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MONEY LAUNDERING IN WEST AFRICA.

Mutual Evaluation Report

Anti-Money Laundering and Combating the Financing of Terrorism

MALI

18TH SEPTEMBER 2008

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THE WORLD BANK



CONFIDENTIAL

REPUBLIC OF MALI

DETAILED ASSESSMENT REPORT ON ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM

DATE OF ASSESSMENT

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FINANCIAL MARKET INTEGRITY UNIT

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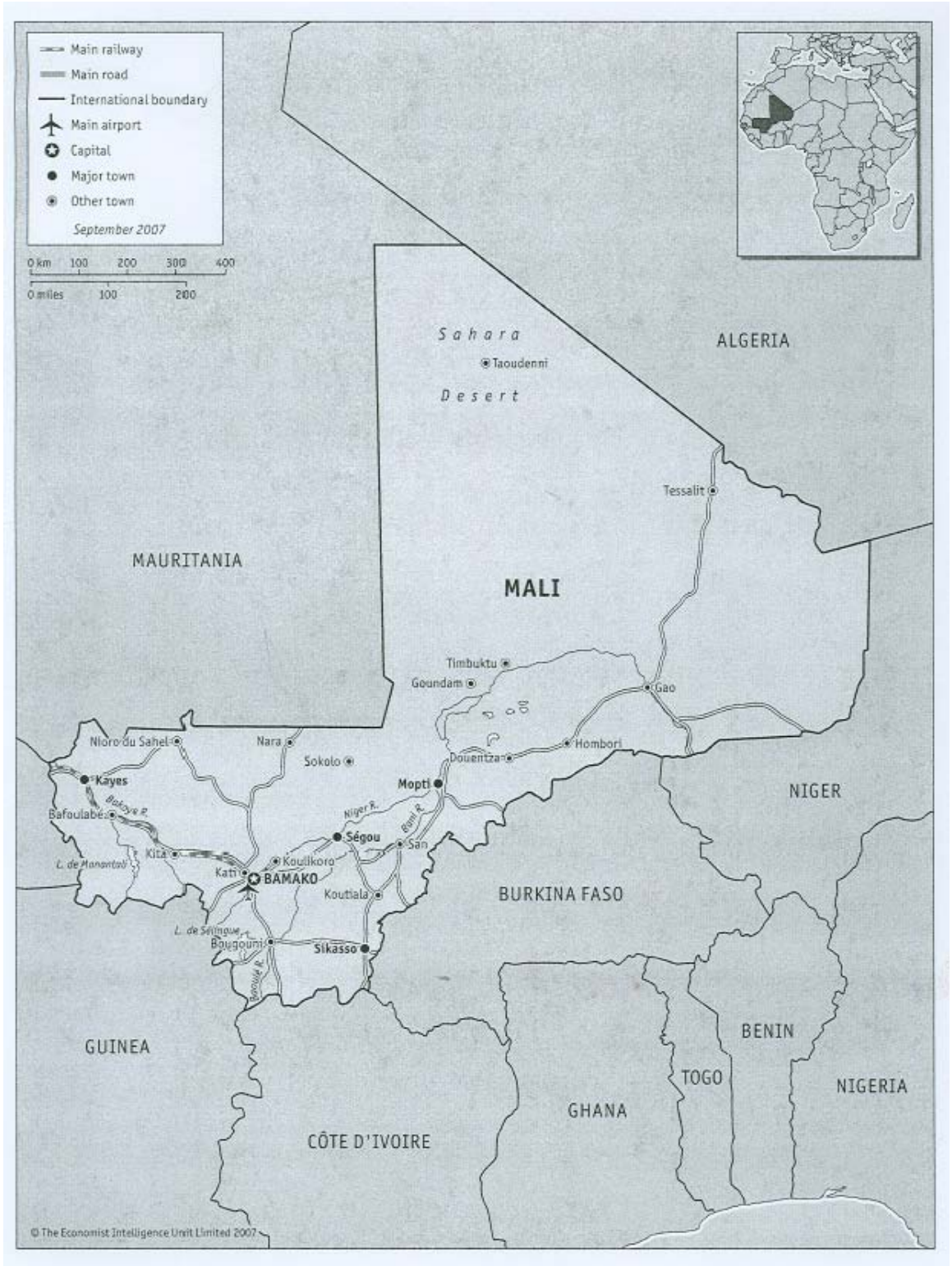
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ACRONYMS AND ABBREVIATIONS

AML	Anti-money laundering
AML /CFT	Anti-money laundering and combating the financing of terrorism
BCEAO	Central Bank of West African States
BC-WAEMU	WAEMU Banking Commission
CAC	External auditor [*Commissaire aux comptes*]
BC	Banking Commission
CCS/SFD	Control and Surveillance Unit for Decentralized Financial Systems
CDM	WAEMU Council of Ministers
CENTIF	National Financial Information Processing Unit
CFAF	CFA franc, the currency issued by the BCEAO
CFT	Combating the Financing of Terrorism
CI	Credit institution
CMU	WAEMU Council of Ministers
CRBV	Regional Securities Exchange Council
CRCA	Regional Insurance Supervision Commission
CREPMF	Regional Council on Public Savings and Financial Markets
DFI	Decentralized financial institution (also SFD)

DNA	National Insurance Directorate
ECOWAS	Economic Community of West African States
EUR	Euro
FATF	Financial Action Task Force on Money Laundering
FO	Financial organization
FP	Fundamental principle
FSAP	Financial Sector Assessment Program
FT	Financing of Terrorism
G	Giga (billion)
GDP	Gross domestic product
GIABA	Interministerial Group for Action Against Money Laundering in West Africa
I-	Instruction
IMCEC	Savings and loan associations or cooperatives
M	Million
MFI	Microfinance institution
ML	Money Laundering
OHADA	Organization for the Harmonization of Business Law in Africa
OPCVM	Organization for collective investments in securities (mutual fund)
PCB	Bank chart of accounts

PDG	President and general manager (CEO)
R-	Regulation
SA	Limited company
SAR	Suspicious Activity Report
SGCB	General Secretariat of the WAEMU Banking Commission
SGI	Management and Intermediation Company
SGP	Asset Management Company
USD	U.S. dollar
WAEMU	West African Economic and Monetary Union


Main railway
Main road
International boundary
Main airport
Capital
Major town
Other town
September 2007
0 km 100 200 300 400
0 miles 100 200
Sahara
Desert
ALGERIA
Taoudenni
Tessalit
MAURITANIA
MALI
Timbuktu
Goundam
Gao
Nioro du Sahel
Nara
Sokolo
Douentza
Hombori
Kayes
Mopti
NIGER
Bafoulabé
Bakoye R.
Niger R.
Bani R.
Ségou
San
Kita
L. de Manantali
Kati
Koulikoro
BAMAKO
Koutiala
BURKINA FASO
L. de Selingue
Bougouni
Sikasso
Baoulé R.
GUINEA
BENIN
TOGO
NIGERIA
GHANA
CÔTE D'IVOIRE
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INTRODUCTION

GENERAL INFORMATION AND METHODOLOGY USED FOR ASSESSING MALI

1. The assessment of the Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) regime in Mali was conducted on the basis of the Forty Recommendations of 2003 and the Nine Special Recommendations on the financing of terrorism drawn up in 2003 and 2001, respectively, by the Financial Action Task Force (FATF), and on the AML/CFT Methodology of 2004. The assessment was based on the laws, regulations, and other materials supplied by community institutions (in particular the Central Bank of West African States [BCEAO], the Banking Commission of the West African Economic and Monetary Union [BC-WAEMU] and the Interministerial Group for Action Against Money Laundering in West Africa [GIABA]) and by the national authorities of Mali, as well as the information gathered in the course of the country visit from Febuary 4 to 14, 2008. During its visit, the assessment team met with the managers and representatives of all the relevant government agencies and the private sector.

2. The assessment was conducted by an evaluation team from the World Bank. Participants in the assessment included Pierre-Laurent Chatain (financial expert and mission chief), Cédric Mousset (financial expert), Marilyne Goncalves (legal expert), Marianne Mathias (consultant and expert for questions on the financial intelligence unit), Navin Beekarry (expert from the IMF) and Thelma Ayamel (administrative assistant). The experts focused their analysis on the Malian AML mechanism, while also taking into account the regional and community framework of WAEMU with regard to anti-money laundering and combating the financing of terrorism. For this purpose, the team met the autorities of the Central Bank in Mali and Senegal, as well as the Banking Commission of UMOA located in Ivory Coast.

3. To this end, they analyzed the institutional framework, the laws and regulations relating to AML/CFT, regulations, guidelines, and other obligations, as well as the regulatory or other regime in force in Mali for combating money laundering and the financing of terrorism. The capacity, implementation, and effectiveness of all these mechanisms were assessed as well.

4. This report provides a summary of the AML/CFT measures in force in Mali as at the date of the on-site visit or immediately thereafter. It describes and analyzes those measures, and makes recommendations on how certain aspects of the system could be strengthened (see Table 2). It also sets out Mali's level of compliance with the FATF 40+9 Recommandations (see Table 1). The report was reprepared by the World Bank in the broader context of the Financial Sector Assessment Program (FSAP) for Mali. This report has already been submitted in November 2008 to the GIABA plenary session and is been recognized as a Mutual Assessment Report from the regional group.

SUMMARY OF ASSESSMENT

GENERAL INFORMATION

5. The institutional and political system of Mali takes the form of a democratic republic consisting of a President, a Prime Minister, and a unicameral National Assembly made up of 142 members elected for 5-year terms. From a demographic standpoint, Mali is characterized by the youth of its population (nearly half the people are under 15 years of age), a spatial distribution that is imbalanced between the North and the Center on the one hand, and the South on the other hand, where 90 percent of the population is concentrated, and finally by the magnitude of the migratory movements toward urban centers or abroad.

6. Moreover, the country is quite populated. In the United Nations Human Development Report 2007, Mali ranks 173rd out of the 177 countries analyzed. With a population of nearly 14 million, the territory covers nearly 1.2 million square kilometers and shares over 7,200 km of borders with seven countries (Algeria, Côte d'Ivoire, Burkina Faso, Guinea, Mauritania, Niger, and Senegal).

7. Mali is a member of the West African Economic and Monetary Union (WAEMU), which apart from Mali includes Benin, Burkina Faso, Côte d'Ivoire, Guinea-Bissau, Niger, Senegal and Togo. All these countries share a common currency, the CFA franc, which has a fixed parity with the euro that is guaranteed by France. Mali's economy is focused basically on agriculture, which employs 80 percent of the labor force. The industrial sector is underdeveloped and focused primarily on the processing of agricultural production. The country also has sizable gold resources, ranking it third among African producers. In addition, research on oil production is in progress.

8. The formal financial sector is underdeveloped in Mali, and dominated by the banks. The microfinance sector, and to a lesser extent the life insurance sector, are growing but remain modest in size, while activities involving management on behalf of third parties or the securities exchange are marginal.

9. The informal sector in Mali accounts for a substantial proportion of economic activity in the country, a characteristic shared by the other WAEMU Member States. In addition to the impact that this situation has on public finances in Mali, this weight of the informal sector — combined with the low degree of bank usage by the general public and the reticence of the local population as regards the banking system— is reflected in an extremely high share of fiat money and a preponderant recourse to the use of cash in economic transactions. While the BCEAO is seeking to promote scriptural money and putting in place a high-performance payments system at the regional level (and thereby developing recourse to payment cards), fiat money remains by and large the preferred payment and saving instrument in the country. Indeed, it is not unusual for a bank to have business customers withdraw or deposit tens of millions of CFA francs (tens of thousands of U.S. dollars) on a daily basis. Instruments and products promoting the anonymity of beneficiaries also exist (in particular bearer checks and life insurance savings products).

10. Along these lines, Mali has a system of informal cooperatives, taking in particular the form of the *tontine*. These solidarity mechanisms, which have been in place for many, many years, pose a dual risk from the money laundering standpoint: they parallel the formal financial system —sometimes to the detriment of the latter's development— and thus have the potential of recycling some criminal proceeds; they might also serve as a screen for identifying the origin of funds, imparting an appearance of legality to sometimes very substantial amounts of funds.

11. Although there is no official qualitative and quantitative estimate of money laundering in Mali, in the course of its discussions the mission learned that the country is highly exposed to

money laundering risk. In Bamako, for example, several major local banks recently detected suspicious transactions valued at over a million dollars.

12. In general, the criminal environment is characterized by sizable amounts of illegal trafficking and by a level of corruption that is perceived to be high. The territory of Mali, in particular the desert North, thus appears to be used extensively for various kinds of trafficking, in particular including drugs, human beings, and cigarettes. In this regard, Mali is directly affected by the increasing role of West Africa in the international drug trade and, more generally, by the growth of illegal trafficking in the region. Furthermore, Mali is ranked 118th (out of 180) in the 2007 classification of the perception of corruption prepared by Transparency International.

13. Terrorism and its financing are also a subject of increasing concern. The presence of the Algerian Al-Qaida group in the Islamic Maghreb has been attested to in the North of the country, where it is said to have established bases. Armed combat between this group and the Malian armed forces or Tuareg groups has been reported in this area. This group would appear to be financed in particular by taking part in the trafficking in the Sahelian zone of the country or, doubtless to a lesser extent, by the collection of ransoms following the kidnapping of Western tourists in the Sahelian zone (in particular including parts of Algeria, Mauritania, and Niger). This situation is aggravated by the vastness of the border areas, which are difficult to supervise. The human and material resources means available to the authorities for controlling these parts of the territory appear to be quite modest (approximately 5,000 police officers, 1,200 customs officers, etc.).

LEGAL SYSTEMS AND RELATED INSTITUTIONAL MEASURES

14. The Malian anti-money laundering system is determined by Law No. 06-066 of December 29, 2006, which transposes into national law Community Directive 07/2002 adopted by the WAEMU Council of Ministers on September 19th, 2002. Malian law also reflects the provisions of the Uniform Act adopted on March 20, 2003 by the Council of Ministers of the Union (CMU), on the proposal of the BCEAO, in order to facilitate the adoption of AML laws at the national level and thereby ensure standardization of the general principles throughout the entire zone.

15. Law No. 06-066 defines money laundering and specifies the coercive measures applicable to individuals and legal persons guilty of the offense of money laundering. It also provides for a mechanism for the confiscation of the proceeds from the offense of money laundering as well as protective measures (freezing and seizures). Moreover, the law defines the preventive and operational framework, in particular that of CENTIF, as well as the legal framework for international cooperation (mutual legal assistance and extradition).

16. The Malian legal mechanism has a number of shortomings, however. It does not provide for terrorist financing as a predicate offense of laundering and also fails to further criminalize illegal trafficking in migrants. Owing to the lack of statistical data, there are also no mechanisms for regularly assessing the effectiveness of Law No. 06-066. Beyond the strictly legal aspects, the mission found that in practice, most of the parties met with had a limited understanding of the laundering of proceeds from drug trafficking (as distinguished from the other predicate offenses defined by the FATF, in particular corruption). More generally, the mission found a significant lack of familiarity with the law, both on the part of the authorities responsible for its implementation and that of the private sector.

17. Law No. 06-066 has not been implemented, given that no money laundering case has been handled by the criminal prosecution authorities. It bears noting in this respect that Mali is the next-to-last WAEMU country to have enacted an AML law, four years after the Community Directive. It is therefore urgent that the mechanisms envisaged be instituted so as to make the national anti-money laudering system fully operational as soon as possible.

18. As regards the financing of terrorism, the Malian legal mechanism is nonexistent for lack of a specific law during the mission[1]. Admittedly, the WAEMU Council of Ministers did adopt a directive on July 4, 2007 which lays out the main lines of a future preventive and repressive approach as regards CFT. This text, however, has many shortcomings. The Malian authorities note in this regard they are unable to enact the necessary legal instruments owing to the lack of a Uniform Law on transposition into national legal systems (such as the one on AML adopted in 2003 by the CMU). This approach is not feasible for several reasons: first, the directive clearly states that the countries have six months to implement it, and it is therefore mandatory for Member States; more importantly, as a member of the United Nations (and not only WAEMU), Mali must comply with its international obligations. Yet Mali has yet to establish a national legal framework for combating the financing of terrorism.

19. Only the BCEAO has enacted an instruction (2007/RB) relating to AML for the financial institutions of the subregion, doing so on July 2, 2007. This text reiterates the provisions relating to the obligations of vigilance on the part of financial institutions, in particular the rules regarding identification, record-keeping, and the detection of suspicious transactions as laid out in international standards. However, the instruction does not establish sufficient guidelines to help financial institutions to apply and comply with their AML obligations.

20. The organization of the legal system with regard to the investigation and prosecution of crimes and offenses has several weaknesses. Mali has no clearly articulated and structured criminal policy as regards anti-money laundering, although the necessary judicial apparatus does exist. This results in particular in the complete absence of investigations and prosecutions in this area. It would appear in this regard that the passage of the AML law of 2006 should be interpreted more as a desire to conform to a Community provision than as the reflection of a deliberate policy entered into voluntarily to fight financial crime. It is important in this connection that the passage of the 2006 law result *de facto* in the definition of an adequate repressive policy and that the corresponding resources be mobilized. Greater attention must be paid to proper linkages between the anti-corruption strategies of the Office of the Verificateur General as well as other institutions responsible for the surpervision of public administration (Auditor General of Public Services, Inspection of Finances and other inspection bodies and ministerial departments) and the anti-money laundering initiatives and strategies, so as to build mutually beneficial synergies between them.

21. While the investigative units (police force, *Gendarmerie*, customs) have an adequate legal arsenal and sufficient investigative tools for combatting drug trafficking, this does not hold true in the case of AML. A major training effort must also be engaged in order to strengthen the technical capacity of the personnel involved in the fight against ML/FT, and the operational resources should be increased. The promotion of enhanced coordination and cooperation among the various units (police force, customs, FIU, and justice) is also highly desirable.

22. The judiciary is comprised of specialized economic and financial units; however, for lack of suitable training, magistrates lack the expertise necessary toinvestigate and prosecute ML offences or cases involving financial criminality generally. The lack of resources compromises judiciary action and undermines its authority.

23. The freezing, seizure, and confiscation arrangements for infringements related to money laundering have never been implemented. In respect of FT, Community Regulation No. 14/2002/CM/UEMOA sets up a mechanism for freezing the funds and other financial resources pursuant to United Nations Security Council Resolutions 1373 and 1267. While this Regulation, directly applicable to the States of the zone, constitutes a major first step for Mali toward meeting

1 Mali adoted law no. 08-025 of July 23, 2008 on terrorism and its financing. This constitutes an encouraging and significant step forward. However, the assessors cannot take into account this law in their analysis as the passing of the law took place 2 months after the end of the onsite mission.

its international obligations, it is still incomplete and, as it now stands, does not permit the freezing of all funds and other assets held by the individuals and entities identified by the Security Council. In addition, the regulation targets only the lists drawn up by the Security Council and does not establish procedures for reaching decisions on the lists submitted by non-Member States.

24. The absence of an operational CENTIF constitutes a major handicap to AML implementation**.** At the time of the mission, Mali had not yet created its financial intelligence unit (FIU), nor had it named its members[2]. Some consideration was given at the level of the ministry in charge (Ministry of Finance) to budgetary resources, premises, and the positioning of CENTIF members vis-a-vis their administrations of origin. Discussions revealed that the budgetary resources under consideration by the Directorate-General of the Treasury appear to be insufficient to enable the future CENTIF to carry out its functions fully independently and efficiently. In this respect, the authorities make reference to the provisions of the uniform law, transposed into domestic law, which provide that CENTIF resources come in particular from contributions made by the State, WAEMU institutions, and other development partners.

25. The absence of CENTIF also seriously compromises the implementation of preventive actions in all the sectors concerned. The majority of the mission's interlocutors, in particular the banking sector, underlined the difficulty they experience in fulfilling their obligations. Certain Malian banks have already identified suspicious transactions, but in the absence of CENTIF they reported their suspicions to the BCEAO, which has no capacity to pursue such matters. This situation creates legal insecurity for those subject to the law and generates a loss of confidence in the institutions that are supposed to be supporting them in the effort to combat financial crime.

26. While the establishment of CENTIF suffers from a lack of voluntarism at the national level, the same holds true at the level of the regional authorities which failed to impart the impetus necessary to promote the implementation of CENTIF in the zone. In accordance with the legal provisions, the BCEAO works at the local level through its national agency, the CENTIF secretariat. At the Community level, it is also charged with promoting cooperation among national CENTIF and, to this end, coordinating their actions at the regional level. As regards AML, the mission found that the role played by the BCEAO so far appears to be quite modest.

27. Under these circumstances, it appears paramount that CENTIF:

28. ➢ be established as soon as possible and be provided with trained and highly capable human resources;

29. ➢ have sufficient and sustained financial resources so as to guarantee its role and the independence of its members;

30. ➢ draw up a code of conduct including the obligations of integrity and confidentiality for its members, and internal regulations that define its operating procedures and the rules of confidentiality and protection of information;

31. ➢ establish a standardized reporting form of suspicious transaction report and inform the reporting entities on the manner of reporting their suspicions; and finally

32. ➢ build a network of correspondents within various public and private offices.

33. The national authorities have not established any statistical instrument on money-laundering offenses as regards any of the components concerned (prevention, detection, repression, international cooperation). It is important that the authorities quickly obtain the

2 Several months after the onsite mission, the mission was informed of several improvements. Mali carried out the nomination by decree of all the members of the CENTIF. It was also envisaged to include in the next State budget of 2009 an amount of 400 million CFA for the CENTIF. Lastly, a standardized form of suspicious transaction reports was made.

statistical tools necessary to monitor AML activity in all of its aspects and measure the effectiveness of the actions implemented at the national level.

PREVENTIVE MEASURES—FINANCIAL INSTITUTIONS

34. The implementation of preventive AML measures by financial institutions remains quite rudimentary. The due diligence obligations introduced for financial institutions by the Malian laws and regulations are quite incomplete and frequently vague. This lack of clarity makes it extremely difficult for those subject to the provisions to assume ownership of them, as these topics are new and the guidelines provided by both national and regional authorities are minimal. In particular, the mission noted the excessively limited 'know your customer' obligations (in particular with regard to beneficial owners), as well as the absence of the need to obtain information about the purpose and nature of the business relationship, the need to exercise constant due diligence, and enhanced vigilance measures (in particular for politically exposed persons), obligations relating to existing customers, and specific measures for correspondent banking measures or wire transfers.

35. The provisions applicable as regards reporting suspicions are too partial. The existence of two completely independent mechanisms for reporting suspicions, one in respect of combating drug trafficking, the other under the AML law, is a noteworthy flaw, although theoretical owing to the lack of implementation of the relevant provisions of any of these two laws. The lack of clarity of the reporting requirements envisaged by Law No. 06-066 is also harmful given that these provisions are completely new for most institutions. Among the institutions met with by the mission, only the banks were aware of these reporting requirements. The fact that two banks had already identified transactions which they regarded as suspicious and had sought to report them to the authorities is nevertheless a positive sign.

36. The knowledge of obligations as regards AML is weak within the banking sector where, for example, only some banks have copies of the texts in force. It is nonexistent in the other components of the financial sector (microfinance and insurance institutions in particular). The texts have not been communicated to the persons subject to them, and no public awareness campaign has yet been conducted in Mali. In general, the obligations as regards AML are frequently poorly understood (including by some banks), owing in particular to an extremely restrictive interpretation of the concept of money laundering, often reduced to the proceeds from drug trafficking (whereas the proceeds from any crime or offense are covered by Law No. 06-066). Only a few banks have effectively begun to assume ownership of the obligations as regards AML.

37. While the national and Community texts make financial institutions subject to a general obligation to institute internal AML policies and procedures, the same does not hold true for the other financial institutions, in particular in the securities exchange and insurance sectors.

38. Activities relating to funds transfers through the banks have expanded rapidly since 2007. Many banks have effectively delegated the receipt and even issuance of Western Union-type funds transfers to sub-agents. Admittedly, training activities have been organized by WU for the benefit of its partners, including as regards AML. However, nothing makes it possible to say that the banks check that their sub-agents are complying with preventive obligations.

39. Under these conditions, it appears urgent for the authorities to sensitize all parties involved in AML to the existing obligations in this area. This initially involves providing all of the texts in force to the various persons subject to them, as well as public awareness campaigns to ensure a common understanding of the objectives and provisions of these texts. Furthermore, it is necessary to complete the arrangements in place in order to create complete and clear due diligence obligations and to integrate the CFT dimension into these obligations. It is also

important for the Malian authorities to intervene with the qualified regional authorities, through national channels (the DNA for CIMA and the Malian representative at the CREMPF), to alert them to the urgency of adopting sectoral regulations as regards internal control of money laundering for insurance companies and stakeholders in the securities exchange sector.

40. As regards the supervision of financial institutions, Mali does not have any autonomous powers, except however for the supervision of micro finance structures. In accordance with the institutional organization in force within the WAEMU, it is the Banking Commission that has responsibility for conducting oversight over observance by financial institutions of their AML/CFT obligations. To this end, it has the power to impose administrative or disciplinary sanctions, including as regards violations of AML/CFT rules. This being so, the BC has played a reduced role as regards the prudential supervision of money laundering. On-site supervisions have been carried out in Mali, but their depth remains insufficient as regards AML. It appears urgent that the BC strengthen its controls, ensure that its staff are adequately and thoroughly trained on AML/CFT, and that they be equipped with suitable methodological tools. Furthermore, it would be advisable to bolster the Banking Commission's sanctioning capacities by enabling it to impose financial penalties on banks in violation of their AML/CFT obligations.

41. The regulation and targeted oversight of microfinance companies or decentralized financial institutions (DFIs) are handled by an *ad hoc* unit of the Ministry of Finance. The human resources of this unit are clearly inadequate, despite the support provided by the BCEAO. In addition, the prudential supervision carried out is directed strictly toward compliance with the prudential management ratios; the approach toward money laundering risk has yet to be incorporated. A campaign to enhance DFI awareness of AML/CFT risks and their preventive obligations appears to be necessary.

42. In the insurance and financial markets sectors, the conditions of AML supervision appear insufficient. CIMA suffers from seriously inadequate resources, and the conditions for coordination between its secretariat and national delegations are unclear. In the financial markets sector, the staff of the CREPMF are not adequately trained on money laundering issues and the extent of the investigatory powers of its inspectors is not clearly defined, in particular as regards its authority to access required documents. While investigations do take place on-site with market players, none have related specifically to AML.

43. The physical transfer of funds is a strong constraint in the WAEMU area, and in Mali in particular. The existence of sizable diasporas, the preeminence of cash in the economy, and the lack of resources for monitoring the internal and external borders of the zone make it difficult to apply the exchange controls. Moreover, the Community mechanism in force is not consistent with the international standards required in this regard, and does not make it possible to prevent money laundering or identify illicit financial flows.

44. Foreign exchange dealing is very active in Mali and proceeds through two main channels. The formal channel is that of the banks and authorized non-electronic exchange brokers. The latter have been the subject of audit missions conducted jointly by the Malian Ministry of Finance and the BCEAO. However, these controls covered only the observance of exchange regulations and not conformity with AML norms.

45. Informal foreign exchange dealing is also a source of concern. The networks operate primarily between Mali and Europe, and with other African countries, in particular in West Africa. These networks, which have all the characteristics of *hawalas,* are used by the Malian diaspora, which finds, through a multitude of clandestine operators, convenient, rapid, and inexpensive ways to transfer funds from Mali to and from abroad. The mission noted that the national authorities have not taken any initiatives aimed at scaling back this informal sector. Some local banks even go so far as to pay police officers to discourage informal traders from working outside their doors. Admittedly, the regional authorities have made significant efforts to

promote the use of scriptural means of payment and new payment systems. This said, these efforts have not been reflected at the national level by a reduction in informal trading.

PREVENTIVE MEASURES—DESIGNATED NONFINANCIAL BUSINESSES AND PROFESSIONS

46. There has been no dissemination and introduction of preventive standards in the DNFBP sector. Law No. 06-066 of December 29, 2006 incorporates designated nonfinancial professions as defined by the GAFI in the fight plan against money laundering, except for the service providers with the companies and trusts. It defines their obligations of vigilance and declaration of suspicions, with a particular mention for the casinos and gaming establishments. The gaps identified for the non-banking financial professions apply also mainly to the companies and professions not financially related. Broad weaknesses are to be noted: 'know your customer' measures, identifying occasional customers, identifying those with economic entitlements, and ten-year record-keeping, do not apply to DNFBPs; these professions are not subject to the requirement of introducing internal policies and procedures adapted to their activities.

47. Moreover, the implementation of the legislation is ineffective. No public awareness effort has been carried out for these professions. Their supervisory authorities or self-regulation organizations have yet to take any action —both the professionals themselves and their self-regulation authorities seem to be unfamiliar with the Malian AML arrangements. Moreover, generally regulatory mechanisms for these professions are poorly implemented or even nonexistent (as in the case of real estate agents), creating an environment that is hardly conducive to the effective and efficient implementation of the legislative approach.

48. In addition, the scope of application of the law includes other non-designated financial professions, such as those drawing business to the financial institutions, art dealers (masks and paintings in particular), money couriers, gaming establishments and national lotteries, travel agencies, and nongovernmental organizations.

LEGAL PERSONS AND ARRANGEMENTS, AND NONPROFIT ORGANIZATIONS

49. Mali is a member of OHADA, as a result of which applicable commercial law is largely of regional inspiration. The Uniform Act Relating to General Commercial Law (AUDCG) and the Uniform Act Relating to Commercial Companies and Economic Interest Groups (AUSCGIE) establish the legal modalities for commercial companies and the conditions for their creation/registration in the WAEMU Member States. Article 27 of the AUDCG requires that the the companies and other legal persons referred to in the Uniform Act Relating to Commercial Companies and Economic Interest Groups be registered, within a month of their founding, in the Commercial and Real Property Registry of the jurisdiction in which their head office is located.

50. Compliance with these obligations in practice, and the effective updating of the necessary information constitute challenges for Mali, both as regards the reliability of the information recorded (according to the statements of several interlocutors of the mission, false documents are widespread in Mali) and as regards company registration. Indeed, the extremely important share of the informal economy in Mali makes it impossible *de facto* to obtain adequate, relevant and up-to-date information on economic operators.

NONPROFIT ORGANIZATIONS

51. AML Law No. 06-066 subjects nonprofit organizations to obligations in respect of the prevention and detection of money laundering. To this end, these organizations are required to observe certain due diligence obligations, such as reporting suspicious transactions to CENTIF. In

addition, the CFT Directive also requires that States impose specific due diligence obligations on such organizations. Among others, these measures include the listing of all nonprofit organizations in a register set up by the supervisory authority, and obliging these organizations to record all donations received, identifying the donor and making this register available to CENTIF and the competent authorities.

52. Both in respect of money laundering and combating the financing of terrorism, the obligations of these organizations are still virtual owing to the lack of implementation of Law No. 06-066 and the failure to transpose the CFT Directive into the Malian legal order.

NATIONAL AND INTERNATIONAL COOPERATION

53. The lack of implementation of Law No. 06-066 of December 2006 makes it impossible in practice for cooperation and coordination at the national level between the authorities investigating and prosecuring offenses related to money laundering, and related activities and operations. The law does not contemplate a mechanism at the national level for ensuring cooperation and coordination between the authorities responsible for criminal investigation and prosecution and those responsible for general policies against money laundering, and no mechanism has been established for this purpose.

54. As regards AML, the international cooperation between Mali and other countries is defined on the basis of various international instruments ratified by Mali. The provisions of the United Nations Convention against Illicit Traffic Narcotic Drugs and Psychotropic Substances (1988) and the United Nations Convention Against Transnational Organized Crime adopted in Palermo (2000) have been incorporated into the national legislation, but do not take up all of the obligations deriving therefrom. The lack of any legal provision criminalizing the financing of terrorism (FT) as well as the shortcomings identified by the mission as regards implementation of UN resolutions 1267 and 1373 on FT make international cooperation on this matter impossible.

55. International cooperation on anti-money laundering is nonexistent despite the 2006 law, which provides for an elaborate mechanism for mutual legal assistance and extradition. The law envisages a broad range of mutual legal assistance measures with regard to investigation and prosecution efforts relating to money laundering. International cooperation on investigation and prosectution of money laundering is absent for want of implementation of the law.

OTHER SUBJECTS

56. The situation is particularly fragile as regards corruption and the regulatory environment of the private sector, as nearly two thirds of all countries in the world have better rankings than Mali according to an analysis by the World Bank. It is relatively better off as regards political stability, the rule of law, and citizen participation in the selection of those governing, as Mali has a midpoint position worldwide in these areas.

57. The amount of corruption does not appear to have subsided following the creation of the Auditor General's Office (BVG) in 2003. Since its first listing in 2003 in the perception of corruption index prepared annually by Transparency International, both the relative and absolute rankings of Mali have declined, despite the objectives for improvement in this area set by the Malian government. In the 2007 rankings, Mali thus places 118th out of 180 countries, with an

average score of 2.7 out of 10 (these figures were respectively 78th out of 133 countries and a score of 3 in 2003).

58. The BVG has substantial resources, but its action remains too isolated to be fully effective, in particular because of the limited legal follow-up to its most serious findings. It employs more than 100 people who receive compensation, which makes it possible to attract experienced persons from the private sector. The BVG's efforts have shed light on sizable fraud and irregularities, which sometimes take a long time to be regularized and only rarely lead to legal prosecutions.

59. The Malian legal apparatus faces many challenges that strongly affect its effectiveness and the proper application of court decisions. The insufficiency of financial, human, and technical resources and judge training previously cited are compounded by a level of corruption perceived to be high. This situation constitutes a major obstacle to effective AML implementation. It is important that fighting financial crime be part and parcel of the broader framework of promoting good governance and that those vested with authority have independence and the necessary resources.

60. No money laundering cases have been treated in Mali, no device of collection of relevant information is at the time being in place. Since the financing of terrorism was not criminalized at the time of the assessment, Mali did not set up a system to gather relevant information on TF. Because of its non-operationnality, no statistics are available relative to the activities of the CENTIF. There is no device in place to collect relevant statistics related to the declaration of suspicious transactions and the other declarations. With regards to declaration or crossborder communication, Mali is unable to quantify the entries and regular exits of capital flows, and does not have statistics on law enforcement Lastly, there are no statistics on the number of sanctions handed down by the supervisors and law enforcement authorities in the area of AML/CFT.

61. The unreliability of identity documents must also be highlighted. The mission learned that an indentity card could be issued in Mali on the basis of testimony by two persons, without any verification of civil status. Much fraud could be identified in this area, in particular to the benefit of citizens of non-WAEMU countries (Nigerians in particular). Presentation of an identity document indicating nationality in a WAEMU Member State makes it unnecessary to obtain an entry visa for Mali. This enables those concerned to continue their travel, without meeting any other formalities, toward the Maghreb States, thereby facilitating clandestine migration toward Europe.

62. Mining activity and the receipts generated by it are also sources of concern in respect of AML, as noted by several persons who spoke with the mission. While the industrial sector appears to be properly regulated and supervised by the Ministry of Mines and Energy, the same does not appear to be true for the gold washing sector, where "unofficial" rules prevail. The mission was told that the control of AML risk in the exposed gold sector is nonexistent.

63. In conclusion, the legal and operational frameworks for AML in Mali have gaps, and have yet to be implementated. There is no CFT framework at all. Mali is called upon to engage in a range of reforms as rapidly as possible, to bring itself into conformity with international AML/CFT standards. To this end, the following actions should be taken in the next 12 months:

- At the level of the Malian public authorities, it is recommended that the AML mechanism set forth in Law No. 06-066 be instituted as soon as possible. This involves giving priority first to (i) the creation of CENTIF, (ii) the dissemination of AML standards in all sectors concerned, along with awareness training for all parties involved, and (iii) strengthened cooperation among all the various State agencies. Training activities must also be conducted for police personnel and magistrates specialized in combating financial crime. The authorities should also supplement the AML legal framework, in particular by strengthening identification and due diligence requirements, which remain limited, especially as regards PEPs. As

regards CFT, Mali must without delay adopt a specific law without waiting for the Community uniform law.

- In the financial sector in the broad sense, the preventive and oversight standards must be applied and their implementation scrutinized by the competent authorities. Financial institutions must enhance the awareness of all their staff to the risk of AML/CFT.

- An awareness campaign must also be carried for DNFBPs so that the preventive and risk management standards are implemented, in particular in the casino sector and among precious metal dealers and attorneys.

DETAILED ASSESSMENT REPORT

GENERAL

GENERAL INFORMATION ON MALI

64. A WAEMU Member State, Mali is a West African country that has common borders with Mauritania and Algeria to the north, Niger to the east, Burkina Faso and Côte d'Ivoire to the south, and Guinea to the southwest and Senegal to the west. With an area of 1,241,238 square kilometers, Mali is the largest State of West Africa after Niger. It is landlocked inside West Africa between the Tropic of Cancer and the Equator (see map at the front of the report). Its highly variable population density ranges from 90 inhabitants/km² in the Niger central delta to less than 5 inhabitants /km² in the Saharan area in the north. In addition to the capital city of Bamako, the major cities are Kayes, Ségou, Mopti, Sikasso, Koulikoro, Kidal, Gao, and Timbuktu.

65. Economic activity is largely confined to the river area irrigated by the Niger river. Approximately 10 percent its people are nomadic, and some 80 percent work in agriculture or fishing. Industrial activity is concentrated around agricultural activities.[3] Multinational firms developed gold prospecting operations in 1996-1998, and the government projects that Mali will become a major gold exporter in the sub-Saharan region. It is currently the world's third largest exporter (see summary supra), behind Ghana and South Africa. Gold is the country's primary export, followed by cotton and cattle.

66. Immigration also constitutes a very important revenue channel. Approximately 4 million Malians live outside its borders, 3 million of them elsewhere in Africa.

67. Mali is a republic with a unicameral parliament. The executive branch is represented by the president and his government. The legislative branch is the National Assembly. The highest judicial authority is the Supreme Court.

GENERAL SITUATION REGARDING MONEY LAUNDERING AND THE FINANCING OF TERRORISM

68. In the absence of centralized data collection in Mali on criminality, terrorism, money laundering, and the financing of terrorism, the mission endeavored to assess these phenomena on the basis of the rare national data available as well as existing public information on Mali and West Africa.

69. **Corruption is perceived to be high**. Mali ranks 118th (out of 180) in the 2007 classification of the perception of corruption prepared by Transparency International.

70. The criminal environment is characterized by significant illicit trafficking. The territory of Mali is extensively used for various kinds of trafficking, in particular including drugs, human beings, cigarettes, and arms. The North of the country is particularly difficult to control owing to is geographical size, but also to the tensions which regularly bring the Malian authorities into opposition with certain Tuaregs groups. Mali is, moreover, directly affected by the increasing involvement of West Africa in international drug trafficking, and, more generally, by the growth in illicit trafficking throughout the region.

3 See Wikipedia.

71. According to the United Nations Office on Drugs and Crime (UNODC), West Africa has become a transit point for the global drug traffic (more than a quarter of the cocaine consumed in Europe transits West Africa). Traffic in human beings also affects the subregion, and this can be (i) national, international, or subregional, and (ii) relate to forced labor (including forced begging) or prostitution. The subregion is also used as a transit point for clandestine migrants bound for Europe from other countries.

72. West Africa appears, indeed, particularly vulnerable to criminal phenomena in the context of increased openness to international trade related to globalization. The development of criminality is indeed facilitated by (i) the existence of past or present armed conflicts in the subregion (Côte d'Ivoire) or in its nearby neighbors;[4] (II) the weakness of States (in particular with regard to crime control and repression), owing in particular to a shortage of resources and corruption; (iii) poverty, which facilitates recruitment by criminal groups (drug runners in particular); and (iv) the size of the informal sector and the widespread use of cash as a means of payment.

73. **There are still no qualitative or quantitative estimates of money laundering in Mali.** Some financial institutions that the mission met with have nevertheless reported their suspicions relative to certain transactions (large transfers received by two banks —see comments on recommendation 13— and an attempt by a Senegalese national to make a large cash deposit with a microfinance institution, SFD). It is also likely that the informal financial sector is used for money laundering (import and export of funds, savings in foreign exchange) and that the real estate sector can be used to invest funds of criminal origin.

74. **As regards terrorism**, the establishment of bases of the Algerian group Al-Qaida in the Islamic Maghreb (AQIM), formerly the GSPC,[5] has been attested to in the North of Mali. Fighting between members of AQIM, on the one hand, and governmental forces or Tuareg groups, on the other hand, has also beem reported, and the releases of Western hostages have taken place in this zone (in 2003 in particular).[6] Mali also takes part in the "Trans-Sahara Counter-Terrorism initiative," a program conducted by the United States which is aimed at training and equipping the Malian armed forces (of approximately 15,000 men) so that they can reinforce their control of the borders and prevent the infiltrations of terrorists.

75. AQIM is reportedly financed by directly participation in trafficking as well as by the ransoms collected following kidnappings of Western hostages. In a 2005 report,[7] the International Crisis Group (ICG) mentions as financing sources (i) the collection of ransoms following the kidnapping of Western tourists (part of a ransom of EUR 5 million was paid to obtain the release in Mali of German tourists kidnapped in 2003), as well as (ii) its involvement in the trafficking of cigarettes between West Africa and Europe via Algeria (Marlboro cigarettes sold for CFAF 250 in Burkina Faso are resold in Algeria for CFAF 850).

OVERVIEW OF THE FINANCIAL SECTOR

4 Availability of weapons for the criminal groups or to be trafficked, former combatants becoming criminals, weakening of States owing to conflicts, etc.

5 Dissenting members of the GIA formed the Salafist Group for Call and Combat (GSPC) in September 1998. The group aligned itself with Al-Qaida in January 2007 and was then renamed Al-Qaida in the Islamic Maghreb.

6 In March 2008, when this report was being drafted, two Austrian hostages were said to have been held by AQIM in the North of Mali

7 Islamist Terrorism in the Dissenting members of the GIA formed the Salafist Group for Call and Combat (GSPC) in September 1998. The group aligned itself with Al-Qaida in January 2007 and was then renamed Al-Qaida in the Islamic Maghreb.

7 In March 2008, when this report was being drafted, two Austrian hostages were said to have been held by AQIM in the North of Mali

7 Islamist Terrorism in the Sahel; Fact or Fiction? Africa Report No. 92, March 1995.

76. The formal financial sector is underdeveloped in Mali and is dominated by the banks. Financial intermediation is thus only on the order of 20 percent of GDP at the end of 2006. As of that time, furthermore Malian banks mobilized nearly 90 percent of the assets of the formal financial sector.

Formal financial sector in Mali

-as at 12/ 31//2007	Number of entities
- Banks	13
- Financial establishments	4
- Financial services of the Post office	1
- « Caisse des dépôts et consignations :[8]	0[9]
- Microfinance institutions (decentralized financial institutions "SFD")*	538
- Breaux de change	65
- Insurance and reinsurance companies	7
- Insurance and reinsurance brokers	28 (250 for the WAEMU as a whole)
- Regional stock exchange** (BRVM)	0
- Central securities depository and Securities Settlement Bank**	0
- Broker (SGI)	1
- Asset manager ** (SGP)	0

8 The mission was unable to obtain confirmation of the existence of a Caisse des dépôts et consignations in Mali, although the institution is cited in AML Law No. 06-066.

- Organizations for collective investments in securities** (OPCVM)	0
- Fixed capital investment firms**	0
- National Directorate of the BCEAO	1
- Securities or fund transfer firms***	NA
- Pension funds	2
- Public treasury	1
- Establishments issuing electronic money	0
- Establishments distributing electronic money	0
- Electronic money establishments	0
-Deposits and consignment funds	1

Source: World Bank, BCEAO, IMF.

*Savings and loan mutual associations and cooperatives as well as structures or organizations not established in mutualist or cooperative form and whose purposes is the gathering of savings and/or granting of loans.

**Financial entitiess mentioned in Mali's AML Law No. 06-066.

***Activity not subject to registration or licensing.

(i) Banks and financial establishments

77. The banking system[10] is relatively narrow but has some diversity in terms of shareholding as well as specialization:

10 The banking law draws a distinction between banks and specialized financial establishments, and the latter may engage only in a limited range of operations. Banks are thus defined as enterprises customarily engaged in accepting funds by check or by transfers which they use, for their own account or the account of others, in credit or investment operations (Article 3), whereas financial establishments are individuals or legal persons other than banks which customarily engage, for their own account, in credit operations, sales on credit, or foreign exchange, and which customarily receive funds that they use for their own account in investment operations, or which customarily serve as intermediaries as commission agents, brokers, or another capacity in all or part of such operations (Article 4).

- a growing but still low number of institutions since 2002 (13 banks and 4 financial establishments);

- the presence alongside the 9 universal banks of four specialized banks (in agriculture, housing, and SFDs[11]) and of four specialized financial esstablishments (in financing sales on credit, lease purchases, investment capital, and mortgage guarantees). The banks specialized in agriculture and housing control 22 percent of bank assets[12] as at the end of 2006;

- a great diversity of shareholding:

- a frequently scattered shareholding pattern, with individuals able to be included as minority shareholders;
- control by Malian public institutions of four of the principal banks of the country (with a significant role on the part of the BCEAO and the WADB[13] in two of them);
- an important presence of branches of foreign banks both in number (6 out of 13) and in terms of activities (nearly a quarter of bank assets at the end of 2006): (i) three subsidiaries of subregional groups (Bank of Africa, Ecobank, and *Banque Atlantique*) and (ii) 3 subsidiaries of banking groups established in France, Libya, and Mauritania, respectively;

- domination by the first six banks (85 percent of total bank assets at the end of 2006);

- banks of modest size: as of December 31, 2006, only three banks had a total balance sheet of over CFAF 125 billion (that is, about USD 275 million) or employed over 200 people (the whole of the banking system employing 1,770 people as of the same date);

- the profitability of engaging in the banking system is average and varies from one institution to the next (average operating ratio of 71.3 percent at end-2006).

78. **Banking intermediation is weak and establishments are located primarily in the principal urban centers**. At the end of 2006, total bank assets represented CFAF 1,070 billion (approximately USD 2.4 billion) and less than 20 percent of GDP. As of the same date, less than 5 percent of Malians had bank accounts, despite an obligation to open an account for tradesmen and the existence of the right to an account for private individuals.[14] At end-2006, the banking network of 192 points of sale (90 of them for the only bank specialized in housing) was primarily established in Mali's three main cities (2/3 of the facilities), whereas, according to the United Nations, more than two-thirds of the population lived in rural areas in 2001.

79. The supply of banking services is not very broad and relatively simple:

- invetment products are limited largely to sight deposits and time deposits, bank certificates, and the savings accounts under a special regime. Customers who are nonresident Malians account for a significant proportion of the resources of some banks;

11 Decentralized Financial Institutions (microfinance institutions). The two banks concerned essentially serve the role of facilitating the financing of DFI activities.

12 For the remainder of the report, the term "bank assets" shall be deemed to group together the assets of banks and the assets of financial establishments.

13 Central Bank of West African States and West African Development Bank.

14 Regulation No. 15/2002/CM of September 19, 2002 on the payment systems of WAEMU Member States states that (i) any tradesman is required to open an account with a bank or with the postal finance services (Article 9) and (ii) that any individual or legal person established in one of the WAEMU Member States and having a regular income is entitled to open an account with a bank or with the postal finance services (Article 8).

- lending is focused mainly on businesses and to a lesser extent on the private individuals. Despite the beginnings of a diversification toward SMEs, the banks primarily extend credit to large companies active in the cotton, energy, mining, and import-export sectors. These credits includes in particular crop credits, documentary credits, and structured financing;

- cash remains the privileged means of payment for withdrawals as well as deposits. It is not unusual for a business person to withdraw or deposit daily tens of millions of CFA francs (tens of thousands of U.S. dollars). The other means of payment offered are checks (freely endorsable or not[15]), transfers, payment cards (national, regional or international), a recent phenomenon, as well as electronic money and the electronic wallet, introduced by a Community Regulation in 2002,[16] but still very little developed. Automatic teller machines (ATMs) and point of payment terminals (PPTs) exist in the main cities;

- foreign exchange transactions are a significant source of income for some institutions;[17]

- operations not entailing physical contacts with customers are on the rise (see also operations with nonresidents below). Banking activities on the Internet are in the process of being developed, not only for account queries but also for performing transactions (transfers in particular). According to the persons the mission spoke with, it is not yet possible in Mali to open accounts by Internet without physical contact with the customer. Automated teller machines (ATMs) exist in the main cities.

80. **Malian banks are largely open to parties abroad.** They have banking correspondents abroad (WAEMU, European Union, the United States, Saudi Arabia, China, etc.). In addition, certain establishments have entered into partnerships with foreign banks to facilitate extending services to their customers or have opened representative offices abroad (France and Gabon in particular). However, there are no branches of Malian banks abroad.

81. **The banks seek to attract resources from the nonresident Malian community**, in particular by (i) approaching them to open accounts and (ii) broadening the range of the funds transfer services they offer. According to the information gathered by the mission, nonresident Malians are approached by business 'introducers' independent of the banks. These individuals receive a commission for each new customer opening an account in Mali. This occurs after receipt by the bank of a copy of the identification documents transmitted by the business

15 In its 2006 report on payment systems in the WAEMU, the BCEAO indicates that in the sub-region, "the check represents, after fiat money, the means of payment most used in economic transactions. Material errors in the completion of check forms, the non-conformity of signatures, forgery, and especially the absence sufficient funds, very often give rise to fears on the part of check recipients. These phenomena have reinforced the general public's aversion to checks.

"Checks are quite often used as an instrument for withdrawing cash and bank teller windows, thus limiting their impact on currency in circulation. This situation is compounded by the issuance of open checks allowing the withdrawal of cash at bank teller windows by persons without accounts."

16 Regulation No. 15/2002/CM of September 19th, 2002 provides that electronic money can be issued only by banks, the Postal finance services, the public treasuries, and SFDs, as well as by any other organization authorized by law to engage in the activities of issuing electronic money (Article 131). This regulation also defines electronic plastic money as a money value representing a claim on the issuer which is stored on an electronic or comparable medium, issued against the handing-over of funds in an amount whose value is not less than the money value issued and accepted as a means of payment by companies other than the issuer (Article 1). The electronic wallet is defined as a prepaid payment card, i.e. one on which a particular amount of money has been loaded, making it possible to carry out electronic payments in limited amounts (Article 1).

17 Article 2 of the directive on the external financial relations of the WAEMU Member States, annexed to Regulation No. 09/2001/CM/WAEMU, stipulates that only the BCEAO, the Post office, an authorized intermediary bank counsel, or authorized non-electronic exchange broker may engage in foreign exchange transactions.

facilitator, or, in some cases, after receipt of a transfer from an account opened in the name of the customer in a bank of the country concerned. Some establishments, moreover, have entered into partnerships with European banks to facilitate the opening of accounts for Malians abroad. According to the available data, there was strong growth in the number of accounts held by foreign individuals between 2005 and 2006 (7,000 accounts and 36,000 accounts, respectively),[18] a trend which appears to have increased subsequently (the amount of assets deposited by nonresident individuals is not available).

82. **Since 2007 the banks have sharply increased their offers of rapid money transfer services**. This strong growth is in partnership, on the one hand, with international rapid funds transfer companies (Western Union, MoneyGram and Money Express[19]), and on the other hand, with small tradesmen and individual contractors who act as agents of the banks (and hence of the funds transfer companies) and offer access to these services to largely occasional customers. The market is dominated by Western Union (nearly 95 percent of operations in 2006, outgoing and incoming). According to the data provided by the BCEAO, which relate to 2006 and thus do not take account of the strong growth observed in 2007, the amount of transfers received came to CFAF 118 billion in 2006 (or about USD 260 million), with 22 percent coming from the WAEMU area and 78 from outside it, while outgoing transfers amounted to CFAF 56 billion (or about USD 124 million), with 37 percent bound for WAEMU countries and 63 percent for other destinations.

(ii) Other financial institutions

83. The microfinance sector (decentralized financial institutions, SFDs) is growing rapidly:

- the sector has a wide variety of players: mutual associations or otherwise, independent or belonging to a common network. At end-2007, there were 538 SFDs authorized in Mali, broken down into (i) 494 cooperative or mutual associations (including 477 local entities ("Caisses de base") and 17 apex gathering together 85 percent of these funds) and (ii) 44 nonmutual establishments (associations and, in three cases, corporations). The SFD sector employed slightly less than 2,700 people at end-2006;

- SFD assets at December 31, 2006, amounted to CFAF 83.5 billion[20] (about USD 184 million), or less than 8 percent of bank assets;

- SFDs experienced rapid growth in 2006 (total balance sheets up by 30 percent and number of customers growing by 9 percent over 2005);

- with nearly 835,000 customers, the SFDs are serving nearly 7 percent of the Malian population at end-2006, that is, approximately 42 percent of Malian families;[21]

- beyond the two principal networks which account for about half of all SFD activity, the sector is relatively dispersed;

18 According to the 2006 annual report of the WAEMU Banking Commission, at the end of that financial year there were nearly 458,000 accounts opened by private individuals with the banks and financial institutions as a whole (including 36,000 for foreigners) and 82,000 accounts for legal persons (including 1,000 for foreign legal persons). According to the 2006 BCEAO report on WAEMU payment systems, there were 152,798 accounts referenced to Mali in the bank accounts file (FICOB) maintained by the BCEAO (as at December 31, 2006).

19 According to information available on its Internet site, "Money Express was founded in July 2002 by the Senegalese group CHAKA in partnership with the WAEMU savings banks." Money Express specializes in transfers between African countries and between African and Arab countries. These services are offered in Mali by a single bank.

20 Except as otherwise noted, the data on SFDs are extracted from the 2006 annual report on the microfinance sector in Mali, published by the Control and Oversight Unit for Decentralized Financial Institutions.

21 At end-2006, the population of Mali was estimated at 12 million and the number of families at nearly 2 [million].

- the SFDs are much more focused on rural areas than the banks, even though urban areas are still predominant. At end-2006, 51.2 percent of customers were in urban areas. These urban customers accounted for nearly 70 percent of deposits and 60 percent of lending as of the same date;

- rapid growth is occurring in a context of relative fragility relating to governance and organizational problems, and several networks are facing significant financial problems.

84. **The activities of the SFDs are not very diversified, but can involve sizable amounts for individuals**. The products offered consist primarily of sight deposits and time deposits as well as small loans intended for investment or consumption. Despite average deposits of modest size, large deposits can be as high as CFAF 100 million (about USD 221,000) and deposits of CFAF 20 million (about USD 44,000) are common in some SFDs. Most transactions are in cash, and SFDs taking the form of mutual associations or cooperatives cannot offer checking or transfer services,[22] but can propose withdrawal or payment cards as well as electronic money and electronic wallet services. Some SFDs have entered into partnerships with local banks to offer international funds transfer services (via Western Union in particular) to their own customers as well as to occasional customers. Moreover, SFDs are considering developing their own international funds transfer services.[23] [1]

85. **The life insurance sector** is of modest size, but offers savings products that can protect the anonymity of their beneficial owners. Total premium collections in 2007 amounted to CfAF 2.4 billion (about USD 5.3 million). Mali has six insurance companies,[24] but only one offers life insurance products. This company with local capital (Sonavie), which employs 15 people, specializes in life insurance alone. The products offered are divided into retirement insurance and insurance against death:

- 15,000 customers had taken out retirement insurance products and paid nearly CFAF 1.2 billion in premiums in 2007 (about USD 2.7 million). The average annual premiums collected per customer is thus about CFAF 80,000 (roughly USD 18). These products are subscribed through intermediaries who are generally alone with customers when the business relationship is established. Verification of the customer's or beneficiary's identity is necessary only at the time funds are paid out by the life insurance company, that is, when the contract reaches maturity (after 10 years at the most) or when it is rescinded. Such cancellations are possible after two years and in fact occur regularly. Premium payments are generally made by bank transfers, but can also be made in cash;

- life insurance accounts for about half the activity of the life insurance sector (nearly CFAF 1.2 billion in premiums collected in 2007, or USD 2.7 million). These products are subscribed by companies or individuals, in particular bank borrowers. Indeed, banks regularly require life insurance before granting loans.

86. The central bank (BCEAO) engages in particular in correspondent banking activities and in the management of fiat money. According to the information provided to the mission, the concept of Public Treasury covers all the financial authorities, including in particular the Directorate of

22 Article 24 of the law governing mutual or cooperative savings institutions stipulates that an institution may open deposit accounts for its members, but that these accounts may not be used for checking or transfers. There is no similar explicit prohibition for institutions not taking mutualist or cooperative form. The latter are governed by conventions signed by the Minister of Finance and adhering to the framework convention adopted by the WAEMU Council of Ministers on July 3, 1996. That document does not contain a prohibition similar to that of Article 24 of the aforementioned law.

23 "In order to reduce costs, some MFIs [microfinance institutions] plan to develop to their own rapid transfer platform by sidestepping the operator in the payment chain (an example is being developed between the Kayes region in Mali and the Paris area)." Excerpt from the report: African Development Bank, Remittances by migrants, A development challenge, the Comoros, Mali, Morocco and Senegal, Interim report, 2007.

24 In addition to the insurance companies, there is a network of 81 general agents, 25 insurance brokers, and 35 life-insurance advisors.

the Treasury, the Directorate-General of Customs, and the Directorate-General of Taxes and Government Property.

87. The activities of the other nonbank financial institutions are limited:

- **Postal services**: the only financial services provided by the national post office (which employs less than 500 persons) relate to physical and electronic money orders. In 2007, money orders received totaled CFAF 480 million (approx. USD 1.1 million), while those issued represented, according to the mission's interlocutors, a much smaller amount. There is a limit of CFAF 500,000 (approx. USD 1,100) on money order amounts;

- **Bureaux de change**: dealers authorized to exchange foreign banknotes seem to perform small-value transactions. The mission met with such a dealer, who said his business had completely disappeared in 2007 as a result of competition from the informal sector. For this licensed operator, Western Union fund transfers, performed under a bank contract, had become the sole source of income;

- **Operations in securities and management on behalf of third parties**: in Mali, there is a broker (SGI[25]) active on the regional stock exchange (BRVM), itself located in Côte d'Ivoire. No Malian company is listed on the BRVM, and only three Malian enterprises have issued bonds on it (two banks and a construction company). There are neither asset managers (SGPs)[26] nor mutual funds (OPCVMs)[27] licensed in Mali;

- **Pension funds**: there are two pension funds, covering the public sector and the private sector respectively. The Malian Pension Fund (CRM) is responsible for managing the pension scheme for civil servants, military personnel, and parliamentarians. The task of the National Social Welfare Institute (INPS) is to manage, for the benefit of workers in the private and parapublic sectors, the schemes for delivery of family allowances, pensions (old age and disability), protection against disease and workplace accidents, and work-related diseases;

- **Institutions active in the issuance of electronic funds, including smart cards** (electronic funds establishments, automated teller machines, and electronic funds issuers):[28] according to information obtained by the mission, there seems to be no establishment active in this area in

25 The Regional Council on Public Savings and Financial Markets (CREPMF) has established General Regulations on the organization, functioning, and control of the WAEMU regional financial market. These authorize the SGI to perform: (i) exclusively, business as a trader-clearing agent for securities listed on behalf of third parties (and to receive and hold funds from the public in this context) and as a holder of securities (Art. 37); and (ii) as related business, the financial management of securities accounts on behalf of customers, the provision of financial engineering advice, and the investment of securities for issuance, when issued (Art. 38 and Art. 39).

