

INTER-GOVERNMENTAL ACTION GROUP AGAINST
MONEY LAUNDERING IN WEST AFRICA

Mutual Evaluation Report

Anti-Money Laundering and Combating the Financing of Terrorism

GUINEA

NOVEMBER 2012

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0 50 100 km
0 50 100 mi
SENEGAL
THE GAMBIA
MALI
GUINEA-BISSAU
Labé
Siguiri
Boké
Kamsar
Fria
Kindia
Niger
Kankan
CONAKRY
SIERRA LEONE
Macenta
Mont Nimba
Nzérékoré
CÔTE D'IVOIRE
NORTH ATLANTIC OCEAN
LIBERIA
8
12

ACRONYMS

AfDB	African Development Bank.
AML	Anti-Money Laundering
AML/CFT	Anti-Money Laundering and Countering of the Financing of Terrorism
ANLCACA	National Anti-Corruption Agency
APIMG	Professional Association of Micro-Finance Institutions of Guinea
AU	African Union
BCRG	Central Bank of the Republic of Guinea
BICIGUI	Banque Internationale pour le Commerce et l'Industrie de la Guinée (International Bank for Trade and Industry)
BPMG	Banque Populaire Maroco Guinéenne (a bank)
C	Compliant
CCP	Code of Criminal Procedure
CFT	Countering the Financing of Terrorism
CTNSA GIABA	National Technical Committee responsible for the monitoring Follow-Up of GIABA Aactivities in Guinea
DAF	Division of Financial Affairs
DNFBPs	Designated Non-Financial Businesses and Professions
ECF	Extended Credit Facility
ECOWAS	Economic Community of West African States.
FATF	Financial Action Task Force
FIs	Financial Institutions
FIU	Financial Intelligence Unit
FIU/FIU	Financial Intelligence Unit
FT	Financing of Terrorism
GDP	Gross Domestic Product.
GIABA	Inter-Governmental Action Group against Money Laundering in West Africa
HIPC	Highly-Indebted Poor Countries.
IGF	Inspectorate General of Finance
IMF	International Monetary Fund.
LC	Largely Compliant
LGV	La Guinéenne de Vie (angGuinea Life iInsurance cCompany)

LONAGUI	Loterie Nationale de Guinée (Guinea State Lottery)
MEF	Ministry of the Economy and Finance
MFIs	Micro-Finance Institutions
ML	Money Laundering
ML/FT	Money Laundering and terrorism financing
MUTRAGUI	Mutuelle des Travailleurs de Guinée (Trade Union)
NA	Not applicable
NADO	The National Anti-Drug Office
NC	National Correspondent
NC	Non-compliant
NGO	Non-Governmental Organisation
NPO	Non-Profit Organisation
OHADA	Organisation for the Harmonisation of Business Law in Africa
OMVS	Organisation pour la Mise en Valeur du Fleuve Sénégal (Senegal River Development Organisation)
ORDEF	Office for the Combating of Economic and Financial Crimes
PC	Partially Compliant
PC	Penal Code
PEP	Politically Exposed Person
R	Recommendation
RCCMTPPCR	Trade and Personal Property Credit Register
SGBG	Société Générale de Banque de Guinée (a bank)
SONAG	Société Nouvelle d'Assurance de Guinée (an insurance company)
SR	Special Recommendation
UGAR	Union Guinéenne d'Assurances et de Réassurances (an insurance and reinsurance company)
UNO	United Nations Organisation
UNODC	United Nations Office on Drugs and Crime
UNODC	United Nations Office on Drugs and Crime
WCO	World Customs Organisation

PREFACE

Information and Method used in the Mutual Evaluation of the Republic of Guinea

1. The evaluation of the Republic of Guinea's anti-money laundering and countering the financing of terrorism (AML/CFT) regime was conducted based on the Forty Recommendations of 2003 and the Nine Special Recommendations on the financing of terrorism prepared by FATF (Financial Action Task Force). It was also prepared using the 2004 AML/CFT methodology as updated in February 2009. The mutual evaluation was conducted in accordance with the laws, regulations and documents submitted by the Republic of Guinea as well as information gathered during the on-site visit made by the evaluation team to Guinea from 4th to 18th June 2008. During the visit, the evaluation team met with officials and representatives of all relevant competent governmental bodies in Guinea, as well as with the private sector. A list of the bodies met is given in Appendix1 of the mutual evaluation report.

2. The mutual evaluation was conducted by a team of evaluators comprising experts on criminal law, law enforcement and the financial sector. The following participated in this evaluation: Mister DOTCHE TOGBE Kouassi, Magistrate, Director of Legal Affairs and International Cooperation within Togo's National Financial Intelligence Processing Unit (FIU), Legal Expert; Madame Hawa Fatoumata KONE, Secretary General of FIU Côte d'Ivoire, Financial Expert, Madame Astou SENGHOR, Economist at the Division of Currency and Credit in Senegal's Ministry of the Economy and Finance, Financial Expert; Mister Pascal SINDGO, Director of the Criminal Investigation Department of Burkina Faso, Operational Expert; Mister Dadjo Dieudonné LISSAGBE, Head of Benin's Economic and Financial Squad, Operational Expert.

3. Mr. Abdourahmane NIANG, Lawyer at the Legal Affairs Division of the BCEAO (Central Bank of West African States) and Mister Philippe KOSTER, Acting chair of Belgium's Financial Intelligence Processing Unit (FIPU) also participated as observers.

4. The evaluation mission was coordinated by a team from GIABA's Secretariat comprising: Mr. Mohamed COULIBALY, Principal Projects and Programmes Officer; Mr. Madické NIANG, Senior Research and Planning Assistant.

5. The Experts analysed the institutional framework, relevant AML/CFT laws, regulations, guidelines and obligations, as well as regulatory regimes or applicable anti-money laundering and countering of terrorism financing regimes via Financial Institutions (FIs) and Designated Non-Financial Businesses and Professions (DNFBPs). The capacity, implementation and effectiveness of all mechanisms were also evaluated.

6. This report provides a summary of the AML/CFT measures in force in the Republic of Guinea as at the date of the field visit or immediately after the visit. It describes and analyses such measures and indicates the extent to which Guinea complies with the FATF 40+9 Recommendations (Cf. Table 1) and provides recommendations on the measures to be adopted with a view to strengthening some aspects of the regime (Cf. Table 2).

1. GENERAL INFORMATION

1.1 General Information on the Republic of Guinea

1. Guinea Conakry, known officially as the Republic of Guinea, is a country located along the Atlantic coast of West Africa. It covers a surface area of 245, 857 km² and shares common borders with six (6) countries, including Guinea Bissau on the North West (385 km), Senegal on the North (330 km), Mali on the East (858 km), Côte d'Ivoire on the South East (610 km), Liberia (563 km) and Sierra Leone (652 km) on the south.

2. Guinea is divided into four "natural regions", namely:

- Lower Guinea (or Coastal Guinea), which is along the Atlantic Ocean, close to the Fouta-Djalon highlands. It is where Conakry, the country's political and economic capital, is located, and has a hot and humid climate;
- Middle Guinea (Fouta Djallon zone), located at the centre of the country and covering nearly a third of the national territory. Its relief is dominated by the mountainous massif of Fouta Djallon whose peaks include Mt Loura (1, 515m) and Mt. Tinka (1, 425m). This is where most of the region's rivers[1] start, earning the country the nickname "West Africa's Water Tank";
- Upper Guinea is located on the North-Eastern side of the country and is watered by the Niger River and its many tributaries. Its climate is dry, and it has a savannah-type vegetation, and;
- Forest Guinea, covers the South-East of the country. It is mainly covered by primary forest which has valuable woods, including Mahogany. The region's highest point is Mt Nimba (1, 752m), which is iron ore-rich.

3. The Republic of Guinea is a former French colony that gained independence on 02 October 1958. Guinea is not part of the *Communauté française d'Afrique* (XAF zone) due to the country's negative vote in the referendum of 28 September 1958 on the integration of the colonies of French West Africa as proposed by General Charles De Gaulle. However, the Republic of Guinea is a member of other integration or cooperation community organisations such as the Mano River Union[2], ECOWAS, SRDO, AU, and the UNO.

4. Administratively, the Republic of Guinea has eight (8) regions: Conakry and Kindia in Lower Guinea, Faranah and Kankan in Upper Guinea, Labé and Mamou in Middle Guinea, Boké in Coastal Guinea and Nzérékoré in Forest Guinea.

5. Guinea has a population of 10, 182, 926 inhabitants (2008 estimate) about 1.5 million of whom live in Conakry. The country's population is mainly rural (70%) and especially youthful with 44.4% aged between 0 and 14 years, 52.4% within the 15-64 years age bracket

[1] Rivers: Niger, Senegal, Gambia and Falémé
[2] Community organisation created in 1973 between Sierra Leone and Liberia. The Republic of Guinea joined the organisation in 1980 and Côte d'Ivoire, later.

and 3.2% aged 65 or older. In spite of its high agricultural potential and rich subsoil[3], Guinea suffers from endemic poverty as illustrated by its poverty incidence, which rose from 49.2% in 2002 to 58% in 2010[4]. The country also had a human development index (HDI) of 0.344, ranking 176th out of 185 countries [UNDP, 2011].

6. Politically, the election of Professor Alpha CONDE through a democratic process in 2010 ended more than two decades of military rule. The advent of this constitutional administration concluded a long and turbulent period of military transition, precipitated by the tragic events of September 2009[5]. Presently, the failure to adhere to the electoral calendar for the legislative election is escalating the debate among political players and creating a political and social atmosphere that is fragile.

7. Guinea's economy is gradually emerging from the tumult caused by poor management and the socio-economic crisis which occurred from 2009-2010. Guinea was subject to international sanctions during this transition period and the country suffered a drastic drop in its external financing. The situation had a negative impact on macroeconomic aggregates. GDP growth rate stood at -0.3% and 1.9% in 2009 and 2010 respectively. This economic slump is mirrored by a stagnating primary sector which grew by 3.2% in 2009 and in 2010; a secondary sector that is moderately recovering at 2.3% (2010) as against -3.1% (2009) and a tertiary sector emerging from a slump, improving from -7.3% in 2009 to 1.1% in 2010.

8. During the transition period, budget deficit (on commitment basis) doubled, rising from 7.2% (2009) to 14.2% (2010) of GDP. Over the same period, inflation rose sharply from 7.9% to 20.8% notably reflecting a 25% (2009) and 75% (2010) growth in money supply, owing to a large extent on the BCRG's (central bank's) decision to finance the deficit by increasing money supply. Guinea's foreign exchange reserves fell by 26.2% to USD 253.67 million by end December 2010 as against USD 343.82 million at the end of December 2009. Its foreign reserves only covered 1.7 months of import of goods and services as at 31 December 2010 as against 2.9 months of imports as at 31 December 2009[6]. Guinea's economy relies to a large extent on the growth of the mining sub-sector which accounts for nearly 60% of exports and 15 to 20% of GDP, but only accounts for 25% of the country's internal revenue.

9. In order to improve this bleak economic picture, the new authorities in Guinea embarked on reforms with the main objective of curbing inflation, boosting economic growth and reducing the incidence of poverty. The reforms are expected to consolidate the management of public finances, allow the adoption of a new mining code and improve the business environment. In practical terms, the reforms should, as a priority, lead to significant investments in development projects, particularly those related to infrastructure and energy, coupled with the development of the mining sector.

10. The Republic of Guinea is supported i its efforts by the International Monetary Fund (IMF) with the signing of an Extended Credit Facility (ECF). Within this framework, an IMF mission visited Conakry from 19th July to 8th August 2011 to review an ECF supported programme to the tune of 194.50 million dollars. Guinea may receive a second disbursement

[3] Guinea's subsoil is rich in minerals, particularly gold, diamond, iron, and more; the country has a third of the world's bauxite reserves.
[4] PRSP implementation report (June report, June 2011)
[5] Bloody repression resulting in the death of 150 protesters in Conakry (www.guinée-plurielle.com/article-hrw-le rapport-mondial-2011-situation-en- guinée-65690268.html
[6] BCRG, 2010 Annual Report

amounting to 27.79 million dollars in September 2012. In addition, the Guinean and IMF authorities held talks on the HIPC initiative completion point. The triggers of the completion point are expected to be monitored following the conclusion of the first review of the ECF agreement and, where necessary, Guinea's external debt burden may be considerably reduced[7].

11. Guinea's economic prospects are promising, according to the IMF mission report which states that "Guinea's economy continues to record a rapid growth rate in 2012, boosted by increased investments in the mining sector and strong growth in agriculture. Year-on-year inflation, which peaked at 21 % at the end of 2010, continues its downward trend, standing at 15 % at the end of June 2012, and exchange rate has stabilised". The IMF mission also adds that: "efforts have been made to restore budgetary discipline and avoid recourse to budget financing through banks by maintaining expenditure at the level of available resources… ".

1.2 General situation of Anti-Money Laundering and Countering Financing of Terrorism

12. Like most low-capacity countries, the Republic of Guinea is prone to the development of serious criminal activities in general, and to the risk and threats of money laundering and the financing of terrorism in particular. With its high unemployment rate and the overwhelming poverty affecting more than half of the country's population, the survival strategy of this segment of the population, comprising mainly youths, often involves criminal behaviour.

13. Furthermore, Guinea shares a common border with six countries and together, they form a bloc, the crushing majority of which are conflict-ridden countries. Besides, Guinea lacks the huge resources needed for the surveillance of its borders and is confronted with the problem of porosity of its borders, worsened by the ECOWAS principle of free movement of persons and goods. In addition, the country's openness to the sea shores and the existence of a dynamic sea port, provides a major economic opportunity, but which also constitutes a source of risk that needs to be addressed by the authorities.

14. Discussions held with the various stakeholders on the perception of money laundering risk in the country indicate that money laundering risk is coupled with the predominance of the informal sector In the Guinean economy, characterised by the extensive use of cash as a means of payment and a growing number of unauthorised currency dealers. The actors in this sector noted that the ineffectiveness of the coercive measures against unlicensed operators. The socio-political instability that accompanied the succession of regimes as well as the development of drug trafficking catalyzed by such an environment, were also raised. These factors increase the Republic of Guinea's vulnerability to money laundering, and particularly expose the financial sector to the risk of money laundering.

a. <u>Predicate offences to money laundering in Guinea.</u>

15. Predicate offences are criminalised by legislative and regulatory instruments. Their extent varies according to the priority the authorities give to them. International drug trafficking and corruption are thus considered as the predominant offences, although available

[7] IMF, Press release No.12 /291 of 8th August 2012

figures failed to support this position in the case of corruption. Information gathered also points to vehicle theft, forgery (national currency, administrative documents and others), trafficking in migrants and customs fraud as the major offences committed in Guinea.

16. Figures on the activities of the Conakry Prosecutor's office (Conakry III High Court), indicate that the criminal landscape (crimes here are considered in the broad sense, thus including predicate offences) marked by these offences show that: 655 offences, including 595 cases of misdemeanour and 59 crimes, were committed in 2010; 1,026 offences, including 898 cases of misdemeanour and 128 crimes were committed in 2011.

17. The only customs data from Guinea on illegal drug trafficking point to seizure of: 675.5 Kg of Indian hemp and 35 Kg plus 1.5g of cocaine in 2008; 116 Kg of Indian hemp and 03 kg of cocaine in 2009; 493.07 Kg of Indian hemp in 2010; 270 Kg of Indian hemp in 2011; 455 Kg plus 200g of Indian hemp and 22 Kg of cocaine in 2012.

b. Terrorism financing offences

18. There are no statistics on the financing of terrorism as it is not criminalised in the Republic of Guinea. This makes the country especially vulnerable to terrorist financing particularly in the context of the West African region, and the Guinean authorities should make every effort to resolve this deficiency without further delay.

c. Evaluation of national AML/CFT activities

19. The Anti-money laundering and counter-terrorism financing campaign has not recorded any improvement in routine activities in Guinea. There is no operational mechanism, which makes it difficult to obtain statistics indicating the level of performance.

20. Though provided for by the law, the FIU is yet to be operational. This significantly reduces the country's AML/CFT activities. However, within the banking sector, suspicious transaction reports are sent to the Central Bank, where an ad hoc unit has been created for this purpose. The summary analysis of the files by the unit shows that most of the offences identified concern transfer of funds without a valid economic justification and such monies were simply returned to the institutions that originated the transaction. This highlights the weakness of the AML/CFT regime in place.

21. Finally, another equally important aspect of the country’s anti-money laundering regime relates to public expenditure control. Guinea is plagued by misappropriation of public finances. This was particularly persistent during the transition period. The new Government has adopted corrective measures and intends to restore the uniqueness of Government accounts, a major factor in curbing the embezzlement of public funds and corruption within the State administrative apparatus, and therefore a source of money laundering.

22. The main challenge of the AML/CFT regime in Guinea has to do with the failure to establish an FIU, which naturally makes it impossible to contact the other segments and entities accountable to money laundering and the financing of terroirism.

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

23. Guinea's financial sector comprises the Central Bank, banks, micro-finance institutions, insurance companies, foreign exchange bureaus and money transfer companies. Even though the Banking Law provides for credit institutions, Guinea's market is yet to have a credit institution. Similarly, there is no capital market.

a) Banking Sector

Central Bank of the Republic of Guinea

24. Article 1 of Order No.0/2009/046/CNDD spells out the special legal status of the Central Bank of the Republic of Guinea (BCRG), hereinafter called " the Central Bank", and sets out the scope of its mission and establishes its management structure and control. Article 15 of the Order states that the Central Bank shall be responsible for the regulation, approval and supervision of payment and clearing systems and the settlement of securities transactions…and for imposing administrative sanctions in accordance with the provisions of the applicable regulation. Article 17 of the same Order provides that the Central Bank shall regulate and supervise credit institutions, insurance companies and the other financial institutions.

25. Central Bank examiners can visit credit institutions, insurance organisations and financial institutions to examine accounts, books, documents and other evidence to obtain information, and take any other initiative the Central Bank deems necessary or desirable.

26. The Central Bank may impose administrative or monetary sanctions on any natural and /or legal person that violates the provisions of the Order, or its regulations.

27. Pursuant to Decision No. D/2011, the Central Bank's Administration is organised into eight (8) Departments. Consequently, the Financial Institutions Supervision Department and the Credit and Trade Department are directly involved in the monitoring and supervision of banking regulations and the provisions of the anti-money laundering law.

28. The Department responsible for the Supervision of Financial Institutions comprises the Division responsible for Banking Supervision, the Division responsible for the Supervision of Insurance Companies and the Division responsible for the Supervision of Micro-finance Institutions. These Divisions are responsible for the monitoring of credit institutions, the review of applications for licenses and the functioning of the institutions in question.

29. The Department of Credit and Foreign Exchange comprises the Division of Monetary Policy and Credit, the Division of Foreign Exchange and the Division responsible for the supervision and monitoring of Foreign Exchange Regulations.

30. On the basis of the answers given by the Monetary Authorities to the concerns raised by the mission, and drawing on the documentation provided by those authorities, the strengthening of resources at the Department in charge of the Supervision of Financial Institutions is expected to contribute to improving the monitoring of FIs. Staff training provision on AML/CFT is necessary, particularly for Inspectors and the regular organisation of thematic audit missions on money laundering and the financing of terrorism should contribute to strengthening the AML/CFT regime.

31. Furthermore, the Anti-money Laundering Act No.L/2006/010/AN is binding on the Central Bank. However, the Mission could not confirm the implementation of any domestic AML programme within the internal organisation of the Central Bank, which is a deficiency that needs to be resolved.

Credit institutions

32. Banks and financial institutions are governed by both the ordinary law of business corporations defined by a supranational body, the Organisation for the Harmonisation of Business Law (OHADA) and by law L/2005/010/AN of 04 July 2005 on the regulation of credit institutions in the Republic of Guinea, known as the banking law. These instruments set forth rules on their creation, functioning and dissolution. In particular the banking law has no specific provision on AML/CFT.

33. Under article 2 of the banking law, "corporate entities that carry out the following banking operations as a normal activity shall be considered as credit institutions which :

- receive money from the public, and/or
- distribute credit, and/or
- provide clients and organisations with any method of payment.

34. Articles 3, 4 and 5 respectively cover money received from the public, credit operations, and payment instruments. At the time of the on-site visit Guinea had seventeen (17) licensed banks, thirteen of which were in operation. The shareholdings of these banks include Guinean and foreign nationals as well as French and African banking groups.

35. All the thirteen (13) in operation were considered as "community banks".

36. They include:

1. Banque Internationale pour le Commerce et l'Industrie de la Guinée (BICIGUI)
2. La Banque Islamique de Guinée (BIG) ;
3. La Banque Populaire Maroco-Guinéenne (BPMG ;
4. La Société Générale de Banques en Guinée (SGBG);
5. Ecobank-Guinée (ECG) ;
6. Orabank;
7. International Commercial Bank (ICB);
8. First International Bank of Guinea (Fibank-Guinée)
9. La Banque Sahélo-Saharienne pour l'Investissement et le commerce de Guinée (BSIC-Guinée);
10. United Bank for Africa-Guinée (UBA-Guinée);
11. Skye Bank-Guinée (SBG);
12. Banque Internationale pour l'Afrique de l'Ouest (BIAO-Guinée);
13. Banque Africaine pour le Développement Agricole et Minier (BADAM) ;

37. At the time of the on-site visit, BADAM was under temporary administration pursuant to decision No. D/2011/033/CAM of 15 December 2011 due to poor management and breach of banking regulations.

38. The network of branches or counters stood at 84 in 2011 as against 75 in the previous year, indicating that 9 more branches were opened in 2011.

State of the banking system

39. As at 31st December 2011, the banking system's total balance sheet stood at GNF 10,890 billion as against GNF 7,825 billion in 2010, up by GNF 3,065 billion.

40. Guinea's banking system continues to be concentrated with three (3) banks largely dominating the market.

	Deposits	Credits	Total balance sheet	Total balance sheet in billions of GNF
Large banks (3)	70%	76%	69%	7.557
Medium-sized banks (4)	22%	18%	21%	2.307
Small banks (6)	8%	6%	10%	1.025
TOTAL	100%	100%	100%	10.890

41. The law on lease financing has been enacted. This is expected to encourage the establishment of financial leasing companies in the very near future. The International Finance Corporation (SFI) was consulted for the provision of technical and financial assistance towards the popularisation and promotion of lease financing in Guinea.

42. The Central Bank in 2011 authorised two banks to carry out mobile money operations. These banks are yet to launch such operations.

43. It should be note that the Public Treasury, the Central Bank, financial services of the Post Office, international financial institutions, insurance companies, pension and social security organisations, as well as notaries and ministry officials that carry out these mobile money transactions are not bound by the banking law. The regulation, licensing and monitoring of the operations of Credit Institutions fall under the ambit of the Licensing Committee and Central Bank.

On-site audits

44. On-site audits are organised by the monetary authorities, namely the Central Bank, on the basis of an action plan worked out at the beginning of the year. In 2011, the Division responsible for Banking Supervision undertook a thematic mission in three banks, focussing on their accounting information system, and two missions to all banks, to audit the operations of the interbank foreign exchange market

45. The authorities in Guinea submitted to the mission an action plan for 2011, which provides for prudential audits in some banks, particularly those that have not been visited since 2005 or those in which major problems were identified.

b) Micro-finance institutions

46. Operating alongside banks are institutions of the micro-finance sector, which are mutual society or savings and loans cooperative institutions, as well as bodies or organisations not created in the form of mutual institutions or cooperatives and aimed at collecting savings and/or granting loans. These are governed by Specific law No. L/2005/020/AN enacted by the national assembly on 22nd November 2005 to regulate micro-finance institutions.

47. At the time of the on-site visit, the micro-finance sector had 16 MFIs serving nearly 400,000 inhabitants. This sector offers services suited to informal sector players, among them are a remarkable number of women. It is worthy of note that since its emergence in 1988, the sector has only recently began experiencing a boom, offering a credible financing alternative to the vulnerable segment of the population left out of the traditional banking system.

48. Also, Guinean authorities have taken initiatives to promote the sector via the creation of the National Micro-finance Board as well as a schedule to map out a national strategy for micro-finance and the creation of a GNF130 billion fund to support activities initiated by the youth and women.

49. Products offered by MFIs continue to be dominated by sight deposits and short-term credits. Furthermore, partnership agreements between some MFIs and money transfer companies make it possible to facilitate their transactions, in particular the receipt of money from abroad.

50. The Parliamentary Act No. l/2005/020/AN on Micro-finance organises the profession by laying down conditions for carrying out a micro finance business, its organisational structure, as well as granting and withdrawing licenses. Article 37 of the same Act states that "every micro-finance institution must, within three months of its licensing or authorisation, join the professional association of micro-finance institutions known as the professional association of micro-finance institutions of Guinea'' abbreviated as "APIMG". A discussion with members of the association revealed to the mission the level of ignorance about the AML Act in general.

TRENDS IN SECTOR'S INDICATORS				
INDICATORS	**31/12/2008**	**31/12/2009**	**31/12/2010**	**Variation compared to 2009**
No. of MFIs	9	10	13	30.00%
No. of counters	3,540	340	369	8.52%
No. of customers	302,199	324,512	435,131	34.98%
Vol of credits in billions of GNF	71.41	65.45	98.41	50.35%
Outstanding credits in billions of GNF	70.07	60.49	74.12	22.53%
Vol of savings in billions of GNF	35.35	39.91	57.14	43.17%

Supervision of MFIs

51. The Supervision of MFIs is the responsibility of the Central Bank, specifically the Division responsible for the Supervision of MFIs, which is one of the three Divisions that make up the Department responsible for the Supervision of Financial Institutions pursuant to Decision No.245/09. Supervision is conducted through on-site audits based on documents aimed at detecting weaknesses and preventing difficulties related to the sector.

52. The principal issues which emerged from the supervision of MFIs relate to administration and accounting management, portfolio quality and compliance with regulations.

c) Insurance sector

53. In 2010, there were seven (07) insurance companies, 23 brokers, 32 general agents and one Automobile Guarantee Fund on the market.[8] Two insurance companies enjoy the biggest market share, namely Union Guinéenne d'Assurance et Réassurance (UGAR) with a 59.35% market share and *La Guinéenne de Vie* (LGV) with 14.15%. The other insurance companies (*Société Nouvelle d'Assurance de Guinée*-SONAG, International Insurance Company Guinea-IIC, *Société d'Assurances et de Réassurances des travailleurs de Guinée*- MUTRAGUI) have the remaining market share;

54. Insurance companies are governed by Act L/95/022/CTRN/ of 12 June 1995 which lay down the insurance code. The law dates back to the period before the AML Act was enacted and does not address ML/TF issues. Players in the sector are also unaware of the AML Act.

55. In terms of turnover, as of 31 December 2010, the insurance market posted net turnover cancellations of GNF 78,949,142,833 as against 69,780,369,882 as of 31 December 2009, an increase of 13.13%. This increase in turnover can be explained mainly by the growth in output in Life insurance (85.23%), i.e. more than GNF 5,395 billion in value.

56. The growth in the volume of life insurance premiums can be explained to a large extent by the launch of the operations of an insurance company whose activities focus mainly on this branch of insurance. However, the share of Non-Life insurance continues to account for the bulk of the 85.85% turnover, the share of life insurance being 14.15%.

d) Foreign exchange and money transfer sector

57. The foreign exchange transactions are governed by:

- Act No.L/2000/006/AN regulating financial relations relating to transactions between the Republic of Guinea and foreign countries;
- Directive No./112/DGAEM/RCH/00, to establish the regime of relations linked to transactions between the Republic of Guinea and foreign countries, which lays down regulations to enforce the above-mentioned law.
- Directive No.025/DGEEM/RCH/11 regulating foreign exchange bureaus in the Republic of Guinea.

[8]Annual Report of the DGSIF/BCRG (31/12/210).

58. Article 3 of the Directive states that "any Guinean natural or legal person that wishes to carry out foreign exchange transactions as a normal activity the Republic of Guinea must be licensed by the Central Bank of the Republic of Guinea (BCRG) as an Foreign Exchange Bureau".

59. At the time of the on-site visit, forty-three (43) foreign exchange bureaus had been granted licences.

Functioning

60. Foreign exchange bureaus are only authorised to buy from and sell to any person on their own behalf and at their own risk in return for Guinean francs, and process payment denominated in foreign currency or receive money from abroad. Exchange offices may not perform transfers abroad or open letters of credit and generally, any transactions comparable to a credit or a bank deposit. Foreign exchange bureaus are bound to forward their monthly statements on foreign currency transactions to the Central Bank.

Money laundering situation

61. Anti-money laundering law L/2006 /010/AN requires that all foreign exchange bureaus or money transfer companies must exercise due diligence on transactions that are complex and unusual or transactions of exceptional amounts that are not backed by any obvious or clearly legal economic grounds.

62. The mission observed during discussions with the structures contacted that people are generally ignorant about the AML law and the obligations it imposes. However, some organisations have undergone training initiated by foreign bodies or in partnership with international organisations that have AML/CFT policies in place.

63. There also is a strong propensity for informal currency exchange and money transfer, which results in the vulnerability of this sector to money laundering and the financing of terrorism risks and also undermines efforts by licensed structures.

DNFBPs

64. Regarding Designated Non-Financial Businesses and Professions (DNFBPs), the AML legislation of the Republic of Guinea notably covers for the following activities:

- real estate agents;
- traders in precious metals or in precious stones;
- traders in works of art;
- auditors;
- casinos, including internet casinos;
- gaming establishments, including national lotteries;
- providers of services to companies and trusts;
- cash couriers;

- travel agencies;
- Non-Governmental Organisations (NGOs)
- lawyers, notaries public and independent and legal professions and accountants

65. The performance of these non-financial activities in some cases (notably casinos) requires prior authorisation from the competent authorities (supervisory ministry) particularly in the form of a licence or approval, under the penalty of sanctions. In many other cases, a mere disclosure or registration in the Trade and Personal Property Register is enough, owing to the implementation of a policy to liberalise economic activities.

66. With regard to the activities for which they are responsible within the framework of anti-money laundering efforts, Designated Non-Financial Businesses and Professions are bound to implement customer due diligence measures. Those under the DNFBPs category include:

- **Real estate agents:** They are bound by the law even though the real estate business as a profession does not exist in the Republic of Guinea. The real estate business is carried out informally and constitutes a significant vulnerability to money laundering. At the time of the on-site visit, officials of the Ministry of Urban Planning and Construction informed us about the ongoing preparation of an urban planning and construction code. The lack of regulation and supervision of the sector by public authorities and the lack of organisation of the players involved results in a situation whereby the bulk of real estate transactions are private, without notarial deeds and most often involve area headmen.

- **Traders in precious metals:** They are governed by Act No. L/2011/006/CNT of 09 September 2011 which lays down the mining code of the Republic of Guinea. The law aims to regulate the mining sector in order to promote investments and enhance the knowledge of Guinea's sub-soil. Mining in the Republic of Guinea is subject to an authorisation from the Ministry in charge of Mines. The industrial mining licence is granted for a fifteen- (15) year period, while the semi-industrial mining licence is issued for no longer than five (05) years.

- There are **two categories of mining developers in the Republic of Guinea's mining sector**. On one hand, there are industrial developers operating as companies, most of which are members of the Chamber of Mining (Mining employers), which has 64 members, and on the other, small-scale developers regrouped under CONADOG (The National Confederation of Diamond-cutters and Gold washers of Guinea), approved on 23 February 2006. Members of both groups (industrial and small-scale developers) have no knowledge of the anti-money laundering law and do not honour their obligations regarding the prevention and detection of money laundering and the financing of terrorism particularly in respect of customer identification.

- **Accountants:** They are 62 in number, including 41 individuals and 21 corporate entities and are governed by ordinance No.42/PRG/SG of 25 February 1985 which establishes the order of licensed public and chartered accountants, under the supervisory authority of the Ministry of the Economy and Finance. Order No.

a/95/3094 is the regulation to this ordinance. It regulates the professions of approved public accountants and accountants. No one can carry out the profession of public accountant in the Republic of Guinea unless they are registered or have an attestation proving their registration in the rolls of the Order of approved public and chartered accountants in accordance with article 4 of the said order. Only public accountants duly registered in the rolls are allowed to be auditors. The order of licensed public accountants and accountants is a self-regulatory body.

- **Lawyers:** They are governed by law No. 2004/014/AN of 26 May 2004 which organises the legal profession in Guinea and are under the supervisory authority of the Ministry of Justice. There are 213 lawyers on the rolls of the order, which is chaired by the President of the Bar Association who is elected for a two-year term renewable only once, from the ranks of lawyers that have been on the Roll for ten years. The lawyer is an officer of the court and is protected in the practice of his profession by applicable instruments and by the immunities set forth under the law governing the profession. The order acts as a self-regulatory body of the profession, within the limits of its powers.

- **Notaries public**: they are governed by Law L/93/003/CTRN/ of 18 February 1993 which lays down the status of Notaries. There are 18 notaries public in Guinea. These are public officers authorized to receive deeds and contracts from parties required or wishing to make same legally authentic as required by the State authority, to date and act as custodians of such deeds and issue original and official copies thereof. The Ministry of Justice, Keeper of the Seals, and the chamber of notaries public are responsible for supervising notaries public. Lawyers, notaries public and public accountants as part of their profession, use the norms and standards of international firms which allow them to assess risk before starting a transaction. However, they do not exercise the customer due diligence measures they are bound to exercise as reporting entities under the anti-money laundering law.

- **Casinos**: By decree No.0 28 /2000/ PRG/SGG of 2000, Guinea established a public company responsible for the organisation, management and operation of all forms of lottery, gaming, forecasting and related activities in the Republic of Guinea, known as the Guinea State Lottery (LONAGUI.).Within the framework of laws and regulations and with the support of the authorised government services, it lays down policy relating to gaming, forecasting and related activities in the Republic of Guinea. LONAGUI has authorised the opening and operation of six (6) casinos, four (4) of which were in operation at the time of the on-site mutual evaluation visit. However, in terms of the anti-money laundering and countering the financing of terrorism initiatives, like LONAGUI, casinos do not comply with any of their obligations as regards anti-money laundering and countering of the financing of terrorism.

1.4 Overview of business law and mechanisms applicable to legal persons and arrangements

67. The conditions for incorporating, operating and dissolving companies are set forth by the OHADA Uniform Acts notably on general business law and on commercial companies and economic interest groups (EIGs).

68. The legal forms of companies provided for include:

- general partnership;
- partnership limited by shares;
- limited liability company;
- corporation;
- joint venture;
- economic interest group (EIG)

69. The legal forms of credit institutions and micro-finance institutions are on their part respectively defined by the laws governing them.

70. The banking law requires that banks take the form of fixed capital companies, cooperatives or Mutual societies with a variable capital. The minimum share capital for banks is set at fifty (50) billion Guinean francs. As regards other financial institutions, the regulations setting out their legal structure are yet to be signed. However, they are intended to be incorporated either as public liability companies with fixed capital, limited liability companies or cooperatives or mutual societies with variable capital. The minimum share capital for Financial Institutions is yet to be determined.

71. Shares issued by banks and financial institutions must be registered. With the exception of joint ventures, all companies must be registered in the Trade and Personal Property Credit Register in order to be recognised as a corporate personality.

72. Any individual or corporate entity qualified to operate as a trader under the Uniform Act must, in the first month of business operations, apply to be registered with the Registry of the competent jurisdiction where the business is being operated.

73. The application must provide some information and supporting documents that can be useful in the identification of the person. Criminal penalties are imposed for any breach of the Uniform Act.

74. Regarding legal arrangements, it is worth noting that based on information gathered by the Mission, trusts as well as similar legal arrangements are non-existent in the Republic of Guinea. There is no regulation applicable to these legal categories.

75. Associations, Non-Governmental Organisations (NGO) and Foundations on their part are governed by Act No.013/AN of 4 July 2005 which lays down the regime of Associations in the Republic of Guinea (cf. articles 1 and 32). The objective of these bodies is to "promote professional, non-profit social, scientific, educational, cultural and sporting activities " (Association, cf. article 3), carry out humanitarian and/or development works without reward in the form of goods and services to its members" (NGO, cf. article 17), or, activities regarding the "financing of humanitarian activities, scientific research, the promotion of human rights or development" (Foundation, cf. article 32).

76. Notwithstanding the absence of a law on the countering of the financing of terrorism, it is worth underscoring that the provisions of the law on Associations make it possible to fulfil some of the requirements of Special Recommendation VIII. The law on Associations accordingly provides for the identification and registration of NPOs by the supervisory authority, notably through the prior approval regime. It makes it mandatory for NPOs to

inform the supervisory authority about any changes in the membership of its management organs. Similarly, the law empowers the supervisory authority to audit the financial situation of NPOs by requiring that such organisations forward their annual financial statements to the supervisory authority.

77. However, the effectiveness of the requirements of the law on Associations does not seem to cover all non-profit Organisations (NPOs), since the supervisory authority does not know their exact number. According to information received, estimates put the number of NGOs at 2,500 and cooperatives at 5,000, not considering undeclared NPOs operating on the field. In conclusion, the mission was unable to ascertain the regularity and effectiveness of the audits of those NPOs identified by the supervisory authority.

1.5 Overview of money laundering and financing of terrorism prevention strategy

a. AML/CFT strategies and priorities

i) Government's AML/CFT policies and goals

78. The Mission noted that the authorities in Guinea have become aware of ML/FT and are willing to combat them. However, the Republic of Guinea has no yet put in place a national AML/CFT strategy.

79. Nevertheless, an informal coordinating body known as the Inter-ministerial Committee was formed in 2002. The body is responsible for the Follow-up of AML/CFT Activities and it comprises five (05) members, four of who are from the Ministry of the Economy and Finance, Justice, Security and Emergency Preparedness and the representative of the Central Bank of the Republic of Guinea (BCRG). In spite of the lack of a deed formalising the existence of the Committee, we can mention to its credit, some activities carried out on the field, including the preparation of this mutual evaluation of the Republic of Guinea. The Committee also lacks a headquarters or any material and financial resources allowing it to cover the cost of its work.

80. Equally, the Republic of Guinea, in January 2011, set up a Secretariat at the Presidency. This Secretariat is responsible for Special Services, and combating drugs and organised crime. This body notably coordinates the activities of the *Office Central Anti-drogue* (OCAD) responsible for anti-drugs activities and the *Office de Répression des Délits Économiques et Financiers* (ORDEF), responsible for combating financial and economic crimes. Information received by the team indicates that a particular division of ORDEF is charged with anti-money laundering activities.

81. The "laundering of drug money" on its part was criminalised in 1998 by means of article 398 of the Penal code (law No.98/036 of 31 December 1998). However, it was only in 2006, following law No.L/2006/010/AN of 24 October 2007, that the Republic of Guinea enacted an AML legislation. The instrument assigns reporting entities from the financial sector or non-financial professions ML prevention obligations especially those related to the exercise of customer due diligence, suspicious transaction reporting and record keeping. Administrative, disciplinary and criminal sanctions are attached to the obligations.

82. However, it is worth pointing out that since 2003, to make up for the lack of a legal AML regime, the BCRG has enacted two directives which instructed that this issue be dealt with by its departments. These are:

- Directive No.1/2003/001/DGI/DB of 31 March 2003 on combating money laundering;
- Directive No.1/2003/002/DGI/DB of 31 March 2003 on information about the money laundering prevention mechanism.

83. This embryonic mechanism particularly enabled the BCRG to play the role of the Financial Intelligence Unit, a role it has continued to play anyway as the Republic of Guinea is yet to set up the FIU provided for under the AML Act of 2006. Concerning the financing of terrorism, Guinea does not have a relevant law at present. The Mission was informed about the existence of a draft bill that is expected to be passed soon.

ii) Effectiveness of policies and programmes implemented.

84. The lack of a national AML/CFT strategy, a FIU and a CFT law significantly affects AML/CFT measures adopted by the Republic of Guinea. In view of this, the authorities should make efforts to develop a national AML/CFT strategy comprising policies and priority programmes.

b. AML/CFT institutional framework

1. Roles and Responsibilities of Authorities

85. The institutional framework has been created; at the national level, administrative bodies and technical organs are yet to be operational (FIU) or formalised (AML/CFT inter-ministerial committee).

86. At the national level, administrative bodies include the Ministry of the Economy and Finance, the Ministry of Justice and the Ministry of Security and Emergency Preparedness. Technical bodies include the FIU and the Inter-ministerial Committee in charge of the Follow-Up of AML/CFT Activities.

87. However, while the operationalization of these various institutional and regulatory frameworks is effective in the financial system (banks, corporations and insurance companies), this is not the case in other sectors, particularly the Public Treasury, Customs and Designated Non-Financial Businesses and Professions (DNFBPs) because the FIU is yet to be established.

88. The provisions of Law L/2006/010/AN on combating money laundering in the Republic of Guinea, specifically article 19, provides for the setting up of the Financial Intelligence Unit (FIU). This body falls under the technical supervisory authority of the Ministry of the Economy and Finance, and is an administrative FIU with financial autonomy and independent decision-making powers on matters within its purview. One of the remaining challenges following the enactment of the Anti-money laundering Law is the lack of an operational FIU. Currently, all the bodies concerned with the setting up of the FIU have forwarded the name of their representative to the Minister in charge of Finance. There is also a bill on the appointment of FIU members.

c. Progress since the last evaluation or mutual evaluation

89. The Republic of Guinea has never been subjected to an AML/CFT mutual evaluation.

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and regulations

2.1 Criminalisation of Money Laundering (R.1 & 2)

2.1.1 Description and Analysis

90. The Republic of Guinea commenced the fight against money laundering as far back as the '90s with the ratification of the United Nations Conventions Against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances (Vienna Convention) on 27 December 1990, and against transnational organised crimes of December 2000 (Palermo Convention) and on anti-terrorism financing of 9th December 1999 (New York Convention).

91. Guinea, in accordance with the various pertinent Conventions, enacted law No.98/036 of 31 December 1998 and set down in its penal code, provisions on the "laundering of drug money". The country also passed law No.L/2006/010/AN on the combating of money laundering. The country has also adopted several measures to prevent money laundering through various legislative or regulatory instruments targeting sectors that are vulnerable to money laundering. The measures include Instruction No.1/ 2003 / 001/DGI/DB of 31 March 2003 on the fight against money laundering and Instruction No.1/2003/002/DGI/DB of 31 March 2003 relating to information on the money laundering prevention mechanism targeting financial, non-financial bodies and other entities.

Recommendation 1

Criminalisation of money laundering on the basis of the Vienna and Palermo Conventions - Physical and material components of the offence (c.1.1)

92. Within the specific framework of laundering drug money pursuant to article 398 of Act No.98/036 of 31st December 1998 as set down in the penal code of the Republic of Guinea, provides that the conversion or transportation of resources or assets for which the person responsible knew, suspected or should have known to have been derived directly or indirectly from one of the offences provided for under articles 382, 383, 384, 397 and 399 with the purpose of concealing their origin, nature, location, disposal, movement or ownership of the relevant resources, assets or entitlement shall amount to an offence. The facilitation of illegal use by others is targeted under Article 382.. Article 383 is related to the offer and sale of drugs for personal consumption. Article 384 covers the facilitation of use by minors. Article 397 criminalises the organisation, management and financing of offences. Article 399 covers the facilitation of offences by a staff of the office responsible for drug related crimes.

93. The drug money laundering offence is not extended as indicated in article 3 of the Vienna Convention, to the main offences of cultivating, producing, extracting, preparing, brokering, shipping, importing and exporting, encouraging, involvement in any of the

offences indicated, dissimulating or disguising the nature, origin location, disposal, movement or real ownership or entitlements to such assets.

94. The Anti-money laundering Act No. L/2006/010/AN supplements and corrects the 1998 penal code by criminalizing under article 2 most of the acts contained in articles 3 (1)(b) and c of the Vienna Convention and 6(1) of the Palermo Convention. These include acts committed intentionally such as "the transfer or conversion of assets by any person who knows or should have known that the assets in question were proceeds from a crime or an offence or from involvement in a crime or offence, with the aim of concealing or disguising their illegal origin… ". The same applies to the concealment, disguise or camouflage of the nature, origin, location, alienation, movement or real ownership of assets, possession, acquisition or use of such assets. Collusion, association, and attempted complicity are also punished.

95. On the other hand, the AML provisions do not consider as criminal offences acts such as the possession of equipments, materials or substances included in the tables or Table II pursuant to the prescriptions of the Vienna convention in its article 3.1.cii.

The money laundering offence applies to all types of assets, which directly or indirectly represent proceeds from crime, irrespective of their value (C.1.2)

96. Article 1 of the money laundering law expressly defines assets as: **"all types of property, corporeal or incorporeal, movable or immovable, tangible or intangible, fungible or non fungible as well as legal deeds or documents attesting to the ownership of such property or rights to them".** This includes foreign currency, securities, precious stones and metals, receivables, material benefits and other economic benefits, property in the form of increased assets or liabilities. Fringe benefits are also covered; especially income from net asset value, but the law should expressly state it. These assets can be of any value provided that they have been obtained directly or indirectly from proceeds of crime. The Guinean legislators did not adopt the term assets which "directly or indirectly represents proceeds from crime", but rather lists the assets. This method of drawing up a list of assets has the disadvantage of not being able to outline all possible assets.

It is not necessary for a person to be convicted for a predicate offence to prove that an asset constitutes proceeds from crime (c.1.2.1)

97. It is not necessary to sentence a person for a predicate crime in order to be able to declare that his/her assets are proceeds from a crime, under article 3 paragraph $3^{(1)}$ of the money laundering law. The money laundering crime is an independent crime. Article 3 of the AML Act stipulates that "there shall also be money laundering even if the perpetrator of crimes or offences was neither prosecuted nor sentenced; or if the crime or offence from which the facts arise is statute-barred".

Predicate offences should cover all serious offences (C. 1.3)

98. The anti-money laundering law considers all offences and crimes under the Penal Code and criminal law as predicate offences or serious offences. The Guinean law is alleged to cover several hundred criminal offences and includes the serious offence categories defined under the FATF 40 and 9 recommendations as well as other offence which are not designated as predicated offences by the FATF.

Table 1: SUMMARY TABLE OF PREDICATE OFFENCES

FATF serious offence categories	Guinea's Penal Code, Customs Code, Environment Code, the law on fire arms, shipping Code (crime and offence)	Custodial sentences and sanctions
Involvement in an organised criminal group and in racketeering	Criminal syndicate (articles 296-271 PC)	Imprisonment of 10 to 20 years without local banishment over a 5- to 10-year period.
Terrorism	Terrorism (articles 505 to 507 PC)	Imprisonment of 10 to 20 years or death sentence and local banishment or the rights set out under article 37 of the penal code.
The Financing of Terrorism	The financing of terrorism is not criminalised.	
Prostitution	Trafficking in persons (articles 337-339 PC)	Imprisonment ranging from 6 months to 10 years, a fine of 50,000 to 300,000 Guinean francs, the confiscation of assets, money or objects received; the confiscation of money, objects and assets received in pursuance of the said convention ;
Illegal trafficking in migrants	Illegal trafficking in migrants is not criminalised.	
Sexual exploitation	Procuring (art. 328-330 PC)	Imprisonment of 6 months to 2 years, and a fine of 50,000 to 40.000 Guinean francs; when committed against a minor, it attracts imprisonment of 2 to 5 years and a fine of 100,000 to 1,000,000 Guinean francs, or one of these two penalties only;
Illicit traffic in narcotic drugs and psychotropic substances	Traffic and international drug traffic (art. 379-381 PC)	Imprisonment of 10 to 20 years and a fine of 5,000,000 to 100,000,000 Guinean francs, or one of these two penalties only.
Gun smuggling	The law on arms, ammunitions, powders and explosives (art.8, 12, 18, 19, 22, 23, 28, 29)	imprisonment ranging from: - 1 to 5 years and a fine of 500,000 to 1,000,000 Guinean francs for manufacturing and trade; - 3 to 10 years and a fine of 200, 000 to 800, 000 Guinean francs or one of these two penalties only for acquisition and possession; - 2 to 5 years and a fine of 100, 000 to 500, 000 Guinean francs or one of these two penalties only for obstruction or attempted obstruction; - 2 to 8 years and a fine of 300,000 to 1,000,000 Guinean francs or only one of the two penalties for the possession of an arms or ammunitions depot; - 3 to 8 years and a fine of 350, 000 to 500,000 Guinean francs or only one of the two penalties for carrying or transporting arms or ammunitions; - 1 to 5 years and a fine of 200.000 to 300.000

FATF serious offence categories	Guinea's Penal Code, Customs Code, Environment Code, the law on fire arms, shipping Code (crime and offence)	Custodial sentences and sanctions
		Guinean francs or only one of the two penalties for the sale, import, production, or export of powders or explosive substances. - 2 to 5 years and a fine of 200, 000 to 500, 000 Guinean francs for the manufacture or possession without legitimate grounds of any substance intended to be used in the composition of an explosive; In any case, the confiscation of weapons or banishment is ordered.
Illicit traffic in stolen assets and other assets	Receiving arms (art. 497 and 498 PC)	- 6 months to 5 years and a fine of 50, 000 to 500, 000 Guinean francs or a high amount of up to half the value of the objects received;
Corruption	Corruption (art. 191-194 PC)	imprisonment ranging from: - 1 year to 5 years and a fine of twice the value of promises agreed to or the things received, solicited or requested. - 6 months to 3 years and a fine of 50, 000 to 500, 000 Guinean francs or only one of these two penalties for offers, donations, gifts, commissions, discounts or premiums;
Fraud and scam	Scam, breach of trust and other types of fraud (art. 430-443 PC)	imprisonment ranging from: - 1 to 10 years and a fine of 100.000 to 4.000.000 Guinean francs for scam and the issue of bad checks; - 6 months to 10 years and a fine of 50,000 to 5.000.000 Guinean francs for breach of trust - 1 to 5 years and a fine of 50,000 to 1,000,000 Guinean francs for misuse of corporate assets and credit; - 1 months to 5 years and a fine of 50,000 to 500.000 Guinean francs for misuse of blank signature - a fine of 50,000 to 200,000 Guinean francs for theft of documents produced in court; - 1 to 5 years and a fine of 50,000 to 10.000.000 Guinean francs bankruptcy
Counterfeiting of currency	Counterfeit coins (art. 140-148 PC)	imprisonment of 1 to 5 years and a fine of three times at least and at most six times the sum represented by the asset on the day the offence was committed, of such instruments and apparatus, without ever being less than 1,000,000 francs ;

FATF serious offence categories	Guinea's Penal Code, Customs Code, Environment Code, the law on fire arms, shipping Code (crime and offence)	Custodial sentences and sanctions
Product counterfeiting and piracy	Counterfeiting (art. 452-465)	imprisonment of 15 days to 5 years and a fine of 50,000 to 1,000,000 Guinean francs, or only one of these two penalties, confiscation of the products whose brand would constitute the said offence, utensils, instruments that were used in committing the offence, deprivation of the right to participate in the chamber of commerce over a period of at least 10 years, full publication of the sentence in all newspapers;
Environmental crime	Environment code (art. 95-114)	imprisonment of 3 months to 5 years and a fine of 10,000 to 1,000,000 Guinean francs
Murders and serious bodily injuries	Homicide, battery and voluntary violence (art. 295-305 and 310)	imprisonment of 16 days and life or death sentence and a fine of 10,000 to 1,000,000 Guinean francs;
Abduction and forcible confinement	Illegal arrest, forcible confinement and hostage taking (art. 333-335 PC)	imprisonment ranging from 5 years to life
Hostage taking	Hostage taking (art. 335 PC)	imprisonment ranging from 10 to 20 years to death sentence
Theft	Theft and miscellaneous false pretences (art. 414 - 429)	imprisonment of 2 months to 10 years and a fine of 50.000 to 1,000,000 Guinean francs
Smuggling	Customs code (art. 314 - 316).	- confiscation of the smuggled object, means of transport, objects used to conceal the fraud, a joint fine equal to twice the value of the smuggled object, imprisonment of 1 to 2 months, for any smuggling committed by less than three individuals as well as for acts of undeclared import and export or relating to goods that are banned or heavily taxed upon entering or leaving the country; - fiscal sanctions and imprisonment ranging from 3 months to 1 year for smuggling committed by three individuals and more, up to and including six members; - confiscation of the smuggled object, means of transport, objects used to conceal the fraud, a fine equal to four times the value of the confiscated objects and imprisonment of 6 months to 3 years for any smuggling committed by more than six individuals on horseback or on velocipede, by aircraft, by a harnessed or self-propelling vehicle, by sea vessel or craft or by river boat;
Extortion	Extortion of titles or signatures (art. 449 PC)	imprisonment of 5 to 10 years and a fine of 50,000 to 500,000 Guinean francs

FATF serious offence categories	Guinea's Penal Code, Customs Code, Environment Code, the law on fire arms, shipping Code (crime and offence)	Custodial sentences and sanctions
Forgery	Forgery (art. 140-176 PC)	detention ranging from one month to life imprisonment, a fine of 50,000 to 500,000 Guinean francs, local banishment and prevention from enjoying the rights set out under article 37 [9] of the penal code;
Piracy	Not criminalised	
Insider trading and market manipulation	This offence is not criminalised	

99. The above table on predicate offences points to an issue regarding the determination of penalties. Article 19 of the penal code provides that "a determinate prison sentence of between 5 and 10 years should be imposed and "***Anyone sentenced to this prison term shall serve jail time, and labour, part of the proceeds of which could be due to him***". It seems the legislature did not applied the same principle when punishing, for example, trafficking in drugs which is punishable by imprisonment of 10 to 20 years and a fine of 5,000,000 to 100,000,000 Guinean francs, **or only one of these two penalties**. Thus, the drug trafficker could only be sentenced to pay a fine and not serve time in prison contrary to the provision of article 19 of the same code.

100. Since under Guinea's anti-money laundering any misdemeanour or crime is considered an offence, its scope is wider than FATF's twenty (20) offence categories. The mission nevertheless, observed that amongst the twenty (20) offence categories, Guinea has not criminalised piracy, the financing of terrorism, insider trading, market manipulation, and illicit trafficking in migrants. The above offences ought to be added to the existing list of offences in light of relevant Universal Instruments particularly as the current legal framework does not ensure effective prosecution and combating of these forms of crimes. Guinea should thus review the various existing laws in the area and criminalise piracy, market manipulation, insider trading, the financing of terrorism and trafficking in migrants.

101. Amongst the enactments to be reviewed, the instrument on corruption is of paramount importance on account of the transformation the Republic of Guinea is currently going through. Articles 191 to 194 of the penal code covers and punishes corruption. The code dates back to 31 December 1998, while the United Nations Convention against Corruption came into force in 2005. The instrument on corruption has not been domesticated in any way after 2005. It merely contains four articles that describe active or passive corruption and one article on combating it. It does not contain corruption prevention measures, procedural standards, or any rule organising international cooperation or the restitution of illegal assets sent abroad…

[9] *Article 37 " in the cases expressly provided for by law, magistrates courts can ban the convicted offender from enjoying the following rights:1- electorate, eligibility ; 2- appointment to an administrative position, appointment as a juror, exercise of these functions; 3- carrying or possessing arms; 4- appointment as a tutor, subrogate-tutor, curator or judicial advisor, except for their own children, after seeking the opinion of the family; 5 – voting and suffrage in the deliberations of the family; 6- appointment as expert, participation in proceedings as a witness; 7 – deposition in court as a witness, except at the prosecutor's demand""*

102. The assessors also noted that the county has established national good governance bodies (the national commission against illicit enrichment) which report to the President of the Republic. Several administrative decisions by the bodies include dismissal of dishonest civil servants or subjecting those involved in corruption to prosecution. These actions are evidently pursuant to the Merida Convention (2005).

Method of the threshold for determining predicate offences (c. 1.4)

103. The Republic of Guinea employs the threshold approach in its description of offences as serious crimes or misdemeanours. Article 2 of the Penal Code divides offences into three (3) categories: minor violations punishable by prison terms of less than 16 days, misdemeanour punishable by prison terms of more than 16 days to 5 years, and crimes punishable by terms of more than 5 years.

104. It was observed that predicate offences in Guinea's penal system are crimes, which are punishable by the longest, most privative prison terms and deprive the convicted person of their civil freedoms for as long as possible. Consequently, the entry in the criminal record (art. 812 CCP) of convictions for these crimes shows their seriousness. Predicate offences are classified by category with the matching penalties or with a range of penalties containing a minimum and a maximum that the judge should not exceed in theory.

Predicate money laundering offences should cover acts committed in another country, which amount to an offence in that country, and which should have amounted to a predicate offence if they had been committed on the national territory (C.1.5)

105. The Penal system of the Republic of Guinea stipulates that in money laundering cases, “the principal offence also includes offences committed out of the national territory, which amount to an offence in the State where they were committed and would have amounted to an offence if they had been committed on the territory of the Republic of Guinea". We infer from this that an offence that is not amongst the serious offences in a foreign country and amounts to an offence on the territory of Guinea is a predicate offence and its perpetrator or accomplice or instigator may be convicted of money laundering. Thus, it is not necessary for this offence to be amongst the underlying offences in the State where it was committed.

The money laundering offence applies to persons who commit the predicate offence (C1.6)

106. Barring the act of clemency which pardons one or several categories of offences and cancels the penal consequences thereof (art. 843 CPP), Guinea's penal code establishes the principle of application of the money laundering offence to any person who commits the serious offence (art. 2.4 LBC). In other words, this provision applies to any person, criminal, conspirator, accomplice, abettor, and participant who commit a predicate offence. This provision thus makes it possible to consider the case of self-laundering, i.e. the perpetrator of the predicate offence can also be the launderer of the proceeds from his crime. Currently, there is legal precedence to support the notion that " the person that launders assets that he or she personally obtained by committing a crime can also commit the offence of money laundering". There was a lot of debate about this aspect of self-laundering, this debate is now outdated and has settle on the existence of self-laundering**.** Guinea's should clearly consider this issue in its substantive law.

Related offences (c. 1.7)

107. An attempt to commit a crime is always punishable by law. Likewise, an offence is punishable when a legal provision expressly provides for it (art. 3 CP). This provision is applicable to money laundering without limitation. Aiding or abetting a crime or an offence is punishable (art. 53 PC). Those who intentionally aid or abet co-conspirators, carry out preparatory acts, facilitate the offence, obtained weapons, instructions or any other resource that are used in the commission of the offence are similarly punished (art. 54 PC). Under this provision, a party can be considered as aiding and abetting for the benefit of a criminal person or organisation even if the resources utilised in the particular case did not arise from a crime. The owner of the resources and the abettor may be convicted for money laundering.

108. Under article 3 of the money laundering law, "any attempt, agreement or involvement in a conspiracy with the aim of committing an offence that amounts to money laundering, conspiracy to commit the offence in question, the attempt to commit it, aiding and abetting, incitement or advice to a natural or legal person, with a view to accomplishing it or facilitating its accomplishment, shall also amount to a money laundering offence". The relevant related money laundering offences are provided for in Guinean legislation. All these related offences are punishable by imprisonment of three (3) to five (5) years and a fine equal to thrice the value of the assets or funds involved in the money laundering transactions (art. 37 AML).

<u>Complementary elements</u> - Proceeds from a crime obtained following a conduct that occurred in another country, which act does not amount to an offence in that country (c.1.8)

109. The nature of a conduct that occurred in another country, which does not amount to an offence in that country, but which amounts to a predicate offence on the national territory, was not covered by the Republic of Guinea's substantive law.

110. Guinea's penal system says nothing about this the issue. However, in the case of extradition, and common rule of law, Guinea's law does not depart from the rule relating to dual criminalization. In concrete terms, when the conduct was not established an offence, the Guinean judge may not extradite.

Recommendation 2

Money laundering at the very least ought to apply to natural persons that indulge in money laundering operations knowingly (C. 2. 1)

111. Some expressions used in Guinea's money laundering law such as "who knew or should have known… ", "Who knew or had good grounds to suspect at the time of their reception… " (art. 2 AML) mention that the money laundering offence must apply to any natural person that knows or is supposed to know about the criminal origin of assets or heritage values.

112. The expressions "should know" or "had good grounds to suspect…" refer to a presumption of knowledge of the criminal origin of assets. It is settled case law that the money launderer at least considered the criminal origin of assets entrusted to him and accepted to launder them, and that he does not need to know from what offence the money derived. The crucial factor is that at least the possibility of a criminal origin was considered. It

thus suffices for it to appear to him that the money could be proceeds from a predicate offence".

Inferring the element of criminal intent of the money laundering offence from objective factual circumstances.

113. Guinea's money laundering law expressly states that intent, knowledge or the goal can be inferred from objective factual circumstances (article 2.2AML Act). The judge could make this inference on the basis of the notion that the offender "should know" or "had good grounds to suspect… "

Criminal liability of legal persons (c. 2.3)

114. The criminal liability of legal persons is abundantly provided for in Guinea's legal system under the provisions of the general Penal Code, the anti-money laundering law, and in the banking law laying down banking regulations…

115. Articles 411, 412 and 413 of the Penal Code spell out such liability. According to article 411 of the Penal Code "legal persons other than the State on behalf of which or for the benefit of which the offences provided for under articles 382, 399 and 405 of the Penal Code were committed shall be punishable by a fine of a maximum amount equal to five times the fines set out under the said articles, without prejudice to the conviction of the natural person, those who commit or aided and abetted the offence". This instrument contains a list of the specific offences that concern legal persons.

116. It should be recalled that article 382 provides the punishment for those found to have made it easy for others to use high-risk illicit drugs. Article 399 of the Penal Code provides for and punishes any person called upon by their services to combat drug offences, whose inexcusable negligence or serious breach of professional obligations facilitated the offence.

117. The provisions of the Penal Code related to the liability of legal persons set out under articles 412 and 413 outline other penalties, namely dissolution, prohibition to practise, closure and publication. This means that the legal person can be convicted regardless of the natural persons that committed the offence. The guilt of natural persons is not a precondition for establishing the liability of legal persons.

118. Article 42 of the anti-money laundering law specifying the liability of legal persons adopts the principle of the Penal Code, but extends such liability to all legal persons unlike the Penal Code which restricts it to some offences only. Consequently, for measures applicable as penalty, the anti-money laundering law adds exclusion from public contracts, confiscation of assets, and judicial supervision.

119. It also specifies that the penalties relating to publication, dissolution, closure, prohibition to practise, and placing under judicial supervision are not applicable to financial institutions that are under a supervisory authority. In addition to criminal penalty, the last paragraph of article 42 of the money laundering law provides for other penalties applicable to legal persons. They are often referred to as parallel measures.

120. They include:

- Administrative penalties for companies that are under the State's supervision. For example, the Central Bank can withdraw the license of a bank that fails to fulfil the required conditions and the withdrawal of the license can give rise to dissolution in the case of legal persons and removal from the trade and personal property credit register in the case of one-man firms,

- Civil penalty such as dissolution;

- Penal laws provide for a fine;

- Disciplinary sanctions in cases where this is provided for in the articles of incorporation.

Parallel procedures (C.2.4)

121. Where the penal liability of legal persons is upheld for money laundering, article 42 of the AML Act provides for a fine equal to five times the fine imposed on natural persons without prejudice to accessory penalties. Those who commit or aid and abet the same facts may also face conviction.

122. Added to these principal penalties, the company in question may also face other parallel civil, administrative, disciplinary or criminal procedures. The penal code is silent over this aspect of parallel procedures, but article 6 of the code of criminal procedure can be interpreted in this manner as it provides that these proceedings may be initiated at the same time as the public right of action and before the same court or separately.

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

123. Natural persons against whom the charge of laundering drug money has been levied face imprisonment sentences ranging from 6 months to 3 years, 3 to 10 years and 1 to 5 years, depending on whether it is a case of negligence by an enforcement services professional, addition of drugs to food, advertising on an IT network or supply of drugs to children.

124. Articles 37, 38, and 39 of the AML Act specifies the penalties applicable to natural persons guilty of money laundering ranging from 3 to 5 years of imprisonment and a fine equal to the triple value of the assets and funds involved in the money transaction. The sentences are doubled where they are underpinned by worsening circumstances. They can also be accompanied by a supplementary sentence which may impose on the criminals extensive prohibitive measures.

125. The penalty repressing the laundering offence is thus classified in the category of more serious offences (crime and misdemeanour) in the Republic of Guinea. In all French speaking countries and particularly in African countries with laws on the repression of money laundering, the sentences provided for are classified within the category of crimes and misdemeanours. Such sentences are largely proportional to the gravity of the crimes, fairly dissuasive in theory to let criminals turn away from money laundering. The enforcement of such sanctions is a must in order to determine the level of their efficacy.

126. In cases where the individual is convicted for a series of such an offence, the judge shall determine the penalty based on previous convictions and the individual situation of the offender, motives and his guilt.

127. Legal persons other than those the State has convicted of laundering drug money or of any other crimes, shall be punishable by a maximum fine equal to five times the fine applied to natural persons (art.411 PC or 42 AML), without prejudice to supplementary, mandatory, optional, parallel or additional penalties.

Data on money laundering investigations/prosecutions (C.32.2)

128. The authorities of the Republic of Guinea forwarded no strategic data to the evaluation mission on money laundering investigations and prosecutions, apart from the fact that a judge of the Kaloum court presented to the mission a case under investigation which, according to the court, is related to money laundering.

129. Generally, the mission did not note any arrangement or mechanism for gathering strategic data on crimes in general. Thus, the lack of any money laundering procedures does not explain this general situation.

<u>Additional elements</u>: Maintaining complete statistics on money laundering convictions by the competent authorities (c.32.3)

130. At the time of the on-site visit by the team of assessors, there was no money laundering procedure initiated and no conviction for money laundering.

Statistics

131. No statistics available

Effectiveness analysis

132. There is no material for analysis

Recommendations and comments

133. Guinea is amongst the West African countries to have introduced the offence of money laundering in their criminal law with the enactment of law No.98/036 of 31 December 1998 to lay down the penal code. The Code criminalises the laundering of drug money. Article 398 of the code does not formally cover all the behaviours listed in the Vienna Convention (art. 3(1)(b) and c). It limits principal offences to acts outlined under articles 382, 383, 384, 397 and 399.

134. The definition of the laundering of drug money does not cover involvement in crime, the possession of equipment, materials, incitement, attempts, involvement, association, agreement, complicity, aiding and abetting, advice, etc.

135. Eight years later, the country passed a bill, "law No.L/2006/010/AN on the combating of money laundering in the Republic of Guinea". The AML Act extends and rectifies the bulk of the shortcomings of the penal code. However, although in the two instruments the AML

mechanism has adopted some substantive measures and complies with a certain number of essential criteria, the fact remains that the criteria that have yet to be complied with must be rectified in order for the country to be compliant with recommendations 1, 2. Above all, the fact remains that these laws must be enforced in courts and tribunals, and statistics on investigations, prosecutions and convictions for money laundering should be kept in order to bring the country into compliance with recommendations 32 of FATF.

136. It is thus necessary to make the following comments towards the enhancement of the mechanism. The anti-money laundering law does not cover the offence of self-laundering. It does not consider assets derived indirectly from the proceeds of crime. Serious offences such as the financing of terrorism, environmental crimes, piracy, insider trading and market manipulation are not covered. Acts committed abroad, which amount to offences in the foreign country, but not considered as such in Guinea are not covered by the law.

137. As to the criminal liability of natural or legal persons, the criminal intent component, criminal proceedings and their penalties, the evaluation team did not note any theoretical obstacles to prosecution. The law on money laundering and the laundering of drug money are largely compliant with recommendation 1 and largely compliant with FATF recommendation 2.

138. They have never been enforced in courts such as to indicate how judges interpret them. Recommendation 32 has never been implemented to enable evaluators assess the effectiveness of the enforcement system. The risk of money laundering or the financing of terrorism is real in Guinea because of endogenous factors –and informal sector that uses a lot of cash, the lack of FIU and relevant anti-money laundering mechanisms, informal operations in the mining sector and the real lack of a programme to raise awareness and train stakeholders involved in combating money laundering.

Compliance with Recommendations R.1 and R.2

REC	Compliance rating	Summary of factors underlying the compliance rating
R.1	**PC**	• Some serious predicate offences are not covered, such as piracy, illicit trafficking in migrants, terrorism financing, insider trading and market manipulations; • direct or indirect nature of the link between an asset and proceeds from crime not taken into account;
R.2	**LC**	• The country is largely compliant with the criteria. • The sanctions provided for are theoretically proportionate and dissuasive but yet to be enforced;

2.2 Criminalisation of the financing of terrorism (RS.II)

2.2.1 Description and Analysis

139. Guinea has not criminalised the financing of terrorism. Articles 505 et seq mentioned in the answers to the questionnaire refer to the criminalisation of terrorist acts. Guinea ratified the international convention for the control of the financing of terrorism on 20 June 2003. However, it was not implemented.

140. It is worth pointing out that within this framework, the bill against the financing of terrorism had been prepared, but up till now has not been enacted by the competent authorities of the Republic of Guinea.

141. Nevertheless, before the bill on the countering the financing of terrorism comes into effect, there are provisions that can be enforced to control and punish terrorism and even its financing if Guinea's substantive law does not expressly specify it. This includes articles 269 et seq of the penal code, which provides for and punishes conspiracy by imprisonment of 10 to 20 years. The same applies to attempts to commit, instigation or complicity (art.3,51 et seq PC). The provisions of the articles organising the punishment of attacks and threats against persons (art.282 et seq PC), battery, violence and assault (art.295 PC), hostage taking (art.450 PC), arson (art.477 CP), use of explosives (art.479 CP), destruction and damage to buildings or public or private facilities (art.487 PC).

142. In this case, we would however like to observe that the financing of terrorism as an offence does not appear as an autonomous offence pursuant to the criteria of article 2 of the Convention on the Suppression of the Financing of Terrorism, but merely as an act of complicity or aiding and abetting criminal organisations, including terrorist organisations.

Financing of terrorism criminalized in accordance with article 2 of the Convention on the financing of terrorism (C.II.1)

143. The Republic of Guinea ratified relevant International Conventions and Instruments on terrorism and its financing, in particular the United Nations Convention on the Suppression of Financing of Terrorism, on 20 June 2003. On the date of the Evaluation team's on-site visit, the Republic of Guinea had not yet transposed this Convention into its substantive law. The bill presented to the team of evaluators draws on a text from the technical assistance that GIABA provided to the Republic of Guinea.

144. The financing of terrorism offence provided for by article 2 of this text meets all the requirements of article 2 of the International Convention on the suppression of terrorism: it thus applies to any person who, by whatever means, directly or indirectly, deliberately, supplies, manages or raises money with the intent of committing acts of terrorism. It also covers all acts of terrorism (unlawful seizure of aircraft, illicit acts against the security of fixed platforms, terrorist attacks with explosives, unlawful acts against the safety of civil aviation, unlawful acts of violence in airports, hostage taking, unlawful acts against the safety of shipping, crime against diplomatic agents, all acts intended to kill, or grievously hurt a civilian or aimed at intimidating a population or force a government or an international organisation to perform or abstain from performing an act) listed in the attached Treaties.

145. Beyond all the acts listed by the Convention, the law maker in the Republic of Guinea has added the management of money as a terrorist act, when it is linked to the terrorist intent. The acts also cover the intimidation of the populations or pressure on a government or an international organisation to perform or abstain from performing any act.

146. Article 2 of the draft bill makes the offence subject to the terrorist intent in accordance with the requirements of the Convention when it specifies that the offender must act " with the intent of seeing the money used, or knowing that it will be used,…to commit" a terrorist act . The FT draft bill explicitly takes over the terms of the Convention.

147. The money referred to under article 2 of the draft bill is to be interpreted in the broadest sense possible. It is not necessary for it to be used or the goal be achieved for the offence of financing of terrorism to be established.

148. An attempt to commit or complicity is expressly punished. Instigation is also covered by the expressions ‘’ organises or gives the order’’, but not expressly. (cf. 5.b of the Convention)

Financing of terrorism offences are predicate money laundering offences (C.II.2)

149. In the Republic of Guinea, the FT draft bill stipulates that the original offence shall be composed of any crimes or offences. Since the penalties applicable to FT includes inter alia imprisonment of 5 to 20 years, the financing of terrorism offence is thus classified under the category of crimes and offences, so constitutes an original or underlying money laundering offence.

Financing of terrorism offences apply, irrespective of the issue of knowing whether the person accused of committing the offences is from the same country or from a country other than the one in which the terrorists or terrorist organisations are located or in which the acts of terrorism occurred or will occur (C.II.3)

150. According to article 2.2, "there is a case of financing of terrorism even if the acquisition, possession, and transportation of assets intended for the financing of terrorism were committed on the territory of a third State". Concretely, the idea is to consider that the location of the person accused of FT or of facts linked to terrorism or a terrorist organisation does not determine the accused conviction of the accused.

Application of criteria 2.2 to 2.5 of Recommendation 2 to the financing of terrorism offence (C.II.4)

151. Concerning criteria 2.3, 2.4, 2.5, comments related to AML offences also apply here. With regard to criterion 2.2, the draft bill does not expressly mention that intent is inferred from factual circumstances. Jurisprudence will correct this legal loophole and this is what generally obtains in legal practice.

Data on financing of terrorism investigations/prosecutions (C.32.2)

152. No data is available since the law has not been enacted. In Guinea, there is no policy on the maintaining of statistics and tools to evaluate the effectiveness of the AML mechanism.

<u>Additional elements</u>: Custody of complete statistics on financing of terrorism convictions by the competent authorities (c.32.3)

153. No statistics available

Effectiveness analysis

154. No measure is implemented. In the course of the meetings with Guinean actors, the mission was convinced that the Republic of Guinea, which has a very rich sub-soil and is surrounded by countries in which terrorists activities are growing strongly, could possibly be eyed by others either for its minerals or be used as a support base, or as an asylum for terrorists. The risk of the financing of terrorism thus continues to be high in the Republic of Guinea.

Recommendations and comments

155. The Republic of Guinea ought to criminalise the financing of terrorism in its substantive law and make it a predicate ML offence. It should maintain statistics in general and particularly on financing of terrorism investigations/proceedings/convictions; such statistics should be kept in accordance with legal practices.

Compliance with Special Recommendations II

REC	Compliance rating	Summary of factors underlying the compliance rating
SR.II	**NC**	• The financing of terrorism is not an offence in the Republic of Guinea.

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

2.3.1 Description and Analysis

156. Seizure, freezing or confiscation is well known by the judicial or administrative system of the Republic of Guinea in general and specifically as concerns the combating of money laundering. The 1998 penal code provides for confiscation as a summary sentence (art. 11 PC) or common penalty for correctional and criminal cases. This is the case with the special confiscation, either of the main evidence (or proceeds deriving from the offence, or instrumentalities that were used or were intended to for used in the commission of the offence, art. 13 PC). In the specific case of the laundering of drug money, confiscation is a supplementary or mandatory (art. 406, 407, 408 PC) or optional (art. 409 CP) measure or penalty. The 1998 code of criminal procedure, as concerns investigation, case preparation and inquiry, provides for the seizure of documents that can be used as evidence in the proceedings (art. 56, 76, 101 PC).

157. The 2007AML Act prescribes "provisional measures, in particular the seizure or confiscation of assets linked to the offence that is under investigation and all materials that can make it possible to identify them, as well as the freezing of amounts of money and financial transaction on such assets". These seizure, freeze or confiscation measures can also be supplementary (art. 41 AML) or mandatory (art. 43 AML) criminal penalties.

Confiscation of laundered assets and other assets (C.3.1.)

158. Generally, these are assets seized in connection with the offence (art. 11 PC). These can be assets that constitute the main evidence, things deriving from the offence, things that were used to commit it or which were intended to commit it, art. 13 PC).

159. In terms of customs offences, it also covers “all items liable to confiscation” (art. 223: 1.2. of Order No. 091/006/PRG/SGG of 8th January 1991, on the entry into force of the Customs Code of the Republic of Guinea), all assets derived from or used in the commission of the offence (art. 43 of AML Act).

160. Concerning the laundering of drug money, the penal code orders the mandatory confiscation of the plants and substances seized (art. 406 PC), and facilities, materials, equipment and mobile assets used or intended to be used in the commission of such offences (art. 407 PC), proceeds derived from the offence, movable or immovable assets into which the proceeds were transformed or converted up to the value of such proceeds, assets acquired legitimately with which the proceeds in question were mixed, as well as income and other assets derived from the proceeds, assets into which they were transformed or converted or assets with which they were mixed

161. Article 1 of the AML Act describes such assets in other forms as: "all types of property, corporeal or incorporeal, movable or immovable, tangible or intangible, fungible or non fungible as well as legal deeds or documents attesting to the ownership of such property or rights to them". There is provision for the confiscation of all these assets and in various situations:

- As a protective measure, article 36 of the AML Act allows the “Examine Magistrate to prescribe protective measures....particularly the seizure or confiscation of assets associated with the offence.....”. This provision in the Act is in contradiction with the principles of judicial organisation of Francophone countries in West Africa and that of the Republic of Guinea. Confiscation remains a sanction delivered by a trial Judge to the public. The legislators of the Republic of Guinea can decide and has decided that for cases of money laundering, it is the Examining Magistrate who orders confiscation. In such circumstances, he should also amend the other judicial aspects of the Republic of Guinea to make this new provision possible. Since that has not been done, article 36 of the AML Act, though formally contained in the Act, cannot be applied by the Examining Magistrate. Since he cannot order confiscation, he cannot order lifting of the said measure either;
- As an optional supplementary penal sanction applicable to natural persons, article 41.9 of the AML Act prescribes the confiscation of the asset or item used or meant to be used to commit the offence or the proceed thereof, apart from likely to be returned. Considering that the pronouncement of the sanction is a prerogative of the trial Judge, it can be affirmed that it is the latter that shall order the confiscation;
- .The AML Act also applies to moral persons in aits article 42.2 which provides for the confiscation of assets used or meant to be used to commit the offence or the proceeds thereof;
- Article 43.1.a sets out the compulsory confiscation of assets derived from the offence whilst 43.1.b targets the means used to commit the offence. Defining assets considered as proceeds of the offence, the Act refers to those funds and assets targeted by the offence, the income and benefits that have been derived thereof, assets and values for which they have been substituted, etc.. The funds and assets used or meant to be used

to commit the offence are also subject to confiscation under article 43.1.c of the AML Act;

- All assets derived from the offence of money laundering, assets and values for which they were substituted and investment income eventually derived thereof, all belonging directly or indirectly, to ant natural or moral person convicted for money laundering, shall be confiscated under article 43.2 of the AML Act.

162. It is worthy of note that assets directly associated with proceeds of crime are not expressly indicated in the Act.

Assets liable to confiscation (C.3.1.1.)

163. The AML Act covers all assets belonging, directly or indirectly, to a natural or legal person convicted of money laundering (art. 43.2), including the income and benefits that were used (art. 43.1 a). The expression "assets belonging directly or indirectly… ", is to be understood as all the convicted person's assets, whether they are held by a third party or a person accused in any criminal proceedings. Regarding this "directly or indirectly" notion, criterion 3.1.1 talks about assets derived directly or indirectly from the proceeds of crime.

164. The article 43.2 of the AML Act says "all assets belonging directly or indirectly, to a natural or legal person convicted of money laundering". On this issue, the law, while using the "expression directly or indirectly" everywhere, does not seem to refer to the same assets. Assets belonging directly or indirectly to a convicted prisoner do not seem to cover all assets derived directly or indirectly from the proceeds of a crime. The AML Act has not expressly described such assets as "forfeited assets".

Provisional freezing or seizure measures calculated to block any transaction, transfer or sale of assets liable to confiscation (C.3.2)

165. The seizure/confiscation procedure is laid down by the penal code (art. 101). The courts responsible for preparing or judging the case are competent to take measures in the exercise of their general powers (art. 85, 86 PC). Such measures are immediately enforceable and are only disclosed to the person being prosecuted after their enforcement. They cover the entire duration of proceeding, i.e., up until the ultimate decision.

166. The freeze or seizure measures provided for under other chapters are thus largely sufficient to block any transaction, transfer or sale of assets liable to confiscation especially as they are assets derived from the proceeds of crime and do not belong directly or indirectly to the convicted prisoner. In such circumstances, the Republic of Guinea should expressly spell out the powers of the authorities competent to take provisional measures, particularly the freezing, and/or seizure of assets, in order to block any transaction, transfer or sale of assets liable to confiscation.

Ex parte filing (C.3.3)

167. The confiscation referred to above is what obtains in our various legal jurisdictions to date. One of its characteristics is its link with a misdemeanour or crime. Another kind of confiscation is the confiscation of assets on which certain criminals or criminal organizations have a power of disposal. Such assets constitute a category derived from a freezing or seizure order without prior notice or ex parte procedure. For such confiscation, the evidence of

criminal origin is neither required nor needed. The important thing is for the criminal to have such a power of disposal on the assets. The Republic of Guinea should include clauses in its law that provide for freezing or seizure without prior notice or exparte filing of funds belonging to any criminal organization (ex. terrorists) regardless of their origin. This is lacking in its legal system. The competent authorities are apparently unfamiliar with this kind of confiscation, so much so that they do not know what to do with the lists of Resolutions of the United Nations and others.

Suitable prerogatives to enable the authorities detect and trace the origin of assets liable to confiscation (C.3.4.)

168. The competent authorities of Guinea enjoy sufficient prerogatives allowing them to detect the origin of confiscated assets: the investigating magistrate, as part of a judicial investigation, conducts any investigations that he considers helpful in bringing out the truth (art. 84 CCP), can conduct any useful investigations or carry our searches (art. 95 CCP), can go to any location within the province of the Appeal Court or elsewhere for purposes of investigation (art. 96 CCP). He can carry out searches in any place where he may find objects which discovery would be useful in bringing out the truth (art. 97 CCP), and may order provisional measures on the assets of the accused when an investigation is referred to him (art. 100 CCP). He issues summons to any person whose deposition seems useful (art. 105 CCP), can issue summons to appear and warrants of committal or arrest (art. 125 CCP), can request a commission to take evidence (art. 157 CCP), or order an examination (art. 162 CCP).

169. The Prosecutor is responsible for ensuring the enforcement of the penal law (art. 32 CCP), he receives complaints and criminal information (art. 35 CCP), carries out any acts necessary for the investigation and prosecution of breaches of the penal code (art. 38 CCP) and directly summons the police (art. 40 CPP).

170. Under article 33 of the AML "in order to establish evidence of an original offence and evidence of money laundering offences, the judge can order, pursuant to the law, for a set period of time, and without the possibility of invoking professional secrecy to stop him, various actions, including:

- putting under surveillance bank accounts and accounts similar to bank accounts, when there are serious clues for suspecting that they are used for transactions linked to the original offence or offences under the law;
- Access to computer systems, networks and servers used or likely to be used by the person against whom there are serious clues of involvement in the original offence or in offences provided for by the law in force;
- The communication of authentic deeds or deeds under private writing, and of banking, financial and business documents. The seizure of the above-mentioned deeds and documents could also be ordered.

171. Professional secrecy may not be invoked as grounds for refusing to provide information to the competent authorities responsible for detecting and combating money laundering-related offences.

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

172. In matters of confiscation for drug violations, article 407 of the 1998 Penal Code organises the protection of the rights of bona fide third parties by stipulating that "courts shall order the confiscation of facilities, equipment and other assets… whosoever they belong to, unless the owners establish their good faith". According to article 103 of the Code of Criminal Procedure, "the convicted criminal, the accusing party or any person claiming rights to an object in the hands of the courts may claim their restitution from the investigating magistrate".

173. The AML Act also covers the protection of bona fide third parties when it prescribes in article 43 the mandatory confiscation of proceeds from money laundering, belonging to any person, unless their owners establish that they were effectively acquired against payment of their fair price or in exchange for services matching their value, or in any other legal manner and that they were unaware of their illegal origin.

Measures aimed at preventing or cancelling actions in contract or other actions (C.3.6)

174. Any action in contract or other actions in which the persons involved knew or should have known that such actions were prejudicial to the authorities' capacity to recover assets liable to confiscation, in accordance with article 2 of the AML Act in the Republic of Guinea, amount to an offence because such contracts can be considered as concealment, camouflage, disguise of the nature, origin, real ownership of assets or the related rights, an acquisition, possession or use of assets, or proceeds from a crime.

175. Article 28 of the AML Act empowers the prosecutor to stay the execution of suspicious transactions on grounds of the gravity or urgency of the case as assessed by FIU. In the Republic of Guinea, there thus are authorities and measures reflecting criterion 3.6 without expressly transcribing it.

Additional elements: Confiscation of assets of criminal organisations (c.3.7.a); Confiscation of assets in the absence of any conviction (c.3.7.b); Confiscation of assets the origin of which could not be justified by the convicted prisoner (c.3.7.c)

176. The confiscation of assets of criminal organisations, assets in the absence of any conviction, and assets whose origin the convicted prisoner could not justify is not expressly provided for by the Guinean confiscation regime outside of the framework of Resolutions of the United Nations Security Council.

Statistical data on confiscation (C.32.2)

177. No data on the number of cases, the amount of assets seized, frozen or confiscated in connection with money laundering, the financing of terrorism and proceeds from crime was not sent to the team of evaluators.

Statistical data on confiscation/freezing (C.32.3)

178. Here also, there are no clues about any custody of statistical records on the number of cases and the amount of assets frozen, seized or confiscated in connection with money laundering or the financing of terrorism.

Effectiveness analysis

179. No material for assessing effectiveness was forwarded to the evaluators.

Recommendations and comments

180. The Republic of Guinea has a largely satisfactory confiscation regime. Most of the shortcomings identified have to do with form, since the provisions of its enactments largely cover assets liable to confiscation.

181. The authorities should maintain statistics in general and in particular on the number of cases and the amount of assets frozen, seized or confiscated in connection with the afore-mentioned materials and offences.

Compliance with Recommendation R.3

REC	Compliance rating	Summary of factors underlying the compliance rating
R.3	**PC**	• Assets indirectly linked to the proceeds of crime are not expressly stated in the law; • the principle of filing without notice is not covered by the law; • lack of suitable powers for tracing assets liable to confiscation; • No implementation in spite of the formal existence of provisions relating to confiscation.

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

2.4.1 Description and Analysis

182. Statements by the competent authorities we met and the documents they presented during the visit of the evaluation team indicate that the Republic of Guinea is a member of the United Nations Organisation. As such and in accordance with chapter 7 of the United Nations Conventions, the sanctions of the Security Council Resolutions S/RES/1267 (1999) and S/RES/1373 (2001) should be implemented in the country's legal system.

183. However, no national legislative or regulatory measure has been taken to implement these Resolutions. As part of efforts to combat terrorism, the Republic of Guinea has set up a "counter terrorism unit" supported by the presence of an American expert, within the *Direction Centrale de la Surveillance du Territoire et Voyage Officiel*, a National Division responsible for fighting against organised crime, which reports to the Secretariat General at the Presidency in charge of Special Services related to combating drug trafficking and organised crime".

184. It should be noted that these bodies are not appropriate for the implementation of sanctions under the Resolutions in question and seem to disregard them. A draft bill on combating the financing of terrorism is about to be tabled with the competent authorities for passage.

Laws and procedures on the freezing of money and assets of persons targeted by Resolutions 1267 and 1373 (C.III.1 and 2)

185. No general legislation or specific measures or procedures on the freezing of money and assets of persons targeted pursuant to the above-mentioned Resolutions is in force in the territory of the Republic of Guinea. No national institution has been designated to implement international sanctions in general or sanctions specific to AL-QAIDA, the Taliban, terrorists, terrorist organisations and entities. The authorities of the Republic of Guinea at various levels informed the evaluation team that the country has never frozen money or assets of persons targeted by the Resolutions concerned; and that it is the draft bill on the financing of terrorism that would form a framework legislation on the freezing of the money and assets of terrorists in general, without differentiating between the persons targeted by Resolution 1267 and 1373.

186. The draft bill in question stipulates that "the competent authority shall, by administrative decision, order the freezing of the money and financial resources of terrorists, as well as of all those who finance terrorism and terrorist organisations… ".

Laws and procedures effective in examining and giving effect to the freezing mechanism initiatives of other countries (c.III.3)

187. The draft bill on combating the financing of terrorism failed to take clear steps to enable the Republic of Guinea review initiatives adopted as part of the freezing mechanism of other countries and give them effect at the national level. Nevertheless, within the framework of international cooperation, "the authorities undertake to cooperate, in the broadest manner possible, with those of other States in view of the sharing of information, investigations and procedures towards provisional measures"(article 63(2) of the draft bill on the financing of terrorism). This provision can enable national authorities to take provisional measures connected with the initiatives adopted as part of the freezing mechanisms of other countries.

The freezing mechanisms applicable to money and assets owned or generated by persons targeted, terrorists, those who finance terrorism or terrorist organisations (c.III.4)

188. Article 29 of the draft bill does not take into account all the terms of SR III.4 which also targets “money and assets owned or controlled totally or jointly, directly or indirectly, … or derived from or generated by money and assets owned…”. The text covers only "the freezing of money and other financial resources of terrorists and… ". The definition of money and other financial resources in the first article of the AML draft bill equally does not expressly bring out the fact that money controlled totally or jointly, directly or indirectly, derived from or generated by money or assets owned or controlled by the persons targeted… are covered.

189. Courts and tribunals have not left any jurisprudence indicating that an element of the current definition could be interpreted as encompassing money controlled totally or jointly, directly or indirectly, derived from or generated by….

System for disclosing measures adopted as part of freezing mechanisms applicable to the financial sector (c.III.5)

190. Article 29 of the draft bill provides that any decision to freeze or release must be brought to the attention of the public, in particular by publishing it in a legal notices paper… , without indicating that this publication should be made "immediately" after adopting the measure.

The existence of clear instructions to financial institutions and to other persons or entities likely to possess the money or assets targeted (C.III.6)

191. Under the provisions of the same article 29, it is strictly forbidden for reporting entities to place, directly or indirectly, money that is the subject of a freezing procedure, at the disposal of the persons concerned, or to use it for their benefit. It is also strictly forbidden for reporting entities to provide or continue to provide services to the designated persons or organisations or to use such services for their benefit Instructions are also given to reporting entities asking them to report suspicious transactions (article 17 of the draft bill). Within the same framework, professional secrecy may not be invoked as grounds for refusing to provide information to the competent supervisors...., (article 26 of the draft bill).

Procedures for reviewing at the appropriate time applications for the removal from the list of targeted persons and for the unfreezing of money and assets of persons or entities removed from lists (C.III.7)

192. The procedure for reviewing an application for removal from the list and for the unfreezing of money or assets is organised by the last paragraph of article 29 of the AML draft bill. According to the article, "any decision to freeze or unfreeze must be brought to the attention of the public, in particular by publishing it in a legal notice paper. The same holds for the procedures to be followed by any person whose name appears on the list of persons, entities or organisations targeted when such a person tries to secure the removal of his/her name from the list, where applicable, or the unfreezing of money belonging to him/her. ". Article 30 of the same text specifies that the procedure to be adopted continues to be the one provided for by Security Council Resolutions. The Republic of Guinea has neither included in its national law this procedure, which is provided for by the Security Council.

Procedures that are effective and brought to the knowledge of the public with a view to the timely unfreezing of money or assets of persons or entities affected inadvertently by any freezing mechanism (C.III.8)

193. As part of the sanctions provided for by the United Nations Security Council against targeted persons, any erroneous freezing can be appealed, (article 30 of the AML draft bill). The appeal is filed with the competent authorities, which ordered the freezing in accordance with a procedure that complies with the appropriate one provided for by Security Council Resolutions. It is however worth noting that while article 30 of the AML draft bill provides that this procedure remains compliant with the appropriate procedure provided for by Security Council Resolutions, the latter procedure does not exist in Guinea's substantive law. However, the Republic Guinea directly uses UN procedures in its national law. Our understanding is rather that the country intends to take an internal measure that is compliant with the appropriate procedure provided for by Security Council Resolutions.

Access to money and assets frozen in accordance with Resolution S/RES/1267(1999) and in pursuance of Resolution S/RES/1452(2002) (C.III.9)

194. No procedural provision is provided for to authorise access to money or assets frozen to cover basic expenses.

Procedures making it possible to challenge a freezing measure in view of securing its review by a court (C.III.10)

195. Regarding the freezing of money used in the financing of terrorism, the Republic of Guinea's legal system has no procedure for challenging a freezing measure with a view to having it reviewed by a court.

Freezing, seizure and confiscation in other circumstances in accordance with C.3.1 to 3.4 and 3.6 of R3, (C. III.11)

196. The investigating magistrate, in his role in general, is empowered to take any provisional measures in any proceedings referred to him, article 100 of the penal procedure code. The magistrate may, in accordance with article 510 of the penal code, order the confiscation of some objects seized in connection with the offence, without discrimination between offences. Article 13 of the penal code considers confiscation as a penalty applicable in both correctional and criminal cases when it is applied to the main evidence, to things produced by the offence, or to those that were used or were intended to be used to commit it. The investigating magistrate has the power to prescribe provisional measures, in particular seizure, freezing or the confiscation of moneys and assets connected with the financing of terrorism offence, (article 28 of the AML draft bill).

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

197. The Republic of Guinea's internal general law protects bona fide third parties: "the convicted prisoner, the accusing party or any person laying claim to an object in the hands of the court, may demand restitution from the investigating magistrate," (art.103 CPP); article 30 of the AML Act exempts penalties for breach of professional secrecy when reporting entities pass on information or make any statements in accordance with applicable provisions. The same applies to reporting entities under the AML bill with regard to the reporting of suspicious transactions, or the execution of certain transactions (articles 22, 23 and 24 of the AML bill).

Provisions allowing the effective monitoring of compliance with the relevant laws, rules or regulations governing obligations under RS.III (C.III.13)

198. The obligations under SR.III.13 seem to be generally ignored by the national authorities of Republic of Guinea. It follows that provisions allowing the effective monitoring of compliance with laws, rules and regulations cannot be adopted.