26 The General Regulations of the CREPMF define SGPs as legal entities that, through investment and trading on the securities exchange by the SGIs to which they forward pertinent orders, play a discretionary role in the management of securities entrusted to them, based on management terms of reference drawn up with their customers (Art. 57). SGPs are not authorized to hold the securities and/or funds of their customers.

27 OPCVMs are authorized to engage in delegated collective management, in the form of open-ended investment companies (SICAVs); joint investment funds (FCPs), which are co-ownerships of financial claims; or any other form of joint investment authorized by the CREPMF (Art. 72).

28 BCEAO Instruction 01/2006/SP of July 31, 2006 on electronic funds issuance and electronic funds establishments defines these various establishment categories (Articles 1-7, 8, and 9) as follows:

- Establishments issuing electronic funds: the banks in the sense of Article 3 of the Banking Law, postal checking units, the Public Treasury and any other agency authorized by law to issue electronic funds [electronic funds establishments], decentralized financial systems in the sense of the Law governing savings and loan mutual associations and cooperatives, and debtors of claims incorporated in electronic instruments;

- Establishments distributing electronic funds: enterprises providing customers with the services of charging, recharging, and cashing electronic funds; and
- Electronic funds establishments: enterprises and any other legal entities authorized to issue payment instruments in the form of electronic funds and whose business is limited to: (i) issuing electronic funds, (ii) supplying the public with electronic funds, and (iii) managing electronic funds.

Mali; there is no establishment specifically authorized by Malian law to engage in electronic funds issuance in the sense of WAEMU Regulation 15/2002/CM/UEMOA on payment systems in the WAEMU member states.

(iii) Informal financial sector

88. The informal financial sector plays an important role, especially in the areas of international funds transfers, foreign exchange, and *tontines* (grassroots-level solidarity savings and loan system). Accordingly, in a recent African Development Bank (AfDB)[29] study, funds transfers received from nonresident Malians in 2005 were estimated at nearly CFAF 293 billion (i.e., approx. USD 647 million), one-third of which was sent through formal channels (banks, Western Union, etc.) and two-thirds informally. Informal channels include: (i) physical currency transfers (60-70 percent of the total), in sums more often than not exceeding CFAF 6.5 billion (approx. USD 15,000) in the case of transfers from the European Union, (ii) mechanisms of the *hawala*[30] type, called faxes (30 percent of the total), and (iii) transfers of goods (used vehicles, etc.) that can then be resold (5 percent of the total).[31] The magnitude of the informal transfers can be explained by: (i) limited access, for numerous recipients, to formal financial services, either because they do not have an account or because there are no such financial services in the rural areas where they live; (ii) in some cases, the lower cost of informal transfers; (iii) their speed (so-called fax mechanisms); and (iv) the reluctance of migrants in illegal circumstances to use formal financial services.

89. Informal transfers are not limited to flows from the OECD countries. Given the size of the Malian diaspora in some OECD countries (France, Spain, and Italy, in particular), large informal transfers are made from those countries to Mali. Informal transfers also exist with other West African countries, especially: (i) to finance informal cross-border trade (imports and exports of goods, for example agricultural); and (ii) because of the Malian diasporas in other West African countries and, to a lesser extent, West African diasporas resident in Mali. In 2006, the number of Malians resident in Côte d'Ivoire was estimated at two million.[32] Well-established corridors exist in West Africa (Mali-Senegal, for example), involving, among others, truck and taxi drivers who transfer cash. The main purpose of informal outflows of funds from West Africa is to finance: (i) informal trade (e.g., purchases in Asia of consumer goods, subsequently resold in Mali) and (ii) stays abroad, for example in the context of pilgrimages to Mecca.

90. Informal foreign exchange completes the picture of informal transfers of funds. No quantitative estimate of informal foreign exchange is available. However, the mission's interlocutors (banks, in particular) stressed the importance of the individual operations processed, as well as the very established nature of informal foreign exchange. This business is thus performed openly and by persons for whom it is sometimes a career passed on from father to son. According to available information, foreign currency received from Malians abroad seems to be, more often than not, changed into CFA francs (the bulk of the informal transfers are used to meet

29 African Development Bank, "Remittances by Migrants, A Development Challenge: Comoros, Mali, Morocco, and Senegal," Interim Report, 2007.

30 A mechanism of the hawala type is special, in that it does not require a transfer of funds for each operation. The mechanism is based on two informal "agents," one in the country from which the funds are sent and the other in the country where they are received. Funds are deposited with the agent in the country of issue (e.g., a small trader), who contacts his correspondent in the receiving country to request that the latter immediately make the funds available to the payee. Only the balance of the transactions between the two informal agents generates a periodic settlement (bank transfer, transfer of cash, etc.).

31 The orders of magnitude mentioned in the AfDB study relate to the four countries studied (Mali, Senegal, Morocco, Comoros). They are nevertheless deemed pertinent for each of them, even if the importance of the so-called fax, hawala-type arrangements have been stressed in the case of Mali.

32 USAID, "West African Financial Flows and Opportunities for People and Small Business," 2006.

current consumption needs,[33] and the use of foreign currencies does not seem very widespread in this area). Foreign banknote exchange dealers obtain the CFA francs they need by selling foreign currency, either to persons who need it for professional or personal trips abroad (see above), or to persons wishing to save in foreign currency (especially to hedge against possible devaluation or bank failure). Informal foreign exchange is not limited to the principal international currencies (euros and U.S. dollars); it also involves the various foreign currencies used in West Africa and in the neighboring areas (CAEMC CFA francs, for instance).

91. *Tontines* are also a widely used savings instrument.

OVERVIEW OF THE SECTOR OF DESIGNATED NONFINANCIAL BUSINESSES AND PROFESSIONS

92. The anti-money laundering law of 2006 states, in its Article 5, that the provisions in Titles II and III are applicable to "all individuals and legal entities that, within the framework of their profession, perform, control, or advise on operations leading to deposits, exchanges, conversions, or any other flows of capital or of any other goods." The mission feels that only persons specifically named by this law are subject to its provisions. Indeed, no detail in it supports an extensive reading of Article 5 of Law 06-066 defining its implementation scope.[34] Such an understanding would be: (i) rather unrealistic, as that would mean making nearly all economic agents subject to the provisions of said law; and (ii) far from consistent with the mission's observation that numerous persons specifically named by the law do not consider themselves subject to it.

93. **Real estate agents**: information on their number is not available, as this is, for the time being, an unregulated profession. Only real estate developers are known, but they cannot be considered subject to the law of December 29, 2006.

94. **Auditors**: In spite of the repeated requests of the mission, no information was provided by the Malian authorities regarding this profession.

95. **Attorneys:** there are about 300 attorneys in Mali, grouped within a single Bar, established at the Supreme Court. Attorneys are located primarily in Bamako, Segou, Mopti, Sikassou, and Kayes. Attorneys are free to establish practices anywhere within the WAEMU area, but this is not actually a reality. Attorneys may play a role in the management of the business of third parties, especially by representing individuals in civil and commercial operations and actions. The Malian Bar has not taken any action to enforce the obligations of its members under the anti-money laundering law. The public authorities have made no efforts either to provide training or capacity building with regard to this profession.

96. **Casinos:** there are five casinos in the country, employing about 360 persons. They are all managed by the same company, the Malian Games and Leisure Company, which engages in this business only. The legislation requires that they be attached to a prestige hotel. They are subject to special taxation (15 percent of the gross earnings from games) in addition to the usual tax requirements and are therefore routinely supervised by an official from the tax administration.

97. **Notaries:** notaries are public officers instituted for life to provide a public certification service. They thus play a role in real estate operations, in civil matters, and in drawing up instruments for profit-making companies. A Chamber of Notaries, of which the 35 notaries in the

33 African Development Bank, Remittances by Migrants, A Development Challenge, The Comoros, Mali, Morocco and Senegal, Interim Report, 2007

34 Article 5 states that "the provisions in Titles II and III of this Law are applicable to all individuals and legal entities that, within the framework of their profession, perform, control, or advise on operations leading to deposits, exchanges, conversions, or any other flows of capital or of any other goods […]."

country are members, is responsible for supervising and regulating the profession, as well for enforcing a Code of Ethics adopted at the regional level ("Code of Ethics for Notaries in Africa"). The anti-money laundering obligations applicable to notaries are not enforced beyond their internal, but unwritten, laws on the need to know the identity of their customers.

98. **Providers of services to companies and trusts:** attorneys, notaries, and auditors provide financial, tax, and other advice to enterprises. Attorneys and notaries play a significant role in the creation of legal entities and in real estate transactions. However, it seems there are no companies in Mali specialized in taking actions as agents for the constitution of legal entities, for instance. According to the Ministry of Commerce, such companies would be in violation of the regulations in the OHADA Code and could be prosecuted for the illegal performance of a regulated business.

99. **Nongovernmental organizations**. The legal instruments applicable to nonprofit organizations in Mali are Ordinance 41/PCG of 1958 on associations (other than commercial corporations, mutual societies, cultural associations, and congregations) and Law 04/038 of August 5, 2004 on associations. These laws contain the conditions related to the constitution of associations. There are three types of association in Mali: the undeclared associations, the declared associations, and the associations that have signed a framework agreement with the government. Only the last two are subject to the requirement for registration. NGOs are subjected to legal regime applicable to « associations »

OVERVIEW OF COMMERCIAL LAW AND OF THE MECHANISMS APPLICABLE TO LEGAL ENTITIES AND STRUCTURES

100. The law applicable to legal entities established in Mali is governed by the Uniform Act concerning the law on commercial corporations that was adopted by the Council of Ministers of April 17, 1997 and came into force on January 1, 1998. The provisions of this Act are, in accordance with the Treaty on the Harmonization of Business Law in Africa, directly applicable and mandatory in the 16 states-party, including Mali. Pursuant to Title 1, any persons wishing to engage in commercial business must establish, by notarized instrument or by any instrument providing sufficient guarantees of authenticity, articles of incorporation that must mention the form of the company, its trade name, its corporate purpose, its headquarters, the identity of those providing the funds and the amounts of their contributions, and the number and value of the corporate securities handed over in exchange for the contributions of associates.

101. The same Act adds that the founders must lodge at the trade and personal credit register a certificate declaring that they have performed all the operations necessary for constitution of the corporation. Such certificates are required, failing which applications for registration are rejected. All companies, except for those that are jointly owned, must be listed on the trade register to become legally established. In Mali, as in the other states that have subscribed to the Uniform Act, any persons, regardless of their nationality, wishing to engage in a commercial business must choose one of the company formats prescribed by the Uniform Act, namely partnership, limited partnership, joint stock company, stock company, or jointly owned company. No information was provided to the mission on the number of companies, by category.

102. According to information gathered by the mission, there are no legal structures in Mali of the trust or foundation type.

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

AML/CFT Strategies and Priorities

103. Mali was the last, but for one of the WAEMU countries, to adopt an anti-money laundering (AML) law (on December 29, 2006), just before Togo.[35] As at the time of the mission, the national authorities had not formulated an AML strategy. Such a strategy should include a definition of objectives, the identification of priorities, the mobilization of pertinent resources, and the constant assessment of results obtained. Also, it must be preceded by the establishment of a national coordination structure, preferably interministerial, so as to monitor: (i) the institution of *ad hoc* structures, especially the National Financial Information Processing Unit (CENTIF), (ii) the appointment of AML correspondents in each of the departments concerned, and (iii) last, the dissemination of pertinent information[36] to all the regulated sectors. During the visit, none of these measures had yet been taken.

104. Concerning the AML/CFT strategy and priorities, the country has taken no particular steps pending the passing of a pertinent Uniform Regional Law. The only reference document in this area is Regional Directive 04/2007/CM/UEMOA of July 4, 2007. Similarly, in the absence of a law of transposition at the Community level, Mali, like the other WAEMU states, still has no national law under which the financing of terrorism could be repressed. Admittedly, a draft law criminalizing terrorist acts and their financing is currently under study by the National Assembly office. It is clear from discussions held by the mission that a general debate on this matter should be started quickly.

AML/CFT institutional framework

105. The AML institutional framework in Mali is as follows.

106. The **Ministry of Finance** (MoF) is the principal entity responsible for AML initiatives at the national level. The CENTIF is, indeed, placed under the supervision of the MoF (Art. 16 of Law 06-066). Also, the National Directorate of the Treasury and Public Accounting, within the MoF, is responsible for providing the CENTIF with the necessary resources, in the form of an appropriation. The operating budget is approved by the Minister of Finance.

107. Under Law 06-066, the **CENTIF** is at the core of the AML preventive arrangements in Mali. According to Art. 17, its mission is to gather and process financial information on money laundering channels. Its operations are performed by six members, appointed for three years (renewable once) by decree pronounced in council of ministers. For the time being, this unit does not in fact exist. It does not yet have its own budget or premises. Its members, for their part, were not yet appointed at the time of the mission, but only identified.

108. The **Ministry of National Security and Civilian Welfare** also plays an active AML role. It coordinates the actions of the National Police, the National *Gendarmerie*, the National Guard, and the Civilian Welfare Department. The Ministry supervises the National Police and the Civilian Welfare Department, while the National *Gendarmerie* and the National Guard are attached to the Ministry for employment purposes. Only the National Police and the National *Gendarmerie* have jurisdiction in matters of criminal investigation.

109. The General Directorate of the police is placed under the supervision of the Ministry of National Security and consists of four criminal investigation units, the *Gendarmerie*, the National Guard, and the Civilian Welfare Police. The Criminal Investigation Department has jurisdiction to investigate money laundering and its predicate offenses. The economic and financial centers at the level of the courts of first instance are responsible for conducting AML investigations and

35 The AML laws in the eight WAEMU states were passed as follows: Senegal, January 27, 2004; Niger, June 8, 2004, Guinea-Bissau, November 2, 2004; Côte d'Ivoire, December 2, 2005; Benin, October 31, 2006; Burkina Faso, November 28, 2006; Mali, December 29, 2006; and Togo, 2007.

36 That is, the lists of persons, entities, or bodies targeted by the freezing of funds in the CFT framework.

perform their task through agents and officers of the Criminal Investigation Department. The intelligence unit of the National Police Directorate is tasked with gathering information on criminality and state security.

110. The Criminal Investigation Department currently has a specialized unit responsible for conducting investigations on economic and financial offenses, including ML matters. The investigative powers of Criminal Investigation Department officers under the Malian Code of Criminal Procedures (CPPM) are broad and include establishing the occurrence of a crime, conducting searches, seizing goods, and examining persons. The absence of enforcement of Law 06-066 of 2006 and of a law criminalizing FT has not led to ML/FT-related enquiries or prosecutions. The personnel of the Criminal Investigation Department has not received appropriate training in financial matters related to tracing ML and FT operations or the scope of predicate offenses, ML typologies, or techniques for conducting investigations and prosecuting violations.

111. **The Judiciary** consists of magistrates of the public prosecutor's department and the attorney-general's office. Responsibility for conducting investigations and prosecutions for economic and financial crimes and offenses in Mali fall within the competence of the economic and financial centers at the level of the courts of first instance. The authority competent in this area exercises the powers to conduct investigations and prosecution set forth in the CPP and carries out its mission under the authority of the public prosecutor, through the Criminal Investigation Department, which is responsible for gathering evidence and seeking perpetrators before initiating prosecution action. Customs officers are required to refer matters to the Criminal Investigation Department as soon as a violation has financial implications. In general, magistrates are not formally specialized in financial matters. For the Judiciary, the lack of human and material resources is particularly great and debilitating (absence of support staff, of adequate premises, of even basic IT resources). The staff responsible for conducting judicial investigations also suffer from a lack of means. This situation has a negative impact on the possibilities of carrying out complex and lengthy investigations, and as a result, this has, over time, prevented investigative staff at the judicial authority from acquiring the know-how to guide such cases.

112. Pursuant to the annex to the convention creating the CB-UEMOA, the **CB-UMOA**, which is chaired by the BCEAO Governor, is responsible for ensuring that banks and financial institutions established in Mali, as in the eight WAEMU states, are properly organized and supervised. To this end, it is endowed with powers to impose administrative or disciplinary sanctions. Its competence covers AML/CFT activities. In addition, the principal tasks of the **BCEAO** are to draft accounting and prudential (including AML) regulations applicable to financial bodies, to convey them technically, and to contribute, through its National Directorates, to the supervision of the banking system.

113. For **designated nonfinancial businesses and professions**, the situation is as follows: casinos are supervised jointly by the Ministry of the Interior and the MoF. However, none of the controls performed, from the beginning of or during casino operations, relate to ML prevention or repression.

114. Real estate agents fall under the jurisdiction of the Ministry of Housing and Habitat but are not currently organized in a professional federation, and the ministry does not carry out supervision strictly speaking.

115. Notaries and attorneys are subject to the supervision of the Chamber of Notaries and the Order of Attorneys respectively. Although the debate has begun among them, none of these self-regulation organizations has played a role with respect to their members regarding AML action up to the date of the mission.

Risk-related approach

116. AML/CFT activity is a new idea in Mali, despite the previous existence of the 2003 WAEMU Uniform Law and the 2002 Community Directive. In the current circumstances, there is, at the level of the national authorities, no genuine AML/CFT strategy based on a reasoned approach to risk. The national AML laws and regulations (essentially AML Law 06-066 of December 29, 2006 and Decree 07-291 of August 10, 2007) were passed without any supporting strategy for the principal players and institutions concerned. As at the time of the mission, major sectors such as the microfinance networks, attorneys, traders in precious metals, and the mining sector in general were unaware of the existence of the AML Law.

Progress made since the last assessment

117. Not applicable. Mali has never been the subject of an assessment in this area, either by an international institution (World Bank or IMF) or by the GIABA.

LEGAL SYSTEM AND ASSOCIATED INSTITUTIONAL MEASURES

Laws and regulations

CRIMINALIZATION OF MONEY LAUNDERING (R.1, R 2 AND 32)

Description and analysis

118. Money laundering has been a penal offense in Mali since 2001. Indeed, Law no. 01-078 of July 18, 2001 concerning the monitoring of drugs and precursors was the first law to institute the offense of 'the laundering of money' derived from the illegal drug trafiking. The offense of money laundering is also found in Article 298 of the Law of August 20, 2001 revising the Malian Penal Code.

119. A new and more complete legal framework with regard to money laundering was established by Law no. 06-066 of December 29, 2006 establishing the Anti-Money Laundering Uniform Law. This law transposes the WAEMU Anti-Money Laundering Directive no. 07/2002/CM/UEMOA (a.k.a., the AML directive) into the Malian legal apparatus, on the basis of the transposition framework set forth by the WAEMU Uniform Law, and abrogates any previous provision that is contrary to it.

Recommendation 1

Criminalization of money laundering (Criterion 1.1: Physical and material elements of the offense)

120. Money laundering is declared a criminal offense in Article 2 of AML Law 06-066. Thus, this article defines money laundering according to the Vienna and Palermo Conventions, since it concerns "one or more of the intentionally committed actions enumerated hereinafter":

-The conversion, transfer or manipulation of property of which the perpetrator is aware that it derives from a crime or offense or from participation in such crime or offense, for purposes of hiding or disguising

the illegal origin of said property or of helping any person involved in the commission of this crime or offenses to escape the legal consequences of his/her acts;

- the concealment or disguising of the nature, origin, location, disposition, movement or true ownership of property or of corresponding rights of which the perpetrator knows that they derive from a crime or offense as defined in the national legislations of the member countries or from participation in such crime or offense;

-the acquisition, holding or use of property of which the perpetrator knows, at the time of reception of said property, that it derives from a crime or offense or from participation in such crime or offense.

Types of property to which the offense of money laundering applies (Criterion 1.2)

121. Article 1 of the AML Law 06-066 defines the types of property to which the offense of money laundering applies: i.e., assets of any kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, fungible or non-fungible, as well as legal instruments or documents attesting to the ownership of this property or of the corresponding rights. This definition being sufficiently broad, the offense of money laundering thus applies to all types of property deriving from the commission of a crime or offense.

122. However, Law 06-066 provides no specifics on the question of whether the property deriving from the commission of a predicate offense includes property that indirectly represents the proceeds of the crime. Lacking such specificity, and since penal law is interpreted strictly, one deduces from it that the offense of money laundering applies only to property derived directly from a predicate offense.

123. Under the terms of the AML Law 06-066, a person does not need to have been convicted of a predicate offense for there to be proof that a piece of property constitutes the proceeds of crime. Indeed, Article 3, para. 2 of the Law stipulates that:

> - unless the original offense was the subject of an amnesty law, money laundering exists even if:
>
> -the perpetrator of the crimes of offenses was neither prosecuted nor convicted;
>
> -a circumstance is lacking to enable legal proceedings as a consequence of said crimes or offenses.

The scope of primary offenses (Criterion 1.3) and threshold method for predicate offenses (Criterion 1.4)

124. AML Law 06-066 sets out a broad scope of money laundering offenses, since it covers “all crimes and offenses”. An analysis of the Malian Penal Code (MPC) is needed to determine whether the 20 categories of serious offenses designated by the FATF constitute “crimes or offenses” under Malian law and are, as such, predicate offenses to money laundering.

125. The MPC opts for a tripartite division of offenses according to the seriousness of the penalty incurred. Article 1 of the MPC stipulates that “penalties applicable under Malian jurisprudence are divided into criminal penalties, penalties applicable to misdemeanor, and penalties handed down by a police court.” Article 2 further specifies that “the offense that this Code punishes with criminal penalties is a felony (“crime”). The offense that this Code punishes with a police court penalty is a petty crime (“contravention”). All other offenses are misdemeanors (“délit”) unless the law provides otherwise.”

126. Criminal penalties are death, life imprisonment, and imprisonment from five to twenty years (Article 4 of the MPC). The penalties applicable to misdemeanors are imprisonment from eleven days to five years, the penalty of community service work, and a fine (Article 7 of the MPC). Since the fine in the case of police court penalties ranges from CFAF 300 to 18,000, inclusive, (Article 10 of the MPC), it can be deduced, from application of the aforementioned Article 2, that infractions subject to a fine exceeding CFAF 18,000 (about USD 42) are misdemeanors.

127. The threshold method chosen by the Malian authorities to define predicate offenses to money laundering is consistent with FATF recommendations since all infractions subject to imprisonment of more than eleven days are included.

128. The following table provides the list of serious predicate offenses to money laundering designated by the FATF, and lists the offense and corresponding penalties under Malian penal law.

Serious FATF offenses	Malian Penal Law: "Crimes and offenses" and sanction incurred in terms of duration of imprisonment
Participation in an organized group/ racket	Criminal association, Article 175 MPC, 5 to 10 years
Terrorism and the financing thereof	Lack of criminalization of terrorism and of the financing of terrorism
Trafficking in human beings	Article 242 *et seq.* of the MPC – on trafficking, indenture, servitude- 5 to 20 years
Illegal trafficking in migrants	-Article 244 – trafficking in children – 5 to 20 years of imprisonment -Lack of criminalization of the trafficking in migrants and adults (particularly women)
Sexual exploitation	Article 229 of the MPC: incitement to vice – procuring, 6 months to 3 years
Narcotics trafficking	Law no 01-078 of July 18, 2001 concerning the monitoring of drugs and precursors – 5 to 10 years of imprisonment (Article 95 *et seq*.)
Arms trafficking (excepting exportation)	Law no 04-050 of November 12, 2004 governing arms and munitions in the Republic of Mali, Article 43, 1 to 5 years.
Illegal trafficking in stolen property	Article 24 of the MPC, 1 year of imprisonment to death.

Corruption	Article 120 *et seq.* of the MPC, 5 to 10 years
Fraud and swindling	-Article 275 *et seq.* of the MPC (swindles and other offenses of this type), 1 to 20 years of imprisonment -Article 282 *et seq.* of the MPC (breach of trust and other frauds), 6 months to 3 years of imprisonment
Counterfeiting of currency	Article 86 *et seq.* of the MPC, minimum of 2 years
Counterfeiting and pirating of products	Article 248 *et seq.* of the MPC (violation of intellectual property rights, patents, utility model or design, product or service brands, industrial drawings or models, literary or artistic works), 3 months to 5 years
Crimes against the environment	Article 193 *et seq.* of the MPC, life imprisonment
Murder	Article 199 *et seq.* of the MPC, life imprisonment
Kidnapping, sequestration, hostage-taking	Article 237 *et seq.* of the MPC, 5 to 20 years of imprisonment
Theft	Article 252 *et seq.,* 1 year of imprisonment to death
Contraband	Article 355 of the Customs Code, 1 month to 3 years of imprisonment
Extortion	Article 272 *et seq.* (extortion, fraudulent dispossession), 5 to 20 years imprisonment
False documents (excepting false passports)	Article 98 *et seq.* of the MPC (counterfeiting of stamps and brands, fraudulent use of stamps and brands, forgery), 5 to 20 years of imprisonment.
Piracy fluvial[37]	Article 308 *et seq.* of the MPC (violations of the safety of civil aviation, river navigation and railroads), 5 years of imprisonment to death.

37 Mali being a landlocked country, without access to the sea, maritime piracy is not envisaged with the CPM

Stock market offenses	Article 301 *et seq.* of the MPC (insider trading), 6 – 18 months of imprisonment

129. A large proportion of the serious offenses designated by FATF are "crimes and offenses" under Malian law. Lacking, however, are the criminalization of terrorism and of its financing, and the criminalization of the illegal trafficking in migrants (only the trafficking in children is criminalized under the Penal Code.) These gaps are noteworthy weaknesses in Mali's AML/CFT arsenal, given how widespread these offenses are in the Malian criminal environment (cf. paras. 13 and 14 of this report). Indeed, the presence of terrorist groups in the northern part of the country has been demonstrated and the illegal traffic in Malian migrants, particularly towards Europe, is a great source of concern on the part of Malian authorities and European countries. [38]

Acts committed outside the territory (Criterion 1.5) and Additional Element – nature of a money laundering offense as an act occurring in another country in which this does not constitute an offense (1.8)

130. Article 2 of the AML Law 06-066 states that "money laundering is deemed to exist, even if the events at the origin of the acquisition, holding and transfer of the property to be laundered are committed on the territory of another member country or on the territory of a third-party country." According to this Article, which reiterates Article 2 of the AML Directive, predicate offenses to money laundering cover acts committed in another country.

131. Law 06-066 does not raise the issue of dual criminality and does not specify whether a money laundering offense exists when the proceeds of the crime are derived from a conduct that occurred in another country, which is not considered an offense in that other country, but that would have constituted a predicate offense had it occurred in Mali. On this point, the Malian authorities met mentioned that, in the case of acts committed in other countries, the Malian criminal prosecution authorities have jurisdiction over these acts so long as the original act constitutes an offense under Malian law. According to these authorities, the conducts at the origin of the laundering do not need to constitute an offense in the country in which they were committed; only the criminal nature of these conducts under Malian law matters.

Application of the money laundering offense to persons who commit the predicate offense (Criterion 1.6)

132. AML Law 06-066 contains no provision expressly excluding the possibility that a person may be convicted not only for the main offense but also for the laundering thereof. Malian jurisprudence however excludes the illicit traficking in stolen goods.

133. That being said, according to the Malian authorities met, money laundering, is a different and more complex offense than the illicit traficking in stolen goods as it involves positive acts of concealment to hide the fraudulent origin; these constitute actions distinct from the main offense and different from the simple derivation of benefit from the proceeds of the offenses. On this basis, it appears possible according to these authorities, from a legal standpoint, for a person to be the perpetrator of the main offense and then, in addition, of the laundering thereof. This issue of jurisprudential sequencing will need to be resolved by Malian courts. However, regarding the

38 The issue of migrations is the subject of regular consultations between Mali and several European countries, including France, and the European Union. According to European authorities, about 26,000 illegal migrants arrived on Spain's shores in 2006, and about 2,800 of them could be from Mali. http://www.maliensdelexterieur.gov.ml/cgi-bin/view_article.pl?id=432

application of penalties, only the heaviest penalty will apply since Malian penal law refuses the principle of concurrent liability.

Related offenses (Criterion 1.7)

134. For the purposes of Article 3 of the AML Law 06-066, the following are also considered laundering: "the agreement to; participation in, an association to commit laundering acts; any aid, counsel and assistance; association to commit said act; attempts to perpetrate it; aid, incitement or advice to a physical or corporate person with a view to committing it or of facilitating its commission." Offenses related to laundering, as set forth in Recommendation 1, are therefore covered.

Criminal liability of physical persons (Criterion 2.1)

135. As indicated above, the offense of money laundering requires that the actions be intentional (Article 2 of the Uniform Law and of the AML Directive, which define money laundering as "one or several […] actions […] committed intentionally".

Intent (Criterion 2.2)

136. The AML Law 06-066 contains no provision expressly mentioning that the intentional element of the money laundering offense can be deduced from "objective factual circumstances." In Malian law, according to authorities met by the mission, proof of intent to commit an offense is provided by objective material elements. The intentional element is presumed to have been demonstrated if the material elements are all present. This approach is in line with the requirement posited by Recommendation 2.

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

137. Chapter IV of AML Law 06-066 asserts the principle of the criminal liability of legal persons and sets out the sanctions applicable to them in this connection.

138. The fact of subjecting legal persons to criminal liability in the area of money laundering does not preclude the option of instituting parallel procedures. Indeed, Article 35 of AML Law 06-066 stipulates that, "if, as a result of a serious lack of due diligence or of shortcomings in the organization of its internal control procedures, [a subject person, legal persons included] has failed to recognize the obligations imposed upon him/her by [this law], The oversight authority with disciplinary powers may act officially under the conditions set froth in the specific prevailing legislative and regulatory texts."

139. In addition, Article 42 of the aforementioned law also stipulates that the conviction of legal persons persons does not exclude the conviction of those of its representatives who are physical persons as perpetrators or accomplices in the same events.

Sanctions pertaining to the offense of money laundering (Criterion 2.5)

140. ***Penal sanctions against physical persons*** are set forth in Articles 37 through 41 of AML Law 06-066. Thus, the actions are punished by imprisonment of 3 to 7 years and by a fine corresponding to three times [the value] of the property or funds involved in the laundering operations. Attempted money laundering, as well as the agreement to, association in, or complicity with a view to committing money laundering, are subject to the same penalties.

141. The penalties set forth above are doubled in the event of aggravating circumstances such as the following:

1. The money laundering offense is committed in an organized gang;

2. The money laundering offense is committed habitually or through the use of facilities provided by a professional activity;

3. The perpetrator of the offense is a recidivist. (Offenses committed in other countries are taken into account in establishing recidivism.)

142. The last paragraph of Article 39 of AML Law 06-066 also stipulates that, when the crime from which is derived the property or sums of money involved in the money laundering offense is punishable by imprisonment of a duration exceeding that of the imprisonment incurred under AML Law 06-066, the money laundering offense is punishable by penalties attached to the original offense of which its perpetrator was aware of, if this offense is accompanied by aggravating circumstances, by penalties attached only to those circumstances of which he/she was aware of.

143. ***Penal sanctions for legal persons*** are set forth in Article 42: Legal persons are punished by a fine equal to, or exceeding, five times those incurred by physical persons.

144. ***Additional penalties*** are set forth in Articles 41 and 45 of the law. They are of two types: a compulsory additional penalty and optional additional penalties.

145. The compulsory additional penalty involves confiscation of the proceeds of the offense, of movable or imovable assets into which these proceeds are transformed or converted and, up to the level of their value, of legitimately acquired property with which said proceeds are commingled, as well as revenues and other perquisites. This additional penalty applies to both physical and legal persons.

146. The optional additional penalties stipulated with regard to physical persons are aimed at (1) restricting their freedom of action (prohibition on entering, staying or leavign the national territory, restriction of civic and family rights, check-issuing capabilities); or (2) limiting their prerogatives with regard to certain property (prohibition on driving a terrestrial motor vehicle, water craft or aircraft, possessing or carrying a weapon, etc.).

147. The optional additional penalties stipulated with regard to legal persons may include, in particular, exclusion from public procurement; confiscation of the property used for, or intended to be used for, the commission of the offense, or of the property constituting the proceeds thereof; placement under court supervision; prohibition on [professional] activity for no more than 5 years; dissolution [of the enterprise]; posting or broadcasting of the decision to convict.

148. In addition, it should be emphasized that causes of exemption from, or reduction of, the penal sanctions are set forth in Articles 43 and 44. These incentive provisions are provided for cases in which a person makes it possible, by revealing the existence of an agreement, to identify other persons involved and to avert the commission of the offense. An exemption is provided for in that case. They are also provided for in cases where, prior to prosecution, a person makes it possible to identify the other perpetrators or, after institution of prosecution, to arrest those persons. Reduction of the penalty is possible in such a case.

Statistics (Application of Recommendation 32)

149. Since no money laundering cases have been dealt with in Mali, there is not yet any mechanism in place for the gathering of relevant information.

Analysis of effectiveness

150. Since the adoption of AML Law 06-066 in 2006, no money laundering cases have been processed by the Malian authorities based upon it. The authorities have not taken the necessary steps to apply and disseminate the law to the agencies charged with its enforcement.

Recommendations and remarks

151. Mali should criminalize terrorism and the financing thereof, as well as the illegal trafficking in migrants, as soon as possible.

152. AML Law 06-066 should be reviewed so that it specifies that the offense of money laundering applies to property indirectly representing the proceeds of the crime.

153. The Malian authorities need to make great efforts to disseminate the AML Law 06-066, not only to those subject to the law, but also to the authorities charged with enforcing it.

154. The Malian authorities are urged to put in place statistical tools on issues pertaining to the efficacy and proper functioning of anti-money laundering mechanisms.

Compliance with Recommendations 1 and 2

	Rating	Summary of factors underlying the rating
R.1	PC	Goods derived indirectly from the commission of a predicate offense are not covered by AML Law 06-066. Terrorism and the financing thereof, as well as the illegal trafficking in migrants, are not criminalized under Malian law and do not constitute predicate offenses of money laundering. Lack of implementation of AML Law 06-066
R.2	LC	Lack of implementation of AML Law 06-066
R32	NC	Lack of mechanism for the gathering of relevant information

CRIMINALIZATION OF THE FINANCING OF TERRORISM (SR. II AND R 32)

Description and analysis

155. Mali is not yet equipped with a mechanism for combating the financing of terrorism.

156. At the WAEMU level, the Council of Ministers adopted Directive no. 04/2007/CM/UEMOA (CFT Directive), pertaining to the fight against the financing of terrorism (FT) in WAEMU member countries, in order to define the legal framework to fight terrorism financing in WAEMU countries by implementing the 1999 United Nations Convention for the prevention of the financing of terrorism and its nine annexes, as well as the main international recommendations in this area.

157. The modalities of the transposition of the CFT Directive are defined in its Article 27, under the terms of which "member countries shall adopt, no more than 6 months after the date of signature of this Directive, the uniform texts pertaining to the fight against the financing of terrorism for purposes of transposing this Directive into their domestic legal system." .Thus, the transposition of the CFT Directive within the WAEMU member countries involves: (i) the WAEMU Council of Ministers, which sets out the uniform texts pertaining to the fight against the financing of terrorism (as these texts are to serve as "models" for the member countries in their transposition of the CFT Directive; and then (ii) the relevant authorities of the WAEMU member countries, and particularly the Malian authorities, who shall adopt a national law reproducing the provisions of these uniform texts, transposing the CFT Directive in this way into their internal legal apparatus.

158. The 6-month timeframe for transposition of the CFT Directive, set out in the aforementioned Article 27, has now expired. It appears that the uniform texts have still not been developed by the WAEMU authorities and that no national law for transposition of the CFT Directive has been adopted by any of the member countries, Mali included. The Malian authorities met explained to the evaluation mission that they were waiting for the uniform texts to be developed at the community level before proceeding to transpose the CFT Directive.

159. In addition, it should be noted that a draft law on terrorism, which transposes the 9 conventions annexed to the United Nations Convention on the prevention of the financing of terrorism, is currently under preparation. The text has been approved by the Government and submitted to the Parliament.

160. Since Mali does not yet have a legal arsenal for combating the financing of terrorism, the following analysis is intended to examine the provisions of the CFT Directive with regard to international standards, to the extent that this Directive sets out the main lines of Mali's future regime in this area.

The offense of FT (Criterion II.1)

161. Article 6 of the CFT Directive provides for the criminalization of the financing of terrorism, requiring that WAEMU member countries take the necessary steps, on the one hand, "to establish the acts referred to in Article 4 [financing of terrorism] and Article 5 [association, agreement or complicity with a view to the financing of terrorism] as criminal offenses with regard to their internal law" and, on the other hand, "to punish these offenses, given their seriousness, with appropriate penalties."

162. The material elements constituting the offense of the financing of terrorism, as defined in Article 4 of the CFT Directive, are "the fact of deliberately, and by whatever means, providing, collecting or managing – or attempting to provide, collect or manage – funds, property or financial and other services with the intention of seeing them used, or knowing that they will be used, in whole or in part, to commit:

- An act constituting an offense according to one of the international legal instruments enumerated in an annex to the Directive [this refers to the nine (9) annexes to the United nationals Convention of December 9, 1999 for the prevention of the financing of terrorism], regardless of whether such an act occurs or not;

- Any other act intended to kill or seriously injure a civilian or any other person not directly involved in the hostilities in an armed conflict situation, if, by its nature and context, this act is intended to intimidate a population or to force a government or an international organization to perform, or refrain from performing, any act."

163. Thus, Article 4 of the CFT Directive provides for a broad definition of the term "financing" of terrorism in accordance with the United Nations Convention, since the following are covered: the provision, collection or management of funds, property, financial or other services, by whatever means, in order to see them used, or knowing that they will be used, to commit a terrorist act.

164. In addition, concerning the definition of a "terrorist act", Article 4 para. 1 of the CFT Directive first refers the reader back to the acts criminalized by the 9 Conventions annexed to the United Nations Convention on the financing of terrorism, and secondarily reiterates in its para. 2 the definition of "terrorist act" set forth in the United Nations Convention. This approach requires Mali to have signed and ratified the 9 Conventions referred to, and that the various offenses defined by these conventions be criminalized in Malian penal law, which is not always the case in Mali. Mali has in fact signed and ratified these 9 conventions, but the aforementioned draft law on terrorism, which aims to transpose the provisions of these conventions, particularly by criminalizing "terrorist acts", has not yet been approved by the Malian parliament.

165. The CFT Directive provides no definition of the terms "terrorist organization" or "terrorist".

166. ***(SR. II –b)*** Regarding the "**funds**" covered by the offense of the financing of terrorism, the directive refers to " funds, property, financial and other services." The CFT Directive defines the term "property" by referring the reader back to the AML Directive (Article 1, para. 1 of the CFT Directive), which in turn defines "property" as "any type of holdings, corporeal or incorporeal, fixed or moveable, tangible or intangible, fungible or non fungible, as well as legal instruments or documents attesting to the ownership of these holdings or of the corresponding rights." In addition, Article 1 para. 7 of the CFT Directive contains a definition of "funds and other financial resources," which covers "all financial assets and economic advantages of whatever types, including, but not exclusively, cash currency, checks, cash receivables, bankers' drafts, orders of payment and other payment instruments, deposits in banks and financial establishments, account balances, [...]". These definitions make it possible to include within the scope of the Directive all "funds" covered by the United Nations Convention of December 9, 1999 for the prevention of the financing of terrorism.

167. ***(SR. II-c)*** The CFT Directive does not require the funds to have actually served to commit or attempt to commit one or more terrorist acts. Indeed, Article 4, para. 2 stipulates that "the offense of the financing of terrorism […] is deemed to exist even if the funds have not actually been used to commit [the acts referred to under the law]."

168. The CFT Directive does not make a distinction depending on whether the funds and other financial resources are from a legitimate source or not, as long as they have been deliberately intended for the financing of terrorism (*cf*. definition of the financing of terrorism, Article 4, para. 1 above).

169. **(SR. II-d)** The CFT Directive contains no provision requiring countries to establish, as a penal offense, ***the attempt*** to commit the offense of the financing of terrorism. The community authorities stated to the mission that the attempt should be expressly referred to in the AML Uniform Law.

170. In any event, with regard to the attempt, it should be pointed out that the Malian code criminalizes the attempted commission of a crime. Indeed, Article 3 of the MPC states that "any attempt at a crime, as manifested by a start of execution, suspended or having failed to produce its

effect due to circumstances independent of the will of its perpetrator, is deemed to constitute the crime itself." Thus, in application of malien law, the attempt to commit the offense of the financing of terrorism should constitute a penal offense, if the penalty incurred for the acts of the financing of terrorism is a criminal penalty.

171. **(SR. II-e)** In accordance with Article 2(5) of the United Nations Convention on the financing of terrorism, the CFT Directive stipulates that "the agreement to, or participation in an association intended to, committee an act constituting the financing of terrorism [...], association to commit said act, aid, incitement or advice to a physical or corporate person for the execution or facilitation of the execution" also constitute an offense of the financing of terrorism. In addition, it should be recalled that, in application of malian law, the Malian penal code sets the principle according to which the accomplice, whether active or passive, incurs the same penalties as the primary perpetrator. Since the concept of complicity covers aid or assistance provided for the preparation or commission of an offense, provocation or instigation, Mali's future CFT mechanism should conform to Article 2 (5) (a) and (b) of the Convention on the financing of terrorism.

Predicate offenses to money laundering (Criterion II.2)

172. Since the financing of terrorism is not criminalized in Mali, it does not at present constitute a predicate offense to money laundering.

173. It should be noted, however, that Article 6, para 2 of the CFT Directive states expressly that offenses of the financing of terrorism constitute predicate offenses of money laundering.

Territorial authority (Criterion II.3)

174. Article 4, para. 3 of the CFT Directive states that the financing of terrorism is considered to exist even if the acts at the origin of the acquisition, possession or transfer of the property intended for the financing of terrorism are committed in [another country].

Intent (application of Criterion 2.2 of R.2)

175. The CFT Directive contains no provision stating that the intentional element of the offense of the financing of terrorism may be deduced from objective factual circumstances. This requirement of SR.II should be covered by the Malian law concerning transposition of the directive. It should be noted on this point, however, that in application of Malian common law, proof of the intentional element of an offense is provided by objective material elements. The intentional element is presumed to be present once the material elements are all present. This approach is in line with the requirement set forth in Recommendation 2.

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

176. The CFT Directive posits the principle of the application of penal liability of legal persons for acts constituting the financing of terrorism by referring the reader back to Directive no. 07/2002/CM/UEMOA concerning the fight against money laundering. Indeed, Article 23 of the Directive states that the provisions of the AML Directive concerning the criminalization of certain acts attributable to physical and legal persons are applicable to the offense of the financing of terrorism.

177. The CFT Directive contains no provision referring to the possibility of instituting parallel proceedings, whether criminal, civil or administrative, for legal persons regardless of their penal

liability with regard to the financing of terrorism. This option should be provided for by the Malian law transposing the directive, either via express reference or by referral back to Article 35 and 42 of the AML Law 06-066.

Sanctions for the financing of terrorism (Application of Criterion 2.5 of R.2)

178. Article 22 of the CFT Directive requires WAEMU member countries to make legislative provisions pertaining to the penal sanctions applicable to any physical or legal person having committed, or attempted to commit, an offense of the financing of terrorism. Because the CFT Directive has not yet been transposed into Mali's legal apparatus, there is no provision for penal sanctions applicable to the offense of the financing of terrorism.

Statistics

179. Since the financing of terrorism is not at present a penal offense, no mechanism for the collection of relevant information is in place.

Analysis of effectiveness

180. Mali does not have a mechanism for combating the financing of terrorism, since the latter is not a penal offense.

Recommendations and remarks

181. The Malian authorities should quickly transpose into internal law the 9 Conventions annexed to the Convention on the prevention of the financing of terrorism, and, particularly, establish as penal offenses acts of terrorism referred to by these conventions and set the corresponding penalties.

182. The CFT Directive does not cover all of the requirements of Special Recommendation II. Thus, the Malian authorities should ensure that the following elements are taken into account during preparation of the texts intended to transpose the CFT Directive:

- Provide for definitions of the terms "terrorist organization" and "terrorist";
- Provide for the criminalization of attempts to finance terrorism in order to be in conformity with AML Law 06-066 and the AML Directive;
- Stipulate expressly that the intentional element of the offense of the financing of terrorism can be deduced from objective factual circumstances;
- Provide for express reference covering the option of instituting parallel proceedings, whether penal, civil or administrative, for legal persons regardless of their penal liability with regard to the financing of terrorism;
- Provide for penal sanctions applicable to the offense of the financing of terrorism.

Compliance with Special Recommendation II and R 32

	Rating	Summary of factors underlying the rating
RS.II	NC	The financing of terrorism is not criminalized by Malian penal law

R32	NC	Lack of a mechanism for collecting relevant information

CONFISCATION, FREEZING AND SEIZURE OF CRIMINAL PROCEEDS (RECOMMENDATIONS 3 AND 32)

Description and analysis

Confiscation of property constituting the proceeds generated by the commission of any offense of money laundering, financing of terrorism, or other predicate offense, including property of equivalent value (Criterion 3.1)

183. The mandatory confiscation of goods constituting the proceeds generated by the commission of a money laundering offense is stipulated in Article 45 of the AML Law 06-066, which states that:

> " In every case of conviction for the offense of money laundering or the attempt thereof, the courts shall order the confiscation, for the benefit of the Public Treasury, of the proceeds derived from the offense, movable or unmovable property into which these proceeds have been transformed or converted, and, up to their value, legitimately acquired property with which said proceeds are commingled, as well as revenues and other advantages derived from these proceeds, from any person to whom these proceeds and this property belong, unless their owner establishes that he/she is unaware of their fraudulent origin."

184. In addition, Articles 41 and 42 of the AML Law 06-066 stipulate, as an optional additional penal sanction applicable, respectively, to physical and legal persons, "the confiscation of the property or thing that served or was intended to serve to commit the offense, or of the thing constituting the proceeds of it."

185. Thus, AML Law 06-066 includes, with the property subject to confiscation, property constituting the proceeds of the offense of money laundering and the instruments used or intended to be used to commit the offense.

186. Property derived directly or indirectly from the proceeds of the offense are also subject to confiscation, including revenues and other derived advantages. Indeed, the law makes movable or unmovable property with which the proceeds of the offense are commingled or into which they have been transformed, subject to confiscation up to their [monetary] value, if this property has been legitimately acquired.

187. The property subject to confiscation and to which reference is made in the preceding paragraphs refers only to property related to a money laundering offense; it excludes the financing of terrorism, which is at present not criminalized in Mali.

188. The following are not included among the property subject to confiscation under AML Law 06-066: proceeds generated by the commission of a predicate offense to money laundering. The confiscation of proceeds generated by the commission of a crime or offense are covered by the MPC. This issue is actually addressed by Title III ("Penalties common to crimes and offenses") of the Malian Penal Code, in its Article 9, which states that:

> "Penalties common to criminal and correctional cases are: […] special confiscation, either of the *corpus delecti* if the convicted party is the owner thereof, or of things produced by the crime or offense, or of those that have served, or were intended to serve, to commit it."

Provisional measures to block any transfer of property subject to confiscation (Criterion 3.2)

189. AML Law 06-066 provides for provisional measures to block any transaction, transfer or cession of property subject to confiscation. Thus, Article 36 of this law states that "the investigating magistrate may prescribe conservatory measures, in accordance with legal provisions and at the cost of the State, in particular, the seizure or confiscation of goods related to the offense under investigation and all items which are lilely to permit the identification of the goods, and the freezing of the money and financial transactions related to these goods."

Unilateral (*ex parte*) submission, without prior notice, of an initial request for freezing or seizure of property subject to confiscation (Criterion 3.3)

190. Neither Law 06-066 nor the CPPM expressively allow the initial application to freeze or seize property subject to confiscation to be made *ex-parte* or without prior notice. However, according to the Malian authorities met by the mission, these measures can be ordered in Mali within the framework of the general powers of investigating magistrates in the interest of the efficiency of the investigation. Legal decisions tending to uphold this approach were not communicated to the evaluation mission.

Detection and tracing of the origin of property that is, or could be, subject to confiscation (Criterion 3.4) and Measures intended to prevent or annul actions prejudicial to the authorities' ability to recover property subject to confiscation (Criterion 3.6)

191. *Seizure powers of judicial police officers*: Articles 63 through 85 of the Malian Code of Penal Procedure (CPPM) organize penal investigations (in *flagrante delicto* and preliminary investigations) and grant seizure powers to the public prosecutor *(Procureur de la Republique*), judicial police officers acting under the orders of the public prosecutor , as well as to the investigating magistrate (*juge d'instruction)* in charge of the proceedings after referral from the public prosecutor. These powers concern conservatory measures to ensure the efficacy of the investigation, in order to preserve "evidence that could disappear and any element that could serve to demonstrate the truth. [The judicial police officer] shall seize weapons and instruments having served to commit the crime or that were intended to be used in its commission as well as everything that appears to be proceeds of this crime." (Article 64 of the CPPM) Apart from seizure powers, the CPPM empowers judicial policy officers to conduct searches, home visits, hearings, and police custody.

192. In addition, Law 06-066 empowers the investigating magistrate to order a number of investigatory measures to establish proof of the money laundering offense, including in particular the surveillance of bank accounts and similar accounts; access to computer systems, networks and servers; and the communication of authenticated instruments and simple contracts, and of banking, financial and business documents.

193. Regarding the possibility for prosecutorial authorities to take steps to prevent or annul contractual or other actions in which the persons involved knew, or should have known, that these actions would be prejudicial to the authorities' ability to obtain property subject to confiscation, these steps are not explicitly provided for by AML Law 06-066 or by the CPPM. According to the authorities met by the evaluation mission, however, these measures are possible in practice

within the framework of the general powers of investigating magistrates (*procureur de la Republique and juge d'instruction)* in the interest of the efficacy of the investigation.

194. *Regarding the seizure powers of the Customs Service*, Chapter II of the Customs Code (Attestation of Customs Violations"), organizes the modalities of these powers. Article 262, para. 2 states that: "Those who observe a customs infraction have the right to seize all objects that can be confiscated, to hold back deliveries and all other documents pertaining to the objects seized and to place the assigned objects in preventive custody as a security deposit against [eventual] penalties."

195. *Concerning the powers of the CENTIF*, under the terms of Article 28 of Law 06-066: The CENTIF, once operational, will be in a position to block the execution of a transaction on the basis of reliable, serious and concordant information, for a period not exceeding 48 hours.

196. For further details on the powers of prosecuting authorities and the CENTIF, the reader is referred to Sections 2.5 and 2.6 of this report.

Protection of the rights of good faith third parties (Criterion 3.5)

197. The AML Law 06-066 contains no specific provision protecting the rights of good faith third parties. However, by virtue of the aforementioned Article 45, the confiscation, for the benefit of the Public Treasury, of proceeds derived from the offense does not apply to property belonging to persons who have established that they were unaware of their fraudulent origin. It is therefore up to the owner of the property to prove his/her good faith. Article 103 of the CPPM enables any person claiming to be entitled to an object placed in judicial custody to request its restitution from the presiding judge.

Additional element – Provisions stipulating a) confiscation of the property of criminal organizations; b) confiscation mechanism set in motion by a penal conviction; and confiscation of property under conditions of reversal of the burden of proof of their legitimate origin onto the presumed perpetrator of the offense (Criterion 3.7)

198. Law 06-066 does not expressly provide for the confiscation of property belonging to a criminal organization as such. It should be noted, however, that the Malian Penal Code, in its Article 175, criminalizes the association of wrongdoers (*association de malfaiteurs)*, defined as: "Any association, whatever the duration and number of members, or any agreement, formed with the intention of preparing or committing an assault against persons or property, constitutes a crime against the public peace.

199. Anyone who knowingly associates with a formed association, or participates in an established agreement, for the purpose specified in the preceding paragraph, shall be punished by five to twenty years of imprisonment and five to twenty years of prohibition on residency."

200. According to the Malian authorities met by the mission, this Article, in the event of conviction of an individual for affiliation with an association of wrongdoers, and if the association is recognized as such, permits the confiscation of property belonging to that association.

201. Apart from the confiscation mechanism set in motion by a penal conviction, Malian law has no civil confiscation procedure.

Statistics (application of R. 32)

202. The Malian authorities have thus far not handled any money laundering cases.

203. The same is true of cases of the financing of terrorism, since the financing of terrorism is still not criminalized under Malian law.

204. Regarding property frozen, seized or confiscated in relation to predicate offenses, the mission was given only a statement of drug seizures conducted during 2007. A total of 7,565 kilograms of cannabis and 1,342 kilograms of cocaine were seized.

Analysis of effectiveness

205. Provisions concerning seizure and confiscation put in place by Law 06-066 have not yet been implemented. The mission therefore cannot assess their practical effectiveness.

Recommendations and remarks

206. Overall, the texts establishing the Malian mechanism of freezing, seizure and confiscation for offenses related to money laundering are in compliance with international standards.

207. The Malian authorities are urged to implemented Law 06-066 as soon as possible.

208. The Malian authorities should transpose the Directive on the financing of terrorism as soon as possible.

209. The Malian authorities should provide for a mechanism making it possible to know the amount of sums seized for money laundering and their management modalities, in order to gauge the efficacy of judicial seizure and confiscation measures, and to calculate the sums involved.

Compliance with Recommendations 3 and 32

	Rating	Summary of factors underlying the rating
R.3	NC	Failure to implement freezing, seizure and confiscation mechanisms for money laundering infractions, thereby preventing the mission from assessing their practical effectiveness. Lack of criminalization of the financing of terrorism
R.32	NC	Lack of analysis and monitoring tool

2.4 FREEZING OF FUNDS USED TO FINANCE TERRORISM (SR.III)

2.4.1 Description and Analysis

210. Community regulation 14/2002/CM/WAEMU (Regulation 14/2002), which is directly applicable, sets in place a mechanism for freezing assets pursuant to UN Security Council Resolution 1267 (*et seq*.) in WAEMU member countries in general, and in Mali in particular.

211. Decisions of the WAEMU Council of Ministers establishing the list of persons, entities, and organizations whose funds must be frozen:

- Decision 06/2003/CM/WAEMU concerning the list of persons, entities, and organizations subject to the freezing of funds and other financial resources in connection with the effort to combat terrorist financing in WAEMU member countries;
- Decision 04/2004/CM/WAEMU amending Decision 06/2003/CM/WAEMU;
- Decision 12/2005/CM/WAEMU of July 4, 2005 concerning the list of persons, entities, and organizations subject to the freezing of funds and other financial resources in connection with the effort to combat terrorist financing in WAEMU member countries;
- Decision 14/2006/CM/WAEMU of September 8, 2006 amending Decision 12/2002/CM/WAEMU;
- Decision 09/2007/CM/WAEMU of April 6, 2007 amending Decision 14/2006/CM/WAEMU.

Freezing of funds referred to in S/RES/1267(1999) (c. III.1), Applying c. III.1-III.3 to funds or other assets controlled by designated persons (c. III.4), and Communicating with the financial sector (c. III.5)

212. Article 4 of Regulation 14/2002 establishes the conditions for applying the measures for freezing funds and other financial resources of entities designated by the Sanctions Committee. This article stipulates that "all funds and other financial resources belonging to any natural or legal person, entity, or other organization designated by the Sanctions Committee shall be frozen."

213. The procedure for disseminating the lists stipulated under Regulation 14/2002 requires that the Council of Ministers of WAEMU compile the lists of persons, entities, and organizations whose funds must be frozen, and these lists are then disseminated by BCEAO to banks and financial institutions. To that end, five decisions have been adopted by the Council of Ministers of WAEMU.

214. In between sessions of the Council of Ministers, Regulation 14/2002 empowers the President of the Council of Ministers, at the recommendation of the Governor of the Central Bank, to modify or add to the list of persons, entities, and organizations whose funds must be frozen, pursuant to decisions by the Sanctions Committee. Such actions must then be approved at the next session of the Council of Ministers.

215. In regard to the scope of implementation of Regulation 14/2002, it applies to all banks and credit institutions, as defined by the banking regulations, which operate within WAEMU countries. Furthermore, such entities are required to provide the Central Bank and the Banking Commission with any and all information that could help ensure compliance with the regulation, specifically with respect to the freezing of funds and financial resources.

216. The mechanism for disseminating the UN Security Council lists pursuant to Resolution 1267 calls for a number of observations:

- With respect to the entities and persons subject to the freezing mechanism, Regulation 14/2002 is restrictive because only the natural and legal persons, entities, and organizations explicitly designated by the Sanctions Committee are subject to such measures (Article 4). It should be noted that the abovementioned resolution requires the freezing of funds and other assets held or controlled either directly or indirectly by the persons and entities explicitly designated by the Sanctions Committee, as well as by persons acting in their name or on their instructions.

- As regards the assets of persons or entities subject to the regulation, only financial assets are covered. Indeed, Article 4 of the regulation refers to "funds and other financial resources," defined as:

  "all the financial assets and economic benefits of any sort whatsoever, including, but not limited to, cash, checks, cash claims, bills, payment orders, other payment instruments, deposits in banks and financial institutions, account balances, debts and debt securities, marketable securities and debt instruments, particularly shares and other equity securities, certificates of title, notes, promissory notes, warrants, un-guaranteed securities, derivative contracts, interest, dividends or other income from assets or capital gains on assets, credit, rights to compensation, guarantees, performance securities or other financial commitments, letters of credit, bills of lading, sales contracts, any document attesting to shares of a fund or financial resources, and any other export financing instruments" (Article 1, "Terminology" of the Regulation).