<u>Additional elements</u> – Implementation of measures recommended in the document on best international practices (C.III.14); Implementation of procedures authorising access to frozen moneys (C.III.15)

199. Guinea has implemented none of the best international practices applicable under SRIII.

Data on freezing linked to the financing of terrorism (R32.2)

200. There is none

Effectiveness analysis

201. There has been no freezing as part of S/RES 1267(1999) and S/RES 1373 (2001). Moreover, provisions on freezing are not in force.

Recommendations and comments

202. Concerning legislation, the country has not set up any mechanism or procedure for the freezing of the moneys and assets of the persons targeted under Recommendations S/RES/1267 (1999) and S/RES/1373 (2001). Guinea has not appointed national authorities responsible for enforcing the penalties provided for under the said Resolutions.

203. The Republic of Guinea should have in place procedures for reviewing initiatives taken by other countries regarding freezing mechanisms and give effect to them at the national level. Such procedures should cover moneys controlled totally or jointly, directly or indirectly, derived from or generated by moneys or assets owned or controlled by the persons covered;

204. Regarding the publication of measures adopted as part of freezing mechanisms applicable to the financial sector, it would be necessary that the instrument specify that the publication should be made immediately after the adoption of such measure. The Republic of Guinea has in place internal procedures to allow review by the court of freezing measures, and access to moneys or assets frozen in accordance with Resolution S/RES 1452 (2002).

205. Concerning the enforcement of penalties against targeted persons, the country should appoint national authorities empowered to designate the persons and entities whose moneys and assets should be frozen and, make the freezing decision.

Compliance with Special Recommendation III

REC	Compliance rating	Summary of factors underlying the compliance rating
SR.III	**NC**	• No legal text to map out freezing modalities; • No comprehensive mechanism to ensure enforcement of Resolutions 1267 and 1373 • No clear and effective procedure to implement initiatives taken in other countries.

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

2.5.1 Description and Analysis

206. Article 19 of anti-money laundering law No.L /2006/010/AN of 24 October 2007 provides for the setting up of a National Financial Intelligence Processing Unit (FIU) which is under the technical supervisory authority of the Ministry of Finance.

207. According to the afore-mentioned law, the FIU will carry out the following functions:

- receive, analyse and process intelligence capable of ascertaining the origin of transactions or the nature of transaction that are the subject of suspicious transaction reports by which reporting persons are bound;
- also receive other useful intelligence necessary for the performance of its mission, in particular intelligence forwarded by the Supervisory Authorities, as well as judicial police officers;
- request the disclosure, by reporting entities, as well as any natural or legal person, of intelligence in their possession that is likely to enhance suspicious transactions reports;
- conduct or carry out periodic surveys on changes in techniques used to launder money. In this capacity, it puts forward any reforms necessary for the strengthening of the effectiveness of the fight against money laundering.

208. The FIU also prepares periodic reports (at least quarterly) and an annual report, in which it analyses anti-money laundering activities at the national and international levels, and evaluates the reports it receives. These activity reports are submitted to the Minister of Finance.

209. Article 20 of the same law specifies the number of members that should lead the FIU's activities, as well as their profiles and the FIU's composition as follows:

- one (1) senior official either from the Department of Customs, the National Treasury, or the National Tax Department, with the rank of National Director, designated by the Ministry of Finance. He or she shall chair FIU;
- one (1) magistrate specialised in financial issues, designated by the Ministry of Justice;
- one (1) senior official of the Judicial Police, designated by the Ministry responsible for security;
- one (1) investigator, Inspector of Customs, designated by the Ministry responsible for Finance;
- one (1) investigator, who is a Judicial Police Officer, designated by the Ministry responsible for security;
- one (1) representative of the Central Bank, fulfilling the role of secretary of FIU

210. However, the provisions of article 19 are not implemented. The Republic of Guinea has not set up FIU, in spite of the existence of a draft decree on its organisation and functioning which, since the passage of AML/FT law (nearly 4 years ago), is still pending signing by the President Republic.

Recommendation 26

Setting up of the Financial Intelligence Unit (C.26.1)

211. Article 19 of Act No.I/2006/010/AN on the combating of money laundering in the Republic of Guinea instituted the National Financial Intelligence Processing Unit (FIU). The same article provides that the organisation and functioning of FIU be specified by decree and that rules of procedure, prepared by FIU, must be submitted to the Minister of Finance for approval.

212. During the on-site visit, the mission noted the non-existence of FIU because the decree to specify its organisation and functioning has not been passed by the competent authority, as provided for by the anti-money laundering law.

213. In lieu of the FIU provided for under article 19 of the AML Act, the Authorities of Guinea have a unit within the Central Bank of the Republic of Guinea (BCRG) for receiving Suspicious Transaction Reports (STRs).

214. According to article 61 of the Guinean Banking Act, "staff in credit institutions qualified to submit suspicious transaction reports to the Central Bank in application of such provisions shall, in relation to the latter, be relieved of their professional secrecy obligation. No criminal or civil liability shall be proffered before any Judge against the Central Bank or any credt institution or any of its staff as a result of the action taken in application of the legal provisions contained in this chapter and directives emanating thereof"

215. As of the time of the on-site visit, the unit had received eight (8) STRs from commercial banks. However, this does not mean that the unit is competent to receive STRs made by bodies or persons with reporting obligations. It does not meet the standards of a FIU. It should also be noted that the law on the countering of the financing of terrorism has not yet been passed in the Republic of Guinea and thus the attributes provided for in the AML bill cannot be covered.

216. The unit in question is a division the functions of which are assigned to the Secretariat of the Department responsible for the Supervision of Financial Institutions (DGSIF) by the Central Bank of the Republic of Guinea. The STRs submitted within this framework by reporting entities have neither been processed nor subjected to any legal proceeding.

Specification of form and advice on how to make suspicious transaction reports (C.26.2)

217. Article 26 of the law makes it mandatory for reporting entities to report to FIU any information or clues in their possession about money laundering. The format to be used is provided in the annex of an instruction (No.I/2003/DGI/DB) of the Central Bank, which almost only binds financial institutions. However, the rules of procedures, to be worked out by FIU, and which should specify an STR template, as provided for by the AML Act, do not exist.

Timely access, directly or indirectly, to financial and administrative information from law enforcement authorities (C.26.3)

218. The FIU must, in addition to the STR, receive any useful information necessary for the accomplishment of its mission, in particular information from Supervisory Authorities as well as from Law Enforcement Authorities (Judicial Police Officers, Magistrates) and Reporting Entities by requisition.

219. Due to the fact that FIU is not operational, the mission could not check or at least assess whether such information is effectively received.

220. In the same way as FIU members, the correspondents they can contact within the services of the Police, Gendarmerie, Customs, Justice, Taxation and others, pursuant to article 21, are not yet officially designated by their respective departments.

Powers to obtain additional intelligence from reporting entities (C.26.4)

221. FIU has the flexibility to gather, upon request, additional intelligence from those who report suspicious transactions and from public or supervisory authorities. As such, it would be helpful that the supervisory authorities impose the designation of a contact person within the bodies concerned.

222. If on account of the seriousness or urgency of a case FIU deems it necessary, it can seize the competent Prosecutor for the purpose of staying the execution of a transaction before the expiry of the execution time frame mentioned by the reporting entity (art 28).

223. The evaluation team is of the opinion that this practice can reduce the autonomy of FIU which, on its own initiative, cannot oppose the execution of a transaction. The mechanism would be a much more efficient if the law gave FIU the freedom to block, on its own authority, a transaction over a certain period (02 or 03 days).

Empowerment to spread financial intelligence to national authorities in view of investigations or actions where there are grounds to suspect money laundering or the financing of terrorism transactions (C.26.5)

224. Under article 29 of the AML Act, where, upon analysis, FIU realises that the transactions about which it has been informed highlight facts likely to amount to money laundering offences, it forwards a report on such facts to the Prosecutor General who immediately seizes the Investigating Magistrate. The report must be accompanied by all documents, except the suspicious transaction report and the identity of the person who made it.

225. The non-existence of FIU, resulting in the absence of its rules of procedures, does not make it possible for us to make any declarations about its organisation and functioning (role of each member, decision making, procedures for reviewing investigations or facts or the essential elements of the money laundering offence and their transmission to the judiciary authority, and so on)

Operational independence and autonomy of the FIU (C.26.6)

226. The operational independence and autonomy that should be the hallmark of FIU, an administrative department under the Ministry of Finance, are guaranteed by the AML Act (article 19). Under article 24, the same Act stipulates that FIU's resources come mainly from inputs provided by the State and support from regional and international development partners.

227. To this effect, FIU's expenses are the subject of a budgetary item whose amounts must in theory be made available by services of the Ministry of Finance. The mission did not note

the implementation of these provisions and could not check the operational independence and autonomy of a structure that does not exist.

Protection of information in the possession of the FIU (C.26.7)

228. Article 20 of the law states that FIU members and correspondents shall be bound by confidentiality obligations and the secrecy of information gathered, which information may not be used for purposes other than those provided for by law. To this effect, they take an oath before taking office. However, no penalty is provided for by the law in question for breach of the confidentiality requirement.

Publication of periodic progress reports particularly focussing on statistics, typologies and trends (C.26.8.)

229. The last paragraph of article 19 of the law to set up FIU highlights one of the missions of this structure: preparing periodic reports (at least quarterly) and an annual report, analysing developments in anti-money laundering activities at the national and international levels, to be submitted to the Minister in charge of the Economy and Finance, .

230. Since FIU has not been in existence since October 2007 when the AML Act was passed in the Republic of Guinea, no periodic report has been prepared. The mission thus could not expect any report on the exchange of intelligence with other FIU at the present stage in Guinea's anti-money laundering mechanism.

Membership of the Egmont Group (C.26.9)- Consideration of the "Statement of mission"" of the Egmont Group and the "Principle on the sharing of information between financial intelligence units in cases of money laundering and the financing of terrorism" (C.26.10)

231. The non existence of FIU and the law on the financing of terrorism stand in the way of the country's application to join the EGMONT Group. These conditions are crucial for an efficient and effective coordination of the mechanism for combating money laundering and the financing of terrorism, which gets information both locally and internationally.

Recommendation 30

Structuring, financing, human and technical resources of the FIU (C.30.1)

232. According to the AML/FT law, FIU gets it resources mainly from contributions from by the State and support from regional or international development partners (art 24 of the AML Act). The non existence of the structure, which also implies that it is not operational, made it impossible for the evaluation team to gain knowledge about its budget by assessing whether resources match requirements.

233. Some actors involved in the anti-money laundering effort, while aware of the fact that FIU not being operational is a crucial element of the mechanism, already understand its financial implications with which the government cannot cope right now because of budgetary constraints.

Confidentiality and Integrity standards of FIU personnel (C.30.2)

234. The firm determination of the authorities in Guinea to set up FIU in the near future was noted by the evaluation team. However, the appointment of members and correspondents, recruitment criteria, required competencies, and functioning arrangements are all factors to be dealt with in order to guarantee the effectiveness of the future FIU.

Relevant and suitable AML/CFT training to the FIU personnel (C.30.3)

235. FIU's workforce and the type of training it will receive can only be worked out and assessed when it is set up. This was not the case at the time of the on-site visit of the mutual evaluation team.

Management of statistics by the FIU (C.32.2)

236. In the absence of FIU, no statistics to back up its activity are available.

Additional elements - keeping of complete statistics by the FIU on STRs leading to investigations, prosecution or convictions on charges of money laundering, financing of terrorism, or of violation of underlying offences (C.32.3).

237. In the absence of FIU, no statistics are available. STR statistics available at the Central Bank have not been processed.

Effectiveness analysis

238. Effectiveness analyses are impossible because the Republic of Guinea has not set up FIU.

Recommendations and comments

239. Analysis by some key actors encountered indicates that the operationalization of FIU has financial implications with which the government cannot cope right now because of current budgetary constraints. Nevertheless, there is real hope of the creation of the conditions necessary for the operation of FIU because, as we learned from our discussions with other actors and officials in ministries, the Republic of Guinea intends to set up FIU by making the ministries that have already designated their representatives responsible for the individual financial expenses of such representatives. Better still, they say the government, which has already started preparing and finalising all instruments governing the organisation of FIU (with technical assistance from GIABA and other technical partners), has provided for the allocation of a specific budget line for the functioning of the FIU.

240. To revitalise the AML/FT mechanism, the authorities of Guinea must set up a FIU as soon as possible. The setting up of this structure, a crucial element in the mechanism, will be subject to the formalisation, through the rapid signing of all draft deeds needed to make it concrete (designation of members, correspondents, taking of oaths, and so on).

241. First and foremost, the Guinean authorities should:

- Prepare the FIU's rules of procedure and an operational charter that serves as a code of ethics;

- Prepare a model suspicious transaction report form as provided for by the AML Act;
- Extend FIU's powers so that it can be empowered to process intelligence on the financing of terrorism component;
- Create an internet site to facilitate the sharing of information with reporting officers, correspondents and reporting entities. Such a platform will also make it possible to inform the various actors about new money laundering and financing of terrorism trends identified;
- Have correspondents in the services involved in anti-money laundering efforts;
- Ensure the physical protection of data collected as part of its activities. To achieve tthis, it is crucial to secure the premises and computer system for the future institution;
- Provide feedback to reporting entities;
- Get enough competent and honest administrative personnel to process strs, as well as other technical and financial resources needed for the performance of the mission in total independence and autonomy.

Compliance with Recommendation R.26

REC	Compliance rating	Summary of factors underlying the compliance rating
R.26	NC	• Article 19 of the AML Act established a FIU. Details on its organisation and functioning are provided under Art. 23, which is not being implemented; • No operational FIU due particularly to non appointment of FIU members; • No established STR template and no advise for persons accountable to the AML/CFT Law; • No correspondent network within the various departments concerned; • No publication of reports; • No power to counter the financing of terrorism, un-criminalized in the Guinean law.

2.6 Investigation, law enforcement and other competent authorities – framework for investigation, prosecution, confiscation and freezing (R.27, 28, 30 and 32).

2.6.1 Description and analysis

Legal framework:

Judicial authorities

242. Under article 29 of low No.L/2006/010/AN of 24 October 2007, based on facts that may constitute a money laundering offence, the FIU submits a report on such facts to the State Prosecutor, who immediately contacts the investigating magistrate. Based on this provision it is clear that money laundering cases are within the jurisdiction of the Conakry High Courts, where the investigating magistrates also sit.

243. Article 11 et seq of Guinea's criminal procedure code also names the judicial authorities competent to initiate criminal proceedings (Magistrates, judicial police officers, and some government services such as Water Resources and Forestry) while articles 687 et seq (art. 688(3) of the same code provides for an exclusive jurisdiction clause solely devolved to the Conakry judge to be informed of all terrorism offences committed on Guinean territory.

244. As such, money laundering offences and acts of terrorism are regularly provided for and punished in accordance with judicial procedures by Guinean laws, to the exception of facts linked to the financing of terrorism. The regulations of the judiciary are provided for by organic Act No.L /91/0011/CTRN of 23/2/1991, to lay down the regulations of the judiciary.

245. Notwithstanding the existence of the money laundering law, there are no prosecution authorities specialised in this type of offence. In addition, the financing of terrorism is still at the stage of a draft bill.

Police and Special Security Division (Gendarmerie)

246. Besides its military mission, the gendarmerie traditionally performs the services of the national police which involve protecting persons and property, and safeguarding national institutions. It is thus responsible for preventing (Administrative police) and investigating any offence, including money laundering and terrorism-related activities.

247. The Republic of Guinea also has a Secretariat General in charge of Special Services, combating drugs and organised crime. This structure amongst others coordinates the activities of the *Office Central Anti-drogue* (OCAD) responsible for anti-drugs activities and the *Office de Répression des Délits Économiques et Financiers* (ORDEF), responsible for combating financial and economic crimes.

248. Similarly, there are intelligence services set up within the High Command of the National Gendarmerie (general intelligence department), which was undergoing restructuring at the time of the on-site visit, and the National Police. Their general mission is to centralise and exploit information in any domain and on activities that can undermine public security and so they play an important role involving the surveillance of persons and groups that can fall within the anti-terrorist context.

249. Serious offences dealt with by these prosecution authorities and which are capable of generating criminal assets mainly include illicit drug trafficking, crimes against property (theft, scam, breach of trust and so on), corruption, forgery and human trafficking (especially as part of illegal immigration)[10].

[10] Procedure No. 017/CSPAC/012 f 10 May 2012 of the Special Police Station of the Conakry autonomous port and Report No.037/CSPAC/2012 of 21 May 2012 from the special police station of the Conakry port forwarded to the Prosecutor General at the Kaloum Court of First Instance).

Recommendation 27

Designation of competent law enforcement authorities (c. 27.1)

250. The prosecution of criminal financial cases - financial offences - is the responsibility of a department that reports to the General Secretariat of the Office of the President of the Republic responsible for Special Services, combating drugs and organised crime. The department in question is composed of investigators of the national police, the gendarmerie and customs service with no specific training on money laundering. In addition to this is the fact that most of them lack in-depth knowledge of the anti-money laundering law. Investigations thus focus mainly on underlying offences and not on the traceability of the money laundering that arises from them.

251. The draft bill on the Financing of terrorism, in article 16, provides for the extension of the powers of FIU (not yet operational at the time of the on-site visit) to detect the financing of terrorism. According to this article, FIU performs the same mission as the one assigned it under article 19 of the AML Act.

252. The effective success of investigations dealing with the financing of terrorism and money laundering requires that criminal prosecution authorities be trained.

253. The suspicious transaction reports could have certainly encouraged some investigators to pay more attention to the flow of funds linked to money laundering if FIU were functional. This is because the system has the advantage of tracing back to the underlying offences from which they were generated with a view to recovering criminal assets, without sticking only to prosecuting offences at the base. An effective professionalization of the law enforcement officers would enable them take ownership and be in a better position to appreciate the difficulties associated with proving the essential elements of the offence.

254. The same problems appear in the prosecutors' offices. Although magistrates are aware of the existence of the money laundering law, enforcing it continues to be problematic because the justice system lacks magistrates that are specialised and actually responsible for the issue.

255. In order to establish evidence of money laundering offences, article 33 of the AML Act provides the investigating magistrate with specific powers, including supervision of bank accounts, access to computer systems, networks and servers, and demanding the production of banking, financial and business records. This article seems to be superfluous because in any case, these acts are part of the common powers of the investigating magistrate.

Provisions allowing investigation authorities to defer arrests and seizures in order to identify those involved and gather evidence (c. 27.2)

256. Formally, there are no measures covering deferred arrest and/or seizure in the code of criminal procedure (CCP) of the Republic of Guinea or in the Anti-Money Laundering (AML) law L/2007/010 of 24 October 2007

257. In practice, however, investigators, upon consulting the judicial authority (prosecutor general or investigating magistrate) and under the supervision of the latter, have the

opportunity to arrest those involved in such activities or gather evidence. This decision shall depend on the urgency of the measures to be adopted and the circumstances surrounding the offences concerned as well as the need to secure the assets laundered or to be laundered and prevent the perpetrators from escaping justice. In any case, the principles governing the criminal procedure do not impose on the competent authorities a time frame for making seizures or arresting a person involved in the commission of an offence.

258. In the course of discussions with the competent authorities during the on-site visit, the mission observed that supervised delivery, although not provided for by any instrument, has already been used by criminal prosecution authorities as a technique in investigating cases related to drug and human trafficking.

Additional elements

Measures providing for the use of special investigation techniques (cf.27.3)

259. The anti-money laundering law contains relevant provisions that can be applied to money laundering and related offences, in particular the supervision of bank accounts, access to computer systems, networks and servers, and the production of bank, financial and business records ordered by judicial authorities (art.33 of the AML).

260. The draft bill on the fight against the Financing of Terrorism in the Republic of Guinea provides for the same provisions as above (art.33 of the AML Act), where the investigating magistrate is trying to establish evidence of Financing of Terrorism offences (article 25 FT draft bill).

261. Articles 11 and 16 of the code of criminal procedure indicate that this possibility is also available to the judicial police when it is carrying out investigations. Since the supervised delivery technique is not provided for by this law, the authorities could take advantage of article 11 of the United Nations Vienna Convention as a formal reference instrument. The use of this technique by the police will be under the supervision of the judicial authorities. This technique has already been used in underlying offences investigations (cf. C. 27.2).

Scope of special investigation techniques (cf.27.3)

262. The law on the financing of terrorism in the Republic of Guinea is at the draft bill stage, while the one in existence on AML is not enforced effectively and efficiently. The authorities we met did not report the use of such techniques in an investigation. Consequently, the special techniques mentioned above were not implemented in this context, except in that of underlying offences in cases of illicit drug and human trafficking (cf. C. 27.2)

Specialised groups and operational international cooperation (c.27.5)

263. Subject to reciprocity, FIU can share information with the financial intelligence services of third States responsible for receiving and processing suspicious transaction reports, where the latter are bound by similar professional secrecy obligations. FIU can also conclude agreements with a financial intelligence unit of a third State (article 25 of the AML Act).

264. The fact is that there are no groups specialised in financial investigations in Guinea. On the other hand, there is a General Secretariat at the Office of the President in charge of Special Services, and combating drugs and organised crime. It comprises a selection of Police officers, Gendarmes and Customs officers; its mission takes into account the fight against the Financing of Terrorism as well as financial crimes.

265. Investigations are conducted in collaboration with the authorities of other countries through Interpol's I -24 / 7 systems. Such countries include Burkina Faso, Côte d'Ivoire, Ghana, Mali and Senegal, whose cooperation makes it possible to find and seize stolen vehicles in particular.

Table No: SUMMARY OF VEHICLES REPORTED AS STOLEN AND RETURNED IN GUINEA

Serial No.	YEAR	Vehicles Reported as Stolen in Guinea	Vehicle Returned	Number of Vehicles Returned/COUNTRY	OBSERVATION
1	2008	85	-	-	-
2	2009	89	4	1	Dakar
				1	Accra
				1	Ouagadougou
				1	Bamako
3	2010	49	4	3	Bamako
				1	Ouagadougou
4	2011	39	7	4	Abidjan
				1	Bamako
				2	Conakry (Private)
5	2012	21	4	2	Freetown
				1	Bamako
				1	Bamako

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

266. In cases within its jurisdiction, the National Financial Intelligence Processing Unit (FIU) is responsible for conducting or having periodic surveys conducted on changes in techniques used to launder money. In this capacity, it puts forward any reforms necessary for strengthening the effectiveness of the fight against money laundering (AML law: art. 19).

267. Most enforcement or competent authorities that were visited by the mission are not aware of the anti-money laundering law and some do not take it into account in their activities. Senior officials of the judicial system (magistrates and judges) we met did not even know about the existence of the AML Act.

268. No survey on money laundering and financing of terrorism methods, techniques and trends was conducted by the competent authorities in Guinea. With the absence of FIU, this prerogative which falls within its ambit is not implemented.

Recommendation 28

Existence of investigation powers for competent authorities (c. 28.1)

269. In order to establish evidence of an original offence and evidence of money laundering offences, art. 33 of the AML Act provides for access to bank and financial data and the seizure of evidence by order of the judge, in accordance with the law

270. The draft bill on the fight against the Financing of Terrorism in the Republic of Guinea also provides for the same provisions as above where the investigating magistrate is trying to establish evidence of Financing of Terrorism offences (article 25 of the FT draft bill)

271. The Code of Criminal Procedure of the Republic of Guinea implies that the police is also competent to act with authority where someone is caught committing the act, or with the consent of the suspect. (Title II, Chapter I: art. 51 et seq of the Criminal Procedure Code). However, in the context of money laundering (and the financing of terrorism), this procedure has not yet been enforced.

Empowerment to obtain testimonies in investigations and prosecutions (C.28.2)

272. In the conduct of investigations and prosecution of money laundering offences and other offences, it is important to hear witnesses and gather essential elements that should contribute to the establishment of the truth. Consequently, authorities in the law enforcement chain are routinely empowered to obtain and use testimonies when they establish offences, and gather evidence (art. 11, 16 and 59 of the CCP). Moreover, a specific procedure relating to the appearance of non-prisoner witnesses is provided for under art. 57 of the AML Act within the context of mutual legal assistance.

Recommendation 30 (law enforcement authorities)

Structure, human, technical resources and budget (C.30.1)

273. The organisation of police and gendarmerie services seems appropriate and well structured. However, according to the people we met, human resources and logistics are limited. As a result, the number of national police and the national gendarmerie agents is not yet enough to cover the entire national territory. Discussions we had with the competent authorities in Guinea indicate that the country's security ratio is about one police officer to 1,000 inhabitants and that at the level of the judiciary, there are 300 magistrates for about 11,000,000 inhabitants.

Professional standards, competence, confidentiality and integrity (C.30.2)

274. The police officer and gendarme must in theory pass an entrance examination before being admitted to training schools. They must not have any criminal record and must be of good morality. It should be noted that the police has a code of ethics (copy submitted to the evaluation mission) and the gendarmerie, just like the army, has a disciplinary code.

275. However, in matters of prosecution, some offences underlying money laundering and illicit drug trafficking for example, the special services have priority over enforcement structures and can withdraw cases from them at any time.

b. Suitable and relevant AML/FT training

276. Discussions we had with the authorities indicate that Guinea has no national schools for the training of senior officials of the magistracy and the national police. As a general rule, such officials are recruited and trained when opportunities come from abroad.

277. Guinea has no structural and specialised training on financial crimes, while money laundering and the financing of terrorism are not part of training programmes. However, some delegates from Guinea have participated in occasional seminars organised at international level.

Additional elements

Existence of special training programmes for judges (30.4)

278. The mission was not informed about the existence in Guinea of a training programme on the financing of terrorism and money laundering for judges. Statistics on seizures linked to these offences were not made known to the mission.

Recommendations and comments

279. While generally the police, gendarmerie and customs seem to have had appropriate training on the investigation and prosecution of general law offences, the limited nature of their mastery and knowledge of the money laundering phenomenon weakens their effectiveness. The clear lack of cases of seizure of criminal assets derived from any money laundering activity and the confusion of this crime with those that underlie it underscore the need for investigators to gain more expertise in this area.

280. In prosecutors' offices, the bulk of prosecutions also seem to deal with basic money laundering offences than with the traceability of the criminal assets derived from them in view of recovering such assets. It would be necessary in the offices to look into the possibility of setting up special sections charged specifically with money laundering and the financing of terrorism aspects.

281. The effective setting up of a FIU and the provision of suitable training to officials will make it possible to optimise the fight by developing a relationship between the prosecutor's office and FIU based on suspicious transaction reports.

Compliance with Recommendations 27 and 28

	Note	Summary of factors underlying the rating awarded
R27	**NC**	• Ineffectiveness of investigations to trace back criminal assets; • Investigations are limited to predicate offences and not to the tracking of money laundering emanating thereof; • No specialisation for magistrates and criminal investigation officers, resulting in a situation whereby investigations focus on predicate offences.

R28	**PC**	• The absence of FIU makes it impossible to conduct appropriate ML/FT investigations. • Concerning investigations, art. 33 of the law authorises the competent authorities to access records • Art. 51 et seq of the CCP also provides that the competent authorities may access records and make seizures (by order of the judge).

2.7 Cross-border Declaration or Disclosure (SR.IX)

2.7.1 Description and Analysis

282. Customs regulations (Customs code) in Guinea contain no enforcement provisions on money laundering, but rather customs fraud offences (art.310, 311, 314 and 316). The main mission of Customs in Guinea is to ensure that customs duties on cross-border traffic of assets and goods are duly collected. The authorities encountered said such receipts are important for the country as they account for about 50 to 55% of State revenue.

283. In addition to customs offences, customs often deals with other forms of crimes such as illicit drug and human trafficking, as well as attempted corruption.

Table No: SUMMARY OF DRUG SEIZURES BY THE CUSTOMS DEPARTMENT

Year	Type of drug	Quantity
2008	- Indian hemp - Cocaine	675.5 Kg - 35 and 1.5 g
2009	- Indian hemp - Cocaine	-116 Kg - 03 Kg
2010	- Indian hemp - Cocaine	493.07 Kg - - - -
2011	- Indian hemp - Chemical products	-270 Kg - 76 Cartons
2012	- Indian hemp - Cocaine	- 455 Kg and 200 g - 22 Kg

284. Pursuant to law No.L/2000/006/AN of 28 March 2000 on transactions between the Republic of Guinea and foreign countries, and to the instructions of the Governor of the Central Bank of the Republic of Guinea (Ref. Instruction No.112 / DGAEM /RCH /2000 of 11 September 2000), the physical transportation of funds is subject to a regulation.

285. The draft bill on the fight against the Financing of Terrorism in the Republic of Guinea equally provides for supervision and monitoring of measures for detecting physical cross-border transportation of cash and negotiable instruments or bearer negotiable instruments both when entering and on leaving the country (art.60 et seq of the draft bill)

Cash or bearer instrument declaration or disclosure system (c. IX.1)

286. Even though ECOWAS standards contain an obligation to declare to the entry and exit offices of Customs at the border, this information disclosure system does not fit specifically into the context of money laundering and the financing of terrorism in accordance with the AML/FT criteria in FATF standards (recommendations 40+9).

287. Also, under chapter 6 of instruction No.112 / DGAEM /RCH /2000 of 11 September 2000, issued by the Governor of the Central Bank of the Republic of Guinea, (article 29 to 34) the import and export of methods of payment are subject to a declaration to Customs.

288. On the other hand, article 14 of the draft bill on countering the Financing of Terrorism in the Republic of Guinea, within the framework of this effort, specifically provides that any natural persons transporting funds, at an entry or exit point of the national territory, must declare such funds in writing to border posts where the amount they are transporting is equal to or is above ten million Guinea francs (GF10,000,000 or about USD1,400).

289. One of the missions of Customs is checking natural persons transporting cash. To do this, Customs often acts on tips (from informants or close confidants), or depend on the experience of agents or following the attitude of travellers, to initiate procedure for establishing customs fraud.

290. However, in spite of the prerogatives of Customs, there are several weaknesses within the corps in the implementation of AML/FT measures. For instance the absence of a system for reporting cross-border cash transportation to FIU as part of AML/FT efforts. Since there is no FIU on the ground, there is no communication between these two structures.

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

291. In the accomplishment of their missions, customs officers generally have the right to inspect goods, means of transport and check persons, homes, while customs officer have a special right to access all types of records. This means they have the right to interrogate persons concerned and conduct investigations into cases of customs offences (Title II and Chapter IV of the Customs Code). However, as indicated above, this does not happen in the AML/FT context.

292. On the other hand, the draft bill on the fight against the Financing of Terrorism in the Republic of Guinea stipulates that the competent authorities who, at the border, identify a person transporting cash and bearer instruments in an amount equal to or above ten million (10,000,000) Guinean francs shall demand from such a person additional information on the origin of such funds or bearer instruments, where necessary. (Art. 14 of the draft bill).

Power to block or withhold cash or negotiable instruments (c. IX. 3)

293. In the context of Republic of Guinea, the authorities remain competent to block and ground assets in case of suspicion or establishment of a flagrant customs offence, but this does not cover the area of AML/FT. Accordingly, items that are liable to confiscation can be seized or withheld as a preventive measure as security for the payment of penalties (Art. 223 of the Customs Code). The of means transport used as well as contentious goods not liable to confiscation may, to provide security for the payment of the penalties incurred, be withheld until a guarantee is provided or a deposit for the amount of the said penalties is paid (Art.226 of Customs Code).

294. In any case, Customs, whenever necessary, refers to the other law enforcement authorities, offences that do not fall within its jurisdiction.

295. According to art. 14 of the draft bill on the fight against the Financing of Terrorism in the Republic of Guinea, the competent authorities who, at the border, identify a person transporting currency and bearer instruments may, where necessary, block or withhold for a period of up to seventy-two (72) hours currency or bearer instruments likely to be linked to terrorism or money laundering or are the subject of a false declaration or disclosure.

Custody of information gathered (c. IX.4)

296. There is an intelligence department within Customs. As part of customs activities, intelligences on findings and information on the identity of persons concerned are entered into a software known as CEN, which is connected to the Regional Liaison and Intelligence Office based in Dakar, for West Africa. Where necessary, such intelligence could be used to back up judicial action against money laundering (and the financing of terrorism if the Republic of Guinea passes a FT law).

Statistics on declarations of cash to customs

297. The mission received no information on cash or bearer negotiable instruments declarations or on cash or bearer negotiable instruments seizures by Customs.

Disclosure of information gathered at the FIU (c. IX.5)

298. Notwithstanding the setting up of a FIU by the anti-money laundering Act of 24 October 2007, this service has not yet become operational and there are no formal provisions requiring Customs to provide information to another service. However, since such intelligence is in the hands of Customs, it can be disclosed to FIU if it requests it (art. 14 of the AML Act).

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

299. National cooperation between the customs, immigration services and other competent authorities is not formalised. As a result, there currently is no structured coordination between the authorities concerned. Cooperation between Customs and other operational services such as the border police and gendarmerie happens on the field according to contingencies and the nature of the case. Apparently, this cooperation happens routinely and presents no coordination challenges.

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

300. There is one form of international cooperation based on conventions. Such conventions exist with Côte d'Ivoire, Senegal and Cameroon through data sharing. However, currently, this cooperation does not cover the fight against money laundering and the financing of terrorism. Also, the Republic of Guinea, as a member of ECOWAS, cooperates in the monitoring of community regulations.

Penalties for false declarations - enforcement of criteria c.17.1-17.4 (c. IX. 8)

301. Given that there is at the moment no law on the Financing of Terrorism, penalties applicable to false declarations or disclosures exclusively cover customs offences per se. There thus are no specific penalties in the context of AML/FT, except where the offences can be converted to the offences provided for under the AML/FT law and interest other services.

Penalty for the physical transportation of currency or bearer negotiable instruments connected with financing of terrorism or money laundering transaction- implementation of c.17.1-17.4 (c. IX.9)

302. The AML Act does not expressly mention penalties provided for specifically to cover cross-border physical currency transportation offences connected with a FT or ML transaction. However, as an act of commission or involvement in money laundering, they can be punished in accordance with articles 37 and 38 of the said Law.

303. In practice, since customs agents have no specific legal basis for intervening, they give way to the police or gendarmerie, and above all the General Secretariat at the office of the President of the Republic of Guinea, which has structures responsible for fighting against financial offences and the Financing of Terrorism.

Confiscation of cash linked to ML/FT in accordance with criteria c.3.1-3.6 (c. IX.10-11)

304. The fight against money laundering and the financing of terrorism is not yet integrated in Customs because the AML/FT law is not implemented. Since customs agents can only seize assets in cases of customs offences, where necessary, they must refer to prosecution authorities (Police and gendarmerie, but above all the Secretariat General of the Presidency of the Republic of Guinea, which is actually responsible for fighting organised crime) and to judicial authorities for appropriate measures to be taken.

305. However, since the search and arrest of any dangerous criminal and the provisional seizure of anything found in their possession is in theory the primary responsibility of Security services, Customs, Police, and Border Gendarmerie services according to resolution 1267 of the United Nations Security Council, contribute to this fight by using their prerogatives.

Unusual cross-border transportation of gold, precious metals or stones (c. IX. 12)

306. Nothing is expressly provided for in this specific case, but this type of information sharing could fall within the framework of international cooperation between customs services, and those we spoke with said it happens regularly. The mission did not receive any relevant statistics.

Security measures related to the use of cross-border transaction reporting systems (C.IX.13)

307. Guinea's Customs, within the framework of its activities, has a software known as CEN, which is connected to the Regional Liaison and Intelligence Office based in Dakar, for West Africa. Such intelligence, where necessary, could be consulted, but not directly and immediately by border Customs services. In any case, such intelligence remains inaccessible.

Training, data collection and implementation programme (C.IX.14)

308. During the on-site visit, we recorded no AML/FT training programme.

309. Data collection remains partial because the structures normally responsible for enforcement do not sufficiently coordinate AML/FT actions.

310. Enforcement structures are most often ineffective because they are concerned with their traditional missions, which mainly involve the collection of tax revenue and combating fraud, in the case of Customs, or public security, fighting banditry and prosecuting offences underlying money laundering, in the case of the Police and Gendarmerie. Thus, these structures, while operational in their respective domains, are also affected by the lack of coordination amongst themselves and with the judicial authorities.

311. However, the authorities in Guinea are aware of the extent of the threat and are considering building a comprehensive AML/FT enforcement strategy.

Additional elements

Implementation of best practices under SR.IX (C.IX.16)

312. The Republic of Guinea has not implemented international best practices under SRIX.

Saving cross-border transactions reports electronically (C.IX.17)

313. The Republic of Guinea has no computer system for electronically saving cross-border cash transaction reports.

Recommendation 30 (Only concerns Customs)

Structure, financial, human, and technical resources of Customs (C.30.1)

314. The order to organise Customs was not available for the evaluation mission; its availability would have allowed an understanding and analysis of the structural organisation of Guinea's Customs. Judging from on-site discussions with customs authorities, Customs is affected by the lack of financial resources although it generates a substantial part of the national budget. It does not have its own budget line with a credit administrator to enable it meet urgent needs.

315. Interviews conducted by the evaluation mission with Guinea's Customs authorities reveal that the corps' human and technical resources are at the moment insufficient in view of

the breadth of its mission. As a result, there are weaknesses in the coverage of the territory because some land and maritime borders remain porous. It is impossible to monitor the maritime coast which is 300km long by land and 200km as the crow flies. The authorities we met also mentioned plans to reinforce checks by means of scanners at the airport, the port and at three land borders, namely: Koundara at the border with Mali; Koure male at the border with Senegal and Pamelap at the border with Sierra- Leone.

Confidentiality standards and Integrity of Customs personnel (C.30.2)

316. Customs officers, according to interviews we had with authorities on the ground, ought to meet the general integrity conditions and those required to join Guinea's public service. To this effect, they must be of good morality and without any criminal history. The customs service has a code of ethics.

Suitable and relevant AML/FT training for Customs personnel (C.30.3)

317. Customs officers receive training ranging in length from two (02) to six (06) months depending on their entry level. Accordingly, customs officers must be holders of the *brevet d'études du premier cycle* (obtained upon successful completion of the first cycle of secondary school) and undergo training for a period of two (02) to three (03) months; customs controllers (holders of Baccalauréat, obtained after the second cycle of secondary education) are trained for three (03) months, while customs inspectors must be holders of a least a master's degree and train for six (06) months with the possibility of trainings abroad.

318. However, customs training programmes do not include the issue of money laundering and the financing of terrorism. As is the case with the national police, there are no customs schools in Guinea. Trainings received in the country by customs officers following their recruitment only consist in initiation to customs techniques.

319. However, according to Customs authorities, the institution has a six- (06) hectare piece of land dating back to 2006 on which a training school could be built if financing were secured.

Record keeping Customs (C.32.2)

320. The Customs service comprises an intelligence directorate. As part of the fulfilment of the customs' missions, which include seizures, intelligence is entered into a soft ware known as CEN, used as an administrative memory by the Customs services. Such intelligence could be used, where necessary, as a source for intelligence in the fight against money laundering and the financing of terrorism

RECOMMENDATIONS AND COMMENTS

321. In view of the foregoing, it seems that the Customs has no powers in the specific area of combating money laundering and the financing of terrorism. Its mission is to combat customs fraud. When faced with the transportation of currency or illicit goods connected with such offences, Customs stand aside in favour of the police and judicial authorities rather than conduct their own investigation.

322. Some existing mechanisms can be used to detect cross-border currency transportation. Exchange regulations already provide for a reporting system allowing Customs to enquire about cash in the possession of travellers getting in and out of Guinean territory.

323. However, the absence of effective monitoring of some borders, in particular maritime, owing to limited human resources and logistics, as well as the absence of a training centre for customs officers, stand in the way of the effective fulfilment of their mission, and this is alleged to make it easier for many criminals to move around.

324. It is thus necessary to speed up the establishment of effective customs control over cross-border movements and organise specific and appropriate training in this area.

Compliance with Special Recommendation IX

	Rating	Summary of factors underlying the rating awarded
SR.IX	**NC**	• The reporting system exists, but is intended to monitor the implementation of exchange regulations. • Disclosure of information on the origin and use of cash is effective but only covers customs offences.

3. PREVENTIVE MEASURES – FINANCIAL INSTITUTIONS

Customer due diligence and record keeping

Description

325. As part of preventive measures adopted in the Republic of Guinea to combat money laundering in the financial sector, the mission recorded the existence of law N°.L/2006/010/AN of 24 October 2007 related to the fight against money laundering, as well as two (2) instructions issued by the Governor of the Central Bank of the Republic of Guinea. They include:

- Directive No.1/2003/001/DGI/DB of 31 March 2003 on combating money laundering and;
- Directive No.1/2003/002/DGI/DB on information about the money laundering prevention mechanism/DGEEM/RCH.

326. We would like to underscore that the Republic of Guinea has a draft bill combating money laundering. However, this instrument has yet to come into force in the country's AML/CFT mechanism.

327. Of particular note is the fact that instruction No.1/2003/001/DGI/DB predates the AML Act and is still in force. According to article 1 of that instruction, it applies to credit institutions and currency exchange offices. The nine (9) articles comprising it are taken over in substance in the provisions of the AML Act. The instruction has however expressly provided for:

- suspicious reporting of (art.4): (i) amounts or transactions concerning funds that could derive from the activities of organised crime, according to the meaning of article 269 of the Penal Code of the Republic of Guinea (criminal conspiracy), (ii) any transaction the identity of whose originator or beneficiary remains doubtful…;
- the appointment of an executive or officer responsible for suspicious transaction reports and whose name is forwarded to the Central Bank (art.7);
- the use of a report form, the format of which is specified.

328. Generally, and under article 4 specifically, the AML Act aims at " …laying down the legal framework on the fight against money laundering in a bid to prevent the use of economic, financial, banking and non-financial systems in Guinea for the recycling of money or assets with illicit origins".

329. The scope of the AML Act (Art.5) covers " … any natural or legal person who, as part of their profession, carries out, controls or provides advice on transactions resulting in deposits, currency exchange, investments, conversions or transportation of money or any other assets, namely:

- The Public treasury;
- The Central Bank of the Republic of Guinea;
- Financial institutions;
- Businesses and Non-Financial Professions.

330. Article 1 of the AML Act which covers terminology describes financial organisations as:

- banks and specialised financial institutions;
- post office financial services;
- insurance and reinsurance companies, insurance and reinsurance brokers;
- micro-finance institutions;
- licensed foreign exchange dealers, including money transfer companies.

331. The Republic of Guinea's AMLCFT mechanism, in particular the provisions of Cap. II of Act No.L/2006/010/AN on the combating of money laundering, requires reporting entities referred to under article 5 above to: (i) check the client's identity and address, (ii) develop risk management systems for determining if a client is a politically exposed person, (iii) identify economic beneficiaries, (iv) keep records on the client's identity and on the transactions carried out, (v) put in place an internal AML programme.

332. Licensed currency changing agents as well as managers, owners and heads of casinos and gaming rooms are equally bound to exercise special due diligence over some categories of transactions. Finally, reporting agencies are bound to report suspicious transactions to the National Financial Intelligence Processing Unit (FIU) once they suspect or have reason to suspect a criminal activity (Art.26).

333. It is worth noting that reporting entities cannot cite professional secrecy as grounds for refusing to provide information to enforcement authorities, as well as report suspicious transactions (Art.34).

334. Natural and legal persons that are AML reporting entities are exempted from liability resulting from the consequences of suspicious transaction reports made in good faith (Art.30).

335. The same measures are also provided for in the FT bill.

3.1 Risk of money laundering or the financing of terrorism

336. According to article 5 of Act No.L/2006/010/AN on the fight against money laundering in the Republic of Guinea, the provisions of title II (Money laundering prevention) and III (Detection of money laundering) are applicable to "Any natural or legal person who, as part of their profession, carries out, checks or provides advice on transactions resulting in deposits, currency exchange, investments, conversions or any transfer of currency and other assets".

337. The mission was not aware of an instrument adopted by the Republic of Guinea suggesting the simplification or easing of the measures required within the framework of AML initiatives. As a result, we can report that the competent authorities did not exempt any financial institution that is a reporting entity from the enforcement of the entirety or part of anti-money laundering and countering of financing of terrorism (AMLCFT) obligations on grounds that they think the risks are low.

338. As to the general perception of the risk of money laundering and the financing of terrorism, the players met by the mission during interviews linked it to the predominance of the informal sector in the economy in general, with limited use of banking services, which encourages the use of cash in transactions, drug trafficking, the socio-political instability the country has experienced and to the flourishing of unauthorised currency exchange offices. The actors also lamented the ineffectiveness of coercive measures taken against perpetrators of violations of AML/CFT regulations. In their opinion, these factors worsen the Republic of Guinea's vulnerability, and in particular, that of the financial sector, exposing it to the risk of money laundering.

339. The fight against drug trafficking is a dimension that was taken into account very early on by the Republic of Guinea because the activity is a predicate money laundering offence. As such**,** the offence of laundering proceeds from drug trafficking was already criminalised in the country's Penal Code.

340. The risk of the financing of terrorism is very real in the Republic of Guinea because of the porosity of borders and the regional context. Moreover, the country has not passed the law on the financing of terrorism and virtually has no measures in place along those lines.

341. Amongst the financial institutions we met, those that have adopted preventive measures related to it carry out their operations as part of large regional or international groups (banks) or those that have links with foreign countries (money transfer companies).

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

3.2.1 Description and analysis

Legal framework

342. The legal framework applicable to the financial sector comprises the following standards:

- Anti-money laundering Law L/2006/010/AN of 24 October 2007.
- Act L/2005/010/AN of 04 July 2005 to regulated credit institutions in the Republic of Guinea (Banking law);
- law L/2000/006/AN to regulated financial relations relating to transactions between the Republic of Guinea and foreign countries;
- Decree No.032 /PRG/88 on the generalisation of invoicing and payment for goods and services in Guinean francs over the entire national territory;
- Instruction No.105/DGI/99 of 20 August 1999 on monitoring the foreign exchange position of credit institutions:
- Instruction No.112/DGAEM/RCH/2000 to establish the regime of financial relations relating to transactions between the Republic of Guinea and foreign countries;
- Instruction No.1/2003/001/DGI/DB on combating money laundering;
- Instruction No.1/2003/002/DGI/DB on information about the money laundering prevention mechanism.
- Instruction No.033/BCRG/05 on operation of foreign currency accounts in the Republic of Guinea.
- Instruction 025/DGEEM/RCH/11 to regulate currency changing offices in the Republic of Guinea.
- Instruction No.032/DGEEM/RCH/11 to regulate the activity of credit institutions in the Republic of Guinea.
- The OHADA Uniform Act on companies and economic interest groups.
- the OHADA Uniform Act on revised general business law

343. In accordance with the methodology for evaluating compliance with FATF's 40 Recommendations and 9 Special Recommendations, laws were considered as "laws and regulations", BCRG's instructions as "other binding instruments", during compliance ratings, with various recommendations. The mission did not record any directives in the documentation provided.