217. This definition of "funds" that are subject to freezing does not meet the requirements of Resolutions 1267 *et seq*. These resolutions spell out the obligation to freeze without delay "funds or other assets" belonging to or controlled by the listed persons or entities. "Funds or other assets" encompasses financial assets, but also assets of any type, both tangible and intangible, including real estate and chattels, as well as legal documents or instruments of any form proving ownership of or interest in said assets.

- The mechanism set in place by the abovementioned regulation has an overly restrictive scope of implementation because it refers only to funds held by financial institutions, whereas the abovementioned resolution requires that all funds and other assets belonging to persons or entities that commit or attempt to commit terrorist acts shall be frozen; meeting this requirement will require the intervention of other actors, in addition to financial institutions.

- The mechanism set in place by the regulation requiring that the WAEMU Council of Ministers establish the list of persons, entities, and organizations whose funds must be frozen is much too cumbersome and does not permit dissemination of the lists "without delay" in member countries, specifically Mali, as required by Resolution 1267. Indeed, it should be noted that, for the purposes of Resolution 1267, "without delay" ideally means within a few hours of being entered on the lists of the Al-Qaida and Taliban Sanctions Committee. Moreover, in the event of an impasse within the Council of Ministers, which makes its decisions by unanimous approval (Article 11 of the WAEMU founding treaty), member countries, and Mali specifically, should have clear national procedures for disseminating the lists so that they can take action without delay.

218. Parallel to the mechanism set in place by Regulation 14/2002, in Mali there is an informal mechanism for transmitting the UN lists through embassies. The Malian Embassy at the UN sends the lists to the Ministry of Foreign Affairs, which then takes charge of distributing the lists to other relevant ministries, particularly the Ministry of Finance.

219. The coexistence of two systems for disseminating the UN lists is unsatisfactory because it causes delays and sometimes creates confusion about the behavior to be followed. In addition, the

mechanical processing of the lists within the banking networks is too cumbersome to ensure effective comparison of the lists with the client base.

Freezing of funds in the context of S/RES/1373 (2001) (c. III.2), Freezing actions by other countries (c. III.3), Applying c. III.1-III.3 to funds or other assets controlled by designated persons (c. III.4), and Communicating to the financial sector (c. III.5)

220. The preamble to Regulation 14/2002 refers to both Resolution 1267 and Resolution 1373; however, Article 2 of this regulation ("purpose of the regulation") refers only to Resolution 1267. Regulation 14/2002 does not contain any provisions specific to the implementation of Resolution 1373.

221. At the national level, Mali has no legal mechanism enabling it to develop its own lists by designating persons or entities whose funds or other assets should be frozen and to move forward with freezing same. It should also be noted that terrorist financing is not a criminal offense in Mali.

222. Mali has not instituted any procedures enabling it to review and put into effect actions taken under the freezing mechanisms of other countries.

223. The absence of a legal mechanism enabling Mali to take actions pursuant to the freezing mechanisms of Resolution 1373 explains the absence of an effective system for communicating to the financial sector.

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

224. Apart from Regulation 14/2002 which solely concerns financial institutions, no guidance is given to financial institutions and other persons or entities likely to hold funds or other assets that may subject them to the obligation to take action pursuant to the freezing mechanisms.

Requests for de-listing and for un-freezing funds (c. III.7)

225. The absence of effective and publicly known procedures for timely consideration of requests for de-listing of designated persons and for un-freezing of funds and other assets of de-listed persons or entities is explained by the absence of a legal mechanism to implement Resolution 1373.

Procedures for unfreezing the funds of persons inadvertently affected by a freezing mechanism (c. III.8)

226. Regulation 14/2002 does not set in place effective and publicly known procedures for the timely unfreezing of funds or other assets belonging to persons or entities inadvertently affected by a freezing mechanism, following verification that the person or entity is not a designated person.

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

227. Regulation 14/2002 does not set in place appropriate procedures for authorizing access to funds or other assets that were frozen pursuant to Resolution S/RES/1267(1999) and that have been determined to be necessary for basic expenses, the payment of certain types of fees, expenses, and service charges or for extraordinary expenses.

Procedures for challenging a freezing action with a view to having it reviewed by a court (c. III.10)

228. Regulation 14/2002 does not set in place appropriate procedures through which a person or entity whose funds or other assets have been frozen can challenge that measure with a view to having it reviewed by a court.

Freezing, seizing, and confiscation in other circumstances (applying c. 3.1-3.4 and 3.6 of R. 3, c. III.11)

229. There is no procedure in Mali for the freezing, seizing, and confiscation of terrorism-related funds or other assets, as terrorism and its financing are not currently criminalized.

230. However, once transposed, the CFT directive should enable Mali to fill this loophole. Article 20 of the CFT directive states that "member countries shall adopt provisional measures, consistent with the rules of their national law, to require, at the expense of the member country involved, the seizing of assets related to the offense of terrorist financing, the subject of investigation, and all items necessary to identify same."

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

231. Regulation 14/2002 does not contain any provision to protect the rights of third parties acting in good faith.

Compliance with obligations under SR. III (c. III.13)

232. Article 8 of Regulation 14/2002 stipulates that BCEAO and the Banking Commission are charged with monitoring compliance with this regulation. As such, the Banking Commission may impose sanctions for noncompliance with the mechanism set in place by banks and credit institutions under its supervision. To date, the relevant competent authorities have not taken any steps to monitor compliance with Regulation 14/2002.

233. Since Regulation 14/2002 applies solely to financial institutions, there is no mechanism for monitoring compliance with the regulation by other entities likely to hold funds belonging to persons or entities designated on the UN lists.

234. There is no mechanism in place for monitoring proper execution of freezing measures taken pursuant to Resolution 1373, as this resolution has not been implemented in Mali.

Additional element – Implementation of measures set out in the International Best Practices Paper (c. III.14) and Implementation of procedures authorizing access to frozen funds (c. III.15)

235. The measures set out in the International Best Practices Paper are not covered by Regulation 14/2002. The same is true of procedures to authorize access to funds or other assets that were frozen pursuant to Resolution S/RES/1373(2001) and that have been determined to be necessary for basic expenses, the payment of certain types of fees, expenses, and service charges or for extraordinary expenses.

Statistics (applying R. 32)

236. No mechanism is available for gathering information related to freezing measures taken pursuant to Resolution 1267.

Analysis of effectiveness

237. Among the financial institutions and designated non-financial persons and businesses met by the assessors, only banks stated that they were aware of lists disseminated by the authorities

containing the names of persons whose funds should be frozen. Some banks indicated that they have received such information from the Malian Ministry of Finance, and others from BCEAO (none had received such information from both institutions at once).

238. The persons met by the assessors were largely unaware of WAEMU Regulation 14-2002 on the freezing of funds, and no bank indicated that it had developed a specific procedure for meeting the provisions of this regulation. In most cases, the controls performed after receiving the abovementioned lists focus on new accounts that are opened, to the exclusion of accounts opened earlier at the institution. In addition, one bank indicated that it had identified several persons bearing the same name who were mentioned on a list received from the authorities. The bank considered that it knew these customers well and therefore neither froze the funds, nor alerted the authorities.

2.4.2 Recommendations and Comments

239. The mechanism for freezing funds pursuant to Resolution 1267 is very incomplete and should be modified in order to:

-Subject the funds and other assets held or controlled directly or indirectly not only by persons or entities explicitly designated by the Sanctions Committee, but also by persons acting in their name or on their instructions, to freezing measures taken pursuant to Resolution 1267;

-Expand the freezing measures to all funds and other assets, which would encompass, in accordance with the abovementioned resolution, all financial assets, assets of any type, both tangible and intangible, including real estate and chattels, as well as legal documents or instruments of any form proving ownership of or interest in said assets;

-Expand the regulation's scope of implementation to cover all actors who hold funds or other assets belonging to persons or entities involved directly or indirectly in the commission of terrorist acts and ensure effective monitoring of compliance with these obligations by the supervisory authorities;

-Provide a clear and rapid mechanism for disseminating the lists of the Sanctions Committee nationwide, to complement the regional mechanism; the current mechanism of transmission through embassies should be formalized;

-Set in place effective and publicly-known procedures for the timely unfreezing of funds or other assets belonging to persons or entities inadvertently affected by a freezing mechanism, following verification that the person or entity is not a designated person;

-Set in place appropriate procedures for authorizing access to funds or other assets that were frozen pursuant to Resolution S/RES/1267(1999) and that have been determined to be necessary for basic expenses, the payment of certain types of fees, expenses, and service charges or for extraordinary expenses;

-Set in place appropriate procedures through which a person or entity whose funds or other assets have been frozen can challenge that measure with a view to having it reviewed by a court;

-Adopt measures to protect the rights of third parties acting in good faith.

240. Mali should implement Resolution 1373 as soon as possible in order to:

-Be able to designate persons and entities whose funds or other assets should be frozen;

-Provide a clear and rapid procedure to review and put into effect actions taken under the freezing mechanisms of other countries;

-Set in place effective and publicly known procedures for timely consideration of requests for de-listing of designated persons and for unfreezing of funds and other assets of de-listed persons or entities;

-Set in place effective and publicly known procedures for the timely unfreezing of funds or other assets belonging to persons or entities inadvertently affected by a freezing mechanism, following verification that the person or entity is not a designated person;

-Set in place appropriate procedures through which a person or entity whose funds or other assets have been frozen can challenge that measure with a view to having it reviewed by a court;

-Adopt measures to protect the rights of third parties acting in good faith.

241. Mali should transpose the CFT Directive without delay, criminalize terrorist financing under national law, and establish a mechanism for the freezing, seizing, and confiscation of terrorism-related funds or other assets.

2.4.3 Compliance with Special Recommendation III and R 32

	Rating	Summary of factors underlying the ratings
SR.III	NC	-The regional mechanism for freezing funds pursuant to Resolution 1267 is incomplete and overly restrictive (restrictive scope of implementation, restrictive definition of "funds," etc.) and is not adequately implemented -Absence of a complementary national mechanism for implementing Resolution 1267 -Absence of a legal framework for implementing Resolution 1373 -Absence of a mechanism for the freezing, seizing, and confiscation of terrorism-related funds or other assets, as terrorism and its financing have not been criminalized in Mali
R.32	NC	Absence of statistical monitoring

2.5 THE FINANCIAL INTELLIGENCE UNIT AND ITS FUNCTIONS (R26)

2.5.1 Description and Analysis

Legal framework

242. WAEMU Directive 07/2002 concerning the effort to combat money laundering in member countries of WAEMU was made the subject, by these same WAEMU bodies, of a uniform bill, adopted by the WAEMU Council of Ministers, and addressed to all member countries, for the purpose of transposing the directive's provisions under the national law of individual countries.

243. Accordingly, Mali adopted, under national law, Law 06-066 of December 29, 2006, instituting the uniform anti-money laundering law. This law contains, in particular, the community provisions relating to the creation of a National Financial Information Processing Unit (CENTIF), dedicated to the detection of money laundering.

244. An implementing decree was issued for the Malian law, Decree 07-291/P-RM of August 10, 2007, which establishes the organizational structure and financing arrangements for CENTIF. [39]According the this decree, the CENTIF is vested with the power to collect and process financial intelligence. As such, the Unit is responsible for collecting, analyzing and processing STRs sent by reporting entities.

245. As of the time of the on-site mission, CENTIF had not yet entered an operational phase. Its members, which must be appointed by decree of the Council of Ministers (Article 6 of Decree 07-291), had not yet been named by the time of the mission. Its physical facilities had been identified but not outfitted. A bidding process was reportedly under way, about which the assessors received no information. At the time of the mission, team's interlocutors were unbale to indicate when the CENTIF is about to start working.

246. A CENTIF founding committee, of variable composition depending on the business of the day, was reportedly meeting under the auspices of the Ministry of Economy and Finance to pave the way for an operational CENTIF. No agenda or minutes of the work conducted by this committee were provided to the assessors.

Establishment of an FIU that serves as a national center (c. 26.1)

247. Under the terms of the law, CENTIF is an administrative unit that holds nationwide jurisdiction and enjoys financial autonomy, with a mandate to gather and process financial intelligence on money laundering channels.

248. To that end, it collects, analyses and processes suspicious transaction reports from persons subject to the law, focusing on:

- - any sums of money or other assets in their possession that could be derived from money laundering;
- - any transactions involving such assets, if the transactions could be part of a money laundering process;
- - any sums of money or other assets that are suspected to be intended for terrorist financing and that appear to be derived from transactions related to money laundering (Article 26 of the Law of December 29, 2006).

249. Since terrorist financing had not been criminalized under Malian law at the time of the assessment mission, CENTIF holds no powers in this area, and particularly no power to transmit information to judicial authorities on this subject.

39 During the GIABA Plenary which was held in Dakar in November 2008, the Malian authorities indicated to the assessors that the members of the CENTIF had been nominated by decree in May 2008 and that the CENTIF had begun its work since then.

250. In regard to its status as a national center, the assessors took note of the existence, in Law 01-078 of July 18, 2001 on the control of drugs and precursors, of a mechanism intended to facilitate detection of the laundering of the proceeds of drug trafficking (Articles 121-124 of this law). The law specifically calls for a suspicion reporting mechanism for listed professions, which are required to report their suspicions to the "competent judicial authority." These legal provisions, predating the 2006 anti-money laundering law, were not mentioned by the professionals involved and appear never to have been implemented. However, the 2001 law is still in effect and the 2006 law does not repeal any of its provisions. Thus, two different systems for preventing money laundering coexist, a fact that weakens CENTIF's status as a national center (cf. comments relating to Recommendation 13 also).On the other hand, it is noteworthy some banks have already reported suspicious activities to the BCEAO, owing to the absence of the CENTIF.

Guidance regarding the manner of reporting (c.26.2)

251. At the time of the on-site mission, neither CENTIF nor any government authority had provided guidance to financial institutions and other persons subject to the law to explain how to report suspicions. In this regard, Article 26 of the law specifically calls for a model report to be issued by order of the Minister of Finance.

Timely access to information on the part of the FIU (c.26.3)

252. The absence of a truly operational CENTIF prevented the assessors from examining this structure's real access to pertinent information on a timely basis. The network of correspondents had not been set in place at the time of the mission.

253. Accroding to the law, the financial intelligence unit receives all useful information needed to carry out its mission, particularly information communicated by oversight authorities and officers of the criminal investigation department. It may also rely on a network of correspondents within the police, *Gendarmerie*, customs, and legal services departments or any other department whose assistance is deemed necessary to combat money laundering.

Obtaining additional information from reporting parties (c. 26.4)

254. CENTIF possesses a broad right of communication in regard to parties subject to the law, as well as all other natural and legal persons, for the purpose of buttressing reports of suspicions. It may, if necessary, request additional information from the reporting party.

Dissemination of financial information (c. 26.5)

255. Under the terms of Article 29 of the law, CENTIF transmits a report on facts likely to constitute a money laundering offense to the public prosecutor, who immediately refers the matter to the examining magistrate. This report is accompanied by all relevant evidence, except for the report of suspicion and the identity of the reporting party.

256. In addition, CENTIF is charged with creating and operating a data bank that contains all useful information relating to reports of suspicions. No other authority has a right of access to this data bank.

Operational independence and autonomy (c. 26.6)

257. In the absence of a fully functioning CENTIF, the mission was unable to assess its operational independence and autonomy. Its rules of procedure will be worked out by the members of CENTIF, once they have been appointed and installed, in accordance with the Decree of August 10, 2007.

258. Inasmuch as the operational arrangements for CENTIF are to be defined by its future members (a total of six members: its president, a senior official of the Ministry of Finance, on temporary assignment from his/her original department; a magistrate specialized in financial issues; a senior official of the criminal investigation department; a BCEAO representative holding the post of secretary; two investigative officers, one of them a customs inspector, and the other an officer of the criminal investigation department, referred to as an OPJ), no attention has yet been given, at this stage, to the possible subsequent recruitment of analysts to process reports of suspicions.

259. As regards the persons designated in the statutes, here again there has been no attention given to the tenets of their functions within CENTIF. Thus, for example, one might question the requirement of OPJ status for the police official responsible for investigations. OPJ status entails the possibility of obligations to the judicial authority in forms specified under the code of criminal procedure. But CENTIF is an administrative structure that is not intended to operate under the auspices of the judicial authority. In any event, the possible use of OPJ status will depend on this person's status within CENTIF (availability versus temporary assignment) and will be exerciced in the strict limits of the CENTIF's mandate.

260. A preliminary version of standard rules of procedure, developed by BCEAO in June 2006 for WAEMU member countries, proposes that national government officials who are CENTIF members should be in a position of temporary assignment, while the BCEAO member is in a position of availability (Article 17 of the draft rules of procedure).

261. In terms of independence, CENTIF is empowered to make autonomous decisions about matters falling under its competence (Article 17 of the law and Article 2 of the decree). Pending discussions revolving around the status of personnel that will form the FIU's staff and their responsabilities are also an important element of its competence. In this regard, it is not clear as to whether civil servant that will be seconded to the CENTIF will be subject to two different hierarchies (one from their administration and one from the FIU); if so, the independence of the CENTIF is likely to be undermined.

262. The issue of resources to be allotted to CENTIF, which has not yet been settled (see criterion 30.1), will have an impact on the unit's autonomy and independence, depending on the amounts and types (from government, community, partners) of funding that will compose its budget.

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

263. The anti-money laundering law does not stipulate any specific sanctions for violations of the secrecy requirements by which appointed members of CENTIF are bound. Therefore, subject to the interpretation of the judicial authorities, the applicable sanctions are those stipulated in Article 195 of the criminal code.

Publication of periodic reports (c. 26.8)

264. CENTIF must prepare, or see to the preparation of, periodic reports on trends in the techniques used for money laundering purposes within the country. It must also issue opinions on the implementation of government anti-money laundering policy and propose any and all reforms needed to make the anti-money laundering effort more effective. In addition, it must transmit detailed quarterly and annual reports on its activities to BCEAO headquarters.

265. Lastly, CENTIF must prepare quarterly reports and an annual report, to be submitted to the Minister of Finance, analyzing trends in anti-money laundering activities at the national and international level, and assess the reports received.

Membership in the Egmont Group (c. 26.9)

Attention to the principles of the Egmont Group (c. 26.10)

266. The fact that the CENTIF is not operational yet and due to the absence of legislation on terrorist financing at this stage, the CENTIF is not in a position to seek membership in the Egmont Group. The law already sets out the possibility, subject to reciprocity, of exchanging information with counterpart financial intelligence units in third countries, after concluding an agreement with the prior authorization of the Minister of Finance.

267. In addition, CENTIF is required to transmit, at the duly justified request of another CENTIF of a WAEMU member country in connection with an inquiry, any and all information and data relating to investigations undertaken pursuant to a report of suspicions at the national level, even without concluding a prior agreement.

Adequacy of FIU resources (c. 30.1)

268. CENTIF resources will come from a government appropriation (projected to reach CFAF 75 million in the government budget for 2008, equivalent to USD 166,000), to be supplemented by contributions from WAEMU institutions and development partners. The Malian authorities have no information concerning the funds likely to be given to CENTIF through the two latter channels.

269. The actual concept of "development partners" is not spelled out in the law or in the directive. It can be assumed that this refers to multilateral institutions (World Bank, IMF, etc.) or government partners within a bilateral framework. The Malian authorities were unable to produce any agreement in principle in this area with the above mentioned institutions or with partner countries[40].

270. This issue of sources of financing for CENTIF appears, however, to be a crucial point for the authorities insofar as the actual setting up of CENTIF has been presented as being dependent upon assurances of external financing to round out its budget.

Integrity of FIU staff (c. 30.2)

271. The decree calls for taking an oath and lays out specific conditions for compensation and secrecy requirements for the six appointed members only. The wording of the decree gives the impression that these six members will alone be responsible for all CENTIF operations (Article 4 of the decree).

40 The assessors took note of the Minister of Finance's decision to set up the CENTIF by nominating its members by decree in May 2008, with a budget that was fixed by the Malian Government of 75 million FCFA for the year 2008 and 400 million FCFA (to be adopted by the National Assembly) for the year 2009.

272. However, the example of CENTIFs already created in WAEMU countries (Senegal and Niger in particular) shows the possibility of additional administrative, technical, or investigative staff. No specific provisions are laid out to ensure the integrity of CENTIF employees, patterned on the model of what has been done for the Auditor General (a written statement of his/her assets is required from the Auditor General and his/her Deputy prior to assuming their positions).

Appropriate training for FIU staff (c. 30.3)

273. In the absence of any official appointment of CENTIF members at the time of the on-site mission, it was not possible for the assessors to examine the training and competence of the future members. Some officials from the Ministry of Finance, the police, and customs and some BCEAO members have participated in training activities and seminars organized at the regional level for combating money laundering and terrorist financing. Their involvement in CENTIF could not be confirmed to the assessors.

Statistics (applying R. 32)

274. The absence of an operational CENTIF explains the absence of statistics relating to its activities or of a mechanism for collecting relevant information.

Analysis of effectiveness

Assessors were not in a position to assess the effectiveness of the CENTIF. The Unit is not operational despite the enactment of the decree which sets out the internal organization of the latter and even though the AML law has been passed for more than one year resquesting reporting entities, financial and non-financial, to report their suspcions to the FIU.

2.5.2 Recommendations and Comments

275. More than a year after adoption of the law criminalizing money laundering, imposing prudential requirements on financial and designated non-financial professions, and creating CENTIF, and several months after adoption of the decree establishing the organizational structure and operating arrangements of the latter, CENTIF still is not operational in Mali.

276. The Malian authorities should therefore consider the following actions without further delay:

- appoint, by decree of the Council of Ministers, the six permanent members of CENTIF, in accordance with Article 4 of Decree 07-291, and provide a monthly allowance in accordance with Article 6 of Decree 07-291;
- establish a model report of suspicions by order of the Minister of Finance, in accordance with Article 26 of Law 06-066, and provide guidance to reporting entities on how to prepare such reports;
- appoint CENTIF correspondents within relevant departments in accordance with Article 7 of the decree;
- develop rules of procedure for CENTIF operations so that CENTIF can commence its activities as soon as its members are appointed;

- think about recruiting additional staff and plan accordingly for additional financial resources to ensure the operational autonomy of CENTIF;
    - Make sure that all STRs are sent to the FIU only and not to other bodies (e.g. the BCEAO);
- set in place a binding mechanism to ensure the integrity of CENTIF members, patterned on the model of arrangements made for the Auditor General;
- expand the scope of competence of CENTIF to encompass the offense of terrorist financing, once this has been criminalized under Malian law;
- seek membership for Mali in the Egmont Group once the CENTIF has become operational and once the offense of terrorist financing has been criminalized under Malian law;
- ensure adequate and sustainable financing for CENTIF.

2.5.3 Compliance with Recommendations 26, 30, and 32

	Rating	Summary of factors underlying the rating
R.26	NC	Absence of an operational CENTIF, specifically in terms of: -absence of appointment of CENTIF members -absence of development of a model for reports of suspicions and of guidance for persons subject to the law -absence of a network of correspondents within relevant departments -absence of the publication of reports Absence of powers relating to terrorist financing, which has not been criminalized under Malian law
R.30	NC	Absence of measures designed to guarantee the integrity of CENTIF staff
R.32	NC	Absence of statistics

2.6 AUTHORITIES RESPONSIBLE FOR INVESTIGATIONS, CRIMINAL PROSECUTION AUTHORITIES, AND OTHER COMPETENT AUTHORITIES – FRAMEWORK FOR INVESTIGATION AND PROSECUTION OF OFFENSES AND FOR CONFISCATION AND FREEZING (R.27, 28, 30, AND 32)

2.6.1 Description and Analysis

Legal framework

277. Law 01-080 of August 20, 2001 regulates the organization of the judicial system in terms of investigating and prosecuting crimes and offenses. It defines the procedures and powers relating to investigations and prosecutions. The provisions of the code of criminal procedure apply to crimes and offenses, violations of an economic or financial nature, which includes money laundering, predicate offenses, and customs violations (Article 609).

278. Although the anti-money laundering law of 2006 has come into effect, the mission noted a total absence of implementation of this law by the competent authorities for investigations and prosecutions relating to money laundering.

279. Law 01-078 of July 18, 2001 on the control of drugs and precursors defines powers of investigation and prosecution specific to drug-related offenses.

280. Mali has not adopted a law on terrorist financing, which would allow the competent authorities to conduct investigations and prosecutions relating to the offense of terrorist financing.

Designation of competent authorities for criminal prosecutions (c. 27.1)

281. The Malian judicial system consists of a Supreme Court, three Courts of Appeal, and the District Courts. The prosecution and investigation of economic and financial offenses, including money laundering, fall under the jurisdiction of the three economic and financial units located at the district court level (Articles 609 and 610 of the code of criminal procedure).

282. Each of the district courts in the Districts of Bamako, Kayes, and Mopti has an economic and financial unit that includes a specialized public prosecutor's department; specialized examiner's offices; a specialized investigative team, known as the economic and financial brigade, comprising officers of thejudiciary police, the *Gendarmerie*, and the police; and assistants specialized in economic, financial, fiscal, and customs matters. In total, there are 24 police officers, three prosecuting magistrates, three examining magistrates, six clerks of the court, and four assistants specialized in financial affairs who are assigned to the economic unit in Bamako. The economic unit is placed under the authority and leadership of the public prosecutor, who receives the statements and reports prepared in criminal investigations (Articles 609 and 610 of the code of criminal procedure).

283. The economic unit fulfills its mandate through agents and officers of the judiciary police, who are responsible for gathering evidence and searching for the perpetrators before starting a preliminary inquiry. Once the inquiry has been started, the criminal investigation department executes the tasks delegated by the examining jurisdiction and refers to the case for prosecution (Articles 31 and 32 of the code of criminal procedure). The judiciary police conducts preliminary investigations under the instructions and control of the public prosecutor, or else as a matter of course, and is required to inform the public prosecutor or the magistrate of crimes and offenses, as well as statements, certificates, documents, and objects seized at the end of the inquiry.

284. As a representative of the public prosecutor's office, the prosecutor oversees the enforcement of criminal law throughout the jurisdiction of the court of appeal (Articles 47 and 48 of the CCP) and may refer a case to any examining magistrate to continue an inquiry started by a magistrate from whom he has decided to remove the case (Article 48 of the CCP). The public prosecutor receives any complaints and denunciations and assesses what follow-up to apply to the case.

285. The prosecutor has authority over all officers of the public prosecutor's office and is thus the hierarchical chief. He/she also holds powers of supervision over officers and agents of the judiciary police in the performance of their functions and powers.

286. In criminal matters, a preliminary inquiry is required, barring special provisions. The examining magistrate is charged with carrying out all aspects of the investigation opened by the public prosecutor's office concerning all crimes and offenses based on denunciations, statements, and other reports from the criminal investigation department (Article 612 of the CCP). The examining magistrate exercises all powers of the criminal investigation department.

287. The territorial jurisdiction for prosecutions is defined in Article 611 of the CPP, which establishes the competence of the public prosecutor's office and its specialized units within the jurisdiction of the court of appeal where they are based. The courts of criminal appeal are second-tier jurisdictions, under the courts of appeal, for all cases investigated by specialized examining units within their jurisdiction involving economic or financial offenses and corruption.

288. The General Directorate of Customs (DGD) in Mali oversees 7,200 kilometers of borders. The expanse of the country constitutes a major vulnerability in terms of illegal trafficking. Customs agents are empowered to detect violations of the customs code in regard to commercial matters (undeclared imports and exports), smuggling (of ordinary goods as well as illegal goods such as drugs, weapons, counterfeit items, etc.), and exchange control. Customs laundering is not criminalized.

289. The customs services are required to record any offenses relating to the physical cross-border transportation of currency or bearer-negotiable instruments by virtue of the community regulations on exchange control, which are contained in an annex to the community customs code.

290. The department of general intelligence and national surveillance, which falls under the General Directorate of the National Police, has as its mission to gather information on criminal trends in the country and state security, and relies on police posts located in the different regions to obtain its information. Although this department has the power to obtain information relating to money laundering and terrorism, the mission found no indications that this power is in fact exercised.

291. Law 03-030 of August 25, 2003 establishes the Office of the Verificateur General, thus setting in place an instrument and a structure to oversee the management of public resources by government agencies. The mission of the Verificateur General is to oversee the management of public funds by performing controls to ensure the legality of revenue and expenditure operations of national institutions, government agencies, territorial authorities, public institutions, and all other organizations receiving financial support from the government (Article 2 of the law of 2003).

292. If the mission of the Verificateur General causes him/her to become aware of facts likely to constitute a criminal offense, then he/she must refer the matter to the public prosecutor or a magistrate holding broad competence (Article 16). During the years 2004-2005 and 2005-2006, the Verificateur General performed 36 control missions, uncovering estimated losses for the government of CFAF 15 billion and CFAF 103 billion respectively, in most cases involving violations of the tax and customs codes.

Possibility of postponing or waiving certain arrests or seizures to ensure a proper investigation (c. 27.2)

293. There is no mechanism to permit the authorities responsible for investigating and prosecuting money laundering offenses to postpone the arrest of suspects and/or the seizure of funds, or to waive such arrests or seizures, in order to identify the persons involved in these activities or gather evidence.

294. The judiciary police indicated that it follows such techniques to combat drug trafficking, pursuant to the abovementioned law of 2001, but not in money laundering cases.

Additional element – Authorization of special investigative techniques (c. 27.3)

295. Beyond his/her traditional investigative powers conferred by the CCP, the examining magistrate holds, pursuant to Article 33 of Law 06-066, additional powers to search for evidence in the context of investigations of offenses related to money laundering. Thus, he/she may order:

- the monitoring of bank accounts and other accounts comparable to bank accounts if there are serious indications that they are used for transactions related to predicate offenses or offenses specified in the law;
- access to computer systems, networks, and servers used or likely to be used by persons against whom there are serious indications of involvement in predicate offenses or offenses specified in the law;
- production of official instruments or private agreements and bank, financial, and business documents.

296. These powers may be exercised for a limited time only, and professional secrecy may not be invoked in opposition. The examining magistrate also has the power to seize the abovementioned instruments and documents.

297. Special investigative techniques to search for predicate offenses are stipulated by the law of July 18, 2001 on the control of drugs and precursors. Thus, officers of the criminal investigation department may in such cases conduct night searches (Article 113), medical screening tests (Article 116), and controlled deliveries (Article 117).

298. The public prosecutor or the examining magistrate may also authorize:

- placing under surveillance or wiretapping, for a limited time, of telephone lines;
- placing under surveillance, for a limited time, of bank accounts;
- access, for a limited time, to computer systems;
- production of all bank, financial, and business documents.

299. A comparison between the special investigative techniques authorized to combat the laundering of all crimes and offenses and those authorized to combat drugs shows that wiretapping has not been authorized by lawmakers as a special investigative technique in cases involving the laundering of all crimes and offenses.

Additional element – Framework for using special investigative techniques (c. 27.4)

300. The abovementioned special investigative techniques are partially used by the Malian authorities responsible for prosecutions. Thus, while controlled deliveries appear to be used to combat drugs, wiretapping and computer surveillance do not.

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

301. Apart from the special investigative techniques, there are no permanent or temporary groups specialized in investigating the proceeds of crime. There is no indication that shows that these special techniques are used in cooperation with appropriate competent authorities in other countries.

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

302. Due to the absence of statistics, the authorities are unable to undertake studies of money laundering methods, techniques, and trends. Such studies have never been conducted by the Malian authorities.

Powers to require and search all documents and information (c. 28.1)

303. The prosecutor takes or sees to all actions necessary for detecting and prosecuting violations of criminal law (Article 53 of the CCP). The criminal investigation department is authorized by the CCP to compel the production and conduct searches and seizures of documents related to the facts of money laundering or other predicate offenses. The department is also empowered to search and seize evidence and, if necessary, compel the production of any document or other object in the possession of persons who appear to have participated in the crimes or offenses or to hold evidence or objects relating to actions criminalized under the provisions of the CCP. If the nature of the crime is such that proof of same may be obtained by seizing papers, documents, or other objects in the possession of persons who appear to have participated in the crime or to hold evidence of objects relating to criminal actions, the officer of the criminal investigation department may issue a requisition (Article 68 of the CCP).

304. The examining magistrate is empowered to seize and hold objects and documents deemed useful in demonstrating the truth (Article 97 of the CCP).

305. The judiciary police is empowered to summon and take testimony from any person likely to provide information on the facts of the case or on the objects and documents that have been seized. If the person should refuse to appear and testify, he/she may be required to do so (Article 74 of the CCP). The examining magistrate is empowered to summon a law enforcement officer or any other person or witness whose testimony would appear to be useful.

Powers to obtain and use statements from witnesses (c. 28.2)

306. The competent authorities charged with investigating and prosecuting crimes related to money laundering and predicate offenses are authorized to take and use testimony obtained in the context of their investigations and prosecutions.

307. The CCP requires the criminal investigation department to summon and take testimony from any person likely to provide information on the facts of the case or on the objects seized (Article 74 of the CCP). The examining magistrate may summon witnesses whose depositions or interviews appear useful to him/her, and statements of such depositions are drawn up (101).

Adequacy of the authorities' resources (c. 30.1)

308. The mission noted a general lack of human resources (and particularly training) and also material resources for combating money laundering.

Integrity of the authorities' staff (c. 30.2)

309. Appointment of the judicial authorities' staff is based on competitive examination.

310. Officers of the economic crime unit are appointed by the Minister of Justice on the recommendation of the public prosecutor. Their appointment hinges on good conduct and the conclusions of an investigation of moral standards. They are bound by requirements of confidentiality and professional secrecy in performing their duties. They are subject to disciplinary action by the Minister of Justice in the event of indiscretions.

311. Customs agents are civil servants. In addition, they must adhere to a code of ethics that calls for internal controls of their integrity in performing their duties. Article 50 of the Malian customs code states that "customs agents are forbidden, under penalty of sanctions laid out in the criminal code for instances of corruption and misappropriation of public funds, to receive, either directly or indirectly, any bonus, payment, or gift whatsoever, or to receive on their own behalf any or all of the duties and taxes. A guilty party who exposes corruption or the misappropriation of public funds may be absolved of penalties, fines, and confiscations insofar as the information provided has resulted in a determination of the accuracy of the exposure." The authorities did not cite any statistics of employees suspended from their positions or punished for failure to meet these standards of integrity.

Appropriate training for the authorities' staff (c. 30.3)

312. There is a general absence of training for the staff of competent authorities who are responsible for enforcing the anti-money laundering law. With just a few exceptions, the great majority of officers of the judiciary police, customs, the Office of the Verificateur General, and other institutions have not received appropriate training in specific techniques for investigating and prosecuting money laundering offenses. The staff of competent authorities has not received appropriate and relevant training on issues such as the scope of predicate offenses, money laundering typologies, and techniques for investigating and prosecuting these offenses.

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

313. Judges have never received training concerning money laundering offenses or the freezing and confiscation of assets related to money laundering and terrorist financing. There is no special program to train judges in these matters.

Statistics (applying R. 32)

314. There is no mechanism for collecting statistics on money laundering investigations, prosecutions, and convictions. The criminal investigation department gave the assessment mission a few statistics for 2007 concerning investigations and prosecutions of crimes and offenses in general. Statistics on money laundering are nonexistent due to the absence of implementation of the anti-money laundering system.

2.6.2 Recommendations and Comments

315. Implementation of the 2006 law should be a priority for the competent authorities responsible for combating money laundering.

316. The authorities should adopt the necessary instruments to criminalize terrorist financing allowing for FT offences to be then investigated.

317. The authorities responsible for investigating and prosecuting money laundering offenses should have specialized resources and techniques for detecting and prosecuting money laundering.

318. Information and statistics should be gathered on a systematic basis, and a national data collection mechanism should be set in place.

319. The various departments involved, particularly the intelligence service and the criminal investigation department, should coordinate their activities with regard to criminal investigations and prosecutions.

320. Training should be arranged that brings together all departments involved in the effort to combat money laundering, including judges, so as to facilitate their cooperation and coordination and make the system more effective.

2.6.3 Compliance with Recommendations 27, 28, and 30

	Rating	Summary of factors underlying the rating
R27	PC	Absence of implementation
R28	PC	Absence of implementation of the necessary powers for investigating ML/FT offenses or corresponding predicate offenses

2.7 REPORTING/COMMUNICATION OF CROSS-BORDER TRANSACTIONS (SR IX)

2.7.1 Description and Analysis

321. The Malian economy functions to a large extent on cash, and transfers of funds from the diaspora are very substantial (estimated at € 456 million per year in 2005). But a major share of transfers of funds is also carried out through the physical transportation of currency, either by professional cash couriers or by individuals themselves, mainly through inter-African exchanges.

322. Regulation R09/98/CM/WAEMU of December 20, 1998 concerning the external financial relations of WAEMU member countries, establishes an exchange control, in effect in Mali and in the other WAEMU countries, from which the anti-money laundering law does not depart. This law specifies that foreign exchange operations, movements of funds, and payments of all types with a third country must be performed in accordance with the provisions of the foreign exchange regulations in effect.

System to detect the physical cross-border transportation of currency (c. IX.1)

323. Detection of the physical cross-border transportation of currency falls to the customs service. Community regulations in this area form an annex to the customs code and provide customs agents with code-derived powers to detect and sanction exchange control violations, according to the authorities.

324. There is a Malian law from 1989 (Law 89-13/AN-RM of January 14, 1989) concerning disputes over exchange control violations. This law was not communicated to the assessors, and the relevant authorities made no mention of its implementation.

325. The system of controls currently in place is mixed and depends on the status of the person transporting the funds (resident versus nonresident), as well as his/her destination (inside versus outside the WAEMU zone).

	Imported to the WAEMU zone	Exported from the WAEMU zone	Movements within the WAEMU zone
WAEMU resident	- CFAF: unrestricted - currency: unrestricted, but must be handed over to an authorized intermediary within 8 days if the exchange value exceeds CFAF 300,000	- CFAF: prohibited - currency: maximum exchange value of CFAF 2 million (disclosure system) - other means of payment: unrestricted	-
WAEMU nonresident	-CFAF and currency: unrestricted, but inward declaration required if the exchange value exceeds CFAF 1 million	- currency: maximum exchange value of CFAF 500,000, unless receipts are presented (inward declaration or currency purchase notes) at the customs office of departure (declaration system) - other means of payment: unrestricted, but declaration required if exchange value exceeds CFAF 1 million	Same conditions when entering or exiting the country as when entering or exiting the WAEMU zone

326. These different thresholds entail, in the assessors' view, rather difficult enforcement of the regulations. For example, if a nonresident enters with CFAF 800,000 in currency, no inward declaration is required, but subsequent departure with the same currency with an exchange value exceeding CFAF 500,000 requires that the person holding the funds present receipts proving their origin, which he/she would not have (no inward declaration required, and no purchases of currency within the WAEMU zone).

327. Furthermore, the transfer of foreign currency exceeding CFAF 300,000 by a WAEMU resident after importing same to the WAEMU zone is not subject to controls or sanctions by the relevant authorities, for lack of a disclosure system at the point of entry.

328. In addition, at the point of entry to Mali, the immigration form does not specifically mention the exchange control regulations.

329. The customs guide for travelers, whose 2003 edition is available on the customs service's website, contains provisions relating to controls over means of payment when entering or exiting Malian customs territory. The information given in this manual does not appear to be consistent with WAEMU exchange regulations. It essentially lays out a declaration system, with requirements to declare transported funds above certain thresholds, for particular categories of persons (WAEMU residents and nonresidents), whereas this requirement to file a declaration is not specified in the community regulations. In addition, a copy of a "declaration of imported or exported funds or securities" is appended to the customs guide for travelers. This standard declaration form was developed on the basis of Articles 38, 64, and 76 of the customs code. Article 38 concerns exchange control, Article 64 concerns customs procedures for imported goods, and Article 76 concerns customs procedures for exported goods.

330. It is indicated on the form that it must be filled out by "any person who imports or exports, on his/her own behalf or on behalf of a third party, funds, securities, or gold substances (other than jewelry) with a total value or exchange value equal to or greater than CFAF 2,500,000." This threshold is not consistent with the exchange regulations adopted at the community level and applicable in Mali. Furthermore, the form does not make any distinction between residents and nonresidents. Lastly, this declaration system does not appear to be in actual use since the authorities did not furnish any statistics on legally imported or exported funds and securities.

331. The Directive 04/2007/CM/UMOA on countering financing f terrorism includes in its art. 17 provisions on cross-borders transportation of currency. It is stated that member states are commited to detect cross-borders transportation of currency and bearer instruments, by establishing a system of declaration or other type of communication. This directive has not been yet transposed in the Malian legal regime. This provision however is insufficient to meet the requirememts as set out by SR IX. Moreover, in order to comply with SR IX, the preexisting regional legal arsenal on exchange control will require further amendments.

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

332. In the event of the discovery of undeclared funds, customs agents lodge a legal action and confiscate the merchandise, pursuant to Article 354 of the national customs code. Article 18 of the WAEMU customs code ascribes the status of prohibited merchandise to funds, because funds are subject, whether imported or exported, to specific exchange control formalities. Thus, any violation of the provisions on the physical transportation of currency constitutes a customs offense.

333. The customs service is authorized to communicate any information it holds with regard to financial relations with foreign countries to other ministerial and Central Bank departments which, through their activities, are involved in the public service mission to which the customs service contributes (Article 52 of the national customs code).

334. Customs inspectors and controllers may compel the production of papers and documents of all sorts that pertain to operations important to their mission and, in particular, to the domicile of any natural or legal person directly or indirectly involved in operations that fall under the competence of the customs service (Article 60 of the national customs code).

Retention of currency (c. IX. 3)

335. Those who detect a customs violation are empowered to seize any objects liable to confiscation, including currency.

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

336. No data were furnished to the assessors concerning amounts of funds declared when entering or exiting Malian territory. Such information is not retained, and no data base on same has been set in place.

337. Statistics were provided by the customs service concerning funds seized for violations of the regulations:

Year	Number of cases	Amounts seized
2005	2	€ 91,500
2006	5	€ 230,575 USD 21,120
2007	8	€ 171,445 USD 34,200
TOTAL	15	€ 493,520 USD 55,320

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

338. There are no specific arrangements for communication between the customs service and CENTIF in this area. However, CENTIF theoretically has access to information held by the customs service, through a designated correspondent within the customs service, based on Article 19 of the anti-money laundering law. Such communication would thus take place at the initiative of CENTIF, and not directly by the customs service.

Domestic cooperation between customs, immigration, and other competent authorities (c. IX. 6)

339. No specific cooperation has been set in place between customs, immigration, and other competent authorities in regard to undeclared imports or exports of funds. Persons captured by the customs service following the detection of such an offense are remanded to the criminal investigation department once the customs procedure has been completed, unless this procedure results in a negotiated settlement (i.e. a contract between the customs service and the offender, settling the dispute through the payment of a fine and restitution of the amount involved in the offense; the fine may be as high as 100 percent of this amount).

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

340. At the international level, the customs service may, in the event of undeclared imports or exports of funds, utilize the cooperation procedures of the International Convention on Mutual Administrative Assistance (a system for exchanging information between customs services that are World Customs Organization members, through bilateral agreements). No statistics were provided to the assessors about sending or receiving mutual administrative assistance requests concerning the unlawful transportation of funds.

Sanctions in the event of false declarations/statements (applying c.17.1-17.4, c. IX. 8)

341. The WAEMU regulations on financial relations with foreign countries, which constitute an annex to the WAEMU customs code, state in Article 16 that violations of the regulations shall be recorded, prosecuted, and punished in accordance with the legal and regulatory provisions in effect in each member country of WAEMU concerning the litigation of exchange control violations.

342. A false declaration as to the type, value, and origin of merchandise (including funds) is considered an undeclared import or export of prohibited merchandise, pursuant to Article 364 of the customs code.

343. The sanctions for violating the rules on the physical transportation of currency are thus the sanctions specified in the customs code for prohibited merchandise, as follows: "any act of smuggling and any act of undeclared importing or exporting that involves merchandise in the category of prohibited or highly taxed goods shall be liable to confiscation of the smuggled object, confiscation of the means of transportation, confiscation of objects serving to conceal the act of smuggling, a fine binding on all parties equal to three times the value of the smuggled object, and a prison sentence of one month to three years" (Article 354 of the national customs code).

344. These sanctions do not appear proportionate to the nature of the offense since they do not depend on the unlawful origin or destination of funds that are seized, nor do they appear effective insofar as the customs service most often makes use of settlement powers to resolve disputes.

345. The customs service does indeed hold settlement powers (Article 288 of the national customs code), and this appears to be the most frequently used method for resolving disputes related to the unlawful transportation of funds. However, no statistics were provided concerning funds that were seized for violations of the regulations and then either confiscated by the judicial authorities or subjected to a negotiated settlement.

Sanctions in the event of the physical cross-border transportation of currency related to an FT or ML transaction (applying c.17.1-17.4, c. IX.9)

346. The applicable sanctions are the same regardless of the unlawful origin or destination of the funds.

Confiscation of currency related to ML/FT (applying c.3.1-3.6, c. IX.10)

347. The judicial authorities may confiscate funds that have been seized, means of transportation, and objects used to conceal the unlawful activity. The transaction may involve confiscation of funds seized, plus a fine, or restitution of the funds in exchange for payment of a fine.

Confiscation of currency in the context of the UN Security Council resolutions (applying c. III.1-III.10, c. IX.11)

348. The WAEMU regulations pertaining to external financial relations and the Malian customs code do not call for the freezing of funds belonging to designated persons pursuant to the UN Security Council resolutions.

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

349. No specific provisions have been set in place concerning unusual cross-border movements of gold, precious stones, or precious metals. No statistics are available regarding same. The form for travelers refers to "funds, securities, or gold substances other than jewelry" but there is no legal basis concerning the transportation of gold. The exchange control regulations do not address the latter, and the authorities made no mention of any specific regulations in this area.

Safeguards to protect the information that is gathered (c. IX.13)

350. No automated system has been set in place to retain information related to the physical transportation of funds.

351. No safeguards to protect the information gathered by customs have been set in place concerning the cross-border transportation of funds.

Analysis of Effectiveness

Mali is not able to provide any statistics on the flow of incoming and outcoming funds. Statistics are only available when it comes to illegal funds. Statistics provided by customs appear to be excessively low and are questionable compared to the importance of cross-border transactions (8 cases only in 2007). Sanctions seem to be disproportionate and do not take into account the illicit or licit origin of funds. The Exchange control apparatus in force between WAEMU members states and third states do not comply with international standards on AML/CFT.

2.7.2 Recommendations and Comments

352. The exchange control system currently in effect for relations between WAEMU countries and third countries does not meet the international standards required for combating money laundering and terrorist financing. Mali has not taken the necessary steps to be able to quantify lawful inflows and outflows of funds and keeps statistics only on amounts found to be in violation of the regulations. The statistics provided by the customs service in this regard show a very small number of cases in view of the reality of cross-border transfers to Mali (just eight cases in 2007). The sanctions incurred are clearly disproportionate and do not take into account the lawful or unlawful origin of funds that are seized.

353. The Malian authorities should therefore:

-Install either a declaration system or a disclosure system;

-Set in place communication arrangements between customs and CENTIF concerning the information gathered when funds are seized;

-Establish sanctions that tie the degree of punishment to evidence, or lack thereof, of the unlawful origin or destination of funds that are seized;

-Make it possible to freeze funds belonging to designated persons pursuant to the UN Security Council resolutions;

-Set in place a system to exchange information on unusual cross-border movements of gold, precious metals, or precious stones;

-Set in place a computerized system to retain information relating to the physical transportation of funds.

2.7.3 Compliance with Special Recommendation IX

	Rating	Summary of factors underlying the rating
SR.IX	NC	Absence of a declaration or disclosure system Absence of communication arrangements between customs, the police, and CENTIF concerning the information gathered when funds are seized Disproportionate sanctions in the event of violations of the regulations on physical transfers of funds Absence of a system to exchange information on unusual movements of gold, precious metals, or precious stones Absence of a computerized system to retain information relating to the physical transportation of funds

PREVENTIVE MEASURES – FINANCIAL INSTITUTIONS

OBLIGATION OF CUSTOMER DUE DILIGENCE AND DOCUMENT RECORD KEEPING

RISK OF MONEY LAUNDERING OR THE FINANCING OF TERRORISM

354. The authorities have not exempted any financial institution from all or some of the relevant AML/CFT obligations, on grounds that they deem the ML or FT risk to be low in these situations.

355. However, institutions that issue electronic money (see 1.3) are not subject to the prudential provisions, including those pertaining to AML/CFT, of BCEAO Instruction nº01/2006/SP concerning the issuance of electronic money and e-money establishments, if their activities remain limited.[41] It would appear from information provided to the mission that such a provision was not made for reasons of low ML/FT risk.

CUSTOMER DUE VIGILANCE, INCLUDING ENHANCED OR REDUCED IDENTIFICATION MEASURES (R.5 THROUGH R.8)

Description and analysis

356. Legal framework:

-Law nº 06-066 of December 29, 2006 setting forth the uniform law concerning the fight against money laundering (AML) in WAEMU member countries[42] and transposing Directive nº 07-02/CM/UEMOA of September 19, 2002 concerning the fight against money laundering in WAEMU member countries.

-Instruction nº 01/2007/RB of the BCEAO dated July 2, 2007 concerning the fight against money laundering within financial entities (enabling text of the aforementioned Law nº 06-066);

-Instruction nº01/2006/SP of the BCEAO dated July 31, 2006 concerning the issuance of electronic money and e-money establishments, taken in application of Regulation n° 15/2002/CM/UEMOA dated September 19, 2002 concerning payment systems within the WAEMU member countries;

-Directive nº 04/2007/CM/UEMOA of July 4, 2007 concerning the fight against the financing of terrorism (not transposed as of the date of the mission and therefore not having binding force in Mali).

41 Article 3 of Instruction n° 01/2006/SP stipulates that establishments issuing e-money are not subject to the prudential provisions of this Instruction if : (i) all of the establishment's commercial activities referred to in Article 9 of this Instruction generate a total financial exposure in e-money not exceeding CFAF 5 million; (ii) the e-money issued by the establishment is accepted as a means of payment only by affiliates of the establishment exercising operational or accessory functions in relation to the e-money issued or distributed by the establishment concerned, the parent company of the establishment, or the other affiliates of said parent company; (iii) the e-money issued by the establishment is accepted as a means of payment only by a limited number of companies distinguished by the fact that they share office space or are in another limited local area and by their close financial or commercial relationship with the issuing establishment, e.g., if they share a common marketing or distribution mechanism. In addition, the contractual arrangements on the basis of which the e-money establishments concerned issue the e-money must stipulate that the maximum carrying capacity of the electronic support available to the bearers for purposes of payment may not exceed CFAF 100,000. However, these establishments must submit a monthly activity report to the BCEAO, indicating, among other things, the total sum of financial exposure corresponding to e-money.

42 The text of this law was prepared by WAEMU and adopted on the same terms by all WAEMU countries, without change or addition.

357. In accordance with the Methodology for Assessing Compliance with the FATF 40 Recommendations and the FATF 9 Special Recommendations [43], laws were considered to be "laws and regulations", BCEAO instructions to be "other enforceable means", and directives as "non-binding", in rating the compliance conformity with the various recommendations.

358. Activities carried out by financial institutions as defined by the FATF[44] may be carried out in Mali by (see I.3):

- Financial entities (FEs) in the meaning of Law nº 06-066. The latter are designated by name (see table below), but without reference to the legal texts governing them. The uncertainty thus created is illustrated by the example of fixed capital investment companies ("enterprises d'investissement à capital fixe"). It was impossible to identify any legal text governing them, and the mission is unaware of the existence of such companies in Mali;

-The BCEAO and the Public Treasury, which Law nº 06-066 designates as being bound by their rules, but which are not designated as FCs. The ability of a national law to create provisions constraining the BCEAO, which has a status equivalent to that of an international financial institution[45], seems uncertain. The BCEAO also has the specificity of being simultaneously one of the authorities charged with ensuring the smooth functioning of the AML/CFT mechanism within WAEMU[46] and of being itself bound by that mechanism;

-Electronic money establishments, issuers of e-money, and distributors of e-money (see comments below);

-Securities or funds transfer companies[47] and pension funds. These institutions are not explicitly designated by Law nº 06-066. The mission considers that only persons designated by name by the Law are bound by its provisions. Indeed, there is no element supporting an extensive reading of Article 5 of Law nº 06-066 defining its scope of application.[48] Such an understanding would be (i) unrealistic, since it would cause almost all economic agents to be bound by the provisions of the above-cited law; and (ii) inconsistent with the mission's observation that many people designated by name in this text are unaware of the fact that they are bound by it.

43 The interpretive notes also stipulate that the "basic obligations set forth in Recommendations 5, 10 and 13 should be formulated as a legal or regulatory text." The term 'law' or 'regulation' refers to primary and secondary legislation such as laws, decrees, enabling regulations and other similar provisions, promulgated or authorized by a legislative body and imposing obligations accompanied by sanctions in the event that they are not observed. The term 'other constraining means' refers to directives, instructions or other documents or mechanisms containing enforceable provisions entailing sanctions if they are not observed, and that are promulgated by a relevant authority (e.g., a financial surveillance authority) or self-regulatory organization. In either case, the sanctions for non-compliance must be effective, proportionate and dissuasive (see Recommendation 17). The criteria of the methodology concerning Recommendations 5, 10 and 13, which are basic obligations, are noted with an asterisk (*). Excerpted from "Methodology for evaluating compliance with the 40 FATF Recommendations and 9 Special Recommendations".

Recommendations".

44 In this report, unless otherwise noted, the term 'financial institution' is used according to the definition provided by the FATF.

45 Article 4 of the BCEAO bylaws set forth by the WAEMU Council of Ministers stipulates that "in order to enable the Central Bank to perform its functions, the status, privileges and immunities of international financial institutions are granted to it within the territory of each member country of the Union."

46 Article 25 of Law n° 06-066 specifies that the role of the BCEAO is to foster cooperation between CENTIFs. In this connection, it is responsible for coordinating the actions of the CENTIFs within the framework of the fight against money laundering and for synthesizing information from reports prepared by the latter. The BCEAO, along with the CENTIFS, participates in the meetings of international bodies dealing with issues related to efforts to combat money laundering.

47 These companies are also referred to in this report as rapid fund transfer companies.

48 Article 5 states that "the provisions of Titles II and III of this law apply to any physical or corporate person who, within the framework of his profession, carries out, oversees, or advises on transactions entailing deposits, exchanges, investments, conversions or any other movements of capital or of any other assets […]"

Financial institutions (excepting e-money institutions) to which the AML/CFT texts apply explicitly

	Law nº 06-066 concerning AML	Instruction nº 01/07/RB of the BCEAO concerning AML	Directive nº 04/2007 concerning CFT (not transposed)
- Banks and financial establishments (FEs) [49]	X	X	X
- Financial services of the Post Office (FE)	X	X	X
- « Caisse des dépôts et consignations[50] » (or entities acting as such) (FE)	X	X	X
- Microfinance institutions[51] (FE)	X	X	X
- Bureaux de change (« Agréés de change manuel ») (FE)	X	X	X
- Insurance and re-insurance companies (FE)	X		X
- Insurance and re-insurance brokers (FE)	X		X
- Regional stock exchange (FE)	X		X
- Central securities depository and securities settlement bank (FE)	X		X
- Brokers (“Société de gestion et d’intermédiation”) (FE)	X		X
- Asset managers (“Société de gestion de patrimoine”) (FE)	X		X

49 Financial institutions as defined in Article 1 of Law nº 06-066.

50 Specialized state owned financial institution.

51 Mutualist institutions and savings and loan cooperatives, as well as structures or organizations not incorporated in a mutualist or cooperative format and having as their purpose the gathering of savings and/or the granting of credit.

- Mutual funds (*Organismes de placements collectifs en valeurs mobilières*, OPCVM) (FE)	X		X
- Fixed capital investment companies (FE)	X		X
- BCEAO	X		X
- Public Treasury	X		X
- Fund or securities transfer services			X

359. The legal basis for applicability of the BCEAO Instruction to the financial services of the Post Office and "Caisse des dépôts et consignations" seems uncertain. Although Law nº 06-066 stipulates that oversight authorities may, within their respective areas of authority, specify the content and modalities of application of ML prevention programs, the BCEAO does not appear to be the oversight authority of the financial services of the Post Office and "Caisse des dépôts et consignations".

360. BCEAO Instruction nº01/2006/SP dated July 31, 2006, concerning the issuance of e-money and e-money establishments, defines the AML/CFT obligations applicable to establishments operating in this area. It should be noted that:

-The financial entities authorized to operate in this area (banks, decentralized financial companies and postal check services) must comply with the most constraining provisions of Law nº 06-066 (the Law taking precedence over the Instruction) and of Instruction nº 01/2007/RB (the most recent text taking precedence over the oldest);

-The Public Treasury, which is subject to the provisions of Law nº 06-066 although it is not classified therein as a financial entity, must comply, in its e-money activities, with the most constraining obligations of the Law or of Instruction nº01/2006/SP (depending on the topic, the most constraining legal text may differ);

-E-money establishments must comply only with the provisions of Instruction nº01/2006/SP, since they are not explicitly subject to the provisions of Law nº 06-066 (see preceding discussion of this point). These provisions do not match those of the FATF, particularly with regard to the 'know your customer' obligations and due diligence requirements, the duration of information record keeping, and the communication of information to the authorities. In the absence of e-money establishments, a detailed discussion was not included in the continuation of the report, apart from aspects dealing with the reporting of suspicious transactions (see Recommendation 13);

-E-money establishments belonging to none of the aforementioned categories are not subject to any of the AML/CFT requirements.

361. According to information gathered during the mission, e-money activity does not yet exist in Mali.

<u>AML texts applicable to establishments operating in the area of e-money</u>

	Law nº 06-066 concerning AML	BCEAO Instruction nº 01/07/RB concerning AML	BCEAO Instruction nº01/2006/SP concerning e-money	Directive nº 04/2007 concerning CFT (non transposed)
- Banks	X	X		X
- Postal check services	X	X		X
- Decentralized financial systems	X	X		X
- Public treasury[52]	X	X	X	X
- E-money establishments			X	
- Other e-money issuing establishments				

362. Directive n° 04/2007/CM/UEMOA concerning the fight against the financing of terrorism in WAEMU member states was also adopted on July 4, 2007. It covers the same financial entities as Law nº 06-066 concerning AML, as well as fund transfer companies.[53] Directive n° 04/2007 has not yet been transposed to Mali, and its provisions therefore do not have binding force there.

Prohibition on anonymous accounts (Criterion 5.1)

363. Mali does not yet have any provisions specifically prohibiting financial institutions from holding anonymous accounts or accounts under fictitious names. Law nº 06-066 does not specifically prohibit anonymous accounts or accounts under fictitious names.

364. Mali neither has any provisions concerning numbered accounts, which are thus not explicitly prohibited, nor are there any provisions requiring financial institutions to administer such accounts in such a way as to be able to fully comply with aspects covered by the FATF recommendations.

Framework for application of due diligence requirements (Criterion 5.2)

365. Law nº 06-066 establishes certain due diligence obligations (see criterion5-3 *et seq*.), which must be respected by all financial entities (i) before they open an account, agree to hold, *inter*

52 Only some of the obligations of each of the texts mentioned are applicable to the Public Treasury.

53 Its Article 13 stipulates that member countries must pledge to take steps to ensure that physical or corporate persons providing a fund or securities transfer service must obtain an operating license and must be subject to the anti-organized crime mechanism in place in the WAEMU member countries, and particularly to the general and specific obligations applicable to financial institutions with regard to the prevention and detection of ML- and FT-related transactions.

alia, securities, stocks or coupons, assign a safe deposit box, or enter into any other business relationship with a customer (Article 7, para. 1); (ii) when they carry out occasional cash transactions exceeding CFAF five (5) million (about USD 2,200[54]) or in the case of repeated occasional transactions (Art. 8); and (iii) when the legitimate provenance of the funds is uncertain in an occasional transaction (Article 8, para. 2). Regarding the 'know your customer' obligations concerning the occasional clients referred to under (ii) above, these apply whenever there are repeated occasional transactions, regardless of the amount threshold[55] (which goes farther than the FATF recommendations).

366. The due diligence obligations established by Law nº 06-066 do not apply (i) when financial entities carry out occasional transactions exceeding the CFAF 5 million threshold, but that are not in cash; (ii) when financial entities carry out occasional transactions in the form of wire transfers under the circumstances set forth in the interpretive note to Special Recommendation VII; (iii) when there is suspicion of ML apart from an occasional transaction, or when there is suspicion of FT; or (iv) when the entity doubts the veracity and relevance of identification information previously obtained from a customer.

367. On this latter point, the BCEAO Instruction specifies, only for the financial entities to which it applies, that the 'know your customer' procedures must be applied to existing customers, and "particularly to those about whom there are doubts concerning the reliability of previously obtained information" (Article 4, para. 4).

368. Directive nº 04/2007 concerning CFT specifies the 'know your customer' obligations applicable to occasional customers that should be imposed upon financial entities. It urges member countries (i) to extend the obligations to all transactions exceeding CFAF 5 million (about USD 2,200), including those that do not involve cash; and (ii) specifies that they must apply to any transaction exceeding the aforementioned threshold "whether or not it is carried out in one or several transactions that appear to be linked" (Article 11-1). It also states that member countries must require financial entities to demand customer identification as soon as there is a suspicion of FT (Article 11-4).

Identification measures and sources of verification (criterion 5.3)

369. Article 7 of Law nº 06-066 states that "financial entities must determine with certainty the identity and address of their customers before opening accounts for them; agreeing to hold, *inter alia*, securities, stocks or coupons; assigning to them a safe deposit box; or establishing with them any other business relationship."

370. The general obligation of identification based on a reliable and independent source is not explicitly mentioned by Law nº 06-066 for individual persons and corporate entities. This law does define, however, detailed identification measures for these persons based on sources deemed by the authorities to be reliable and independent. Article 7 also requires (i) that the identify of a physical person be verified by the presentation of a national identity card or any valid original official document serving as such and including a photograph[56] (Article 7, para. 2); and (ii) that the identity of a corporate entity be verified through the "provision, first, of the original or

54 Dollar equivalents were calculated on the basis of CFAF 100 = USD 0.22 (1 EUR = USD 1.45).

55 Article 8 stipulates that "occasional customers shall be identified […] for any transaction involving a sum in cash of CFAF 5 million or more or having a CFAF value equal to or greater than this amount. The same applies in the event of the repetition of separate transactions for an individual sum less than that stated in the preceding paragraph […]."

56 The mission was told that an identity card could be issued in Mali on the basis of testimony from two persons, without any verification of civil status. Many cases of fraud have been noted in this area, particularly involving nationals of African countries (especially Nigeria) that are not members of WAEMU. Indeed, the presentation of an identity document stating that the holder is a national of a WAEMU member country exempts the person concerned from the need to obtain a visa for travel in the Maghreb countries, thereby facilitating clandestine migration to Europe.

certified conformed copy of any certificate or extract from the Trade and Personal Property Credit Register ("Registre du Commerce et du Crédit Mobilier »), attesting, *inter alia*, to its legal format, headquarters location and the powers of the persons acting on its behalf."

371. The wording, in Law nº 06-066, of the obligations related to verification of the identity of corporate entities is unclear, especially regarding the nature of the document(s) to be provided. The mission's understanding is that (i) it is necessary to submit a certificate from the Trade and Personal Property Credit Register ("Registre du Commerce et du Crédit Mobilier ») or an extract from that same registry and, thus, that the verification of the identity of foreign corporate entities is not covered; or (ii) that any certificate attesting to the legal format and headquarters of the corporate entity is sufficient, regardless of the reliability and independence of the information provided.[57] There is also no obligation to verify, based on reliable and independent data, the identity of legal structures in the FAFT sense[58] (whereas the services provided by attorneys for the establishment, management or direction of trusts are mentioned in Article 5 d) of Law nº 06-066).

Verifications concerning corporate entities or legal structures (Criterion 5.4)

372. Regarding corporate entities, Article 7 states that financial entities must (i) verify the powers of persons acting in the name of a corporate entity (Article 7, para. 3); and (ii) verify the identity of physical persons acting in their name under the conditions provided for in Article 7, para. 2 (see supra criterion 5.3). Article 7 also states that financial entities must possess documents attesting to the legal format and location of headquarters of the corporate entity (Article 7, para. 3).

373. Regarding legal structures (and particularly those to which Law nº 06-066 refers), financial entities have (i) no obligation to verify that any person claiming to act on behalf of the customer is authorized to do so, and, more importantly, no obligation to identify and verify the identity of that person; and (ii) no obligation to verify the legal status of the legal structure.

Identification measures and verification of beneficial owners (Criterion 5.5)

374. Article 9 of Law nº 06-066 states that: "if the customer is not acting on his own behalf, the financial entity must verify by all means the identity of the person on whose behalf he is acting (Article 9, para. 1)." This Article also states that financial entities need not verify the identity of the person for whom their customer is acting, if that person is a financial entity subject to Law nº 06-066[59] (see remarks on criterion 5-9). In addition, Article 9 does not require financial entities to determine, for all customers, if the customer is acting on his own behalf and, more generally, does not require them to identify the beneficial owner (see below).

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

57 The information provided to the mission did not make it possible to choose between these two interpretations.

58 The methodology for evaluating compliance with FATF recommendations specifies that "the term 'legal arrangement' refers to express trusts and other similar structures. Example of similar structures (for AML/CFT purposes) would include a Treuhand or fideicomiso."

59 i.e., a Malian financial institution, excluding other WAEMU financial institutions.

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

376. There is no obligation for financial institutions to obtain information on the intended purpose and nature of the business relationship.

Ongoing due diligence with regard to the business relationship (Criterion 5.7)

377. In Mali, financial institutions are under no obligation to (i) exercise ongoing monitoring with regard to their business relationships; (ii) carefully examine transactions carried out during the entire duration of their business relationships, so as to ensure that these transactions are in keeping with the institutions' knowledge of their customers' commercial activities and risk profiles, and, where appropriate, the origin of their funds; or (iii) ensure, through the examination of existing documents, that the documents, data or information gathered as 'know your customer' requirements were being fulfilled are up-to-date and relevant, especially for categories of customers and business relationships entailing a higher risk.

378. Only some aspects related to the exercise of vigilance are indirectly dealt with by AML/CFT regulations, a situation that is not compliant with FATF recommendations. These aspects include in particular (i) obligations to declare suspicious transactions, as required in Article 26 of Law nº 06-066, or obligations related to special examinations as stipulated in its Article 10, which in practice can only be met if a certain vigilance is exercised (see remarks on Recommendations 11 and 13 below); and (ii) some provisions of Article 7 of BCEAO Instruction n° 01/2007/RB, which require the financial entities to which it applies to develop a mechanism for analyzing transactions and customer profiles that enables them to track and monitor, most particularly, "atypical financial movements and transactions."

379. In addition, Directive nº 04-2007 states that member countries must require financial entities to "ongoingly monitor their customers for the duration of any business relationship, with a vigilance that is a function of the degree of risk that the customer is associated with the financing of terrorism." (Article 11-7)

Risk – Enhanced due diligence measures (Criterion 5.8)

380. There is no provision requiring financial institutions to take enhanced measures of vigilance with high-risk categories.

381. BCEAO Instruction n° 01/2007/RB requires only the financial entities to which it applies to meet certain indirect or partial obligations related to enhanced vigilance. In particular, it requires these financial entities (i) to define the types of customers that they cannot accept (Article 4, para. 3); and (ii) to develop a mechanism for analyzing transactions and client profiles that enables them to track and monitor, most particularly, unusual financial movements and transactions (Article 7, para. 1).

Risk – Reduced or simplified measures (Criteria 5.9 through 5.12)

382. Provision is made for reduced measures if the customer is a financial entity subject to the AML law. In that case, the financial entity concerned need not obtain information on the person for whom its customer is acting, which is itself a financial entity subject to the AML law (Article 9 of Law nº 06-066). This is a very broad exclusion amounting to the removal of any obligation of identification. Thus, a financial entity needs not obtain information on the identity of physical persons, corporate entities and legal structures on behalf of which a financial entity subject to the AML law (which is its customer), is acting. This provision appears contrary, in particular, to the recommendations concerning the traceability of financial flows expressed with regard to wire transfers in Special Recommendation VII (see 3.5).

383. The scope of application of the aforementioned Article 9 is ambiguous. The mission therefore considers that it extends to relations with all financial entities within WAEMU. Although an STRict reading [of the Article] would cause one to include only Malian financial entities (which are the only ones subject to the provisions of Law n° 06-066), it seems rather inconsistent with the fact that (i) the provisions of this uniform law were prepared and adopted at the WAEMU level, thereby leading the reader to think that the financial entities being referred to are those that are subject to the provisions of this uniform law as transposed into the legal apparatus of each country; and (ii) that the provisions of the annex to the uniform law explicitly stipulate (solely for non face to face transactions with physical persons) that identification of the latter is not required "if the counterpart is based in the Union" (Article 6 a). Although not yet transposed, Directive nº 04/2007 contains similar provisions. Indeed, it requires that member countries take care to exempt financial entities from the identification obligations that it contains (i.e., identification of the customer and of the economic beneficiary), in cases where the customer is also a financial entity based in a member country subject to an equivalent identification obligation (Article 11).

384. Certain reduced identification measures are also set forth in the Annex to the AML law in the case of non face to face relationships with physical persons (see description of criterion 8.2 below). Article 2 of that annex also stipulates that these simplified provisions may not be applied if a financial entity (i) feels that direct (i.e., face-to-face) contact is being avoided in order to conceal the true identity of the customer; and (ii) has suspicions of money laundering.

385. Malian law contains no provision stipulating that (i) when financial institutions are authorized to apply simplified or reduced due diligence measures vis-à-vis their customers residing in another country, this faculty concerns only countries for which the country of origin is satsified that they comply with FATF recommendations and that they have actually implemented them; and that (ii) simplified customer due diligence measures are not acceptable if there is suspicion of money laundering or financing of terrorism, or in specific circumstances presenting greater risk (with the exception, mentioned in the previous paragraph, of non face to face relationships). There is also no provision stipulating that, although the financial institutions are authorized to determine the scope of the customer due diligence measures as a function of the risks presented, this must be done in compliance with the instructions issued by the relevant authorities.

386. There are not other cases in which reduced or simplified measures can be implemented (e.g., Malian government, companies listed on the stock exchange, etc.).

Time of verification – General rule (criterion 5.13)

387. Law nº 06-066 stipulates that financial entities must determine the identity and address of the customers (i) before opening an account for them, agreeing to hold securities, stocks or bonds, assigning a safe deposit box to them, or establishing with them any other business relationship (Article 7, para. 1); and (ii) when they carry out certain transactions with occasional customers (Article 8).

388. Regarding occasional customers, Directive nº 04/2007 specifies the provisions of Law nº 06-066. Thus, it stipulates that, if the total amount is not known when the transaction is initiated, member countries must require the financial entity concerned to proceed with identification as soon as it learns the amount and determines that the threshold has been reached (Article 11.2).

Time of verification – Special circumstances (Criterion 5.14)

389. When verification of the identity of the customer or beneficial owner is required, there is no provision authorizing financial institutions to complete the identification after establishment of the business relationship.

Failure to comply with due diligence obligations – Before initiation of the relationship (Criterion 5.15)

390. Law nº 06-066 does not directly prohibit a financial entity from opening an account, entering into a business relationship, or carrying out a transaction when it cannot comply with the requirements set forth in the law with regard to identification of the customer or of the beneficial owner(s). While it does provide for penal sanctions when these obligations are not respected,[60] at the time of the mission these sanctions had never been used.

391. In addition, BCEAO Instruction n°01/2007/RB requires only those financial entities to which it applies[61] to "refrain from entering into any relationship" prior to having satisfactorily determined the identity and address of their customers (Article 4, para. 3).

392. Article 9 of Law nº06-066 also stipulates that, if doubt persists after identification of the identity of the economic beneficiary, the financial entity must file a suspicious transaction report. In other cases in which a financial institution cannot fulfill the legally mandated identification obligations, the law does not require it to contemplate filing a suspicious transaction report.

Failure to comply with due diligence obligations – After initiation of the relationship (Criterion 5.16)

393. If a financial institution has already established a business relationship and cannot fulfill the required identification obligations, there is no provision requiring that this financial institution be bound to terminate the business relationship and to contemplate filing a suspicious transaction report.

Existing customers – Due diligence (Criterion 5.17)

394. Law n° 06-066 does not require financial entities to apply due diligence obligations to existing customers depending on the significance of the risks they represent, nor does it require them to implement due diligence regarding these existing relationships at the opportune time.

395. BCEAO Instruction n° 01/2007/RB requires only those financial entities to which it applies to apply 'know your customer' procedures, not only to their new relationships but also to existing customers (Article 4, para. 4). This Instruction does not define the concept of 'know your customer' procedures, nor does it specify the circumstances under which these procedures must be applied to existing customers.

Existing customers - Anonymous accounts (Criterion 5.18)

396. There is no legal text requiring financial institutions to apply due diligence measures to their existing customers if the latter hold anonymous accounts, account under fictitious names, or numbered accounts.

60 Article 40 stipulates six months to two years imprisonment and fines ranging from CFAF 100,000 to 1.500.000 (USD 220 to 3,300) if the offense is intentional and from CFAF 50,000 to 750,000 (USD 110 to 1,660) if not.

61 Banks, financial institutions, financial services of the Post Office, public savings and loan funds (or institutions serving as such), mutualist institutions and savings and loan cooperatives, structures or organizations not incorporated in the form of mutuals or cooperatives having the purpose of collecting savings and/or granting credit, and authorized foreign exchange dealers.

Obligation to identify PEPs (Criterion 6.1)

397. Financial institutions are under no obligation to have adequate risk management systems in order to determine whether a potential customer, customer or beneficial owner is a politically exposed person (PEP), in addition to the application of the due diligence measures prescribed by Recommendation 5.

398. Directive nº 04/2007 concerning CFT stipulates that "each member country must take steps to ensure that financial entities, in particular, apply, as a function of their assessment of the risk, enhanced due diligence measures on the occasion of transactions or business relationships with PEPs residing in another member country or third-party country, particularly for purposes of preventing or detecting transactions linked to the financing of terrorism. To this end, it shall take appropriate steps to determine the origin of the assets or funds" (Article 15). The Directive contains no provision creating a direct obligation for financial institutions to have adequate risk management systems in order to determine whether a potential customer, customer or beneficial owner is a PEP.

Authorization by senior management of business relationships with PEPs (Criterion 6.2)

399. Financial institutions are under no obligation to obtain permission from their senior management (i) before entering into a business relationship with a PEP; or (ii) to continue the business relationship when a customer has been accepted and it subsequently emerges that this customer or beneficial owner is a PEP or is becoming one.

400. Directive nº 04/2007 concerning CFT contains no provision on this subject.

Identification of the origin of assets or funds of PEPs (Criterion 6.3)

401. Financial institutions are under no obligation to take all reasonable steps to determine the origin of assets or funds of customers and beneficial owners identified as PEPs.

402. Directive nº 04/2007 concerning CFT contains some ambiguous provisions. Its wording seems to indicate that each member country should take appropriate steps to determine the origin of the assets or funds [62] (Article 15).

Ongoing and enhanced monitoring of the relationship with a PEP (Criterion 6.4)

403. Financial institutions are under no obligation to engage in enhanced and ongoing surveillance of their business relationships with PEPs.

404. Directive n° 04/2007 concerning CFT requires each member country to ensure that steps are taken to require that financial entities apply, as a function of their assessment of the risk, enhanced due diligence measures on the occasion of transactions or business relationships with PEPs residing in another member country or in a third-party country, particularly in order to prevent or detect transactions linked to FT (Article 15). The Directive (i) seems to indicate that surveillance may not be enhanced if the financial entity deems this unnecessary ("as a function of their assessment of the risk") and (ii) creates confusion since it appears to link enhanced surveillance of PEPs and the fight against FT ("particularly in order to prevent or detect transactions linked to FT"), whereas money laundering is the main motive justifying the measures imposed with regard to PEPs.

62 Article 15 stipulates that "each member country must ensure that it takes steps to demand that financial institutions, in particular, enforce, as a function of their assessment of risk, enhanced due diligence measures in the case of transactions or business relationships with PPEs residing in another member country or in a third-party country, particularly to prevent or detect FT-related transactions. The country must take appropriate steps to determine the origin of the assets or funds."

Additional element – Application of Recommendation 6 to national PEPs (Criterion 6.5)

405. In Mali there are no obligations transcribing the provisions of FATF Recommendation 6, be it for foreign PEPs or for national PEPs.

406. Directive nº 04/2007 applies only to PEPs residing in another WAEMU member country or in a third-party country (Article 15).

Additional element – Transposition of the Merida Convention (Criterion 6.6)

407. Mali ratified on March 25, 2008 the Convention of the United Nations against corruption signed in Merida on December 9, 2003 (decision of the President of the Repulic concerning ratification of the convention of Merida).

Recommendation 7

Adequate information on crossborder banking correspondents (Criterion 7.1)

408. Regarding relationships with crossborder banking correspondents and other similar relationships, financial institutions are under no obligation to gather enough information on the customer institution to thoroughly understand the nature of its activities and to assess, on the basis of publicly available information, the institution's reputation and the quality of its surveillance (including verification of whether the institution concerned has been the object of an investigation or intervention by the surveillance authority dealing with ML or FT).

409. There is only a partial and ambiguous obligation to identify a banking correspondent; this appears in the annex to the uniform law (see criterion 8-2).

410. Directive nº 04-2007 contains no provision pertaining to relationships with banking correspondents.

Evaluation of controls put in place by correspondents (Criterion 7.2)

411. Financial institutions are under no obligation to evaluate the AML/CFT controls put in place by the customer institution, nor are they required to determine their relevance and effectiveness.

Authorization from senior management before entering into a correspondent relationship (criterion 7.3)

412. Financial institutions are under no obligation to obtain the authorization of senior management before entering into new relationships with banking correspondents.

Specification of respective responsibilities of each institution (Criterion 7.4)

413. Financial institutions are under no obligation to specify in writing the respective AML/CFT responsibilities of each institution.

Rules pertaining to 'payable-through' accounts (Criterion 7.5)

414. When a banking correspondent relationship involves the maintenance of 'payable through' accounts, financial institutions are under no obligation to determine whether (i) their customer (the customer financial institution) has applied all the usual due diligence measures set forth in Recommendation 5 to those of its customers that have direct access to the accounts of the correspondent financial institution; and (ii) that the other customer financial institution is able to provide relevant identification data on these customers at the request of the correspondent financial institution.

Recommendation 8

Prevention of misuse of new technologies (Criterion 8.1)

415. BCEAO Instruction n° 01/2007/RB requires only those financial entities to which it applies,[63] and that allow transactions via internet or any other electronic means: (i) to have an appropriate system of surveillance of these transactions; and (ii) to centralize and analyze unusual internet transactions or those using any other electronic platform (Article 9). Financial institutions not covered by the aforementioned Instruction are under no obligation to develop policies or to take the necessary steps to prevent misuse of new technologies in ML or FT mechanisms.

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

416. Article 7 of Law n° 06-066 stipulates that, in the case of non face to face financial transactions, financial entities must identity physical persons in accordance with the principles set forth in the annex to the Law. There is no provision concerning non face to face transactions with legal persons or legal arrangements.

417. The annex to the uniform law contains numerous ambiguities that make its interpretation delicate and uncertain, for evaluators as well as for those persons subject to it and for authorities responsible for ensuring that its provisions are obeyed. The concept of 'non face to face transaction' is not defined, and there can be confusion between (i) the initiation of the non face to face relationship; (ii) the performance of non face to face financial transactions once a business relationship has been established; and (iii) the performance of non face to face financial transactions by persons who are not customers of the financial entity, but who are using its services on account of the contractual relationship that this entity has developed with another financial institution of which these persons are using the services. (e.g. a transfer received in Mali by a (possibly occasional) customer from another financial entity using the banking correspondent services that the Malian entity makes available to it.) There does not appear to be any specific due diligence defined for the performance of non face to face financial transactions once a business relationship has been established. In addition, the annex to the uniform law pertains to the conditions of identification of physical persons, but does not define this concept of identification, which is a source of uncertainty.

418. The annex to the uniform law specifies that the identification procedures implemented by the financial entities in their non face to face relationships with physical persons (i) may be applied provided that there is no reasonable cause to believe that direct (i.e., face-to-face) contact is being avoided in order to conceal the true identity of the customer and that no money laundering is suspected (Article 2); and (ii) must not be applied to transactions involving the use

63 Banks, financial institutions, financial services of the Post Office, public savings and loan funds (or entities serving as such), mutualist institutions and savings and loan cooperatives, structures or organizations not incorporated in the form of mutuals or cooperatives and having as their purpose the collection of savings and/or the granting of credit, and authorized foreign exchange dealers.

of cash (Article 3). No details are provided as to how the financial entities are to proceed when the above-cited conditions are not fulfilled (e.g., suspicious transaction report, refusal to enter into a business relationship, etc.).

419. The annex to the uniform law also indicates that the internal control procedures of financial entities must take special account of non face to face transactions (Article 4), without giving any other details.

420. Article 5 of the annex to the uniform law pertains to the conditions of identification during a non face to face transaction "in the event that the counterpart of the financial entity carrying out the transaction (the contracting financial entity) is a customer." Two scenarios are posited. In the first case, identification is made by means of direct contact with the customer, through a subsidiary or a branch. In the second case, the customer must (i) provide a copy of an official identity document; and (ii) an initial payment must be made out of an account opened with a WAEMU credit establishment or with a third-party country that applies equivalent anti-money-laundering standards. The financial entities must then: (i) pay special attention to verification of the address appearing on the identity document (if there is one); and (ii) carefully verify that the identity of the account holder through whom the payment is being made actually matches that of the customer (by contacting, if it deems it necessary, the institution with which the account is opened). These provisions seem to be aimed only at the initiation of a non face to face relationship (opening of an account, for example) and not at the performance of non face to face transactions once a business relationship has been established.

421. Despite its vague wording, Article 6 of the annex to the uniform law seems to pertain to the situation in which a Malian financial entity carries out a transaction with another financial entity (whether Malian or not) acting on behalf of a customer.[64] Two types of diligence are stipulated and pertain, respectively, to (i) the financial entity * (whether Malian or not) acting on behalf of a customer; and (ii) this customer. They differ depending on whether the financial entity * concerned is established in WAEMU or not.

422. When the financial entity * concerned "is located" in WAEMU, no diligence is required with regard to it or to its customer. Indeed, Article 6 a) specifies that "identification of the customer by the financial entity is not required, per Article 9, para. 4" of the law when a financial entity carrying out a transaction on behalf of its customer is a WAEMU financial entity. This wording runs counter, in particular, to the provisions of Special Recommendation VII concerning wire transfers.

423. When the financial entity * concerned "is located" outside of WAEMU, the financial entity must verify the identity of this financial entity * by consulting a "reliable financial yearbook" and, in case of doubt, request confirmation of its identify from the oversight authority of the relevant third-party country (Article 6 b). Thus, within the framework of a banking correspondent relationship with a financial entity that is not established in WAEMU, the obligations of a Malian financial entity are limited to verifying its identity, usually from a financial yearbook alone.

424. This Article also specifies that the financial entity must take reasonable steps to verify the identity of the beneficial owner of the transaction, steps that include (i), "when the country of the counterpart applies equivalent identification obligations", requesting the name and address of the customer, and, (ii), when the country of the counterpart does not apply equivalent identification obligations, requesting from the financial entity * concerned a certificate confirming that the identity of the customer has been duly verified and recorded. The concepts of 'beneficial owner' or 'equivalent identification obligations' are not defined in the law or in the annex to the uniform law.

64 In order to avoid any confusion, this type of financial entity is marked with an * in the remainder of the text.

425. In addition, Article 11 of Directive n° 04/2007 stipulates that member countries must adopt the provisions needed to address the increased risk of the financing of terrorism when they enter into business relationships or carry out a transaction with a customer who is not physically present for purposes of identification, e.g., in the case of a non face to face transaction. These provisions must, in particular, ensure that the identity of the customer is established by requesting, among other things, additional supporting documentation, additional measures of verification or certification of the documents provided, or affidavits of confirmation from a financial entity, or by requiring that the initial payment of transactions be carried out by means of an account opened in the customer's name with a financial entity subject to an equivalent identification obligation.

Analysis of effectiveness (Recommendations 5 through 8)

426. The mission met representatives of six banks, two mutual savings and loan institutions, one life insurance company, one authorized foreign exchange dealer, the financial services of the Post Office, the Directorate of the Treasury, and the national directorate of BCEAO.

427. Legal texts with binding force in Mali (Law nº 06-066 and BCEAO Instruction nº 04-2007) are either little known or unknown to those subject to them, as these texts have usually not been conveyed to them by the government authorities or by their supervisors. The latter have undertaken no outreach efforts since these texts became effective. Only a few banks and the national directorate of BCEAO were aware of the provisions contained in these texts. (All banks, however, were aware of the provisions of Directive nº 07-2002, although it is not binding in Mali)

428. Implementation of AML provisions has begun only in the banking sector, and also appears to be very uneven, depending on the bank. The procedures of many banks are still limited to a literal reading of the provisions of Directive nº 07-2002. The concept of money laundering remains poorly defined and often limited to the proceeds of drug trafficking, and the due diligence mechanism relies essentially upon the individual diligence of bank officers, very few of whom have received AML training. Controls are often confined solely to those transactions referred to in Article 10 of Law nº 06-066 (cash transactions exceeding CFAF 50 million and "unusual" transactions exceeding CFAF 10 million). In addition, measures related to the identification of beneficial owners appeared in all cases to be too limited, as were the diligence measures carried out regarding non-resident customers introduced by representatives of businesses present in foreign countries, although they account for a significant portion of the resources of certain banks.

429. Certain banks belonging to international groups have, however, established mechanisms that go beyond the prevailing Malian texts in certain areas, basing themselves on FATF recommendations (e.g., those concerning politically exposed persons or wire transfers.). Finally, the bank representatives met indicated that they had no anonymous accounts, accounts under fictitious names, or numbered accounts.[65]

430. Some serious shortcomings were also noted regarding the oversight of rapid money transfers, which are carried out *de facto* by banks, either directly or through agents (see I.3). According to information obtained by the mission: (i) most of these activities are carried out by independent agents acting on behalf of banks (small merchants, individual entrepreneurs, etc.), who have not received AML training; (ii) the identification of customers is not required at the time of fund reception if the message accompanying the transfer specifies that no identity document is required when the funds are handed over; and (iii) the conditions under which the independent agents conduct these transactions with regard to existing AML obligations have not

65 The procedures of one of these institutions that the mission was able to consult, however, mention the existence of "pseudonymous accounts", but emphasize that the identity of the customer and of the economic beneficiary must in that case be known to Management.

been overseen at all, whether by the delegated banks or by their supervisors.[66] In addition, the banks lack adequate mechanisms to exercise due diligence with regard to these transactions and effectively rely upon the diligence exercised by Western Union and MoneyGram, which dominate the market in the WAEMU zone, but are neither accredited nor physically established there. The gaps in customer identification render the per-transaction, or per-customer per-day amount limits imposed by Western Union, MoneyGram or Money Express more or less non-operational in practice.

Recommendations and remarks

431. The legal framework defining the obligations of financial institutions is incomplete and often imprecise. The identification and due diligence obligations are thus too limited, particularly with regard to beneficial owners or due diligence requirements in high-risk situations. Understanding of the texts is also made difficult by their frequent vagueness. The lack of clarifications by supervisors or by the CENTIF exacerbates this difficulty. Particular attention should be paid to this aspect during transposition of Directive nº 04/2007 concerning FT, in order to ensure coherence throughout the AML/CFT mechanism.

432. In addition, the AML/CFT texts that are binding in Mali are either little known or unknown to those subject to them, most of whom have not heard about them. Broad dissemination of these texts is advisable, particularly to non-bank financial institutions, and should be accompanied by outreach activities aimed at the entire Malian financial sector. The mplementation of AML/CFT obligations has begun only in the banking sector, and remains very uneven, especially in the absence of appropriate supervision. As a general matter, it would be advisable to begin implementation of the existing AML/CFT framework with respect to all financial institutions, without awaiting the desirable modifications of this framework that are recommended in this evaluation.

433. The Malian authorities should consider the following measures:

-Broaden the obligations set forth in Recommendations 5 through 8 to include all financial institutions (including those active in the area of e-money), taking into account, as necessary, situations involving low risk of ML/FT;

-Ensure that all financial institutions subject to the laws are accurately identified;

-Determine with certainty the legal validity of (i) the BCEAO's subjection to the provisions of Law n° 06-066, and (ii) that of the "Caisse des dépôts et consignations" and the financial services of the Post Office to the provisions of BCEAO Instruction n° 01/07/RB;

Recommendation 5

-Explicitly prohibit financial institutions from holding anonymous accounts or accounts under fictitious names (and require verification of the identities of existing customers in this area);

-Require financial institutions to administer numbered accounts in such a way as to fully comply with aspects covered by FATF recommendations (and require verification of the identities of existing customers in this area);

-Require financial institutions to fulfill the stipulated due diligence obligations:

66 In November 2007, however, the national management of the BCEAO addressed a circular letter to all banks concerning rapid money transfers. This letter emphasizes that rapid money transfer activities are occurring more frequently under conditions that do not comply with any security rules in that area (e.g., offices not meeting standards, untrained operators, lack of appropriate controls on the part of banks, etc.) and asks the establishments concerned to take the necessary steps to see that these very sensitive activities are carried out in accordance with the customer security rules.

-When they carry out occasional transactions exceeding the CFAF 5 million threshold, but that are not in cash;

-When they carry out occasional transactions in the form of wire transfers under the circumstances described in the interpretive note to Special Recommendation VII;

-in all cases where there is suspicion of ML or FT;

-When the institution has doubts as to the veracity and relevance of previously -obtained customer identification data;

-Supplement the prevailing texts by instituting a clear obligation for financial institutions to identify customers on the basis of reliable and independent sources;

-Institute, for legal arrangements, an obligation for financial institutions to:

- verify their identity on the basis of reliable and independent data;
- verify that any person claiming to act on behalf of the customer is authorized to do so (and identify and verify the identity of that person);
- verify the legal status of the legal arrangement;

-Require financial institutions to gauge, for all their customers, whether the customer is acting on his own account;

-Require financial institutions, for beneficial owners, to:

- Identify the person(s) who ultimately own or control their customer (including identification of persons who exercise ultimate control over a corporate body or legal arrangement);
- Take reasonable steps to verify the identity of beneficial owners using relevant information or data obtained from a reliable source, so that the financial institution has satisfactory knowledge of the identity of the beneficial owner;
- Take all reasonable steps, regarding customers that are corporate bodies or legal arrangements, to: (i) understand the ownership and control structure of the customer; and (ii) identify the physical persons who ultimately own or control the customer.

-Require financial institutions to obtain, in any case, information on the intended purposeand nature of the business relationship;

-Create an obligation for financial institutions to exercise ongoing monitoring with regard to their business relationships;

-Require financial institutions to attentively examine transactions carried out during the entire duration of their business relationships, in order to be certain that they match the knowledge that the institutions have of their customers, the latter’s commercial activities and risk profiles and, as the case may require, the origin of the funds;

-Require financial institutions to ensure that documents, data or information collected during the performance of customer due diligence is up-to-date and relevant, on the basis of examinations of existing documents, particularly for categories of customers or business relationships presenting higher risk;

-Require financial institutions to take enhanced diligence measures to high-risk categories;

-Examine possible cases in which, on account of low risks, the financial institutions might be authorized to apply reduced or simplified measures, at the same time specifying:

- the conditions on which these measures are to be carried out (the general rule being that customers are subject to all customer due diligence measures, and particularly to the obligation to identify the beneficial owner);
- whether financial institutions are authorized to apply simplified or reduced diligence measures vis-à-vis their customers residing abroad, and specifying that this option applies only to customers whose for which the country of origin is satsified that they comply with FATF recommendations and that they have actually implemented them;
- that simplified customer due diligence measures are not acceptable if there is a suspicion of money laundering or the financing of terrorism, or in specific circumstances presenting higher risk;
- that when financial institutions are authorized to determine the scope of customer due diligence measures to be applied as a function of the risks presented, this must be done in compliance with instructions published by the relevant authorities.

-Prohibit a financial institution from opening an account, entering into a business relationship or carrying out a transaction if it cannot comply with legal requirements regarding identification of the customer or of beneficial owner(ies);

-Stipulate that, in all cases in which a financial institution cannot fulfill the legally required obligations, it must consider filing a suspicious transaction report;

-When the financial institution has already established a business relationship and cannot fulfill the legally required identification obligations, ensure that the financial institution is bound to terminate the business relationship and to consider filing a suspicious transaction report;

-Require financial institutions to apply due diligence obligations to existing customers according to the significance of the risks they represent and to implement due diligence measures with regard to these existing relationships at the opportune time;

Recommendation 6

-Regarding politically exposed persons (PEPs), require financial institutions to:

- have adequate risk management systems to determine whether a potential customer, customer or beneficial owner is a PEP (in addition to the application of the diligence measures prescribed in Recommendation 5);
- obtain permission from their senior management (i) before entering into a business relationship with a PEP; or (ii) before continuing the business relationship when a customer has been accepted and it subsequently emerges that this customer or beneficial owner is a PEP or is becoming one;
- take all reasonable steps to identify the origin of the assets and funds of customers and beneficial owners identified as PEPs;
- conduct enhanced and ongoing surveillance of their business relationships with PEPs;

Recommendation 7

-Regarding crossborder correspondent banking relationships and other similar relationships, require financial institutions to:

- gather enough information on the customer institution to thoroughly understand the nature of its activities and to assess, on the basis of publicly available information, the reputation of the institution and the quality of the surveillance (including verification of whether the institution concerned has been the object of an investigation or intervention by the ML or FT surveillance authority);
- evaluate the AML/CFT controls put in place by the customer and ensure their relevance and efficacy;
- obtain permission from senior management before entering into new banking correspondent relationships;
- specify in writing the respective AML/CFT responsibilities of each institution;
- require financial institutions, when a banking correspondent relationship involves the holding of 'payable-through' accounts, to ensure that (i) their customer (the customer financial institution) has applied all the usual due diligence measures required under Recommendation 5 to all of its customers with direct access to the accounts of the corresponding financial institution; and (ii) that the other customer financial institution is able to provide relevant identification data on its customers at the request of the corresponding financial institution.

Recommendation 8

-Require financial institutions to develop policies or to take the necessary steps, within its ML or FT mechanisms, to prevent the misuse of new technologies.

Compliance with Recommendations 5 through 8

	Rating	Summary of factors underlying the rating
R.5	NC	- Identification obligations too limited, particularly for beneficial owners - Lack of obligation to investigate the purpose and nature of the relationship - Lack of obligation of ongoing monitoring - Lack of obligations pertaining to existing customers - Limited implementation by the banking sector, and lack of implementation by other financial institutions
R.6	NC	- Lack of obligations pertaining to PEPs
R.7	NC	- Lack of obligations pertaining to correspondent banking
R.8	NC	- Obligations incomplete and imprecise

		- Lack of implementation

USE OF THIRD PARTIES AND OTHER INTERMEDIARIES (R.9)

Description and analysis

434. Legal framework (see also 3.2.1 for more detail on the texts referred to):

- Law nº 06-066 on AML;
- BCEAO Instruction nº 01/2007 of July 2, 2007 on AML within financial entities;
- Directive 04/2007 on CFT (not transposed as of the date of the mission and therefore not binding in Mali).

435. The prevailing texts allow financial entities to use intermediaries or third parties only for certain cases of initiation of a non face to face relationship, under difficult-to-interpret conditions that are set forth in the annex to Law n° 06-066 (see discussion of criterion 8-2 above).

Analysis of effectiveness

436. The financial institutions met in the bank and life insurance sectors indicated that they often used third parties upon whom they devolve a portion of their AML due diligence obligations, although this delegation is not clearly organized. This is true in particular of (i) banks when they initiate certain relationships with non-resident Malians (where a portion of the identification obligation can be carried out by a bank located abroad); (ii) fund transfer services along the lines of Western Union, MoneyGram and Money Express carried out by banks (in which a portion of the due diligence obligation is implemented only at the level of these fund transfer companies) or life insurance companies (where customers are identified by a bank when the life insurer grants a life insurance policy linked to a bank loan).

Recommendations and remarks

437. It would be advisable to precisely define the conditions under which the use of third parties and intermediaries is allowed in the area of AML/CFT:

- Financial institutions using third parties should be required to immediately obtain from this third party the needed information concerning certain elements of the customer due diligence measures (criteria 5.3 through 5.6);
- Financial institutions should be required to take adequate steps to ensure that the third party is able to provide, upon request and quickly, copies of identification data and other relevant documents related to the customer due diligence obligations;
- Financial institutions should be required to ensure that the third party is subject to regulation and is the object of surveillance (in accordance with Recommendations 23, 24 and 29), and that the third party took steps to comply with the customer due diligence measures set forth in Recommendations 5 and 10;
- When there is a need to decide in which country the third party complying with the criteria may be established, the relevant authorities should take into account available information indicating whether these countries apply FATF recommendations properly;

- Ultimately, the responsibility for identification and verification of identity should rest with the financial institution that used the third party.

Compliance with Recommendation 9

	Rating	Summary of factors underlying the rating
R.9	NC	- Lack of clear and complete AML/CTF requirements pertaining to the use of third parties and intermediaries, where this practice exists

PROFESSIONAL SECRECY OR CONFIDENTIALITY OF FINANCIAL INSTITUTIONS (R.4)

Description and analysis

Lack of obstacles to the implementation of FATF Recommendations related to professional confidentiality applicable to financial institutions (Criterion 4.1)

438. Article 34 of Law nº 06-066 stipulates that "notwithstanding any contrary legislative or regulatory provisions, professional confidentiality may not be invoked by the persons referred to in Article 5 [the persons subject to the law] so that they may refuse to provide information to the oversight authorities and to CENTIF or to make the reportings required by this law. The same is true of information required within the framework of an investigation pertaining to money laundering actions, ordered by a presiding judge or carried out under that judge's authority, by government agents charged with detecting and preventing offenses related to money laundering."

439. On the other hand, there is no provision making it possible to ensure that laws on the professional confidentiality of financial institutions do not hamper the exchange of information between financial institutions when this is required by Recommendations 7 and 9 or Special Recommendation VII.

Analysis of effectiveness

440. The Ministry of Finance, as well as the BCEAO, reported good cooperation on the part of financial institutions in giving them access to information covered by professional confidentiality, when this is necessary for the accomplishment of their mandates. The authorities also informed the mission that, at the request of a foreign embassy, the Ministry of Finance had been able to obtain individual data pertaining to a customer from a financial institution and then convey it to this embassy. The financial institutions met also indicated that they have no problem communicating the information requested of them to the authorities (judicial officials and supervisors in particular).

Recommendations and remarks

441. The authorities should consider establishing a provision making it possible to ensure that the financial institutions' rules on professional confidentiality do not hamper the exchange of

information between financial institutions when this is required by Recommendations 7 and 9 or Special Recommendation VII.

442. In addition, it is important to ensure that access to data covered by professional confidentiality is strictly limited to needs deriving from tasks entrusted to public authorities.

Compliance with Recommendation 4

	Rating	Summary of factors underlying the rating
R.4	LC	- Lack of provision guaranteeing professional confidentiality does not hamper the exchange of information between financial institutions, when this is required

RECORD KEEPING OF DOCUMENTS AND RULES APPLICABLE TO ELECTRONIC FUND TRANSFERS (R.10 AND SR.VII)

Description and analysis

Record keeping of all documentation needed to reconstitute various transactions (Criteria 10.1* and 10.1.1*)

443. Article 11 of Law nº 06-066 requires that financial institutions (i) conserve documentation and documents pertaining to the identity of their usual and occasional customers for a period of ten years from the closure of their accounts or the cessation of their relationships with these customers; and (ii) conserve documentation and documents pertaining to transactions they have carried out for a period of ten years from the end of the fiscal year during which the transactions occurred.

In addition, additional clarifications are provided, solely for banks and financial establishments, by texts of a more general scope than AML/CFT. Thus Article 20 of Community Regulation n° 15/2002/CM/UEMOA pertaining to systems of payment within the WAEMU member countries stipulates that (i) the data message of documents in electronic format must be conserved for five years in the form in which it was created, sent or received, or in a form of which it can be proven that its content is not subject to modification or alteration and that the document transmitted and the one conserved are strictly identical, and that (ii) information making it possible to determine the origin and destination of the data message, as well as indications of the date and time of transmission or receipt, must be conserved if it exists. In addition, Banking Commission Circular n° 10-2000/CB of June 23, 2000 stipulates that the system of internal controls of these institutions must guarantee the existence of an audit trail making it possible to (i) reconstitute the transactions in chronological order; (ii) document any information by means of an original piece of documentation from which it must be possible to track back, in an uninterrupted sequence, to the summary document; and (iii) explain balance changes from one statement to another, thanks to the record keeping of movements that have affected similar line items. These constituent elements of the audit trail must be conserved for at least ten years. This requirement related to the audit trail does not, however, cover all the information needed to reconstitute the various transactions so as to provide proof, if necessary, in the event of criminal prosecution.

444. There is no requirement (i) that documentation be kept longer if a relevant authority so requests in a specific matter and for the accomplishment of its mission, nor is there a requirement

(ii) that transaction documentation must be sufficient to allow the reconstitution of the various transactions so as to provide, if necessary, proof in the event of criminal prosecution.

445. Regarding this latter point, Article 12 of Directive n° 04/2007 specifies that member countries must take steps to oblige financial entities to conserve certain documents, documentation and statistical data that might serve as pieces of evidence in any investigation pertaining to the financing of terrorism. This provision does not cover cases of money laundering.

Record keeping of identification data, account books and business correspondence (Criterion 10.2*)

446. Article 11 requires financial institutions to conserve for ten years documentation and documents pertaining to transactions they have carried out. The very broad reference to transaction-related documentation and documents is not further specified, particularly in terms of explicitly including account books and business correspondence.

Information made available to relevant authorities (Criterion 10.3*)

447. Law nº 06-066 stipulates (i) that judicial authorities, government agents charged with detecting and preventing offenses related to money laundering (ML) acting on a court order, oversight authorities, and the CENTIF may ask persons subject to Law nº 06-066 to communicate to them information related to customer identification, which these subject persons must gather and conserve (Article 12) and (ii) that CENTIF may ask subject persons or any other physical person or corporate body to communicate information held by them and of a nature to enhance suspicious transaction reports (Article 17).

448. Article 12 of Law nº 06-066 grants broad access to oversight authorities, since their access to information is not confined to information needed to for the accomplishment of their mandates. In addition, Article 1 of this same law provides a vague, and therefore very broad, definition of oversight authorities. The latter are in fact defined as "national or community authorities of WAEMU empowered, by virtue of a law or regulation, to conduct verifications of physical persons and corporate bodies." Under an extreme scenario, then, one might envisage, from a reading of the law, that a government agent charged with verifying compliance with standards of physical security on the part of a subject person would have access to all information gathered in application of Law nº 06-066 concerning ML.

449. Law nº 06-066 also does not stipulate that financial entities must ensure that all documentation pertaining to customers and transactions is made available in a timely manner to the relevant national authorities for the accomplishment of their mandate.

Transfers (SR. VII)

450. Regulation n° 15/2002/CM/UEMOA of September 19, 2002 concerning systems of payment in the WAEMU member countries defines the provisions applicable to wire transfers. Despite the ambiguities of this text, the mission's understanding is that the institutions authorized to make transfers are banks, financial establishments, the financial services of the Post Office, the Public Treasury, decentralized financial institutions ("SFD"), and any other institution duly authorized by the Law (Articles 42, 131 and 132[67]). No institution belonging to this last category was identified.

67 Article 42 concerning the general scope of application of the regulation does not include financial institutions which are, however, explicitly referred to in Article 132 of the regulation.

Obtaining information on the instructing parties of transfers (Criterion VII.1)

451. Financial institutions of the instructing parties are under no obligation to obtain and conserve, for all transfers, the following information pertaining to the transfer's instructing party and to verify that this information is accurate and useful: name of the instructing party, account number of the instructing party. On the contrary, Article 4, para. 3, like the provisions of the annex to the uniform law, waive or greatly limit the customer identification obligations of the financial institutions acting on behalf of these customers (see criterion 5-5 and 8-2).

Inclusion of information on the instructing party of an international transfer (Criterion VII.2)

452. For crossborder transfers (including batched transfers and transmissions using credit or debit cards to effect a fund transfer), the financial institution of the instructing party is under no obligation to include complete information on the instructing party in the message or payment form accompanying the transfer.

453. Directive nº 04/2007 concerning CFT does not require countries to demand that a financial institution include complete information about the instructing party, i.e., his or her name, account number and address, in the message or payment form accompanying the transfer. Indeed, although its Article 14 stipulates that member countries must take the necessary steps for every crossborder wire transfer to be accompanied by information about the instructing party, only that person's account number (or, failing that, a unique reference number) must necessarily accompany a transfer.

Inclusion of information on the instructing party of a domestic transfer (Criterion VII.3)

454. For domestic transfers (including transactions using a credit or debit card as a system of payment to effect a transfer), the instructing party's financial institution is under no obligation to comply with Criterion VII.2 above, or to include in the message or payment form only the account number of the instructing party or, if an account number if unavailable, a unique means of identification.

455. Directive nº 04/2007 concerning CFT stipulates that "member counties must ensure that any domestic wire transfer includes the same data as in the case of crossborder transfers, unless all information pertaining to the instructing party can be made available by other means to the beneficiary's financial entities and to the relevant authorities." (Article 14, para. 2).

Processing of non-routine transactions (Criterion VII.4)

456. Financial institutions are under no obligation to ensure that non-routine transactions are not processed in batches when this could entail an increased risk of money laundering or financing of terrorism.

Record keeping of information on instructing parties (Criterion VII.5)

The provisions of Title II, which includes wire transfers, apply (i) according to the general provisions specified in Article 131, to all institutions referred to in Article 42 and to DFCs that are empowered to promote the use of modern means of payment, particularly through the creation of groups with a view to instituting national and regional mechanisms and instruments for wire transfers; and (ii) according to Article 132 , which defines the scope of application of Title II, only to banks and financial institutions.

457. There is no obligation for each intermediate financial institution in the chain of payment to conserve all the information needed on the instructing party with the corresponding transfer.

Existence of a *de minimis* threshold (Criterion VII.6)

458. There is no *de minimis* threshold in Mali below which certain obligations related to wire transfers would be waived.

Requirement of effective control procedures by institutions based on risk assessment (Criterion VII.7)

459. Financial institutions are under no obligation to adopt effective procedures based on risk assessment to identify and process transfers not accompanied by complete information about the instructing party.

Existence of effective measures to monitor implementation of SR VII (Criterion VII.8)

460. In the absence of any transposition to Mali of the provisions of Special Recommendation VII, there are no measures [in place] to monitor compliance by the financial institutions with those provisions.

Application of Criteria 17.1 through 17.4 to SR VII (Criterion VII.9)

461. There are no obligations in Mali pertaining to SR VII.

Analysis of effectiveness

462. Among the institutions met, only certain banks were aware of the record keeping requirements defined by Law nº 06-066. The other financial institutions, although unaware of the obligations, indicated that they do conserve due diligence information as well as transaction information for a period of ten years.

463. The banks met indicated that their primary banking correspondence relationships were within the European Union. Because of the standards applicable there, they indicated that, when they made transfers to those jurisdictions, they took care to ensure that instructing parties and beneficiaries were clearly mentioned. In the case of transfers received, they indicated that information on the instructing parties and beneficiaries was systematically included on account of the prevailing AML/CFT standards in those jurisdictions. No bank indicated that it had a specific computerized AML mechanism for monitoring information accompanying wire transfers (e.g., regarding transfers received from or sent to countries that do not apply the provisions of SR VII).

Recommendations and remarks

464. Transfers are a significant and growing activity for financial institutions, both inside and outside the WAEMU zone. The absence of any measure reflecting the provisions of Recommendation VII is a particularly striking weakness in this context. The transposition only of the measures envisaged by Directive nº 04/2007 concerning CFT is not sufficient in this regard. These measures should be supplemented and clarified at the time of their transposition into Malian law.

465. Obligations related to document record keeping are incomplete and not well known to those subject to the law. In addition, supervisors in the financial sector have not verified compliance with existing obligations (including those applicable to banks).

466. The authorities should consider establishing the following provisions:

Recommendation 10

- Stipulate that documents may be kept longer if a relevant authority so requests in connection with a specific matter and for the accomplishment of his mandate;
- Stipulate that transaction documentation must be sufficient to permit the reconstitution of the various transactions in such a way as to provide, if necessary, proof in the event of criminal prosecution;
- Specify that the obligation of financial institutions to conserve, for a period of ten years, documentation and documents on transactions they have carried out includes, in particular, account books and business correspondence;
- Clarify the definition of 'oversight authorities' so as to ensure that only the relevant authorities have access to confidential information conserved by those subject to the law;
- Require financial institutions to ensure that all documentation on customers and transactions is made available in a timely manner to the relevant national authorities for the accomplishment of their mandates;

Special Recommendation VII

- Require the financial institutions of instructing parties to obtain and conserve, for all transfers, the following information concerning the transfer's instructing party and to verify that this information is accurate and useful: name of the instructing party, account number of the instructing party (or unique reference number if there is no account number), and address of the instructing party (or national identity number, customer identification number or date and place of birth, if Mali decides to authorize this);
- For crossborder transfers (including batched transfers and transmissions using a credit or debit card to effect a fund transfer), require the financial institution of the instructing party to include complete information about the instructing party in the message or payment form accompanying the transfer;
- For domestic transfers (including transfers using a credit or debit card as a system of payment to effect a transfer), require the financial institution of the instructing party to comply with Criterion VII.2 above or to include only the account number of the instructing party, or lacking an account number, a unique means of identification in the message or payment form;
- Require financial institutions to ensure that non-routine transactions are not processed in batches when this might entail an increased risk of money laundering or financing of terrorism;
- Require each intermediate financial institution in the chain of payment to keep all necessary information on the instructing party with the corresponding transfer;
- Require financial institutions to adopt effective procedures based on risk-assessment in order to identify and process transfers not accompanied by complete information on the instructing party;

- Establish effective measures to monitor the implementation of SR VII;
- Ensure that criteria 17.1 through 17.4 apply to SR VII.

Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying the rating
R.10	PC	- Lack of adequate specifics as to the nature and availability of documents to be conserved - Lack of supervision of compliance with AML obligations, the content of which is most often unfamiliar to those subject to the law
RS.VII	NC	- Lack of obligations related to wire transfers

MONITORING OF TRANSACTIONS (R. 11 AND 21)

Description and analysis

Obligation to pay particular attention to all complex transactions, those involving unusually large sums, or all unusual types of transactions (Criterion 11.1)

467. Law nº 06-066 stipulates that financial entities and, more generally, all persons subject to this text (including, therefore, the BCEAO and the Public Treasury) must carry out a specific examination of any transaction involving a sum of CFAF 10 million (about USD 22,000) or more which is carried out under unusually complex terms and/or does not appear to have an economic rationale or legitimate purpose (Article 10 al. 1). The law does not obligate financial entities in any way to pay specific attention: (i) to transactions involving less than CFAF 10 million (about USD $22,000); or (ii) to unusual types of transactions, when they appear to have no legitimate economic purpose.

Investigation, to the fullest extent possible, of the context and purpose of these transactions (Criterion 11.2)

468. Article 10, para. 2 of Law nº 06-066 stipulates that persons subject to the law "are required to determine, from the customer and/or by any other means, the origin and destination of sums of money at issue, as well as the purpose of the transaction and the identity of the persons involved. The measures to be implemented are imprecise (e.g., "determine", whereas the FATF recommends that "the context and purpose of these transactions be studied to the fullest extent possible and [that] the results of these examinations be put in writing.").

469. Article 12 of Instruction n° 01/2007/RB stipulates that the financial entities to which it applies must inquire in any case of their customers about the origin and destination of these sums, as well as about the purpose of the transaction and the identity of the persons who are its beneficiaries. The systematic obligation to obtain additional information from the customer regarding the transactions referred to in Article 10 is of a nature as to tip off the customer about any suspicious transaction report.

Ongoing availability of results to relevant authorities and auditors (Criterion 11.3)

470. The main characteristics of the transaction, the identity of the instructing party and beneficiary, and that of actors in the transaction must be recorded in a confidential register (Article 10, para.3) and kept available for judicial authorities, government authorities charged with detecting and preventing ML offenses acting on a court order, oversight authorities, and the CENTIF. Auditors are not among the persons able to access this information.

Particular attention to countries that apply FATF Recommendations insufficiently or not at all (Criterion 21.1)

471. Law n° 06-066 creates no obligation for financial institutions to pay particular attention to their business relationships and transactions (particularly with corporate bodies and financial institutions) residing in countries that do not apply the FATF recommendations, or that apply them inadequately. This aspect is only addressed partially and in an unclear manner in the annex to the uniform law (see analysis of criterion 8-2).

472. BCEAO Instruction n° 01/2007/RB requires only those financial entities to which it applies[68] to have a transaction analysis and client profiling mechanism enabling them to track and "monitor very specifically" unusual movements and financial transactions (Article 7). It specifies that these transactions include, in particular, those carried out with persons aimed at by asset-freezing measures on account of their presumed association with an organized criminal entity[69] and with counterparts located in countries, territories and/or jurisdictions declared by the FATF as being uncooperative (which is more restrictive than the provisions of Recommendation 21, which pertain to countries that apply FATF recommendations insufficiently or not at all).

Establishment of effective measures (Criterion 21.1.1)

473. No effective measures exist to inform financial institutions of the concerns aroused by the shortcomings of AML/CFT mechanisms in other countries.

Examination of transactions having no apparent economic rationale or legitimate purpose (Criterion 21.2)

474. For transactions with countries that apply FATF recommendations inadequately or not at all, there is no obligation to examine, to the extent possible, the context and purpose of these transactions if they have no apparent economic rationale or legitimate purpose. *A fortiori*, there is no obligation to make the written results of these examinations available to the relevant authorities and auditors.

Option of applying appropriate countermeasures to countries continuing to apply the FATF recommendations insufficiently or not at all (Criterion 21.3)

68 Banks, financial institutions, financial services of the Post Office, public savings and loan funds (or entities serving as such), mutualist institutions and savings and loan cooperatives, structures or organizations not incorporated in the form of mutuals or cooperatives and having the purpose of gathering savings and/or granting credit, and authorized foreign exchange dealers.

69 As of the date of the mission, there was no mechanism for freezing holdings because of their presumed links to an organized crime entity (terrorist movements being excluded from this category since penal law does not address them).

475. When a country continues to apply FATF recommendations insufficiently or not at all, Mali is unable to apply appropriate countermeasures.[70]

Analysis of effectiveness

476. Of the financial institutions met by the mission, only certain banks were aware of the particular examination obligations set forth in Article 10 of Law nº 06-066; the other financial institutions were therefore not implementing them. In addition, there are great disparities between banks with similar activity profiles with regard to the number of "Article 10" transactions identified. Certain banks identify on average ten to twenty such transactions per month (which is explained by the very widespread use of cash in business deals, including for sums that can often be as large as CFAF 100-200 million, or about USD 221,000 - 442.000), while others have never detected any. Certain banks have not yet put in place the confidential register called for in Article 10 of Law nº 06-066.

Recommendations and remarks

477. The due diligence obligations pertaining to transactions referred to in Article 10 are too restrictive in scope and imprecise in nature. They may also constitute an undue tip-off for a party in a business relationship, ahead of any suspicious transaction report. In addition, these obligations are still quite unfamiliar to most financial institutions. Only a few banks have begun to implement them. It is necessary to inform and make all financial institutions aware of these obligations and to supervise compliance with the provisions of the applicable texts in this area.

478. No provision is in place regarding countries that apply the FATF recommendations insufficiently or not at all.

479. The authorities should consider establishing the following provisions:

- Eliminate the systematic obligation imposed by Instruction n° 01/2007/RB upon financial entities to which it applies to turn to customers for additional information concerning the transactions referred to in Article 10, as this is of a nature to tip off the customer ahead of any suspicious transaction report.
- Require financial institutions to pay particular attention to all complex individual transactions involving unusually large sums, or when they have no apparent economic rationale or legitimate purpose whatever the sum involved (i.e., not only when the sum involved is CFAF 10 million or more);
- Require financial institutions to pay particular attention to all unusual types of transactions, when they have no apparent economic rationale or legitimate purpose;
- Allow auditors, in the performance of their duties, access to the confidential register referred to in Article 10;

70 For example, (i) the application of strict standards of customer identification and enhanced advice to financial institutions, particularly on financial issues specific to the jurisdiction, in order to identify effective beneficiaries before business relationships are established with physical or corporate persons from these countries; (ii) enhancement of the corresponding reporting mechanisms or systematic reporting of financial transactions, considering that financial transactions with these countries are probably suspect; (iii) taking into account, at the time of examination of the establishment's request for the approval of affiliates, branches or representative offices in countries applying the countermeasures, because the financial institution concerned originates in a country lacking an adequate AML/CFT mechanism; (iv) alerting of enterprises in the non-financial sector of the money laundering risk involved in transactions with the physical or corporate persons from this country; or (v) limitation of business relationships or financial transactions with the country or with persons identified in the country.