344. The activities carried out by financial institutions for purposes of FATF can be carried in the Republic of Guinea by financial organisations (FOs) which under the AML Act include:

- banks and specialised financial institutions;
- post office financial services;
- insurance and reinsurance companies, insurance and reinsurance brokers;
- micro-finance institutions;

- licensed foreign exchange dealers, including money transfer companies.

345. No reference is made to specialised financial institutions and post office financial services in the legal instruments governing them;

346. The Public Treasury and the BCRG are described as reporting entities by the AML Act even though they do not qualify as financial organisations.

347. The BCRG thus has the specific characteristic that it is both an authority responsible for ensuring the effective functioning of the AML/CFT mechanism within the financial sector, while at the same time being bound by it.

Table 3: Financial institutions to which AML/CFT instruments apply explicitly

	Law No.L/2006/010/AN on AML	**BCRG instruction No.1/2003/001/DGI/DB on AML**	**BCRG instruction No.01/2003/002/DGI/DB on information on ML prevention**	**The draft bill on combating the financing of terrorism**
Banks and financial institutions (FOs)	X	X	X	X
- Licensed foreign exchange establishments (FOs)	X	X	X	X
- Insurance and reinsurance companies (FOs)	X		X	X
- Insurance and reinsurance brokers (FOs)	X		X	X
-BCRG	X			X
-Public treasury	X			X

Recommendation 5

Ban on anonymous accounts (C.5.1*)

348. The ban on holding anonymous accounts or accounts under false names or managing numbered accounts is not explicitly mentioned in the anti-money laundering law. The various

instruments regulating the activities of financial institutions make no mention of such accounts.

349. However, we would like to report that article 6 of the AML Act requires financial institutions to check the client's identity and address before establishing relations. The article specifies that: "The checking of the identity of a natural person is effected by presentation of a valid national identity card or any original official document serving as such, a copy of which it retains.

350. The identification of a legal person or branch is done through presentation of the original, official copy or certified true copy and any deed or extract of the trade register, notably proving its legal form and its head office on the one hand, and on the other, the powers of the persons acting on its behalf".

351. Article 3 of instruction No.I/2003/001/DGI/DB on the combating of money laundering, which predates the Law on the combating of money laundering which credit institutions continue to comply with, specifies the identification measures to be followed before opening any type of account.

352. In the operation of credit institutions, the relevant procedure requires that they have some basic knowledge of customers. This is the "KYC[11]" principle.

353. It can be inferred from this that the implementation of these provisions makes it virtually impossible for anonymous accounts or accounts under false names to exist. Finally, the structures we met said they had no such accounts in their portfolio.

Situations in which due diligence obligations must be complied with (C.5.2*)
Diligence observed at the beginning of business relationship (C.5.2a)

354. The due diligence measures provided for at the time of establishing relations are those laid down under article 6 of the AML Act, specified by article 3 of the BCRG instruction and mentioned under (C.5.1).

Diligence observed for occasional transactions above the designated threshold (C.5.2.b)

355. The same identification conditions, provided for under paragraphs 2 and 3 of article 6 apply during occasional transactions of an amount equal to or above 50 million GNF or an equivalent value in Guinean francs. Article 8(2) requires the same identification conditions as above in case of repeated transactions, the total amount of which exceeds 50 million GNF or which appears to be linked to the commission of an offence.

356. Instruction No.025/DGEEM/RCH/11 to regulate the activity of currency changing offices in the Republic of Guinea, which was issued in accordance with law NO.L/2000/006/AN of 28 March 2000 to regulate financial relations between the Republic of Guinea and foreign countries, makes it mandatory for licensed foreign exchange bureaus to "exercise special due diligence regarding all transactions that are unusual, complex or are of an exceptional amount without grounds that are obvious or clearly lawful".

[11] Know your Customer

Diligence observed for occasional transactions in the form of electronic funds transfer (C.5.2.c)

357. Under articles 19 and 20 of instruction No.32/DGEEM/RCH/11 to regulate the activity of money transfer institutions in the Republic of Guinea, such institutions are authorised to receive or send amounts denominated in all currencies listed on the Republic of Guinea's foreign exchange market. Every transaction is authorised within certain limits of the amount of money equal in value in Guinean francs (GNF) to one thousand US dollars (USD1,000) when sending and Five thousand US dollars (USD5,000) when receiving.

358. Article 20 specifies that during every transaction, the money transfer institutions are bound to keep accurate information on the identity of the sender and beneficiary of the transaction, as well as the source and destination countries and cities.

Suspicion of money laundering and financing of terrorism (C5.2.d)

359. Article 6 of the anti-money laundering Act of the Republic of Guinea in point 6.7 mentions that "where a financial institution cannot comply with the obligations stemming from the identification procedure provided for in this Act or where it is still unclear about the true identity of the customer or beneficial owner, the reporting entity should not open any account or continue business relations or carry out any transaction".

Identification measures and sources of verification (C.5.3*)

360. Article 6(1) of the AML Act provides that "during the establishment of business relations such as opening an account, accepting securities, values and vouchers for safe keeping, or assigning a safe, the financial agency must check the client's identity and address by means of a valid identification document accompanied by any prescribed supporting documents".

361. Paragraphs 2 to 6 describe the general obligation to identify documents and the address of the natural or legal contracting person. However, there is no explicit requirement in the AML Act to carry out the identification of the natural and legal persons based on reliable and independent sources. Detailed identification measures for such persons based on sources considered by the authorities as reliable and independent are not provided for.

362. Articles 6.2, 6.3, 6.4, provide that (i) the checking of the identity of a natural person be done by means of presentation of a valid national identity card or any original official document bearing a photograph (art. 6(2) (ii) the identification of a legal person or a branch be done by means of the presentation of the original, official copy or certified true copy and any deed or extract of the trade register, notably proving its legal form and its head office on the one hand, and the powers of the persons acting on its behalf, on the other,".

Verification of legal persons (C.5.4)

363. Article 6(6.3 and 6.4) of the AML Act provides that: "(i) the identification of a legal person or branch be done through the presentation of the original, official copy or certified true copy and of any deed or extract of the trade register, notably proving its legal form and its head office on the one hand, and on the other, the powers of the persons acting on its behalf; (ii) Financial organisations ensure, under the same conditions as those set out in article

6(2), the identity and address of the real officials, employees and authorised persons acting on behalf of others. The latter must in turn produce documents proving on the one hand the delegation of authority or mandate that was granted them and, on the other, the economic beneficiary's identity and address".

364. There also is no obligation to verify, based on reliable and independent data, the identity of legal structures according to the meaning of the FATF.

365. While the AML Act targets legal structures and trusts (Art.7), regarding the identification of customers by designated non financial businesses and professions, the mission could report the existence of such entities during the on-site visit.

Identification and checking of the beneficial owner (C.5.5*)

366. Article 6(4) of the AML Act states that financial organisations verify, under the same conditions as those under article 6(2), the identity and address of the real officials, employees and authorised representatives acting on behalf of others. The latter must in turn produce documents proving on the one hand the delegation of authority or mandate that was granted them and, on the other, the beneficial owner's identity and address.

C.5.5.1* – C.5.5.2

367. Concerning a client that is a natural or legal person, article 10(1) of the anti-money laundering law stipulates that "Where the client is not acting on his own behalf, the reporting entities covered under article 5 above shall get information by all means on the identity of the person on whose behalf he is acting". It provides that: "After verification, if there continues to be doubts about the beneficial owner's identity, reporting entities shall make the suspicious transaction report referred to under article 26…".

368. Furthermore, par. 5 of article 6 of the AML indicates that "in the case of distance transactions, financial institutions shall identify physical persons, pursuant to the principles laid down in the Appendix of this Act"; appendix (dealing with modalities for the identification of customers (physical persons) by financial institutions in the case of distance financial transactions) which mentions that "the financial institution shall take reasonable measures to obtain information on the customer of its counterpart, namely the beneficial owner of the transaction pursuant ot article 10 par.1of the above mentioned Act.

369. Financial institutions are therefore under no obligation to adopt reasonable measures neither (i) to understand the client's ownership and control structure, (ii) identify the natural person(s) who *ultimately* own or control the client (including identifying persons who exercise in last resort effective control over the legal person or legal structure), nor (iii) to check the identity of beneficial owners using relevant information or data obtained from a reliable source such that the financial institution can gain satisfactory knowledge about the beneficial owner's identity.

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

370. There are no legal provisions requiring financial institutions to obtain information on the purpose and nature of the envisaged business relationship. However, the entities encountered by the Mission say that when establishing a business relationship, they ask the

client the envisaged nature of the business relationship more for business reasons than for purposes of combating money laundering and the financing of terrorism.

Continuous due diligence over business relationships (C.5.7*)

C.5.7.1/ C.5.7.2

371. The AML Act does not put financial institutions under any obligation to exercise continuous due diligence over their business relationships, carefully review transactions carried out over the entire duration of the relationship in order to ensure that such transactions are consistent with the information they have on their clients, their business activities, their risk profiles and, where necessary, the origin of their funds.

372. They do not observe any due diligence measures allowing them to update and ensure the pertinence of documents, data or information gathered during the exercise of the due diligence over clients, by reviewing existing documents, in particular for categories of higher-risk clients or business relationships.

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

373. There is no explicit provision in the AML Act requiring that financial institutions adopt enhanced due diligence measures over categories with the highest risk level apart from Politically Exposed Persons. Regarding PEPs, article 9 specifies that apart from ordinary identification measures, reporting entities shall: (i) develop risk management systems for determining if a client is PEP; (ii) adopt reasonable measures for determining the origin of a fortune and funds; (iii) institute enhanced and continuous monitoring over the business relationship with this type of client.

374. However, article 6(6.6) stipulates that "financial organisations shall apply the identification measures on existing clients based on the magnitude of the risk they represent". A broad interpretation of this provision could lead to the conclusion that this recommendation is implemented, if we consider the fact that existing clients can include higher-risk categories.

375. During the discussions the Mission had with the stakeholders particularly the banks, the latter indicated in practice that they have a different approach to the issue of identification depending on the risk presented by the customer is high or low.

Reduced or enhanced due diligence measures (C.5.9)

376. Reduced or simplified due diligence measures were not provided for by the Guinean anti-money laundering law.

Simplified or reduced due diligence measures applicable to clients resident in another country (C.5.10)

377. Regarding clients resident in another country, reduced or simplified due diligence measures were not explicitly provided for by the Guinean anti-money laundering law.

Simplified vigilance measures and suspicion of money laundering or financing of terrorism (C.5.11)

378. Since the anti-money laundering Act in Guinea does not provide for the acceptance of simplified customer due diligence measures where there is suspicion of money laundering or the financing of terrorism or in case of specific circumstances that present a higher risk, reporting entities are bound to enforce the required due diligence under article 26 of the said Act relating to the obligation to report suspicious transactions.

379. There is neither any provisions requiring that, where financial institutions are authorised to determine the extent of the due diligence measures to be applied to a client on the basis of the risks incurred, this must be done in accordance with the directives issued by the competent authorities.

380. There are no other cases in which reduced or simplified measures can be implemented.

Directives from competent authorities regarding the risk-based approach (C.5.12)

381. The AML Act has no provision to guarantee compliance with the criteria.

Verification time – General rule (C.5.13)

382. The AML Act provides that financial organisations shall verify the identity and address of their clients:

- ✓ when establishing business relationships, namely opening an account, accepting securities, values or vouchers for safe keeping, assigning them a safe or entering into any other business relationship with them (art. 6(1) and
- ✓ when they carry out some transactions with occasional clients (art. 8), namely:
  - any transaction involving an amount equal to or above GNF 50,000,000 or whose equivalent amount in local currency is equal to or is above this amount;
  - where there are suspicions that the funds used in the transaction or attempted transaction can be linked to the commission of an offence;
  - where the transaction is part of a set of transactions that are or seem to be linked or whose total exceeds this threshold.

383. However, concerning the second component, article 8 does not specify the exact time when the check should be made.

Possibility of completing identity verifications on the client or beneficial owner after establishing the business relationship (C.5.14)-C.5.14.1

384. Where the customer identity check or beneficial owner is required, there is no provision authorising financial institutions to complete the identification data after establishing the business relationship. However, in the course of discussions with stakeholders in the banking sector during the on-site visit, the mission noted that this possibility was implemented by some in very few specific cases. Where necessary, financial organisations regularise cases as soon as possible.

385. The audit authorities should ensure the effective implementation of the relevant regulatory provisions by reporting entities.

Non compliance with customer due diligence obligations – Before establishing relationships (C.5.15)

386. Article 6 (par. 6.7) of the AML Act stipulates that "where the financial organisation cannot comply with the obligations under the identification procedure provided for or where it has doubts about the client's or economic beneficiary's real identity, the reporting entity must not open an account, enter into or continue business relationships or carry out a transaction.

387. Similarly, article 4 of Directive No.I/2003/DGI/DB of 31 March 2003 provides that "credit institutions or currency changing offices are bound to report to the BCRG, using the appropriate form, any transaction in which the originator's or beneficiary's identity remains doubtful in spite of the due care exercised… ". This criterion is thus adequately covered.

Non compliance with customer due diligence obligations – After establishing relationships (C.5.16)

388. Article 6(6.7) of the AML Act requires reporting entities that have already established a business relationship to terminate them on grounds that they cannot honour the identification obligations provided for. The above-mentioned article specifies cases where (i) accounts should not be opened, relationships not entered into …which suggest that the relationship is not yet established, but also provides for (ii) not continuing… which suggests that the relationship had already been established. This latter aspect covers part of the criterion calling for the termination of the relationship but does not require the reporting entity to envisage reporting any suspicious transaction. This report is covered by article 10(10.1) which specifies that after checks, if doubts remain about the economic beneficiary's identity, the reporting entity shall make a suspicious transaction report…As such, the combination of the provisions of these two articles (6 and 10) makes it possible for the criterion's requirements to be met.

Application of due diligence measures to existing customers depending on the extent of risks (C.5.17)

389. Article 6(6.6) of the AML Act makes it mandatory for financial organisations to apply identification measures to existing customers depending on the extent of the risk they represent". However, it does not refer to any other form of due diligence over existing clients, notably the checking of transactions carried out and so on. This weakness is dealt with by article 10(4) which stipulates that "in any case, those bound by the law must exercise due diligence at all times in business relations with all clients". Given that the notion of "all clients" also encompasses existing clients, we can consider that the criterion is covered.

Application of due diligence measures to existing clients to whom the criterion applies (C.5.18)

390. The provisions of the AML Act does not require that financial institutions apply due diligence measures to their clients if the latter hold anonymous accounts, accounts under false names or numbered accounts.

391. Nevertheless, if complied with, procedures for opening accounts should not allow the presence of such accounts in the books of financial institutions. In any case, the due diligence measures are applied by reporting entities to all clients in accordance with article 10(1.4) referred to above.

Recommendation 6

Management of Politically Exposed Persons - PEPs (C.6.1)

392. The preliminary title of the AML Act, a Politically Exposed Persons is defined as a person that holds or has held a high public function in Guinea or in another State, for example Head of State, Head of Government, Member of Government, High-ranking politician, Senior civil servant, senior member of the Judiciary or the Armed Forces, director of a state corporation, or leader of a political party. The family members of PEP, as well as persons that are closely linked to such a person are also considered as PEPs.

393. This definition is less restrictive than that of FATF, used for the purposes of this methodology, which limits the notion of PEP to any person that holds or has held high public functions in a foreign country

394. Concerning the client category of Politically Exposed Persons, article 9 of the AML Act provides that: "the reporting entities covered under article 5, apart from ordinary identification measures, shall: (i) develop risk management systems for determining if a client is a politically exposed person; (ii) adopt reasonable measures for determining the origin of a fortune and funds; (iii) implement enhanced and continuous monitoring measures over the business relationship with this type of client.

395. Article 12 of the draft bill on the combating of money laundering and the financing of terrorism in the Republic of Guinea provides that "financial organisations must in particular apply, based on the assessment of risk, enhanced due diligence measures during transactions or business relationships with PEPs residing in Guinea or in another State, notably with a view to detecting transactions linked to the financing of terrorism. As a matter of fact, they adopt appropriate measures to establish the origin of their estate or funds.

396. Analysis of the foregoing shows that the law places reporting entities under the obligation of developing measures allowing them to identify their PEP clients. In this regard, the mission observed that the financial institutions it met with during the on-site visit have no clear procedures describing the methodology for identifying PEP. PEP clients in their portfolio were identified on the basis of their popularity.

Authorisation of top management to establish business relationships with PEPs (C.6.2 and C.6.2.1)

397. The provisions of the last paragraph of article 9 of the AML Act requires that financial organisations secure authorisation from the Board of Directors before establishing a business relationship with PEP clients.

The origin of the estate and origin of funds of the clients and beneficial owners identified as politically exposed persons (C.6.3)

398. This recommendation is covered by the afore-mentioned article 9 of the AML Act and 12 of the CFT draft bill

Continuous and enhanced diligence over the relationship with a PEP (C.6.4)

399. Article 9 of law on the combating of money laundering mentions the implementation of enhanced and continuous diligence over business relationships with PEPs.

Additional elements:

Implementation of R6 to national PEPs (C.6.5)

400. This criterion is satisfied by the definition of Politically Exposed Persons in the various instruments regulating AMLCFT.

Transposition of the 2003 United Nations Anti-Corruption Convention (C.6.6)

401. The Republic of Guinea signed the United Nations Anti-Corruption Convention (Merida Convention) on 09 December 2003.

Recommendation 7

Adequate information on cross-border correspondent banks (C.7.1)

402. Regarding correspondent banking relations, the AML/CFT legal framework provides for no obligation for financial institutions to gather adequate information on the client institution in order to better understand the nature of its activities, based on publicly available information, the institution's reputation and the quality of its monitoring (including checking whether the institution in question was the subject of an investigation or intervention by the enforcement authority relating to ML and FT).

403. In the absence of an obligation within this framework, the financial institutions we met say they have a questionnaire they apply to their future correspondents meant to gather desired information, whose analysis will determine whether they enter into a relationship or not.

Analysis of controls put in place by correspondent banks (C.7.2)

404. There is no obligation neither for financial institutions to evaluate the controls put in by the client institution in the area of AML/CFT nor for them to ensure their pertinence and effectiveness.

Authorisation of top management before establishing a business relationships with a bank correspondent (C.7.3)

405. There is no obligation for financial institutions to obtain authorisation from top management before establishing new bank correspondent relationships.

Obligation to specify in writing the respective responsibilities of each institution (C.7.4)

406. There is no obligation for financial institutions to specify in writing the respective responsibilities of each institution within the framework of AML/CFT.

Rules on suspense accounts (C.7.5)

407. Where a correspondent banking relationship involves the operation of suspense accounts, there is no obligation for financial institutions to ensure that (i) their client (client financial institution) applied all the usual measures provided for in Recommendation 5 to those of its clients with direct access to the accounts of the correspondent financial institution, and (ii) that the other client financial institution is capable of providing relevant identification data on such clients upon request by the correspondent financial institution.

Recommendation 8

Measures to prevent the abusive use of new technologies (C.8.1)

408. Article 18 of Guinea's law on the combating of money laundering requires that reporting entities put in place measures necessary to prevent the abusive use of new technologies in money laundering mechanisms.

Mechanisms for managing specific risks linked to business relationships or transactions not requiring the physical presence of parties (C.8.2 and C.8.2.1)

409. Article 6(5) of the law on the combating of money laundering provides that "in the case of non-face-to-face financial transactions, financial organisations shall identify natural persons pursuant to the principles set out in the annex to the law in question.

410. The annex to the AML Act specifies that the identification procedures to be developed by financial organisations within the framework of non-face-to-face financial transactions shall comply with the following principles: (i) The procedures must ensure appropriate identification of the client; (ii) The procedures may be applied unless there are reasonable grounds to suggest that direct contact (face-to-face) is avoided to conceal the client's real identity and that no money laundering is suspected; (iii) The procedures must not be applied to transactions involving the use of cash, (iv) The internal control procedures referred to under article 15 of the money laundering law must especially take into account non-face-to-face transactions.

411. More specifically, the annex specifies details for identifying a non-face-to-face client as follows:

- Direct identification by the branch or office representing the agency;

- In the absence of direct identification, the agency should proceed as follows:
  - a copy of the official identification document or official identification number is demanded and special attention is paid to checking the client's address when it is provided, by sending a letter by registered mail with advice of delivery.
  - similarly, the initial payment must be made through an account opened in the client's name with an institution located on the territory where he or she resides.

- possibility of payment by a reputable credit institution operating from a country that implements anti-money laundering standards.
- regarding these two payment methods, the financial organisation shall check whether the account holder's identity matches the one stated on the identification document in its keeping and that in case of doubt, it shall contact its counterpart and must even request certification in case of serious doubts.

- Where the counterpart is a financial organisation acting on a client's behalf, the reporting entity shall be obliged to check its identity by consulting a reliable financial directory and, in case of doubt, contact the enforcement body

- According to the AML Act, the above-mentioned procedures can be applied without prejudice to other methods capable of providing equivalent guarantees…

Effectiveness analysis:

412. Concerning the financial sector, the mission met with the following structures: the Ministry of the Economy and Finance, the Ministry Delegate in charge of the budget and the main Central Divisions(26 persons); The Central Bank of the Republic of Guinea (BCRG) (19 persons); the Association of Bank Professionals-APB (09 persons); four (04) banks (14 persons); the Professional Association of Insurers of Guinea (06 persons); two insurance companies (07 persons); the Professional Association of Micro-finance Institutions of Guinea (APIM); the National Micro-finance Board; one micro-finance institution (09 persons); Two money transfer companies (05 persons); the National Association of currency exchange offices and one currency changer (07 persons).

413. Regarding general knowledge of instruments regulating AML/CFT, the majority of structures said they had no such knowledge or had recent knowledge following the organisation of the workshop ahead of the Mutual Evaluation by Guinean authorities in collaboration with GIABA's Secretariat from 03 to 07 March 2012. The players in the banking sector seemed to be more knowledgeable of the measures recommended by the Law.

Recommendation 5

414. The players in the banking sector, especially banks that belong to large groups, seem to be better informed about the provisions of the AML/CFT law. The mission noted the putting in place of internal AML/CFT procedures within such institutions, which sent written copies thereof. The mission could not check the effective and efficient implementation of the said measures by reviewing the supervisory body's audit report.

415. The banks visited confirmed they had no anonymous accounts in their portfolios.

416. The authorities of the BCRG, which plays the dual role as supervisory body and reporting entity under the AML Act did not say they had developed internal AML/CFT procedures.

417. In the insurance sector, the AML Act is unknown and obligations seem to be largely disregarded. The Mission was able to note that the Professional Association of Insurers of Guinea (APAG) and insurance do not honour their obligations.

418. As to the micro-finance sector, the meeting with its association allowed us to note the lack of knowledge in terms of the law and of due diligence obligations, excepting a single structure that had developed internal procedures with support from its technical and financial partners. The latter did not say it had made any suspicious transaction report.

419. The meeting with licensed currency changing outfits made it possible to note recent knowledge of the money laundering law following an awareness-raising seminar organised by Guinean Authorities with support from GIABA. Due diligence and record keeping measures are implemented more in accordance with regulations of the currency changing activity than with the AML Act.

420. In the domain of rapid money transfer, the two companies we met, which carry out their activity within the framework of conventions signed with international partners specialised in money transfer, apply the internal procedures laid down by such partners.

Recommendation 6

421. Legal provisions are adopted by Guinean Authorities to regulate the management of domestic and foreign politically exposed persons. However, the mission did not note the effective implementation of such provisions by the reporting entities it met with.

Recommendation 7

422. The annex to the AML Act tries to provide an appropriate response to this recommendation within the framework of non-face-to-face transactions. The mission did not record any implementation. Interviews the mission had with players in the financial sector indicate that the due diligence obligations to be observed within the framework of correspondent banking relationships fall mainly on parent companies, while branches or subsidiaries adopt no special due diligence measures.

Recommendation 8

423. There are legal provisions in place obliging FIs to develop policies or adopt measures necessary to prevent the abusive use of new technologies in money laundering or financing of terrorism mechanisms, as well as in the management of specific risks linked to non-face-to-face business relationships or transactions.

424. The effective implementation of this recommendation was not noted by the mission amongst the players encountered.

Recommendations and comments

425. The Mission recommends that Guinean authorities adopt the necessary measures outlined below:

Recommendation 5

426. Under recommendation 5, Guinean authorities must ensure:

- the effective implementation of AML/CFT measures by financial institutions;

- the review of the AML Act in order to introduce the identification obligations provided for by FATF;
- the formal and explicit prohibition of financial institutions from operating anonymous accounts or accounts under false names;
- the adoption of clear provisions on the identification of the beneficial owner;
- the effective implementation of measures aimed at requiring that financial institutions obtain information on the purpose and nature of the envisaged business relationship;
- the adoption of permanent obligation for financial institutions to exercise due diligence over their clients and update information on such clients;
- the adoption of provisions aimed at compelling financial institutions to adopt enhanced due diligence measures for high-risk clients and maintain a minimum level of due diligence measures over financial institutions bound by the AML Act.

Recommendation 6

427. The effective implementations by financial institutions of the provisions under the AML Act in the area of the treatment of Politically Exposed Persons, which should translate into the development of clear procedures that can be enforced.

Recommendation 7

428. Under recommendation 7, Guinean authorities must ensure:

- the gathering by financial institutions of real and sufficient information, by means of reliable and publicly available databases, before entering any correspondent banking relationship
- systematic requirement of an authorisation from the highest level by financial institutions before establishing correspondent banking relationships;
- the requirement to take all measures necessary for the evaluation of AML/CFT controls instituted by the client organisation, the assessment of their relevance and effectiveness;
- specification in writing of the AML/CFT responsibilities of each of the institutions that have correspondent relationships;
- implementation of the provisions prescribed by FATF in case of the use of a suspense account in a correspondent banking relationship.

Recommendation 8

429. The effective implementation of the legal provisions provided for in the AML/CFT regime to assist FIs protect themselves against the abusive use of new technologies, and improved management of AML/CFT procedures in non-face-to-face transactions.

Compliance with Recommendations R.5 and R.8

REC	Compliance rating	Summary of factors underlying the compliance rating
R.5	**NC**	• No explicit prohibition to hold anonymous accounts; • Ignorance of due diligence obligations, only banks fulfil such obligations; • No obligation to verify identification data using reliable and independent means; • Identification obligations are too limited, in particular in the case of beneficial ownership; • No obligation to obtain information on the purpose and nature of the business relationship; • No permanent due diligence; • No obligation to take enhanced due diligence measures for high risk customers; • No obligations concerning existing clients; No specification of timing for the verification of the beneficiary or beneficial owner's identity; • No implementation of due diligence obligations by financial institutions;
R.6	**NC**	• Existence of legal provisions regulating the management of Politically Exposed Persons; • In spite of BCRG instruction 1/001/2003, employees do not consult hierarchy before opening accounts for PEPs. • No implementation in practice of the said provisions by FIs. • No consideration in internal procedures; opinion of the Board of Directors not sought.
R.7	**NC**	• No clear and specific obligations in the AML Act regarding the management of correspondent banks save the annex to the law; • No obligation to gather information on the client institution; • No obligation to request authorisation from top management before establishing a business relationship with a correspondent bank; • No implementation in the structures visited.
R.8	**NC**	• The annex to the AML has developed appropriate mechanisms for managing a non-face-to-face client, in particular with regard to identification and payment; • Parts of the legal provision (annex to the AML Act) are vague and incomplete, only covering clients that are natural persons; • No effective implementation by FIs even though instruments have provided for (Art.18 and the Annex to the AML Act)

3.3 Third parties and introducers (R 9)

3.3.1 Description and analysis

Recommendation 9

430. The anti-money laundering law in the Republic of Guinea is not very specific as concerns obligations to be honoured by reporting entities in their relationships with third parties or introducers. However, the provisions of the annex to the said law make it possible to partially cover this recommendation in the case of non-face-to-face transactions executed between two financial organisations bound by the due diligence obligations laid down by the AML Act.

431. One can thus infer that applicable instruments only authorise financial institutions to resort to intermediaries or third parties when establishing some non-face-to-face relationships, under the conditions spelt out in the annex to the AML Act.

432. In the insurance sector also, it is known that insurance and reinsurance brokers directly enter into contract with a client for the benefit of an insurance or reinsurance company for a commission. Within this framework, these institutions act as introducers and intermediaries. However, from the perspective of the Republic of Guinea's AML legislation, these insurance and reinsurance brokers are qualified financial organisations and in this capacity, are bound by the AML Act and must comply with the same due diligence measures provided for.

Immediately obtain from third parties and introducers necessary information about some elements of customer due diligence measures (C.9.1)

433. No provision requires that financial organisations immediately obtain from third party introducers necessary information about some elements of customer due diligence measures (C.9.1)

Adopt appropriate measures to ensure that the third party is capable of providing upon request and as soon as possible copies of identification data (C.9.2)

434. The annex in question states how the identification is made without direct contact with the client; papers (identification document or papers relating to the transaction) are made available by dispatching.

435. In the case of insurance companies, insurance and reinsurance brokers systematically share with their partner (principal) all pieces of information on clients' files.

436. Article 240 of law L/95/022/CTRN of 12 June 1995 to lay down the Insurance Code states that "insurance transactions can only be presented to the public through the following persons:

1) insurance broker: the insurance broker is the person that puts in contact the insurance buyer and insurance or reinsurance companies without being taken into account in the latter's choice for the purpose of insuring or re-insuring risks. The broker is the insured's authorised agent and is answerable to him or her

2) insurance agent: the insurance agent is the person responsible, by virtue of a mandate, for concluding insurance contracts on behalf of one or several insurance companies. He or she carries out their activity individually or as part of a professional company.

437. Articles 246 and 247 describe relations binding the insurance company to the general agent. They state that: “relations between the insurance company and the general agent shall comply with the provisions of a standard agency agreement drawn up by the professional association of insurance companies of Guinea and approved by the insurance company’s supervisory authority".

438. Article 247 stipulates that "the agency agreement referred to in the foregoing article is a legal nexus between the principal company and the general agent. To be valid, the agreement must specify:

- the branches for which the agent is appointed as agent,
- the operating district,
- the agent's production, management and claim settlement obligations, if any
- the amount of commissions according to branches, contract categories and tasks performed.

439. Article 253 stipulates that "the insurance brokers is the insured's authorised representative and is linked to an insurance company”.

440. The practice of the profession of broker is subject to authorisation by the insurance company’s supervisory authority (which is the BCRG as indicated in article 271 of the Code).

Application to regulations and to the supervisory and due diligence measures required under R.23, 24, 29, 5 and 10 (C.9.3)

441. Financial organisations are bound by AML/CFT laws and have the obligation to ensure that the third parties they resort to comply with the provisions of such those laws. However, there is no provision to ensure that such third parties are monitored and that they have adopted measures to comply with the customer due diligence requirements under Recommendations 5 and 10.

442. Regarding the insurance sector, the Code makes no mention of AML/CFT provisions. This situation could be explained by the anteriority of the instrument in relation to the AML Act and to the penal code which date back to 2006 and 1998 respectively.

Choice of country where the third party introducer is established taking into account AML/CFT (C.9.4)

443. There is no provision in the AML Act requiring that the competent authorities be very particular about compliance with FATF Recommendations by the country where the Third party is established, taking into account available information making it possible to know whether such countries properly implement such recommendations.

444. As to the insurance sector, articles 267 to 270 of the Insurance code cover international brokers. Article 267 states that international brokerage concerns brokerage transactions in which, on account of the risk to be covered, the broker chooses foreign approved intermediaries …

445. The involvement of international brokers in the Republic of Guinea is conditional upon the approval of the supervisory authority as mentioned under article 268.

446. The article in question also states that international brokers must back up their application with an information sheet bearing the following pieces of information:

1) Name, address, company name, legal form, authorisation in the country of origin and international brokerage experience.
2) Detailed description of the risk(s) the broker intends to cover. Commissions received are liable to taxes in the Republic of Guinea.

447. Article 269 stipulates that to meet the retention capacity of the local market, international brokers must send the risk through an insurance company authorised in the Republic of Guinea. Article 270 stipulates that the international broker must get representation by a natural or legal person of Guinean nationality liable to pay taxes in the Republic of Guinea.

Liability of the financial institution using third party introducers with regard to identification and identity checks (C.9.5)

448. This recommendation is not covered by legal and regulatory AML/CFT instruments in Guinea.

449. As financial organisations, insurance companies are held responsible for the conducting of AML due diligence for clients in their portfolio. This simply means that insurance companies are bound to check on their own behalf and should not rely on the diligence of brokers in matters of AML.

Comments and effectiveness analysis

450. Discussions the mission had with the banks it met allowed it to note that the use of introducers is not a common practice apart from rare cases where nationals open accounts abroad through another bank that applies the AML/CFT due diligence obligations. Some banks said they avoid using the services of introducers.

451. Regarding the insurance sector, brokers could play the role of introducers. However, the meeting with the sector's players showed their complete ignorance of their AML/CFT obligations.

452. Consequently, it would be necessary to accurately spell out the circumstances in which the use of third parties or intermediaries in the area of AML/CFT is authorised :

- Financial institutions using a third party should be required to immediately get from such third party necessary information about some elements of customer due diligence measures (criteria 5.3 and 5.6);
- Financial institutions should be required to adopt appropriate measures to ensure that the third party is capable of providing upon request and as soon as possible copies of

identification data and other relevant documents linked to the duty of customer due diligence;

- Financial institutions should be required to ensure that the third party is bound by regulations and is monitored (in accordance with Recommendations 23, 24 and 29), and that it has adopted measures aimed at bringing itself into compliance with the customer due diligence measures provided for under Recommendations 5 and 10.

Recommendations

453. The mission recommends that the Authorities in Guinea specify in legal provisions the due diligence obligations that fall to FIs that use introducers.

454. A greater AML/CFT awareness-raising is strongly recommended, targeting all players involved, and more particularly insurance companies.

455. Guinean Authorities ought to envisage the updating of instruments governing the financial sector and more specifically that of insurance companies in order to bring them into compliance with the AML Act.

Compliance with Recommendation R.9

REC	Compliance rating	Summary of factors underlying the compliance rating
R.9	**NC**	• Absence of clear and complete requirements covering the use of third parties and intermediaries AML/CFT matters: • In the insurance business, the brokers, even though acting as reporting entities bound by the due diligence obligation, fail to comply with this requirement.

3.4 Financial institution secrecy or confidentiality (R 4)

3.4.1 Description and Analysis

- The anti-money laundering law;
- Banking law;
- Law L/2000/006/AN to regulated financial relations linked to transactions between the Republic of Guinea and foreign countries (Article 18 p 11);
- Ordinance on the statute of the BCRG (article /75).
- Law L/95/022/CTRN/ of 12 June 1995, to lay down the Insurance Code.

Recommendation 4

Absence of obstacles to the implementation of FATF Recommendations because of professional secrecy applicable to financial institutions (C.4.1)

456. The banking law and the anti-money laundering law clear all obstacles linked to the professional secrecy of financial institutions, which obstacles are capable of preventing the enforcement of measures relating to the reporting of suspicious transactions and access to information by enforcement authorities. Article 61 of the banking law stipulates that: "Officers of credit institutions qualified to make suspicious transaction reports to the Central Bank in accordance with these provisions shall see their professional secrecy obligations waived".

457. Additionally, the law in question provides for measures to protect those who file reports by providing that "no criminal or civil liability may be cited before a judge against the Central Bank, a credit institution or any of its officers because of acts carried out in pursuance of the legal provisions of this chapter and the instructions arising from it…"

458. Further, *article 34 of the anti-money laundering law provides that*: "Notwithstanding any legislative or regulatory provisions to the contrary, professional secrecy cannot be cited as grounds by the reporting entities covered by article 5 for refusing to provide information to enforcement authorities, as well as to FIU or to report the suspicious transactions provided for under this law. The same applies to information required within the framework of an investigation into money laundering offences ordered by the investigating magistrate or conducted under his supervision by officers of the State responsible for detecting and combating offences linked to money laundering".

459. Both instruments offer sufficient guarantees capable of allowing the disclosure of information to the competent authorities, and access to information for them.

460. As to the identification of economic beneficiaries, article 10 of the AML Act provides that "no client may cite professional secrecy as grounds for refusing to disclose the economic beneficiary's identity".

461. Article 75 of the ordinance to lay down the statute of the BCRG provides that "those who, in any capacity, participate in the supervision, administration, audit or management of the Central Bank are bound by professional secrecy except in cases where they are summoned to testify in court or to fulfil legal obligations or where the dispatch is made to auditors external to the Central Bank, to regulatory and enforcement authorities or to public international financial institutions as part of their official functions" .

462. Finally, in view of the provisions of chapter 5: Information sharing with foreign prudential authorities (banking law). The Central bank can by virtue of article 59, forward information to the authorities charged in other countries with approving or monitoring credit institutions, subject to reciprocity and on condition that such authorities be themselves bound by professional secrecy.

463. Concerning the insurance sector, article 223 of the Insurance code states that "insurance companies must provide, upon requisition by the Insurance companies supervisory authority, information and clarifications deemed necessary.

464. Professional secrecy may not be cited as grounds neither before the licensing committee (BCRG), the insurance companies' supervisory authority, nor before the judicial authority acting within the framework of a criminal procedure".

465. This prerogative is enjoyed by FIU in accordance with the provisions of article 14 of the AML Act relating to the dispatch of records.

Effectiveness analysis

466. The mission was informed through discussions with the structures met that there is no obstacle blocking the waiving of professional secrecy within financial institutions, which indicate that they cooperate especially with the BCRG.

Recommendations and comments

467. To ensure enhanced implementation of Recommendations 7 and 9 or Special Recommendation VII provisions must be adopted in order that the laws on the professional secrecy of financial institutions do not hamper information sharing between financial institutions when it is required.

468. It is also important to ensure that access to data covered by professional secrecy be strictly restricted to the needs arising from missions entrusted with public authorities.

Compliance with Recommendation R.4

REC	Compliance rating	Summary of factors underlying the compliance rating
R.4	**LC**	• Recommendation covered by the provisions of the Banking law, the AML Act, the insurance code and the CFT draft bill • Possibility for foreign prudential authorities to share information under the reciprocity regime • No clear provision guaranteeing that professional secrecy does not hamper information sharing between financial institutions when required and between the various prosecution authorities (SRVII/R9)

3.5 Record keeping and wire transfer rules (R 10 & SR VII)

3.5.1 Description and Analysis

- The anti-money laundering law
- The Anti-terrorism financing bill;
- Directive No.025/DGEEM/RCH/11 to regulate the activity of currency changing in the Republic of Guinea;
- Act No. L/95/022/CTRN/ of 12 June 1995, to lay down the Insurance Code.

Recommendation 10

Custody of records (C.10.1*)

469. *Article 13 of the money laundering law provides that*: "Without prejudice to the provisions specifying more restrictive obligations, financial organisations and non-financial businesses and professions shall keep for a period of ten years records relating to:

- the identity of their usual or occasional clients from the closure of their accounts or from the cessation of their relationships;
- the transactions that their clients carried out from the end of the financial year in which the transactions were carried out".

Keeping of records necessary for the reconstruction of various transactions (C.10.1.1)

470. Article 13 of the AML Act has no specific provision obliging reporting entities to keep adequate records required to reconstitute various transactions in such a way as to provide evidence, where necessary, in case of criminal prosecution.

Nature of records kept and for how long (C.10.2*)

471. Article 13 of the Anti-money laundering law makes it obligatory for financial organisations to keep records relating to transactions they carried out for ten years. The very broad reference to records relating to transactions provides no further clarifications to explicitly include account books and business correspondence.

472. However, the Uniform Act of 24th March 2000 on the organisation and harmonisation of business accounting in article 24 also clearly states that accounting books or records used in their stead, as well as authentic documents shall be kept for a period of ten (10) years. The treaty on the Harmonisation of Business Law in Africa (OHADA) was ratified by sixteen (2000) including Guinea.

473. Article 223 of the Insurance Code states that "insurance companies must keep for at least ten years their account books, letters received, copies of letters sent, as well as any documentary evidence of transactions".

Information provided for competent authorities (C.10.3*)

474. Article 14 of the AML Act stipulates that "records relating to the identification obligations set forth under articles 6 to12 and 17, whose keeping is mentioned under article 13, shall be sent, upon request, by the reporting entities referred to under article 5, to judicial authorities, officers of the State responsible for detecting and combating money laundering-related offences, acting within the framework of a judicial mandate, to enforcement authorities within the framework of their supervisory activity, as well as to FIU".

475. The above-mentioned article specifies that: "The purpose of this obligation is to allow the reconstruction of all transactions carried out by a natural person and linked to a transaction that was the subject of a suspicious transaction report referred to under article 26 or transaction whose characteristics were entered in the confidential register provided for under article 12(3)".

476. Article 224 of the Insurance code states that "insurance companies must provide, upon requisition by the Insurance companies supervisory authority, information and clarifications deemed necessary.

Special Recommendation VII

477. According to article I of the draft bill on the financing of terrorism, wire transfer means: any transaction by electronic means carried out on behalf of an originator, whether a natural or legal person, via a financial institution for the purpose of making available to a beneficiary a certain some of money in another financial institution, with the possibility for the originator and beneficiary to be one and the same person.

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

478. This recommendation is covered by Directive No.032/DGEEM/RCH/11 of 13 April 2011, in particular articles 19, 20 and 21, to regulate the activity of money transfer companies in the Republic of Guinea. Article 19 of the above-mentioned Directive sets the maximum amounts denominated in any currency listed on the Guinea currency exchange market that can be sent or received, against an amount of money of equal value in Guinean francs of: (i) USD 1,000 for sending and (ii) USD 5,000 for receiving.

479. Whatever the amount involved, article 20 of the instruction stipulates that: "during every transaction, money transfer companies are bound to accurately gather the following information:

- name, first name and address of the sender and beneficiary;
- source and destination country and city;
- amount of the transaction in Guinean francs and its equivalent value in foreign currency listed by the BCRG;
- reference number of the transaction;
- a question and a suggestion as distinctive test.

480. Additionally, the instruction makes it an obligation for money transfer companies to "...provide documentary evidence at all times for the transactions carried out. To this effect, every institution is required to keep records and registers (in manual and electronic forms) in order to faithfully retrace on a daily basis transactions carried out chronologically".

481. Article 11 of the CFT draft bill also specifies that the information that should accompany national or international electronic transfers shall include the account number or failing that, a single reference number of the originator.

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

482. This recommendation is covered by BCRG instruction No.032/DGEEM/RCH/11, which in article 20 requires that money transfer companies state the names, first names and address of the sender (originator) and beneficiary (Cf.C.VII.1). This obligation covers national and international transfers.

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

483. BCRG instruction No.032/DGEEM/RCH/11 does not mention this specific provision. However, in light of the provisions of articles 13, 20 and 22 of that instruction, it can be considered that the same information shall be provided both for national and international transfers. We can infer that it is not covered and that for every transaction, identification is carried out in the same manner.

484. The situation is much clearer in the FT draft bill, article 11 of which stipulates as follows: "any cross-border wire transfer must be accompanied by accurate information on the originator….Every national wire transfer shall include the same data…"

Obligations of intermediary payment service providers (C.VII.4 and C.VII.4.1)

485. By virtue of the provisions of article 20 of instruction No.32/DGEEM/RCH/11, we can consider that the requirement for money transfer companies to gather information is valid not only in their capacity as sending institution, but also as the beneficiary of the transfer. As a matter of fact, the use of the word transaction can include the sending as well as receipt of the transfer. Moreover, the pieces of information to be gathered, as outlined above, concern the beneficiary and sender.

486. However, as a bridge institution in the payment transfer chain, no measure requires the gathering of information on the originator.

Adoption of effective procedures founded on risk evaluation (C.VII.5)

487. There is no obligation for financial institutions to adopt effective procedures founded on risk evaluation in order to identify and process transfers not accompanied by comprehensive information on the originator. Article 26 of instruction No.32/DGEEM/RCH/11 remains vague by making it obligatory only for transfer institutions to "...report to the BCRG any doubtful money transfer transactions".

Effective measures to check compliance with rules and regulations on the implementation of S.R.VII (C.VII.6)

488. By virtue of article 23 of instruction No.32/DGEEM/RCH/11, money transfer companies are bound to receive, for service reasons, in particular in relation to the audit of compliance with accreditation conditions, any person duly bearing a mission order from the BCRG. This provision applies as a general rule, but does not specify that the audit aims at ensuring compliance with the implementation of RSVII. Also, in the absence of transposition in the Republic of Guinea of the provisions of special recommendation VII (adoption of the CFT law), there is no measure to audit compliance by financial institutions with the latter.

Application of criteria 17.1 to 17.4 (C.VII.7)

489. Article 31 of Directive No.032/DGEEM/RCH/11 to regulate the money transfer activity in the Republic of Guinea provides for penalties against any breach of the provisions of the instruction. The penalties include: warning, deduction of a fine, suspension of activities, and withdrawal of license. However, the penalties provided for are not extended to failure to honour obligations relating to SRVII because of the absence of the CFT law that provides for such obligations in article 11.

<u>Additional elements</u> - Extension of obligations to transfers of less than 1,000 EUR/USD from or to the territory (C.VII.8 and C.VII.9)

490. Article 19 provides for a limitation of the thresholds to be respected in transfer transactions when receiving and sending, whilst article 20 of the same instruction lays down identification criteria.

Comments and effectiveness analysis

Recommendation 10

491. The financial institutions we met all pointed out that they keep customer records for a period of 10 years.

492. During discussion with these structures, the mission noted compliance with this recommendation. However, amongst many reporting entities, this practice is a custom and not linked to the enforcement of the AML Act, about which some have no knowledge.

493. The players involved in AML say they keep records without clarifying the type of records or for how long they do so.

494. The absence of FIU also does not make it possible to assess how quickly the players provide to the Unit the information requested during investigations into money laundering or the financing of terrorism.

Recommendation VII

495. In the absence of the adoption of a law on the financing of terrorism, the effectiveness of the implementation of this recommendation remains partial and rather aims at meeting the provisions of instruction No.032/DGEEM/RCH/11, relating to money transfer activities. This implementation remains vague.

Recommendations and comments

Recommendation 10

496. The authorities should to adopt the following measures:

- Provide that records be kept for longer if the competent authorities make the request in a specific case and for the accomplishment of its mission;
- Provide that records relating to transactions must be sufficient to allow the reconstruction of various transactions such that, where necessary, evidence can be provided in case of criminal prosecution;
- Provide that the obligation for financial organisations to keep for a period of ten years records relating to transactions they carried out include in particular account books and business correspondence.

- Make it obligatory for financial institutions to ensure that all customer records and transactions are made available when required to competent national authorities for the accomplishment of their mission;

Special Recommendation VII

- Diligently adopt the law on the financing of terrorism.