- Institute an obligation for financial institutions to pay particular attention to their business relationships and transactions (particularly with corporate bodies and financial institutions) based in countries that apply the FATF recommendations insufficiently or not at all;
- Establish efficient measures to inform financial institutions of the concerns aroused by shortcomings in AML/CTF mechanisms in other countries;
- Establish appropriate countermeasures that Mali may choose when a country continues to apply FATF recommendations insufficiently or not at all.

Compliance with Recommendations 11 and 21

	Rating	Summary of factors underlying the rating
R.11	PC	- Excessively restrictive definition of the transactions concerned (threshold of CFAF 10 million and failure to mention unusual types of transactions); - Lack of implementation by financial institutions other than banks, and very uneven implementation within the banking sector
R.21	NC	- Lack of provisions pertaining to countries that apply FATF recommendations insufficiently or not at all

SUSPICIOUS TRANSACTION REPORTS AND OTHER REPORTINGS (R.13-14, 19, 25 AND SR.IV)

Description and analysis

480. Legal framework:

- Law n° 01-078 of July 18, 2001 concerning oversight of drugs and precursors;
- Law nº 06-066 of December 29, 2006 establishing the uniform law concerning anti-money laundering efforts (AML);
- BCEAO Instruction n° 01/2007/RB of July 2, 2007 concerning anti-money laundering efforts within financial entities;

- BCEAO Instruction nº01/2006/SP of July 31, 2006 concerning the issuance of e-money and e-money establishments;
- Directive nº 04/2007/CM/UEMOA of July 4, 2007 on combating the financing of terrorism (not transposed as of the date of the mission and therefore not binding in Mali).

Recommendation 13

Obligation to file a suspicious transaction report (STR) in the event of suspicion of money laundering or terrorism (Criteria 13.1*, 13.5 and SR IV.1)

481. From a legal standpoint, there are two parallel mechanisms for making suspicious transaction reports: (i) the mechanism created by Law n° 01-078 solely for cases of money laundering related to drug production and trafficking; and (ii) the mechanism created by Law nº 06-066 for all cases of money laundering related to any crime or offense (Article 2). Indeed, Law nº 06-066 abrogates only those previous provisions that are contrary to it, and the existence of a parallel reporting mechanism cannot be interpreted as constituting a provision contrary to it. (Article 77). In addition, this law specifies that no reporting made to another authority constitutes an exemption from the obligations to declare that it institutes (Article 26, para. 6).

482. Law n° 01-078: Article 121 of Law n° 01-078 stipulates that "persons who, in the performance of their profession, carry out, supervise or advise on transactions entailing fund movements, public and private banking and financial establishments, financial services of the Post Office, insurance companies, mutual insurance companies, listed companies and merchants/currency exchangers, are required to alert the relevant judicial authority as soon as they become aware that sums, or transactions involving these sums, are likely derived from the offenses referred to in Articles 94 through 96, 99 and 100[71] […] ".

483. Law nº 06-066: Article 26 of Law nº 06-066 stipulates that financial entities as well as other persons subject to the law[72] are required to declare to the CENTIF, an administrative department under the authority of the Minister of Finance, (i) sums of money and any other property in their possession, when these could derive from money laundering (ML); transactions involving property, when such transactions could be part of a money laundering operation; and, (iii) sums of money and any other property in their possession, when such items, suspected of being intended to finance terrorism, appear to derive from ML-related activities. ML predicate offenses relate to all crimes or offenses (Article 2 of Law nº 06-066). Article 9 stipulates, in addition, that financial institutions must declare cases in which, despite verifications made, doubts persist as to the identity of an economic beneficiary.

484. The wording "could derive from", "could be part of" and "appear to derive from" are too vague and fail to make explicit reference to the concept of suspicion (although Article 26 is

71 Articles 94 through 96 and 99 and 100 pertain to the cultivation, production, manufacturing, processing and international trafficking in drugs and precursors (see also remarks concerning compliance with Recommendation 1 above).

72 Financial institutions: banks and financial institutions, financial services of the Post Office, public savings and loan funds (or entities serving as such), insurance and reinsurance companies, insurance and reinsurance brokers, mutualist institutions and savings and loan cooperatives, as well as structures or organizations not incorporated in a mutualist or cooperative format and having as their purpose the gathering of savings and/or the granting of credit, regional stock exchange, central securities depository and securities settlement bank, management/intermediation companies , asset management companies, mutual funds, fixed capital investment companies, and authorized foreign exchange dealers;

Other subject parties: Public Treasury, BCEAO, members of independent legal professions if they represent or assist customers outside of any legal procedure under the circumstances set forth in Article 5, introducers of business to financial institutions, auditors, real estate agents, dealers in high-value items, cash couriers, owners, directors and managers of casinos and gaming establishments, travel agencies, non-government organizations.

entitled “Obligation to declare suspicious transactions”) or to the existence of due cause to suspect that the funds derive from a criminal activity. The absence of significant outreach and supervision activities made it impossible in practice to resolve the confusion created by these various terminologies.

485. In addition, Article 26 specifies that STRs must be made “according to a template reporting in a format determined by decree of the Minister of Finance.” As of the date of the mission, this template had not yet been developed since the authorities did not wish to prepare it before the members of CENTIF had assumed their posts. Finally, the wording of obligations to declare pertains to ML situations, and not to the simple fact that the funds could be derived from a crime or offense (which is unfortunate in a context (i) in which the concept of ML is still little known and often interpreted in an excessively restrictive manner; and (ii) in which the criminalization of self-laundering is uncertain, see Criterion 1.6).

486. BCEAO Instruction n° 01/2007/RB also includes provisions pertaining to obligations to declare incumbent upon certain financial entities[73]. Although they do not contradict those of Law n° 06-066, their ambiguity exacerbates an erroneous understanding, on the part of most people met by the mission, of ML predicate offenses. Indeed, Article 11 specifies that the following must be declared: “transactions involving sums that could be part of a money laundering operation, and particularly (i) sums entered into their books that might be derived from narcotics trafficking or organized criminal activities [and] (ii) transactions involving sums, when such sums might be derived from narcotics trafficking or organized criminal activities.” The mission observed that predicate ML offenses were often understood to be limited solely to the proceeds from narcotics trafficking, or even organized criminal activities, whereas Law n° 06-066 stipulates that they must include the proceeds of all crimes and offenses (Article 2).

487. In addition, Article 11 of Instruction n° 01/2007/RB specifies the obligations to declare set forth in Law n° 06-066 in the event that the beneficial owners are unknown. This article actually stipulates that the financial entities to which it applies must declare (i) any transaction of which the identity of the instructing party or beneficiaries remains in doubt, despite the due diligence performed in accordance with the provision of Article 7 through 9 of Law n° 06-066, as well as (ii) transactions carried out by financial entities on their own behalf or on behalf of third parties with physical persons or corporate bodies, including their subsidiaries or branches, acting in the form of, or on behalf of, trust funds or any other instrument for the management of a fiduciary trust (“patrimoine d'affectation”), where the identity of the constituents or beneficiaries is not known.

488. Finally, Instruction n° 01/2006/SP concerning the issuance of electronic money and e-money establishments creates an unclear obligation regarding suspicious transaction reports. Thus, its Article 7 stipulates that “anomalies” identified by establishments that issue or distribute e-money must be declared to CENTIF. The concept of an ‘anomaly’ is not defined and the legal basis upon which a BCEAO instruction can compel an institution to report is unclear.

STR obligation in the case of funds related to terrorism (Criterion 13.2* and SR IV)

489. Article 26 of Law nº 06-066 creates an obligation to declare to CENTIF money laundering transactions that are also suspected of being intended for FT. This provision does not create any new obligation in relation to the other provisions of Article 26, but specifies that transactions related to ML must be declared to CENTIF even when they are also suspected of being intended for FT.

73 Banks, financial institutions, financial services of the Post Office, public savings and loan funds (or entities serving as such), mutualist institutions and savings and loan cooperatives, structures or organizations not incorporated in a mutualist or cooperative format having as their purpose the gathering of savings and/or the granting of credit, and authorized foreign exchange dealers.

490. Apart from funds covered by the STR obligation in connection with ML, the obligation to make an STR does not apply to funds for which there are reasonable grounds for suspecting, or of which it is suspected, that they are linked to, or will be used for, terrorism, terrorist acts, terrorist organizations, or those who finance terrorism.

491. Directive nº 04/2007 concerning CFT also stipulates that member countries must take critically needed measures to ensure that persons subject to the law proceed immediately to file suspicious transaction reports to CENTIF if they suspect, or have reasonable grounds to suspect, that the funds are linked to, or are intended for, the financing of terrorisms or terrorist acts (Article 10, para. 2). This directive has not been transposed to Mali.

Obligation to declare all suspicious transactions (Criterion 13.3*)

492. STRs must be made regardless of the amount of the transaction, according to both Law n° 01-078 (drugs) and Law nº 06-066 (AML).

493. There is no obligation in Mali to declare attempted transactions.

Obligation to declare suspicious transactions related to tax issues (Criterion 13.4*)

494. The obligation to file an STR in application of Law nº 06-066 (AML) pertains to any transaction that could be linked to ML. ML-related predicate offenses consist of all crimes and offenses. They therefore include tax issues, which are directly covered by the STR obligation (and therefore cannot be put forth as a reason for not making a STR).

495. According to Law n° 01-078, predicate offenses do not include tax matters. This law does not specify that the obligation to declare suspicious transactions applies whether or not these transactions are considered to pertain to tax issues as well.

Recommendation 14

Protection in the event of a STR (Criterion 14.1)

496. Article 123 of Law n° 01-078 (drugs) stipulates that "no prosecution for violation of professional confidentiality may be instituted against the directors or managers of the agencies enumerated in Article 125[74] above, even if subsequent investigations or judicial decisions reveal that the reporting that they made in good faith was groundless."

497. Article 30 of Law nº 06-066 (AML) stipulates that "persons, or the directors and managers of the persons referred to in Article 5, who, in good faith, have conveyed information or made any reporting in accordance with the provisions of this law, are exempt from any sanction for violation of professional confidentiality. No civil or penal action may be brought against, nor may any professional sanction be imposed upon, persons or the directors and managers of persons refereed to in Article 5 who have acted under the same circumstances as those described in the preceding paragraph, even if the judicial decisions rendered on the basis of the reportings referred to in that same paragraph have not resulted in any conviction."

498. Law nº 06-066 does not specify that this protection is extended to them (i) even if they do not know exactly what the criminal activity in question was, and (ii) even if the illegal activity that gave rise to the suspicious transaction report did not actually occur. These various elements are nevertheless contained in the more general provisions of the above-cited Article 30.

Prohibition on alerting a party to an STR (Criterion 14.2.)

74 Article 125 deals with protective measures, whereas the entities required to make STRs are mentioned in Article 121.

499. Law n° 01-078 contains no provision prohibiting the tipping off of a third party to the existence of a STR.

500. Law nº 06-066 stipulates that "the reportings are confidential and may not be communicated to the owner of the sums or to the originator of the transactions" (Article 26, para. 4). The wording (i) is ambiguous because it seems to be aimed at the communication of the reporting rather than at the existence of the reporting; (ii) does not prohibit communication to any third party not duly authorized to have access to this information, but only prohibits communication to the owner of the sums or the originator of the transactions; and (iii) is too restrictive since it pertains only to the STR, without including other information communicated or provided to CENTIF.

501. Article 40 of Law nº 06-066 also stipulates that persons having intentionally "revealed to the owner of the sums or the originator of the transactions referred to in Article 5 the reporting that they are required to make or the follow-up that has resulted" shall be punished by penal sanctions ranging from six months to two years in prison and fines of CFAF 110,000 to 1,500,000 – about USD 220 to 3,300. This wording is unclear to the extent that Article 5 does not refer to transactions, but instead simply lists the persons subject to the law. There is also no sanction when the fact that a STR or information concerning it has been communicated or provided to CENTIF is divulged unintentionally.

Confidentiality of the identity of officers of financial institutions making STRs (criterion 14.3)

502. Law n° 01-078 contains no provision protecting the confidentiality of the officers of financial institutions making STRs.

503. Law nº 06-066 stipulates (i) that information held by CENTIF must be confidential (see 2.5) and (ii) that, when CENTIF conveys a report to the Government Prosecutor following the examination of a STR, the latter must not be communicated, nor may the name of the official responsible for the reporting appear in this report (Article 29, para. 2).

Recommendation 19

Study of a system of reporting of cash transactions (Criterion 19)

504. Mali has not studied the feasibility and utility of a system by means of which financial institutions would declare all cash transactions exceeding a certain amount to a central national agency equipped with a computerized database.

Recommendation 25

Reporting guidelines (Criterion 25.1)

505. Article 13 of Law n° 06-066 allows oversight authorities to issue enabling provisions in the area of AML.[75] The BCEAO is the only agency to have issued in 2007 an instruction[76] containing additional clarifications of Law nº 06-066, which are still too limited, however. These clarifications pertain to (i) the types of transactions that may arouse suspicion (Article 11) as well as to (ii) measures to be implemented to enforce the provisions of the law on AML mechanisms. This instruction applies to banks and financial institutions, the financial services of the Post

75 Article 13 specifies that " oversight authorities may, in their respective areas of authority, specify, if necessary, the content and modalities of application of programs to prevent money laundering."

76 BCEAO Instruction nº 01/2007/RB of July 2, 2007 concerning the fight against money laundering within financial institutions.

Office, "Caisse des dépôts et consignation" (or entities serving as such), microfinance institutions[77] and bureaux de change. Regarding other financial institutions, as well as designated non-financial companies and professions, no guideline has been issued by the authorities to help them enforce and comply with their AML obligations.

Feedback on reporting (Criterion 25.2)

506. Article 29 of Law nº 06-066 stipulates that "the CENTIF shall inform those subject to filing STRs of the conclusions of its investigations when appropriate." The CENTIF had not yet been established as of the date of the mission and there was thus no feedback on reporting.

Recommendation 32

Maintenance of statistics (Criterion 32.2)

507. There is no mechanism in place for the gathering of relevant statistics.

Analysis of effectiveness

508. The mission learned only belatedly of the existence of the obligations concerning suspicious transaction reports created by Law n° 01-078 of July 18, 2001 concerning the oversight of drugs and precursors. In addition, none of the public or private actors met by the mission mentioned the existence of these provisions. The mission therefore believes that these provisions concerning the obligation to file a suspicious transaction report have not been implemented at all since they became effective in 2001.

509. Regarding the reporting obligations created by Law n° 06-066, no interim procedure for the transmission of such reportings, in the absence of CENTIF, has been established. Most of the institutions met by the mission had given no thought to the follow-up required if they identified a suspicious transaction (including, in particular, the question of whether to communicate such information to a public authority or not and, if so, to which public authority). This situation was explained either by an unawareness of the reporting obligation (which was the case of financial institutions other than banks, in particular), or by the perception that there was a very low probability that their institution could be carrying out transactions that could be suspicious (a belief held despite the very broad scope of ML predicate offenses) and that they would therefore need to make an STR.

510. Only two banks identified transactions that could have been the subject of an STR if a CENTIF had been in place (the exact number of these transactions is unavailable but is less than a dozen). Information concerning these transaction was communicated by the banks to the national management of the BCEAO, which conducted additional investigations, including on-site inquiries in the two banks as a result of the information received from the mission. It then conveyed all of this information to the Ministry of Finance, which kept these documents pending the creation of a CENTIF.

511. According to information obtained by the mission, the transactions involved the receipt of transfers of large sums from abroad, without economic justification: e.g., (i) receipt of a transfer of USD 1 million from Europe by a Senegalese national bearing only the explanation "for services rendered". The justification provided, after the bank requested additional information before the funds were withdrawn in cash, was that the party wished to build a mosque; and (ii) a transfer, with a Russian instructing party, of USD 1.5 million from a United States bank, for

77 Mutualist institutions and savings and loan cooperatives, as well as structures or organizations not incorporated in a mutualist or cooperative format and having as their purpose the gathering of savings and/or the granting of credit.

which the funds were withdrawn in cash, and which was explained, after the bank's request for details, as being from a sale of gold realized in Mali. Other transfers "justified" as being for purchases of gold in Mali are believed to have been identified, but the mission was unable to obtain details about them.

512. The legal basis for both the transmission, by the banks, of individual customer data as well as for the additional investigations conducted by the BCEAO seem very uncertain, especially given the confidentiality obligations applicable to the banking sector and to its supervisory authorities.

Recommendations and remarks

513. The existence of two distinct mechanisms for suspicious transaction reports constitutes a significant weakness, albeit a theoretical one, since the relevant provisions of neither text have been implemented. Indeed, Laws n° 01-078 and n° 06-066 require (i) subject persons, the definition of which differs, (ii) to make suspicious transaction reports of ML pertaining to different predicate offenses (drugs in one case, all crimes and offenses in the other), and (iii) require that these be made to separate authorities (i.e., the relevant judicial authority and CENTIF, respectively). Malian authorities should consider unifying the mechanism for the suspicious transaction report, taking into account the advances contributed by Law n° 06-066 as well as the recommendations set forth in this report.

514. The reporting obligations created by Law n° 06-066 are actually imprecise, and this is particularly unfortunate since these provisions are new, in practice, for most of the institutions required to enforce them. Moreover, the financial and non-financial institutions met (with the exception of banks) were unaware of the existence of such reporting obligations (which cannot be explained solely by the failure to establish a CENTIF). Even in the case of the banks, these obligations were often poorly understood on account of an overly restrictive interpretation of the concept of ML, which is often confined to the proceeds of drug trafficking (whereas Law nº 06-066 covers the proceeds of any crime or offense). Information and outreach by the authorities to persons subject to the law would therefore appear to be priorities (along with the preparation of guidelines conducive to effective implementation by each profession). The fact that two banks have already identified transactions that they believe to be suspect, and that they have sought to inform the authorities of them, is an encouraging sign (see analysis of effectiveness, above).

515. The authorities should consider taking the following steps:

Recommendation 13

- Unify the regime of suspicious transaction reports;
- Require all financial institutions to make suspicious transaction reports in accordance with FATF recommendations (including institutions actives in the area of e-money);
- Specify that financial institutions must make file an STR to the CENTIF when they suspect (or have sufficient grounds to suspect) that funds derive from a crime or offense (which constitute predicate ML offenses);
- Institute an obligation to make an STR regarding funds for which there are reasonable grounds to suspect, or of which it is suspected, that they are linked to, related to, or will be used for, terrorism, terrorist acts or terrorist organizations or by those who finance terrorism;
- Institute an obligation to declare attempted operations;

- Specify that protection is granted to financial institutions, their managers and employees (i) even if they did not know exactly what the criminal activity in question was; and (ii) even if the illegal activity that gave rise to the suspicious transaction report did not actually occur;
- Broaden the confidentiality obligation (i) to include the existence and content of any information communicated to CENTIF; and (ii) prohibit the communication of this information to any third party not duly authorized to have access to it;
- Study the feasibility and utility of implementing a system by means of which financial institutions would declare all cash transactions exceeding a certain amount to a national central agency equipped with a computerized database;
- Ensure that all financial institutions and designated non-financial businesses and professions are given guidelines issues by the relevant authorities (CENTIF and/or oversight authorities in particular) for purposes of enforcing and complying with their AML/CFT obligations;
- Ensure that the relevant authorities, and CENTIF in particular, provide financial institutions and designated non-financial businesses and professions that are required to declare suspicious transactions with useful and appropriate feedback in keeping with FATF guidelines;
- Review the wording of Article 40 of Law n°06-066, in which the cross-reference to Article 5 of that same law appears to be in error (see c. 14-2).

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

	Rating	Summary of factors underlying the rating
R.13	NC	- Reporting obligations are imprecise and largely unfamiliar to persons subject to them - Existence of two competing, unharmonized, reporting mechanisms - Lack of implementation
R.14	NC	- Protection of the confidentiality of information communicated to CENTIF is too limited
R.19	NC	- Lack of a study of the feasibility of a system of cash transaction reportings
R.25	NC	- Lack of guidelines apart from a BCEAO instruction containing few details
RS.IV	NC	- Lack of obligation to declare transactions linked to FT.

516.

INTERNAL CONTROLS, COMPLIANCE, AUDITS AND BRANCHES ABROAD (R.15 AND 22)

Description and analysis

Recommendation 15

517. Legal framework

518. **Banks**. By virtue of Article 13 of Law 06-066 of December 29, 2006, which incorporates the provisions of the community directive, financial institutions are required to develop harmonized programs to prevent money laundering. These programs include in particular:

- the centralization of information on the identity of customers, instructing parties, agents, economic beneficiaries, etc.;
- the processing of suspicious transactions;
- the designation of internal officers charged with enforcing anti-money laundering programs;
- ongoing staff training; and
- the establishment of an internal mechanism for monitoring the enforcement and effectiveness of measures adopted within the framework of this law.

519. WAEMU Banking Commission Circular n° 10/2000/CB of June 23, 2000[78] also requires banks and financial institutions to acquire an efficient system of internal controls adapted to the organization and the nature and volume of their activities as well as to the risks to which they are exposed. According to Title I of the document, one of the purposes of the system of internal controls is to verify that completed transactions and internal organization and procedures are in keeping with prevailing legislative and regulatory provisions (and therefore, implicitly, with those applicable to AML/CFT). It is indicated therein that deliberative and executive bodies are responsible for the smooth functioning of the system of internal controls (Title II). Title IV also stipulates that the system must be based, among other things, upon a complete formalization of procedures and modalities of transaction processing and recording, and that it must include, at each operational level, an appropriate control mechanism. Finally, Title V requires banks to guarantee the traceability of transactions (or an audit trail) making it possible in particular to reconstitute transactions in chronological order and to document any piece of information by means of an original document that must be conserved for a period of at least ten years.

520. The BCEAO, in its Instruction 01/2007/RB, also imposes upon banks and financial institutions an obligation to submit to its departments and to the Banking Commission, within two months of the end of a fiscal year, a report on the implementation of the entire internal mechanism in place in the WAEMU member countries for combating money laundering. This report must contain several items of information making it possible to assess the quality and

78 This refers to the enabling circular for the prudential mechanism applicable to WAEMU banks and financial institutions as of January 1, 2000, which, in its Article 6 (Internal transaction controls), stipulates that "the internal control obligations incumbent upon banks and financial institutions are specified by Central Bank instructions or Banking Commission circulars."

depth of the controls put in place within each establishment.[79] Only one report had been submitted to the WAEMU Banking Commission as of the date of the mission. In addition, and according to the BCEAO, financial institutions other than banks and financial establishments[80] must convey to the BCEAO, within one (1) month of the end of a fiscal year, the report of their anti-money laundering unit. As of the date of the mission, no such report has been submitted by Mali.

521. The 2006 law, contrary to the provisions of the community directive on AML, does not specify that internal control procedures pertaining to anti-money laundering efforts must pay particular attention to non face to face transactions.

522. **Stock exchange sector**: By virtue of the General Regulation concerning the organization, operation and control of the WAEMU financial market (Article 54), any company active in the market (MICs and AMCs) is required to designate a staff member responsible for internal controls. The internal controller's mandate includes, among other things, verification of the company's own compliance with all professional rules, and especially with the prudential rules applicable to it.

523. In addition, internal control standards such as those referred to in Article 13 of the above-cited 2006 law apply to stock exchange companies (MICs, AMCs, etc.), since they are among those institutions subject to preventive AML provisions. However, there is no instruction on internal controls for these establishments pertaining explicitly to AML. A draft circular is under preparation. The oversight authorities have, however, expedited their investigations in the WAEMU zone in order to enhance controls at the level of the market actors. Their internal controllers must also submit quarterly reports on offenses, particularly in connection with the issue of customer identification. Market authorities (CREPMF) indicated to the mission[81] that these controls, although relevant with regard to AML, are not explicitly aimed at AML efforts, but instead at the protection of customers.

524. **Insurance sector**: In the insurance sector, the law is aimed, among those financial institutions subject to the anti-money laundering law, at insurance and reinsurance companies and insurance and reinsurance brokers (Article 1). Despite this, however, the sector has still not paid much attention to the obligations incumbent upon the profession in the area of money laundering. The insurance companies operating in Mali have not put any specific AML-related oversight mechanism in place.

525. **Micro-finance sector**: For the micro-financing sector, community texts require DFCs to establish internal control systems.

Analysis of effectiveness

79 This report must: • describe the organization and resources of the establishment in terms of preventing and combating money laundering • describe training and informational activities carried out during the preceding year • inventory the controls carried out to ensure proper implementation of and compliance with customer identification procedures, data conservation, detection and declaration of suspicious transactions • present the results of investigations, particularly concerning weaknesses noted in procedures and in compliance with those procedures, as well as statistics related to implementation of the 'declaration of suspicion mechanism' • point out, as necessary, the nature of information transmitted to third-party institutions, including those located outside of the host country • draw up a map of the most common suspicious activities, indicating as necessary the nature and form of the anomalies noted in the area of money laundering • present the outlook and action program for the upcoming period.

80 i.e., insurance and reinsurance companies, mutual funds and fixed capital investment companies.

81 During a meeting in Abidjan which was held when the same team carried out the evaluation on AML/CFT standards for WAEMU region.

526. **Banking sector**: In practical terms, the mission met with representatives of the main banks present, including one branch of a large international banking group. These meetings revealed that the banks concerned have internal audit and inspection departments responsible for internal AML surveillance.

527. These visits afforded an opportunity to observe several control practices intended to prevent the risk of AML. One bank indicated that it had established a system to detect fractional (or split) transactions, while another has developed a system of customer ranking by "sensitivity index". One establishment indicated that it had created tools to detect "noteworthy transactions"; these make it possible to track transactions that are unusual in terms of their amount or frequency. These alerts are issued at the end of the business day and examined by back office departments. Another establishment indicated that its internal audit department examined compliance with AML standards during each control mission (examination, by those responsible for first-level controls, of daily and periodic supervision reports, analysis of account-opening documents). The internal instructions of banks to which the mission had access also define the terms of internal AML controls.

528. The establishments interviewed acknowledged a number of difficulties in performing internal control and audit tasks. It is often difficult to verify customer addresses, as most Bamako neighborhoods have no exact addresses, or even mailboxes. It is practically impossible to verify an address by means of a certified letter with acknowledgment of receipt. As for dubious transactions, the banks were unanimous in declaring that they did not know what approach to take. In fact, two large-scale suspicious transactions (exceeding one million dollars in cash) have already been identified, which tends to demonstrate that the controls are working. Still, the identification of dubious transactions leads to no concrete action, for lack of an operational CENTIF. The banks acknowledge that if something happens, their only option right now is to turn either to the BCEAO or to their home office,[82] an unsatisfactory solution. This situation is creating great legal uncertainty and undermines banks' confidence in the efficacy and relevance of the overall AML mechanism.

529. In the area of training, there have been some real efforts, except perhaps at the BCEAO, a national agency that has trained only four (4) persons in AML procedures; a lackluster result, given the coordinating role the entity is supposed to play.

530. In the micro-finance sector, although community texts require DFCs to establish systems of internal control, these have proven imperfect, even inefficient, in practice. In addition, internal AML surveillance is non-existent. Training and outreach for the relevant staff is also scant, or entirely absent.

In the **financial market and insurance sectors**, internal AML surveillance is, in practice, still in its infancy.

Recommendation 15

Obligation to establish internal controls (Criterion 15.1)

531. Banking sector: See sections 517 *et seq.*

532. Financial market: Market companies (MICs and AMCs) are required to establish internal control mechanisms by virtue of Article 54 of the General Regulation concerning the organization, operation and oversight of the WAEMU financial market.

Designation of a compliance officer (Criterion 15.1.1)

82 This is the case for two local banks.

By virtue of Article 13 of Law 06-066, financial institutions are required to designate an internal officer responsible for enforcing AML programs. In banks, the compliance officer usually ensures, in practice, compliance with AML standards and assumes the role of CENTIF interlocutor. In MICs and AMCs, this has not occurred, and the same is true for insurance companies.

Timely access to customer identification data (Criterion 15.1.2)

533. According to the current standards described above, the AML/CFT control officer and other relevant staff members must have timely access to customer identification data and to other information related to due diligence measures, transaction documentation, and other relevant information.

Independence and means of internal control (Criterion 15.2)

534. Circular 10-2000/CB of the WAEMU Banking Commission concerning internal controls in credit establishments requires, in its Title IV, that internal controls, still called therein internal audits, must be entrusted to a designated person or to a department specifically established for this purpose, with operational independence and broad prerogatives regarding the scope of its interventions and the provision of data by the other bodies within the establishment.

535. Article 16 of the BCEAO Instruction of 2007 also stipulates in its Article 16 that "the internal program to combat money laundering must be subject to the scope of authority and investigative purview of a body or agency independent from the one responsible for its implementation. This body or agency is required to report regularly to the deliberative body on the controls it performs in this area."

536. There is no comparable provision for the insurance sector. As for stock exchange companies, regulations require them to "make available to their internal controllers all human and material resources necessary for the accomplishment of their mission" (Article 55 of the General Regulations).

Ongoing staff training (Criterion 15.3)

537. The AML law of 2006 stipulates in its Article 13 that financial institutions must establish on-the-job staff training programs. The BCEAO, for its part, has also provided several clarifications in its Instruction 01/2007/RB. Indeed, Article 14 stipulates that "financial institutions must develop a specific policy for the information and training of all staff…"

538. In practice, most banks met declared to the mission that their staff had undergone AML training. According to some banks, this training had been provided to all front office staff (window clerks) and agency heads. One bank declared that it had trained its entire staff in a single quarter and that its audit department had confirmed, by means of tests, that this training had indeed been received and mastered. The BCEAO national office (which is itself subject to the 2006 law) trained four (4) persons. In the internal instructions provided by banks to the mission, explicit provision is made for the issue of AML training. The instructions also state that "staff must be trained so as to understand the seriousness of money laundering (…). The officer responsible for compliance with standards must initiate training sessions at least twice per year, or whenever the need arises, in order to keep all staff informed of changes or experiences occurring in other units of the Group (…)." The mission was not able to determine, however, whether the training dispensed is provided at the time of staff hiring or is part of an ongoing training program.

Hiring criteria (c. 15.4)

539. Neither the community texts nor the Malian law of 2006 contain any employee hiring criteria aimed at ensuring that hiring follows strict criteria.

Independence of the AML/CFT control officer (Criterion 15.5)

540. Within banks, the compliance officers are usually responsible for ensuring implementation of preventive standards. None of the officers met by the mission mentioned any problem in connection with his or her independence.

541. One local bank has developed an original technique for ensuring that the reporting chain, from the base-level agent up to management, is not interfered with. Thus, a mechanism called the 'alarm bell' is set up, under which an Internet website is made available to the employees of the bank group concerned. This website enables employees to 'blow the whistle' on fraud or embezzlement through an independent company based in London. The general management of each branch office must take steps to encourage employees wishing to point out instances of embezzlement while avoiding hierarchical hurdles and protecting their anonymity to use the 'alarm bell' to communicate in a totally confidential manner. Although this practice is not, strictly speaking, aimed at AML, it is an interesting way to ensure that internal control bodies are not co-opted.

Recommendation 22

Application of AML/CFT measures to foreign branches and affiliates… (Criterion 22.1)

542. Neither the community texts nor the Malian law address this issue explicitly. The 2002 Directive and the uniform law of 2003 stipulate that, in the case of non face to face transactions, financial institutions must identify physical persons, in accordance with the principles set forth in the annex to this law. This provision is also reproduced *in extenso* in the Malian law of 2006.

543. The provisions of point 6 of the annex to the uniform law, as reflected in the national law, deal with the conditions of identification required when the counterpart is located (or not) within the Union, and also when the identification obligations are not equivalent. Thus, when the counterpart is located within the Union, customer identification by the contracting financial institution is not required. When the counterpart is located outside of the Union, the financial institution must verify his/her identity by consulting a reliable financial yearbook. In case of doubt in this regard, the financial institution must request confirmation of its counterpart's identity from the oversight authorities of the third party. The financial institution is also required to take "reasonable steps" to obtain information on its counterpart's customer, i.e., the effective beneficiary of the transaction.[83].

544. By virtue of the provisions of Article 9 of the Directive as reproduced in the Malian law, if the customer is not acting on his/her own behalf, the financial institution must obtain information by all means on the identity of the person on whose behalf he/she is acting.

545. In accordance with the last paragraph of that same Article, the financial institutions are not subject to the identification obligations set forth, if the customer is a financial institution subject to the law.

83 These "reasonable steps" may be limited if the counterpart country applies equivalent identification obligations to request the name and address of the customer, but it may prove necessary, if these obligations are not equivalent, to demand from the counterpart a certificate confirming that the customer's identity has been duly verified and recorded.

546. In practice, it emerged from the mission's interviews with several banks that, in their relationships with their foreign branches and affiliates, the same due diligence measures are observed.

547. In sum, although the provisions of the Uniform Law are not clearly defined with regard to the enforcement of this criterion, the above-cited articles implicitly require financial institutions to apply the rules.

… especially in host countries that apply FATF recommendations insufficiently or not at all (Criterion 22.1.1)

548. Malian law contains no provision requiring financial institutions to ensure that their foreign branches and affiliates, in countries that apply FATF recommendations insufficiently or not at all, observe AML/CTF measures in accordance with the obligations set forth in Law 06-06.

Enforcement of stricter standards (Criterion 22.1.2)

549. There are no standards in Mali requiring that, when the minimum AML/CFT standards of the host country and country of origin are different, the branches and affiliates in the host country must be required to enforce the more rigorous standard to the extent that the local legislative and regulatory texts (i.e., those of the host country) permit.

Obligation to inform the supervisor if a foreign branch or affiliate is unable to observe AML/CFT measures (Criterion 22.2)

550. Malian laws, as well as community instructions, are silent on this point. Financial institutions are not required to inform oversight authorities of their country of origin if a foreign branch or affiliate is unable to observe appropriate AML/CFT measures.

Coherence of due diligence measures throughout the group (Criterion 22.3)

551. This criterion does not exist in Malian law.

Recommendations and remarks

552. The authorities should:

Rec. 15

- Define obligations with regard to staff hiring procedures;
- Adopt sector regulations, apart from subject persons under the authority of the WAEMU Banking Commission, with regard to internal anti-money laundering controls;
- Clarify obligations with regard to internal control obligations incumbent upon micro-finance institutions;
- Ensure that subject persons begin rapidly to fulfill their obligations;

Rec. 22

- Create, for all banks and financial institutions, an obligation to ensure that their foreign branches and affiliates enforce AML/CFT standards.

Compliance with Recommendations 15 and 22

	Rating	Summary of factors underlying the ratings
R.15	PC	Inadequate regulatory mechanisms in the banking sector Lack of sectoral mechanism apart from the banking sector, particularly in the micro-finance sector Lack of effective implementation of internal control obligations with regard to anti-money laundering efforts

R.22	NC	Lack of obligation for the non-banking financial sector Lack of obligation, with regard to financial institutions, to inform the banking supervisor

SHELL BANKS (R.18)

Description and analysis

Prohibition on the creation of shell banks (Criterion 18.1)

553. There are no provisions directly prohibiting the creation of shell banks or the conduct of their activities on the territory. These aspects are taken into account, however, in the process of bank licensing and supervision, compliance with which should, in practice, prohibit the creation of shell banks or the conduct of their activities.

Prohibition of banking correspondent relationships with shell banks (Criterion 18.2)

554. There is no provision prohibiting financial institutions from entering into or maintaining banking correspondent relationships with shell banks.

Obligation to verify that foreign correspondent financial institutions prohibit shell banks from using their accounts (Criterion 18.3)

555. There is no provision requiring financial institutions to ensure that financial institutions belonging to their foreign clientele do not authorize shell banks to use their accounts.

Recommendations and remarks

556. The authorities should consider (i) prohibiting financial institutions from entering into, or maintaining, correspondent banking relationships with shell banks; and (ii) requiring financial institutions to ensure that financial institutions belonging to their foreign clientele do not authorize shell banks to use their accounts.

Compliance with Recommendation 18

	Rating	Summary of factors underlying the ratings
R.18	NC	Lack of prohibition on entering into, or maintaining, correspondent banking relationships with shell banks Lack of obligation to ensure that financial institutions belonging to their foreign clientele do not authorize shell banks to use their accounts

SURVEILLANCE AND CONTROL SYSTEM. COMPETENT AUTHORITIES AND SELF-REGULATION ORGANIZATIONS. ROLE, FUNCTIONS, OBLIGATIONS AND POWERS (R. 17, 23, 29 AND 30)

Description and analysis

557. To understand the AML supervision system applicable to Mali, one must first understand the regional framework. Indeed, where supervision is concerned, as in other areas as well, the selected architecture is of a regional type for all WAEMU countries. This architecture pertains to the supervision of banks and other financial institutions, insurance companies,[84] stock markets, and micro-finance.

558. **Banking sector**: As a member of the West African Economic and Monetary Union (WAEMU), the Republic of Mali, as a sovereign state, does not have direct authority over its banking system, in the sense that regulation and supervision are organized on a community-wide basis within WAEMU. Indeed, banking regulation and supervision within the Union are organized and regulated by the law establishing banking regulations. This framework law constitutes the basic text of the banking supervision mechanisms and, more generally, of the organization and surveillance of banking activities within WAEMU. This framework law was transposed into the Malian legal structure by Law 90-74 /AN/RM.

559. In addition, in application of the aforementioned framework law, a number of legal and regulatory texts have been adopted. These include the Convention creating the Banking Commission, which became effective on October 1, 1990, and the prudential mechanisms application to banks and financial institutions within WAEMU, reworked by the Council of Ministers in its session of June 17, 1999 and effective as of January 1, 2000.

560. With more specific regard to banking controls, the above-cited framework law defines the distribution of authority between regulatory and banking control bodies and the conditions of their interventions. It also establishes a distinction between, on the one hand, representation functions and, on the other, the control and sanctioning functions, where the various bodies or institutions are concerned, i.e., Council of Ministers, Ministers of Finance, Central Bank and Banking Commission.

561. The WAEMU Council of Ministers (COM) is empowered to make any provision with regard to prudential regulation (Article 44 of the Banking Law). Thus, it has authority over the instruments and rules of credit policies as well as over the managerial standards applicable to banks (including solvency, division of risk and liquidity), and, by extension, AML/CFT standards.

562. The authority of the Minister of Finance – in Mali as in every country in the Union – covers mainly accreditation (see Criterion 23.3 below for more detail), the appointment of the provisional administrator or liquidator, the suspension of operations of all banks and financial establishments. In addition, regarding micro-financing networks, the surveillance responsibilities traditionally assigned to the Minister of Finance will be transferred this year to the BC-WAEMU (see Criterion 29.2 below for more detail).

84 With regard to insurance, the supervision mechanism transcends WAEMU boundaries and actually extends to the entire franc zone.

563. Regarding banking controls (apart from the micro-finance network), the Central Bank of West African States (BCEAO, based in Dakar) shares its documents-based and on-site surveillance powers with the WAEMU Banking Commission (based in Abidjan, Cote d'Ivoire). The BCEAO is empowered to make on-site visits to banks and financial establishments after having informed the BC (Article 46 of the framework law), which is also informed of the results of the investigation. The BC, chaired by the Governor of the BCEAO, enjoys all oversight prerogatives with the eight (8) countries constituting the WAEMU zone, including Mali. In the exercise of its mandate, it provides a conforming opinion for the accreditation of a bank or financial institution, and conducts documents-based or on-site controls of establishments subject to its authority, or causes this to be done. It may, as the situation requires, extend its controls to include affiliated companies.

564. **Micro-credit sector**: Regarding the micro-financing networks, a law setting forth the regulation of mutual institutions or savings and loan cooperatives (IMCEC) was adopted by the WAEMU Council of Ministers in 1993. This text sets forth the prerogatives of the authorities regarding regulation and supervision. By virtue of this text, accredited micro-finance institutions are placed under the oversight of the Ministry of Finance. They are required to communicate an array of information and to submit to the oversight and prudential rules of the authorities. Thus, under the terms of Article 64 of the Parmec Law[85], the Minister, the Central Bank and the Banking Commission are empowered to request communication of all documents, statistical reports, reports and any other information deemed necessary for the exercise of their mandate. Article 66 stipulates that the Minister may conduct any examination of institutions, or cause this to be done. Along the same lines, Article 67 stipulates that the Central Bank and the BC-WAEMU may, on their own initiative or at the request of the Minister, conduct on-site controls of financial bodies or of any companies under the latters' control.

565. In Mali, accreditation, surveillance and sanctioning procedures are regulated by Law 06-002 of January 6, 2006. This law gives the oversight unit for decentralized financial companies (*Cellule de contrôle et de surveillance des sociétés financières décentralisées*, CCS/SFD) the power to process accreditation requests, examine entities (mutualist or not), and collect, analyze and distribute statistical data, in order to propose sanctions for failure to observe prudential standards.[86]

566. **Financial market**: Financial markets are regulated at the regional level by the Regional Council on Public Savings and Financial Markets (CREPMF), a WAEMU regulatory body created in 1996. It is responsible, on the one hand, for organizing and overseeing public calls for savings and, on the other, for accrediting and overseeing participants in the regional financial market. In this capacity, the CREPMF regulates the operation of the market, particularly by articulating regulations specific to the stock market. It also has disciplinary and judicial processing powers (e.g., handling of complaints).

567. **Insurance sector**: In the insurance sector, the fourteen countries of the franc zone established the Interafrican Conference on Insurance Markets (CIMA) by means of the Yaoundé Treaty of July 10, 1992. This treaty seeks to remedy the shortcomings of insurance law by means of legal standardization through the CIMA Code, which became effective in 1995. It sets forth a legal framework for the exercise of the profession within the franc zone, and therefore in Mali, and establishes the regulatory and sanctioning powers of the authorities in this area. The Conference's Regional Insurance Supervision Commission (CRCA) is the regulatory body and is responsible for general surveillance of insurance and oversight of insurance companies, with the

85 The law regulating the microfinance and credit union savings and credit institutions

86 See also Decree 06-044 P-RM of February 3, 2006 setting forth the organic framework of CCS/SFD) and Decree 06-039 P/RM of February 3, 2006 setting forth the Unit's organization and mode of operation.

assistance of the National Insurance Directorate (DNA) in the member countries. In actual practice, the General Secretariat of the Conference oversees insurance companies.

Recommendation 23

AML/CFT regulation and controls (Criterion 23.1)

568. Malian Law 06-066 of December 29, 2006 defines the list of persons and entities subject to AML obligations, and especially financial institutions including banks and financial establishments, the financial services of the Post Office, insurance companies, mutuals and savings institutions, and authorized foreign exchange dealers. **In the stock exchange sector,** apart from mutual funds (OPCVMs), persons subject to the AML law include the Regional Stock Exchange, the Central Depository/Settlement Bank, Management and Intermediation Companies (MICs), Asset Management Companies (AMCs) and business introducers.[87]

Designation of competent authorities (Criterion 23.2)

569. **Banking sector**: Banks and other financial institutions are subject to the supervision of the BC-WAEMU by virtue of Article 13 of the Convention creating the BC. The BCEAO also enjoys autonomous supervisory power according to para. 2 of that same Article, since it can also conduct controls on its own initiative (see Criterion 29.1 for more details).

570. **Insurance sector**: Insurance companies are subject to the supervision of CIMA, based in Libreville (Gabon), which is assisted in this supervision by the national insurance directorates. As for insurance intermediaries, they are subject to the prudential control of national insurance directorates.

571. **Micro-financing sector**: Decentralized financial systems are under the supervision of the MOF. In practice, this role is played by the Unit for Control and Surveillance of DFCs. The latter is headed by a unit chief appointed by decree of the Council of Ministers at the suggestion of the MOF.[88] The Office of Financial Analysis, Surveillance and Control oversees DFCs and, if necessary, proposes sanctions, penalties, or even temporary receivership.

572. **Stock exchange sector**: The Regional Council on Public Savings and Financial Markets is responsible for overseeing the smooth operation of the financial market of WAEMU, of which Mali is a member. By virtue of Article 23 of the annex to the General Regulations,[89] the Regional Council oversees the activity of all participants, and particularly that of the market management structures and accredited commercial actors.[90] It also verifies compliance, on the part of issuers of securities, with their obligations with regard to public calls for savings. In this connection, it may, as necessary, conduct investigations of their stockholders, parent companies or affiliates, or of any corporate or physical person having a direct or indirect interest in these actors. It emerged from the mission's interviews with market authorities that no AML surveillance is being conducted, although the main market actors are subject to the AML law (see Article 1 of Malian Law 06-066 of December 29, 2006).

87 Business introducers are physical or corporate persons who bring customers into contact with an MIC or AMC for purposes of: a) the opening of a securities account; b) investment or trust management advice; c) transmission of their customers' orders.

88 Malian Decree 06-039/P-RM of February 3, 2006.

89 Pertaining to the organization, operation and oversight of the regional financial markets of WAEMU.

90 Management and intermediation companies, asset management companies, regional stock exchange, and central depository/settlement bank.

Prevention of the presence of criminals (Criterion 23.3)

573. **Access to the banking profession**: The banking profession is subject to regulation that limits the exercise of the profession of banker to persons able to provide guarantees of integrity. Thus, Article 8 of the framework law regulating banks entrusts the BCEAO with the task of obtaining all information on the quality of persons having contributed capital and, if necessary, that of their guarantors, as well as on the honorability and experience of persons called upon to head, administer or manage the bank or financial institution and its agencies. Article 15 excludes from the banking profession any person who has been convicted of common law crimes and offenses.[91]

574. In practice, accreditation requests are addressed to the Minister of Finance of the country concerned and placed with the Central Bank, which processes them. The Central Bank verifies whether the physical or corporate persons requesting accreditation meet the conditions and obligations contained in the aforementioned Articles 14 ([92]) and 15, among others. The BCEAO also assesses the ability of the requesting enterprise to fulfill its development objectives under conditions compatible with the proper functioning of the banking system and adequate customer security. As indicated above, the Central Bank also obtains all information on the quality of persons having contributed capital as well as on the honorability and experience of persons called upon to head, administer or manage the bank or financial institution and its agencies.

575. Regarding the surveillance of the origin of capital, there is no particular procedure within BCEAO. In addition, the mission was unable to establish whether the accrediting authorities systematically track back to the effective beneficiary when they are asked to process an authorization request.

576. It should be specified that these provisions apply when the establishment is being created for the first time in the WAEMU zone. For other, previously implanted bans, the rule of the single banking licensing procedure (*agrément unique*) applies.[93]

577. **Access to the profession of insurer.** Accreditation dossiers are submitted to the relevant National Insurance Directorate (DNA) and then to the Regional Insurance Supervision Commission (CRCA), which issues an opinion (Title II, chapter 1, section 1 of the Insurance Code). This conforming opinion is a prerequisite for the issuance of accreditation by the minister responsible for the insurance sector in the member country (Mali in this case). Under this procedure, the distribution of capital and the quality and honorability of the company's managers are examined in particular. Assurances are sought especially that the managing bodies have no

91 Includes, by law, a prohibition from directing, administering or managing a bank or financial institution or one of their agencies, any common law conviction for forgery or the use of false documents for public documentation, for forgery or use of false documents for private, commercial or banking documentation, theft, fraud, or offenses punishable by the penalties for fraud, abuse of confidence, bankruptcy, embezzlement of public moneys, removal of funds through a public depository, extortion of funds or securities, passing bad checks, violation of currency exchange laws, compromising the credit of the government, or receipt of stolen goods obtained by means of these infractions (Article 15 of banking law).

92 A person may not direct, administer or manage a bank or financial institution, or one of their agencies, unless he/she holds (…) nationality or that of a WAEMU member country.

93 By virtue of the decision of the WAEMU Council of Ministers at its session of July 3, 1997 concerning the adoption of the principle of the single licensing procedure, and the decision of the WAEMU Council of Ministers at its session of September 25, 1998 concerning the adoption of the implementation modalities of the single licensing procedure, the single licensing procedure enables a duly constituted bank or financial institution in a WAEMU member country to establish itself or to freely provide services of the same nature throughout the Union without being required to seek new licenses.

prior penal convictions. The CRCA may reject an accreditation request, especially if the company does not present all of the guarantees required to exercise this activity.

578. The stockholders are the object of particular attention at the time of the accreditation request, but also when any significant modification of capital or voting rights occurs. Thus, Article 329-7 stipulates that any transaction whose purpose is to confer capital participation exceeding 20 percent or majority voting rights must be subject to the approval of the Minister responsible for insurance, after a conforming opinion of the CRCA. Still, there is no particular procedure, whether in the area of insurance or in banking, aimed at ensuring that capital investment does not derive from fraudulent or criminal activity.

579. Access to the micro-credit profession. Regarding micro-finance networks, which are among the persons subject to Malian Law 06-066, the conditions for access to the profession are regulated by the above-cited Parmec Law. Article 9 stipulates that financial institutions or bodies of which the purpose is to carry out savings-gathering or credit-granting activities must be previously recognized or accredited under specific conditions. Indeed, Article 13 stipulates that the local institutions affiliated with a network may not exercise their activities within the territory unless they have been previously accredited or recognized by the Minister of Finance. The terms of the constitution, establishment and operation of the institutions are set forth in a decree.[94] At the time of the mission, there were three categories of authorization to exercise (accreditation, recognition and convention), depending on the nature of the institution (local institution, Union, Federation or Confederation). Since the existence of three (3) categories of authorization can cause a certain amount of confusion, the regional authorities have decided to reform the Parmec Law and to simplify both the modalities of DFC accreditation and the terms of their supervision. In future (i.e., from 2008 onward), accreditation will be the only form of authorization of the exercise of the profession and about 60 IMCECs[95] will transition to the direct surveillance of the BC-WAEMU.

580. The examination of accreditation request dossiers focuses especially on the integrity and expertise of the managers. Apart from the obligation to register their bylaws with the court, DFCs must at the same time submit the list of administrators and directors with an indication of their profession and place of residence (Article 18 of the Parmec Law).[96] In Mali, the accreditation is issued by the MOF. The request dossier is processed by the CCS/SFD, which formulates an opinion. In support of their accreditation requests, applicants must also provide bylaws signed by the founding members, the list of capital subscribers, and the minutes of the constitutive general assembly. The integrity of candidates is also verified by means of examination of their criminal records. As for the legitimate origin of the capital contributed, the CCS/SFD usually requires a probative document.[97]

581. The mission learned, from exchanges with regional authorities, that the reform of the regulatory framework of IMCECs, which is scheduled for 2008, was motivated among other

94 It should be pointed out that certain activities require a specific business license. This is the case, for example, of currency exchange activities.

95 This refers to the largest DFCs, which account for 90% of transactions and have outstanding amounts of CFAF 300 million.

96 Any subsequent modification of the bylaws or the aforementioned list of administrators is subject to an obligation to register the change with the courts and make a written declaration to the Minister.

97 Copy of the contract in the case of a bank loan, written document in the case of assigned funds, protocol or any other document attesting to an endowment.

things by a certain laxness in the terms under which accreditation is granted and also because of inadequate surveillance of DFCs.[98]

582. **Access to the stock market.** Financial markets are regulated at the regional level by the Regional Council on Public Savings and Financial Markets (CREPMF), a WAEMU regulatory body created in 1996. The Council is responsible, on the one hand, for organizing and overseeing public calls for savings and, on the other, for accrediting and overseeing participants in the regional financial market. In this connection, CREPMF regulates market operations, particularly by articulating regulations specific to the stock market. It also has disciplinary and judicial processing powers (see Criterion 29.4 below for more detail).

583. Two main types of actors on the regional financial market should be distinguished: a) market structures, i.e., the regional stock market (BRVM) and the Central Depository/Settlement Bank; and b) commercial actors such as the Management and Intermediation Companies (MCIs), Asset Management Companies (AMCs), stock investment councils, business introducers, and scouts.

584. Concerning market structures, the company created to carry out the activities of the Regional Stock Exchange within the West African Monetary Union [sic] is required to submit a dossier to the Regional Council to seek its accreditation. This dossier must include: (i) the bylaws of the company applying; (ii) the distribution and identity of its stockholders; (iii) the General Regulations applicable to stock exchange operators; and (iv) any other information deemed necessary by the Regional Council. The same applies to the company established to carry out the activities of the Central Depository/Settlement Bank.

585. Regarding commercial participants (MICs and AMCs in particular), accreditation modalities appear to be stricter. Thus, Article 27 of the General Regulations stipulates that, for purposes of examination of their accreditation request, applicant companies must present sufficient guarantees, especially regarding the composition and amount of their capital, their organization, human, technical and financial resources, the honorability and experience of their managers, and the provisions intended to ensure the security of customers' transactions. The same regulation states, in its Article 32, that the following may not be stockholders, corporate officers or administrators of a company applying to be an MIC: physical persons having, in any country, one more convictions for a common law crime or offense, an attempted crime, complicity in a crime or receipt of stolen goods or for (i) forgery or the use of forged documents; (ii) fraud, abuse of confidence, embezzlement of public moneys, extortion of funds or securities and counterfeiting; (iii) violation of banking and currency exchange laws; or (iv) in general, any conviction for crimes or offenses similar in nature to any of those enumerated above. According to information gathered by the mission, applicant companies can possibly, but not systematically, obtain a hearing. The processing departments also require a copy of the criminal records of the managers. On the other hand, there is no specific procedure aimed at ensuring the legitimate origin of capital contributed.

586. Although banks and MICs can create OPCVM, approval of the CREPMF is needed and the honorability of managers must be verified. It should be added that, for Mali, the ML risk seems limited because the country has only one MIC and no AMCs. At the time of the mission, there were not yet any specific money-laundering rules pertaining to the financial market. A draft text is under study, however.

587. **Foreign exchange dealers**. Accreditation for foreign exchange dealers is issued by order of the MOF after a conforming opinion from the BCEAO. According to BCEAO Instruction 11/05/RC, the validity of the authorizations thus issued is subject to the actual start of the

98 The mission was told that some DFCs request accreditation after having conducted their activities illegally for two or three years.

beneficiary's activities within a period not exceeding one year from the date of notification of said order. Accreditation dossiers are processed by the BCEAO, which examines the criminal record of the accreditation candidate. The BCEAO issues a conforming opinion which is then transmitted to the Ministry of Finance. The accreditation agreement is then issued by the minister. In addition, foreign exchange dealers must declare the volume of their transactions to the BCEAO. Any individual transaction exceeding CFAF two (2) million is prohibited. In terms of sanctions, the foreign exchange dealer's accreditation is withdrawn if his activity has not begun within six (6) months following the accreditation.

Aptitude and honorability criteria (Criterion 23.3.)

588. The criteria of aptitude and honorability are examined by the relevant authorities with regard to the directors of banks and insurance companies and the commercial participants in financial markets. On the other hand, the examination of this criterion is not explicitly required for market structures such as the regional stock exchange (BRVM) and the Central Depository/Settlement Bank (see Criterion 23.3 above) and foreign exchange dealers. As for DFCs, the rules concerning the verification of the aptitude and integrity criteria of DFCs are not clearly established.

Application of AML/CFT prudential rules (Criterion 23.4)

589. Circular n° 10-2000 of June 23, 2000 of the Banking Commission stipulates that banks and financial institutions in WAEMU must develop effective internal control systems adapted to their organizations, the nature and volume of their activities, and the risks to which they are exposed. These standards apply, obviously, to Malian banks.

590. The principles described above in Circular n° 10-2000 of June 23, 2000 require, in particular, a complete formalization of procedures and processing and transaction recording modalities, a clear delegation of powers and responsibilities, as well as a strict separation of functions. The system put in place must institute, at each operational level, a first-level control mechanism similar to an authorization or validation. The second level of internal control must be performed by a dedicated and independent audit function. It is up to the deliberative body to define internal control policy, to ensure that an adequate mechanism is in place and, at least once a year, to supervise activity and results. This body must be kept informed on a regular basis of all risks to which the establishment is exposed. The deliberative body may create an audit committee responsible, among other things, for issuing an assessment of the organization and operation of the control system.

591. These general risk management provisions are relevant to anti-money laundering efforts.

Accreditation of value transfer and currency changing services (Criterion 23.5)

See SR VI.

Monitoring and control of value transfer and currency changing services (Criterion 23.6)

See SR VI.

Prior authorization or registration, regulation and control of other financial institutions (Criterion 23.7)

592. The financial institutions apart from banks (e.g., DFCs and foreign exchange dealers) are also subject to prior authorization and supervision. The AML surveillance terms applicable to them are inadequate, however, or even non-existent in the case of micro-finance funds.

Guidelines for financial institutions (Criterion 25.1)

593. **In the banking and financial sector,** the only existing instruction is that of the BCEAO dated July 2, 2007 (Instruction 01/2007/RB concerning the fight against money laundering within financial institutions). This document is thus of recent creation, which means that for the past several years, banks and financial institutions, in Mali and elsewhere, did not have detailed information on ways to comply with AML laws. According to regional authorities, this hiatus separating the initial community-level AML laws and the appearance of the Instruction was explained by the fact that it had been necessary to wait for community texts to be transposed into the national legal apparatuses of countries in the sub-region. The mission observes, as an aside, that the current legal procedure in the region is sometimes an obstacle to speedy implementation of texts at the national level. This situation is particularly disadvantageous when one is dealing with texts pertaining to money laundering or the financing of terrorism, which require conscientious installation of operational structures.[99]

According to its Article 3, the BCEAO directive applies to banks and financial institutions; the financial services of the Post Office; public savings and loan institutions (*Caisses de dépôts et consignations*) or entities serving as such; mutualist institutions; savings and loan cooperatives; unincorporated structures or organizations in mutualist or cooperative form and aimed at collecting savings and/or granting credit; and authorized foreign exchange dealers. It does not apply, however, to value transfer services.

594. This text repeats the broad outlines of the community uniform law of 2003. It reiterates the provisions pertaining to the due diligence obligations of financial institutions, especially regarding standards of identification, document conservation, and detection of suspicious transactions. It also reiterates the specific enhanced due diligence obligations and those pertaining to occasional financial transactions. The Instruction also specifies the obligations pertaining to the declaration of suspicion and to staff training. Finally, it requires subject establishments to put in place an anti-money laundering unit and to transmit to the BCEAO and BC-WAEMU an annual report[100] on implementation of the entire AML mechanism.

595. A close reading of this Instruction inspires the following comments:

596. The document does not provide all the clarifications needed, and this is true in several areas. With regard to (i) customer identification, the Instruction refers only to customers who are physical persons; it provides no elements concerning the ways in which customers that are legal

99 More than five years passed between the community directive of 2002 and its final transposition to the member countries (Togo transposed it in late 2007), despite the countries' obligation to transpose regional texts within 6 months of their issuance. It would appear that the coercive mechanisms within the regional agencies have little practical impact. If the same sequence of events that occurred with the transposition of the AML directive of 2002 occurs with that of the CFT directive of July 2007, the mission seriously doubts that CFT standards will be implemented quickly in the sub-region.

100 According to Article 17, this report must : • describe the organization and resources of the establishment with regard to the prevention and combating of money laundering; • describe training and informational activities carried out during the preceding year; • inventory controls carried out to ensure proper implementation of and compliance with customer identification procedures, data conservation, detection and declaration of suspicious transactions; • indicate the results of investigations, particularly regarding weaknesses noted in procedures and in compliance with those procedures, as well as statistics related to implementation of the 'declaration of suspicion' mechanism ; • point out, as necessary, the nature of information transmitted to third-party institutions, including those outside the host country; • draw up a map of the most common suspicious activities, indicating, as necessary, the nature and form of the anomalies observed in the area of money laundering; and finally • present the outlook and action program for the upcoming period.

entities are to be identified. It also does not specify how the subject financial entities are to determine the identity of the beneficial owner if the customer is not acting on his/her own behalf. It does not specify what types of identification documents are admissible in the sub-region, nor does it define the enhanced diligence measures with regard to certain categories of customer (e.g., non-resident customers, foreign customers). In the area of (ii) implementation of AML standards within financial institutions, although the Instruction indicates that the latter must put in place internal programs to combat money laundering, it does not specify what these programs would consist of, saying only that they must comply with "the prevailing legal and regulatory provisions in the WAEMU member countries." The Instruction also provides no indication of the obligation of financial institution to obtain information on the proposed purpose and nature of the business relationship, or on the need to update customer files on a regular basis.

597. The Instruction also contains certain provisions likely to cause confusion within the subject financial entities. Thus, in its Article 4, it stipulates that customer identification must be based, among other things, upon "precise ethical rules." In addition to the fact that these ethical rules are not specified in the Instruction, they also do not correspond to FATF standards.[101] Along the same lines, the Instruction stipulates that financial institutions "must define the types of customer that they cannot accept". Lacking any further detail, this provision is devoid of practical application.

598. It should also be pointed out that the BC-WAEMU has not issued any AML-related circular or circular letter. Even if the regulatory power is held by the BCEAO (since the BC has only a supervisory and oversight role), it can still clarify certain points of current regulations by means of circulars. This ability has not yet been exploited where AML is concerned.

From the preceding considerations, the mission concludes that the only document now in force in Mali, as in the rest of the sub-region, does not establish any adequate guidelines that might help financial entities to enforce and comply with their AML obligations.

599. **In the stock market sector,** there was no AML instruction applicable to market participants at the time of the mission. The AML issue was only addressed very belatedly. Indeed, it was not until 2007 that the market authorities took the initiative of preparing a draft AML instruction in this area. This text was approved by the Regional Council in September 2007 and should become effective in the course of 2008. It provides for three (3) types of obligation pertaining to customer identification, record keeping and due diligence. It also defines enhanced surveillance measures for atypical transactions and reiterates the declarative obligations incumbent upon market actors.

600. **In the micro-finance sector.** The mission's interviews with DFCs as well as with oversight authorities revealed the lack of AML directives or guidelines in the profession. Law 06-066 has not been disseminated within the networks, nor has the BCEAO's July 2007 Instruction been distributed. The interviews also afforded an opportunity to observe a certain amount of confusion as to the way in which AML texts are to be distributed within the profession: some persons interviewed felt that this was the responsibility of the professional association and not that of the relevant authorities. **In the insurance sector**, there are no AML guidelines.

601. In conclusion, with the exception of the BCEAO, and in the absence of an operational CENTIF, no relevant Malian authority has yet provided information to subject parties within the financial sector.

Recommendation 29

101 FATF Recommendation 5 concerning customer identification makes no reference to ethical rules.

Powers of oversight authorities (Criterion 29.1)

602. **Banking sector**: As indicated above, banking supervision is governed by community and national provisions whose implementation is divided among four oversight authorities[102]: (i) the WAEMU Council of Ministers, which determines the general legal and regulatory framework applicable to credit activity; (ii) the ministers of finance of member countries (such as Mali), who have powers, each within the limits of his/her national territory, particularly to grant and withdraw the accreditations of banks and financial institutions, and to deal with problems experienced by these establishments; (iii) the BCEAO, whose primary mandate is to develop and handle the technical transposition of accounting and prudential regulations applicable to financial institutions, and to help supervise the banking system through its national directorates; and, finally (iv) the BC-WAEMU, chaired by the Governor of the BCEAO, who is responsible for ensuring the organization and oversight of banks and financial institutions implanted in the eight member countries and who has, for this purpose, administrative sanction and disciplinary powers.

603. Thus, supervisory power over the financial institutions is organized in this way. According to Article 13 of the Convention creating the BC-WAEMU, the Banking Commission conducts, through the Central Bank among others, documents-based and on-site verifications of banks and financial entities, or causes this to be done, in order to ensure compliance with the provisions applicable to them. The Central Bank can also carry out controls on its own initiative. It informs the Banking Commission in advance of on-site controls.[103] Surveillance of micro-finance networks is the responsibility of the MOF of each country, through "ministerial structures for monitoring/SMS", but the BCEAO as well as the BC-WAEMU are involved in sectoral supervision through verification of the compliance of procedures manuals with the standards set by them, documents-based controls, and surveillance of financial institutions. The supervision of the financial services of the Post Office and of foreign exchange dealers is the responsibility of the BCEAO. This overlap of purviews and the sometimes-parallel exercise of certain tasks, especially in the area of supervision, among the MOFs, BCEAO and BC-WAEMU, reduced overall efficiency.[104]

604. With regard to money laundering, surveillance of compliance with legal standards, on the part of subject bodies, is the responsibility of the above-cited authorities. CENTIF has no responsibility to supervise subject persons, whether in Mali or elsewhere in the sub-region.

605. Concerning the monitoring of AML compliance within banks and other similar establishments, the BC-WAEMU exercises primary supervisory power through its General Secretariat (SGCB). In that connection, supervision consists of documents-based and on-site verifications. The Department of Banking Studies conducts ongoing, or so-called documents-based, surveillance with the Legal Directorate; their employees number 25 and 5, respectively. The Studies Directorate is responsible, among other things, for examining periodic financial statements and end-of-fiscal-year documents, analyzing inspection reports and preparing follow-up letters[105] resulting from inspection reports. This Directorate also ensures that remarks resulting from on-site controls are implemented.

102 This configuration is dictated by the need to put in place a uniform surveillance mechanism throughout the zone while at the same time having local relay points that permit implementation of prudential provisions and decisions made by regional agencies.

103 The Central Bank reports the results of controls to the Banking Commission. It informs the BC of violations of banking regulations, failures to observe the rules of proper conduct in the banking profession, and of any other anomalies in the management of banks and financial institutions of which it is aware.

104 An institutional reform now underway should improve the division of responsibilities among these various institutions.

606. On-site controls are handled by the Inspection Department, which has 22 employees, inspectors and mission chiefs (of which there are 5). Professional secrecy may not be invoked against the inspectors. They have access to all information, including personal or financial data concerning the bank's customers and managers. The inspectors also have access to the verification files of the auditors. These auditors are also systematically questioned by the inspectors during their on-site visits. According to statements of the BC-WAEMU, every on-site inspection has an AML component and this point is included in the terms of reference of every mission. The conclusions emerging from on-site controls are made known by the Banking Commission to the Minister of Finance, the Central Bank and the board of directors of the establishment concerned, or to the body serving as such.

607. Banking controls related to AML suffer from several handicaps:

608. Resources appear to be largely inadequate. The BC-WAEMU has a total of 111 employees, but only 22 inspectors, to cover 115 banks located throughout the WAEMU zone (see Criterion 30.1 for more details).

609. The inspection department of the BC-WAEMU has not yet expedited any AML-themed investigation. The mission was informed, however that since 2002 every general investigation includes a money laundering component.

610. AML controls carried out by the BC-WAEMU lack depth. The mission learned, from information received from Malian banks, that the scope of the controls carried out by the BC-WAEMU is still confined to a simple analysis of compliance. There is no analysis of ML risk facing the bank, nor is there any judgment of the relevance of the bank's own internal AML mechanism given its risk exposure.

611. The degree of specialization in the area of AML is limited, given the small size of existing staff. An annual training program is established for BC officers; it includes internal training as well as training abroad.[106] However, the training of SGCB officers in money laundering is partial. The various meetings and seminars organized recently in the area of money laundering fail to provide specific knowledge and an adequate level of practical experience. These programs are more geared to outreach and awareness than to actual training in the prevention of ML.[107]

612. Since the BCEAO instruction is very recent, the SGCB, in Mali and elsewhere, has data only about the status of AML implementation in the countries in the zone. Of the 115 banks in the zone, only one has produced the report called for in Article 17 of the above-cited instruction, which requires banks and financial establishments to submit a report to authorities on the implementation of the entire AML mechanism. As a result, except for inspection reports and the internal control reports that banks are required to produce each year,[108] the SGCB does not yet have a simultaneously global and individual picture of the state of progress in implementing AML standards in Mali or in the rest of the sub-region, nor does it have a typology of money laundering. For lack of tools for analysis and monitoring of AML risks on a bank-by-bank basis, by group of banks or by geographic area, AML supervision is not based on risk, but rather on a compliance approach.

106 BC staff consists primarily of managers with ample university background (Bac +5) and enjoying confirmed credibility within the profession (source: PESF).

107 In its 2006 annual report, the BC-WAEMU refers to some meetings concerning AML. At the regional level, for example, the SGCB participated in seminars organized by the BCEAO on "validation of the Directive concerning the fight against the financing of terrorism." At the international level, the SGCB participated in various seminars organized by the World Bank, IMF and AfDB concerning AML/CFT, among other things. The report does not indicate, however, how many SGBC officers benefited from these training/outreach activities.

108 These reports sometimes contain a money laundering component; see Circular CB 10-2000 of June 23, 2000, Title VI and Internal Control Regulation 01-2001

613. The lack of CENTIFs and of AML guidelines for subject persons, along with a regulatory framework that is recent but not yet definitively set, significantly reduces the practical impact of the surveillance conducted thus far by the SGCB.

614. SGBC's inspection department has only one partial methodological tool for evaluating the extent of banks' compliance with AML standards. In addition, the Studies Directorate has not yet developed procedures enabling it to collect, on an individual and periodic basis (i.e., outside of the biannual and triennial inspection cycles), data on the implementation of banks' internal AML mechanisms. In this regard, the BC-WAEMU indicated that it was studying the option of copying methods developed by the Banking Commission for Central Africa in the CEMAC zone, which will enhance the AML-related operational capacities of the BC-WAEMU, in terms of both off-site and on-site inspections. Thus, the plan is to acquire an on-site methodology[109] enabling the inspector to determine, on the basis of an analysis of files and transactions, that regulatory requirements are in fact being observed by the establishment. The BC-WAEMU could likewise, over the medium term, design a questionnaire (similar to a self-evaluation) to be filled out by banks; the answers given would enable the Studies Directorate responsible for documents-based controls to ensure that the internal mechanism complies with prevailing texts and, thus, to identify any weaknesses.

615. Regarding ongoing surveillance, the centralization of the accounting or prudential information transmitted periodically by the banks is still not sufficiently automated, and analysis thereof is still hampered by excessively lengthy processing times.[110] This situation may affect the early detection of possible money laundering problems. Documents-based (off-site) surveillance is also not conducted on a consolidated basis, whereas the region has several banking groups.[111]

616. In conclusion, AML supervision in banks and other financial entities remains embryonic.

617. **Insurance sector.** All franc zone countries, including Mali, have signed the Treaty of the Interafrican Conference on Insurance Markets (CIMA) and are bound by common laws and regulations concerning insurance. Decisions regarding the granting or withdrawal of accreditations and sanctions imposed upon insurance companies are made by the Regional Insurance Supervision Commission ("the Commission"). The Commission is governed by a representative council whose members are appointed by the signatory countries, as well as by representatives of the regional reinsurance company CICA-RE and of the regional professional insurance association.

618. Supervision of the insurance sector is weakened by the following factors:

- Inadequacy of the resources provided to the Secretariat and the Commission, aggravated by the death or retirement of key staffers;

- Vague definition of the division of responsibilities between the Secretariat and national insurance authorities. Thus, the role of the national authorities, especially in Mali, in following up CIMA decisions varies, ranging from actual controls to the mere observation of the market.

109 Called ASTROLAB

110 Source : PESF, Basel Core Principles, 2007

111 Although the regulations provide for the production of consolidated accounts by banking groups, these are not the object of specific controls, and compliance with prudential standards is based upon social equity (source: PESF, supra)

619. CIMA's resources are very limited and budget constraints have forced it to reduce the frequency and the intensity of its on-site inspections. The means provided to the national authorities are likewise very limited, and these authorities therefore have difficulty attracting and retaining competent staff.

620. The number of inspectors employed by the CIMA Secretariat is slated to be significantly increased. The plans also call for greater involvement of national departments in supervision work. The new inspectors, as well as the staff of national departments, will need training. In addition, the Secretariat needs to improve document-based supervision and establish a system of early detection. The inspectors of the CIMA Secretariat are currently analyzing the annual declarations of companies by manual means, and this considerably delays the detection of problems.

621. **The micro-finance sector** was characterized**,** at the time of the mission, by an overlapping of prerogatives of various institutions, i.e., the MOF, through the "ministerial structures for monitoring/SMS", the BCEAO and BC-WAEMU, not to mention the internal controls conducted by the apex structures of certain micro-finance networks. This situation generates confusion about the role of each participant and reduces the efficiency of the whole mechanism. In terms of supervision, the surveillance specifically aimed at micro-finance institutions or decentralized financial institutions is the responsibility of a unit within the Ministry of Finance (Control and Surveillance Unit for Decentralized Financial Systems, (CCS/SFD)).

622. In Mali, this unit employs about 30 people (all categories combined) for a portfolio of 454 entities (both mutualist and non-mutualist).[112] Oversight of these institutions is affected at two levels. Documents-based controls (off-site supervision) are conducted by the unit's teams, only for some funding entities and using financial statements that the latter are required to prepare. DFCs are also required to submit an activity report each year to the MOF. It should be pointed out, however, that the Technical Assistance Unit is seriously understaffed relative to the number of entities to be supervised. In addition, the prudential surveillance exercised is strictly geared to compliance with prudential management ratios. The ML risk approach has not yet been incorporated. In general, AML and prudential surveillance is very scant, or even non-existent, in DFC networks. In Mali, for example, meetings with several DFCs confirmed that, although joint BCEAO/MOF missions had indeed occurred, none had addressed the issue of ML risk.

623. **Foreign exchange sector**: Mali had 65 authorized foreign exchange dealers as of January 31, 2007, 37 of which are corporate entities. The BCEAO has supervisory authority over these establishments. In 2006, the BCEAO, jointly with Mali's MOF, conducted a verification mission focusing on about 40 foreign exchange bureaus. These controls dealt exclusively with compliance with foreign exchange regulations. The presence of a large informal foreign exchange sector needs to be emphasized. By definition, this sector escapes any surveillance and is thus a factor in AML/CFT vulnerability.

624. **Stock exchange sector**. In the stock exchange sector, the authorities have conducted several verifications of market actors. These controls were aimed at ensuring that customer files were complete and contained all the required information. Although these procedures are relevant to AML, they were by no means aimed at ensuring compliance with 'know your customer' rules in the sense of the community AML texts. Thus, there is not yet any AML surveillance in this sector.

112 17 Unions or Confederations and 396 local institutions

Powers of inspection (c.29.2)

625. In the case of **banks**, BC inspectors possess the necessary powers to inspect financial institutions (including on-site inspection) in order to verify that they are meeting their obligations. For lack of detailed information, the mission is not in a position to pass final judgment on the issue of whether BC inspections incorporate a review of policies, books, and accounting records or whether they include sample testing. Based on the discussions held with the BC, it would appear that inspectors do examine these matters. Also, the FSAP report[113] states that "the procedures for on-site inspections and inspections of records do not contain any provisions specifically pertaining to the assessment of anti-money laundering mechanisms."

626. In the **financial markets** sector, the Regional Council has inspectors whose area of competence extends to all publicly traded entities and all entities operating on the basis of an authorization issued by the Regional Council. Furthermore, in performing inspections of records, the Regional Council is empowered to request information on a regular basis, and to set the content of this information and the way in which it is to be provided.

627. In the **microfinance** sector in Mali, CCS/SFD inspectors are responsible for ensuring compliance with the regulations governing decentralized financial institutions. In this regard, they are expected not only to provide monitoring and oversight of same, but also to propose sanctions against such entities and see to their enforcement.[114]

628. In the **insurance** sector, CIMA inspectors provide oversight through the Commission's national directorates**.**

Powers of access to necessary records (c.29.3)

629. Within the **banking sector** in a broad sense, BC-WAEMU possesses the most expansive powers of access to information. By virtue of Article 16 of the convention establishing BC-WAEMU, "banks and financial institutions shall provide, for any and all requests from BC-WAEMU and through the desired media, all documents, information, clarifications, and justifications necessary for it to fulfill its responsibilities." The banking law also states, in Article 46, that "banks and financial institutions may not resist the controls performed by the Banking Commission and the Central Bank." The Malian banking law 90/74 states, in Article 46, that banks may not oppose the controls performed by BC and BCEAO. In the final paragraph of Article 42, the same law states that professional secrecy may not be invoked in response to BC-WAEMU or BC, nor to judicial authorities involved in criminal prosecutions.

630. Within the specific sector of **microfinance**, Article 68 of the PARMEC law states that professional secrecy may not be invoked before the Minister or the prudential authorities. BCEAO directive 01/2007 of July 2, 2007 on anti-money laundering efforts within financial organizations further states that, in regard to the controls stipulated under Article 46 of the abovementioned banking law establishing banking regulations, "banks and financial institutions must be able to produce all the information required to assess the quality of their mechanism for preventing money laundering."

113 Assessment report on compliance with the Basel Core Principles for Effective Banking Supervision, 2007.

114 Law 06-002 of January 6, 2006, Article 1.

631. The banking law also states that any banker who knowingly provides false or inaccurate information shall incur criminal penalties (Article 51 of the banking law).[115]

632. In the **stock market sector**, the general regulations pertaining to the organizational structure, functioning, and oversight of WAEMU regional financial markets establish the supervisory prerogatives of the Regional Council, which is charged with monitoring the legality of stock exchange transactions. Pursuant to Article 56 of these regulations, "the Regional Council shall perform inquiries or controls, based on inspections of records or on-site inspections, at management and intermediation companies." In addition, Article 24 of the annex to the general regulations[116] states that "the Regional Council has inspectors whose area of competence extends to all publicly traded entities and all entities operating on the basis of an authorization issued by the Regional Council." In Article 25, the annex also states that "in performing inspections of records, the Regional Council is empowered to request information on a regular basis, and to set the content of this information and the way in which it is to be provided." On the other hand, the abovementioned provisions do not spell out the precise scope of the right of access conferred upon the Regional Council's inspectors when they investigate market players. There are no explicit provisions in the regulations provided to the mission stating that CR agents enjoy a broad right of access and communication, similar for example to the right conferred upon BCEAO or BC-WAEMU inspectors. Thus, this situation is not consistent with the FATF recommendation (Rec. 29) which states that supervisors should have adequate powers to compel production of all records, documents, and information needed to ensure compliance with requirements to combat money laundering and terrorist financing.

633. In the **insurance sector**, CIMA, through its national directorates, holds powers of access to information.

Powers not predicated on a court order (c.29.3.1)

634. The powers of the supervisory authorities in regard to the production of records or access to the same are not subject to any requirement to obtain a court order.

Powers of enforcement and sanction (c.29.4)

635. **Banking sector**: To exercise the powers ascribed to it, BC-WAEMU is authorized to impose disciplinary sanctions based on the gravity of the offense. Sanctions may range from a simple warning to withdrawal of a license (Articles 22 to 25 of the convention), without prejudice to possible monetary and/or criminal sanctions, and with the further specification that decisions about appointing a provisional administrator or a liquidator fall to the Minister of Finance, based on the recommendation of the BC. All BC injunctions, decisions, opinions, and recommendations must be justified (Article 30 of the convention). Decisions by the Commission are binding throughout the countries of the Union once notification of same is provided to the parties concerned, either directly by this body or by the Minister of Finance in the case of a decision to withdraw a license. Such decisions may be appealed to CMU, with the exception of decisions to

115 The punishment is either a prison sentence of one month to one year or a fine of CFAF 1,000,000 to 10,000,000, or else both of the above, for any person who, acting on his own behalf or on behalf of a third party, knowingly provides the Central Bank or the Banking Commission with inaccurate documents or information, or who resists any of the controls specified under Article 46. For a second offense, the maximum punishment is increased to two years of prison and a fine of CFAF 20,000,000.

116 This annex establishes the composition, organizational structure, functioning, and terms of reference of CREPMF.

withdraw a license made by the Minister of Finance of the country in which the decision is binding.

636. With respect to money laundering more specifically, Article 35 of the uniform law 2004-09 on money laundering states that if, in the case of a serious lack of diligence or deficiency in organizing internal oversight procedures, a person subject to the law has ignored the law's requirements, specifically in terms of prevention (for example, failure to establish the customer's identity), then the supervisory authority holding disciplinary powers may automatically take action under the conditions set forth in the relevant laws and regulations in effect.

637. **In the stock market sector**, the powers of sanction are held by CRBV. Article 30 of the amendment to the convention establishing CREPMF gives to the Regional Council the power to impose non-criminal and/or administrative monetary sanctions. The article states that "any action, omission, or operation that would run counter to the general interests of the financial market and its smooth functioning, and/or be harmful to the rights of investors, shall be punished by monetary, administrative, and disciplinary sanctions, depending on the specifics of the case, without prejudice to possible judicial sanctions that could be leveled against the perpetrators, pursuant to legal action for redress lodged in an individual capacity by the persons harmed by said offense." However, it is not certain that the provisions of Article 30 also apply to anti-money laundering cases.

638. **Insurance sector**: All the countries of the CFA Franc Zone, including Mali, are signatories of the treaty of the Inter-African Conference on Insurance Markets (CIMA) and are bound by common laws and regulations concerning insurance. Decisions about the issuance or withdrawal of licenses and the sanctions imposed on insurance companies are made by the Regional Insurance Supervision Commission ("the Commission"), which is governed by a representative council whose participants are appointed by the signatory countries, as well as by representatives of the regional reinsurance company CICA-RE and the regional insurance industry trade organization.

639. **Microfinance sector**: In this sector, the powers of enforcement are held by MOF.

Recommendation 17

Existence of effective, proportionate, and dissuasive sanctions (c.17.1)

640. **Banking sector**: In the event of a breach of banking regulations, BC-WAEMU may impose disciplinary sanctions, without prejudice to criminal or other sanctions which could be handed down by the competent courts (Article 47 of the banking law and Article 23 of the Convention). Such sanctions may include warnings, censure, suspension or banning of all or some operations, limitations on practicing the profession, automatic suspension of the directors, or, in the most serious cases, withdrawal of a license. The traditional arsenal of sanctions set forth in the abovementioned Article 47 applies to money laundering just as it does to all other prudential matters.

641. Neither the banking law nor the Convention establishing the BC provides for financial sanctions in the event of a breach of prudential standards. Thus, a bank that is seriously deficient in meeting its obligations of due diligence would incur no penalties other than disciplinary sanctions. The mission concludes that the sanctions covered by the banking law are not

dissuasive. It bears repeating that no sanctions have been imposed by the BC for breaches of anti-money laundering requirements.[117]

642. In the Malian **microfinance sector**, powers of sanction are held by the Minister of Finance through CCS/SFD. The statutes organizing the system of sanctions, as worded, are inadequate for the purpose of measuring the effectiveness and proportionality of the sanctions. Law 06/002 of January 6, 2006 establishing the Control and Surveillance Units states, without further detail, that the CCS shall recommend sanctions against decentralized financial systems and see to their enforcement. The law does not specify the nature or scope of these sanctions. Decree 06-039 P/RM of February 3, 2006 provides a few additional indications, but does not eliminate all doubt concerning the adequacy of the sanctions. It indicates that the CCS shall recommend to MOF "the penalties to be imposed." The CCS may also recommend "placement under provisional administration." Of the statutes shown to the mission, none specifies the criteria to be used in determining what sanction to impose, nor the amount of the penalties incurred. Since it began operations, the CCS has withdrawn, on disciplinary grounds, roughly 30 licenses from decentralized financial institutions that failed to follow prudential regulations. None of these sanctions involved money laundering.

643. **Stock market sector**: The amendment to the Convention establishing CREPMF calls for two types of sanctions when an actor violates the rules of the market. The first involves financial, non-criminal sanctions. The size of the monetary sanctions handed down by the Regional Council depends on the gravity of the mistakes, omissions, and violations committed (Article 32). However, it should be noted that the criteria justifying a sanction of this type are enumerated restrictively[118] and do not apply to cases in which a market actor violates anti-money laundering requirements. Discussions with CR representatives confirm this point of view.

644. The CR may also impose administrative sanctions, which once again appear not to apply to money laundering situations.[119] Lastly, the CR possesses the power to hand down disciplinary sanctions when it finds that a violation of the regulations has occurred. It may also impose, without prejudice to criminal or other penalties incurred, one or more of the following disciplinary sanctions: (i) warning, (ii) censure, (iii) temporary or permanent banning of some or all activities, (iv) suspension or automatic dismissal of directors, and (v) temporary or permanent withdrawal of a license or certification already granted, or striking from the professional lists kept by the Regional Council. In the event of breaches of anti-money laundering rules, the CR may thus impose one or more of these penalties, at least in theory. In practice, however, no disciplinary sanctions for money laundering offenses have been imposed.

Designation of an authority empowered to apply these sanctions (c.17.2)

117 The CB indicated to the mission that the sanctions imposed were "comprehensive" and not based on a single lapse, but rather on a body of mistakes, which could include possible breaches of anti-money laundering standards. Since the mission was unable to gain access, despite its request, to specific examples of sanctions already handed down, it cannot verify this point.

118 Monetary sanctions are to be taken against any person who, whether acting alone or in concert with others, derives any benefit whatsoever, specifically defined as either a material gain or avoidance of a loss, as a result of: (a) market manipulation, (b) the use of confidential and privileged market information, (c) dissemination of false information, (d) unauthorized use of investors' funds for personal purposes, or (e) a breach of public information.

119 Article 34 of the amendment states that if the Regional Council finds that a commercial actor has violated professional rules of conduct or no longer meets the conditions required for a license, then it may send to said actor either a warning or an injunction requiring that necessary corrective steps, or any protective measures that it deems appropriate, be taken within a specific timeframe.

645. In the banking sector, BC-WAEMU decides sanctions against banks and credit institutions. Its president is the Governor of BCEAO (Article 2 of the Annex to the Convention establishing the BC). Yet BCEAO itself holds equity ownership in many banks, both in Mali and elsewhere in the sub-region, which creates a potential conflict of interest. The independence of the Banking Commission or its effectiveness may thus be affected due to the presence within BC-WAEMU of representatives of BCEAO and member states, who happen at the same time to be shareholders of banks.

Sanctions applied to directors (c.17.3)

646. Neither the community banking law nor the Malian banking law contains any provisions that call for applying sanctions to directors. For the financial markets, extending sanctions to directors only applies in very limited cases, specifically involving insider dealing. Consequently, in the case of a legal person, the *de facto* or *de jure* directors are liable to the same proceedings if they were aware of such dealing. But there is nothing of this sort in regard to money laundering.

Broad and proportionate range of sanctions (c.17.4)

647. See criterion 17.1.

Adequacy of resources for competent authorities (c.30.1)

648. The resources allocated to BC-WAEMU appear to be very insufficient. BC-WAEMU has a total staff of 111 persons, but just 22 inspectors to cover 115 banks spread throughout the WAEMU zone. Records are reviewed by 30 agents, but five of these deal with legal issues, and others with regulatory issues in coordination with BCEAO or issues involving cooperation with other supervisors. The number of staff focused on the inspection of records is thus low, roughly 17. In this regard, BC-WAEMU is planning to reorganize its internal structure, which should be accompanied by an increase in staff and greater specialization, but still without reaching a satisfactory level. The transfer from MOFs to BC-WAEMU of responsibility for supervising the largest DFI networks (roughly 60, with more than CFAF 300 million outstanding at a minimum) should be accompanied by a transfer of resources on the order of 11 additional agents. The number of BC staff assigned to perform oversight, even if increased from 47 to 58, will remain significantly undersized in relation to the number and size of the financial organizations to be overseen (175 banks and DFIs). In addition, the participation of agents of the national directorates of BCEAO is not a solution for this shortage, especially since their contribution would focus more on operations related to the Central Bank's needs in its capacity as monetary or exchange control authority.

649. Oversight of microfinance in Mali also suffers from a shortage of staff. The MOF unit in charge of oversight has about 30 persons (all categories combined) for a portfolio of 454 entities (mutual or not).[120] Only 11 persons are assigned to oversight responsibilities in the strict sense. Of course, BCEAO and BC-WAEMU are also involved in on-site inspections, but at a low level in relation to the number of entities to be overseen. Thus, the number of joint MOF/BCEAO investigations was zero in 2005, three in 2006, and three in 2007.

650. In the stock market sector, oversight entities have a total staff of roughly 20, which does not seem inappropriate in relation to the region's stock market activity.

Integrity of staff of competent authorities (c.30.2)

120 17 Unions or Confederations and 396 local banks.

651. **Banking sector**: Members of the Banking Commission and the persons who help it function are bound by professional secrecy (Article 6 of the convention law establishing the BC). In the statutes provided to the mission, there are no specific provisions on the integrity of the persons involved. In the **stock market sector**, based on the general regulations pertaining to how the WAEMU regional financial market is organized, how it functions, and how oversight is provided, members of the Regional Council and persons acting under the responsibility of the Regional Council are bound by an obligation of total discretion in regard to facts and acts of which they are aware, either in carrying out or in connection with their functions, if said facts and acts are not public. Noncompliance with this obligation is punishable by disciplinary sanctions, as set forth in the policies and procedures of the Regional Council, against the perpetrator of the violation, without prejudice to any judicial proceedings that could be lodged against him. On the other hand, there are no provisions stating that members of CREPMF must display full integrity or appropriate competence.

Training of staff of competent authorities (c.30.3)

652. An annual training program is organized for BC staff that includes in-house training and training abroad. However, training for SGCB staff in the area of money laundering is insufficient and the degree of specialization in money laundering matters is limited, given the current staffing constraints.[121] The various meetings and seminars organized in recent times on the prevention of money laundering are not adequate to provide both specific knowledge and sufficient practice. They are more of an awareness-raising mechanism than real training in how to deal with money laundering. In its annual report of 2006, BC-WAEMU reports a few meetings related to money laundering. Thus, at the regional level, SGCB has participated in seminars organized by BCEAO on "validation of the directive on combating the financing of terrorism." At the international level, SGCB has participated in various AML/CFT seminars organized by the World Bank, IMF, and AfDB. However, the report does not indicate how many SGCB staff took part in these training/awareness-raising actions.

653. There is virtually no AML training for staff of the DFI Control and Surveillance Unit. In this regard, officials who met with the mission emphasized a clear lack of awareness-raising and training concerning a "new" problem that is not well understood by all sector actors.

Existence of statistics (c.32.2)

654. BC-WAEMU keeps statistics on the number of investigations performed in banks. Similarly, BCEAO keeps statistics on the number of joint investigations performed with MOF. However, no precise statistics are available on the number of sanctions handed down by the BC that were based, at least in part, on breaches of AML standards.

655. **Analysis of effectiveness** (Recommendations 17, 23, 25, 29, 30, and 32)

656. Implementation of the system of regulations, controls, and sanctions in the financial sector is unsatisfactory because it is still too limited. Actors in the stock market and insurance sectors have not received any guidelines to show them how to fulfill their AML requirements. The guidelines for banks are too recent to have been properly assimilated and applied. Bank supervision is deficient in AML matters and nonexistent in the microfinance, stock exchange, and insurance sectors. The system for cracking down on money laundering has not been implemented either. No sanctions have been imposed in the financial sector for breaches of AML standards. The sanctions that can be imposed by BC-WAEMU are not dissuasive inasmuch as they do not

121 For the most part, CB staff consists of professionals who possess significant university backgrounds (Bac + 5) and professionally recognized credibility (source: FSAP).

include monetary penalties. The effectiveness of the supervision arsenal, for all sectors combined, is also compromised by insufficient resources and the embryonic state of the training.

Recommendations and Comments

657. Since the issue of financial sector supervision arises at the community level (banks, foreign exchange offices, and other financial institutions) but also at the national level (microfinance in particular), this section provides a series of recommendations aimed at both Malian and regional authorities.

658. At the regional level, BC-WAEMU and BCEAO should ensure, each within its own sphere, full implementation of community statutes (uniform law, BCEAO Directive of 2007) and national statutes (Law 06-2006) within the banking sector. In the financial markets sector, the Regional Council should adopt an AML sectoral directive for all actors, SGIs, SGPs, investment advisors, and others. In general, the staff of the regional financial supervisors should be increased to handle the additional task of integrating money laundering prevention into their workload. A major training effort is also necessary. Furthermore, it is strongly recommended that methodological tools be created for on-site inspection staff in order to promote supervision based on risk and not solely on simple compliance. In addition, it is important to review the mechanisms for disseminating statutes to the institutions covered, so as to guarantee rapid and thorough dissemination of AML regulations in all relevant sectors. Finally, with regard to enforcement, monetary sanctions should be instituted against banks that commit violations, since disciplinary sanctions alone appear to be insufficiently dissuasive.

659. In Mali, with respect to microfinance operations, awareness-raising and training actions should be undertaken as soon as possible. The sector remains ignorant of the statutes pertaining to money laundering and the associated risks. In view of the large sums managed by DFIs and the weakness of both internal and external controls, prudential authorities and microfinance institutions need to be mobilized to ensure rigorous compliance with AML/CFT requirements in this sector.

660. In addition, the mission recommends the following:

- Strengthen exchange controls in the informal sector and carry out targeted actions against manual moneychangers in the informal sector. Specifically, joint action by the public authorities (Ministry of Finance, Customs, Police, *Gendarmerie*) could target the best-known informal moneychangers and those involved in the largest transactions, so as to send a signal that the competent authorities have been mobilized.
- Consolidate the actions of public authorities in regard to manual moneychangers, especially in terms of supervision – without, however, enhancing the "comparative advantages" of informal moneychangers, at the risk of otherwise reinforcing them.
- Carry out awareness-raising actions targeting Western Union sub-delegates to promote more rigorous identification of customers.

Compliance with Recommendations 17, 23 (criteria 23.2, 23.4, 23.6-23.7), 29, and 30

	Rating	Summary of factors underlying the ratings

R.17	NC	The sanctions provided by the banking law and the statutes applicable to financial markets are not dissuasive because they do not call for financial penalties. The nature and scope of the sanctions applicable to DFIs are not clearly defined. There is a conflict of interest within BC-WAEMU due to the presence in its midst of representatives of BCEAO and member states, who happen to be, at the same time, shareholders in banks.
R.23	NC	The rules for monitoring the criteria of competence and integrity of DFI directors are not clearly established. There are no specific procedures for verifying the lawful origin of capital brought forward to create a bank or any other financial organization such as a DFI, an SGP, an SGI, or an insurance company, nor are there any procedures for verifying the beneficial owner.
R.25	PC	There are no AML guidelines for the insurance and financial markets sectors. BCEAO Directive 01-2007 of July 2, 2007 has not been fully disseminated. The BCEAO directive contains inaccuracies and does not provide all necessary elements of information for financial organizations to be able to implement and meet their AML obligations. In the absence of CENTIF, there are no AML directives other than the BCEAO directive, which is manifestly inadequate, particularly in regard to reporting requirements.
R.29	NC	The AML controls performed by BC-WAEMU in banks and financial institutions are insufficient and do not appear in conformity with the international standards in this regard DFI supervision is deficient and does not focus on compliance with AML standards. Insurance company supervision suffers from a number of weaknesses and does not address money laundering.
R.30	NC	The resources allocated to oversight and supervisory bodies are insufficient. A lack of training pervades all sectors.
R.32	PC	Absence of statistics on the number of sanctions handed down by the BC that involves, at least in part, breaches of AML standards.

MONEY/VALUE TRANSFER SERVICES (SR.VI)

Description and Analysis

661. According to community authorities (BCEAO), money/value transfer operations may only be performed by banks. It appears that, in practice, banks "delegate" their authority to money transfer companies. This activity takes place either inside the banks, or in specialized stalls, or in connection with preexisting businesses (dry-cleaners, cafeterias, travel agencies, etc.). The money transfer companies are thus backed by a bank, which lends its name (for example, Western Union – *Banque Atlantique*).

662. Money transfer companies have grown significantly in recent years in Mali, reportedly resulting in a decline of the informal sector. Formerly, the money transfer companies were located inside the banks, but the latter, seeking new products, have encouraged efforts to set up money transfer companies throughout the country, especially in areas where they have no branch offices. The ratio of market coverage by money transfer companies (mainly Western Union, also Money Gram and Money Express) remains at just 29 percent.[122]

663. The assessors received several indications about the existence of informal suppliers of money/value transfer services, but no precise information concerning the size or number of such transfers. This mainly involves the *hawala*-type system. According to the abovementioned African Development Bank study, in Mali this system relies on a distribution network in very close proximity to beneficiaries, the majority of whom are spread throughout the rural areas, which gives it a sizable advantage over the formal sector. This system has also acted as a substitute for internal bank transfers in the country in response to overloaded bank facilities. In Kayes, the number of informal distribution points identified is reportedly three to five times greater than the number of money transfer companies.

664. In all probability, the informal operators function more as money/value receivers than as providers, given the structure of money transfers in Mali. Understanding that some of these operators are known to the authorities, the assessors feel that they have not received a convincing response about efforts to integrate these operators into the formal sector, or else place sanctions on them.The directive 04/2007/CM/UMOA on countering terrorist financing contains in its art. 13 provisions on Money and Value tranfer services: "*Member states are commited to ensure that individuals or legal entities who provide Money and Value tranfer services are required to be licensed and are subject to comply with the WAEMU system against organized crime, notably the specific and general obligations that apply to financial entities on AML/CFT*".

Registration or licensing (c.VI.1)

665. Money transfer companies are subject to the due diligence requirements of the anti-money laundering law, just like the banks that have delegated money transfer activities to them. However, there is no mechanism for the competent authorities to license such companies.

Implementation of the 40 FATF Recommendations and 9 Special Recommendations (R.4-11, 13-15, and 21-23 and c.VI.2)

666. In practice, banks perform no oversight of the activities of money transfer companies in regard to implementation of the 40 + 9 FATF Recommendations. They have no contact with the customers, do not verify that the identification papers presented are kept on file, etc. It even

122 Abovementioned study by the African Development Bank, page 23.

appears that the computer system set up in the money transfer companies is not blocked in the event that information pertaining to the identification papers presented by customers (when funds are either sent or received) is not provided. Money transfers may thus take place without presentation of identification papers.

Monitoring of money/value transfers (c.VI.3)

667. The banking supervisor has not provided any oversight of this sector of activity. The national BCEAO sent a circular to local banks on November 29, 2007 enjoining them to ensure compliance with the "usual security rules" in regard to rapid money transfers. There is no mention whatsoever of anti-money laundering rules, which cannot be considered "usual security rules" given their specificity. BCEAO also points out that money transfers are performed under the full responsibility of the banks, which are the sole entities authorized by the banking law to carry out this activity.

List of money/value transfer agents (c.VI.4)

668. The current plan is for the banking supervisor to compile a list in the very near future of all money transfer structures in Mali. To date, there is no list of MVT agents.The directive mentioned above does not contemplate the obligation for countries to require licensed value transfer agents to hold an updated list of their personel.

Sanctions (c.17.1-17.4 and c.VI.5)

669. The banking supervisor has never imposed sanctions on MVT services, which he considers to fall within his area of competence solely through the prism of the banks. Banks, moreover, have never been sanctioned for a lack of implementation of the anti-money laundering law on the part of MVT services connected to them.

Analysis of effectiveness

Findings from the assessments show that money transfer companies to whom banks have delegated their authorities for money transfer services are not subject to the same prudential obligations. Banks do not monitor their "delegates" to make sure that they comply with their obligations. Besides, there is a great many informal MVT agents operating in Mali and local authorities have not taken any action aimed at shifting these agents from the informal sector to the formal sector or to sanctioning them.

Recommendations and Comments

670. The authorities should adopt a more proactive approach toward money transfer services currently provided in the informal sector to ensure compliance with the requirements of SR VI, first of all by arranging for the registration of all natural persons engaged in this activity. BCEAO could be charged with maintaining this registry.

671. With respect to the formal sector, the authorities should ensure, as part of their supervision of banks, that the banks provide effective oversight of the activities that they delegate to money transfer companies.

Compliance with Special Recommendation VI

	Rating	Summary of factors underlying the ratings
SR.VI	NC	Absence of a competent authority charged with issuing authorizations to MVT service operators Absence of oversight of the activities of MVT services Absence of a list of agents

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

CUSTOMER DUE DILIGENCE AND RECORD-KEEPING (R.12)

(Applying R.5, 6, and 8-11)

Description and Analysis

672. Article 5 of Law 06-066 of December 29, 2006 expands the obligations of money laundering prevention and detection (Titles II and III of the law) and goes beyond the Treasury, BCEAO, and specifically mentioned financial organizations to encompass "all natural or legal persons who, as part of their profession, perform, oversee, or advise operations involving deposits, trading, investments, conversions, or any other movements of capital or other assets," namely:

673. Members of the independent legal professions when they represent or assist clients apart from any judicial proceedings (buying and selling of assets, businesses, or goodwill; handling of money, securities, or other assets belonging to the client; opening or management of bank, savings, or securities accounts; creation, management, or operation of companies, trusts, or similar entities; execution of other financial transactions), and other natural or legal persons, particularly the following:

Business introducers to financial organizations

Auditors

Real estate agents

Traders of high-value articles, such as art objects (particularly paintings and masks), precious stones, and precious metals

Money carriers

Owners, directors, and managers of casinos and gaming establishments, including the national lotteries

Travel agencies

Nongovernmental organizations

674. This definition, with its nonrestrictive list of professions ("particularly"), is in fact very broad from the viewpoint of businesses or professionals who perform such operations, and cannot realistically be interpreted as being applicable to the majority of Malian economic actors.

675. The abovementioned Article 5 covers all the sectors cited by Recommendation 12 (except for trust and company service providers) and even goes further because it also covers travel agencies, money carriers, traders of art objects such as paintings and masks, gaming establishments, the national lotteries, and nongovernmental organizations (cf. R.20 concerning these).

Conditions for applying Recommendation 5 to DNFBPs (c. 12.1)

676. Even though Titles II and III of the anti-money laundering law are applicable to DNFBPs (Article 5), it should be noted that several of the obligations are specifically relevant to financial organizations only (identification of clients – Article 7, identification of occasional clients – Article 8, identification of the economic beneficiary – Article 9).

677. As a result, the only obligations falling to DNFBPs are:

- compliance with foreign exchange regulations (Article 6),
- monitoring of certain transactions (Article 10),
- provision of papers and records (Article 12),
- reporting of suspicious transactions (Article 26).

678. In general, none of the DNFBPs apply the provisions of the Law of December 29, 2006 concerning DNFBPs. No awareness-raising in regard to the law and no communication concerning the law have been provided by the authorities responsible for each of the professions cited by the law.

679. The managers, owners, and directors of **casinos, gaming establishments, and national lotteries** are bound by the following specific obligations, above and beyond the general provisions of the law:

- "provide the competent authority, on the date of the request for authorization to open the establishment, proof of the lawful origin of the funds needed to create the establishment";
- "ascertain the identity, based on presentation of a national identification card or any other original, official, and currently valid photo identification document, a copy of which will be made, of players who purchase, bring, or exchange tokens or chips in an amount equal to or greater than CFAF 1,000,000, or for which the exchange value is equal to or greater than this amount";
- "record in a special register, in chronological order, all transactions specified in the preceding paragraph, their nature and their amount, along with the full name of the players and the official number of the identification document presented, and keep said register for ten years after the last recorded transaction";
- "record in a special register, in chronological order, all money transfers between casinos and gaming establishments and keep said register for ten years after the last recorded transaction".

680. "In the event that the casino or gaming establishment is controlled by a legal person possessing several affiliates, the tokens must identify the affiliate by which they were issued. In no case may the tokens issued by one affiliate be reimbursed at another affiliate, regardless of whether this other affiliate is located within the country, in another member state of the Union, or in a third country."

681. The threshold of CFAF 1,000,000 is equivalent to roughly US$ 1,500 and is lower than the FATF standard casino client identification threshold (US$/EUR 3,000). Generally speaking, the provisions of the 2006 law on casinos are not followed by the Malian casinos management company.

682. In addition, it should be noted that the requirements concerning identification, record-keeping, and maintaining a special register are aimed at natural persons (managers, owners, and directors) and not at legal persons. If the managers, owners, or directors change, there is no guarantee that the information collected will stay tied to the legal person.

683. A single Malian company runs the country's five casinos. The requirements for casino authorization are set forth in Decree 97-182 of June 2, 1997, which establishes the implementation arrangements for Law 96-021 of February 21, 1996, and in Inter-ministerial Order 03-1731 (Ministry of Economy and Finance, Ministry of Internal Security and Civil Protection, Ministry of Handicrafts and Tourism) of August 15, 2003.

684. **Real estate agents** are subject to the law when they perform, oversee, or advise operations involving deposits, trading, investments, conversions, or any other movements of capital or other assets, i.e. when they perform transactions for their clients that involve buying or selling real estate. The mission was not able to meet with representatives of the profession.

685. The Ministry of Housing is about to regulate the profession of real estate agent in Mali. There is an informal professional federation, and other players, called real estate developers, engage in the same type of activity, but also serve as financial intermediaries between the parties to a transaction. This is a regulated activity. Forty authorizations for real estate developers were issued in 2007 by the Mali Investment Promotion Agency, which falls under the Ministry of Economy and Commerce.

686. However, the term "real estate agents," even when preceded by the adverb "particularly," cannot necessarily be interpreted to cover developers as well, which represents a loophole, given the nature of their activities.

687. There is no specified threshold that triggers the obligations of due diligence for **traders of precious metals or precious stones**. The gold traders sector (purchasing agencies) is particularly sensitive in Mali, the world's third leading gold producer. The profession is regulated, and practicing the profession requires issuance of an authorization by order of the Minister of Commerce. Despite the many instances of fraud and swindling in this sector, no licenses have been withdrawn to date, nor have any proceedings been initiated against a purchasing agency. There are presently 25 purchasing and export agencies licensed in Mali for gold and other precious or fossil substances, all of them based in Bamako.

688. Members of the **independent legal professions** (notaries, lawyers) are subject to the Malian anti-money laundering law when they represent or assist clients apart from any judicial proceedings (buying and selling of assets, businesses, or goodwill; handling of money, securities, or other assets belonging to the client; opening or management of bank, savings, or securities accounts; creation, management, or operation of companies, trusts, or similar entities; execution of other financial transactions).

689. However, a few details should be incorporated concerning the scope of coverage as it applies to legal professionals. In fact, for independent legal professionals, R.12 requires that they practice due diligence and keep records when they perform financial transactions, but also when they prepare these transactions, which is not specified in the Malian law.

690. The profession of **notary** is regulated by Law 96-023 of February 21, 1996. Notaries are public officials authorized for life to provide a public service of verification. They receive all documents and contracts for which the relevant parties must or would like to establish the authenticity ascribed to instruments of public authority, and certify dates, record the information submitted, and issue copies and certificates (Article 4 of the abovementioned law). A notary must enjoy full civic rights and be of good moral standing. Certificates issued by notaries must contain the full name, profession, and residence of the parties involved, and any notary who violates these rules is subject to a fine in the range of CFAF 10,000 to CFAF 100,000 (Article 64 of the abovementioned law). However, the law does not impose any obligation to keep copies of identification papers, since physically appearing before the notary is considered a sufficient

element of identification. The use of a professional account at the *Caisse des Dépôts et Consignations* does not appear to be effective. There are 35 notaries operating in Mali.

691. The profession of **lawyer** is regulated by Law 94-042 of October 13, 1994. There are roughly 300 lawyers in Mali, belonging to the bars of Bamako, Segou, Mopti, Sikassou, and Kayes. WAEMU Regulation 10/2006 states that lawyers are free to set up a practice in the region, but these rules have not been implemented. For the most part, lawyers have individual practices, although the law permits the creation of law firms. Setting up operations with CARPA accounts is under review. In addition, it is interesting to note that the Mali Bar Association has chosen "criminal justice and economic and financial crime" as the theme for the formal start of the 2008 season. However, according to the mission's discussions, there is strong opposition to the AML law within this profession.

692. The mission was not able to meet with representatives of the **auditor** professions**.** Moreover, it does not appear that the profession of certified public accountant (except when performing the activities of an auditor) is subject to the anti-money laundering law.

693. Law 96-024 of February 21, 1996 lays out the statutes of the association of chartered and certified public accountants and regulates the professions of chartered accountant and certified public accountant. This association holds sole power to authorize access to the public accountant profession. Certified public accountants are those who, in their own name and under their own responsibility, habitually engage in organizing, verifying, assessing, and auditing accounts of all sorts. A certified public accountant may also use accounting techniques to analyze the position and operations of businesses from an economic, legal, financial, and social standpoint.

694. Certified public accountants are authorized to give consultations and perform all studies and all activities of a legal or fiscal nature, on the condition that their actions must be taken exclusively on behalf of clients for whom accounting work is performed at the same time.

695. -Under the same conditions, they may also provide management advice.

696. -No one may carry the title of certified public accountant, nor practice this profession, unless he or she is listed in the association's register (Article 7 of the law).

697. To be listed in the association's register as a certified public accountant, the individual must enjoy full civic rights, must have no criminal record of a sort that could call into question his or her worthiness – especially no record in regard to laws in effect that involve revoking the right to manage and administer companies – and must possess high ethical standards.

698. According to the authorities, there are reportedly no **trust and company service providers** in Mali. However, Article 5 of the law mentions, as part of the targeted activities of independent legal professionals, the "creation, management, or operation of companies, trusts, or similar entities."

Applying Recommendations 6 and 8-11 to DNFBPs (c. 12.2)

699. The lack of provisions on politically exposed persons (Recommendation 6) and new or developing technologies that might favor anonymity (Recommendation 8) has already been noted in Section 3.2. This comment also applies to all DNFBPs.

700. The due diligence and record keeping requirements set forth in the 2006 law that apply to the financial institutions described above (Section 3) partially apply to non-financial businesses and professions. Even though Article 5 mentions Titles II and III of the anti-money laundering law, a number of the identification and reporting requirements specifically relate to financial organizations only.

701. DNFBPs are thus subject to the following prudential obligations:

*Specific monitoring of certain transactions (*Article 10 of the law): any payment in cash or by bearer security, performed under normal conditions, if the unit or total amount is equal to or greater than CFAF 50,000,000, and any transaction involving an amount equal to or greater than CFAF 10,000,000 if it is performed under unusually complex conditions and/or does not appear to have any economic justification or lawful purpose.

Provision of documents and records, including the obligation to keep the records and confidential register of the abovementioned transactions for ten years (Article 12 of the law).

Suspicious transaction reporting (Article 26 of the law).In the absence of an operational CENTIF, local authorities have not raised awareness among the DNFBPs industry regarding their AML/CFT obligations. The prudential legal regime is not totally applicable to them and does not comply with required standards.

Recommendations and Comments

702. The recommendations made in Section 3 concerning non-bank financial institutions should also apply to DNFBPs.

703. In particular, the authorities should:

- include the obligation of enhanced diligence with respect to politically exposed persons;
- subject trust and company service providers and certified public accountants to prudential obligations and the requirement to report suspicious transactions;
- disseminate the 2006 law as quickly as possible to professionals covered by the law, as well as to their supervisory authorities. A major effort should be undertaken to raise awareness of the risk of the non-financial sector being exploited for money laundering purposes;
- raise the identification threshold for casino customers;
- impose prudential obligations on casinos as legal persons;
- establish a threshold to trigger due diligence for traders of precious metals and precious stones, consistent with FATF recommendations.

Compliance with Recommendation 12

	Rating	Summary of factors underlying the ratings
R.12	NC	Threshold for triggering casino obligations set too low Absence of obligations imposed on casinos as legal persons Absence of a threshold to trigger due diligence for traders of precious metals Absence of trust and company service providers in the list of persons covered by the law

		Absence of certified public accountants in the list of persons covered by the law Absence of a due diligence mechanism concerning politically exposed persons Absence of an effective mechanism

SUSPICIOUS TRANSACTION REPORTING (R.16) (APPLYING R.13 AND 15-21)

Description and Analysis

Recommendation 13

Obligation to report suspicious transactions to the FIU (applying c. 13.1 & IV.1 to DNFBPs)

704. Article 26 of Law 06-066 of December 29, 2006 states that persons covered by Article 5 must report to CENTIF:

- any sums of money or other assets in their possession that could be derived from money laundering;
- any transactions involving such assets, if the transactions could be part of a money laundering process;
- any sums of money or other assets in their possession that are suspected to be intended for terrorist financing and that appear to be derived from transactions related to money laundering.

705. The comments about suspicious transaction reporting by financial institutions are also relevant to DNFBPs.

Recommendation 14

Protection and restriction on disclosure in the case of suspicious transaction reporting (applying c. 14.1 and 14.2)

706. Refer to the analysis and description given in Section 3.

Recommendation 15

Internal controls to prevent money laundering/terrorist financing (applying c. 15.1-15.4)

707. Article 13 of the law on internal programs to combat money laundering covers financial organizations only. Thus, there are no provisions for DNFBPs in this regard. Nothing is planned for DNFBPs. It is noteworthy that art. 5 of law 06-066 indicate that titles II and III applies to financial organizations and also non financial organizations. However, the drafting of art. 13 of the same law is very restrictive since it only applies to financial organizations. It is thus not possible to infer from this law that the obligation which lies on these financial organizations to set up internal programs on CFT also applies de facto to DNFBPs.

Special attention to countries that do not sufficiently apply the FATF Recommendations (applying c. 21.1-21.3)

708. There is no provision to ensure that DNFBPs give special attention to countries that do not sufficiently apply the FATF recommendations, or that call for special scrutiny of transactions with these countries or the possibility of applying countermeasures.

Analysis of effectiveness

DNFBPs had not made any STRs at the time of the mission. In the banking industry, some financial institutions had reported their suspicions to the BCEAO.

Recommendations and Comments

709. The recommendations made in Section 3 concerning R.13, 14, 15, and 21 also apply to DNFBPs.

Compliance with Recommendation 16

	Rating	Summary of factors underlying the rating
R16	NC	Absence of special attention to countries that do not sufficiently apply the FATF recommendations Lack of effectiveness

REGULATION, SUPERVISION, AND MONITORING (R. 24-25)

Description and Analysis

710. The table below summarizes, for each DNFBP, the authority responsible for its regulation and supervision, as well as the general legal basis and the extent to which it is covered by anti-money laundering requirements.

DNFBP	**Regulatory/supervisory authority**	**General legal framework**	**Applicability of the 2006 AML law**
Casinos	Ministry of Tourism / Ministry of Internal Security	Law 96-021 of February 21, 1996	Preventive measures, special monitoring of certain transactions, suspicious transaction reporting
Real estate agents	Ministry of Housing (pending)	Law 99-040 of August 10, 1999 (not disseminated)	Special monitoring of certain transactions, record keeping, suspicious transaction reporting

Traders of precious stones and metals	Ministry of Economy, Industry, and Commerce (MEIC)	Decree 02-536 of December 3, 2002	*idem*
Lawyers	Ministry of Justice / Bar Association	Law 94-042 of October 13, 1994	*idem*
Notaries	Ministry of Justice / Association of Notaries	Law 96-023 of February 21, 1996	*idem*
Auditors	Ministry of Finance / Association of Chartered and Certified Public Accountants	Law 96-024 of February 21, 1996	*idem*

Recommendation 24

Regulation and supervision of casinos (c. 24.1)

711. There is no monitoring system aimed at ensuring that casinos effectively apply the provisions related to the anti-money laundering law. A department of the national police (the security branch) provides permanent plain-clothes surveillance inside the casinos but, to date, not for the purpose of implementing the 2006 law.

712. Casinos must first obtain a license (operating authorization) by joint order of the Minister of Tourism, the Minister of Internal Security, and the Minister of Finance. The tax department is also involved in the activities of casinos because a special tax of 15 percent of gross gaming income is collected.

713. Obtaining a license requires producing a police statement that is less than three months old, and the applicant must also present moral guarantees (certificate of high moral standards).

Monitoring and oversight of other DNFBPs (c. 24.2)

714. No DNFBP is subject to a system of monitoring and ensuring compliance with the requirements of Law 06-066 of December 29, 2006. In more general terms, some DNFBPs are supervised by a competent authority or a self-regulatory organization. But even this general supervision of DNFBPs is often deficient or nonexistent. Still, in theory it can provide oversight of compliance with requirements related to the monitoring and recording of certain transactions.

715. **Real estate agents** are not yet organized into a federation officially recognized by the government. The Ministry of Housing is currently contemplating a statute to establish a license for real estate agents.