Compliance with Recommendation 10 and Special Recommendation VII

REC	Compliance rating	Summary of factors underlying the compliance rating
R.10	**PC**	• Instruments in force sufficiently regulate the recommendation. However, the anti-money laundering law has provided for 10 years, and the BCRG instruction 5 years. Therefore, while the latter complies with the FATF minimum, it does not comply with the law; • No specification of the nature and availability of records to be kept by financial institutions.
SR VII	**NC**	• As part of AML, these measures are covered in transfer transactions, but this is not valid from the standpoint of the countering of the financing of terrorism law that has yet to be passed by the Republic of Guinea.

3.6 Monitoring of transactions and business relationships (R 11 & 21)

3.6.1 Description and Analysis

- The anti-money laundering law in the Republic of Guinea;

Recommendation 11

Special attention to all complex transactions of an abnormally high amount, or to all types of unusual transactions (C.11.1)

497. Article 12 of the anti-money laundering law stipulates that**:** "any payment in cash or by bearer security of an amount of money, made under normal conditions, the unit or total amount of which is equal to or above one hundred and fifty million (150,000,000) Guinean francs, any transaction involving an abnormally high amount, made under unusually complex conditions and/or appearing not to have any business justification or legal purpose, shall be carefully reviewed by the reporting entities referred to in article 5.

498. In the cases covered by the foregoing paragraph, the reporting entities are bound to get information from the client, and/or by any other means, about the origin and destination of the

money in question, as well as about the purpose of the transaction and the identity of the persons involved, pursuant to the provisions of article 6(2 and 3). The principal features of the transaction, the originator's and beneficiary's identity, and where applicable, that of those involved in the transaction are entered in a confidential register, with a view of reconciling them, where necessary.

499. Article 5 of BCRG instruction No.I/2003/001/DGI/DB on AML equally states that "any transaction involving a considerable amount, which, without falling within the scope of article 4 of this instruction, is complex and seems not to have any legal economic justifications, must be carefully reviewed by the credit institution or currency exchange office bound to carry out a special review. In this case, the latter shall get information from the client about the origin and destination of the sums of money, as well as about the purpose of the transaction and the identity of its beneficiary.

500. Considerable amount means: transfer in cash of a unit or total amount of more than one hundred and fifty million (150,000,000) Guinean francs; transactions involving sums whose unit or total amount is above three hundred million GNF.

501. The information gathered must primarily be on:

- the origin and destination of sums, as well as the purpose of the transaction; the identity of the originator or beneficiary or beneficiaries (name, address, profession); the characteristics of the transaction; where necessary, details and terms and conditions of operation of the account (date and origin of account, authorised representative, accounts without activity).
- the characteristics of the transaction are entered in writing and kept, as well as records related to it, by the reporting credit institution or currency changing office for five years.

Review as much as possible the context and purpose of such transactions and enter the findings of the reviews in writing (C.11.2)

502. This recommendation is covered by the above-mentioned instruction. However, it is not stated that the institution must review as much as possible the context and purpose of such transactions. The identification obligations are however sufficient to meet the requirements of this recommendation.

Information put at the disposal of competent authorities and statutory auditors (C.11.3)

503. The AML Act or other instructions issued by the Central Bank make no mention of the provision of the said information to statutory auditors.

Recommendation 21

Special attention to countries that do not implement or inadequately implement FATF Recommendations (C.21.1)

504. The criterion is covered by the legal provisions of the last paragraph of article 3 of instruction No.I/2003/001/DGI/DB of 31 March 2003 on the fight against money laundering which stipulates that: "reporting credit institutions or currency exchange offices shall exercise the greatest possible due diligence over transactions with natural or legal persons resident or

registered in States or territories considered to be uncooperative by the Financial Action Task force against Money Laundering (FATF)".

505. The structures we met said such measures are only implemented within the framework of the implementation of policies laid down by parent companies or within the framework of agreements signed with international specialised companies. Example of money transfer companies (Western Union /Money Gram).

It is necessary to put in place effective measures to ensure that financial institutions are informed about concerns raised by the weaknesses of the AML/CFT mechanisms of other countries C.21.1.1 –

506. At the time of the mission, the legal provisions in force in the Republic of Guinea do not provide for such measures**.**

Measures to be adopted in situations where transactions have no apparent economic or licit purpose (C.21.2)

507. Guinea's legal provisions (article 16 of the AML Act, 4 and 5 of the instruction on the AML Act) recommend special due diligence by reporting entities, especially credit institutions and licensed currency changing outfits, for all complex and unusual transactions or transactions involving an exceptional amount, not backed by obvious economic reasons, or not clearly licit.

Application of counter measures to a country that does not implement or inadequately implements FATF Recommendations (C.21.3)

508. There are no effective measures to ensure that financial institutions are informed about concerns raised by the weaknesses of the AML/CFT mechanisms of other countries.

509. When a country continuous to not implement or inadequately implements FATF recommendations, the Republic of Guinea is not in a position to implement suitable counter measures.

Comments and effectiveness analysis

Recommendation 11

510. Discussions the mission had with financial sector players indicate that special attention is paid to unusual transactions.

511. Banks, specifically subsidiaries of foreign banks, have filtering tools that allow them to detect this type of transaction. This activity is managed by the compliance officer. However, other reporting entities, especially foreign exchange dealers, said they preferred to postpone these types of transactions.

Recommendation 21

512. The structures we met said they implemented measures relating to this recommendation only within the framework of the implementation of policies laid down by

parent companies or within the framework of the signing of agreements with international specialised companies.

Recommendations and comments

Recommendation 11

- Guinean authorities should consider adopting measures aimed at making it obligatory for financial institutions to conduct as much as possible a survey on the context and purpose of unusual transactions and put down their findings in writing;
- Statutory auditors should also be recipients of the findings of such surveys.

Recommendation 21

- Guinean authorities should put in place mechanisms aimed at informing financial institutions about concerns raised by the weaknesses of the AML/CFT mechanisms of other countries;
- Counter-measures should be implemented against countries that continue to not implement or inadequately implement FATF Recommendations.

Compliance with Recommendations R.11 and R.21

REC	Compliance rating	Summary of factors underlying the compliance rating
R.11	**LC**	• This notion of unusual transaction is covered by article 12 of the AML Act. • Article 5 of instruction No.I/001/203 on the AML Act covers unusual transactions. • The law sets the threshold of 150 million GNF, which is however not the only trigger of special diligence. • The AML Act makes it mandatory for reporting entities to take special diligence steps regarding any transaction involving an abnormally high amount, made in unusually complex circumstances and/or which do not appear to have an economic justification or licit purpose.
R.21	**PC**	• There are no effective mechanisms aimed at informing financial institutions about the AML/CFT weaknesses of other countries. • No proposed counter-measures to be implemented against countries that do not comply with FATF Recommendations. • This criterion is covered by an BCRG instruction

		(instruction No.1/001/2003/DGI/DB dealt with in article 3)

3.7 Suspicious transaction reports and other reporting (R 13-14, 19, 25 and SR IV)

3.7.1 Description and Analysis

- The AML Act

Recommendation 13 and Special Recommendation IV

Suspicious transaction reports (STRs) in case of suspicions about funds deriving from an offence (C.13.1*)

513. Article 26 of the AML Act of the Republic of Guinea provides for the obligation to report suspicious transaction, and stipulates that: "The reporting entities referred to in article 5, who suspect or have reason to suspect that funds are proceeds from an unlawful activity, or have knowledge of a fact that could be the clue to money laundering, are bound to report it to FIU,… "

514. The law specifies that the STR is made using a model report prepared by FIU. The latter has not been set up in the Republic of Guinea.

515. The AML Act specifies the types of information to be included in the report as follows:

- the identity and other identification details of the reporting body, including the name and contact details of the person making the report;
- the identity and other identification details of the client and, where applicable, of the beneficiary of the transaction;
- the type of transaction (activity) reported to be suspicious and its details (amount, currency, date and stakeholder), including the account number and details about its holder; and
- a brief presentation of why suspicion was raised, plus details, if any.

516. It continuous as follows: "Officers of the above-mentioned persons are bound to immediately inform their hierarchy about the same transactions as soon as they have knowledge thereof".

517. The natural and legal persons mentioned above are under obligation to report to FIU transactions thus carried out, even if it was impossible to postpone their execution or if it appeared, after the execution of the transaction, that the latter involved moneys or any other assets of suspicious origin… ".

518. Furthermore, the former Banking Act against money laundering provides in article 61 that “staff of credit institutions qualified to submit suspicious transaction reports to the Central Bank in application of the provisions of the said Act, shall be relieved of the latter, of their professional secrecy obligation”. Directive N°.I/2003/001/DGI/DB against money laundering in article 4, indicates that “accountable credit institutions or foreign exchange

bureaus shall submit returns to the Central Bank in the form attached as Appendix 1 to transactions that may stem from organised criminal activities as provided for in article 269 of the Penal Code of the Republic of Guinea, or any transaction the identity of which sender or beneficiary remains doubtful.

Suspicious transaction reporting obligation applicable to financial intermediaries in case of suspicions about funds meant to be used in terrorism, terrorist acts, terrorist organisations or those that finance terrorism (13.2* and C.IV.1)

519. Guinean authorities have not passed any law on the Financing of Terrorism, but a draft bill was forwarded to the mission.

520. Article 7 of the draft bill in question provides that "the natural and legal persons referred to under article 7 (title II of the AML) are bound to report to FIU, under the conditions provided for by this law and according to a model report drawn up by a decision of the Minister of Finance:, sums of money and other assets in their possession, where the latter could arise from the financing of terrorism… "

NB / the model STR for the FT is covered by a decision of the minister, while in the case of ML, the model is drawn up by FIU.

Suspicious transaction reporting obligation extended to attempted money laundering or terrorism transactions (13.3* and C.IV.2)

521. The AML Act (art.26) and FT draft bill (art.17) do not provide for the obligation to report attempted transactions linked to money laundering or to terrorism or to its financing.

Suspicious transaction reporting obligation linked to tax issues (C.13.4*)

522. According to article 26 above, the obligation to report covers" …funds that are proceeds from a criminal activity… ". Given that tax fraud is on the list of predicate offences and is criminalised in the Republic of Guinea, the suspicious transactions reports also cover tax issues.

<u>Additional elements</u> – STR obligation covering funds suspected of being proceeds from a predicate money laundering offence (13.5)

523. The AML does not specifically mention the obligation to report suspicious transactions linked to tax issues (C.13.4*)

524. However, the AML Act subjects the reporting entities referred to in article 5 to the obligation to report funds that are suspected to be proceeds from a criminal activity. This comprehension could be extended to tax issues and to funds suspected of being the proceeds of a predicate money laundering offence.

Protection by the law of reporting professions against criminal or civil liability for breach of confidentiality rules (C.14.1)

525. The protection of reporting officers is provided for by article 30 of the AML Act of the Republic of Guinea, which stipulates that: "Persons or executives and officers of the reporting

entities referred to in article 5 who in good faith forwarded information or any report, in accordance with the provisions of this law, shall be exempted from any penalties for breach of professional secrecy".

526. Additionally, paragraph 2 of the same article 2 specifies as follows: "no criminal or civil suit may be initiated, or any professional sanction taken against persons or executives and officers of the reporting entities referred to in article 5 who acted in the same conditions as those provided for in the foregoing paragraph, even if court rulings handed down on the basis of the reports referred to in the same paragraph gave rise to no conviction".

527. Paragraph 3 of the above-mentioned article provides that: "no civil liability or criminal suit may be brought against the reporting entities referred to in the foregoing paragraph because of material or moral damage that could arise from the blocking of a transaction by virtue of the provisions of article 26".

528. Article 32 of the law holds the State liable in case of damage suffered by persons denounced on the basis of suspicious transaction reports made in good faith, but which turned out to be inaccurate.

529. Also, by virtue of article 32, reporting professionals, who carry out in good faith a doubtful transaction that should have been reported, are exempted from prosecution. Actually, article 32 stipulates that: "When a suspicious transaction was executed, and unless in case of fraudulent collusion with perpetrator(s) of money laundering, no criminal prosecution of the money laundering charge may be initiated against one of the reporting entities referred to in article 5, their executives or officers, if the suspicious transaction report was made in accordance with the provisions of this law". The same applies when a reporting entity referred to in article 5 carried out a transaction at the request of judicial authorities or State officials responsible for detecting and combating offences linked to money laundering, acting within the framework of a judicial mandate or FIU.

Prohibition from disclosing to ("tipping off the client") a client that an STR or information about them has been dispatched (C.14.2)

530. Reporting entities are under the obligation not to tip off suspected persons that a report has been sent to FIU about them. Article 26(6) of the AML Act stipulates that "These reports shall be confidential and may not be sent to the owners of the sums of money or to the one who carried out the transaction".

Additional elements – ***Existence of laws, rules or measures allowing the FIU to maintain confidentiality over the names and personal information of employees of financial institutions submitting STRs (C.14.3)***

531. Article 29 (Action taken following suspicious transactions reports) of the AML Act stipulates that "when transactions highlight facts likely to amount to a money laundering offence, FIU forwards a report on such facts to the Prosecutor General who immediately seizes the investigating magistrate. The report is accompanied by useful documents, except the suspicious transaction report. The identity of the reporting officer must not feature in the report in question, which will be authoritative until proven otherwise.

Recommendation 25 (feedback and guidelines for making STRs)

Feedback on suspicious transaction reports (C.25.2)

532. The feedback is covered under article 29(3) of the AML Act. By virtue of the provision, FIU, at the appropriate time, must inform reporting entities about the conclusions of its investigations. For the time being, these provisions are not implemented because FIU has not yet been set up.

533. Some reporting entities of the banking sector said they made STRs to the BCRG and have not been informed about what action was taken following the reports,

Recommendation 19

Study of a system for reporting cash transactions in excess of the set threshold (C.19.1)

534. The legal framework of AML/CFT in the Republic of Guinea does not provide for a study on the feasibility and usefulness of the setting up of a system through which financial institutions would report any cash transactions in excess of a certain amount to a national central agency equipped with a computerised database.

Additional elements*: Existence of a system for reporting transnational transactions or considerable amounts in cash (C.19.2 and C.19.3)*

535. Such systems do not exist in the Republic of Guinea and were not provided for at the time of the on-site visit.

Recommendation 32

536. STR statistics are not kept regularly and comprehensively. In the absence of FIU, only some reporting entities, notably a few banks, sent STRs to the BCRG (8 STRs were recorded).

Comments and effectiveness analysis

Recommendation 13

537. Among the reporting entities referred to in article 5 of the AML that the mission met with, only banks said they made suspicious transactions reports to the BCRG.

538. Currency changers mentioned having received some instruction from the Central Bank to immediately contact prosecution authorities when they see any case of breach of applicable regulations by clients.

539. This recommendation is not systematically implemented. Apart from a small number of banks, virtually all reporting entities make no suspicious transaction report in the absence of FIU. The stakeholders encountered explained that they do not comply with this legal provision out of fear that the BCRG may not fulfil the security conditions provided for with FIU. Moreover, the fact that the law on the combating of the financing of terrorism in Guinea has not been passed contributes to the non implementation of this recommendation.

Recommendation 14

540. Legislative and regulatory provisions perfectly cover obligations under this recommendation. The implementation of this recommendation was seen amongst reporting entities within the framework of the AML policy of their parent companies.

Recommendation 19

541. The instruments governing AML/CFT in the Republic of Guinea have not made provision for a system for reporting cash transactions in excess of a set threshold in spite of the existence of the highly developed and very dynamic informal sector. The reporting system continues to rely on the suspicion of money laundering or the financing terrorism.

Special Recommendation IV

542. This recommendation cannot be implemented because of the absence of the CFT law.

Recommendation 25

543. Reporting entities have not received any instruction on how to make suspicious transaction reports and have no suspicious transaction report form. For those who have made STRs, no feedback has been received. This situation can only be corrected by creating FIU.

Recommendations

544. It is crucial to make FIU operational in order that investigations in greater depth can be conducted into cases, a role the BCRG cannot play because it is not part of it duties.

545. The passage of a law on the financing of terrorism should make it possible to cover the relevant suspicious transaction.

546. The Republic of Guinea should consider imposing an obligation to report attempted suspicious transactions.

Compliance with Recommendation R.13, R14, R19, R25 and Special Recommendation IV

REC	Compliance rating	Summary of factors underlying the compliance rating
R.13	**PC**	• The AML Act covers this recommendation; • A few banks made STRs to the BCRG and not to the FIU; • Non adoption of anti-terrorism financing Act that should cover the suspicious transaction reporting obligation applicable to financial intermediaries in case of suspicion of funds meant to be used in terrorism, terrorist acts , terrorist organizations or given to terrorism financiers;

		• No obligation to report attempted money laundering transactions; • No effective implementation of STR obligation by all reporting entities
R.14	**LC**	• The AML Act has provided for the protection of reporting officers by virtue of the provisions of articles 30, 31 and 32. • Article 26 of the law in question prohibits the tipping off of the client or beneficiary of funds that were the subject of an STR. • Article 29 of the AML (processing of STRs) indicates that the suspicious transaction should not be part of the report submitted to the Prosecutor where such transaction features as a case of money laundering
R.19	**NC**	• No study or provision has been implemented to force FIs to report cash transactions made in excess of a certain threshold.
R25	**NC**	• With there being no FIU, it is not possible to have feedback on the processing of STRs. • For the rare STRs forwarded to the BCRG by some banks, no feedback was made by the latter; • The law provides that STRs be made using a reporting format prepared by FIU, but this has yet to be done.
SPIV	**NC**	• In the absence of any legislation against the financing of terrorism, reporting entities are not bound by any STR obligation.

INTERNAL CONTROLS AND OTHER MEASURES

3.8 Internal controls, compliance, audit and foreign branches (R 15 &22)

3.8.1 Description and Analysis

- The anti-money laundering Act
- Directive No.1/2003/001/DGI/DB on AML

Recommendation 15

Stipulating procedures, policies and internal control measures aimed at preventing AML/CFT within Financial Institutions (C.15.1)

547. Article 15 of the AML Act makes it obligatory for reporting entities to prepare harmonised money laundering prevention programmes. According to the provision, the programmes in question must notably comprise:

- the centralisation of information on the identity of clients, originators, authorised representatives, beneficial owners;
- the processing of suspicious transactions;
- the designation of internal officials responsible for the implementation of anti-money laundering programmes;
- personnel training;
- the setting up of a mechanism for detecting and reporting suspicious transactions to FIU.

548. The obligation to put in place these measures is reaffirmed by Directive No.I/2003/001/DGI/DB of 31 March 2003 on the fight against money laundering issued by the regulatory authority on behalf of credit institutions and currency exchange offices. According to that directive, the structures referred to must adopt written internal rules laying down procedures for implementing the provisions of this instruction.

549. During meetings specific to the Financial Sector, reporting entities that have reportedly put in place internal control systems in connection with AML are from the banking, micro-finance and money transfer sectors.

550. With regard to the insurance sector and foreign exchange bureaus, the mission noted the lack of knowledge about AML and the related required due diligence obligations especially amongst insurers. Since currency exchange offices were sensitised very recently, they observe some due diligence obligations, especially with regard to client identification and compliance with thresholds.

Compliance monitoring and designation of an AML/CFT audit officer (C.15.1.1).

551. By virtue of article 15(2) of the AML Act, and regarding financial organisations, "officials responsible for the implementation of internal programmes are under the authority of their management"

552. It is also stated that "Supervisory authorities could, in their respective areas of competence, specify the contents and regulations regarding money laundering prevention. They shall conduct investigations on-site to check the effective implementations of such programmes".

553. The institutions we met said they were considering effecting restructuring in order to make the said official report to the Management of the structure.

554. This measure was not effective at the time of the mission.

Access at the required time by the AML/CFT supervisor and other members of the staff concerned to client identification data and other information (C.15.1.2)

555. Article 15(3) provides that internal control must deal with the effective implementation of regulatory provisions.

556. The organisation of the audit within institutions is the responsibility of the institutions themselves. Consequently, most of the structures we met have developed group procedures, at times very recently.

Internal control mechanism that is independent and has adequate resources (C.15.2)

557. The requirements of recommendation seem to have been only recently fulfilled by reporting entities, which could imply that it is not effective.

558. There seems to be only one internal control official in all the banking institutions we met with. Moreover, the latter does not report to Management, but to AML internal audit.

559. The detailed organisation of internal control is not regulated by regulatory instruments, but left to the discretion of reporting entities.

Provision of professional development to the employees of financial institutions on AML/CFT (C.15.3)

560. In banks that are subsidiaries of regional or international banking groups, the mission was informed about the organisation of seminars on the initiative of the groups to which they belong. On average, one annual training programme for all staff can be chosen.

561. At the level of micro-finance institutions, one of them received support from technical and financial partners in the area of training and as part of the institution of its AML/CFT mechanism.

562. Money transfer companies, through their partnerships with international companies, implement the entire internal mechanism and organise training for their staff.

Putting in place of appropriate procedures during recruitment (C.15.4)

563. At the level of banks, we were informed that recruitments are made through recruitment firms and that there is special emphasis on the morality of future employees (a morality investigation is conducted).

564. Concerning managers:

- **Article 16 of the banking law stipulates that "**the officials of credit institutions referred to in article 15 must have the necessary level of integrity and fulfil the following conditions: **Unless there is exemption granted by the Accred**itation Committee, no one may lead, administer or manage a credit institution if they are not of Guinean nationality unless they enjoy the legal or regulatory provisions granting reciprocity, within the framework of an agreement signed between their State of origin and the Republic of Guinea.

- Article 31 stipulates that "No one may be a member of the board of directors of a credit institution, directly or through an intermediary, administer, direct or manage in

any capacity a credit institution, nor have the power to sign on behalf of such an institutions if they have been convicted by final judgement for one or several of the following offences:

i. crime;
ii. forgery and falsification private business or banking documents,
iii. theft, scam or breach of trust;
iv. bankruptcy or fraudulent bankruptcy;
v. embezzlement of public funds
vi. extortion of funds or securities;
vii. issue of bounced cheque, and
viii. possession of goods obtained through these offences.

565. At the level of money transfer companies, physical knowledge is crucial.

Additional elements – *Independence of the compliance officer in the area of AML/CFT (C.15.5)*

566. Article 15 of the AML Act in the Republic of Guinea states that officials responsible for the implementation of internal programmes are under the authority of their management"

Recommendation 22

567. Instruction No.1/2003/001/DGI/DB on combating money laundering;

Application of AML/CFT due diligence measures to foreign branches and subsidiaries (C.22.1 and C.22.1.1)

568. Article 5 of the above-mentioned instruction spells out measures to be taken by credit institutions or foreign exchange bureaus within the framework of AML in general and specifically with regard to the amount to be respected in transactions.

569. In this respect, paragraph 9 states that "the reporting credit institution or currency exchange office must ensure that the obligations under this article are implemented by its branches or subsidiaries whose head office is abroad, unless local legislation hampers this, in which case it shall inform the Central Bank".

Application of the strictest standards (C.22.1.2)

570. There are no provisions in the instruments governing AML/CFT in the Republic of Guinea, which provide that when the minimum AML/CFT standards in the host and home countries differ, the branches and subsidiaries in the host country should be required to apply the most rigorous standards to the extent that local legislative and regulatory instruments (of the host country) permit them.

Information of the supervisor when a foreign branch or subsidiary is unable to comply with AML/CFT measures (C.22.2)

571. Article 5 of the Directive on AML covers recommendations 22.1 and 22.2.

Additional elements- ***Consistency of due diligence measures at the level of the group (C.22.3)***

572. Discussions the mission had with the structures it encountered indicate that only banks respect this criterion, while money transfer companies do so to a lesser extent within the framework of agreements signed with international companies.

Comments and effectiveness analysis

573. The banking sector: Interviews the mission conducted with the banks concerned revealed that the latter have an internal audit or inspection department responsible for internal AML monitoring. The official called a compliance officer reports to the director of the said department

574. The mission however noted the existence of various physical audit practices through computer tools intended to prevent the risk of money laundering.

575. The Insurance sector: The AML Act was unknown to those the mission talked with.

576. In the micro-finance sector, in general, the structures concerned said they had recent knowledge of the AML Act and none of them had already adopted measures in that direction apart from a single structure. This mission could not check the effectiveness of the implementation of the structure's measures. The Annual Report of the Division in charge of the Supervision of Micro-finance Institutions that was forwarded to the mission makes no reference to the audit of AML procedures to be laid down. The audit only covered administrative and accounting management, credit portfolio quality and compliance with regulations.

577. As concerns personnel training, at the level of banks, the mission received training programmes that were initiated by banks mainly for their personnel.

Recommendations

578. The Mission recommends that Guinean authorities:

Recommendation 15

579. Clarify the internal control obligations of credit institutions, and per sector (bank, insurance, micro-finance, currency changing and money transfer companies)

580. See to the effective implementation of obligations by reporting entities.

Recommendation 22

581. The Authorities should include in binding instruments the obligation for all credit institutions to see to it that their foreign branches and subsidiaries implement AML standards.

582. The effective implementation of this recommendation through instruction I of the BCRG relating to AML must be checked by the latter.

Compliance with Recommendations R.15 and R.22

REC.	Compliance rating	Summary of factors underlying the compliance rating
R.15	**PC**	• Lack of clarity in the coverage of this recommendation by article 15 of the AML Act. • Noted implementation of AML/CFT policies developed by parent companies (banks, MFIs and money transfer companies) • No implementation in insurance companies. • Absence of monitoring by the supervisor
R.22	**PC**	• Article 5 of Directive No. I/001/2003/DGI/DB provides that the financial institution must ensure that the AML obligations are implemented by its branches or subsidiaries whose head offices are abroad.

3.9 Shell banks (R 18)

3.9.1 Description and Analysis

Recommendation 18

Ban on the authorisation of shell banks and their continuous operation in Guinea (C.18.1)

583. At the time of the mission, no legal provision governed this notion of shell bank in the judicial system of the Republic of Guinea.

584. Guinean Authorities say the issue is covered by the new draft bill on banking. According to them, the future banking law would ban the granting of accreditation to shell banks on the national territory of Guinea and would also prohibit Guinean financial institutions from establishing business relationships with a shell bank.

Ban on correspondent banking relationship with shell banks (C.18.2)

585. There is no law in the country that prohibits financial institutions from establishing or continuing correspondent banking relationships with shell banks.

Ensure that foreign client financial institutions do not allow shell banks to use their accounts (C.18.3)

586. There is no provision obliging financial institutions to ensure that financial institutions which form par of their customers abroad do not authorize shell banks to use their accounts.

587. However, the banks visited said they let their parent companies monitor compliance with this recommendation.

Comments and effectiveness analysis

588. The mission noted no measure taken by the actors encountered with regard to the notion of shell banks.

Recommendations

589. Guinean authorities should adopt measures aimed at:

- Explicitly banning the establishment or continuation of relationships with shell banks;
- Requiring that client financial institutions ensure that their clients which are also financial institutions do not let shell banks use their accounts

Compliance with Recommendation R.18

REC.	Compliance rating	Summary of factors underlying the compliance rating
R.18	**NC**	• No ban on establishing or continuing correspondent banking relationship with shell banks • No obligation to ensure that financial institutions that are among their foreign clients do not allow shell banks to use their accounts.

Regulation, supervision, follow-up and penalties

3.10 Supervision and Control System – Competent Authorities and Self-regulatory Organisations -

Role, Functions, Obligations and Powers (including penalties) – (R.17, 23, 25, 29, and 30)

3.10.1 Description and Analysis

- Order No.0/046/CNDD 07 February 2009 to lay down Statutes of the Central Bank of the Republic of Guinea;
- Act L/2005/010/AN of 04 July 2005 to pass and enact the law to regulate credit institutions in the Republic of Guinea;
- Act L/2005/020/AN to pass and enact the law on the activity and control of micro-finance institutions in the Republic of Guinea;
- Law L/2000/006/AN to regulated financial relations relating to transactions between the Republic of Guinea and foreign countries;
- Law L/2006/010/AN on anti-money laundering in the Republic of Guinea;

590. The above instruments spell out the conditions for operating as financial institutions and the role of the supervisory and oversight body, namely BCRG.

591. It is however important to underscore the fact that most of these instruments pre-date the AML Act of 2006 and do not always include anti-money laundering provisions.

Authorities/Supervisory Authorities, roles and duties & Structure and resources- R.23, R.30

Regulation and control of financial institutions on AML/CFT issues (C.23.1)

592. Article 5 of the AML Act determines those accountable to the anti-money laundering obligation, particularly "every physical or moral person who, in the exercise of his/her profession, carries out, monitors or advises to carry out transactions in the form of deposits, trade, investments, swaps or any other movements of capital or other assets, such as:

- State treasury;
- The BCRG;
- Financial organizations;
- Non financial businesses and professions.

Designation of competent authorities for monitoring compliance by financial institutions with AML/CFT obligations (C.23.2)

593. The Central Bank, pursuant to the functions assigned to it by Order No.0/046/CNDD of 7th February 2009, establishing the Articles of Association of the Central Bank of the Republic of Guinea, monitors the AML/CFT regimes within the financial institutions.

594. According to article 15 of the above mentioned order, the Central Bank is responsible for the regulation, licensing and supervision of payment and clearing systems as well as settlements on title deed transactions. In this regard, it is empowered to issue licenses to any payment system or operator of such a system, to monitor their activities and obtain information on them, as well as to mete out administrative sanctions as provided for by the regulation.

595. Article 17 of the said order stipulates that "the Central Bank shall regulate and supervise credit institutions, insurance companies and other financial institutions".

596. According to article 1 of Decision No. D/2011 to specify the administrative organisation of the BCRG, the Central Bank's Administration shall be divided into eight (08) Departments.

- The Administration and Legal Services Department;
- The Department responsible for the Supervision of Financial Institutions;
- The Division Finance and IT Department;
- The Department of Studies and statistics;
- The Credit and Foreign Exchange Department;
- The Permanent Supervision Department;
- The Operations Department; and
- The General Audit Department;

597. The supervision and control of financial institutions are handled by the Central Bank via the Department in charge of Financial Institutions, which is itself broken down into three Divisions:

- The Division in charge of Bank Supervision;
- The Division responsible for the Supervision of Insurance Companies, and;
- The Division in charge of the Supervision of Micro-finance Institutions.

598. In addition to these three divisions, there is:

- The Division in charge of Foreign Exchange, responsible for monitoring exchange regulations, including the AML/CFT mechanism.

599. Consequently, article 15 of the anti-money laundering law states that reporting entities shall prepare harmonised money laundering programmes... and that supervisory authorities could, in their respective areas of competence, specify the contents and regulations regarding money laundering prevention. They shall conduct investigations on-site to check the effective implementations of such AML programmes.

600. The BCRG has issued two instructions:

- Instruction No.1/2003/001/DGI/DB on AML, and;
- Instruction No.1/2003/002/DGI/DB on information about the money laundering prevention mechanisms that spell out the obligations of credit institutions and foreign exchange bureaus in this domain.

601. The supervision and control of financial institutions by the Department in charge of the Supervision of Financial Institutions (DGSIF) is done through four (04) units: Each unit supervises the sector for which it is responsible.

602. Within this framework, the exploitation of supervision/inspection reports made available to the mission reveal that:

603. The bank supervision directorate, in the excerpt from a report following an inspection mission at a bank in July 2008, devoted a chapter to the checking of the implementation of mandatory AML due diligence. The report concluded that " …the bank does not comply with the anti-money laundering mechanisms as well as foreign exchange regulations relating to the financing of imports". The report adds that "out of a sample of thirty-six (36) transfer transactions, the origin and destination of the funds transferred or received cannot be located as recommended by the AML"

604. In February 2009, a report by a joint mission comprising the Division in charge of Bank Supervision and the Division in charge of Foreign Exchange devoted to the activities of money transfer companies and exchange offices, noted in particular that, " …money transfer companies carry out their activities with a currency exchange license… ". The report also states that " the inspection mission noted … violations of exchange regulations and the anti-money laundering law".

605. In 2010 and 2011, copies of reports made available to the evaluation mission either did not tackle the AML aspect or provided very few details. However, it is important to underscore, based on documents submitted to the mission, that the AML theme is a

component of the inspection mission of banks, money transfer companies and exchange offices.

606. In the area of AML, inspection missions operate according to the process stated below, which constitutes Terms of Reference:

1) Existence of the anti-money laundering mechanism;
2) Applicability and application of anti-money laundering initiatives;
   i. Knowledge of the Client (identification)
   ii. Supervisions of transactions
   iii. Suspicious transaction reporting

607. The mission had no evidence that the bodies responsible for the insurance and micro-finance sector supervise the implementation of AML obligations.

608. A review of various BCRG audit reports forwarded to the mission and discussions with structures under the supervision of the Central Bank encountered allow us to conclude that audit missions conducted by AML control bodies are insufficient.

609. Authorities of the BCRG forwarded to the mission the 2012 action plan of the Inspection Service mentioning a cross-cutting mission on the implementation of the AML mechanism from 16 to 04 May 2012. However, the findings of the said mission were not forwarded to us.

Table 4: 2012 ACTION PLAN OF THE BANKING SUPERVISION DIVISION

Serial No.	Problem	Recommended solution	Due diligence to be conducted	Time frame
1	Implementation of the recommendations of the last mission to ORABANK	Mission to follow up the implementation of the recommendations of the last inspection mission	Review the provisions of the follow-up letter of the Governor to the bank.	From 19 March to 06 April
2	Cross-cutting mission on the implementation of the anti-money laundering mechanism	Mission on the implementation of the anti-money laundering initiatives.	Review the provisions in the above-mentioned mechanism.	From 16 to 4 May
3	S.G.B.G had not been visited since 2005	General audit mission	Audit focusing in particular on: -Accounting control -Financial analysis -Credit portfolio analysis -Operational risk analysis	From 18 June to 18 September

Serial No.	Problem	Recommended solution	Due diligence to be conducted	Time frame
			-Management assessment	
4	Implementation of the recommendations of the last ICB mission	Mission to follow up the implementation of the recommendations of the last inspection mission	Review the provisions of the follow-up letter of the Governor to the bank.	From 18 October to 23 November
5	Cross-cutting mission on the enforcement of free basic services	Mission on the conditions for enforcing the instruction on the provision of some service to clients free of charge	Review the provisions in the above-mentioned instruction.	From 03 to 31 December
6	Major challenges noted in banks by other units and/or by Central Bank Authorities	Thematic mission, cross-cutting mission, general audit mission as applicable		In 2012

Legislative or regulatory measures to prevent criminals from taking over financial institutions (C 23.3 and C.23.3.1)

610. Chapter 2 of the Banking Act sets out the conditions to for the establishment of credit institutions.

611. Article 11 of the said Act stipulates that "to carry put their activity, credit institutions should obtain a license issued by the License Committee".

612. Article 31 stipulates that " No one shall become a member of the Board of Direectors of any credit institution, directly or by any interposed person, administer, direct or manage in any way any credit institution, nor have power to sign on behalf of such an institution if such a person has been finally convicted for one or more of the following offences:

1. Misdemeanour;
2. Forgery or use of written forgery in business or banking;
3. Theft, scam or breach of confidence;
4. Bankruptcy and fraudulent failure;
5. Embezzlement of public funds;
6. Extortion of funds or values;
7. Issuance of dud cheque; and
8. Concealment of items gotten from these offences.

613. Any conviction for attempted or complicity in the offences outlined above shall be liable to the same ban.

614. The ban stipulated in this article shall also apply to the permanently bankrupt and dismissed ministerial officers.

615. Furthermore, as part of the process of obtaining the Registration Certificate (RCCM), due diligence measures taken in respect of identification helps to prevent criminals from taking over FIs.

616. In addition, article 16 of the Banking Act stipulates that Managers and Auditors of credit institutions should posses the requisite good repute and fulfil all the requirements laid down (level of competence) for the exercise of their function.

617. With regard to the insurance sector, the insurance code clearly states the requirements for the issuance and withdrawal of licences for insurance companies in articles 280 to 295 in particular, by the License Committee which, pursuant to the provisions of article 280, is presided over byth the Governor of the Central Bank and comprising the following:

- A representative from the Ministry of Justice;
- A representative from the Ministry of Finance and;
- A representative from the Central Bank.

618. Article 282 clearly states that "Managers of insurance companies targeted by Article 281 should possess the requisite good repute.."

Enforcement of prudential regulation for AML/CFT (C.23.4)

619. Cap. III of the Guinean Banking Act clearly states the operation of credit institutions in relation to their legal status, capital outlay, their level of solvency and liquidity, accounting and supervision obligations, exchange of information with foreign prudential authorities as well as the ethics.

620. Article 46 mentions that credit institutions shall comply with the management standards designed to guarantee their liquidity and solvency towards depositors and more generally, third parties as well as equilibrium in their financial structure.

621. In this regard, the Central Bank may take all appropriate measures particular to get credit institutions to :

- Comply with the prudential ratios;
- Build statutory reserves
- Comply with rules of reporting payment incidents in the areas of credit trade securities and cheque issuance;
- Determine the management rules of their risks;
- Determine the principles of organising their internal auditing;

622. However, these measures are not directly applied as a means of controlling money laundering.

License for funds transfer and foreign exchange services (C.23.5)

623. Pursuant to the provisions of article 3 of Directive No.32/DGEEM/RCH 11 issued by the Governor of the Central Bank, regulating the activity of money transfer institutions in the Republic of Guinea, any moral person of Guinean nationality, desirous of exercising the activity of money transfer in the Republic of Guinea, should necessarily be so authorized by the BCRG.

624. Articles 3 to 12 define the other requirements for the exercise of the profession.

625. Chapter. I of Directive No.25/DGEEM/RCH/11 regulating the activity of foreign exchange bureaus in the republic of Guinea, clearly state s the requirements for the issuance of license. Article 3 clearly states that "any physical or moral person of Guinean origin, desirous of engaging in foreign exchange transactions as a regular profession in the Republic o Guinea, should be so authorized by the Central Bank as a foreign exchange bureau".

626. Article 4 outlines the required documents in the application file.

627. Article 7 stipulates that "the BCRG departments shall ensure, by every regular means, that background check is carried out on every applicant, be it physical or moral person.

Supervision and monitoring of funds transfer and foreign exchange services (C.23.6)

628. The supervision and monitoring of money transfer and foreign exchange transactions are carried out by the BCRG through the Foreign Exchange Department. Such monitoring includes auditing the implementation of national AML obligations.

629. In effect, the anti-money laundering Act No. L/2006/010/AN requires foreign exchange bureaus or money transfer companies, among other things, to carry out due diligence on all complex, unusual transactions or transaction involving exceptionally huge amounts without any obvious or clearly legitimate economic motive.

630. The Mission received the list of authorized foreign exchange bureaus numbering about forty.

631. The mission report of the BCRG on money transfer services of 18th February 2000 submitted to the Mission indicated three major money transfer companies including Western |Union, Money Gram and Money Express. According to the report, the Western Union is represented by the SOFIG Company and banks (BICIGUI, SGBG and ECOBANK-GUNEE).

- Money Gram in Guinea is represented by the Micro-bit Company.
- Money Express is represented by Guinee-Voyage.
- Number of Insurance Copanies- 9 (about sixty brokers).
- Number of banks- 17.
- Number of microfinance institutions- 14

Prior approval registration, regulation and monitoring of other financial institutions (C23.7)

632. It is noteworthy that all the financial institutions are under the supervision of the Central Bank and are subject to prior approval for them to carry out their businesses.

Resources (Supervisory authorities)

Recommendation 30

Adequacy of resources at the disposal of supervisors (C.30.1)

633. The authorities of the BCRG forwarded to the mission a memo for the attention of the Governor of the Central Bank mentioning the recruitment of eighteen (18) inspectors by decision No.006/DGASJ/DRH/SAP/engag/11 of 06 January 2012, to strengthen the workforce at the Department in charge of the Supervision of Financial Institutions and a proposal to reorganise the various Central Divisions in response to the growing number of financial institutions to be supervised and the need to adapt Guinea's banking regulations to new international standards.

634. As a result the workforce of the three DGSIF Divisions can be broken down as follows:

Table 5: RECRUITMENT OF NEW INSPECTORS FOR THE DGSIF

	Inspectors recruited	current workforce
Banking Supervision Division	10	16
Insurance Companies Supervision Division	05	11
MFIs Supervision Division	03	09

635. The language of the memo attests to the inadequacy of the resources available at the time of the on-site visit. As a matter of fact, the memo states that " … the organisation of three (3) Divisions of the DGSIF that right now only comprises two services each, no longer seems adapted to changes in the number of institutions to be supervised... nor, above all, to changes in the supervision procedures and practices of financial institutions with regard to the Basel II standards and norms".

636. While the BCRG is an independent institution with an appropriate running budget, this analysis nevertheless points to the inadequacy of human and training resources.

Confidentiality and Integrity measures applicable to the supervisory authority's personnel (C.30.2)

637. Article 3(2) of ordinance 0/2009/046/CNDD to specify the statutes of the Central Bank of the Republic of Guinea specifies that the personnel of the BCRG are governed by the provisions of the Labour Code (of the Republic of Guinea, supplemented, where necessary, by an organisation-wide agreement specifying the status of the bank's personnel.

638. Article 72(3) of the said ordinance stipulates that "members of the Board of Directors and personnel of the Central Bank are forbidden from using for private financial transactions confidential information to which they have access ... "

639. Article 75 states that "those who, in any capacity, participate in the supervision, administration, audit or management of the Central Bank are bound by professional secrecy except in cases where they are summoned to testify in court or to fulfil legal obligations or where the dispatch is made to auditors outside the Central Bank, to regulatory and

enforcement authorities or to public international financial institutions as part of their official functions".

640. Article 56 of law L/2005/010/AN to pass and enact the law to regulate credit institutions in the Republic of Guinea stipulates that " any person that participates or participated in the supervision of credit institutions in the conditions provided for in this chapter shall be bound by professional secrecy on pain of the sanctions provided for in article 375 of the penal code. The secrecy cannot be used as evidence against any judicial authority acting within the framework of a criminal procedure. However, no criminal or civil liability may be cited before a judge against employees of the Central Bank acting in their role as supervisors".

641. Article 45 of law L/2005/020/AN to pass and enact the law to regulate the activity and supervision of micro-finance institutions in the Republic of Guinea stipulates that " any person that participates or participated in the supervision of micro-finance institutions in the conditions provided for in this chapter shall be bound by professional secrecy or face the sanctions provided for in article 375 of the penal code. The secrecy cannot be used as evidence against any judicial authority acting within the framework of a criminal procedure. However, no criminal or civil liability may be cited before a judge against employees of the Central Bank acting in their role as supervisors".

Relevant and suitable AML/CFT training for the supervisory authority's personnel (C.30.3)

642. The above-mentioned memo (Cf.30.1) states that in addition, a series of training and capacity-building sessions will be organised for inspectors with technical assistance from the IMF. The modules taught dealt with the supervision of banks, insurance companies and financial institutions.

643. Regarding AML/CFT, according to information provided by authorities of the BCRG, no AML/CFT training was organised within the Central Bank for its personnel. However, some employees participated in seminars and meetings initiated by the Intergovernmental Action Group against Money Laundering in West Africa (GIABA)

Authorities: powers and sanctions – R.29 & 17

Supervisory powers, including the conduct of inspections (C.29.1 and C.29.2)

644. In accordance with article 17 of ordinance No.0/046/CNDD of 07 February 2009 to lay down the Statutes of the Central Bank of the Republic of Guinea, "the Central Bank shall regulate and supervise credit institutions, insurance companies and other financial institutions".

645. More specifically, Decision No.243/09 to specify the powers and organisation of the management of banks, stipulates in article 1 that the management of banks shall have the following powers:

- Draw up and follow up the regulation relating to credit institutions;
- Study projects to create a credit institution;
- Organise document-based audits and on-site audit missions at such institutions.
- Centralise document-based and on-site audit reports and send summaries of such reports to the Administration of the Bank.

646. The powers of the Management of micro-finance institutions are specified by Decision No.245/09 as follows:

- Draw up and follow up regulations relating to micro-finance institutions;
- Study projects to create micro-finance institutions;
- Conduct document-based and on-site audits of micro-finance institutions and intermediaries;
- Centralise document-based and on-site audit reports and send summaries of such reports to the Governor of the BCRG;

647. Similarly, Decision No. D/2011/267 spells out the powers of the Division in charge of the supervision and follow-up of exchange regulations as follows:

- Devise and put in place a consistent supervision mechanism for the effective implementation of exchange regulations;
- Put in place a system for monitoring the issue of Descriptive Export Applications by the Ministry in charge of Trade and compare such data with those of the Conakry Autonomous Ports Authority, the Conakry Airport and local Commercial Banks;
- Put in place a system for reporting daily to the BCRG the net exchange positions of local banks and define arrangements for levelling them;
- In collaboration with the specialised services of the Ministry of Mines and the Division of Precious Materials at the BCRG, collect data on mining exports and prepare a monthly information memo on such data.

648. In light of decisions outlined above, the supervisory power of financial institutions falls to the various Divisions of the DGSIF. However, the supervision of compliance with AML obligations is not included in the various terms of reference, although in practice, this component is covered during inspections (Cf.23.2). This situation meets the requirements of article 15 of the AML Act, which stipulates that: "supervisory authorities could, in their respective areas of competence, specify the contents and implementation arrangements regarding money laundering prevention. They shall conduct investigations on-site to audit the effective implementations of such programmes". There thus is need for supervisory authorities to formalise in instruments the responsibilities of the various units in the area of AML supervision.

Power to demand the presentation of records (C.29.3 and C.29.3.1)

649. Article 17 of ordinance No.0/046/CNDD of 07 February 2009 adds that "staff of the Central Bank can visit credit institutions, insurance organisations and other financial institutions to examine accounts, account books, records in order to get information, and take any other initiative that the Central Bank shall deem necessary or desirable".

Coercive powers and sanctions against financial institutions and their managers (C.29.4)

650. According to the same article, the Central Bank may impose administrative or monetary sanctions on any natural and /or legal person that violates the provisions of this ordinance, or its regulations.

651. Article 35 of Law No. L/2006/010/AN on anti-money laundering in the Republic of Guinea stipulates that "Where, following either a serious due diligence-related fault, or shortcomings in the organisation of its internal control procedures, a reporting entity under

article 5 shall be considered to have disregarded its obligations under title II and articles 26 and 27 of this law, and the supervisory authority with disciplinary powers may act automatically as provided for by specific legislative and regulatory instruments in force. It shall notify FIU and the Prosecutor General accordingly".

Recommendation 17

Existence of effective, proportionate and dissuasive sanctions (C.17.1)

652. The AML Act of the Republic of Guinea provides for a range of administrative and disciplinary sanctions (article 35), as well as criminal sanctions against a natural person guilty of a money laundering offence or of attempted money laundering (articles 37 to 41).

Authorities empowered to apply effective, proportionate and dissuasive sanctions (C.17.2)

653. Article 35 of the AML Act states that the authority with disciplinary powers may act automatically as provided for by the specific legislative and regulatory instruments in force. It shall notify FIU and the Prosecutor General accordingly.