716. **Gold washers.** Mining[123] and the revenues it generates constitute a source of worry in regard to money laundering, as several different persons pointed out to the mission. While the

121 Mining is an ancient activity in Mali. Small-scale gold mining is an ancestral practice in the southern and western parts of the country but, over the last decade, prospecting and mining have taken on industrial dimensions with the arrival of large international companies, facilitated by preparation of a Mining Code. Mali is the third largest producer on the African continent, after South Africa and Ghana. Its reserves are estimated to exceed 800 metric tons, and the amount of mining, now performed by six licensed companies,

industrial sector appears to be properly regulated and supervised by the Ministry of Mining and Energy, the same does not hold true of gold washing, which follows "unofficial" rules. Oversight of these informal gold mining activities takes place at the village level, where the chief holds police powers to settle disputes. The Malian government has attempted to establish some order in this sector by adopting a ministerial order that requires all exports of washed gold to pass through a "purchasing agency" licensed by MDE. Between the gold washers and the purchasing agencies, there are many intermediaries, called "collectors," who must also obtain a professional card.

717. This being the case, containment of the risk of money laundering in the gold sector is nonexistent. The authorities were not aware of the anti-money laundering law of 2006. The very concept of money laundering was not understood by the central departments in charge of regulation and oversight.[124]

718. **Purchasing agencies (traders of precious metals or precious stones)** fall under Inter-ministerial Order 03-239 of February 17, 2003 for licensing and operating requirements. Under this framework, they are required to keep a register of purchases and sales, numbered and initialed by the Commercial Court, indicating all purchase and sale transactions in chronological order. In regard to purchasing agencies, this register is subject to any and all requests from agents of the National Geology and Mining Directorate and the economic departments or any other duly authorized agency. Every six months, purchasing agencies must also report information to the National Geology and Mining Directorate concerning quantities purchased.

719. Generally speaking, traders of precious stones and metals, although their profession is clearly subject to the law, were unaware of their obligations in this area. Apparently, no campaign has been conducted in this sector to raise awareness of the risk of money laundering, nor have any such efforts targeted gold sector professionals, nor their bankers. It is important to report, in this regard, that one Malian bank sent a statement of suspicion to BCEAO when a gold washer customer asked a bank teller to withdraw US $1.5 million in cash, from funds originating in Russia.[125]

720. The profession of **lawyer** is organized by Law 94-042 of October 13, 1994. The board of the Bar Association is charged with ensuring compliance with the principles of ethical behavior, integrity, impartiality, moderation, and respect for colleagues on which the Bar Association is based, and with performing such oversight as the honor and interests of the Association dictate. No one has yet been expelled from the Bar Association in Mali. To date, lawyers do not apply the provisions of the anti-money laundering law.

721. The profession of **notary** is organized by Law 96-023 of February 21, 1996. The Organization of Notaries is a trade organization and statutory body set up as a legal person that includes all Malian notaries (35). In particular, this organization verifies accounting records and identifies and sanctions irregularities or recommends disciplinary sanctions, depending on the seriousness of the error. Notwithstanding the oversight authority of the Department of Public Property, as specified in the General Tax Code, notaries are also subject to oversight by the Minister of Justice. Public prosecutors hold permanent power of oversight over the offices of notaries and notary-clerks of the court within the range of their territorial jurisdiction (Article 42 of the abovementioned law). The Organization of Notaries is not certain that the profession is

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has steadily increased. The sector is dominated by foreign mining companies. Alongside this industrial sector, there is a network of small-scale mines operated by gold washers, roughly 300 in total. Many intermediaries, of both Malian and foreign nationalities, are involved in the distribution and marketing chain.

124 One official at the Ministry of Mining asked the mission to explain the concept of money laundering.

125 Inasmuch as BCEAO has no authority to conduct investigations into such statements, the bank had no other choice, under its terms, but to execute the withdrawal operation.

subject to the anti-money laundering law, given the wording of the law, which speaks of "independent legal professions." However, despite the oversight powers of various agencies, there is no relationship of dependency that would suggest that notaries cannot be classified as an independent legal profession.

722. **Auditors**: The Association of Chartered and Certified Public Accountants is led by a board set up under the Minister of Finance. The function of this board is to impose disciplinary sanctions in particular. The rights and responsibilities of certified public accountants are governed by the association's policies and procedures.

723. The association's board, when it meets in a disciplinary session, identifies and sanctions errors made by the chartered and certified public accountants listed in the association's register. It acts either as a matter of course, or at the request of the public prosecutor at the Court of Appeal, or at the initiative of the chairman of the association's board or the Minister of Finance. The disciplinary penalties are as follows: warning, reprimand, temporary ban not to exceed two years, and permanent removal from the register, which entails banishment from the association. The board acts in sovereign fashion when it hands down a warning or reprimand. In the case of temporary or permanent removal, the board's decision is sent to the public prosecutor at the Court of Appeal, who then sends it on to the Minister of Justice and the Minister of Finance with any comments he deems necessary.

724. To apply these same penalties the public prosecutor may, either as a matter of course or at the request of the parties, and after receiving the board's opinion, make recommendations to the Minister of Justice and the Minister of Finance. Sanctions are then handed down by decree of the Council of Ministers, based on the joint recommendation of the Minister of Justice and the Minister of Finance. The chairman of the association's board and the public prosecutor see to the enforcement of disciplinary sanctions.

Guidelines for DNFBPs (c. 25.1)

725. No guidelines have been published for DNFBPs to help them meet their anti-money laundering obligations.

Feedback from the FIU and competent authorities (c. 25.2)

726. No statements of suspicion have been sent to CENTIF, which is not operational, by DNFBPs. Authorities have not raised awareness among DNFBPs on AML/CFT. Oversight authorities of some of them (notaries, lawyers) have already started thinking

Recommendations and Comments

727. The competent authorities should ensure compliance with the anti-money laundering law by casinos and other DNFBPs. They should regulate the real estate agent profession without delay, and ensure that real estate agents comply with anti-money laundering regulations.

728. They should establish guidelines to help DNFBPs implement and meet their anti-money laundering obligations. In particular, these guidelines should provide a description of money laundering techniques and methods and indicate possible additional measures that DNFBPs could take to ensure the effectiveness of their efforts. Given the tight resources and limited knowledge of money laundering issues on the part of the authorities charged with supervising DNFBPs, the task of developing the guidelines could be assigned to CENTIF.

729. Until it is in a position to provide feedback on any statements of suspicion received, CENTIF could, once operational, provide DNFBPs with information on techniques, methods, and current trends (typologies), and such information could be drawn from FATF typology reports or from cases presented on the Egmont Group website.

Compliance with Recommendations 24 and 25

	Rating	Summary of factors underlying the rating
R.24	NC	Absence of casino supervision pursuant to the anti-money laundering law Absence of any system to monitor and ensure compliance with AML obligations by other DNFBPs
R.25	NC	Absence of guidelines Absence of feedback

OTHER NON-FINANCIAL BUSINESSES AND PROFESSIONS AND MODERN AND SECURE TRANSACTION TECHNIQUES (R.20)

Description and Analysis

Other NFBPs that present ML/FT risks (c. 20.1, applying R.5, 6, 8-11, 13-15, 17, and 21)

730. Other professions are covered by the Malian anti-money laundering law, but their inclusion under the AML system has not been subjected to any analysis by the competent authorities concerning their vulnerability to the risk of money laundering.

731. Thus, traders of articles of high value such as **art objects** (particularly paintings and masks) are subject to the law. There are regulations pertaining to protection of the country's cultural heritage (Law 85-40 of July 26, 1985 on protecting and promoting the national cultural heritage) and a law regulating the profession of trader of cultural articles (Law 86-61 of July 26, 1986 on the profession of trader of cultural articles). Since Mali is a region with an important cultural heritage, the vulnerability of the trade in art objects is real, but to date has never been studied in depth. No statistics on seizures of cultural articles were provided to the assessors.

732. Business introducers to financial organizations, money carriers, and travel agencies are also subject to the law.

733. There is no definition of business introducers to financial organizations in Mali. The competent authorities (Ministry of Tourism, Ministry of Commerce) were unable to inform the assessors about the risks of money laundering in travel agencies. The risky activities performed by the latter, secondarily to arranging travel (transfers of funds and foreign exchange), are already covered by the fact that they operate under the authority delegated to them by banks.

734. There is reportedly just one money carrying company in Mali, working for BCEAO, since banks have their own unmarked vehicles to transport funds. The obligations incumbent upon such companies do not appear very relevant, given the nature of their business: special scrutiny of "any cash payment (…) in excess of CFAF 50 million" refers to the contractual terms between them and the businesses that award them a contract to transport funds on their behalf, while "any transaction involving an amount greater than CFAF 10 million if it is performed under unusually complex conditions or with no economic justification" refers to the actual funds transported. The profession is regulated by Law 96-020 of February 21, 1996.

735. **Nongovernmental organizations** are also subject to the law of December 29, 2006, and there are roughly 2,000 NGOs in Mali. They enjoy the status of associations and are covered by framework agreements with the government. Although NGOs have the legal obligation to file annual records of accounts (law of 2000 on non profit organizations and cooperatives, and provisions of the framework agreements), the authorities feel that they are unable to determine whether the NGOs' finances are proper and they complain about a lack of transparency in NGO operations. However, the authorities have not provided any elements of risk analysis to justify including NGOs in the mechanism for preventing money laundering.

736. To date, there are no registered gaming establishments in Mali except for the abovementioned casinos. The authorities suspect that clandestine gaming establishments exist, particularly in the Chinese community in Bamako, but have not exposed any such illicit activities so far. There is no national lottery in Mali, and the PMU (government-regulated network of betting counters) is controlled by a semipublic company with exclusively Malian capital (government and private). Bets are placed on horse races in France.

737. The table below summarizes the other NFBPs covered by the law of December 29, 2006, along with their regulatory and supervisory authorities and the basis for their general legal framework.

Other DNFBPs	Regulatory/supervisory authority	General legal framework	Applicability of the 2006 AML law
Traders of art objects (cultural articles)	Ministry of Culture	Law 86-61 of July 26, 1986	Special monitoring of certain transactions, record-keeping, reporting of suspicious transactions
Business introducers to financial organizations	No information provided by the authorities	No information provided by the authorities	*idem*
Money carriers	Ministry of Internal Security	Law 96-020 of February 21, 1996	*idem*
Travel agencies	Office of Tourism/MEIC	Decree 95-163 of April	*idem*

		12, 1995	
NGOs	Ministry of Territorial Authorities	Law of 2000 on non profit organisations and cooperatives/framework agreement with the government	*idem*
Gaming establishments	Ministry of Tourism/Ministry of Internal Security	Law 96-021 of February 21, 1996 Decree 97-182/P-RM of June 2, 1997 Ministerial order 03-1731/MEF/MSIPC/MAT of August 15, 2003	Preventive measures, special monitoring of certain transactions, suspicious transaction reporting
National lotteries (Mali PMU)	No information provided by the authorities	No information provided by the authorities	*idem*

738. **Gold washers** are among the DNFBPs not covered by Law 06-66 that present a serious risk in terms of money laundering. Mining[126] and the revenues it generates constitute a source of worry in regard to money laundering, as several different persons pointed out to the mission. While the industrial sector appears to be properly regulated and supervised by the Ministry of Mining and Energy, the same does not hold true of gold washing, which follows "unofficial" rules. Oversight of these informal gold mining activities takes place at the village level, where the chief holds police powers to settle disputes. The Malian government has attempted to establish some order in this sector by adopting a ministerial order that requires all exports of washed gold to pass through a "purchasing agency" licensed by MDE. Between the gold washers and the purchasing agencies, however, there are many intermediaries, called "collectors," who must also obtain a professional card.

739. This being the case, containment of the risk of money laundering in the gold sector is nonexistent, and officials at the Ministry of Mining were not aware of Law 06-66. The risks of gold smuggling and laundering the proceeds of same, given the porous borders, are real.

Development of modern and secure transaction techniques (c. 20.2)

740. Mali transposed Directive 08/02/CM/WAEMU concerning measures to promote the use of banking facilities and representative means of payment by adopting Law 04-048 of November 12,

126 Mining is an ancient activity in Mali. Small-scale gold mining is an ancestral practice in the southern and western parts of the country but, over the last decade, prospecting and mining have taken on industrial dimensions with the arrival of large international companies, facilitated by preparation of a Mining Code. Mali is the third largest producer on the African continent, after South Africa and Ghana. Its reserves are estimated to exceed 800 metric tons, and the amount of mining, now performed by six licensed companies, has steadily increased. The sector is dominated by foreign mining companies. Alongside this industrial sector, there is a network of small-scale mines operated by gold washers, roughly 300 in total. Many intermediaries, of both Malian and foreign nationalities, are involved in the distribution and marketing chain.

2004. The following arrangements are based on the combined provisions of this law and of BCEAO Directive 01/2003 of May 8, 2003 on promoting representative means of payment:

All financial transactions involving sums of money in the amount of CFAF 100,000 (approximately US $235) between private individuals or businesses, on the one hand, and public or semipublic persons on the other, are to be made by check or by transfer to an account opened at the financial desk of the Post Office or a bank;

Wages, compensation, and other cash benefits owed by the government, a government agency, or a public or semipublic person or enterprise to civil servants, agents, other employees or their families, or to persons eligible for benefits or allowances, in an amount equal to or greater than CFAF 100,000, are to be paid by check or by transfer to an account opened at the financial desk of the Post Office or a bank;

Taxes, duties, and other cash payments owed to the government, a government agency, or a public or semipublic person or enterprise, in an amount equal to or greater than CFAF 100,000, are to be paid by check or by transfer to an account opened at the financial desk of the Post Office or a bank;

Payment of water, electric, and telephone bills and execution of all other cash obligations are exempt from the payment of stamp duty if they are made through a representative payment instrument or procedure.

741. Regulation 15/2002/CM/WAEMU of September 19, 2002, adopted by the WAEMU Council of Ministers and relating to systems of payment in the member states of WAEMU, also stipulates that all traders must open an account at the financial desk of the Post Office or a bank established in a member state.

742. The trader must indicate the domiciliation and the identifying number on bills and other documents by which he requests payment, and interest on arrears is not due so long as these indications have not been given to the debtor.

743. The Malian authorities have not taken other measures to further encourage the development of modern and secure transaction techniques that are less vulnerable to money laundering. Moreover, the measures adopted are not subject to the sorts of controls that would permit limiting the circulation of cash.

744. The rapid development of newly opened money transfer houses in recent years is also an aggravating factor in regard to the risk of money laundering, since this contributes to the handling of cash when funds are either sent or received.

Analysis of Feectiveness

The other DNFBPs have been sujected to the AML law without any previous analysis of their risk exposure to ML. In some instances (money carriers, travel agencies), the reason of this has not been clearly articulated by the authorities. As for the other DNFBPs, no STRs have been sent to the FIU and no raising awareness has been done either by the authorities or by their supervisors.

The development of modern and secure transaction techniques is not vey popular in Mali. The existing legal device is not implemented in this cash based economy.

Recommendations and Comments

745. The Malian authorities should examine the risks of money laundering in non-financial businesses and professions covered by the country's anti-money laundering law, specifically in order to raise their awareness and ensure effective monitoring of the AML system's implementation.

746. They should also ensure implementation of the regulations concerning cash payments and, if necessary, raise the admissible threshold, which appears very low for an economy that operates mainly on cash.

Compliance with Recommendation 20

	Rating	Summary of factors underlying the rating
R.20	NC	Absence of any analysis of money laundering risks in non-designated non-financial businesses and professions Absence of any monitoring of compliance with measures taken to encourage the development of modern and secure transaction techniques

LEGAL PERSONS – LEGAL FRAMEWORK AND NON PROFIT ORGANIZATIONS

LEGAL PERSONS – ACCESS TO BENEFICIAL OWNERSHIP AND CONTROL INFORMATION (R.33)

Description and Analysis

747. The Uniform Act on General Commercial Law (*Acte Uniforme relatif au Droit Commercial Général*: AUDCG) and the Uniform Act relating to Commercial Companies and Economic Interest Groups (*Acte Uniforme relatif au Droit des Sociétés Commerciales et du Groupement d'Intérêt Economique*: AUSCGIE) establish the legal framework for commercial companies and the requirements for starting and registering them in Mali.

748. The national law transposing the provisions of the OHADA law into Malian law was not provided to the assessment mission.

749. No statistics on legal persons were provided to the assessment mission.

750. The elements of information presented below come from an analysis of applicable OHADA regulations; discussions requested by the assessment mission with competent departments who handle commercial company matters at the Ministry of Economy and Commerce were not organized by the Malian authorities. The assessment mission also relied on information gathered by the general FSAP mission that visited Bamako from January 28 to February 15, 2008 to examine actual implementation of the OHADA law.

751. Measures to prevent the unlawful use of legal persons (c. 33.1):

752. *Registration of commercial companies*: Article 27 of AUDCG states that companies and other legal persons covered by the Uniform Act on Commercial Company and Economic Interest Group Law must register their activity, during the month of their incorporation, at the Trade and Personal Property Credit Register of the jurisdiction in which their headquarters are located.

753. All applications for registration must contain a number of pieces of information including, in particular:

754. -Company name;

755. -Commercial name, acronym, or sign, if applicable;

756. -Description of activity/activities carried out;

757. -Form of the company or corporate body;

758. -Amount of the registered capital with an indication of the amount of contributions in kind;

759. -Address of registered office and, if applicable, address of principal establishment and all other establishments;

760. - of the company or legal person as set by its articles of association;

761. -Full names and domicile of business partneres who have unlimited liability vis-à-vis the company's debts, along with an indication of their date and place of birth, their nationality, the date and place of their marriage, the type of marriage property option adopted and clauses

demurrable to third parties limiting the free disposal of spousal property or the absence of any such terms, as well as requests for separation of property;

762. -Full names, date and place of birth, and residence of managers, directors, or business partners with general power to commit the responsibility of the company or corporate body ;

763. -Full names, date and place of birth, and residence of auditors, if appointment of same is required under the Uniform Act on Commercial Company and Economic Interest Group Law.

764. -More specifically, the registration requirement for commercial companies covers general partnerships, limited partnerships, limited liability companies, corporations, and economic interest groups.

765. In addition, AUSCGIE requires (Article 10) that the abovementioned articles of association of companies be established by notarial deed or by any instrument that ensures legal validity in the country of the company's main registered office and be deposited in the notary's office together with the certification of the writings and signatures by all parties. The statutes must contain a variety of information, including the following:

766. -The identity of contributors in cash and, for each of them, the amount of their contribution and the number and value of the shares handed over in exchange for each contribution

767. -The identity of contributors in kind, the nature and value of the contribution made by each of them, the number and value of the shares handed over in exchange for each contribution; and

768. -The identity of persons enjoying special benefits and the nature of such benefits.

769. Changes occurring throughout the life of a commercial company or other corporate body must be updated and recorded in the Register, particularly any amendments to the statutes of a legal person (Article 33, Paragraphs 1, 2, and 3 of AUDCG).

770. The information required by OHADA regulations is relatively extensive, but not sufficient to obtain accurate data on beneficial ownership under the definition used in R.33. In fact, the regulations do not contain any reporting requirements when capital is held by other legal persons. Furthermore, no specific information is required for the purpose of distinguishing between frontmen and real shareholders.

771. *Keeping of the Registers*: There are three Trade and Personal Property Credit Registers in Mali kept by the clerks of the district courts of Bamako, Mopti, and Kayes. In addition, a national registry, kept by the National Directorate of Judicial Affairs and designed to centralize the information recorded in each Register of Trade and Movable Property Credit, was established by Decree 492/P-RM of November 6, 2006. However, the Malian authorities with whom the mission met did not provide any relevant information about the operational status of this national register. Furthermore, no information was provided to the mission concerning computerization of the registers kept by the clerks of the district courts.

772. Access to information on the beneficial ownership (c. 33.2) and Additional elements – Access by financial institutions to information on the beneficial ownership of legal entities (c. 33.4)

773. The information contained in the Trade and Personal Property Credit Registers is accessible to the public and, in particular, to authorities responsible for criminal prosecutions (police and gendarmerie departments and judicial authorities) and financial institutions. As noted above, for lack of relevant information on the operational status of these registers, the mission is unable to assess whether the competent authorities can obtain such information in a timely fashion and whether the information is accurate and up to date.

774. Preventing the misuse of bearer shares (c. 33.3)

775. According to Articles 744 and following of AUSCGIE, public limited companies (*sociétés anonymes*) may issue securities, shares, and bonds in the form of "negotiable instruments (bearer shares) or registered securities." For companies that are not publicly traded, bearer shares may be conveyed by simple delivery; the bearer of the share is deemed to be the owner (Article 764, Paragraph 1). In the case of companies launching a public issue, AUSCGIE states, that, besides the simple delivery:

776. "may be represented by registration in an account opened in the name of their owner and held either by the issuing company or by a financial intermediary licensed by the Ministry of Economy and Finance; the shares may then by conveyed by transfer from one account to another" (art. 764 al.2)

777. The provisions of the OHADA regulations are not in themselves sufficient to ensure that bearer shares issued by corporations are not misused.

778. No estimates were provided to the assessment mission concerning the number of legal persons that have issued bearer shares, the number of bearer shares in circulation, and their current value.

779. Analysis of effectiveness

780. With respect to implementation of the OHADA law in Mali**,** the mission was unable to verify the level of compliance, in practice, with the various provisions of the OHADA regulations, although the private sector entities with which the mission met, particularly financial institutions and notaries, indicated that they do require the relevant data when establishing business relationships.

781. Similarly, the mission was unable to verify that the information is updated throughout the life of a company or other legal person.

In addition, independent of the issue of compliance with all the OHADA formalities in regard to company registrations and articles of association, it should be stressed that the very substantial role of the informal economy in Mali makes it virtually impossible to obtain adequate, relevant, and up-to-date information on economic operators. Furthermore, according to the statements made by several interlocutors of the mission, Mali appears to have a major problem of falsified documents, which adds an element of uncertainty as to the veracity of data recorded in the registers.

Recommendations and Comments

782. -It is recommended that the national authorities implement all the provisions of the OHADA regulations, particularly with respect to the tasks of keeping registers, registering companies, and updating the information.

783. -It is also recommended that the national authorities closely examine the adequacy of the OHADA regulations in relation to the requirements of Recommendation 33 concerning access to relevant information on the beneficial ownership and control of commercial companies and other corporate bodies. The Malian authorities could consider assigning the responsibility for obtaining, verifying, and preserving papers related to actual ownership and control of legal persons to notaries; this could be done when the notaries establish the statutes of same.

784. -The national authorities are encouraged to take all appropriate measures to reduce the relative size of the informal economy.

Compliance with Recommendation 33

	Rating	Summary of factors underlying the rating
R.33	NC	The information that, under OHADA regulations, must be recorded in registers is insufficient to identify the beneficial ownership as intended by R.33. The mission was unable to gather adequate information concerning implementation of the OHADA law in Mali. The substantial role of informal activities makes it virtually impossible to obtain adequate, relevant, and up-to-date information on all economic operators.

LEGAL ARRANGEMENTS – ACCESS TO BENEFICIAL OWNERSHIP AND CONTROL INFORMATION (R.34)

5.2.1 Description and Analysis

785. The assessment mission was unable to verify the existence in Mali of a mechanism of the common law-type such as trusts and other similar legal arrangements. In fact, Article 5 of AML Law 06-066 refers to "the creation, management, or operation of […] trusts or similar entities […]" within the context of operations carried out by members of the legal professions that are subject to money laundering prevention and detection requirements; this reference in the law suggests that it is possible in Mali to set up trusts. However, the Malian authorities with whom the mission met insisted that such mechanisms do not exist in Mali and that there are no legal provisions that allow for setting up trusts. According to the information gathered by the mission, there are also no foreign trusts in the country.

Recommendations and Comments

786. N/A

Compliance with Recommendation 34

	Rating	Summary of factors underlying the rating
R.34	N/A	

NONPROFIT ORGANIZATIONS (SR.VIII)

Description and Analysis

787. In Mali, the regulations applying to nonprofit organizations (NPO) are Order 41/PCG of 1958 concerning NPOs (*associations*) (other than commercial companies, fraternal benefit societies, cultural nonprofit organizations, and congregations) and Law 04/038 of August 5, 2004 also concerning nonprofit organizations.

788. The anti-terrorist financing directive also contains provisions that apply to nonprofit organizations in order to prevent their involvement in activities related to terrorist financing. However, it should be noted that this directive is not directly applicable and that the Malian authorities have not yet transposed this directive.

Review of the adequacy of laws and regulations pertaining to nonprofit organizations (c. VIII.1)

789. To date Mali has not undertaken a review of the adequacy of its legal framework as it applies to the nonprofit organization sector, nor has it conducted any specific study to measure the sector's vulnerability to the risks of terrorism financing.

Assistance to the nonprofit sector to protect it from being misused for purposes of terrorist financing (c. VIII.2.)

790. No campaign has been undertaken by the competent authorities to raise the awareness of nonprofit organizations concerning the risks of their being misused for purposes of terrorist financing and the resources available to them to protect against such risks. The competent authorities did not provide the mission with any information suggesting that the prevention of terrorist financing through nonprofit organizations is a concern of the authorities. No timetable has been set for undertaking this type of effort.

Monitoring and oversight of NPOs in line with the significance of international resources or activities (c. VIII.3), record-keeping by NPOs and public access (c. VIII.3.1), accreditation or registration of NPOs and availability of this information (c. VIII.3.3)

791. Article 2 of Law 04-038 defines a nonprofit organization as "an agreement by which several persons combine their knowledge or activities on an ongoing basis for a purpose other than profit-sharing." There are three types of association in Mali: (1) undeclared nonprofit organizations (2) declared nonprofit organizations; and (3) nonprofit organizations that have signed a framework agreement with the government.

792. Nonprofit organizations may be freely formed in Mali without prior authorization or declaration, but only declared nonprofit organizations hold legal status. There are slightly more than 2,000 declared nonprofit organizations in Mali, including nonprofit organizations that have signed a framework agreement with the government.

793. **Prior declaration** is performed before a government representative in the District of Bamako or at the Circle[127] holding jurisdiction over the location where the nonprofit organization is headquartered. The procedure for prior declaration requires that the following information be produced: the title of the nonprofit organization, its purpose, the address of its headquarters and

127The "circle" is a territorial entity encompassing several municipalities that holds legal status and enjoys financial autonomy. There are 49 circles in Mali. The circle council is composed of members elected by the municipal councilors for a five-year term. The circle council may issue opinions on any issue involving the circle and must be consulted regarding implementation of government or regional development projects.

other locations, and the names, professions, and addresses of those who, in whatever capacity, are charged with managing or operating the nonprofit organization.

794. Political, humanitarian, and foreign nonprofit organizations must submit their declarations to the Ministry of Territorial Administration and Local Authorities.

795. The law stipulates that, within three months, a declared nonprofit organization must be made public through a notice in the Official Record (*Journal Officiel).* In addition, the law states that any person has the right to have access to information related to the statutes and the declaration of any declared nonprofit organization, as well as any information related to amendments brought to the statutes or changes occurring in the nonprofit organization's management or administration.

796. Article 8 of Law 04-038 states that an nonprofit organization is required to report, within three months, any changes occurring in its management or administration, as well as any amendments to its statutes, any new establishments opened, any change of address of its headquarters, and any acquisitions or disposals of facilities or buildings used for running the nonprofit organization or accomplishing its stated goals. Such changes must be recorded in a register held at the headquarters of the declared nonprofit organization, and this register must be made available to government or judicial authorities. In the event of any violation of these requirements, a decision to dissolve the nonprofit organization may be handed down by decree of the Council of Ministers.

797. Legally declared nonprofit organizations may, without "special authorization, […] possess and administer, in addition to grants from the government, territorial authorities, and statutory bodies:

> "Membership fees or sums through which these fees have been redeemed, on the condition that said sums may not exceed CFAF 300,000 per person per year [..]" (Article 10 of Law 04-038).

798. For foreign nonprofit organizations to operate in Mali, they must receive prior authorization from the Ministry of Territorial Administration. Each establishment must have a separate authorization. Authorization applications must include the title and purpose of the nonprofit organization or establishment, the location of its operations, and the names, professions, residences, and nationalities of foreign members and members who, in whatever capacity, are charged with managing or operating the nonprofit organization or establishment.

799. Any legally declared nonprofit organization may sign a **framework agreement with the government** after three years of activity as demonstrated by progress reports and annual financial statements certified by a certified public accountant. The framework agreement lays out the commitments of both parties. A decree by the Council of Ministers determines the operative, oversight, and sanction arrangements for nonprofit organizations that sign framework agreements.

800. Also, in terms of specific due diligence requirements for NPOs that wish to collect, receive, or order money transfers, the anti-terrorist financing directive requires registration in a register set in place for this purpose by the competent authority. The information to be provided as part of the initial registration application includes "the full names, addresses, and telephone numbers of all persons who hold responsibility for running the organization, and particularly the president, vice-president, secretary-general, members of the board of directors, and treasurer, depending on the situation" (Article 16 of the anti-terrorist financing directive).

Implementation of sanctions for violations of oversight rules by NPOs (c. VIII.3.2)

801. In regard to monitoring and oversight, there is no provision in Law 04-038 that requires nonprofit organizations to keep a record of their revenues and expenditures and prepare each year a financial statement and an inventory of their movable property and buildings. Furthermore, in the case of declared nonprofit organizations that wish to sign framework agreements with the government, while Law 04-038 refers to the necessity of keeping progress reports and having annual financial statements certified by a certified public accountant, the arrangements for meeting these obligations are not specified in the statute, nor in any other document given to the assessment mission. Law 04-038 does not establish any monitoring and oversight mechanism for nonprofit organizations, and the information gathered by the mission does not point to the existence of appropriate measures for sanctioning violations of oversight rules by nonprofit organizations or persons acting in their name.

Recording of NPO transactions and availability of this information (c. VIII.3.4)

802. To date, there is no obligation in Mali for nonprofit organizations to keep records of their domestic and international transactions.

803. However, the anti-terrorist financing directive lays out the obligation to record, in a register set in place by the competent authority, all donations made to an NPO (*association*), including the donor's complete contact information, the date, the nature, and the amount of the donation (Article 16, Paragraph 2). The directive also states that the register must be kept for ten years, without prejudice to longer requirements stipulated by other statutes or regulations in effect (Article 16, Paragraph 3). The register in which all donations made to a nonprofit organization are recorded must be made available to the CENTIF, the authorities charged with nonprofit organization oversight, and, on request, officers of the criminal investigation department assigned to a criminal investigation (Article 16, Paragraph 3).

804. In addition, the mechanism laid out by the anti-terrorist financing directive requires that the authority charged with keeping the register must report to CENTIF:

- any cash donation to an nonprofit organization equal to or greater than the sum of CFAF 1,000,000 (approximately US $2,400), and
- any donation to an nonprofit organization, regardless of the amount, if the funds are likely to be related to a terrorist enterprise or terrorist financing.

805. The mechanism set in place by the anti-terrorist financing directive thus goes beyond FATF recommendations and, because of its cumbersome nature, might destabilize or discourage legitimate charitable activities. In fact, contrary to the directive's mechanism which requires that all donations be recorded in a register at the administrative authority, SR VIII simply requires that NPOs maintain internal procedures that will enable them to make the following information available to the authorities:

- records of their national and international transactions in sufficient detail to be able to verify that the funds were spent in accordance with the organization's purpose and goal;
- information on the purpose and goal of their declared activities and the identity of the person or persons who possess, monitor, or manage their activities, including management, members of the board of directors, and administrators;
- annual financial statements, with a detailed breakdown of their revenues and expenditures.

806. In addition, given the shortage of technical and human resources confronting administrative authorities in Mali, plus the large number of NPOs active in the country, it is worth mentioning that the mechanism prescribed by the anti-terrorist financing directive seems

inconsistent with realities in the field, which could compromise its implementation from a practical standpoint.

Measures designed to facilitate efficient investigation and information exchange (c. VIII.4)

807. Apart from the reporting mechanisms instituted by Law 04-038 as described above, Mali has not taken any measures to obtain the means to investigate and efficiently gather information on nonprofit organizations in order to combat terrorist financing; the supervisory authorities are not currently concerned about the risk of nonprofit organizations being misused for purposes of terrorist financing.

Cooperation, coordination, and information exchange at the national level (c. VIII.4.1), access to information on the administration and management of an NPO in the context of an investigation (c. VIII.4.2), information exchange, preventive measures, investigatory expertise, and capacity to scrutinize NPOs that are suspected of being misused for purposes of terrorist financing (c. VIII.4.3), and response to international requests for information on NPOs (c. VIII.5)

808. As mentioned above, the risk of nonprofit organizations being misused for purposes of terrorist financing is not yet a priority in Mali, and there is no attempt being made to ensure cooperation, coordination, and information exchange regarding nonprofit organizations between different national authorities.

809. Terrorist financing is not a criminal offense in Mali and, as a result, the national authorities have not yet mobilized efforts to combat the misuse of nonprofit organizations for purposes of terrorist financing. The authorities responsible for criminal prosecutions in Mali do not yet possess specialized resources and skills in this area. In addition, the absence of criminalization of terrorist financing makes international cooperation difficult in this area.

Analysis of effectiveness

810. Mali does not have any procedures at this time for combating the misuse of nonprofit organizations for purposes of terrorist financing.

Recommendations and Comments

811. Nonprofit organizations are not subject to any specific measures designed to ensure that they are not being misused for purposes of terrorist financing. It is recommended that the Malian authorities organize awareness-raising campaigns with an eye to forestalling the risk of nonprofit organizations being misused for purposes of terrorist financing. These campaigns should focus on raising the nonprofit organizations' awareness of the risks and the measures available to protect against them.

812. The Malian authorities should set in place nonprofit organization monitoring and oversight mechanisms. These monitoring and oversight measures should target in particular nonprofit organizations that account for a significant share of the financial resources controlled by the sector, as well as a substantial share of the international activity in the sector.

813. The Malian authorities are encouraged to examine the risk of destabilizing the NGO sector by implementing the anti-terrorist financing directive and should give serious consideration to

setting up a mechanism that would protect the sector against any misuse, while allowing it to function smoothly, inasmuch as the nonprofit organizations sector is a vital piece of the Malian economy.

Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR VIII	NC	Nonprofit organizations are not subject to any specific measures designed to ensure that they are not being misused for purposes of terrorist financing Absence of concrete awareness-raising measures to keep funds or other collected or transferred assets from being diverted for terrorist financing Lack of sector oversight

COOPERATION ON THE NATIONAL AND INTERNATIONAL LEVELS

COOPERATION ON THE NATIONAL LEVEL AND COORDINATION (R.31)

Description and Analysis

814. In general terms, the CPP governs cooperation between criminal authorities.

Mechanisms of cooperation and coordination to combat money laundering and terrorist financing (c. 31.1)

815. AML Law 06-066 does not contain any provisions governing cooperation between competent authorities and coordination of their AML/CFT activities.

816. Such cooperation is made possible by provisions of the CPP relating to the execution of responsibilities and powers in the context of criminal investigations and prosecutions, but, in practice, anti-money laundering cooperation is nonexistent because AML Law 06-066 is not enforced.

817. The mission also took note of the absence of cooperation and coordination at the national level between departments involved in the implementation of United Nations Security Council Resolutions 1267 and 1373.

Additional element – Mechanisms for consultation between competent authorities, the financial sector, and other sectors (c. 31.2)

818. There is no mechanism for discussions or consultation between the competent authorities for AML/CFT and the various financial and other sectors subject to the provisions of AML Law 06-066.

Recommendations and Comments

819. Set in place a mechanism for cooperation and coordination among the various competent authorities responsible for criminal investigations and prosecutions related to money laundering and predicate offenses.

Compliance with Recommendation 31

	Rating	Summary of factors underlying rating
R.31	NC	Absence of any mechanism for coordination and cooperation between competent authorities in regard to efforts to combat money laundering and terrorist financing

UNITED NATIONS CONVENTIONS AND SPECIAL RESOLUTIONS (R.35 AND SR.I)

Description and Analysis

Recommendation 35

Ratification of anti-money laundering conventions (c. 35.1)

820. The Republic of Mali acceded to the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (the Vienna Convention) on October 31, 1995 and ratified the United Nations Convention Against Transnational Organized Crime of 2000 (Palermo Convention) on April 12, 2002.

821. The provisions of both Conventions have, to a large extent, been incorporated into national law through Law 01-078 of July 18, 2001 concerning drug and precursor control (the Drug Law) and AML Law 06-066.

822. a) The Drug Law came into effect in 2004 and is properly enforced by the departments involved. However, it does not incorporate all the obligations of the Vienna Convention. In particular, the money laundering offense stipulated by the law, whwhat constitutes the main predicate offense, is not consistent with the definition of money laundering given in the Convention, as it is too restrictive. In addition, the provisions of the law pertaining to confiscation, cooperation, commercial carriers, illicit traffic by sea, and the use of postal services,

witness protection, and joint investigations should all be reviewed and revised to be consistent with the Convention.

823. In the absence of practical information and statistics on investigations and prosecutions carried out on the basis of the Drug Law, it was not possible for the mission to confirm that the law is enforced effectively. The statistics given to the mission concerning customs seizures in 2005-2007 are insufficient for assessing the effectiveness of the entire drug control system.

824. b) AML Law 06-066 of 2006 does not reflect all the provisions contained in the Palermo Convention: The definition of the offense of money laundering given in Article 6 of the law is not consistent with the relevant provision in the Convention and the definition of proceeds of the crime is incomplete for the reasons noted in the analysis of Recommendations 1, 2, and 3 above. Furthermore, the law does not contain any international cooperation provisions pertaining to detection and suppression of the crime of money laundering or cooperation for the purpose of confiscation, and the provisions on mutual legal assistance and extradition are insufficient. Finally, the law does not address the possibility of joint investigations, measures governing witness protection and the granting of assistance, or victim protection.

825. The General Directorate for International Cooperation at the Ministry of Foreign Affairs is responsible for policy development in regard to international treaties and also for ensuring that Mali meets its international commitments. In particular, the general directorate makes sure that the international instruments of which Mali is part are duly signed, ratified, and incorporated into the national legal system.

Ratification of Conventions related to terrorist financing (c. I.1)

826. Mali ratified the International Convention for the Suppression of the Financing of Terrorism of 1999 on November 11, 2001. A bill to combat terrorism and criminalize its financing has been drafted and is waiting to be finalized before being submitted to the parliament. Mali has ratified all the Conventions and Protocols related to the fight against terrorism except for the International Convention for the Suppression of Acts of Nuclear Terrorism of 2005, which has been signed by Mali but not yet ratified.

827. WAEMU Directive 04/2007/CM/WAEMU concerning the fight against terrorist financing has not been transposed into national law in Mali.

Implementation of the United Nations Security Council Resolutions relating to the prevention and suppression of terrorist financing (c I.2)

828. Mali has incorporated into its national law, the standard WAEMU provisions pertaining to implementation of United Nations Security Council Resolutions 1267 and 1373 on the fight against terrorism and, in particular, Regulation 14/2002/CM/WAEMU of September 19, 2002 concerning the freezing of funds and other financial resources in the context of the fight against terrorist financing in the member states of WAEMU, Decision 06/2003/CM/WAEMU of June 26, 2003 concerning the list of persons, entities, or organizations to be targeted by the freezing of funds and other financial resources in the context of the fight against terrorist financing in the member states of WAEMU, and Decision 04/2003/CM/WAEMU which amends both Decision 06/2003 and Decision 04/2004. However, these different instruments have not been implemented. In practice, cooperation between Mali and other member states of WAEMU is nonexistent.

829. With respect to the lists established by the Committee created under United Nations Resolution 1267 (1999) on terrorism, the mission was informed that the responsibility for providing these lists to national institutions falls to the Ministry of Economy and Finance and the Treasury. The authorities also indicated that these lists are regularly provided to all financial

institutions and territorial units of the armed and security forces. Via Circular 4505 of October 10, 2003, the Minister of Economy and Finance instructed banks and financial institutions to freeze, if necessary, the assets of listed persons or entities. No information was provided concerning how this circular is to be implemented, and it appears that no seizures have been performed. It was not possible for the mission to confirm that these lists have been distributed to the intended recipients. The mission was informed that List 1267 is distributed by BCEAO directly to financial institutions in member countries, following approval by the WAEMU Council of Ministers. The existence of various channels for distributing UN lists, without any mechanism for coordination or monitoring, combined with a lack of information about the overall length of the procedure for distributing lists, is likely to create confusion and compromise effective information distribution to relevant sectors.

830. According to the authorities met by the mission, no national mechanism for monitoring these lists has been instituted.

Additional element – Ratification or implementation of other relevant international conventions (c. 35.2)

831. With regard to criminal investigations and prosecutions, Mali has signed and ratified the following conventions and agreements:

- International Convention Against the Recruitment, Use, Financing, and Training of Mercenaries of December 4, 1989, ratified in April 2002;
- United Nations Convention Against Corruption of December 9, 2003, ratified in December 2003;
- Organization of African Unity Convention on the Prevention and Combating of Terrorism of July 14, 1999, ratified in March 2002;
- Convention of the Organization of the Islamic Conference (OIC) on Combating International Terrorism of July 1, 1999, ratified in March 2002;
- ECOWAS Convention A/P1/7/92 on Mutual Legal Assistance of July 29, 1992, ratified in February 1995.

Recommendations and Comments

832. Even though Mali has ratified the Vienna and Palermo Conventions and the International Convention for the Suppression of the Financing of Terrorism, additional efforts are needed to implement the provisions of these conventions in Malian national law.

833. The assessors thus recommend the following:

834. Complete the incorporation of, and ensure conformity with, the provisions of the Vienna and Palermo Conventions pertaining to the definition of drug-related crime, confiscation, cooperation, illicit traffic by sea, the transfer of suppressive procedures, the use of postal services, and the possibility of joint investigations, measures governing witness protection and the granting of technical assistance, and victim protection.

835. Complete the transposition into national law of the WAEMU directive on terrorist financing, criminalize terrorist financing, and implement the WAEMU instruments concerning terrorist financing.

Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying the rating
R.35	PC	The provisions of the Vienna and Palermo Conventions have not been implemented in full, particularly the provisions pertaining to defining the criminalization of drug offenses, the use of postal services, illicit traffic by sea, witness protection, and joint investigations.
SR.I	PC	Failure, in practice, to implement UN Resolutions 1267 and 1373 and the WAEMU instruments for combating terrorism and the financing of same Absence of cooperation in regard to combating terrorist financing

MUTUAL LEGAL ASSISTANCE (R.32, 36-38, SR.V)

Description and Analysis

Legal framework

836. AML Law 06-066 specifically provides for mutual legal assistance procedures between WAEMU member countries in regard to money laundering (Articles 53-70). These provisions also apply to requests for mutual legal assistance from countries other than those that belong to WAEMU.

837. International cooperation between Mali and other countries is also defined by the various international instruments signed by Mali and, in particular, the United Nations International Conventions, the ECOWAS Convention on Extradition, the Charter of the African Union, the WAEMU instruments concerning the freezing of funds and other financial resources in the context of combating terrorist financing (Article 5, Regulation 14/2002/CM/WAEMU), and the various bilateral agreements concluded in the area of cooperation and mutual legal assistance. In this regard, Mali has concluded the following bilateral agreements:

838. a. Convention on cooperation in legal matters with the Democratic Republic of Algeria, signed in Bamako on January 28, 1983;

- b. General convention on cooperation in legal matters with Burkina Faso, signed in Bamako on November 23, 1963;
- c. General convention on cooperation in legal matters with the Republic of Cameroon, signed in Bamako on May 6, 1964;
- d. General convention on cooperation in legal matters with the Republic of Côte d'Ivoire, signed in Bamako on November 11, 1964;
- e. General convention on cooperation in legal matters with the Republic of Ghana, signed in Bamako on August 31, 1977;
- f. General convention on cooperation in legal matters with the Republic of Guinea, signed in Bamako on May 20, 1964;
- g. General convention on cooperation in legal matters with the Islamic Republic of Mauritania, signed in Bamako on March 1, 2002;
- h. General convention on cooperation in legal matters with the Republic of Niger, signed in Niamey on April 22, 1964;
- j. General convention on cooperation in legal matters with the Republic of Senegal, signed in Dakar on April 8, 1965;
- k. Convention on mutual legal assistance with the Republic of Tunisia, signed in Bamako on March 9, 1965;
- l. Agreement on cooperation in legal matters with the French Republic, signed in Bamako on November 29, 1962;
- m. Convention on mutual legal assistance in civil, family, and criminal matters with the Russian Federation, signed in Moscow on August 31, 2002.

Range of AML/CFT mutual legal assistance (c. 36.1) – Applying the powers of competent authorities (applying R.28, c.36.6, and c.36.8)

839. AML Law 06-066 provides for a full range of mutual legal assistance that may be provided in the context of money laundering investigations and prosecutions and defines the applicable procedures. The law is primarily aimed at cooperation between WAEMU member countries, but the measures provided for under the law can also be taken on behalf of a nonmember country on the basis of a reciprocity agreement. According to Article 53, mutual legal assistance may involve:

- a. gathering testimony or depositions;
- b. providing assistance to make detained or other persons available to the judicial authorities of the requesting country for the purpose of testimony, or assistance in conducting the investigation;
- c. handing over legal documents;
- d. carrying out searches and seizures;
- e. inspecting objects and places;
- f. providing information and exhibits;
- g. providing the originals or conformed copies of relevant files and documents, including bank statements, accounting records, and Register of Trade extracts.

840. Article 54 provides that a request for mutual legal assistance must be made in writing and specifies the documents that it must contain. The applicable procedure in regard to protective measures (such as searches and seizures) and confiscation that

may be carried out at the request of foreign authorities is stipulated earlier in Article 52 and in Articles 62-64 of the law. The competent authorities informed the mission that they are able to provide mutual assistance in a timely and constructive manner. However, the mission was unable to confirm this opinion due to the absence of practical information and statistics on mutual legal assistance.

841. Mutual legal assistance cannot be granted within the context of combating terrorist financing because the latter has not been criminalized in Malian law.

Mutual legal assistance not made subject to unreasonable, disproportionate, or unduly restrictive conditions (c. 36.2)

842. AML Law 06-066 sets out the grounds for refusing a request for mutual assistance in money laundering matters (Article 55). Such a request may be refused only if:

- it does not come from a competent authority under the laws of the requesting country or is not submitted properly;
- execution of the request is likely to undermine law and order, sovereignty, security, or the underlying principles of Malian law;
- the facts to which it refers are the subject of criminal proceedings in Mali or have already been addressed by a final decision in the country;
- the requested measures, or any other measures having analogous effects, are not authorized or are not applicable to the offense cited in the request, according to the laws in effect;
- the requested measures may not be ordered or executed because of the statute of limitations on the crime of money laundering, according to the laws in effect or the laws of the requesting country;
- the decision for which execution is requested is not enforceable under the laws in effect;
- the foreign decision was handed down under conditions that fail to provide adequate guarantees of the rights of the defendant;
- there are serious reasons to believe that the requested measures or the requested decision targets the person involved solely because of his or her race, religion, nationality, ethnic origin, political opinions, gender, or status.

843. These conditions are attached to mutual legal assistance in most countries, and are not unreasonable, disproportionate, or unduly restrictive.

Clear and efficient processes for the execution of mutual legal assistance requests (c. 36.3)

844. The system set in place by AML Law 06-066 is likely to facilitate efficient cooperation because it enables competent authorities to take a large number of measures and sets reasonable limits for a timely response.

845. However, the mission is not able to assess the real effectiveness of this system due to the absence of implementation of the provisions of AML Law 06-066.

Mutual legal assistance on fiscal matters (c. 36.4)

846. The fact that the offense leading to the request for mutual assistance may also involve fiscal matters is not one of the grounds for rejection listed in the law. The authorities confirmed that a request for mutual legal assistance may not be refused solely because it involves fiscal matters.

Mutual legal assistance notwithstanding laws that impose secrecy or confidentiality requirements (c. 36.5)

847. Article 55 of AML Law 06-066 explicitly states that professional secrecy may not be invoked as grounds for refusing to execute a mutual legal assistance request.

848. Applying the powers of competent authorities (applying R.28, c.36.6).

849. The provisions of AML Law 06-066 permit using the powers of competent authorities in money laundering investigations and prosecutions in response to a mutual legal assistance request (Articles 57-67). The investigatory measures are to be executed in accordance with the laws in effect unless the competent authority of the requesting country has requested that the procedure adhere to a specific form compatible with these laws (Article 57).

Jurisdictional conflicts (c. 36.7)

850. Article 47 of AML Law 06-066 authorizes a transfer of prosecution when the competent authority of another member country of WAEMU believes, for whatever reason, that carrying out or continuing the prosecution is likely to face major obstacles and that appropriate criminal prosecution is possible within the country. Under such circumstances, the requesting country may ask the national judicial authority to take necessary actions against the alleged perpetrator. The request for a transfer of prosecution may be accompanied by a request for protective measures, including temporary detention and seizure.

851. However, this provision does not enable the authorities to determine, in the interest of justice and in order to avoid situations of jurisdictional conflict, the most appropriate place for the alleged perpetrator to be prosecuted.

International cooperation regarding SR. V (applying c. 36.1-36.8 of R.36, c. V.1)

852. In the absence of criminalization of terrorist financing, mutual legal assistance is not possible, practically speaking, in terrorist financing cases.

Recommendation 37

Dual criminality and mutual legal assistance (c. 37.1 and 37.2)

853. AML Law 06-066 is silent on the subject of dual criminality and mutual assistance measures other than extradition. Thus, the absence of dual criminality does not appear to constitute an obstacle in this area, but this could not be factually confirmed.

854. On the other hand, AML Law 06-066 explicitly states that an extradition request may not be granted in the absence of dual criminality. A mutual legal assistance request is also subject to the condition of reciprocity and is applicable only when the laws of the requesting country require that said country follow up on requests of a similar nature from the competent authority of another country (Articles 53 and 71 of AML Law 06-066).

855. According to the authorities, potential differences in the definition of the predicate offense do not constitute an obstacle to the execution of a mutual assistance or extradition request and there are no additional obstacles of a legal or practical nature to the granting of mutual legal assistance, including extradition.

856.

Special Recommendation V

International cooperation regarding SR. V (applying c. 37.1 and 37.2 of R.37, c. V.2)

857. In the absence of criminalization of terrorist financing, mutual legal assistance is not possible, practically speaking, in terrorist financing cases.

Recommendation 38

Mutual legal assistance requests from foreign countries related to provisional measures or confiscation (c. 38.1, c. 38.2, and c. 38.6)

858. Mutual legal assistance related to the identification, freezing, seizure, or confiscation of assets linked to a money laundering offense is governed by Articles 62-67 of AML Law 06-066. The competent authorities in investigations and prosecutions of money laundering and predicate offenses are authorized to execute mutual legal assistance requests that have as their purpose the execution of search and seizure actions in order to gather exhibits (Articles 53, 62, and 63). The mutual legal assistance request must satisfy the same conditions required by Article 54 of AML Law 06-066 (described under Recommendation 36 above). Article 36 of AML Law 06-066 authorizes the examining magistrate to order, in the context of an investigation initiated by the Malian authorities, protective measures or confiscation of all assets linked to the offense, as well as the freezing of any sums of money or financial transactions involving said assets. However, Article 64 limits the scope of the protective measures that can be ordered at the request of another country to the "proceeds of the crime." Thus, within the framework of mutual legal assistance, protective measures may not be taken against other assets, such as the instruments used or intended to be used in committing the money laundering offense or any of the predicate offenses.

859. With respect to confiscation, the request must target an asset that represents the proceeds or instrument of one of the offenses covered by the law and that is located within the country or that corresponds to the obligation to pay a sum of money equivalent to the value of this asset (Article 63).

860. The law (and particularly Article 62) protects legally established rights over such assets on behalf of third parties acting in good faith. This principle applies to money laundering offenses and also to the predicate offenses.

861.

862. There is no mechanism for coordination with other countries to facilitate seizure and confiscation actions.

863. In practice, cooperation in combating terrorist financing is nonexistent. The instruments adopted by WAEMU pursuant to the United Nations Resolutions for combating terrorism and terrorist financing should permit mutual legal assistance in freezing, seizing, or confiscating assets or proceeds linked to terrorist financing or instruments used or intended to be used in committing a terrorist financing offense, but, as indicated above, these instruments have not been implemented in Mali.

Coordination of seizure and confiscation actions with other countries (c. 38.3) and sharing of confiscated assets (c. 38.5)

864. AML Law 06-066 does not specifically provide for coordination between the authorities receiving a mutual assistance request and the authorities of the requesting country but, in practice, there are no obstacles to such coordination based on a reciprocity agreement.

865. There are no provisions in Malian law to permit the sharing of confiscated assets.

Funds for confiscated assets (c. 38.4)

866. The law does not provide for the establishment of a fund for seized assets into which some or all property confiscated in the context of anti-money laundering and combating terrorist financing would be deposited.

International cooperation regarding SR. V (applying c. 38.1-38.3 of R.38, c. V.3 and c. 38.4-38.6 of R. 38, c. V.7)

867. The absence of criminalization of terrorist financing makes mutual legal assistance impossible in terrorist financing cases.

Statistics (applying R. 32)

868. It was not possible to obtain information on the number of mutual legal assistance requests (other than extradition) received in the context of anti-money laundering or combating terrorist financing (or even other crimes).

869. The mission was informed that there were 20 requests for extradition in 2007. In 2008, 327 requests have been received and 129 sent. The mission was unable to confirm these figures, nor even to determine whether they relate to money laundering offenses.

Recommendations and Comments

870. Criminalize terrorist financing and authorize the freezing, seizure, and confiscation of assets or instruments related to terrorist financing.

871. Expand the provisions pertaining to protective measures in order to authorize the freezing and seizure of all property linked to money laundering and predicate offenses, including the instruments used or intended to be used in committing these offenses.

872. Consider establishing a fund into which some or all confiscated property could be deposited and later used by the criminal authorities or for other purposes such as health and education improvements.

873. Consider the possibility of sharing confiscated assets between competent authorities.

874. Develop statistics on mutual legal assistance requests, the responses given, and actions taken.

875. Consider creating and implementing a mechanism that will enable the authorities to determine, in the interest of justice and to avoid jurisdictional conflicts, the most appropriate place for alleged perpetrators to be prosecuted.

876. Set up a mechanism for the coordination of seizure and confiscation actions.

Compliance with Recommendations 32, 36, and 38 and Special Recommendation V

	Rating	Summary of factors underlying the rating
R.36	NC	• Mutual legal assistance cannot be carried out in terrorist financing cases due to the absence of criminalization of same in Malian law. • Absence of concrete mutual assistance requests and impossibility of confirming the number of extradition requests in order to determine, from a practical standpoint, the effectiveness of the Malian system in this area. • Absence of a mechanism for the coordination of seizure and confiscation actions. • The authorities have not considered a mechanism to determine the place of prosecution in the event of jurisdictional conflicts. • Absence of statistics necessary for assessing the mutual assistance system.
R.37	PC	• It is not clear whether dual criminality is a prerequisite for a request for mutual legal assistance.
R.38	PC	• Protective measures cannot be taken at the request of a third country based on the instruments used or intended to be used in committing money laundering offense, a predicate offense, or a terrorist financing offense. • The sharing of confiscated assets with other countries has not been considered.
SR.V	NC	• In the absence of criminalization of terrorist financing, mutual legal assistance cannot be given in terrorist financing cases.
R.32	NC	• The Malian authorities do not keep statistics on mutual assistance requests received and the responses given.

EXTRADITION (R.32, 37, AND 39 AND SR.V)

Description and Analysis

Legal framework

877. Money laundering is one of the crimes that may result in extradition. Articles 71-75 of AML Law 06-066 define the conditions and effects of the extradition process.

878. Extradition is not possible in terrorist financing cases.

Recommendation 37

Dual criminality and mutual legal assistance (c. 37.1 and 37.2)

879. Based on Article 71 of AML Law 06-066, an extradition request cannot be granted in the absence of dual criminality. The mission was informed that there are no additional practical obstacles to granting a mutual legal assistance request. The technical differences in the definition of predicate offense in particular do not appear to pose an obstacle to the execution of an extradition request.

Recommendation 39

Money laundering as an extraditable offense (c. 39.1)

880. Article 71 of AML Law 06-066 stipulates that money laundering is an extraditable offense.

881. Articles 71-75 of the abovementioned law and the general provisions of the CPP determine the rules and conditions governing extradition. The extradition request must be addressed to the competent Public Prosecutor, who informs the Minister of Justice of same (Article 72 of AML Law 06-066). The request must be accompanied by original documents attesting to an enforceable sentence, or else an arrest warrant issued in the form required under the laws of the requesting country and providing a precise indication of the time, place, and circumstances of the facts constituting the offense and their classification, as well as a certified copy indicating the sentence incurred (Article 72). According to the Malian authorities, the request is submitted to the court of criminal appeal, accompanied by all documents needed to review the case (CPP Article 242). Once the judicial phase has been completed, it remains to the government, through the Council of Ministers, to rule on the request. If the request is granted, the Minister of Justice submits for the Prime Minister's signature a decree authorizing the extradition (CPP Article 248).

882. International arrest warrants are executed by BCN-Interpol of Mali.

883. The extradition request may be met by a request for additional information if the information provided by the requesting country turns out to be insufficient (Article 73).

884. In an urgent situation, AML Law 06-066 states that the requesting country may request that the wanted person be taken into preventive custody until such time as an extradition request is presented (Article 74). The preventive custody request must indicate the existence of the documents mentioned in Article 72 and state the intention to send an extradition request, the offense for which the preventive custody request is being made, the circumstances of the offense, and the sentence that could be incurred or that has been handed down. Preventive custody expires if the competent Malian authority is not notified of the extradition request or does not receive the required documents within 20 days.

885. Based on Article 71 of said law, the following persons may be extradited:

i. persons wanted within the country for offenses covered by this same law, regardless of the length of the sentence incurred;

ii. persons who, for offenses covered by this same law, have been sentenced by the courts of the requesting country, without it being necessary to take into account the sentence handed down.

886. Mali has also ratified the ECOWAS Convention on extradition. Since no copy of the Convention was provided, the mission was unable to assess its provisions' compliance with standards, nor its implementation in Mali.

Extradition of its own nationals by a country (c.39.2(a))

887. According to the authorities, the extradition of a Malian national is not authorized in Malian common law.

888.

Cooperation in criminal prosecutions of its own nationals (c. 39.2(b), c. 39.3)

889. However, the impossibility for Mali to extradite its own nationals does not exclude the possibility for the competent authorities to undertake criminal prosecutions for the offenses mentioned in the extradition request. This possibility is then subject to the regular provisions of the CPP. No additional information was provided by the competent authorities.

890. AML Law 06-066 does not lay out the possibility for countries involved in the extradition process to cooperate on matters related to investigation and prosecution, and no additional information on this subject was provided by the authorities.