Sanctions provided for should also be applicable to managers (C.17.3)

654. Article 40 of the AML Act stipulates that "Persons and managers or officers of the natural or legal persons referred to in article 5 shall be punishable by imprisonment ranging from six (6) months to two (2) years and a fine ranging from five hundred thousand (500,000) to seven million five hundred thousand (7,500,000) Guinean francs or one of the two (2) penalties only, where the latter intentionally:

- tip off the owner of sums of money or the person responsible for the transactions referred to in article 5, about the report they are bound to make or about the actions taken on them; …

Wide range of sanctions proportionate to the gravity of offences (C.17.4)

655. By virtue of article 35 of the AML Act "...the supervisor with disciplinary powers may act automatically as provided for by the specific legislative and regulatory instruments in force". This suggests that each supervisor enforces the sanction regime provided for in the regulation applicable to their sector.

656. In this regard, the Banking Act provides for a variety of sanctions (Art.62 to 67), ranging from a fine to imprisonment, through a warning; reprimand; suspension or banning from some transactions or any other restriction in the practice of the profession, after receiving the opinion of the licensing committee; suspension of the officials responsible, with or without appointing a provisional administrator, after receiving the opinion of the accreditations committee. Additionally, the BCRG may recommend that the Committee withdraw the license.

657. The micro-finance sector through the provisions of Title IV- Sanctions, of Act No. L/2005/020/AN also provides for the same sanctions regime.

658. Chapter V of instruction No.032/DGEEM/RCH/11 which regulates the money transfer companies provides for a warning, the deduction of fines, suspension of operations and withdrawal of license.

659. Chapter V of instruction No.025/DGEEM/RCH/11 which regulates foreign exchange transactions provides for the same types of sanctions that apply to money transfer companies.

660. The mission is not sure about the enforcement of these instruments in case of sanctions in AML matters. As a matter of fact, the implementation of the provisions of article 35 of the AML Act recommending action by the supervisor as provided for by the specific legislative and regulatory instruments in force needs clarification.

Entry into the market-R23

Prior authorisation or registration of FIs other than those subject to fundamental principles (C.23.7.a)

661. Title V of Law L/2005/020/AN which passes and enacts the law on the activity and supervision of micro-finance institutions in the Republic of Guinea specifies the institutional framework that regulates the activities of MFIs.

662. Articles 34 to 36 cover the composition of the licensing committee, chaired by the Governor of the BCRG, and the conditions for granting and withdrawing of MFIs' licenses.

663. Furthermore, Article 35(1) states that: "the licensing committee's function is to issue licenses to micro-finance institutions, officials and statutory auditors of institutions as provided for in articles 15 to 17, withdraw licenses from institutions, officials and statutory auditors of institutions that no longer fulfil the required legal or regulatory requirements".

664. Information taken from the Annual Report of the Division in charge of the Supervision of Micro-finance Institutions (BCRG) as of 31 December 2011 indicates that the micro-finance sector had 13 approved structures and the Division had received three new applications.

Table 6: list of MFIs approved or licensed by the BCRG as at 31/12/211

Tier 1 **Mutual societies or cooperatives**	**Tier 2** **Companies**	**Tier 3** **Associations**
1. *Caisses Populaires d'Epargne et de Crédit de Guinée* (CPECG-YETE MALI)	*a. Crédit Rural de Guinée*	1.Integrated Programme for Enterprise Development (PRIDE FINANCE)
2. *Société Coopérative de Mobilisation des Ressources pour l'Investissement en Guinée* (MIGUI)	3. Financial Development (FINADEV-SA)	b. *Agence Autonome d'Assistance aux Entreprises* (3AE)
4. *Réseau des Caisses Communautaires d'Epargne et de Crédit de Guinée* (RCCECG)		c. *Centre d'Appui et de Formation au Développement à l'Epargne/Crédit et à l'Education Civique* (CAFODEC)

Tier 1 Mutual societies or cooperatives	Tier 2 Companies	Tier 3 Associations
5. *Mutuelle d'Epargne et de Crédit des Pêcheurs Artisanaux de Guinée* (MECREPAG)		d. *Réseau d'Assistance Financière aux Organisations Communautaires* (RAFOC)
6. *Groupe d'Appui à l'Autopromotion Economique et Sociale-GIE* (GAAES-GIE-NAFAYA de Guinée)		e. *Maison Guinéen de l'Entrepreneur* (MGE)
7. *Coopérative d'Epargne et de Crédit* NAFA (COOPEC-NAFA)		

Source: *Annual Report 2011, Division in charge of the Supervision of Micro-finance Institutions 31/12/2011.*

Keeping of statistics by the competent authorities (C.32.2)

665. On-site visits by supervisors result in explicit and archived reports. Copies were made available to the mission.

666. The Authorities of the BCRG forwarded to the mission a summary table of suspicious transaction reports they received in 2011. The table identifies 5 STRs sent by three FIs because there were no reasons for the funds received. The amounts involved range from GNF 70,180,000 to 109,000,000, USD 123,475 to 612,000 and EUR 709,995,28. The table does not mention the action taken following the reporting of the cases.

667. The banks we met also forwarded to the mission their various STR statements forwarded to the BCRG. The cross-checking of these two situations raises the issue of consistency in the date forwarded.

Directives – *R.25 (Directives to financial institutions on issues other than STRs)*

Preparation of guidelines by the competent authorities (C.25.1)

668. The BCRG has issued implementation instructions to ensure improved implementation of AML/CFT provisions, notably:

- an outline for suspicious transaction reports;
- the appointment of correspondents within banks (the mission did not receive any information on such a practice in other FIs).

669. To this effect, a list of the correspondents was submitted to the mission.

Effectiveness analysis

Recommendation 17

670. Legal provisions provide for the implementation by supervisors of effective, proportionate and dissuasive sanctions (criminal, civil or administrative) against the natural or

legal persons covered by FATF Recommendations that do not honour AML/CFT obligations; however, the mission was unable to check the effective implementation of this recommendation.

Recommendation 23

671. Instruments governing AML in the Republic of Guinea provide for a regulation of FIs in this area; the BCRG regulates and supervises such institutions.

672. FI licensing procedures, if properly enforced, will make it impossible for financial criminals to take over a FI in the Republic of Guinea.

673. However, the mission did not note any regular checking of measures to combat ML/FT by supervisor in FIs

674. A single report dating back to 2009 on an audit conducted within rapid money transfer and currency exchange companies was forwarded to the mission.

675. The 2012 audit programme includes thematic missions on money laundering.

Recommendation 29

676. Supervisors have the necessary powers to check and ensure that FIs implement AML/CFT mechanisms. They can also apply sanctions for non-compliance with AML measures.

Recommendation 25

677. The mission noted that the BCRG issued instructions in accordance with AML without being able to judge the effectiveness of the implementation of the measures recommended.

Recommendation 30

678. The resources at the disposal of supervisors are inadequate considering the considerable increase in the number of financial institutions (banks, MFIs …).

679. Legal instruments provide that the personnel recruited by supervisors be honest.

680. Such personnel have not yet received specific training on AML/CFT to enable them accomplish the audit mission conveniently.

Recommendations and comments

681. The Mission recommends that Guinean authorities adopt the following measures

Recommendation 17

682. The implementation of financial penalties against natural and legal person that fail to honour their AML/CFT obligations.

Recommendation 23

683. Extension of measures to prevent the criminals from taking over legal persons in all financial institutions;

684. Broadening of the scope of due diligence and control measures to all financial activities identified by FATF;

685. Putting in place of efficient systems for following up and auditing compliance with national anti-money laundering obligations.

Recommendation 29

686. Organisation of frequent and appropriate audits, including the AML/CFT component within FIs.

687. Incorporation in a more in-depth manner of the AML/CFT component in the supervisory systems of financial institutions;

688. Increase in the frequency of audits in financial institutions;

Recommendation 25

689. The mission recommends improved follow-up in the implementation of the measures issued by the supervisor through guidelines.

Recommendation 30

690. Equip supervisors with human, financial and technological resources.
The BCRG should ensure training for inspectors in the specific domain of AML/CFT.

Compliance with Recommendations R.17, R23, R25, R29

Rec.	Compliance rating	Summary of factors underlying the compliance rating
R.17	**PC**	• Articles 35, 40, 41 of the law provide for sanctions; the mission did not note any effectiveness. • No implementation of recommended obligations; difficulty assessing the effective, proportionate and dissuasive nature of sanctions because they are not enforced.
R.23	**LC**	• BCRG instructions regulate the activity of FIs in the AML domain. • The Central Bank conducts audits within FIs to ensure compliance with measures adopted in the area of AML/CFT. • No thematic AML mission, but this aspect is taken into account in the general inspection exercises. • The banking Act draws up a list of documents allowing the checking of the morality of managers as part of conditions to operate (article 11)
R.25	**NC**	• Concerning financial institutions, the BCRG has issued two instructions whose implementation is not regularly checked; • The effectiveness of their implementation could not be checked.

R.29	**C**	• The BCRG has supervisory powers (art 17 of the ordinance); • On-site audit and power to demand records; • The BCRG has powers to impose sanctions.

3.11 Money or value transfer services (SR VI)

3.11.1 Description and Analysis

- Law L/2005/0010/AN of 04 July 2005 to regulated credit institutions in the Republic of Guinea;
- Law L/2000/006/AN to regulated financial relations relating to transactions between the Republic of Guinea and foreign countries;
- Instruction No.112/DGAEM/RCH/00;
- Instruction No.032/DGAEM/RCH/11;
- Instruction No.36/DGCC/RCH/11 to amend article 19 of Instruction No.0032/DGEEM/RCH/11 of 15 April 2011 relating to money transfer companies;
- Law L/2006/010/AN on anti-money laundering in the Republic of Guinea;

691. The mission met with two money transfer companies, namely:

- *La Société Financière et Industrielle du Golfe* (SOFIG) representing Western Union. SOFIG is a corporation incorporated on 27 May 1986 with a capital of 1.2 billion Guinean francs. Its core activity is money transfer. This activity is carried out within the framework of a convention with the parent company Western Union, which provides for the rights and obligations of each party; and
- *Micro-Bit*, a sole proprietorship registered in the TPPCR under number ENTREPRISE/TPPCR/GC-KAL/0510B/2004 and specialised in IT, money transfer and currency exchange services.

692. *Micro-Bit* carries out the money transfer activity within the framework of a memorandum of understanding signed on 13 April 1999 with Africa Alliance, Côte d'Ivoire, which represents Money Gram Inc USA in a certain number of West African countries.

693. These two structures said they had little knowledge of national AML/CFT measures adopted. Compliance with these requirements continues to rely on those laid down by the international firms mentioned above.

694. Their general perception is the risk of money laundering is to be linked with the predominance of the informal sector in the money transfer activity.

695. The mission thus noted the lack of internal AML procedures. In particular the designation of an AML official, compliance with client identification measures and thresholds to be adhered to.

Authorisation to operate (or licensing) and/or registration of natural and legal persons that provide money or value transfer services (C.VI.1)

696. Articles 3 to 12 of the above-mention instruction of the BCRG spell out licensing conditions for money transfer companies.

697. Article 3 stipulates that "any Guinean natural or legal person wishing to carry out the money transfer activity in the Republic of Guinea must get approved by the Central Bank of the Republic of Guinea (BCRG) as a money transfer company".

698. Article 9 of the same instruction states that "the Central Bank shall assign to each institution a distinct licence number and update the list of approved institutions".

Implementation of FATF recommendations in respect of natural and legal persons that provide money or value transfer services (C.VI.2)

699. Law L/2006/010/AN applies to financial organisations of which money transfer companies are part;

700. Identification and due diligence, custody of records, as well as reporting measures concerning suspicious transactions provided for by FATF as part of AML/CFT efforts apply to these structures.

Inspection of natural and legal persons that provide money or value transfer services (C.VI.3)

701. The audit of money transfer companies is within the province of the BCRG.

702. The companies said they received audit missions from the BCRG, placing more emphasis on compliance with money transfer regulations.

703. The Central Bank audit report, dating back to February 2009, forwarded to the mission, indicates some shortcomings in the AML/CFT procedures of *Microbit* (a money transfer institution).

704. No sanction was imposed on the institution. The audit mission had recommended the updating of instruments regulating currency exchange.

Obligation to maintain an updated list of employees, which should be placed at the disposal of the designated competent authority (C.VI.4)

705. Article 9 of instruction No.032/DGEEM/RCH/11 states that "the Central Bank shall assign to each institution a distinct licence number and update the list of licensed institutions".

706. However, the mission had no knowledge of such a list.

Sanctions against natural and legal persons that provide money or value transfer services in accordance with criteria (C.17.1 to C.17.4) (C.VI.5)

707. In the event of non compliance with the provisions of Act No.L/2006/010/AN on the combating of money laundering in the Republic of Guinea, article 35 of that law provides for administrative and disciplinary sanctions.

708. The mission was not informed about any sanctions against money and value transfer services for not implementing the anti-money laundering law.

***Additional elements* – Implementation of the measures outlined in the Best Practices document concerning special recommendation VI (C.VI.6)**

709. Measures are being implemented regarding requirements issued by the parent companies of the structures visited.

Recommendations and comments

710. The authorities, like other actors involved in AML/CFT efforts, should popularise national instruments applicable to the effort.

711. Ensure regular audit of the introduction of internal procedures in order to make sure licensed companies comply with client identification standards and other obligations under FATF 40+9 recommendations.

712. They should develop policies for promoting money and value transfer services in order to limit the scope of the informal sector.

Compliance with Special Recommendations VI

REC.	Compliance rating	Summary of factors underlying the compliance rating
SR VI	**NC**	• No regular inspection of money and value transfer companies in the area of AML/CFT • No administrative and disciplinary sanctions • Ignorance of national AML/CFT regulations • No law on terrorism financing

4. PREVENTIVE MEASURES - Designated Non-Financial Businesses and Professions

Description

713. The provisions of titles II and III of law L/2006/010/AN of 24 October 2007 are applicable to any natural or legal person who, as part of their profession, carries out, controls or provides advice on transactions resulting in deposits, currency exchange, investments, conversions or transfer of money or any other assets (cf. article 5).

714. The AML Act cites reporting designated non-financial businesses and professions (DNFBPs), namely:

- real estate agents,
- traders in precious metals or stones,

- traders in works of art,
- statutory auditors,
- casinos, including internet casinos,
- gaming rooms, including national lotteries,
- providers of services to trusts,
- cash couriers,
- travel agencies,
- Non-Governmental Organisations (NGOs),
- lawyers, notaries public and independent legal professions and accountants,

715. The analysis of the DNFBP list highlights the following points:

- The law makes real estate agents reporting entities whereas the profession is not recognised in the Republic of Guinea; The draft urban planning code, initiated by the Ministry of Housing, talks of real estate developer, even if elsewhere, the mission was informed that most real estate transactions are not carried out in the presence of a notary public and often get the area headmen involved;

- The money laundering law in the Republic of Guinea goes further than the FATF list, by making reporting entities to include travel agencies, cash couriers, traders in works of art, and Non-Governmental Organisations (NGOs). It also makes gaming houses, including national lotteries reporting entities, whereas FATF does not explicitly mention casinos. Guinean law thus legitimises a large portion of entities in the DNFBP sector.

4.1 Customer due diligence and record keeping (R.12)

[in accordance with R.5, 6, 8-11 and 17 (Only the Points Concerning Sanctions)]

Recommendation 12

Customer due diligence applicable to non-financial professions as provided for by the R.5 (C.12.1)

Casinos and gaming rooms

716. By virtue of article 7 of the AML Act, managers of casinos are bound to accurately identify their customers by implementing the provisions of article 6 (applicable to FIs) when the latter carry out transactions equal to or above 10 million GNF. In addition to the obligations relating to customer identification, article 17 of the AML Act indicates that managers and owners of casinos and gaming rooms shall be under the following obligations:

- "justify to the public authority, from the date it files an application for the licence to operate, the origin of the funds necessary for setting up the institution;
- check the identity, by presentation of a valid national identity card or any official document serving as such, bearing a photograph of which a copy is taken, of players who buy, bring or exchange games chips for an amount of up to or in

excess of five million (5, 000, 000) Guinean francs (about USD 715) or whose exchange value is equal to or greater than this amount;

- chronologically record in a special register all the transactions referred to in the foregoing paragraph, their amount along with the full names of players, as well as the identity document presented, and keep the said register for ten (10) years after the last recorded transaction;
- chronologically record all money transfers between casinos and gaming rooms in a special register and keep the said register for ten (10) years after the last recorded transaction;
- Where the casino or gaming room is controlled by a legal entity with several subsidiaries, the chips must identify the subsidiary through which they are issued. In no case should gaming chips issued by a subsidiary be reimbursed by another subsidiary, whether it be located in Guinea or in a third State".

717. By decree No.0 28 /2000/ PRG/SGG, a public company was set up responsible for the organisation, management and operation of all forms of lottery, gaming, forecasting and related activities in the Republic of Guinea, known as National lottery of Guinea (LONAGUI.).

718. Within the framework of laws and regulations and with the support of the authorised government services, it lays down policy relating to gaming, lotteries and forecasting, including **casinos**. LONAGUI has licensed six (6) casinos, four (4) of which are in operation. Information we received indicates that others discontinued their operations because of bankruptcy. No investigation was conducted to this effect by LONAGUI to check whether it is actually a case of bankruptcy or a money laundering operation by owners.

719. Under regulations, LONAGUI is the supervisory, management and inspection authority of casinos. However, within the framework of the fight against money laundering and the financing of terrorism:

- it complies with none of its anti-money laundering and countering of the financing of terrorism obligations; as to licences, it does not have all the guarantees necessary for identifying the origin of money used in setting up casinos;
- it does not carry out the due diligence required in customer identification and this does not make it possible to identify the beneficial owner(s) of casinos at the time of licensing.

720. Casinos also do not honour due diligence obligations as provided for by law, especially special record keeping. Regarding the coordination of anti-money laundering activities, no official responsible for these issues has been designated within LONAGUI.

721. As to training, no programme has been worked out for LONAGUI employees.

722. In their management, casinos, just like LONAGUI, are not acquainted with issues relating to combating money laundering and the financing of terrorism.

723. **Real estate agents**, when carrying out transactions for their customers involving the purchase or sale of real property, are bound by the due diligence measures provided for in article 6 (FI) in accordance with article 7. The real estate agent profession does not exist in the Republic of Guinea. Officials in the Ministry of Urban Planning, Regional Development and Housing say the draft urban planning code being prepared talks of real estate developers. However, it is carried out informally and constitutes a potential source of money laundering in the Republic of Guinea; the mission was also informed that most real estate transactions are carried out in cash and out of the sight of a Notary Public, notably with the involvement of area headmen.

724. **Traders in precious metals** They are governed by law L/2011/006/CNT of 09 September 2011 to lay down the mining code of the Republic of Guinea. The law aims to regulate the mining sector in order to promote investments and enhance knowledge of the Republic of Guinea's subsoil. Mining in the Republic of Guinea is subject to a licence. The industrial mining licence is granted for a fifteen- (15) year period, while the semi-industrial mining licence is issued for no longer than five (05) years.

725. There are two categories of mining developers in the Republic of Guinea's mining sector. On the one hand, there are industrial developers operating as companies, most of which are members of the Chamber of Mining (Mining employers), which has 64 members, and on the other, small-scale developers regrouped under CONADOG (The National Confederation of Diamond-cutters and Gold washers of Guinea), approved on 23 February 2006.

726. Article 60 of the mining code specifies that the export of gold, diamond and other precious stones shall be carried out exclusively through buyers organised within licensed purchase offices, which are authorised to operate by decision of the Minister in charge of mining on the recommendation of the Bureau National d'Expertise (BNE), an expert assessment office, for natural or legal persons of Guinean and/or foreign nationality.

727. Concerning the possession and sale of artisanal gold, as stipulated in article 61 of the mining code, apart from the purchase and sale as part of a professional activity, the possession, movement or sale of gold by an individual are free across the national territory. The marketing and export of gold from small-scale production are governed by the regulation laid down by the Minister in charge of mines in collaboration with the Central Bank of the Republic of Guinea (BCRG).

728. Regarding the possession and sale of diamonds and other precious stones, (article 62) of the mining code stipulates that only small-scale miners with a license to operate, collectors, authorised purchasers from purchasing agencies, may possess and sale diamond and other precious stones from small-scale production.

729. Diamond and other precious stones from small-scale production zones must follow the official channel recognised by BNE and/or the BCRG, in accordance with regulations in force.

730. As part of due diligence measures provided for by the AML Act, article 7 specifies that customer identification obligations (article 6) apply to traders in precious metals or stones when they carry out with a customer cash transactions in an amount equal to or greater than

75 million Guinea francs (about USD 10, 715). The threshold is below the amount set by FATF, which is equal to or greater than USD/EUR 15, 000.

731. None of these two entities (industrial and small-scale developers) complies with its obligations regarding the prevention and detection of money laundering and the financing of terrorism in the area of customer identification.

732. The mission noted that in the mining sector, small-scale developers are vulnerable to the risk of money laundering because transactions are often cash-based.

733. **Lawyers, notaries public, and other independent legal professions and accountant.** They are obliged by the AML Act to apply the due diligence measures provided for under article 6 when they prepare or carry out transactions for a customer as part of the following activities:

- Purchase or sale of real estate;
- Management of the customer's money, securities or assets;
- Management of bank accounts, savings accounts or securities;
- Organisation of contributions for the incorporation, operation or management of companies
- Formation, operation or management of legal persons or legal structures, and purchase and sale of business entities.

734. **Profession of notary public.** It is governed by law L/93/003/CTRN/ of 18 February 1993, to lay down the statutes of the profession of notary public. Notaries public are public officers who are there to receive deeds and contracts to which parties must or want to give the authenticity attached to deeds of the public authority, and to ensure their date, keep the deposited deed and issue engrossed and official copies thereof. A chamber of notaries if established, representing the entire profession with public services. The chamber of notaries, sitting as a disciplinary board, shall prosecute and combat offences and faults committed by notaries, former notaries and honorary notaries.

735. The legal profession. It is governed in the Republic of Guinea by law No. 2004/014/AN of 26 May 2004 to organise the legal profession in Guinea. The lawyer is an officer of the court. The profession is free and independent. The lawyer is protected in the practice of his profession by applicable instruments and by the immunities set forth by the present law.

736. **The accounting profession** is governed by ordinance No. 042/PRG/SG of 25 February 1985 to establish the Order of Public Accountants Order No. a/95/3094 is regulation to this ordinance which regulates the profession of public accountants. No one can practise the profession of public accountant in the Republic of Guinea if they are not first registered or have an attestation proving their registration on the roll of the Order of licensed public accounts in accordance with article 4 of the said order. Only natural persons actually and habitually practising their profession on the territory of the Republic of Guinea and who fulfil the following requirements can be entered on the roll:. Must

be of Guinean nationality or national of a State that grants reciprocity to Guinean accountants;

– be free from any professional ban;
– be of age;
– enjoy civil rights;
– be honest and honourable;
– fulfil the competence and qualification requirements set forth by these provisions;
– be resident in the Republic of Guinea;
– fulfil the requirements of regulations in force as regards practical training or be exempted in the cases provided for by these provisions;
– take out an insurance policy in the conditions set out by the by-laws of the Order of Licensed Public Accountants.

737. Lawyers, notaries public and public accountants, as part of their profession, have adopted minimum rules regarding due diligence in the identification of customers for activities that fall to their professions. To this effect, they use the norms and standards of international firms, which allow them to assess risks before starting a transaction. However, they do not carry out the due diligence that falls to them as reporting entities under the anti-money laundering law.

Implementation of Recommendations 6 and 8-11 to non-financial professions (C.12.2)

Comments and effectiveness analysis

738. Article 1 of Act No.L/2006/010/AN of 24 October 2007 relating to AML in Guinea, defines the Politically Exposed Person (PEP) as a person that holds or has held a high public function in Guinea or in another State, for example Head of State, Head of Government, Member of Government, High-ranking politician, Senior civil servant, senior member of the Bench or the Armed Forces, director of a state corporation, or leader of a political party. The family members of PEP, as well as persons that are closely linked to such a person are also considered as PEPs.

739. Article 9 of the AML Act and article 12 of the draft bill on the countering of the financing of terrorism take into account PEPs and go further in the definition of a PEP to include nationals. The AML Act defines PEP as a person that holds or has held high public functions in Guinea or in another State.

740. Concerning PEPs, it also indicates in point:

- 9.1 of article 9 of the AML - that the reporting entities covered under article 5, apart from ordinary identification measures, shall:
  - develop risk management systems for determining if a customer is a politically exposed person;
  - adopt reasonable measures to determine the origin of a fortune and funds;
  - carry out enhanced and continuous supervision over business relationships with this type of customers.

741. The mission noted that issues relating to Politically Exposed Persons are covered by the AML Act and in the CFT draft bill; however, no measures were adopted to implement the law. As such:

- DNFBPs that do not have an appropriate risk management system for determining if a potential customer, customer or beneficial owner is a politically exposed person (PEP);
- Customers are not identified systematically by dnfbps and this makes it impossible to know if a customer is a politically exposed person;
- The non-existence of a database on customers, especially on peps, also makes it impossible to know the origin of funds in the possession of customers.

742. Concerning the Recommendation on the abusive use of new technologies (8.1), article 18 of the AML Act states that reporting entities referred to in article 5 are required to put in place measures necessary to prevent the abusive use of new technologies in money laundering mechanisms.

743. The related instruments adopted by the Republic of Guinea do not cover all the provisions defined by the FATF recommendation as regards DNFBPs.

Management of specific risks linked to the absence of parties (8.2)

744. Contrary to financial organisations, AML has not provided for any provision on the prudent management of relationships with non-face-to-face customers with regard to DNFBPs.

745. Point 6.5 of article 6 of the law on the identification of customers by financial organisations states that in the case of remote financial transactions, financial organisations shall identify natural persons, in accordance with the principles set out in the annex that spells out arrangements for the identification of customers (natural persons) by financial organisations during non-face-to-face financial transactions (detailed in section 3).

746. The obligations that fall to financial institutions regarding record keeping as described in section III of the AML Act are applicable to DNFBPs. Guinea's AML Act goes further than FATF as concerns the length of time for keeping records. It has chosen a period of ten (10) years whereas the FATF Recommendation provides for a five-(5) year period. However, it is not effective at the level of DNFBPs which are unaware of their obligations in this area.

747. Article 12 of the AML Act mentions the special supervision of certain transactions that must the subject of special review by the reporting entities referred to in article 5:

- Any payment in cash or by bearer security of an amount of money, made under normal conditions, the unit or total amount of which is equal to or is greater than one hundred and fifty million (GNF 150,000,000, i.e. slightly over USD 20,000) Guinean francs,
- Any transaction involving an abnormally high amount, made in unusually complex circumstances and/or which do not appear to have an economic justification or licit purpose.

748. In the cases covered by the foregoing paragraph, the reporting entities are bound to get information from the client, and/or by any other means, about the origin and destination of the money in question, as well as about the purpose of the transaction and the identity of the persons involved, pursuant to the provisions of article 6(2 & 3).

749. The principal features of the transaction, the originator's and beneficiary's identity, and where applicable, that of those involved in the transaction are entered in a confidential register, in view of reconciling them, where necessary.

Recommendations and comments

- LONGUI as the authority supervises casinos and regulates gaming, must work at fulfilling its money laundering obligations.
- It should also surround itself with all the guarantees necessary for determining the origin of funds intended for the setting up and operation of casinos ;
- LONAGUI authorities should designate an official responsible for AML/CFT issues within the structure.
- LONAGUI must endeavour to prepare a training programme for its personnel.
- Casinos should conduct due diligence on the identification of the beneficial owner;
- Casinos should exercise due diligence as provided for by the law, especially the keeping of special records.
- Traders in precious metal must comply with the provisions of the law by respecting , at least , the thresholds set by FATF with regard to due diligence;
- The authorities in charge of AML should consider providing training to and raising the awareness of DNFBP on issues relating to the obligations as reporting entities.
- DNFBPs should put in place appropriate risk management systems in order to be able to identify politically exposed persons (PEPs);
- Guinean authorities and those of DNFBPs should put themselves into creating a database for customers and PEPs, which should make it possible to know the origin of funds held by customers.
- Guinean authorities should adopt appropriate measures to prevent the abusive use of new technologies in money laundering mechanisms at the level of DNFBPs.

Compliance with Recommendation R.12

REC.	Compliance rating	Summary of factors underlying the rating awarded
R.12	**NC**	• Ignorance of the law and failure to implement the mechanism by DNFBPs. • Non existence of specific procedures for DNFBPs in practice for customer identification; • No due diligence for Politically Exposed Persons; • Non identification of beneficial owners and failure to check the

REC.	Compliance rating	Summary of factors underlying the rating awarded
		origin of funds by casinos. • Failure to keep a special record for customer identification by casinos;

4.2 Monitoring of transactions and other issues (R. 16)

[*in accordance with R.13-15, 17 & 21*]

Description and analysis

Obligation to submit STRs to the FIU (implementation of C.13.1 and I3.4 to DNFBPs) (C.16.1)

750. Article 26 of the AML Act and article 17 of the CFT draft bill specify that reporting entities (natural and legal persons) are bound to report to FIU suspicions of money laundering and the financing of terrorism. For example, article 17 of the CFT draft bill makes it obligatory for reporting entities to report to FIU:

- sums of money or other assets in their possession, when the latter could derive from the financing of terrorism;
- transaction involving assets, when the latter are part of a terrorist financing process;
- sums of money or other assets in their possession, when the latter, suspected of being intended for the financing of terrorism, seem to be derived from transactions linked to money laundering;

751. Under the money laundering law, the suspicious transaction report must be made "based on a reporting format prepared by FIU". On the other hand, the CFT draft bill provides that the report must be made "according to a reporting format prepared by order of the Minister of Finance". This clear divergence between the two instruments should be clarified.

752. The two laws mentioned above take into account money laundering and financing of terrorism attempts. Given that they all target crimes and offences, they also cover tax issues.

753. Article 7 of the AML Act and article 6 of the CFT draft bill specify that lawyers, notaries public, and members of independent legal professions are not bound to submit STRs when they represent or assist customers in a legal procedure.

754. Casinos (including online casinos), as reporting entities, are bound by the obligation to make STRs to FIU (articles 26 of the AML Act and 17 of the CFT law).

755. Traders in precious metals or stones, when carrying out with a customer cash transactions in an amount that is equal to or greater than USD/EUR 15,000, are also bound by the suspicious transaction obligation.

756. DNFBPs are not aware of their suspicious transaction reporting obligations. Information we received indicates no suspicious transaction report has been made by them.

Self-regulatory organisations in the forwarding of STRs (C.16.2)

757. The AML Act of the Republic of Guinea does not provide that DNFBPs forward STRs through self-regulatory organisations. DNFBPs are bound to make STRs to FIU directly without an intermediary.

Implementation of Recommendations 14, 15 and 21 (C.16.3)

758. As AML reporting entities, the provisions of articles 30 to 31 (protection of reporting officers) are also applicable to DNFBPs; similarly, they, like FIs, are bound to put in place internal programmes in accordance with 15 (cf. section 3). The obligations of the criteria of recommendation 21 are not extended to DNFBPs.

Additional elements - STR obligation extended to all professional activities of accountants, in particular the audit activity (16.4); STR obligation when funds are suspected to be proceeds from any criminal act amounting to a money laundering offence in the country (16.6)

759. The AML Act makes statutory auditors, and not accountants, reporting entities. Given that their profession consists in auditing and certifying accounts, the law, by virtue of article 26, makes it obligatory for them to make STRs within the framework of this activity (16.4). The same article stipulates that reporting entities "that suspect or have reason to suspect that funds are proceeds from a criminal activity… ", must make an STR (16.5).

Comments and effectiveness analysis

760. Lawyers, notaries public and other members of independent legal professions and accountants, as reporting entities under the AML Act, (article 5, cf. also article 6 of the CFT draft bill), are authorised to make their suspicious transaction report to FIU without going through a self-regulatory organisation.

761. Article 34 of the AML Act stipulates that, notwithstanding any provisions to the contrary, professional secrecy cannot be cited as grounds by the reporting entities for refusing to provide information to supervisors, as well as to FIU or to report the suspicious transactions provided for under this law. An identical provision appears in article 26 of the CFT draft bill.

762. The same applies to information required within the framework of an investigation into money laundering offences ordered by the investigating magistrate or conducted under his supervision by officers of the State responsible for detecting and combating offences linked to money laundering.

763. Article 26 of the AML Act stipulates that suspicious transaction reports shall be confidential and may not be sent to the owner of the sums of money or to the one who carried out the transactions (cf. also: article 17 of the CFT draft bill).

764. Regarding the implementation of recommendation 15, the provisions of article 15 of the AML Act makes it an obligation to put in place internal programmes for the auditing and detecting money laundering.

765. Audit programmes put in place at the level of DNFBPs do not deal with money laundering issues. No supervisors responsible for AML issues have been designated at the level of DNFBPs. No training programme has been drawn up for DNFBP personnel or agents.

766. Article 30 of the AML Act and article 22 of the CFT draft bill exempt from sanctions for professional secrecy persons or managers and officers of reporting entities who, in good faith, forwarded information or made any report, in accordance with the provisions of this law. Similarly, no criminal or civil suit may be initiated, or any professional sanction taken against persons or managers and officers of the reporting entities who acted in the same conditions as those referred to above, even if court rulings handed down on the basis of the reports did not give rise to any conviction.

767. DNFBPs should be made to pay special attention to their business relationships and their transactions (notably with legal persons and financial institutions) resident in countries that do not implement or sufficiently implement FATF recommendations.

Recommendations

- DNFBPs, in pursuance of the provisions of the law, should consider preparing audit programmes focussing on AML/CFT issues.

- DNFBPs should also designate a supervisor responsible for implementing and following up AML/CFT issues.

- The authorities of DNFBPs should develop training programmes for their managers of employees;

- DNFBPs should consider making suspicious transaction reports to the appropriate authority as stipulated by the law.

- DNFBPs should pay special attention to their business relationships and their transactions with legal persons and financial institutions resident in countries that do not implement or sufficiently implement FATF recommendations.

Compliance with Recommendation R.16

REC.	Compliance rating	Summary of factors underlying the compliance rating
R.16	**NC**	• The AML Act and the CFT bill provide for the making of STRs, but no DNFBP submitted any STR.; • Non-existence of internal control programmes within DNFBPs as required by law; • Failure by DNFBPs to designate an official responsible for AML/CFT issues; • No training programmes for DNFBP employees;

		• No obligation for DNFBPs to pay special attention to their business relationships and their transactions with legal persons and financial institutions resident in countries that do not implement or sufficiently implement FATF Recommendations.

4.3 Regulation, supervision and monitoring (R.24-25)

Recommendation 24

Regulation and supervision of Casinos (C.24.1) and (C.24.1.2)

768. By decree No.0 28 /2000/ PRG/SGG of 28 March 200, a public company was set up responsible for the organisation, management and operation of all forms of lottery, gaming, forecasting and related activities in the Republic of Guinea, known as the Guinea State Lottery (LONAGUI.), which reports to the Ministry of the Economy and Finance. Since 01 October 2010, it reports to the Secretariat General at the Presidency of the Republic, by decree D/No. 214/PRG/CNDD/SGPRG/2010.

769. Within the framework of laws and regulations and with the support of the authorised government services, it lays down policy relating to gaming, lotteries and forecasting, including casinos, and has put in place a licensing regulation.

770. The opening of a gaming room requires the prior authorisation notified by order of the Supervisory minister. To this effect, the requirements to be fulfilled to obtain a licence to operate a casino, or a technical licence for lotteries, must comply with the following measures:

771. Send a letter to LONAGUI containing, in particular:

- An introduction of the company (registration in the business register or licence);
- Related experience;
- Financial resources, workforce and staff rules
- The mechanism of the game per se:
- Earnings (cash, nature, due date);
- Payment of the annual license in the amount of 150 million to 300 million Guinean francs in accordance with the regulation in force.

In addition, for casinos:

– The list of slot machines and their specific characteristic;

– The technical licence in the amount of GNF 50 million to 100 million.

After the company is set up, the following documents are to be provided:

– Workers' contracts validated by the inspectorate general of labour;

- Workers' insurance;
- Coverage of medical and pharmaceutical expenses;

772. In the area of supervision and control, a service within LONAGUI, known as the gaming police, handles this activity. Discussions with officials of LONAGUI, in particular games inspectors (professional gendarmes, playing the role of administrative police), revealed that checks are restricted to gaming regulation. The mission did not note any control covering the AML aspect or any sanction relating to it.

Designation of a competent authority responsible for regulation and supervision in the area of AML/CFT (C.24.1.1)

773. In the area of AML/CFT, all DNFBPs are bound by the obligations imposed by regulation, namely the provisions of the AML Act. However, in terms of supervising the implementation of those obligations, no self-regulatory organisation, talk less of a supervisory ministry, has included the audit of compliance with AML obligations in its supervisory prerogatives and powers. The mission did not receive any information confirming the effectiveness of AML/CFT audits.

774. **Real estate agents.** The real estate agent as a profession does not exist in the Republic of Guinea. The draft urban planning code, which is being prepared, talks of real estate developer. However, this activity is carried out informally and constitutes a potential source of money laundering in the Republic of Guinea; the mission was also informed that most real estate transactions are carried out in cash and out of the sight of a Notary Public, especially with the involvement of area headmen. No supervisor in charge of AML/CFT could be identified for this unrecognised activity.

775. **Traders in precious metals.** They are governed by law L/2011/006/CNT of 09 September 2011 to lay down the mining code of the Republic of Guinea. The law aims to regulate the mining sector in order to promote investments and enhance knowledge of the Republic of Guinea's subsoil. Although it is a reporting entity under the AML Act, the supervisor of traders in precious metals has no knowledge about the AML/CFT mechanisms and consequently has never taken into account the auditing of compliance with AML obligations by entities operating under its supervision.

776. **Lawyers, notaries public**, **and other independent legal professions and accountants** are concerned by due diligence obligations when they prepare or carry out transactions for a customer as part of the following activities:

- Purchase or sale of real estate;
- Management of the customer's money, securities or assets;
- Management of bank accounts, savings accounts or securities;
- Organisation of contributions for the incorporation, operation or management of companies;
- Formation, operation or management of legal persons or legal structures, and purchase and sale of business entities.

777. Concerning categories that are reporting entities under the AML Act, neither their self-regulatory organisation nor their supervisor has taken into account the supervisory aspect relating to compliance with AML/CFT obligations.

778. **The profession of notary public** is governed by law L/93/003/CTRN/ of 18 February 1993, to lay down the statutes of the profession of notary public. Notaries public are public officers who are there to receive deeds and contracts to which parties must or want to give the authenticity attached to deeds of the public authority, and to ensure their date, keep the deposited deed and issue engrossed and official copies thereof. A chamber of notaries if established, representing the entire profession with public services. The chamber of notaries, sitting as a disciplinary board, shall prosecute and combat offences and faults committed by notaries, former notaries and honorary notaries. The chamber of notaries public has not included the AML/CFT aspect in its supervisory powers and has thus not handed down any sanction in that regard.

779. **The profession of notary public** is governed in the Republic of Guinea by law No. 2004/014/AN of 26 May 2004 to organise the legal profession in Guinea. The lawyer is an officer of the court. The profession is free and independent. The lawyer is protected in the practice of his profession by applicable instruments and by the immunities set forth by the present law. The profession has a self-regulatory body namely the law society, headed by the president of the Bar. The body has never check the implementation of AML provisions within the profession.

780. **The accounting profession** is governed by ordinance No. 042/PRG/SG of 25 February 1985 to establish the Order of Public Accountants. Order No. a/95/3094 is regulation to this ordinance which regulates the profession of public accountants. No one can practise the profession of public accountant in the Republic of Guinea if they are not first registered or have an attestation proving their registration on the roll of the Order of licensed public accounts in accordance with article 4 of the said order. Only natural persons actually and habitually practising their profession on the territory of the Republic of Guinea and who fulfil the following requirements can be entered on the roll:. must

- Be of Guinean nationality or national of a State that grants reciprocity to Guinean accountants;
- Be free from any professional ban;
- Be of age;
- Enjoy civil rights;
- Be honest and honourable;
- Fulfil the competence and qualification requirements set forth by these provisions;
- Be resident in the Republic of Guinea;
- Fulfil the requirements of regulations in force as regards practical training or be exempted in the cases provided for by these provisions;
- Take out an insurance policy in the conditions set by the by-laws of the Order of Licensed Public Accountants.

781. According to regulation the order is authorised to impose sanctions for violations of rules governing the practise of the profession. However, the body's officials met by the evaluation team only had knowledge of the provisions of the AML Act during the seminar organised ahead of the mutual evaluation. Consequently, no measure is adopted by the body to audit the compliance with AML obligations.

782. Meetings with Lawyers, Notaries Public and Public Accountants revealed that these professions have no knowledge of the AML Act. The only knowledge these reporting entities have, has to do with information they received during the awareness-raising workshop organised by GIABA in Guinea in March 2012, as part of preparations ahead of the mutual evaluation mission.

783. However, these professions have adopted minimum due diligence rules regarding the identification of customers within the framework of their professional activities. To this effect, they use the norms and standards of international firms, which allow them to assess risks before starting a transaction. However, they do not conduct the due diligence that falls to them as reporting entities under the AML Act.

784. In the mining sector, in particular as regards traders in precious metals, the risk of money laundering is quite high at the level of small-scale miners because transactions are cash-based.

Legislative or regulatory measures to prevent criminals or their accomplices from taking over a casino or buying a stake in them (C.24.1.3)

785. Conditions laid down by the Republic of Guinea, which must fulfilled by promoters in the application for a license to open a casino (cf. C.24.1and C.24.1.2), are no sufficient to prevent access by criminals to the profession. The documents to be submitted neither include the criminal record, nor a morality investigation to make it possible to come up with the promoter's profile and personality.

Follow-up and supervision of DNFBPs (C.24.2)

786. Apart from the DNFBPs mentioned by FATF, the AML Act (article 1) also makes reporting entities out of gaming establishments, including national lotteries, travel agencies, Non-Governmental Organisations and goes further than FATF in the definition of the scope of DNFBPs.

Designation of a competent authority or a self-regulatory body responsible for supervising and ensuring that DNFBPs fulfil their AML/CFT obligations (C.24.2.1)

787. No authority or organisation acting as a supervisor or responsible for the self-regulation of the activities of these other DNFBPs (cf. C.24.2) is authorised to supervise compliance by such DNFBPs with the implementation of AML obligations.

Recommendation 25 (Directives for designated non-financial businesses and professions other than those connected with STRs)

Guidelines for DNFBPs (C. 25.1)

788. No guideline was issued either by the self-regulatory body or by supervisory ministries to assist DNFBPs in more effectively resolving the issues covered by FATF recommendations.

Comments and effectiveness analysis

Recommendations

Recommendation 24

789. Guinean authorities should take the steps necessary to regulate the real estate agent profession, which, in practice, does not exist and constitutes, in the absence of a regulation, a potential source of money laundering in the Republic of Guinea.

790. They should also get traders in precious metals to honour their obligations to prevent and detect money laundering in the areas of customer identification and compliance with thresholds defined by FATF.

791. LONAGUI, which is responsible for regulating gaming, should work at ensuring implementation by casinos of the provisions of the AML Act as regards supervision.

792. Guinean authorities should ensure that all authorities responsible for supervising DNFBPs or their self-regulatory organisations incorporate in their prerogatives the aspect dealing with AML/CFT supervision.

Recommendation 25

793. Supervisory or self-regulatory authorities should come up with guidelines to assist DNFBPs to better implement FATF recommendations, as well as their obligations under the AML Act.

Compliance with Recommendations R.24 and R.25

Rec.	Compliance rating	Summary of factors underlying the compliance rating
R.24	**NC**	• The casinos and gaming establishments sector is supervised by LONAGUI, but the latter does not implement the provisions of the AML Act; • There is a supervisory authority responsible for licensing casinos, but there is no competent authority to follow up and ensure compliance with AML/CFT provisions by DNFBPs; • The conditions to be fulfilled in applications to open and operate a casino cannot prevent access by criminals to the profession because the conditions are not concerned with the profile and morality of applicants.

Rec.	Compliance rating	Summary of factors underlying the compliance rating
R.25	**NC**	• No guidelines for Designated Non-Financial Businesses and Professions and aimed at helping them implement and comply with AML/CFT obligations.

4.4 Other Non-Financial Businesses and Professions - Modern and Secure Money Management Techniques (R.20)

794. Apart from the DNFBP mentioned by FATF, the AML Act (article 1) makes reporting entities out of:

- Gaming establishments, including national lotteries,
- Travel agencies;
- Non-Governmental Organisations (NGOs).

Application of R.5, 6, 8 to 11, 13 to 15, 17, 21 to other DNFBPs with ML/FT risks (C.20.1)

795. Just like traditional DNFBPs (adopted by FATF), the other Non-Financial Businesses and Professions listed above are covered by the scope of the AML Act as reporting entities (Art.5).

Adoption of measures to encourage the development and use of modern and secure techniques in financial transactions that are less vulnerable to money laundering (C.20.2)

796. The mission was not informed about policies worked out or specific measures adopted by the Republic of Guinea to encourage the development of modern and secure money management techniques that are less vulnerable to money laundering.

Comments and effectiveness analysis

797. The mission was able to note ignorance of their AML Act and non implementation of AML/CFT obligations.

Recommendations

798. Guinean authorities should necessarily popularise and implement the AML Act within these entities.

Compliance with Recommendation R.20

REC.	Compliance rating	Summary of factors underlying the compliance rating
R.20	**NC**	• General ignorance of the AML Act and non implementation

		of AML/CFT its mandatory provisions. • No policy to promote modern payment instruments.

5. LEGAL PERSONS AND ARRANGEMENTS AND NON-PROFIT ORGANISATIONS

5.1 Legal Persons – Access to information on beneficial owners and control Information (R.33)

5.1.1 Description and Analysis

Measures* to prevent illicit use of legal persons *(C.33.1)

799. The legal regime of common law companies in the Republic of Guinea is laid down by the OHADA Uniform Act on the business law and economic interest groups (AUSCGI) and by the OHADA Uniform Act on revised general business law (AUDC). These Uniform Acts lay down conditions for the incorporation and registration of companies.

800. According to AUSCGIE, *"the business corporation is created by two or several persons who agree, by contract, to allocate to an activity, assets in cash or in kind, for the purpose of sharing the profits or taking advantage of the savings that may derive from it. The partners undertake to share losses as provided for in this Uniform Act"* (art.4).

801. Any natural or legal person may be partner in a business corporation when they are not the subject of a ban, legal incapacity or incompatibility as referred to in particular by the Uniform Act on General Business Law (art.7).

802. The articles of association of the business corporation are established by notarized deed or any deed offering guarantees of authenticity in the State where the head office of the corporation is located, deposited with recognition of writings and signatures by all the parties on the roll of the minutes of a notary public. They may only be amended in the same form (art. 10).