Effectiveness of extradition procedures (c. 39.4)

891. The mission was unable to perform an analysis of the effectiveness of the extradition procedures due to the absence of specific information on the number of requests received and the amount of time it took for them to be executed.

Additional element – Existence of simplified extradition procedures (c. 39.5)

892. Article 72 of AML Law 06-066 lays out a simplified procedure by which extradition requests are sent directly to the public prosecutor. Nevertheless, according to the authorities, Article 72 adds to the general provisions of the CPP. In the absence of practical information, it was not however possible for the mission to confirm the effectiveness and speed of this procedure which is based on the provisions of both these instruments.

Additional element regarding SR V (applying c. 39.5 of R. 39, c. V.8)

893. Extradition for terrorist financing is impossible because of the absence of criminalization of terrorist financing and the requirement of dual criminality.

Statistics (applying R. 32)

894. No statistics were provided.

Recommendations and Comments

895. Clarify whether the provisions of the CPP are supplanted by AML Law 06-066.

896. Provide clear rules to ensure that, at the request of a foreign country, Mali can prosecute its own nationals whom it cannot extradite because of their nationality.

897. Compile statistics on extradition requests received and the responses given (to permit assessment of the effectiveness of mutual legal assistance and extradition mechanisms).

898. Criminalize terrorist financing to permit mutual legal assistance and extradition in terrorist financing cases.

Compliance with Recommendations 32, 37, and 39 and Special Recommendation V

	Rating	Summary of factors underlying the rating
R.37	PC	In the absence of statistics, the effectiveness of the mechanism cannot be measured.
R.39	NC	Absence of provisions to permit the countries involved in the extradition process to cooperate on matters related to investigation and prosecution in order to ensure the effectiveness of the prosecution. Clarify whether the provisions of the CPP supplant those of Law 06-2006. Absence of information and statistics to permit analysis of the existence of appropriate measures or procedures for the timely processing of extradition requests.
SR.V	NC	In the absence of criminalization of terrorist financing, extradition for such actions is not possible.

OTHER FORMS OF INTERNATIONAL COOPERATION (R.32 AND 40 AND SR.V & R.32)

Description and Analysis

Recommendation 40

Range of international cooperation mechanisms (c. 40.1)

1-Cooperation between criminal prosecution authorities

899. The Malian authorities competent in criminal investigations and prosecutions are able to cooperate with their foreign counterparts through the national Interpol office (BCN-Interpol) and the sub-regional organizations of criminal investigation departments. BCN-Interpol in Bamako works in close collaboration with the secretariat of the International Criminal Police Organization (ICPO) and other national offices to carry out its mission of assisting the police, the *gendarmerie*, customs, and all government agencies involved in the fight against transnational organized crime, including money laundering, and to transmit

intelligence to or from foreign countries through the Interpol I-24/7 communication system. Cooperation between WAEMU countries through BCN-Interpol involves both the sharing of information and assistance in conducting investigations. Customs departments collaborate with their counterparts in WAEMU countries through the Customs Enforcement Network (CEN).

900. At the operational level, the authorities confirmed that it is possible, with no formal mechanism, for the police departments of these countries to share information directly through the Interpol office. The heads of state of ECOWAS have decided that the national central Interpol offices of each country will provide liaison between the different departments of member countries. However, the mission did not receive any statistics or other relevant information in this regard.

901. Agreements such as the agreement for cooperation in Criminal Police Matters in ECOWAS countries and the cooperation agreement between ECOWAS and the International Criminal Police Organization ICPO-INTERPOL provide for statutory meetings between the police chiefs of these countries to discuss crime at the national and regional levels. Pursuant to these agreements, the Malian police is authorized to conduct criminal investigations on behalf of its counterparts.

902. A framework for cross-border cooperation exists between Mali and neighboring countries such as Burkina Faso and Senegal for crime-fighting purposes and to ensure border security. This mechanism makes it possible to provide a rapid alert to these countries in the event of a threat of terrorist activity.

903. Mali participates, under the aegis of the United States, in the Trans-Saharan Counter-Terrorism Initiative, a 12-country mechanism designed to facilitate information-sharing and cooperation between these countries in regard to terrorist financing, and thus support the efforts of government agencies with the goal of preventing terrorist bases from taking hold in Africa.

904. An agreement for cooperation in criminal police matters between member countries of ECOWAS was signed by the heads of state in Accra on December 19, 2003.

905. To ensure better cross-border cooperation at the ECOWAS level, a criminal investigation bureau was established pursuant to the Protocol, signed in Lomé on December 10, 1999, relating to mechanisms for conflict prevention, management, and resolution and the maintenance of peace and security.

906. According to the authorities, there is a satisfactory level of cooperation between criminal investigation departments of WAEMU member countries in investigating and prosecuting criminal offenses in general. However, the assessors were unable to confirm this because of the absence of specific cases of cooperation. In practice, cooperation and information sharing between departments involved in prosecuting money laundering appear to be limited due to the fact that Mali has not implemented the anti-money laundering system.

2 - Information sharing between FIUs

907. AML Law 06-066 allows Mali's CENTIF to share information with foreign financial intelligence units on the condition of reciprocity and analogous requirements in regard to professional secrecy. However, since CENTIF is not yet operational, such information sharing has not yet occurred.

3- Cooperation between supervisors

908. The status of cooperation between the supervisory authorities of the financial system (banks, insurance, and stock market) is discussed below:

909. **Banking sector**. In this area, there are two different levels to consider – first, intra-community cooperation within WAEMU; and second, international cooperation. A convention for cooperation and information sharing was concluded in June 2002 between BC-WAEMU and the Regional Council (CREPMF), the latter of which has, moreover, the governor of BCEAO as one of its members. According to BC officials, implementation of this convention has permitted experience sharing, informational travel, and bilateral meetings between the two institutions. The Regional Council, a WAEMU body, reports to the Council of Ministers of the Union.[128] The governor of the Central Bank also participates in CIMA, a regional body charged with oversight of insurance organizations. With respect to the supervision of decentralized financial systems, the framework law regulating mutual institutions and savings and loan cooperatives in WAEMU, adopted in 1993, stipulates under Title V the possibility of sharing information, specifically with the Banking Commission. Based on the information gathered by the mission, these cooperation conventions have not had any concrete effects in regard to anti-money laundering activity.

910. With respect to relationships with oversight authorities foreign to the Union, Article 35 of the convention states that BC-WAEMU may transmit information concerning banks and financial institutions in particular to competent authorities responsible for oversight of similar institutions in other countries, subject to reciprocity and on the condition that said authorities are

128 Source: Assessment report of compliance with Basel Core Principles and bank soundness, World Bank, 2007.

themselves bound by professional secrecy. Within this framework, a convention for cooperation and information sharing was signed with the French Banking Commission on September 19, 2000 and with the Central Bank of the Republic of Guinea on July 18, 2003. A similar convention was concluded in July 2007 with the Central African Banking Commission (COBAC). Draft conventions for cooperation also exist with the Central Banks of Morocco, Nigeria, and Rwanda.[129] Here again, the cooperative relationships that have been put together at the international level have not explicitly addressed AML activity.

911. **Stock market sector**: Based on the statutes pertaining to the structure, operations, and oversight of financial markets, the Regional Council may conclude reciprocal assistance and cooperation agreements with organizations responsible for supervision and oversight of foreign savings and financial markets (Article 27). When investigations are undertaken at the request of foreign authorities pursuant to the existence of an international cooperation agreement, it is not up to the Regional Council to assess whether the facts presented in support of such requests constitute a violation of applicable laws and regulations within the Union. Based on the information gathered at CREPMF, no cooperation convention has to date been signed that could result in sharing information for AML purposes.

912. **Insurance sector**: For this particular sector, the mission has no data concerning cooperation.

Rapid, constructive, and effective assistance (c. 40.1.1)

913. The competent authorities for criminal investigations and prosecutions indicated that they are in direct contact with the police authorities of the sub-region and that cooperation with their counterparts in the sub-region is constructive, spontaneous, rapid, and effective.

914. The system of cross-border cooperation between Mali and neighboring countries (for crime-fighting and border security purposes) makes it possible to provide a rapid alert to these countries in the event of a threat of terrorist activity. Under this system, periodic meetings are held for government and ministry officials of the region. According to the authorities, officers of security agencies may share intelligence on criminal activities through rapid means of communication. However, it was not possible for the mission to obtain practical information to confirm this cooperation and its specific implementation in the absence of criminalization of terrorist financing in Mali.

Clear and effective mechanisms to facilitate exchanges of information between counterparts (c. 40.2)

915. Exchanges of information between officials of the Malian security agencies and their foreign counterparts are made possible by the Interpol I-24/7 rapid communication system.

916. Also, Mali has concluded bilateral cooperation agreements, encompassing among other matters the sharing of information between police and other investigatory authorities, with a number of countries: Republic of Algeria, Burkina Faso, Cameroon, Republic of Cote d'Ivoire, Ghana, Republic of Guinea, Islamic Republic of Mauritania, Republic of Niger, Republic of Senegal, Republic of Tunisia, French Republic, and Russian Federation.

917. The national central offices of Interpol in the member States of ECOWAS provide liaison between the different agencies of the contracting parties. These offices hold annual meetings at which they assess the level of crime and the status of cooperation between competent agencies.

Spontaneous exchanges of information (c. 40.3)

918. The ECOWAS Agreement does not specifically provide for the possibility of spontaneous exchanges of information. In addition, no information was provided regarding spontaneous exchanges of information with countries outside of ECOWAS.

Inquiries conducted on behalf of foreign counterparts (c. 40.4)

919. Based on the ECOWAS Agreement, security agencies may conduct ongoing or targeted joint operations to fight transnational crime. Such cooperation permits searching for individuals involved in a crime, as well as for property or objects linked to the crime, inside the country of one or another of the parties. However, it applies only between ECOWAS member States, and no information was provided concerning cooperation with other countries.

Inquiries by the FIU on behalf of foreign counterparts (c. 40.4.1)

129 In addition, the Banking Commission is a member of several groups of banking supervisors (Group of Francophone Banking Supervisors, Committee of West and Central African Banking Supervisors, International Liaison Group, etc.).

920. Mali's CENTIF is authorized to reach agreements with an intelligence agency of a third country on the condition of prior authorization by the Minister of Finance (Article 24 of Law 06-066). In the context of an inquiry, it may provide any and all information and data relevant to an investigation undertaken pursuant to a statement of suspicion at the national level, to the CENTIF of a WAEMU member country. However, in practice, there have been no such exchanges to date. AML Law 06-066 does not provide for the possibility of CENTIF conducting inquiries on behalf of counterparts.

Investigations by law enforcement authorities on behalf of foreign counterparts (c. 40.5)

921. The authorities indicated that Malian criminal investigation departments are authorized to conduct investigations on behalf of foreign counterparts and to accept and facilitate investigatory missions on criminal matters within the country. Travel by officers of security agencies is possible through BCN-Interpol channels provided that authorization is first obtained from the Malian authorities.

922. However, the absence of any specific cases makes it impossible to verify the effectiveness of such opportunities.

923. Absence of disproportionate or unduly restrictive conditions on exchanges of information (c. 40.6).

924. According to the authorities, exchanges of information between law enforcement agencies are not subject to disproportionate or restrictive conditions. In the absence of information, it was not possible for the mission to confirm this statement.

Cooperation also involving fiscal matters (c. 40.7)

925. The competent authorities indicated that requests for cooperation are not refused solely because the requests involve fiscal matters. In addition, Malian law does not contain any provisions that would permit a refusal to cooperate for this sole reason.

Cooperation notwithstanding the existence of laws that impose secrecy or confidentiality requirements (c. 40.8)

926. Professional secrecy may not be invoked as grounds for refusing to execute a request for cooperation between competent AML/CFT authorities, including mutual legal assistance (Article 55 of AML Law 06-066). It was not possible to confirm whether these rules apply to other forms of cooperation besides legal assistance.

Controls and safeguards concerning the use of information (c. 40.9)

927. The mission was informed that information is exchanged subject to confidentiality requirements and is exclusively to be used for authorized purposes. The information must be sent by secure, legal means of communication. The competent authority is required to maintain secrecy regarding all requests for cooperation, their content, and the documentary evidence provided, as well as the very fact of mutual assistance (Article 56 of AML Law 06-066). The authorities confirmed that this rule for legal cooperation also applies to other forms of cooperation.

Additional element – Exchanges with non-counterpart authorities (c. 40.10 and 40.10.1)

928. The Malian authorities are not authorized to exchange information with non-counterpart authorities.

Additional element – Transfer of information to the FIU from other competent authorities at the request of a foreign FIU (c. 40.11)

929. International cooperation concerning SR. V (applying c. 40.1-40.10 of R.40, c. V.5, and c. V.9).

930. The authorities indicated that cooperation on terrorist financing is possible between the general intelligence agency, national security, and law enforcement intelligence agencies in the context of bilateral agreements such as the Trans-Saharan Counter-Terrorism Initiative.

Statistics (applying R. 32)

931. There are no statistics on international cooperation.

Recommendations and Comments

932. Mali's authorities may wish to consider the following:

-Strengthen the mechanisms for cooperation on AML/CFT matters between competent authorities and their foreign counterparts.

-Allow the CENTIF to perform inquiries of behalf of foreign FIUs;

-Adopt the law on CFT in order to promote internation cooperation on CFT;

-Set in place a system for collecting information concerning international cooperation on AML/CFT matters besides legal assistance.

-Reinforece oversight and safeguard mechanisms in the area of exchange of information and mutual assistance requests.

Compliance with Recommendation 40 and Special Recommendation V

	Rating	Summary of factors underlying the rating
R40	NC	• Lack of cooperation between competent authorities and their foreign counterparts • Absence of information needed to assess the effectiveness of exchanges of information with foreign counterparts • Insufficient controls and safeguards concerning the use of mutual assistance requests • Impossibility for CENTIF to conduct inquiries on behalf of its foreign counterparts
SR V	NC	• The absence of criminalization of terrorist financing makes other forms of cooperation impossible

OTHER ISSUES

RESOURCES AND STATISTICS

7.1.1- Resources

Conformity with Recommendation 30

	Note	Summary of the factors justifying the notation allotted

R30	**NC**	• Absence of measures intended to guarantee the integrity of the personnel of CENTIF • Absence of resources and lack of training for the authorities in charge of investigations, law enforcement authorities and other competent authorities • The means allocated to the organizations of control and supervision is insufficient. Lack of training in all sectors.

7.1.2- Statistics

Conformity with Recommendation 30

	Note	Summary of the factors justifying the notation allotted
R32	**NC**	• No money laundering cases have been handled in Mali; no device for collection of relevant information has been put in place. • The financing of terrorism is not for the time being a criminal violation; no device for collection of relevant information is currently in place. • Absence of statistics relating to the activities of the CENTIF, because of its non-operationality • With regards declaration or cross border communication, Mali could not quantify the entries and regular outflows of capital, and only has statistics for the amount on violation. • There is no device in place to collect important statistics related to suspicious declarations and other declarations • Absence of statistics on the number of sanctions handed down by the BC that involve, at least in part, breaches of AML standards • Absence of statistics on mutual legal assistance and extradition
		• There are no statistics on international cooperation.

7.2 OTHER MESURES AND RELEVANT SUBJECTS OF AML/CFT

TABLES

Table 1: Ratings of Compliance with the FATF Recommendations

Table 2: Recommended Action Plan for Improving the AML/CFT System

Table 3: Response of the Malian Authorities to the Assessment

Table 4: Comments from the BCEAO

TABLE 1. RATINGS OF COMPLIANCE WITH THE FATF RECOMMENDATIONS

C: Compliant

NC: Noncompliant

LC: Largely compliant

PC: Partially compliant

Forty Recommendations	**Rating**	**Summary of factors underlying rating**
Legal systems		
• 1. Money laundering offense	PC	-Absence of implementation of AML Law 06-066
• 2. Mental element and corporate liability	LC	-The legal provisions relating to money laundering are consistent with FATF recommendations -Absence of implementation of Law 06-066
• 3. Confiscation and provisional measures	NC	-The Malian mechanism set in place by Law 06-066 in regard to freezing, seizure, and confiscation is consistent with international AML standards; however, the absence of implementation of the law makes it impossible for the mission to assess its practical effectiveness -Absence of criminalization of terrorist financing
Preventive measures		
• 4. Professional secrecy laws	LC	-Absence of provisions to guarantee that professional secrecy does not hinder the exchange of information between financial institutions when

		it is required
• 5. Customer due diligence	NC	-Overly lenient identification requirements, especially for beneficial owners -Absence of a requirement to obtain information on the purpose and nature of the relationship -Absence of a due diligence requirement -Absence of requirements covering existing customers -Limited implementation by the banking sector and absence of implementation by other financial institutions; overly lenient identification requirements, especially for beneficial owners -Absence of a requirement to obtain information on the purpose and nature of the relationship -Absence of a due diligence requirement -Absence of an enhanced diligence requirement -Absence of requirements covering existing customers -Limited implementation by the banking sector and absence of implementation by other financial institutions
• 6. Politically exposed persons	NC	-Absence of PEP requirements.
• 7. Correspondent banking	NC	-Absence of requirements relating to correspondent banking.
• 8. New technologies and non face-to-face business	NC	-Incomplete and unclear requirements -Absence of implementation
• 9. Third parties and intermediaries	NC	-Associations are not subject to any specific measures to ensure that they are not misused for terrorist financing purposes
• 10. Record keeping	PC	-Type of records to be kept needs to be clarified
• 11. Unusual transactions	PC	- Overly restrictive definition of the transactions covered (threshold of CFAF 10 million and no

		mention of types of unusual transactions) - Absence of implementation by financial institutions other than banks and very uneven implementation in the banking sector;
• 12. Designated non-financial businesses and professions– R.5, 6, 8-11	NC	-Threshold for triggering casino requirements set too low -Absence of threshold for triggering due diligence by traders of precious metals -Absence of trust and company service providers in the list of persons covered by the law -Absence of diligence mechanism for politically exposed persons
• 13. Suspicious transaction reporting	NC	-Unclear reporting requirements and general unawareness of same by persons covered by the law -Existence of two competing and mutually inconsistent reporting mechanisms -Absence of implementation.
• 14. Protection of informants and no tipping-off	NC	-Overly restrictive protection of the confidentiality of information provided to CENTIF -Incomplete range of the confidentiality of information provided to CENTIF
• 15. Internal controls, compliance, and auditing	PC	-Absence of sectoral mechanism apart from the banking system -Absence of actual implementation of internal controls for the prevention of money laundering
• 16. Designated non-financial businesses and professions – R.13-15 & 21	NC	-Absence of internal controls for the prevention of money laundering -Absence of special attention to countries that do not adequately apply FATF recommendations
• 17. Sanctions	NC	-The sanctions provided by the banking law and the statutes applicable to financial markets are not dissuasive because they do not call for financial penalties. -The nature and scope of the sanctions applicable to DFIs are not clearly defined.

		-There is a conflict of interest within BC-WAEMU due to the presence in its midst of representatives of BCEAO and member states, who happen to be, at the same time, shareholders in banks.
• 18. Shell banks	NC	-Absence of a ban on forming or maintaining a correspondent banking relationship with a shell bank -Absence of a requirement to ascertain that financial institutions which are part of their foreign clientele do not authorize shell banks to use their accounts
• 19. Other forms of reporting	NC	-Absence of a feasibility study for a cash transaction reporting system.
• 20. Other non-financial businesses and professions and modern transaction techniques	NC	-Absence of a money laundering risk analysis in non-designated non-financial businesses and professions -Absence of measures taken to encourage the development of modern and secure transaction techniques
• 21. Special attention for higher-risk countries	NC	-Absence of provisions relating to countries that do not apply, or do not adequately apply, FATF recommendations. Absence of provisions relating to countries that do not apply, or do not adequately apply, FATF recommendations.
• 22. Foreign branches and subsidiaries	NC	-Absence of requirements for the non-bank financial sector -Absence of a requirement to report to the banking supervisor in the case of credit institutions
• 23. Regulation, supervision, and monitoring	NC	-Agencies that send funds are not subject to any formalities to authorize their operations, nor to enhanced supervision. -The rules for monitoring the criteria of competence and integrity of DFI directors are not clearly established. -There are no specific procedures for verifying the lawful origin of capital brought forward to create a bank or any other financial organization such as a DFI, an SGP, an SGI, or an insurance company.

• 24. Designated non-financial businesses and professions – regulation, supervision, and monitoring	NC	-Absence of casino surveillance for AML purposes -Absence of a system to monitor and control compliance with AML requirements by other DNFBPs
• 25. Guidelines	NC	-Absence of guidelines, apart from a BCEAO directive that contains few details. There are no AML guidelines for the insurance and financial markets sectors. -BCEAO Directive 01-2007 of July 2, 2007 has not been fully disseminated. -The BCEAO directive contains inaccuracies and does not provide all necessary elements of information for financial organizations to be able to implement and meet their AML obligations. -In the absence of CENTIF, there are no AML directives other than the BCEAO directive, which is manifestly inadequate, particularly in regard to reporting requirements.
Other institutional measures		
• 26. Financial Intelligence Unit	NC	-Absence of an operational CENTIF and, more specifically: -Absence of appointment of CENTIF members -Absence of development of a model statement of suspicion and advice for persons subject to the law -Absence of a network of correspondents within relevant departments -Absence of published reports -Absence of powers relating to terrorist financing, which is not criminalized under Malian law
• 27. Law enforcement authorities	PC	-Absence of criminalization of terrorist financing -Absence of statistics on investigations and prosecutions -Total lack of training on money laundering -Absence of implementation
• 28. Powers of competent authorities	PC	-Absence of implementation of necessary prerogatives in regard to investigations of money

		laundering/terrorist financing offenses or predicate offenses
• 29. Supervisors	NC	-The AML controls performed by BC-WAEMU in banks are insufficient and do not conform with the international standards on AML. -DFI supervision is deficient and does not focus on compliance with AML standards. -Insurance company supervision suffers from a number of weaknesses and does not address money laundering.
• 30. Resources, integrity, and training	NC	-The resources allocated to oversight and supervisory bodies are insufficient -A lack of training pervades all sectors -Absence of measures aimed at ensuring the integrity of CENTIF staff
• 31. National cooperation	NC	-Absence of internal coordination and cooperation -No mechanism for cooperation and coordination
• 32. Statistics	NC	-Absence of statistics on mutual legal assistance and extradition -Absence of statistics on the number of sanctions handed down by the BC that involve, at least in part, breaches of AML standards -No money laundering or terrorist financing cases have been handled by Malian law enforcement authorities
• 33. Legal persons – beneficial ownership	NC	The very substantial role of the informal economy makes it impossible to obtain adequate, relevant, and up-to-date information on all economic operators
• 34. Specific legal arrangements – beneficial ownership	N/A	
International cooperation		
• 35. Conventions	PC	-Absence of full transposition of the provisions of the Vienna and Palermo Conventions -Lack of compliance with the provisions of these

		conventions
• 36. Mutual legal assistance	NC	• Mutual legal assistance cannot be given in terrorist financing cases • Absence of specific mutual assistance requests makes it impossible to assess the practical effectiveness of the Djibouti mechanism in this area
• 37. Dual criminality	PC	• Lift the requirement of dual criminality
• 38. Mutual legal assistance on confiscation and freezing	PC	• Inconsistencies in the provisions on protective measures • Law on AML does not provide for the sharing of confiscated property with other countries
• 39. Extradition	PC	Absence of statistics on extradition requests
• 40. Other forms of cooperation	NC	• Absence of cooperation between all competent authorities and their foreign counterparts • Absence of information needed to assess the effectiveness of exchanges of information with foreign counterparts • Insufficient controls and safeguards concerning the use of mutual assistance requests • Impossibility for CENTIF to conduct inquiries on behalf of its foreign counterparts
Nine Special Recommendations		
SR.I Implement UN instruments	PC	-Absence of implementation of UN resolutions on terrorist financing
SR.II Criminalize terrorist financing	NC	-The mechanism for freezing funds instituted by Rule 14/2002 under R. 1267 and 1373 is very incomplete. -Mali has not yet transposed the CFT Directive.
SR.III Freeze and confiscate terrorist assets	NC	-The mechanism for freezing funds instituted by Rule 14/2002 under R. 1267 and 1373 is very incomplete.

SR.IV Suspicious transaction reporting	NC	-Absence of a requirement to report transactions related to terrorist financing.
SR.V International cooperation	NC	• In the absence of criminalization of terrorist financing, mutual legal assistance is not possible in terrorist financing cases.
SR.VI AML/CFT requirements for money/value transfer services	NC	-Absence of a competent authority charged with issuing authorizations to provide money/value transfer services -Absence of oversight of the activities of money/value transfer services -Absence of a list of agents
SR.VII Wire transfer rules	NC	- Absence of requirements relating to wire transfers.
SR.VIII Nonprofit organizations	NC	• Associations are not subject to any specific measures designed to ensure that they are not being misused for purposes of terrorist financing.
SR. IX Declaration or Cross Border Communication	NC	-Absence of a reporting or communication system -Absence of communication arrangements between customs, police, and CENTIF for information gathered when funds are seized -Disproportionate sanctions for violations of the rules on physical transportation of currency -Absence of a system for the exchange of information on unusual transportation of gold, precious metals, or precious stones -Absence of a computerized system to retain information on the physical transportation of currency

TABLE 2: RECOMMENDED ACTION PLAN FOR IMPROVING THE AML/CFT SYSTEM

40 + 9 FATF Recommendations	Principal recommendations
Legal system and institutional measures	
Scope of enforcement of the money laundering offense (R 1, R 2)	• Mali is urged to criminalize terrorism and its financing as soon as possible, as well as the illegal traffic of migrants. • AML Law 06-066 should be amended in order to specify

	that the money laundering offense applies to property that indirectly represents proceeds of the crime. • The Malian authorities are urged to implement statistical tools for issues relating to the effectiveness and proper functioning of anti-money laundering mechanisms.
Criminalization of terrorist financing (SR II)	• Take without delay all appropriate steps to transpose the CFT Directive. • Transpose into Malian law the nine conventions appended to the convention on the suppression of terrorist financing and, specifically, criminalize the terrorist acts covered by these conventions and impose the corresponding penalties. The Malian law transposing the CFT Directive should: a. define the terms "terrorist organization" and "terrorist"; b. adopt a definition of "funds" that is consistent with the convention on terrorist financing, i.e. inclusive of property of all types, both movable property and real estate; c. criminalize attempts to finance terrorism in line with AML Law 06-066; d. specifically stipulate that the intentionality of the terrorist financing offense may be deduced from objective factual circumstances; e. make specific mention of the possibility of parallel prosecutions, whether criminal, civil, or administrative in nature, against legal persons independent of their criminal liability in regard to terrorist financing; • call for criminal penalties for terrorist financing offenses.
Confiscation, freezing, and seizing of property of criminal origin (R3)	• Implement Law 06-066 without delay. • Transpose the terrorist financing directive without delay. • Develop a mechanism that will make it possible to know the amounts seized on money laundering grounds and how they are managed, in order to measure the effectiveness of legal actions involving seizure and confiscation and quantify the amounts involved.
Confiscation of proceeds of crime or assets used for terrorist financing (SR III)	• Apply the freezing measures stipulated under Resolutions 1267 and 1373 to the funds or other property of persons who commit or attempt to commit terrorist acts, persons who facilitate or participate in same, entities belonging to said persons or controlled, directly or indirectly, by them, and persons and entities acting on behalf or on the instructions of said persons and entities, including funds derived from property belonging to said persons, or to persons or entities associated with them or controlled, directly or indirectly, by them. • Expand the scope of the freezing measures to include all

	"funds and other property." • Expand the scope of the rule such that it applies to all actors who hold funds or other property belonging to persons or entities involved directly or indirectly in committing terrorist acts. • Develop a clear and rapid mechanism for nationwide dissemination of Sanction Committee lists. • Develop a clear and rapid procedure to examine and put into effect initiatives taken under the Resolution 1373 freezing mechanisms of other countries. • Set in place appropriate procedures to enable a person or entity whose funds or other property have been frozen to dispute this action and submit it for court review. • Include provisions designed to protect third parties acting in good faith.
Financial Intelligence Unit (R26)	Appoint by decree of the Council of Ministers the six permanent members of CENTIF, in accordance with Article 4 of Decree 07-291, and provide monthly compensation in accordance with Article 6 of Decree 07-291. Establish a model statement of suspicion by order of the Minister of Finance, in accordance with Article 26 of Law 06-066, and provide advice to the entities subject to the reporting requirement on how to file such statements. Appoint CENTIF correspondents within relevant departments, in accordance with Article 7 of the decree. Develop rules and regulations for CENTIF operations so that CENTIF can start its activities as soon as its members have been appointed. Examine the possibility of recruiting additional staff and plan accordingly for additional financial resources to ensure the functional autonomy of CENTIF. Institute a restricting mechanism to ensure the integrity of CENTIF members, modeled on the procedures followed for the Auditor General. Expand the scope of competence of CENTIF to include the offense of

	terrorist financing, once this has been criminalized under Malian law. • Seek membership for Mali in the Egmont Group, once the offense of terrorist financing has been criminalized under Malian law.
Law enforcement, prosecution, and other competent authorities (R 27, R28)	• Implementation of the 2006 law should be a priority of the competent authorities in charge of money laundering matters. • The authorities should adopt necessary instruments aimed at criminalizing terrorist financing, which should make it possible to investigate these types of offenses. • The authorities in charge of investigating and prosecuting money laundering offenses should possess specialized resources and techniques for detecting and prosecuting money laundering. • Information and statistics should be systematically collected and a national data collection mechanism should be set in place. • The various departments involved, particularly Intelligence and Criminal Investigation, should coordinate their activities relating to criminal investigations and prosecutions. • Training should be arranged for all departments involved, including magistrates, regarding the system, in order to facilitate their cooperation and coordination and improve its effectiveness.
Reporting/communication of cross-border transactions (SR IX)	• Establish either a reporting system or a communication system. • Set up communication arrangements between Customs and CENTIF to share information gathered when funds are seized. • Establish sanctions that tie the degree of punishment to evidence (or lack thereof) of the unlawful origin or intended use of the seized funds. • Establish the possibility of freezing funds belonging to persons targeted by the UN Security Council Resolutions. • Set in place a system for the exchange of information on unusual transportation of gold, precious metals, or precious stones. • Set in place a computerized system to retain information on the physical transportation of currency
Preventive measures for financial institutions	
Risk of money laundering or terrorist financing	• Mali should conduct an analysis of the various economic sectors most at risk for money laundering/terrorist financing and the most widely used money laundering

	vectors
Customer due diligence; Identification and record-keeping obligation (R. 5-8)	• Mali should expand the identification requirements, specifically toward beneficial owners. • Establish the obligation to inquire into the purpose and nature of the business relationship • Institute an obligation of permanent due diligence. • Institute an obligation of due diligence toward existing customers. • Institute an obligation of due diligence toward PEPs.
Reliance on intermediaries (R9)	• Institute clear and precise AML/CFT requirements in regard to reliance on third parties and other intermediaries.
Bank secrecy and confidentiality (R4)	• Institute provisions to guarantee that professional secrecy does not hinder the exchange of information when required.
Record-keeping and wire transfers (R10 and SR VII)	• Specify the types of records and how they are to be kept. Recommendation 10 • Stipulate that documents may be kept longer if a relevant authority so requests in connection with a specific matter and for the accomplishment of his mandate; • Stipulate that transaction documentation must be sufficient to permit the reconstitution of the various transactions in such a way as to provide, if necessary, proof in the event of criminal prosecution; • Specify that the obligation of financial institutions to conserve, for a period of ten years, documentation and documents on transactions they have carried out includes, in particular, account books and business correspondence; • Clarify the definition of 'oversight authorities' so as to ensure that only the relevant authorities have access to confidential information conserved by those subject to the law; • Require financial institutions to ensure that all documentation on customers and transactions is made available in a timely manner to the relevant national authorities for the accomplishment of their mandates; Special Recommendation VII • Require the financial institutions of instructing parties to obtain and conserve, for all transfers, the following information concerning the transfer's instructing party and to verify that this information is accurate and useful: name of the instructing party, account number of the instructing party (or unique reference number if there is no account number), and address of the instructing party (or national identity number, customer identification number or date and place of birth, if Mali decides to authorize this); • For crossborder transfers (including batched transfers and transmissions using a credit or debit card to effect a fund transfer), require the financial institution of the instructing

	party to include complete information about the instructing party in the message or payment form accompanying the transfer; • For domestic transfers (including transfers using a credit or debit card as a system of payment to effect a transfer), require the financial institution of the instructing party to comply with Criterion VII.2 above or to include only the account number of the instructing party, or lacking an account number, a unique means of identification in the message or payment form; • Require financial institutions to ensure that non-routine transactions are not processed in batches when this might entail an increased risk of money laundering or financing of terrorism; • Require each intermediate financial institution in the chain of payment to keep all necessary information on the instructing party with the corresponding transfer; • Require financial institutions to adopt effective procedures based on risk-assessment in order to identify and process transfers not accompanied by complete information on the instructing party; • Establish effective measures to monitor the implementation of SR VII; • Ensure that criteria 17.1 through 17.4 apply to SR VII.
Monitoring of transactions (R11 and R21)	• Impose on financial institutions the obligation to pay special attention to complex transactions and those involving unusually large sums.
Suspicious transaction reporting (R13, R14, R19, R25, and SR IV)	• Implement CENTIF so that financial institutions can report their suspicions. • Ensure better protection of the confidential information transmitted to CENTIF.
Internal controls, compliance, audit, and foreign branches (R15 and R22)	Define obligations in regard to the employee hiring process. Adopt sectoral regulations regarding internal controls to prevent money laundering for entities other than those subject to BC-WAEMU supervision. Clarify the internal control obligations of microfinance institutions. Implement, as soon as possible, the monitoring of compliance with obligations by those subject to the regulations. For all non-bank financial institutions, impose obligations pertaining to foreign branches and subsidiaries and, for the banking sector, require that the banking supervisor be informed of any obstacles encountered.
Shell banks (R18)	Impose on financial institutions a ban on forming or maintaining a correspondent banking relationship with a shell bank. • Require that financial institutions ascertain that other financial institutions who are part of their foreign clientele

	do not authorize shell banks to use their accounts.
Regulation and supervision, competent authorities and their powers (R17, R23, R25, R29, R30)	At the regional level, BC-WAEMU and BCEAO should see to full implementation of community statutes (Uniform Law, BCEAO Directive of 2007) and national law (Law 06-2006) within the banking sector. In the financial markets sector, the Regional Council should adopt a sectoral AML directive for all actors, SGIs, SGPs, investment advisors, and others. In general, the staff of the regional financial supervisors should be increased to handle the additional task of integrating money laundering prevention into their workload. A major training effort is also necessary. Create methodological tools for on-site inspection staff in order to promote supervision based on risk and not solely on simple compliance. Review the mechanisms for disseminating statutes to the institutions covered, so as to guarantee rapid and thorough dissemination of AML regulations in all relevant sectors. Institute monetary sanctions against banks that commit violations, since disciplinary sanctions alone appear to be insufficiently dissuasive. In Mali, with respect to microfinance operations, awareness-raising and training actions should be undertaken as soon as possible. Carry out targeted actions against manual moneychangers in the informal sector. Consolidate the actions of public authorities in regard to manual moneychangers, especially in terms of supervision – without, however, enhancing the “comparative advantages” of informal moneychangers, at the risk of otherwise reinforcing them. Carry out awareness-raising actions targeting Western Union sub-delegatees to promote more rigorous identification of customers.

Alternative remittance (SR VI)	• Adopt a more proactive approach toward money transfer services currently provided in the informal sector. • Expand the direct scope of due diligence requirements for money laundering to include money/value transfer services. • Permit the performance of such operations without delegated bank authorization. • Tend to issuance of authorizations, supervision, and regulation of the profession.
Preventive measures applicable to designated non-financial businesses and professions	
Customer due diligence and record keeping (R12)	• Include the obligation of enhanced diligence with respect to politically exposed persons. • Subject trust and company service providers and certified public accountants to prudential obligations and the requirement to report suspicious transactions. • Disseminate the 2006 law as quickly as possible to professionals covered by the law, as well as to their supervisory authorities. A major effort should be undertaken to raise awareness of the risk of the non-financial sector being exploited for money laundering purposes. • Raise the identification threshold for casino customers. • Impose prudential obligations on casinos as legal persons. • Establish a threshold to trigger due diligence for traders of precious metals and precious stones, consistent with FATF recommendations.
Suspicious transaction reporting (R16)	• The recommendations made in Section 3 concerning R13, 14, 15, and 21 also apply to DNFBPs.
Regulation, supervision, and monitoring (R17, R24, and R25)	• Ensure compliance with the anti-money laundering law by casinos and other DNFBPs. • Regulate the real estate agent profession without delay. • Establish guidelines to help DNFBPs implement and meet their anti-money laundering obligations.
Other non-financial businesses and professions and modern and secure transaction techniques (R20)	• Examine the risks of money laundering in non-financial businesses and professions covered by the country's anti-money laundering law, specifically in order to raise their awareness and ensure effective monitoring of the AML system's implementation. • Ensure implementation of the regulations concerning cash payments and, if necessary, raise the admissible threshold, which appears very low for an economy that operates mainly on cash.
Legal persons and arrangements and nonprofit organizations	
Legal persons – Access to beneficial ownership and control information (R 33)	• Implement all the provisions of the OHADA regulations, particularly with respect to the tasks of keeping registers, registering companies, and updating the information. • Take all appropriate measures to reduce the relative size of

	the informal economy.
Legal arrangements – Beneficial ownership and control information (R 34)	•
Nonprofit organizations (SR VIII)	• Organize awareness-raising campaigns with an eye to forestalling the risk of associations being misused for purposes of terrorist financing. • Set in place association monitoring and oversight mechanisms. These monitoring and oversight measures should target in particular associations that account for a significant share of the financial resources controlled by the sector, as well as a substantial share of the international activity in the sector. • Transpose as soon as possible into Malian law the terrorist financing directive and its provisions relating to obligations of due diligence specific to associations.
National and international cooperation	
National cooperation and coordination (R31)	• Implement Law 06-066 of 2006 in order to facilitate cooperation and coordination between competent departments in money laundering cases. • Set in place a mechanism for internal cooperation among the various competent authorities responsible for criminal investigations and prosecutions related to money laundering and predicate offenses
International Conventions and UN Resolutions (R35 and SR I)	• Complete the transposition of, and ensure conformity with, the provisions of the Vienna and Palermo Conventions. • Sign, ratify, and incorporate the 1999 Convention on terrorist financing and transpose into national law the WAEMU Directive on terrorist financing.
Mutual legal assistance (R 32, 36-38, and SR V)	• Criminalization of terrorist financing should permit the freezing, seizing, or confiscation of property or instruments related to terrorist financing. • Review the provisions pertaining to protective measures and remove the inconsistencies. • Collect statistics on mutual legal assistance, which will facilitate analysis of same.
Extradition (R32, 37, and 39, SR V)	• Lift the requirement of dual criminality. • Compile statistics to permit assessment of the effectiveness of mutual legal assistance and extradition mechanisms. • Criminalization of terrorist financing should permit mutual legal assistance and extradition in terrorist financing cases.
Other forms of cooperation (R40 and SR V)	• Set in place mechanisms to facilitate cooperation on money laundering matters between competent authorities and their foreign counterparts. • Adopt the terrorist financing law to permit international cooperation in combating the financing of terrorism.

	• Set in place a system for collecting information concerning international cooperation on AML/CFT matters. • Strengthen the controls and safeguards on exchanges of information and mutual assistance requests.
Other issues	
Other relevant AML/CFT measures or issues	•
General structure – structural elements	•

TABLE 3: RESPONSE OF THE MALIAN AUTHORITIES TO THE ASSESSMENT

Republic of Mali

Ministry of Finance

General Secretariat

The Minister of Finance



No. 01708 MF/SG

Bamako, June 24, 2008

Mr. Pierre-Laurent Chatain

Senior Financial Sector Specialist

Financial Market Integrity

World Bank

1818 H Street, N.W.

Washington, DC 20433

C/O World Bank Resident Representative

Bamako, Mali

Subject: Mission Report on Assessment of the National Strategy to Combat Money Laundering and the Financing of Terrorism (May 5, 2008 version)

Sir:

I am pleased to provide you with the comments below, which were made by our departments following review of the abovementioned report.

Point 20 of the report: The mission failed to mention the existence of other supervision entities in Mali that are involved with the anti-corruption strategy, in the same manner as the Office of the *Vérificateur Général*. The final sentence of the paragraph should therefore be reworded to read as follows: "Greater attention must be paid to proper linkages between the anti-corruption strategy of the Office of the *Vérificateur Général* and the other public administration supervision entities (Auditor General of Public Services, Inspection of Finances, and other inspection bodies of ministerial departments) and anti-money laundering initiatives and strategies, so as to build mutually beneficial synergies between them."

Point 50: The mission report states, without any supporting evidence, that ".... false documents are widespread in Mali." In the absence of formal evidence, this phrase should be deleted from the document.

Point 84: With reference to financial authorities, the report mentions the Directorate-General of Taxes and Government Property. However, Mali has a Directorate-General of Taxes within the Ministry of Finance and a National Directorate of Government Property and Registers within the Ministry of Land Use and Urban Planning.

Point 107: The sentence: "The General Directorate of the Police is placed under the supervision of the Ministry of National Security and consists of four criminal investigation units, the *Gendarmerie*, the National Guard, and the Civilian Welfare Police," should be replaced with: "The General Directorate of the Police and the National *Gendarmerie* have jurisdiction over criminal investigation matters." The remainder of the paragraph should remain unchanged.

Point 268: The mission report states that the actual establishment of CENTIF has been presented by the authorities as being dependent upon assurance of external financing to round out its budget. This statement is unfounded, as evidenced by the fact that the authorities made an appropriation in the 2008 domestic budget for the unit which is currently operational (staff appointments have been made), without submitting any request to technical and financial partners. Consequently, this paragraph should be deleted.

Point 563: Accreditation, surveillance, and sanctioning procedures are not regulated by Law 06-002 of January 6, 2006, but rather by Law 94-040 of August 15, 1994, regulating cooperative or savings and loans institutions and its implementing decree 94-302 of September 20, 2006, supplemented by Ministry of Finance Circular 00011 of November 1998. Law 06-002 of January 6, 2006, mentioned in the report, establishes the oversight unit for decentralized financial companies [*Cellule de contrôle et de surveillance des sociétés financières décentralisées*, CCS/SFD].

Subject to these various modifications, I would like to indicate to you my agreement with this version and authorize you to transmit it to the GIABA Secretariat.

Very truly yours,

/s/

Abou-Bakar Traoré

[Official Ministry stamp]

TABLE 4- COMMENTS FROM THE BCEAO



Central Bank of West African States

COMMENTS ON THE DRAFT ASSESSMENT REPORT ON MALI'S ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM STRATEGY

September 8, 2008

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BP 3108 – Dakar, Senegal **www.bceao.int**

From February 4–14, 2008, the World Bank conducted an assessment of Mali's anti-money laundering and combating the financing of terrorism strategy (AML/CFT). At the end of this exercise, it prepared a draft assessment report. The draft report provides a summary of AML/CFT measures in effect in Mali and assesses their conformity with the recommendations of the Financial Action Task Force on Money Laundering (FATF). In addition, it makes recommendations regarding measures to be adopted to strengthen a number of aspects of the aforementioned strategy.

The final report will be submitted at the Plenary of GIABA members with a view to its adoption as a mutual evaluation report of the regional group.

I. GENERAL COMMENTS

It should be noted that the deficiencies identified in the anti-money laundering and financing of terrorism strategy are, in part ,the result of the fact that the AML Uniform Act preceded the new requirements (for example, the requirement to include information on the instructing party in the case of an international transfer). Pending amendment of the legislation, the BCEAO has adopted appropriate provisional measures with respect to cross-border transfers made by or on behalf of the account holders appearing in its records, in particular by subjecting them to the provisions set forth in European Council (EC) Regulation No. 1781/2006.

In addition, the language contained in the report regarding implementation of the anti-money laundering strategy (AML) in Mali should be softened (paragraphs 24 and 25). Indeed, progress has been made with respect to the setting up of CENTIF, which was created since August 10, 2007, with the appointment of its officials on May 16, 2008. The actual start-up of activities by the unit should ensure the awareness-building and training of persons subject to the anti-money laundering law.

With regard to the comments on the financing of terrorism, it should be noted that the legal framework has been significantly strengthened with the adoption by the Council of Ministers of the Union of the Uniform Act pertaining thereto, at its March 2008 session, incorporation of which into the domestic law of Member States of the Union is underway. Also, the comments indicating that Mali is not equipped with a strategy to combat the financing of terrorism should be cast in a more nuanced way (for example, paragraphs 153, 201, 853, 862, etc.).

II. SPECIFIC COMMENTS

Paragraph 7. Add Senegal to the list of WAEMU Member States.

Paragraph 34. The comment that the identification requirements are excessively limited, in particular with regard to beneficial owners, is at odds with Article 9 of the AML Uniform Act on the "identification of economic beneficiaries by financial organizations." Similarly, the comment regarding the lack of constant and enhanced due diligence does not seem to be justified in light of Article 10 of the AML Act on the "specific oversight of certain transactions."

Paragraph 90. The interpretation in the mission report of Article 5 of the AML Uniform Act is that "*only persons specifically named in this law are subject to its provisions*." In this regard, it should be noted that the material criteria set forth in this article facilitate application to anyone who may be required to meet these criteria. In fact, it applies to "*all individuals and legal entities that, within the framework of their profession, perform, control, or advise on operations leading to deposits, exchanges, investments, conversions, or any other flows of capital or of any other goods.*"

Page 28, footnote 32. The report confuses the dates of passage of the AML Act with the date of promulgation of this Act. A summary table providing the dates of passage and promulgation of this legislation is attached.

Paragraph 209. Decision 09/2008/CM/WAEMU amending Decision 09/2007/CM/WAEMU of April 6, 2007 should be added to the list of decisions of the Council of Ministers of WAEMU on the persons, entities, and organizations subject to the freezing of funds. Incidentally, the list of decisions made pursuant to Regulation 14/2002/CM/WAEMU of September 19, 2002 concerning the freezing of funds and other financial resources in the context of combating the financing of terrorism in WAEMU Member States is unnecessary, given that the most recent decision is the one in effect.

Paragraphs 218 and 232. Citing Regulation 14/2002/CM/WAEMU concerning the freezing of funds and other financial resources in the context of combating the financing of terrorism in WAEMU Member States (hereinafter, Regulation 14), paragraph 218 of the report states that *"the preamble to Regulation 14/2002 refers to both Resolution 1267 and Resolution 1373; however, Article 2 of this regulation ("purpose of the regulation") refers only to Resolution 1267,*" and concludes that this Regulation "*does not contain any provisions specific to the implementation of Resolution 1373*." This statement is reprised in paragraph 232 of the report. In this regard, it should be noted that this analysis reflects the letter but not the spirit of Regulation 14. Indeed, the fact that Resolution 1373 is not mentioned in the preamble of Regulation 14 does not preclude the Council of Ministers of WAEMU, when making decisions emanating from the United Nations Sanctions Committee to implement measures related to freezing of funds within the Union, from expressly citing said Resolution. Accordingly, and by way of example, Article 1 of Decision 09/2008/CM/WAEMU[130] expressly states that "*this decision is intended to amend the Decision [....] to implement measures on the freezing of funds and other financial resources adopted by the Sanctions Committee of the United Nations Security Council pursuant, in particular, to Security Council Resolutions 1267 (1999) and 1373 (2001)*."

Paragraph 243. The comments regarding the establishment of CENTIF should be revised. In fact, the members of the unit have been appointed by Decree of the Minister of Economy and Finance of May 16, 2008.

With regard to the comments appearing in **paragraphs 247 and 274**, it should be noted that with the adoption of the Uniform Act on combating the financing of terrorism, CENTIF missions have been expanded in order to include this aspect of financial crimes.

Paragraph 356. This paragraph indicates that no legislation governing fixed capital investment companies has been identified. These companies fall within the purview of Mali's AML Act.

Paragraph 347. The report states that "*no specific provisions have been set in place concerning unusual cross-border movements of gold, precious stones, or precious metals. [….] The form for travelers refers to 'funds, securities, or gold substances other than jewelry' but there is no legal basis concerning the transportation of gold. The exchange control regulations do not address the latter [….]*."

130 Decision 09/2008/CM/WAEMU of March 28, 2008, amending decision No. 09/2007/CM/WAEMU of April 6, 2007, concerning the list of persons, entities, and organizations subject to the freezing of funds and other financial resources in connection with the effort to combat terrorist financing in WAEMU Member States.

This comment is not entirely correct given that, although the AML Uniform Act covers exclusively "*physical cross-border movements of cash and bearer instruments*" (Article 15), **it should be noted that AML and CFT legislation is interdependent** (cf. Article 8, paragraph 2(1) of the CFT Uniform Act and Article 6 of the AML Uniform Act). As a result of this interdependence, Regulation 09/98/CM/WAEMU of November 20, 1998, concerning the external financial relations of WAEMU Member States is, *ipso facto*, applicable to AML/CFT. Consequently, Article 6 of the AML Uniform Act, which addresses the regulation of exchange rates, stipulates that "*exchange transactions, capital flows, and regulations of any kind with a third State shall take place in accordance with the provisions of the exchange regulations in effect*." However, Article 9, paragraph 1 of the aforementioned Regulation 09/98/CM/WAEMU sets forth the principle that "*the importation and exportation of gold from overseas shall be subject to prior authorization from the Minister of Finance*."

Paragraph 353. According to this paragraph, "*institutions that issue electronic money […] are not subject to the prudential provisions, including those pertaining to AML/CFT, of BCEAO Instruction 01/2006/SP concerning the issuance of electronic money and e-money establishments, if their activities remain limited*." In this regard, it should be pointed out that pursuant to Article 5 of the AML Uniform Act, e-money establishments are subject to AML/CFT legislation, inasmuch as *"within the framework of [their] profession, [they] perform, control, or advise on operations leading to deposits, exchanges, investments, conversions, or any other flows of capital or of any other goods […]."*

Furthermore, the exemption of these institutions from the prudential provisions set forth in Article 3, paragraph 1 of the aforementioned Instruction, does not apply to the AML provisions (Article 7, Instruction 01/2006/SP). Indeed, this limitation should be construed as being applicable to the provisions of Chapter II of the Instruction regarding the "*Prudential Supervision Strategy*" (Article *8 et seq.*).

Paragraph 355. The comment appearing in paragraph 355 does not sufficiently take into account the specificity of the legal community order and the instruments related thereto in the West African Economic and Monetary Union, in particular, BCEAO Instructions and WAEMU Directives, in the context of the rankings. In fact, it states that "*in accordance with the Methodology for Assessing Compliance with the FATF 40 Recommendations and the FATF 9 Special Recommendations, laws were considered to be 'laws and regulations,' BCEAO instructions to be 'other enforceable means,' and directives as 'non-binding,' in rating the conformity with the various recommendations*."

Tellingly, this approach overlooks the Directive related to binding legal instruments. However, the Directive "*is binding upon all Member States with respect to the results to be achieved*" (Article 43, paragraph 2, WAEMU Treaty of January 10, 1994). Consequently, any Community Directive, in particular Directive 04/2007/CM/WAEMU of July 4, 2007, regarding combating the financing of terrorism, should be considered binding by the persons conducting the assessment, and in this case, as binding upon the Malian State.

Paragraph 357. This paragraph states that "*the legal basis for applicability of the BCEAO Instruction to the financial services of the Post Office and 'Caisse des dépôts et consignations' seems uncertain*." In this regard, it should be noted that under the restructuring terms applicable to these entities, they are now governed by the banking law.

Paragraph 361 of the report notes that *"Mali does not yet have any provisions specifically prohibiting financial institutions from holding anonymous accounts or accounts under fictitious names."* This statement merits revision, in light of the provisions of Article 7 of the AML Uniform Act, which stipulates that "*financial entities must observe 'know your customer' guidelines before opening an account on their behalf, consenting to the safekeeping of securities, paper assets, or notes, providing them with a safe deposit box, or establishing any other business relationship with them*."

The exemption applicable to financial entities with respect to identification of the actual beneficial owner, "*[when their] customer is a financial entity subject to [the AML Uniform Act]*" mentioned in **paragraphs 372 and 380** is explained by the fact that the financial entity is assumed to have applied these identification measures, inasmuch as said entity is subject to AML legislation.

Paragraph 387. The report states that "*when verification of the identity of the customer or beneficial owner is required, there is no provision authorizing financial institutions to complete the identification after establishment of the business relationship.*" In this regard, it should be noted that no prohibition exists in this regard. Furthermore, the possibility of completing the customer's and owner's identification after establishment of a business relationship is one aspect of the internal AML program stipulated in Article 13 of the AML Uniform Act. Incidentally, these checks are linked to "know your customer" procedures.

Pa**ragraph 431, third point**. In this section, the authors of the assessment indicate that the Malian authorities should "*determine with certainty the legal validity of (i) the BCEAO's subjection to the provisions of Law 06-066 [AML Uniform Act adopted in Mali], and (ii) that of the 'Caisse des dépôts et consignations' and the financial services of the Post Office to the provisions of BCEAO Instruction 01/07/RB*."

In this regard, it should be noted that the legal basis for subjecting the BCEAO to Law 06-066 lies in the very corpus of this Uniform Act, which expressly applies to the issuing institution (cf. Article 5). Subjecting the "*Caisse des dépôts et consignations*" and financial services of the Post Office to Instruction 01/2007/RB of July 2, 2007 regarding anti-money laundering in financial entities flows from the application of Law 06-066 and is limited to the Post Office and, as appropriate, banking-related activities of the "*Caisse des dépôts et consignations*" (for example, financial services of the Post Office).

Paragraphs 437 and 439. Paragraph 437 of the report states that there is "*no provision making it possible to ensure that laws on the professional confidentiality of financial institutions do not hamper the exchange of information between financial institutions when this is required by Recommendations 7 and 9 or Special Recommendation VII*." Consequently, the authors of the assessment recommend that the Malian authorities adopt the appropriate provisions (paragraph 439).

It should, however, be underscored that in accordance with the spirit of the AML/CFT strategy in effect in the Union, refusal by a financial entity to provide information to another financial entity does not completely hamper application of the AML/CFT. In fact, the financial entity is required to file a suspicious report with CENTIF if, for reasons of professional secrecy, it is denied access to information it deems useful to determine the source of funds. It should thus be noted that professional secrecy cannot be invoked against CENTIF (Article 34 of Law 06-066 adopting the AML Uniform Act in Mali).

Paragraph 451. The comment indicating that, in the case of an e-transfer, only the account number of the instructing party is required to be placed on a transfer is explained by the fact that the account or reference number is linked to a single instructing party, thus facilitating identification of that party.

Contrary to the comments made in **paragraph 518**, the money laundering law in point 4 of the annex stipulates that internal supervision procedures must pay close attention to non-face-to-face transactions.

Paragraph 486. Contrary to the interpretation of the authors of the assessment, the notion of "anomalies" mentioned in Article 7 of Instruction 01/2006/SP regarding the issuance of e-money and e-money entities is not "confusing." In fact, it refers to "*unusual*

transactions" covered in the first paragraph of this article. For AML purposes, an unusual transaction is considered to be any transaction that seems out of the ordinary, particularly given the banker's knowledge of the customer and the nature of the transaction in question.

Paragraph 520. Stock exchange companies (SGIs [brokerage firms], SGPs [asset management firms]) should be taken into account in texts issued by the Regional Public Savings and Financial Markets Council, when the latter calls for enforcement of the law by those subject to its oversight.

Paragraph 550. The statement indicating that there are no provisions directly prohibiting the establishment of fictitious banks strikes us as unfounded, given that any bank that fails to meet the operating conditions set forth in the Uniform Act is considered illegal and such illegality is not countenanced.

Paragraph 584 states that "*in terms of sanctions, the foreign exchange dealer's accreditation is withdrawn if his activity has not begun within six (6) months following the accreditation.*" It should be underscored that this time period is granted to foreign exchange services that were authorized less than one year ago. For those that received authorization one year ago or longer, the time period is three months.

Paragraph 590. It is pointed out that Instruction 01/2007/RB related to combating money laundering within financial entities does not apply to money transfer companies. This is attributable to the fact that, **in accordance with the regulatory provisions governing external financial relations of Member States of the Union, such companies cannot carry out their transactions under cover of the banks responsible for ensuring conformity with regulatory provisions, in particular those related to AML/CFT**.

Paragraph 671. In commenting on Article 5 of Law 06-066, the report notes that "*this definition, with its nonrestrictive list of professions ("particularly"), is in fact very broad from the viewpoint of businesses or professionals who perform such operations, and cannot realistically be interpreted as being applicable to the majority of Malian economic actors*." In this regard, as indicated above (cf. our comments on paragraph 353), Article 5 should be interpreted as being applicable to "*all individuals and legal entities that, within the framework of their profession, perform, control, or advise on operations leading to deposits, exchanges, investments, conversions, or any other flows of capital or of any other goods […].*" Consequently, any Malian actor falling within the scope of this article, as stipulated above, is subject to Law 06-066, notwithstanding the fact that this is not explicitly mentioned. The case at hand entails **a material, rather than an organic, definition of persons subject to said law**. Consequently, the fact that a professional category (for example, certified accountants, cf. paragraph 700) or a given economic operator does not appear on the list should not be construed as exemption from AML provisions, if its activity falls within the material scope of Article 5.

Paragraph 850. This paragraph states that "*AML Law 06-066 is silent on the subject of dual criminality and mutual assistance measures other than extradition*." This assertion should be removed from the report. First, Article 71, paragraph 2, pertains to "dual criminality," in that it stipulates that extradition "*does not depart from the rules of ordinary law […], in particular the rule pertaining to dual criminality.*" Second, in addition to extradition, Articles 53 to 70 of Law 06-066 pertain to mutual assistance.

Paragraph 860. This paragraph states that "*there are no provisions in Malian law to permit the sharing of confiscated assets*." This comment is not borne out by Article 66 of Law 06-066 pertaining to the "*disposal of confiscated assets,*" which stipulates that "*the [Malian] State is vested with disposal powers over goods confiscated on its territory at the request of foreign authorities, unless an agreement has been concluded with a government setting forth different disposal stipulations.*"

Page 174. Table 1 contains an inconsistency. The offense of money laundering has been rated "largely compliant," while the factors justifying this rating indicate the failure to implement AML Law 06-066.

ΩΩ