803. Article 13 of AUSCGIE states the markings that must appear on the articles of association, namely:

1. the form of the corporation;
2. its name followed, where applicable , by its logo;
3. the nature and area of its activity, which form its corporate purpose;
4. its head office;
5. its term;

6. the identity of cash contributors, for each one of them, the amount of contributions, the number and value of COMPANY SHARES given in return for each contribution;
7. the identity of cash contributors, the nature and evaluation of the contribution made by each one of them, the number and value of company shares given in return for each contribution;
8. the identity of the beneficiaries of special benefits and the nature of such benefits;
9. the amount of registered capital;
10. the number and value of company shares issued, by distinguishing, where necessary, the various share categories created;
11. provisions on income distribution, the building of reserves and the distribution of liquidating dividend; and
12. operational arrangements.

804. Cap. 5 of AUSCGIE covers the registration of business corporations on which particularly confers to the business corporation the status of a legal personality (art. 97 to 120). In particular, article 97 stipulates that *"except for joint-stock companies, every company must be registered in the Trade and Personal Property Credit Register [TPPCR]"*, while article 98 states that *any company shall enjoy a legal personality " from its registration in the trade and personal property credit register, unless this Uniform Act provides to the contrary"*.

805. The TPPCR per se is governed by Book II of the AUDC (art. 34 to 72). As to the "Missions" of the TPPCR, the AUDC recalls that the latter is instituted for the following notable purposes:

- make it possible for those liable to registration, the business corporation in this case, to apply for it, obtain their registration number as soon as they file and accomplish other formalities provided for by AUDC and any other legal provision;
- allow access by those liable and third parties to information in the TPPCR;
- allow compliance with safety, celerity, transparency and loyalty requirements necessary for the development of economic activities.

806. By virtue of article 46 of the AUDC, "legal persons required by legal provisions to register, must within a month of being formed request to be registered with the registrar of the competent court or the body that is competent in the State Party within whose province their head office or main premises are located".

807. The application, which is made on a dedicated form, (cf. art. 39) must state:

1. the name or corporate name or appellation as the case may be;
2. where necessary, the logo or sign;
3. activity or activities carried out;
4. the form of the legal person;

5. where necessary, the amount of registered capital complete information about the amount of cash contributions and evaluation of contributions in kind;
6. the address of the head office, and where necessary, that of the main premises and of each of the other premises;
7. the term of the company or legal person as stated in its articles of association or the founding text;
8. the names, first names and personal residence of partners held sine die and personally liable for corporate debts with their date and place of birth, their nationality, where necessary, the date and place of marriage, the matrimonial regime adopted and clauses that can be used as evidence against third parties, restricting free disposition of the assets of spouses or the absence of such clauses as well as requests for the separation of property;
9. the names, first names, date and place of birth, and residence of managers, directors, board members or partners with the general power to commit the legal entity or the group;
10. the names, first names, date and place of birth, residence of statutory auditors, where their appointment is provided for by the Uniform Act on law of business corporations and economic interest groups.
11. or any other piece provided for by any special legal provision.

808. The registration application also comprises a certain number of supporting documents, notably (cf. art. 47):

- the certified true copy of the list of managers, board members, directors or partners held sine die and personally liable or with the power to commit the company or legal persons;
- a sworn statement signed by the applicant attesting that it is not under any ban especially by a common law court or by a professional court; the sworn statement is supplemented within seventy-five (75) days with a police record or failing that, a document serving as such.

809. Branches of business corporations are also bound by the registration formalities in the conditions provided for by AUDC (cf. art. 48).

810. Registration gives rise to the assignment to the business corporation of a registration number which is personal [cf. art. 35, 1°, in fine and art. 49(1)]. Similarly, no corporation can be registered as the main corporation in several registers or in the same register under several numbers [art. 49(2)].

811. In the event of transfer of the place of its activity to another jurisdiction, the reporting entity must apply to be struck off from the TPPCR in the jurisdiction under which it was registered and to be registered in the TPPCR under the jurisdiction to which its activity is transferred (art. 51).

812. Finally, the TPPCR also bears information on amending, supplementary and secondary markings (art. 52 à 54) as well as on those relating to the striking off (in the event of discontinuance of business or dissolution) of any entity subjected to the registration formality (art. 55 to 58).

813. Based on the provisions of AUDC, the Republic of Guinea in 2003 instituted a TPPCR in each of the three (3) Courts of first instance in Conakry. However, to avoid abuses in a context where files are manual and decentralised, the authorities decided in 2004 to centralise the entire TPPCR at the Kaloum Court of first (Conakry). However, to-date, the TPPCR remains uncomputerised.

814. Information provided during the application filed to the TPPCR (cf. form to be completed), does not provide sufficient information on beneficial owners and the control of legal persons. It provides no clue on the beneficial owners where shareholders are apparent bearers (front men).

Ability of authorities to obtain at the appropriate time sufficient, relevant and updated information on beneficial owners and the control of legal persons (C.33.2)

815. Consulting information in the TPPCR raises no particular challenges for the competent authorities. Any person, without having to show any special interest, can ask to consult the TPPCR, including documents to back up information provided in it. However, the fact that the TPPCR is not computerised can make it impossible to get sufficient information at the appropriate time.

Situation of legal persons that issue bearer shares (C.33.3)

816. The mission did not note the existence of legislative or regulatory measures intended to prevent legal persons that can issue bearer shares from being misused, particularly in money laundering and the financing of terrorism.

<u>Additional elements</u> - Prevention of the misuse of bearer shares (C.33.4)

817. Finally, apart from possibilities to access information to the TPPCR as provided for by the Uniform Act, there are no special provisions to facilitate access by financial institutions to information on beneficial owners and on the control of legal persons such that they can to check customer identification data more easily. Generally, the entities we met with (Court registry, banks, gaming sector regulatory authority – LONAGUI) ignore the notion of *"beneficial ownership"*.

5.1.2 Recommendation and Comments

818. The Republic of Guinea should make it obligatory for Court Registries, as well as independent legal professions (Lawyers, Notaries, etc.), when they get involved in the process of incorporating an ordinary law company (paying up of shares, registration, amendment, etc.), to conduct due diligence ranging from knowledge of apparent share ownership with a view to obtaining, where applicable, information on the identity of beneficiary owners and on those that actually control the legal person. The awareness of reporting entities should be raised on the notion of "beneficial ownership".

5.1.3 Compliance with Recommendation R.33

REC.	Compliance rating	Summary of factors underlying the compliance rating
R.33	**PC**	– information available in the TPPCR does not make it possible to have data on beneficial owners, in particular when the shareholder in an apparent bearer (front man); – while the general public, including the competent authorities, has access to the TPPCR, the fact that the TPPCR is not computerised can make it impossible to get sufficient information at the appropriate time; – there are no special provisions aimed at preventing legal persons authorised to issue bearer shares from being misused for ML/FT purposes.

5.2 Legal Arrangements– Access to information on beneficial owners and control Information (R.34)

Measures to prevent the illicit use of trusts and other instruments requiring sufficient transparency regarding beneficial owners and the control of trusts and legal arrangements (C.34.1). Access to information on beneficial owners (C.34.2). Additional elements- Access to information on the beneficial owners of legal structures by financial institutions (C.34.3)

Comments and effectiveness analysis

819. Based on information gathered by the Mission, the trust, as well as similar legal arrangements, does not exist in the Republic of Guinea. There is no regulation applicable to these legal categories.

Compliance with Recommendation R.34

REC.	Compliance rating	Summary of factors underlying the compliance rating
R.34	**NA**	• There is no trust in the Republic of Guinea

5.3 Non-profit organisations (SR. VIII)

5.3.1 Description and Analysis

Review of the appropriateness of laws and regulations on non-profit organisations (C.VIII.1).

820. The regime of Associations, Non-Governmental Organisations (NGOs) and Foundations is governed by law No.013/AN of 4 July 2005 to lay down the regime of Associations in the Republic of Guinea (cf. articles 1 and 32). The objective of these bodies is to "*promote professional, social, scientific, educational, cultural and sporting activities with a non-profit making purpose*" (Association, cf. article 3), *carrying out humanitarian and/or development works without reward in the form goods and services to its members*" (NGO, cf. article 17), *or, activities regarding the "financing of humanitarian activities, scientific research, the promotion of human rights or development*" (Foundation, cf. article 32).

821. These Non-Profit Organisations (NPOs), to carry out their activities in the Republic of Guinea, must obtain an authorisation from the supervisory authority, which is the Ministry in charge of Territorial Administration (articles 5, 7 and 33). Where they were created abroad (Foreign NGOs), they must first sign a treaty of establishment with the Government of Guinea, represented by the supervisory authority.

822. In particular, the law provides that they *"can receive gifts, gifts by will and resources from the State or any other public or private person"* (article 10). When an Association is directed to the benefit of the public, it can get State subsidies entered in the national budget (article 16). Also, to get involved in economic or social development activities, NGOs sign technical conventions with Ministries and/or competent public services in the identified sector (article 19).

823. Any association, whatever its nature, is bound to provide activity reports, budgets, annual accounts and financial reports to the supervisory ministry (article 11). Similarly, any amendment to the founding texts of any association or collective association must be brought to the attention of the supervisory authority (article 12). Finally, *" when it is established that the association pursues an illicit cause or purpose, or that it indulges in activities that are contrary to its statutes or in events likely to disturb the peace or undermine public decency, the association may be suspended or dissolved by Order of the Minister in charge of Territorial Administration"* (article 34).

824. It should be underscored that the legal form of the association is used within the framework of Micro-finance Institutions. In this case, these structures are governed by the law on Associations, when they are formed, while their activities are governed by the law on Micro-finance Institutions (law No.L/2005/020/AN of 22 November 2005) relating to the activity and supervision of micro-finance institutions in the Republic of Guinea).

825. Apart from the law to spell out the regime of Associations, Guinea has not adopted any specific measures intended to combat the risk of using NPOs to finance terrorism. As a matter of fact, the State has not yet passed the law on countering the Financing of Terrorism, although it has already ratified the related United Nations convention.

826. Notwithstanding the absence of a law on the countering of the financing of terrorism, it is worth underscoring that the provisions of the law on Associations make it possible to fulfil some of the requirements of Special Recommendation VIII. The law on Associations accordingly provides for the identification and registration of NPOs by the supervisory authority, notably through the prior approval regime. It makes it mandatory for NPOs to inform the supervisory authority about any changes in the membership of its management organs. Similarly, the law empowers the supervisory authority to audit the financial situation of NPOs by requiring that such organisations forward their annual financial statements to the supervisory authority.

827. However, the effectiveness of the requirements of the law on Associations does not seem to cover all non-profit Organisations (NPOs), since the supervisory authority does not know their exact number. According to information received, estimates put the number of NGOs at 2,500, and cooperatives at 5,000, not considering undeclared NPOs operating on the field. Finally, the mission was unable to ascertain beyond reasonable doubt the regularity and effectiveness of the audits of Associations identified by the supervisory authority as prescribed by the law.

Assistance to the NPOs sector and protective measures against the abusive use for terrorist financing purposes (C.VIII .2)

828. The supervisory authority, through the Service in charge of Regulation and the Promotion of Associations, oversees NPOs. In the absence of a law on the combating of the financing of terrorism, there is no specific provision intended to give NPOs assistance or protection against abusive use to terrorist financing ends. Moreover, the Ministry of Security and Emergency Preparedness which is empowered to conduct morality investigations into the leaders of NPOs before the granting of authorisations, is not systematically referred to by the Services of the Ministry of Decentralisation and Territorial Administration.

829. Generally, we did not note the existence of any specific programmes or activities to raise the awareness of leaders and members of NPOs to the risks of money laundering and the financing of terrorism that they face in their sector.

Supervision and monitoring of NPOs on account of the amount of resources or international activities (C.VIII.3)

830. The Mission did not note the existence of measures to support the supervision and monitoring of NPOs focussing both on the amount of financial resources under the control of such NPOs and on the extent of their role in international activities.

831. Nevertheless, it is worth stating that the draft bill on the combating of the financing of terrorism in the Republic of Guinea has provisions capable of strengthening supervision of NPOs by the authorities. In particular, article 13 of the above-mentioned draft bill stipulates that" *any gift made to a non-profit organisation in an amount equal to or greater than Ten*

million (10,000,000) Guinean francs must be recorded in a register kept by the supervisory authority comprising the full contact details, date, nature and amount of the gift". This information must be kept for a period of ten (10) years and be available for consultation by FIU and by any authority responsible for supervising NPOs, as well as, upon requisition, by officers of the judicial police responsible for a criminal investigation. The draft bill equally provides that the competent authority reports to FIU any cash gift in an amount equal to or greater than ten million (10,000,000) Guinean francs, as well as any gift, irrespective of the amount, when it is likely to be connected with a terrorist enterprise or with the financing of terrorism.

Obligation to keep records keeping relating to the purpose and goal of the activity and to the identity of leaders (C.VIII.3.1)

832. We did not note any provision formally requiring that NPOs keep records on the purpose of their activity or identity of their leaders. The NPOs we met however said they keep such records. It is also worth reporting that the law on Associations requires that NPOs inform the Supervisory authority about any amendments to their founding texts (article 13).

Measures for punishing breach of supervisory rules by NPOs or persons acting on their behalf (C.VIII.3.2)

833. As stated above (cf. Point 5.3.1, 4th paragraph), when it is established that the Association pursues an illicit cause or purpose, or that it indulges in activities that are contrary to its statutes or in events that are likely to disturb the peace or undermine public decency, the Supervisory authority may, by order, suspend or dissolve the Association, (article 34).

834. According to article 37 also, the law on Associations, the following shall be punishable in accordance with legislation in force:

- the founders and leaders of associations, NGOs and their and their action groups found to be in breach of the provisions of this Law;
- those who, in whatever capacity, administer or continue to administer an Association or an NGO, notwithstanding refusal to issue an authorisation, withdrawal of its authorisation, or bankruptcy;
- Any founder or leader who maintains himself or herself or who illegally recreates an association after a dissolution order, as well as any person who, through clandestine propaganda, speeches, writings or any other way, perpetuates or tries to perpetuate a dissolved Association.

835. In the area of AML, the bill provides that, without prejudice to prosecution, the competent authority can order the temporary suspension or dissolution of NPOs which, knowingly, encourage, form, organise or commit terrorist financing offences.

Accreditation or registration of NPOs and availability of such information (C.VIII.3.3)

836. By obtaining authorisation from the supervisory authority, in this case the Ministry in charge of Territorial Administration, NPOs can operate in the Republic of Guinea (articles 5, 7 and 33). Access to information on such authorisations by the competent authorities is easy when it exists (as a matter of fact, as stated above, many NPOs on the field have no authorisation). Finally, exchanges with actors in the NPO sector did not enable the mission to ascertain that the competent authorities have sufficient access to this information.

Keeping of records of their national and international transactions and access by the competent authorities (C.VIII.3.4)

837. Exchanges the Mission had with the supervisory authority, through the Service in charge of Regulations and the Promotion of Associations, as well as with NPOs, revealed that NPOs keep records on their national and international transactions for more than ten (10) years. However, the mission could not check the effectiveness of the record keeping system or the quality of records in the system.

838. However, it should be reported that in the area of AML, the draft bill stipulates on the subject of gifts that "any gift made to a non-profit organisation in an amount equal to or greater than Ten million (10,000,000) Guinean francs must be recorded in a register kept by the supervisory authority comprising the full contact details, date, nature and amount of the gift" and that such records be kept for a period of ten (10) years.. The records must also be available for consultation by FIU and by any authority responsible for supervising NPOs, as well as, upon requisition, by criminal investigation.officers.

Powers to investigate and share information on non-profit organisations (C.VIII. 4)

839. Apart from the ordinary prerogatives of authorities in charge of investigations, the Mission was not informed about the existence of powers to investigate and share specific information on NPOs.

Effectiveness of cooperation, coordination and information sharing at national level (C.VIII.4.1)

840. It emerged from discussions between the Mission and prosecution authorities (Police and ORDEF) that there is no particular difficulty faced in the sharing of information between services. Regarding coordination, the creation at the Presidency of the Republic of a Secretariat General in charge of Special Services, and combating drugs and organised crime illustrates the willingness of national authorities to strengthen coordination at the national level. In practice however, linkage between the prerogatives of this structure and those of the police should be improved, in particular to foster a more fruitful coordination and 'information sharing.

Guarantee access to records on the administration and management of a NPO, within the framework of an investigation (C.VIII.4.2)

841. The ordinary prerogatives of prosecution authorities allow them to access records on the administration and management of an NPO. However, as already said above, (cf. C.VIII.3.4), the Mission could not check whether the records kept on the administration and management of NPOs are sufficient.

Mechanisms for the rapid exchange of information between competent authorities in case of suspicions that an NPO is used for terrorist financing purposes (C.VIII .4.3)

842. In the absence of legislation on CFT, there is no specific provision allowing the rapid information sharing in case of suspicion that an NPO is used for FT purposes. Nevertheless, it is worth stating that the draft bill on CFT contains provisions that encourage mutual assistance in line with simplified techniques (cf. articles 68 to 73).

Measures to respond to international requests for information about NPOs (C.VIII.5)

843. In the absence of a specific measure geared towards the prevention of the use of NPOs to finance terrorism, information coordination, cooperation and exchange at the national or international levels in this area only covers common mechanisms. The Anti-terrorist Unit and the Interpol National Central Bureau, housed in the Ministry of Security and Emergency Preparedness, are used as cooperation and information-sharing mechanisms.

5.3.2 Recommendation and Comments

844. The NPO legal framework, if effectively implemented, allows the supervisory authority to identify existing NPOs, monitor them over time (changes in the composition of management bodies, delivery of financial statements) and impose sanctions when they break the law (suspension and dissolution). However, the supervisory authority to-date does not have accurate information on the size of the NPO sector, since their number is not known, a fact that undermines the effectiveness of supervision. Finally and above all, existing mechanisms do not integrate the prevention of the use of NPOs for terrorist financing purposes. Generally, NPOs are concerned about money laundering and terrorist financing prevention, both as a vector for raising the awareness of society in general (NPOs of the civil society, or those working to protect or promote the rights of a given social category) and as a vehicle or object for such offences.

845. The Republic of Guinea should strengthen the supervision of NPOs, in particular by implementing the controls and measures necessary for gaining accurate information about the size of the sector and the activities carried out therein. It should also adopt as soon as possible the law on the countering of the financing of terrorism such that it can have within its internal law measures allowing the inclusion of the prevention of the use of NPOs for terrorist financing purposes.

5.3.3 Compliance with Special Recommendation SR VIII

REC.	Compliance rating	Summary of factors underlying the compliance rating
SR.VIII	**NC**	– the existing legal regime has no provisions allowing the prevention of the abusive use of NPOs for terrorist financing purposes. – the supervisory authority does not have accurate information on the size of the NPO sector, a fact that undermines the effectiveness of supervision. – NPOs and supervisory authorities are not sensitized about the risks of money laundering and the financing of terrorism to which the sector is exposed.

6. NATIONAL AND INTERNATIONAL COOPERATION

6.1 National cooperation and coordination (R.31)

Recommendation 31

Existence of national AML/CFT cooperation and coordination mechanisms (C.31.1)

846. Before passage of law L2006/010/AN of 24/10/2007, an ad hoc committee was set up in Guinea, bringing together representatives of the Ministries of the Economy and Finance, Justice, Security and the representative of the Central Bank of the Republic of Guinea.

847. No official deed has formalised the existence of the committee whose timid actions were admittedly recognised by some actors we met during our on-site visit. To its credit, mention was made of cooperation with the Secretariat of GIABA, the organisation of meetings to raise the awareness of AML/CFT reporting entities, as well as advocacy with political authorities and other decision makers.

848. Although it is informal, the committee has nevertheless played a leading role in overall coordination at the national level of the on-sit visit of the mutual evaluation mission.

849. It should be noted that in spite of the absence of a formal coordination committee, the AML Act in Guinea has laid the legal basis for a national cooperation platform in article 21, which stipulates that "FIU can resort to correspondents within the police, gendarmerie, customs, central bank, as well as to the legal services of the State and any other service whose support is deemed necessary in the fight against money laundering".

850. This provision suggests coordination between all competent authorities, but of course, this is not operational because of the absence of FIU.

<u>Additional elements</u> - Consultation mechanisms between competent authorities, the financial sector and other sectors (C.31.2)

851. There is no formal consultation mechanism between competent authorities, the financial sector and other sectors in the Republic of Guinea.

Recommendation 32

Regular monitoring of the effectiveness of AML/CFT regimes (C.32.1)

852. The mission was not informed about any approach that could be related to self-evaluation to enable the competent authorities in the Republic of Guinea check the effectiveness of the AML/CFT mechanism.

Comments and effectiveness analysis

853. There is no formal or effective national cooperation mechanism for fighting against money laundering and the financing of terrorism.

Recommendations

854. Guinea should put in place a formal national cooperation and coordination mechanism revolving around FIU, which should also be set up without delay.

855. The body, in addition to including FIU, the BCRG and criminal prosecution authorities, should be extended to the private sector, in particular to supervisory authorities and to the self-regulatory organisations of reporting entities.

856. This platform should regularly meet to decide on the direction to give AML/CFT in Guinea, and should provide advice to political decision makers and the State.

857. The platform should be responsible for the preparation of a national AML/CFT strategy paper.

Compliance with Recommendation R.31

REC.	Compliance rating	Summary of actions that justify the compliance rating
R.31	**NC**	• No formal national AML/CFT coordination mechanism • No FIU which should be the hub of the said committee. • No coordination for the purpose of devising policies and carrying out AML/CFT activities.

6.2 Conventions and special resolutions of the United Nations (R.35 and SR.I)

6.2.1 Description and Analysis

Signature, ratification and implementation of the Vienna Convention, the Palermo Convention, and the Convention on the financing of terrorism (C.35.1 and C.1.1)

858. The Republic of Guinea has ratified the following three (3) international conventions covered by Recommendation 35 and Special Recommendation I:

- the United Nations Convention against illicit traffic in narcotic drugs and in psychotropic substances of 20 December 1988 (Vienna Convention);
- The United Nations Convention against transnational organised crime held on 15 November 2000 (Palermo Convention), as well as its two additional protocols relating respectively to the prevention, suppression and punishment of traffic in persons, in particular in women and children (open for signature up to 12 December 2002) and to the fight against the illicit traffic in migrants by land, air and sea (open for signature up to 12 December 2002) ;
- the United Nations Convention for the suppression of the financing of terrorism of 10 January 2000.

859. The provisions of the Vienna and Palermo Conventions relating to AML are implemented through the criminalisation of this offence by law No.L/2006/010/AN of 24 October 2007 on the fight against money laundering in the Republic of Guinea. Furthermore, the "*laundering of drug money"* is expressly punishable by the Guinean penal code (article 398, law No.98/036 of 31 December 1998).

860. On the other hand, although it ratified the United Nations Convention for the suppression of FT, the Republic of Guinea has no measures in place to effectively implement it in its internal law The State does not yet have any law on countering the financing of terrorism. In this regard, it should nevertheless be reported that the Republic of Guinea has ratified the OAU Convention of 11 July 2003 on the prevention and countering of terrorism. Article 1(3b) of the convention also defines the *"Terrorist act* as *"any promotion, financing, contribution to, command […] with the intent to commit any act referred to in paragraph a (i) to (iii)"*. However, although it talks of the financing of terrorism, this convention is rather devoted to the fight against terrorism.

Implementation of United Nations Security Council Resolutions on the prevention and suppression of the financing of terrorism RES 1267/RES 1373 (C.I.2)

861. Concerning United Nations Security Council resolutions 1267 and 1373, relating to measures to freeze the assets of persons linked to the financing of terrorism, the mission was informed about the forwarding of the related lists by the Ministry of Foreign Affairs to the competent authorities, in particular, the Ministry of the Economy and Finance, the Ministry of Security and Emergency Preparedness and the Central bank of the Republic of Guinea. However, in the course of discussions with the banking sector and the police, it appeared that the latter receive them rather through parent companies and some embassies. As such, the mission was unable to note the existence of an effective mechanism for the delivery of the said lists by national authorities to reporting entities. Finally, the mission could not check

whether the Republic of Guinea delivered to the United Nations Security Council reports on the implementation of the resolutions.

6.2.2 Recommendation and Comments

862. As mentioned above, (point 6.2.1), after ratifying the Vienna and Palermo Conventions, the Republic of Guinea passed law No.L/2006/010/AN of 24 October 2007 on the fight against money laundering and inserted in it a criminalisation provision that complies with those provided for in those Conventions. On the other hand, it has not implemented the United Nations Convention for the suppression of the financing of terrorism nor resolutions 1267 and 1373 relating to it.

863. Consequently, the Republic of Guinea should adopt necessary measures to ratify this Convention and implement all the afore-mentioned resolutions.

Compliance with Recommendation 35 and Special Recommendation SR I

REC.	Compliance rating	Summary of factors underlying the compliance rating
R.35	**PC**	– The Republic of Guinea has ratified, published and implemented the Vienna and Palermo Conventions. – However, it has not yet implemented the United Nations Convention for the suppression of the financing of terrorism, although it has ratified it and has a draft bill on the countering of the financing of terrorism, currently being finalised; – The criminalisation of the financing of terrorism as provided for by the OAU Convention on the prevention and countering of terrorism, as a "terrorist act", does not comply with the provisions of the United Nations Convention for the suppression of the financing of terrorism.
SR.I	**NC**	– The United Nations Convention for the suppression of the financing of terrorism is not implemented; – There is no mechanism for the implementation of resolutions 1267 and 1373, although they have been forwarded to certain State structures.

6.3 Mutual legal assistance - R.32, 36-38, SR.V

6.3.1 Description and Analysis

Recommendation 36

Power to recommend the broadest possible range of mutual legal assistance measures for

investigations, prosecutions and related proceedings related to money laundering and the financing of terrorism (C.36.1; C36.1.1)

864. To combat money laundering, law No.L/2006/010/AN of 24 October 2007 provides for a broad range of mutual legal assistance measures. As a matter of fact, according to article 51 of that law, "*legal mutual assistance may include in particular: the collection of testimonies or depositions; the provision of assistance to provide requesting judicial authorities of the State persons held or other persons, for purposes of testimony or assistance in the conduct of investigations; submission of legal documents; searches and seizures; inspection of objects and places; provision of intelligence and incriminating evidence; provision of the originals or certified true copies of relevant files and documents, including bank statements, accounting documents, records showing the operation of a company or business activities"* .

865. Mutual legal assistance can be granted "when the legislation of the [requesting State] makes it obligatory for that State to take action regarding requests of the same nature from the competent authority [of the requested State]" (reciprocity, cf. article 51).

866. Mutual legal assistance is not subject to unreasonable, disproportionate or unduly restrictive conditions. In effect, subject to reciprocity (cf article 51 par 1 of Act N°.L/2006/010/AN of 24th October 2007), mutual assistance can only be refused in limitative cases outlined by the Act, that is: " *where it does not emanate from a competent authority according to the legislation of the requesting country or where it has not gone through the regular channel;..where its execution may compromise public order, sovereignty, security or fundamental principles of the law; where the offences on which the request is based are the subject of criminal prosecution or on which a final legal decision has already been taken within the national territory; where the measures being solicited or all other measures having similar effects, are not authorized or are not applicable to the offence targeted in the request, under the legislation in force; where the measures requested for cannot be pronounced or executed because of a prescription in the money laundering offence, under the legislation or law in force in the requesting country; where the decision to be executed as requested is not binding according to the legislation in force; where the foreign decision has been pronounced under conditions that do not provide adequate guarantee in terms of rights of defence; where there are serious reasons to think that the measures requested or the decision being solicited only target the person concerned because of his/her religion, nationality, ethnic origin, political opinions, sex or status*" (article 3 par.1).

867. Furthermore, in case of refusal to grant mutual assistance, paragraph a of article 3 provides that the state ministry can interject an appeal on the relevant decision handed down by Guinean jurisdiction.

Existence of clear and effective procedures for executing mutual legal assistance requests (C.36.3)

868. Clear procedures are provided for in the execution of mutual legal assistance requests. Accordingly, the AML Act provides for clauses applicable to areas that can give rise to mutual assistance (collection of testimonies or depositions, submission of documents, etc., cf. article 51), as well as clauses on the contents of the mutual legal assistance request (the name of the authority soliciting the measures, the name of the competent authority to whom the request refers, indication of the measure solicited, etc., cf. article 52). In this regard, the clear

and efficient nature of the mutual assistance procedures can be illustrated by the " *request for investigation and instruction measures"* (article 55 of AML Act). In effect, in such an assumption, the investigation and instruction measures are, in principle, executed in accordance with the legislation in force, which makes for a certain degree of visibility. However, the competent authority of the requesting State may request that a particular pattern be followed which is compatible with such legislation. Furthermore, any requesting Magistrate or State Functionary may take part in the execution of the measures being requested.

869. With regard to the execution of mutual assistance " *at the opportune time and without unnecessary delay*", this could be illustrated by article 9 of the AML Act relating to the issuance of a police clearance for any ongoing proceeding in a third country. In effect, under this article, "where the legal proceedings are being entered into by any jurisdiction of a third country of the leader of one of the offences targeted by this Act, "***the Prosecutor of the said jurisdiction may obtain directly from the national authorities a copy of the said police clearance*** *and all information on the person being prosecuted provided the State metes out the same treatment to requests of the same nature emanating from the competent national jurisdictions"*.

Mutual legal assistance relating to tax issues (C.36.4)

870. The mission did not note any restrictions aimed at refusing mutual legal assistance on grounds that the offence is equally considered as also dealing with tax issues. In effect, among the cases of refusal to provide mutual assistance, narrowly outlined in article 53, no outright mention is made of any tax-related grounds to justify any refusal of mutual assistance

Mutual legal assistance should not be refused on grounds of the existence of laws imposing secrecy or confidentiality on financial institutions or DNFBPs (C.36.5)

871. According to article 53(2 & 3) of the AML Act, "professional secrecy may not be cited as grounds for refusing to execute a [mutual assistance] request" and "the prosecution can appeal against the decision to refuse to execute [a mutual assistance request] by a Guinean court".

Powers of the competent authorities extended to mutual legal assistance requests in accordance with Recommendation 28 (C.36.6)

872. In the execution of mutual legal assistance requests, prosecution authorities are empowered amongst other things, to gather testimonies or statements, conduct searches and make seizures, obtain originals or certified true copies of relevant documents and records including bank statements, accounting documents, business registration certificates, etc. (cf. article 51,AML Act). Moreover, generally, prosecuting authorities have the powers provided for in the criminal procedure code. Accordingly, for instance, within the framework of an investigation, *"the investigating magistrate may, depending on the case, issue a subpoena, an arrest, or committal warrant". These warrants are enforceable across the Territory of the Republic"* (article 125, Criminal procedure code).

Existence of clear procedures to determining the place of seizure to avoid conflicts of jurisdiction (C.36.7)

873. The mission did not note the existence of mechanisms making it possible to avoid conflicts of jurisdiction, by determining the most appropriate place of seizure in cases where accused persons are subject to prosecution in several countries

874. However, it is noteworthy that the Republic of Guinea is a member of International Organisations such as ECOWAS and Interpol (ICPO-INTERPOL) which in the area of transnational crime control, could serve as platforms for information sharing particularly to avoid cases of conflicts of jurisdiction and reach a consensus on the most appropriate venue for the prosecution.

Additional elements - Power of the competent authorities indicated in accordance with Recommendation 28, can such powers be cited in case of direct requests to judicial authorities (C.36.8)

875. The AML Act expressly provides that where in a prosecution of AML charges, the appearance in person of a witness held on Guinean territory is deemed necessary, the competent authority, when it receives a *"request sent directly to the competent office of the prosecution"*, shall transfer the person concerned ". However, first, the competent authority of the requesting State must undertake to maintain in detention the person transferred for as long as the prison term he or she is serving is not completed and to send him or her back in detention after the court appearance (article 58).

Recommendation 37 (dual criminalization dual criminalization in mutual assistance)

Demand for dual criminalization dual criminalization in order to grant mutual legal assistance, particularly with regard to less intrusive and less coercive measures (C.37.1)

876. No provision of the AML Act or of the criminal procedure code makes mutual legal assistance conditional on the existence of dual criminalization

Legal or practical obstacles to the granting of mutual assistance in extradition or other forms of mutual legal assistance for which dual criminalization is required when both countries criminalise the behaviour underlying the offence. (C.37.2)

877. There is no clearly express provision dealing with this issue in the AML Act or in the criminal procedure code. However, in practice, by means of mutual legal assistance conventions (ECOWAS Convention on mutual legal assistance in criminal matters) and police cooperation (Criminal police cooperation agreement between ECOWAS member states) Guinean authorities should, where necessary, give effect to mutual assistance, even for cases in which dual criminalization is required when both countries criminalise the predicate conduct to the offence.

Recommendation 38

Existence of suitable laws and procedures to effectively allowing timely response to mutual legal assistance requests from foreign countries and concerning the identification, freeze, seizure or confiscation (C.38.1)

878. The Anti-money laundering Act No.L/2006/010/AN of 24 October 2007 provides for mutual legal assistance for the purpose of confiscating an asset that constitutes proceeds or the

means used in committing one of the offences it covers, and is found on the national territory or for the purpose of having honoured an obligation to pay an amount of money corresponding to the value of the asset However, the legal rights of third parties to the assets concerned are unaffected (article 61).

879. Provisional measures can also be set out at the request of the requesting State to prepare a confiscation, in particular investigations to find proceeds from an offence; the results shall be sent to the competent authorities of the requesting State.

Existence of suitable laws and procedures for ensuring a timely response to mutual legal assistance requests from foreign countries concerning identification, freeze, seizure or confiscation (C.38.1)

880. The AML Act provides for the confiscation of an asset constituting the proceeds or means used in committing the offence, as well as the obligation to pay an amount of money corresponding to the value of the asset (cf. article 61).

Existence of mechanisms for coordinating seizure and confiscation with other countries (C.31.1)

881. Apart from the mutual legal assistance mechanisms, the Mission did not note the existence of specific mechanisms for coordinating seizure and confiscation with other countries.

Creation of a fund for confiscated assets (C.38.4)

882. The Mission was not informed about the existence of a fund for receiving confiscated assets. However, the AML draft bill provides for the creation of such a fund (cf. art. 40).

Sharing of confiscated assets (C.38.5)

883. According to article 64 of the AML Act, "the State shall have the power to dispose of property confiscated on its territory at the request of foreign authorities, unless an agreement signed with the requesting government decides otherwise".

Additional elements- Recognition of non criminal confiscation decisions by foreign governments (C.38.6)

Special Recommendation V

Special recommendation V in pursuance of C.36.1 to 36.6 (C.V.1)

884. In the absence of an AML Act, mutual legal assistance in pursuance of criteria *C.36.1 to 36.6 (C.V.1)* would not be operational. However, the CFT draft bill comprises provisions that are identical to those provided for by the AML Act, notably a broad range of mutual legal assistance measures.

Special recommendation V in pursuance of C.37.1 to 37.2 (C.V.2)

885. The CFT law has not yet been passed.

Special recommendation V in pursuance of C.38.1 to 38.3 (C.V.3)

886. The CFT law is not yet in force. However, it should be pointed out that the CFT draft bill contains provisions for facilitating the confiscation or seizure of property linked to an FT offence. Accordingly, under article 72 (Confiscation request) of that draft bill, "*in the case of a mutual legal assistance request for the purpose of making a confiscation decision the court shall rule on the submission of the case before the prosecuting authority"*. The *confiscation decision must target funds used, or intended to be used to commit a terrorist financing offence, or constituting proceeds from such an offence, and found on the national territory"*. In such an event, *"the court, to which a request is submitted for the execution of a confiscation decision made abroad, shall be bound by establishment of the facts on which the decision is based*".

887. As to the fate of seized assets (money and other financial resources), article 40(2) of the CFT draft bill provides that the State can allocate them to a fund for combating organised crime or to compensating victims of the offences covered by the CFT law.

888. This provision is in line with article 73 (Fate of confiscated assets) of the draft bill, which recalls that the Republic of Guinea shall have the power to dispose of assets confiscated on its territory at the request of foreign authorities, unless agreements signed with those foreign authorities provide for the sharing of funds from confiscations ordered at their request.

6.3.2. Recommendations and comments

Recommendation 36

889. The Republic of Guinea has provided for a broad range of mutual legal assistance measures and their implementation is not subject to unreasonable or disproportionate conditions. However, the effectiveness of these measures in the area of AML could not be checked since Guinea has not implemented the provisions of the AML Act relating to it. Finally, although the mission did not note the existence of specific mechanisms designed to avoid conflicts of jurisdiction in the determination of the place of seizure, Guinea nevertheless has sub-regional and international (ECOWAS, BCN-INTERPOL) channels that can make it possible to prevent such conflicts of jurisdiction in determining the most appropriate prosecution venue..

Recommendation 38

890. The provisions of the AML Act make it possible to respond effectively at the appropriate time to mutual legal assistance concerning identification, freeze, seizure or confiscation of assets that are the proceeds of a ML offence or assets of equivalent value. However, apart from the mutual legal assistance mechanisms founded notably on the AML Act and conventions (e.g. ECOWAS), there is no specific mechanism for coordinating seizure and confiscation with other countries. The AML Act furthermore has not provided for the creation of a fund for managing confiscated assets. Such a provision is nevertheless provided for in the CFT draft bill, which, however, is not yet in force.

Special Recommendation V

891. Since the Republic of Guinea has not yet passed the CFT law, no mutual legal assistance measure targeting an FT offence could be implemented for want of a legal basis. Consequently, the Republic of Guinea should pass as soon as possible this law, whose draft version in fact contains appropriate provisions.

Recommendation 32

892. Lack of statistics on mutual legal assistance.

Compliance with Recommendations R.32, R.36 and SR V

REC.	Compliance rating	Summary of factors underlying the compliance rating
R.36	**LC**	- The AML Act covers a broad range of mutual legal assistance measures and their implementation is not subject to unreasonable or disproportionate conditions. - However, the effectiveness of these measures in the area of AML could not be checked since Guinea has not implemented the provisions of the relevant AML Act.
R.38	**PC**	- There is no specific mechanism for coordinating seizure and confiscation with other countries; - The AML Act has not provided for the creation of a fund for managing confiscated assets.
SR.V	**NC**	- Since the Republic of Guinea has not yet passed the CFT law, no mutual legal assistance measure targeting FT offence could be implemented for want of a legal basis.

6.4 Extradition (R. 37, 39 and SR.V)

6.4.1 Description and Analysis

Recommendation 39

The money laundering offence should give rise to extradition (C.39.1)

893. The AML Act provides that money laundering should give rise to extradition and in article 69 lays down conditions for extraditing the persons concerned. By virtue of that article, the following are subject to extradition:

- individuals prosecuted for the offences covered by this law irrespective of the length of the prison term incurred on the national territory,

- individuals who, for the offences covered by this law, are sentenced definitively by the courts of the requesting State, without it being necessary to take into account the sentence handed down..

894. However, the same article specifies that common law rules are not infringed, in particular those relating to dual criminalization. In this regard, the Criminal procedure code, which provides for extradition (cf. articles 653 to 686) recalls that *"no one may be handed over to a foreign government if they are the subject of prosecution or conviction for an offence provided for in this Code"* (article 654).

Extradition of nationals, or initiation of prosecution before national courts (C.39.2)

895. According to the Code of criminal procedure, "extradition shall not be granted [particularly] when an individual, the subject of the request, is a Guinean national, with the status of national assessed at the time of the commission of the offence for which the extradition is requested" (article 657). However, neither the Code of criminal procedure nor the AML Act contains a provision by virtue of which, when the State of Guinea fails to extradite its national, it is bound to prosecute such a national before national courts.

896. Nevertheless, since Guinea is signatory or international or regional conventions governing the issue of extradition, nothing should, in practice, prevent it from judging a national it refuses to extradite. Such is the case with the ECOWAS extradition convention. According to article 10.2 of that Convention, *"the requested State that does not extradite its national shall, at the behest of the requesting State, refer the case to the competent authorities so that proceedings can be initiated if necessary"*. Based on this provision, Guinea should not oppose the judgement of a national that it does not want to extradite. Finally, the Mission was informed by the Ministry in charge of Justice that, in such a scenario, Guinea would not refuse to judge a national.

Cooperation with a third State on aspects of procedure and evidence (C.39.3)

897. The Code of criminal procedure, which governs cases of refusal to extradite, contains no express provisions on cooperation on aspects of procedure and evidence with the requesting State in case of refusal to extradite a national. However, the refusal to extradite should not impede the implementation of the provisions of the AML Act relating to mutual legal assistance, as concerns procedural aspects and evidence. In addition, by virtue of the ECOWAS extradition convention, when a State does not extradite its national and that it submits them as a result to national courts at the behest of the requesting State, *"files, information and objects relating to the offence shall be forwarded free of charge either through diplomatic channels or through any other channel that shall be agreed to by the States concerned. The requesting State shall be informed about the action taken in response to its request*" (article 10.2).

Existence of measures allowing the diligent processing of extradition requests and procedures (C.39.4)

898. Article 70 of the AML Act provides for a simplified procedure for processing extradition requests.

899. As such, "when an extradition request concerns a person that committed one of the offences provided for by the [AML law], it is sent directly to the competent Prosecutor General of the requesting State, with a copy to the minister in charge of justice.

900. It shall be accompanied by:

- the original or authenticated copy either of an enforceable conviction ruling or an arrest warrant or any other deed with the same force, issued in the format prescribed by the law of the requesting State and clearly indicating the time, place and circumstances of the facts that constitute the offence and their description;
- a certified true copy of the legislative provisions applicable and the sentence;
- a document with a description that is as accurate as possible of the person requested, as well as any other pieces information that can be useful in determining their identity, nationality and the place where they are".

901. Furthermore, in case of emergency, the competent authority of the requesting State may request the arrest of the wanted individual, pending the presentation of an extradition request (article 72[1] of the AML Act; an identical procedure is also provided for by the Code of criminal procedure, cf. article 671).

902. Additional elements - Existence of simplified extradition procedures, in particular for persons that waive the formal procedure, and extradition on the basis of arrest warrants of judgement (C.39.5)

903. Apart from the simplified procedure described above, the Code of criminal procedure provides that "*where, during their appearance, the person concerned waives the benefit of this law and formally agrees to be handed over to the authorities of the requesting country, the court shall officially acknowledge such a statement". Next, "a copy of this decision shall be forwarded without delay to the Prosecutor General in the Ministry of Justice, for whatever purpose it may serve* (article 667), in particular the handover of the concerned to the competent authorities of the requesting State.

Recommendation 37 (dual criminalization in extradition)

Mutual legal assistance granted in the absence of dual criminalization, in particular as concerns less intrusive and non-binding measures (C.37.1)

904. Article 69(2) of the AML Act expressly provides "*ordinary law rules pertaining to extradition, in particular those relating to dual criminalization are not infringed"*. In this regard, article 654 of Code of criminal procedure, which constitutes ordinary law in this area, points out that *"no one may be handed over to a foreign government if they are the subject of prosecution or conviction for an offence provided for in this Code"*.

Legal or practical obstacles to the granting of mutual assistance in extradition or other forms of mutual legal assistance for which dual criminalization is required when both countries criminalise the behaviour underlying the offence. (C.37.2)

905. There is no clearly express provision dealing with this issue in the AML Act or in the code of criminal procedure. However, in practice, by means of mutual legal assistance

conventions (ECOWAS Convention on mutual legal assistance in criminal matters) and police cooperation (Criminal police cooperation agreement among ECOWAS member states) Guinean authorities should, where necessary, give effect to mutual assistance, even for cases in which dual criminalization is required when both countries criminalise the conduct of the underlying offence.

Special recommendation V in pursuance of criteria 39.1-39.4 in the case of extradition

906. The CFT bill on extradition for financing of terrorism offence, provides for clauses identical to those provided for by the AML Act (cf. articles 74 et seq of the draft bill). However, since this instrument has not been passed, extradition on the charge of FT would be futile.

Additional elements– Applicability of the additional element 39.5 (relating to R.39) to extradition procedures concerning acts of terrorism or the financing of terrorism (C.V.8)

907. In terrorism cases, the extradition procedure provided for by the ordinary law (Code of criminal procedure) is enforceable. Actually, terrorism is criminalised by Guinean law. However, according to the Code of criminal procedure, *"in case of emergency and upon direct request by the judicial authorities of the requesting country, Prosecutors can, by simple notice sent either by the post office or by any faster mode of transmission that leaves a written or materially equivalent trace, of the existence of the documents mentioned in article 661, order the provisional arrest of the foreigner"* (article 671(1).

908. As concerns the financing of terrorism, the CFT draft bill contains an identical provision (article 82).

909. In both cases, the measures aim at facilitating extradition. In addition, the CFT draft bill provides for a simplified extradition procedure, *"for offences [that it punishes] when the individual whose extradition is requested agrees to it explicitly"*. In this case, the Republic of Guinea can grant the extradition after receiving the provisional arrest request (article 88).

Keeping of statistics showing the effectiveness and proper functioning of AML/CFT mechanisms (C.32.2)

910. No statistics aimed at showing the effectiveness and proper functioning of AML/CFT mechanisms were made available to the Mission.

6.4.2 Recommendations and Comments

911. The AML Act as well as the Code of criminal procedure expressly make dual criminalization a condition for extradition. However, in practice, through conventions to which the Republic of Guinea is signatory, mutual legal assistance in the area of extradition could be granted without any particular problem as concerns offences underlying money laundering when the offence is criminalised both in Guinea and in the requesting State.

912. The AML Act does not contain provisions under which when it refuses to extradite its national, the Republic of Guinea should prosecute such a national before its courts. However, extradition may be granted by enforcing the ECOWAS extradition convention which makes it

obligatory for the State that does not extradite its national to try them. The Republic of Guinea should include in its AML Act a provision with the obligation to either extradite or try the perpetrator of a money laundering offence, in line with what is provided for in the CFT draft bill.

Compliance with Recommendations 32, 37, 39 and SR V

REC.	Compliance rating	Summary of factors underlying the compliance rating
R.37	**LC**	– Dual criminalization remains an express extradition condition under the AML Act and the Code of criminal procedure. – Although there is no express provision making it possible to give effect to mutual legal assistance or other forms of mutual assistance for which dual criminalization is required when both countries criminalise the underlying money laundering offence, in practice, this mutual assistance could be granted through mutual assistance and police cooperation conventions signed by Guinea.
R.39	**LC**	– The AML Act provides that money laundering give rise to extradition; this is nevertheless subject to the dual criminalization condition. – When it does not extradite its national, the State must try them, notably in accordance with the ECOWAS extradition convention, which, in such a scenario, provides for cooperation between States in the areas of procedure and evidence; – Extradition can be granted according to a simplified procedure.
SR.V	**NC**	– Due to the fact that the AML Act has not been passed, extradition on the charge of FT would be futile.

6.5 Other forms of international cooperation (R.40, SR.V & R.32)

6.5.1 Description and Analysis

Recommendation 40

Agreement for extended international cooperation and mechanisms ensuring rapidity and effectiveness (C. 40.1 and C. 40.1.1)

913. FIU is recognised as being the central structure in the fight against money laundering and the financing of terrorism. Its existence in a country ensures effectiveness in the fight

against money laundering and the financing of terrorism. However, at the time of the on-site visit, the structure was not in existence in Guinea although a law set it up and that a draft decree appointing its members and spelling out its organisation and functioning had been initiated.

914. However, according to Guinean authorities, the country through the Interpol Central Bureau (BCN-INTERPOL), cooperates with all member states of ICPO-INTERPOL in the fight against transnational crime. This cooperation takes the form of information sharing and the search for suspects in third countries. The police and gendarmerie use the Interpol network in cooperation with their foreign counterparts. Customs, a member of the WCO, cooperates in the follow-up of ECOWAS community regulations.

Mechanisms defined and effective in facilitating exchanges between counterparts (C. 40.2)

915. Within the framework of exchanges between counterparts, law enforcement authorities use direct communication networks such as those of the ICPO Interpol and the World Customs Organisation (WCO), reputed to be secure networks.

Spontaneous sharing of intelligence about money laundering or underlying offences (C. 40.3)

916. Article 25 of money laundering law stipulates that the FIU of the Republic of Guinea only shares intelligence with the FIU of third countries if they are subject to similar professional secrecy obligations. Even if this is not explicitly formulated, such exchanges can be done spontaneously or upon request, once there is reciprocity.

917. Within the framework of exchanges between counterparts, law enforcement authorities use direct communication networks such as those of the ICPO Interpol and the World Customs Organisation (WCO), reputed to be secure networks.

Enabling measures for the conduct of investigations on behalf of foreign counterparts (C.40.4)

918. In their reciprocal relations and as set out in article 25 of the money laundering law, Guinea's FIU can share information as well as conclude agreements with the financial intelligence services of third states "within the framework of investigations", which suggests that it is allowed to conduct investigations for the benefit of its foreign counterpart. Article 45 of the same law, in view of the conditions it lays down, is much more explicit and authorises the competent judicial authority to conduct investigations on behalf of foreign counterparts.

919. Also, looking at articles 682, 684 and 685 of the code of criminal procedure, it appears that the competent Guinean authorities are permitted to conduct investigations for the benefit of foreign counterparts.

920. Customs authorities, given that the country's customs is a member of the World Customs Organisation (WCO), initiate investigations into customs offences at the request of the foreign counterparts. The customs authorities met during the visit said draft agreements on administrative mutual assistance in the exchange of intelligence on the flow of goods are being prepared.

921. The police and gendarmerie satisfy requests from foreign counterparts through direct channels or through Interpol, but assistance focuses mostly on the gathering of intelligence and not on investigations per se, which always require a letter of request.

Investigations by FIU on behalf of its foreign counterparts (C.40.4.1)

922. The money laundering law in the Republic of Guinea stipulates that the FIU can receive and process suspicious transaction reports on behalf of its foreign counterparts, when they are subject to similar professional secrecy obligations (art. 25 of the law). This implies it has the power to communicate intelligence at its disposal in its database. However, it is not very clear whether this power extends to the gathering of intelligence from external sources to which it has access in the performance of its duties.

Empowerment of law enforcement authorities to conduct investigations on behalf of their foreign counterparts (C.40.5)

923. The above-mentioned investigations can fall within this framework, as well as mutual legal assistance requests linked to money laundering offences received and processed in accordance with the provisions of the money laundering law (art. 52 of the AML).

924. The police and gendarmerie, on their part, have slightly more limited freedom if the request is from a foreign police service directly or through Interpol. Nevertheless, it is not investigations per se, which always require a letter of request, but rather the gathering of intelligence.

925. Customs, on the other hand, initiate investigations into customs offences at the request of their counterparts. It is a member of the WCU. Some customs authorities met during the visit said draft agreements on administrative mutual assistance in the exchange of intelligence on the flow of goods are being prepared.

Intelligence sharing not subject to disproportionate or unduly restrictive conditions (C.40.6)

926. The anti-money laundering law of the Republic of Guinea subjects information sharing to the following conditions:

- Subject to reciprocity, FIU can share information with the financial intelligence services of third States responsible for receiving and processing suspicious transaction reports, where the latter are bound by similar professional secrecy obligations.
- FIU can also conclude agreements with a financial intelligence unit of a third State (art. 25 of the AML Act).

Cooperation should also concern tax issues (C. 40.7)

927. There is no legislation indicating that a request would be inadmissible because tax aspects could be involved. In any case, none of those we met seemed to have any problem with or reason for not granting such a request.

Cooperation should not be refused on grounds of the existence of laws imposing secrecy or confidentiality (C.40.8)

928. Art. 33 of the AML lifts professional secrecy towards an investigating magistrate seeking to establish evidence of the original offence and evidence of offences linked to money laundering.

929. Notwithstanding any legislative or regulatory provisions to the contrary, article 34 of the same law lifts professional secrecy towards FIU and supervisory authorities in the performance of their duties, and police officers conducting a money laundering investigation under the supervision of an investigating magistrate.

Checks and guarantees of the strict use of information (C.40.9)

930. Article 22 of the anti-money laundering law settles the issue of confidentiality through oath-taking before the Conakry Appeals Court by FIU members and correspondents. They are bound to respect the secrecy of information gathered, which information may not be used for purposes other than those provided for by law.

Additional elements-

Cooperation with non-counterpart authorities (C.40.10)

931. The mission was not informed about this form of cooperation by Guinean authorities, and it was neither stated in Guinea's regulatory provisions.

The purpose of the request and the final recipient are always specified by the requesting counterpart (C.40.10 .1)

932. These provisions exist and are contained in law No.L/2006/01/AN of 24 October 2007 on the combating of money laundering in the Republic of Guinea, in particular article 52 of Title V, which covers international cooperation.

Obtaining information from competent authorities at the request of a foreign FIU (C.40.11)

933. The anti- money laundering law in Guinea provides that FIU can, subject to reciprocity, share information with the financial intelligence services of third States. Accordingly, within the framework of their partnership, it is justified in requesting intelligence from other competent Guinean authorities or forcing the latter by law to provide intelligence required on behalf of a foreign FIU.

Special recommendation V

Application of criteria 40.1 - 40.9 (relating to R.40) to the obligations of SR.V (C.V.5)

934. Guinea has not yet set up its Financial Intelligence Unit known as FIU in existing instruments. Consequently, the country has not passed the law on countering the financing of terrorism. However, a related draft bill is in existence. Article 16 of the CFT draft bill establishes the extension of FIU's jurisdiction to the gathering and processing of intelligence on the financing of terrorism. Nevertheless, there is no provision in the above-mentioned instrument providing for cooperation and intelligence sharing between FIU and its counterparts in the fight against terrorist financing.

935. Professional secrecy may not be cited as grounds for refusal since it cannot be used as evidence against the competent authorities within the framework of their investigations at the national level, problem is, since the CFT is not yet in force, this possibility cannot be useful in intelligence sharing for the benefit of the prosecuting authorities of third States.

Additional elements - Application of criteria 40.10 – 40.11 (relating to R.40) to the obligations of SR.V

Recommendation 32

Keeping of statistics by the competent authorities (C.32.2)

936. Apart from the sharing of intelligence within the framework of international police and customs cooperation in the prosecution of offences underlying money laundering, no data was provided on mutual legal assistance requests or requests for international cooperation in the area of AML/CFT.

Comments and effectiveness analysis

937. Direct cooperation between the police and customs officers, at the international level, happens without major difficulty through the use of traditional transmission channels at various levels depending on the type of authorities; it is almost a daily practice by the admission of officers and authorities themselves.

938. In the absence of a FIU that should guide intelligence and investigative efforts, the latter are limited to establish customs offences linked to the collection of revenue for Customs, and underlying offences for the police.

939. Up to this point, FIU does not exist and the powers that the law provides for it do not cover the financing of terrorism. However, the draft bill on combating of the financing of terrorism seems to be capable of settling the issue once passed.

Recommendations

Compliance with Recommendation 40

REC.	Compliance rating	Summary of factors underlying the compliance rating
R.40	**NC**	• A law sets up FIU, but the latter does not exist because an order appointing its members has not been issued. This is why there is no effectively operational FIU. • The powers granted FIU by the law do not cover the financing of terrorism offence. • The absence of FIU makes it impossible to cooperate with counterparts. • The absence of the CFT law hampers cooperation in this

		regard.
SR.V	**NC**	No supervisory and guarantee mechanism that would ensure that CFT information received by competent authorities is only used in the authorised manner. Absence of a CFT law in Guinea.

7. OTHER ISSUES

7.1 Resources and statistics

940. The mutual evaluation report, in various sections, has analysed the adequacy of existing resources, in terms of considerable financing, the training of actors, integrity and autonomy in connection with R.30. Consequently, the availability of relevant statistics as well as the existence of systems for collecting and managing statistics was evaluated in accordance with R.32. This section establishes the rating assigned them respectively, as well as a summary of factors justifying them.

Compliance with Recommendations 30 and 32

REC.	Compliance rating	Summary of factors underlying the compliance rating
R30	**NC**	• At the time of the visit, there were no national schools for training senior officials of the magistracy and national police in Guinea. As a general rule, such officials are recruited and trained when some opportunities come up abroad. • The human and logistical resources of the police and gendarmerie are limited. As a matter of fact, the security ratio is about Discussions we had with the competent police officer to 1,000 inhabitants and that at the level of the magistracy, there are 300 magistrates for about 11,000,000 inhabitants. • There is no structural and specialised training in Guinea on financial crime. Money laundering and the financing of terrorism are not part of training programmes. However, some delegates from Guinea have participated in occasional seminars organised at the international level; • The non-existence of a FIU and the absence of suitable training for its leaders to optimise the fight by developing a relationship between the prosecutor's office and FIU based on suspicious transaction reports;
R32	**NC**	• There is a lack regular record (statistics) keeping on investigations, prosecutions, convictions, freezing,

		seizures and confiscations as part of AML/CFT efforts; • With there being no FIU, there were no suitably kept records on STRs. Moreover, the 8 STRs submitted exclusively by banks to the BCRG were not processed and there was no feedback on them. • Records on reports/seizure relating to physical cross-border transfer of cash or bearer instruments within the framework of SR.IX were not made available to the mission; • Inadequacy of statistics on control missions to FIs in the area of AML/CFT and the related sanctions; • No statistics on control missions to DNFBPs in the area of AML/CFT and the related sanctions by supervisory authorities or self-regulatory organisations; • No statistics on international cooperation , in terms of the exchange of mutual legal assistance, intelligence requests and so on.

7.2 Other measures and relevant AML/CFT issues

941. The mission has no additional issue to tackle in this section.

7.3 General structure of the AML/CFT system (Cf. section 1.1 also)

942. The mission has no particular comment on the Republic of Guinea's AML/CFT regime.

TABLES

The rating of compliance with FATF Recommendations was to be done on the basis of four compliance levels established in the 2004 Methodology: Compliant (C), Largely Compliant (LC), Partially Compliant (PC) and Non Compliant (NC), or, in exceptional cases, be marked Not Applicable (NA).

Compliant	The Recommendation is fully respected as concerns essential criteria.
Largely compliant	The mechanism only has minor shortcomings, the bulk of essential criteria being fully fulfilled.
Partially compliant	The country has adopted a certain number of substantive measures and fulfils a certain number of essential criteria.
Non-compliant	The mechanism only has considerable shortcomings, the bulk of essential criteria not being fulfilled.
Not applicable	A provision or part of a provision is not applicable because of the structural, legal or institutional characteristics of the country, for example a particular type of financial institution does not exist in the country.

Table 1: Rating of compliance with FATF recommendations

Forty Recommendations	Compliance Rating	Summary of factors underlying the compliance rating
Legal Systems		
1. Money laundering offence	**PC**	• Some predicate offences are not covered, such as piracy, smuggling of migrants, insider trading and the manipulation of markets; • No consideration of the direct or indirect nature of the link between assets and proceeds of crime
2. The money laundering offence - intent and liability of legal persons	**LC**	• The country largely meets all the criteria • The penalties provided for are theoretically, proportionate and dissuasive, but are not enforced.
3. Confiscation and provisional measures	**PC**	• Assets indirectly linked to the proceeds of crime are not expressly stated in the law; • The principle of service without prior

Forty Recommendations	Compliance Rating	Summary of factors underlying the compliance rating
		notice is not covered by the law • Absence of suitable powers for tracing the origin of assets liable to confiscation; • No implementation in spite of the formal existence of provisions for confiscation
Preventive measures		
4. The professional secrecy law	**PC**	• Recommendation covered by the provisions of the Banking law, the AML Act, the insurance code and the CFT bill • Possibility for foreign prudential authorities to share information under the reciprocity regime • No clear provision guaranteeing that professional secrecy does not hamper information sharing between financial institutions when required and between the various prosecution authorities (SRVII/R9)
5. Customer due diligence	**NC**	• No prohibition of the operation of anonymous accounts . • General ignorance of due diligence obligations, only banks apply such obligations; • No obligation to verify identification data using reliable and independent sources; • The obligation to identify customers is too restricted, particularly for beneficial owners; • No obligation to get information on the purpose and nature of the business relationship; • No permanent due diligence; • No obligation to take enhanced due diligence measures for high risk customers; • No obligation concerning existing clients; • No specification on the timing for verification of beneficiary or beneficial owner's identity;

Forty Recommendations	Compliance Rating	Summary of factors underlying the compliance rating
		• No implementation of due diligence obligations by financial institutions.
6. Politically exposed persons	**NC**	• No implementation through internal procedures • In spite of BCRG Directive 1/001/2003, employees do not consult hierarchy before opening accounts for PEPs. • The source of the funds of PEPs is not checks.
7. Correspondent bank relationships	**NC**	• No clear and specific obligations in the AML Act regarding the management of correspondent banks save the annex to the law; • No obligation to gather information on the client institution; • No obligation to request authorisation from top management before establishing a business relationship with a correspondent bank; • No implementation in the structures visited.
8. New Technologies & Remote Business Relationships	**NC**	• The annex to the AML has developed appropriate mechanisms for managing a non-face-to-face client, in particular with regard to identification and payment; • Parts of the legal provision (annex to the AML Act) are vague and incomplete, only covering clients that are natural persons; • No effective implementation by FIs even though instruments have been provided for (Art.18 and the Appendix to the AML Act)
9. 3.3 Third parties and introducers	**NC**	• Vague knowledge of aspects linked to introducers in instruments governing AML. • Not implemented, especially by insurance companies • In the case of insurance companies, insurance brokers even though they are

Forty Recommendations	Compliance Rating	Summary of factors underlying the compliance rating
		only reporting entities bound by the due diligence obligation, do not honour this requirement.
10. Record keeping	**PC**	• Instruments govern the notion of record keeping • The AML Act has provided for 10 years whereas the earlier instruction required 5 Therefore, while the latter complies with the FATF minimum, it does not comply with the law • No specification of nature and availability of records to be kept by financial institutions;
11. Unusual Transactions	**LC**	• The notion of unusual transaction is covered by article 12 of the AML Act. • Article 5 of Directive No.I/001/203 on the AML Act covers unusual transactions. • The law sets the threshold of 150 million GF, which is however not the only trigger of special diligence. • The AML Act makes it mandatory for reporting entities to take special diligence steps regarding any transaction involving an abnormally high amount, made in unusually complex circumstances and/or which do not appear to have an economic justification or licit purpose.
12. DNFBPs–R.5, 6, 8–11	**NC**	• Ignorance of the law and failure to implement the mechanism by DNFBPs • Non existence of specific procedures for DNFBPs in practice for customer identification; • No due diligence for Politically Exposed Persons; • Non identification of beneficial owners and failure to check the origin of funds by casinos; • Failure to keep a special record for customer identification by casinos

Forty Recommendations	Compliance Rating	Summary of factors underlying the compliance rating
13. Suspicious Transaction Reports	**PC**	• The AML Act covers this recommendation. • A few banks made STRs to the BCRG and not to the FIU. • Attempted transactions are not covered by reporting. • Apart from banks, other reporting FIs do not fulfil this reporting obligation. • The notion of PEP is provided for by instruments in force, however, no special due diligence is required of reporting entities when dealing with PEPs • There also is no obligation to check the nature and origin of the funds they possess. • Absence of the form to be used in making STRs.
14. Protection of Reporting officers and Prohibition from tipping off the customer	**LC**	• The AML Act, by virtue of articles 30, 31 and 32, provides for the protection of reporting officers. • Article 26 of the law in question prohibits the tipping off of the client or beneficiary of funds that have been the subject of any STR; • Article 29 of the AML Act (fate of suspicious transaction reports) indicates that suspicion reports should not be part of the report submitted to the Prosecutor where there is clear evidence of money laundering;
15. Internal controls and compliance	**PC**	• Lack of clarity in the coverage of this recommendation by article 15 of the AML Act. • Noted implementation of AML/CFT policies developed by parent companies (banks MFIs and money transfer companies) • No implementation in insurance companies. • No audits by the supervisor
16. DNFBPs–R.13–15 & 21	**NC**	• The AML Act and the CFT draft bill provide for the making of STRs, but

Forty Recommendations	Compliance Rating	Summary of factors underlying the compliance rating
		no DNFBP made any STR • Non-existence of internal control programmes within DNFBPs as required by the AML Act; • Failure by DNFBPs to designate an official responsible for AML/CFT issues; • No training programmes for DNFBP employees; • No obligation for DNFBPs to pay special attention to their business relationships and their transactions with legal persons and financial institutions operating from countries that do not implement or sufficiently implement FATF recommendations.
17. Sanctions	**PC**	• Articles 35, 40, 41 of the law provide for sanctions; the mission did not note any effectiveness. • No implementation of recommended obligations; difficulty assessing the effective, proportionate and dissuasive nature of sanctions because they are not enforced.
18. Shell banks	**NC**	• No ban on establishing or continuing correspondent banking relationship with shell banks; • No obligation to ensure that financial institutions that are among their foreign clients do not allow shell banks to use their accounts.
19. Other forms of Reporting	**NC**	• No study or provision has been implemented to force FIs to report cash transactions made in excess of a certain threshold.
20. Other DNFBPs & secure transaction techniques	**NC**	• Ignorance of the law and non implementation of AML/CFT provisions. • No policy to promote modern payment instruments.
21. No attention to high-risk countries	**PC**	• There are no effective mechanisms for informing financial institutions about the AML/CFT weaknesses of other countries.

Forty Recommendations	Compliance Rating	Summary of factors underlying the compliance rating
		• No proposed counter-measures to be implemented against countries that do not comply with FATF Recommendations. • This provision is covered by an BCRG instruction (instruction No.1/001/2003/DGI/DB dealt with in article 3)
22. Foreign Branches and Subsidiaries	**PC**	• Article 5 of Directive No.I/001/2003/DGI/DB provides that the financial institution must ensure that the AML obligations are implemented by its branches or subsidiaries whose head offices are abroad
23. Regulation, Audit & Follow-up	**LC**	• BCRG instructions regulate the activity of FIs in the AML domain. • The Central Bank conducts audits within FIs to ensure compliance with measures adopted in the area. • No specific AML/CFT monitoring mission, but this aspect is taken into account in the general inspection exercises; • The banking law draws up a list of documents allowing the checking of the morality of managers as part of conditions to operate (article 11)
24. DNFBPs - Regulation, Audit & Follow-up	**NC**	• The casinos and gaming establishment sector is supervised by LONAGUI. But the latter does not implement the provisions of the AML Act; • There is a supervisory authority responsible for licensing casinos, but there is no competent authority to follow up and ensure compliance with AML provisions by DNFBPs; • No inspection and audit at the level of DNFBPs based on AML/CFT provisions;
25. Guidelines and Feedback	**NC**	• With there being no FIU, it is not possible to have feedback on the processing of STRs. • For the rare STRs forwarded to the BCRG by some banks, no feedback

Forty Recommendations	Compliance Rating	Summary of factors underlying the compliance rating
		was provided by the latter; • The law provides that STRs be made using a reporting format prepared by FIU, but this has yet to be done. • No guidelines for Designated Non-Financial Businesses and Professions and aimed at helping them implement and comply with AML/CFT obligations; • Concerning financial institutions, the BCRG has issued two instructions whose implementation is not regularly checked. The effectiveness of their implementation could not be checked.
Institutional and other measures		
26. The FIU	**NC**	• Article 19 of the AML Act established a FIU. Details on its organisation and functioning are provided under Art. 23, which is not being implemented, especially with; • No nomination of FIU members; • No design of STR template and advice for persons accountable to the AML/CFT Law. No correspondents' network within the various departments concerned; • No publication of reports; • No power on terrorirsm financing , which is not criminalized in Guinean law.
27. Law enforcement authorities	**NC**	• There is no law enforcement authority to specifically take care of ML offences; however, special services through ORDEF conduct investigations that can lead to ML cases. • No specialisation for magistrates results in a situation whereby investigations focus on underlying offences.
28. Powers of competent authorities	**PC**	• Concerning investigations, art. 33 of the law authorises the competent authorities to access documents • Art. 51 et seq of the CPC also provides that the competent authorities can

Forty Recommendations	Compliance Rating	Summary of factors underlying the compliance rating
		access documents, and make seizures (by order of the judge). • Due to the fact that the CFT law has not been passed, these provisions are not implemented in CFT investigations.
29. Supervisory Authorities	**C**	• The BCRG has supervisory powers (art 17 of the ordinance) • On-site audit and power to demand records • The BCRG has powers to impose sanctions.
30. Resources, integrity and training	**NC**	• At the time of the visit, there were no national schools for training senior officials of the magistracy and national police in Guinea. As a general rule, such officials are recruited and trained when some opportunities come up abroad. • The human and logistical resources of the police and gendarmerie are limited. As a matter of fact, the security ratio is about 1 police officer to 1,000 inhabitants and that at the level of the magistracy, there are 300 magistrates for about 11,000,000 inhabitants. • There is no structural and specialised training in Guinea on financial crime. Money laundering and the financing of terrorism are not part of training programmes. However, some delegates from Guinea have participated in occasional seminars organised at the international level; • The non-existence of a FIU and the absence of suitable training for its leaders to optimise the fight by developing a relationship between the prosecutor's office and FIU based on suspicious transaction reports;
31. Cooperation at the national level	**NC**	• No formal national AML/CFT coordination • No FIU which is a master piece that should organise the committee. • No coordination for the purpose of devising policies and carrying out

Forty Recommendations	Compliance Rating	Summary of factors underlying the compliance rating
		AML/CFT activities.
32. Statistics	**NC**	• There is a lack regular record (statistics) keeping on investigations, prosecutions, convictions, freezing, seizures and confiscations as part of AML/CFT efforts; • With there being no FIU, there were no suitably kept records on STRs. Moreover, the 8 STRs submitted exclusively by banks to the BCRG were not processed and there was no feedback on them. • Records on reports/seizure relating to physical cross-border transfer of cash or bearer instruments within the framework of SR.IX were not made available to the mission; • Inadequacy of statistics on control missions to FIs in the area of AML/CFT and the related sanctions; • No statistics on audit missions to DNFBPs in the area of AML/CFT and the related sanctions by supervisory authorities or self-regulatory organisations; • No statistics on international cooperation, in terms of the exchange of mutual legal assistance, intelligence requests and so on.
33. Legal Persons – Beneficial Owners	**PC**	• Information available in the TPPCR provide no data on beneficial owners, particularly where the shareholder is an apparent bearer (front man); • While the general public, including the competent authorities, has access to the TPPCR, the fact that the TPPCR is not computerised can make it impossible to get sufficient information at the appropriate time; • There are no special provisions aimed at preventing legal persons authorised to issue bearer shares to be used ill-advisedly to serve ML/FT purposes.
34. Legal Arrangements – Beneficial Owners	**N/A**	• There is no trust in the Republic of Guinea

Forty Recommendations	Compliance Rating	Summary of factors underlying the compliance rating
International Co-operation		
35. Conventions	**PC**	• The Republic of Guinea has ratified, published and implemented the Vienna and Palermo Conventions. • However, it has not yet implemented the United Nations Convention for the suppression of the financing of terrorism, although it has ratified it and has a draft bill on the countering of the financing of terrorism, currently being finalised; • The criminalisation of the financing of terrorism as provided for by the OAU Convention on the prevention and countering of terrorism, as a "terrorist act", does not comply with the provisions of the United Nations Convention for the suppression of the financing of terrorism.
36. Mutual legal assistance	**LC**	• The AML Act covers a broad range of mutual legal assistance measures and their implementation is not subject to unreasonable or disproportionate conditions. • However, the effectiveness of these measures in the area of AML could not be checked since Guinea has not implemented the provisions of the AML Act relating to it.
37. Dual criminalization	**LC**	• Dual criminalization remains an express extradition condition under the AML Act and the Code of criminal procedure. • Although there is no express provision making it possible to give effect to mutual legal assistance or other forms of mutual assistance for which dual criminalization is required when both countries criminalise the underlying money laundering offence, in practice, this mutual assistance could be granted through mutual assistance and police cooperation conventions signed by

Forty Recommendations	Compliance Rating	Summary of factors underlying the compliance rating
		Guinea.
38. Mutual legal assistance in confiscation and freezing	**PC**	• The country has no fund for managing confiscated assets • There is no specific mechanism for coordinating seizure and confiscation initiatives with other countries
39. Extradition	**LC**	• The AML Act provides that money laundering give rise to extradition; this is nevertheless subject to the dual criminalization condition. • When it does not extradite its national, the State must try them, notably in accordance with the ECOWAS extradition convention, which, in such a scenario, provides for cooperation between States in the areas of procedure and evidence; • Extradition can be granted according to a simplified procedure.
40. Other forms of cooperation	**PC**	• A law sets up FIU, but the latter does not exist because an order appointing its members has not been issued. This is why there is no effectively operational FIU. • The powers granted FIU by the law do not cover the financing of terrorism offence. • The absence of FIU makes it impossible to cooperate with counterparts. • The absence of the CFT law hampers cooperation in this regard.

Nine Special Recommendations	Compliance Rating	Summary of factors underlying the compliance rating
S. R. I Ratification and Implementation of UN instruments	**NC**	• The United Nations Convention for the suppression of the financing of terrorism is not implemented; • There is no mechanism for the implementation of resolutions 1267 and 1373, although they have been forwarded to certain State structures.
S.R.II Criminalisation of the financing of terrorism	**NC**	• FT not criminalised
S.R.III Freezing and confiscation of terrorists' assets	**NC**	• No comprehensive mechanism to ensure enforcement of Resolutions 1267 and 1373; No clear and efficient procedure to give effect to initiatives taken in other countries.
S.R.IV Suspicious transaction reporting linked to FT	**NC**	• In the absence of the adoption of an instrument on the combating of the financing of terrorism, reporting entities have no STR obligation.
S.R.V International Cooperation	**NC**	• Since the Republic of Guinea has not yet passed the CFT law, no mutual legal assistance measure targeting an ML offence could be implemented for want of a legal basis. • No supervisory and guarantee mechanism that would ensure that CFT information received by competent authorities is only used in the authorised manner.
S.R.VI AML/CFT Obligations applicable to Money or Value Transfer Services	**NC**	• No regular audit of money and value transfer companies in the area of AML/CFT • There are no administrative and disciplinary sanctions • Ignorance of national AML/CFT regulations • Money and value transfer services are bound by the AML Act, but not to the CFT which has not yet been passed.
S.R.VII Rules applicable to Electronic transfers	**NC**	• As part of AML, these measures are covered in transfer transactions, but

Nine Special Recommendations	Compliance Rating	Summary of factors underlying the compliance rating
		this is not valid from the standpoint of the countering of the financing of terrorism law that has yet to be passed by the Republic of Guinea.
S.R. VIII Non-profit organisations	**NC**	• The existing legal regime has no provisions allowing the prevention of the abusive use of NPOs for FT purposes. • The supervisory authority does not have accurate information on the size of the NPO sector, a fact that undermines the effectiveness of supervision. • NPOs and supervisory authorities are not sensitized about the risks of ML/FT to which the sector is exposed.
S.R.IX Cross-border Declaration and Disclosure	**NC**	• The reporting system exists, but is intended to monitor the implementation of exchange regulations. • Disclosure of information on the origin and use of cash is effective but only covers customs offences.

Table 2. Recommended action plan to improve the AML/CFT regime in Guinea

AML/CFT regime	Recommended Actions
1. General	
2. Legal System and Related Institutional Measures	
2.1. Criminalisation of Money Laundering (R.1 & 2)	**Recommendation 1** Guinean authorities should: - Criminalise insider trading and market manipulation; piracy, the financing of terrorism, smuggling of migrants, The AML Act should be revised to: -cover the self-laundering offence; -take into account assets resulting indirectly from the proceeds of crime.
2.2. Criminalisation of the Financing of Terrorism (S.R. II)	Guinea should criminalise the financing of terrorism.
2.3. Confiscation, freezing and seizure of the proceeds of crime (R.3)	The authorities should provide for: - procedures organising the freezing mechanism; - an authority should be appointed to collect statistics on the number of cases and the amount of assets frozen, seized or confiscated in connection with the offences,
2.4. Freezing of funds used to finance terrorism (S.R. III)	Guinea should: - set up any mechanism or procedures to freeze funds and assets of the persons covered by Resolutions S/RES/1267 (1999) and S/RES/1373 (2001); - appoint a national authority responsible for enforcing the sanctions provided for under the said Resolutions; - Establish a clear and swift mechanism for the distribution of the Sanctions Committee's list at national level; - Establish a clear and swift procedure to review and give effect to initiatives taken in other countries on freezing mechanisms as provide for by Resolution 1373; - Establish appropriate procedures for any person or entity whose funds or other assets have been frozen to challenge such a measure and have it reviewed by a court; - Create a provision that would ensure the protection of the rights of third parties acting in good faith;

AML/CFT regime	Recommended Actions
	-
2.5. The Financial Intelligence Unit and its Functions (R.26 & 30)	As a priority, Guinean authorities should: - Set up FIU, which has already been created by the AML Act; - Nominate members of the FIU; -Prepare the FIU's rules of procedure and an operational charter that would serve as a code of ethics; - prepare a model suspicious transaction report form as provided for by the AML Act; - Create a database for collecting and managing all pieces of information on STRs and other pieces of information received; - Appoint correspondents in the services involved in anti-money laundering efforts; - provide feedback to reporting entities; - Provide FIU substantial resources for its operation; - Provide relevant training to Members and personnel in charge of the operation of FIU;
2.6. Prosecuting authorities and other competent authorities (R.27 &28)	- Guinean authorities should train investigators to enable them acquire solid AML/CFT knowledge; - Investigation authorities should be given both substantial human and material resources and a sufficient budget; - Investigation and law enforcement authorities should be given both substantial human and material resources and a sufficient budget;
2.7. Declaration/Disclosure of cross-border transactions (S.R.IX)	-Customs agents should be sensitised and provided training on AML/CFT issues; - Customs officers at borders should effectively implement the provisions of exchange regulations; -Put in place a computer system for saving cross-border cash transaction declaration.
3. Preventive Measures – Financial Institutions	
3.1. Risk of money laundering or the financing of terrorism	
3.2. Customer due diligence, including enhanced or reduced measures (R.5–8)	**Recommendation 5** - The AML Act should be reviewed in order to introduce the identification obligations provided for by FATF; - The AML Act or other binding measures should explicitly mention the prohibition of financial institutions from operating anonymous accounts or accounts under false names; - Clear measures should be implemented with regard

AML/CFT regime	Recommended Actions
	to beneficial owner identification; - Financial institutions should be forced to adopt constant customer due diligence and update customer information; **Recommendation 6** - Financial institutions should develop clear procedures for implementing the provisions under the AML Act regarding the treatment of Politically Exposed Persons, and ensure their effective implementation. **Recommendation 7** - Financial institutions should be obliged to gather sufficient and reliable information, by means of credible databases or other publicly available sources , before entering into any correspondent banking relationship - Financial Institutions should specify in writing of the AML/CFT responsibilities of each of the parties that have correspondent banking relationships; - Oblige Financial Institutions to request authorisation from top management before establishing a correspondent banking relationship; **Recommendation 8** - Extend the legal provisions of the AML annex to also cover legal persons;
3.3. Third parties and business introducers (R.9)	**Recommendation 9** - Clear and comprehensive provisions should be developed for financial institutions that wish to use third parties and intermediaries in AML/CFT issues
3.4. Financial institution secrecy or confidentiality (R 4)	**Recommendation 4** Adopt clear provisions guaranteeing intelligence sharing between financial institutions when required (R.7,9 and SRVII) and between the various national authorities, in spite of professional secrecy.
3.5. Record keeping and wire transfer rules (R 10 & SR VII)	**Recommendation 10**

AML/CFT regime	Recommended Actions
	- Adopt measures to specify that record keeping can last longer than provided for, if a competent authority makes the request in a specific case and for the accomplishment of its mission; - Specify that the obligation for financial organisations to keep for a period of ten years records on transactions they carried out include in particular account books and business correspondence - Adopt measures to make clear to financial institutions that all records on customers and transactions should be made available when required to competent national authorities for the accomplishment of their mission **Special Recommendation VII** - Guinea should pass the law on combating the financing of terrorism.
3.6. Monitoring of transactions and business relationships (R 11 & 21)	**Recommendation 11** - Supervisory authorities should consider adopting measures aimed at making it obligatory for financial institutions to conduct as much as possible a survey on the context and purpose of unusual transactions and put down their findings in writing **Recommendation 21** - The competent authorities should put in place mechanisms aimed at informing financial institutions about concerns raised by the weaknesses of the AML/CFT mechanisms of other countries; - The competent authorities should recommend to FIs appropriate counter-measures to be implemented against countries that continue to not implement or inadequately implement FATF Recommendations.
3.7. Suspicious transaction reports and other reporting (R 1314, 19, 25 and SR IV)	**Recommendation 13** - Guinea must set up FIU to enable reporting entities make STRs; • Attempted transactions should be covered by STR

AML/CFT regime	Recommended Actions
	obligations. **Special Recommendation IV** - Guinea should pass the FT law in order to oblige reporting entities to make STRs on financing of terrorism-related transactions. **Recommendation 25** - FIU, once it is set up, must ensure that it assists reporting entities with suspicious transaction reporting.
3.8. Internal controls, compliance, audit and foreign branches (R 15 &22)	**Recommendation 15** - The competent Guinean authorities should come up with guidelines to spell out the internal control obligations of financial institutions. **Recommendation 22** - Supervisory authorities should audit the effective implementation of article 5 of instruction No.I/001/2003/DGI/DB.
3.9. Shell banks (R.18)	**Recommendation 18** - The competent authorities should adopt binding measures to ban financial institutions from establishing or continuing correspondent banking relationships with shell banks; - The competent authorities should oblige FIs to ensure that their foreign correspondents do not authorise shell banks to use their accounts.
3.10. The supervisory and oversight systems – Competent authorities and SROs (Roles, duties, functions and powers (including sanctions) (R.17, 23, 25, 29)	**Recommendation 17** - The competent authorities should keep complete statistics on supervisions and sanctions imposed on FIs **Recommendation 25** - The competent authorities should oversee the effective implementation of guidelines by FIs.

AML/CFT regime	Recommended Actions
3.11. Money or value transfer services (SR VI)	**Special Recommendation VI** - Guinean authorities should popularise national instruments regulating AML/CFT; - The competent authorities should conduct regular audits to check the institution of internal procedures relating to customer identification standards and fulfilment of obligations relating to information that accompanies transfers; - Statistics on audits and sanctions should be kept
4. Preventive Measures - Designated Non-Financial Businesses and Professions	
4.1. Customer due diligence and record keeping (R.12)	**Recommendation 12** - LONGUI, as the body that regulates gaming and supervises casinos, should extend its oversight powers to cover the AML/CFT component; - LONAGUI should surround itself with all the safeguards necessary for determining the origin of funds intended for the setting up and operation of casinos ; - LONAGUI should designate an official responsible for AML/CFT issues; - casinos should ensure that they identify beneficiary owners; - Casinos should ensure that they create and keep a special register for registering customers, in accordance with the AML Act; - Guinean authorities should consider providing training to and raising the awareness of DNFBPs to issues relating to their ML/CFT obligations. - DNFBPs should put in place appropriate risk management systems in order to be able to identify politically exposed persons (PEPs); - The competent authorities should adopt appropriate measures to prevent the abusive use of new technologies by DNFBPs.
4.2. Suspicious Transaction Reporting (R.16)	**Recommendation 16** - The self-regulating organisations of DNFBP shou consider extending their supervisory powers to th

AML/CFT regime	Recommended Actions
	AML/CFT component; - DNFBPs should develop training programmes for the managers and employees; - DNFBPs should consider making suspicious transaction reports - DNFBPs should adopt appropriate measures regarding business relationships with persons and transactions with financial institutions located in countries that do not implement or insufficiently implement FATF recommendations.
4.3. 4.3 Regulation, Supervision and Follow-up (R.24 & 25)	**Recommendation 24** - Guinean authorities should to regulate the real estate agent profession, which, in practice, does not exist and constitutes, in the absence of a regulation, a potential source of money laundering in the Republic of Guinea. - Traders in precious metals should be obliged to honour their obligations in the areas of customer identification and compliance with thresholds defined by FATF. - Guinean authorities should ensure that all authorities responsible for supervising DNFBPs or their self-regulatory organisations incorporate in their prerogatives the aspect dealing with AML/CFT supervision. **Recommendation 25** - Supervisory or self-regulatory authorities should come up with guidelines to assist DNFBPs to better implement FATF recommendations, as well as their obligations under the AML Act.
4.4. Other Designated Non-Financial Businesses and Professions (R.20)	- Guinean authorities should promote policies that encourage the use of modern payment methods; - The other designated non-financial businesses and professions should be sensitised about the existence of national AML/CFT instruments;
5. Legal Persons and Arrangements & Non-Profit Organisations	
5.1. Legal Persons – Access to beneficial ownership and control	**Recommendation 33**

AML/CFT regime	Recommended Actions
information (R.33)	- The Republic of Guinea should make it obligatory for Court Registries, as well as independent legal professions (Lawyers, Notaries, etc.), when they get involved in the process of incorporating a ordinary law company (paying up of shares, registration, amendment, etc.), to conduct reasonable due diligence making it possible to have information on the identity of beneficial owners and on those that actually control the legal persons. - Guinean authorities should raise the awareness of reporting the notion of "beneficial ownership".
5.2. Legal Arrangements– Access to beneficial ownership and control information (R.34)	
5.3. Non-profit organisations (S.R. VIII)	**Special Recommendation VIII** - The supervisory authority of NPOs should create a database in order to have accurate information on the number and types of operations carried out in the country; - The Republic of Guinea should also adopt as soon as possible the law on the countering of the financing of terrorism such that it can have within its internal law measures allowing the inclusion of the prevention of the use of NPOs for terrorist financing purposes.
6. National and International Cooperation	
6.1. National cooperation and coordination (R.31)	- Guinea should set up an inter-ministerial committee that could bring together FIU, the BCRG and law enforcement authorities and extended to the private sector, in particular to supervisory authorities and to the self-regulatory organisations of reporting entities. - Such a committee, once set up, should prepare a national AML/CFT strategy paper.
6.2. Conventions and Special Resolutions of the United Nations (R.35 and SR.I)	Guinea should implement the United Nations Convention for the Suppression of the Financing of Terrorism, as well as resolutions 1267 and 1373.
6.3. Mutual legal assistance - R.32, 3638, SR.V	**Recommendation 36** The Republic of Guinea should keep statistics on mutual legal assistance in order to provide evidence of the effective implementation of the measures provided for in the AML Act.

AML/CFT regime	Recommended Actions
	Recommendation 38 Guinea should set up a specific mechanism to coordinate seizure and confiscation with other countries; Guinea should provide for measures to set up a fund to manage confiscated assets. **Special Recommendation V** Guinea should pass the CFT law to allow the implementation of mutual legal assistance measures relating to FT.
6.4. Extradition (R. 37, 39 and SR.V)	**Recommendation 39** The Republic of Guinea should include in its AML Act a provision with the obligation to either extradite or try the perpetrator of a money laundering offence, in line with what is provided for in the CFT bill, pursuant to the ECOWAS extradition convention.. **Special Recommendation V** Guinea should pass the CFT law to allow the extradition of a person responsible for a CFT offence.
6.5. Other Forms of Cooperation (R.40, S.R. V)	
7. Other Issues	
7.1. Resources and Statistics (R.30 & R.32)	**Recommendation 30** - Guinea should make it a priority to appoint members of FIU, provided with adequate AML/CFT training and give the FIU substantial financial resources; - Investigation and law enforcement authorities should be provided relevant AML/CFT training; - Supervisory and oversight authorities (BCRG) as well as self-regulatory organisations should be given sufficient human resources and the latter should be provided with relevant AML/CFT training. **Recommendation 32** - FIU, once operational, must create a database for managing information on STR, types of underlying offences, information requests, and so on; - The authorities should keep statistics on investigations, prosecutions, convictions, freezing, seizures and confiscations as part of AML/CFT

AML/CFT regime	Recommended Actions
	efforts; - The competent authorities should keep statistics on reports/seizure linked to the cross-border physical transportation of cash or bearer instruments within the framework of SR IX. - Supervisory and oversight authorities as well as self-regulatory organisations should keep statistics on supervisory missions to FIs and DNFBPs, in the area of AML/CFT, and the related sanctions. - The competent authorities should keep statistics on international cooperation, in terms of mutual legal assistance requests, intelligence sharing, extradition, and so on.
7.2. Other relevant AML/CFT measures and issues	
7.3. General structure of the AML/CFT system - Structural elements	

APPENDIXI: LIST OF STRUCTURES CONTACTED DURING THE ON-SITE VISIT

No.	DATE	STRUCTURES	WORKFORCE
1	04/06/2012	Ministry of the Economy and Finance and Central Directorates	26
2	04/06/2012	Customs Department	17
3	04/06/2012 & 13/06/12	Ministry of Foreign Affairs	13
4	05/06/2012	Ministry of Justice	9
5	05/06/2012	Kaloum Court of 1st Instance	6
6	05/06/2012	Court of Audit	10
7	06/06/2012	Ministry of Public Security and Emergency Preparedness	10
8	06/06/2012	High Command of the National Gendarmerie	6
9	06/06/2012	Secretariat General of the Presidency in charge of Special Services	13
10	07/06/2012	Central Bank of the Republic of Guinea and the Department in charge of the Supervision of Financial Institutions	19
11	07/06/2012	Professional Association of Banks and Financial Institutions of Guinea	9
12	07/06/2012	*Banque Internationale pour le Commerce et l'Industrie de la Guinée* BICIGUI	4
13	07/06/2012	*Banque Populaire Maroco-Guinéenne* – BPMG	5
14	07/06/2012	ECOBANK	2
15	07/06/2012	ORABANK	3
16	08/06/2012	National Anti-Corruption Agency	12
17	08/06/2012	*Loterie Nationale de Guinée* (State Lottery)	8
18	11/06/2012	Association of Insurance Companies	6
19	11/06/2012	UGAR – Assurances	4
20	11/06/2012	NSIA - Assurances	3
21	11/06/2012	Professional Association of Micro-finance Institutions of Guinea - and the National Micro-finance Board	9

22	12/06/2012	Ministry of Mines and Geology	6
23	12/06/2012	Ministry of Urban Planning, Housing and Construction	9
24	12/06/2012	Guinea Chamber of Mines	14
25	12/06/2012	Money transfer institutions (SOFIG, MICROBIT)	5
26	13/06/2012	Association of Non-Governmental Organisations (NGOs) of Guinea.	17
27	13/06/2012	Order of Public Accounts of Guinea	3
28	13/06/2012	Ministry of Tourism	12
29	13/06/2012	Law Society of Guinea	4
30	14/06/2012	Chamber of Notaries of Guinea	6
31	14/06/2012	Casino Riviéra	2
32	14/06/2012	Casino Royal	2
33	15/06/2012	Association of Exchange Offices of Guinea	7
34	15/06/2012	National Technical Committee responsible for the Follow-Up of GIABA Activities	5
		TOTAL NUMBER OF PEOPLE ENCOUNTERED DURING DISCUSSIONS	**286**

APPENDIX II: LIST OF LAWS, REGULATIONS AND OTHER DOCUMENTS RECEIVED

MINISTRY OF THE ECONOMY AND FINANCE
Decree No.D/2011-117/PRG/SGG on the powers and organisation of the Ministry of the Economy and Finance
Decree No.D/2011118/PRG/SGG on the powers and organisation of the Ministry Delegate in the Ministry of the Economy and Finance
Order A/2012/1337/MDB/SGG/12 on the Composition, Appointment of Members and Regulations on the Functioning of the Tax Appeal Commission
Order A/8136/MEF/CAB/SGG on the Powers and Organisation of the National Taxation Division
General Tax Code 2011
Draft bill to create and lay down rules for the functioning of FIU
Draft decree to create and lay down rules for the functioning of FIU
Draft decree Appointing FIU Members.
CUSTOMS DEPARTMENT
Law L/2000/-006/AN passing and enacting the law on the regulation of financial relations relating to transactions between the Republic of Guinea and foreign countries
Instruction No.112/DGAEM/RCH/2000 instituting the Regime of Financial Relations relating to Transactions between the Republic of Guinea and Foreign Countries
Customs code/Oct. 1990
Code of conduct of Customs personnel
Decision No.2551/CDP/Dka/2006
Decision No.2550/CDP/Dka/2006
Statistics on Drug Seizures from 2008 to 2012 (May)
Order 2011/8044/MDB/CAB on the powers and organisation of the National Customs Department
MINISTRY OF FOREIGN AFFAIRS
United Nations Conventions (Vienna 1988-; Palermo 2000- Signed on 09/11/2003; New York 1999-Signed on 16/11/2001 ; Merida 2003) and ratification instruments
1971 Convention on psychotropic substances
Convention on the illegal smuggling of migrants by land, air, sea, (supplementing the UNC on transnational organised crime)
Ratification instrument of the OAU Convention on the Prevention and Combating of Terrorism (Algiers, 14 July 1999) and JO
Convention against trafficking in persons, especially women and children
African Union Convention for the prevention and combating of terrorism of 14 July 1990
MINISTRY OF JUSTICE
Law No.L/95/021/CTRN of 06 June 1995 on the reorganisation of the Justice system in the Republic of Guinea
Penal Code
Code of Criminal Procedure
Draft Decree creating the National Technical Committee responsible for the Follow-Up of GIABA Activities
Draft Decree on the powers and composition of CTNSA-GIABA
Draft bill on the combating Terrorism Financing

KALOUM COURT OF 1ST INSTANCE
TPPCR registration form (Natural and legal persons)
COURT OF AUDIT
Instruments specifying the functioning and powers of the Chamber of Accounts
Text of the Court of Audit project
MINISTRY OF SECURITY
SGPR NO;067/PRG.SGG/Dcree to create, spell out the powers, composition and functioning of the National Anti-Drug Committee
HIGH COMMAND OF THE NATIONAL GENDARMERIE
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