


INTER-GOVERNMENTAL ACTION
GROUP AGAINST MONEY
LAUNDERING IN WEST AFRICA.

# Mutual Evaluation Report

## Anti-Money Laundering and Combating the Financing of Terrorism

# NIGER

5 MAY 2009

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REPUBLIC OF NIGER

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

DATE OF ASSESSMENT

JUNE 16 TO 27, 2008

WORLD BANK

FINANCIAL MARKET INTEGRITY UNIT

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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 |
| BC | Banking Commission |
| CCS/SFD | Control and Surveillance Unit for Decentralized Financial Systems |
| CENTIF | National Financial Information Processing Unit |
| CFAF | CFA franc, the currency issued by the BCEAO |
| CFT | Combating the Financing of Terrorism |
| 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 |
| DNFBP | Designated Non Financial Businesses and Professions |
| DPJ | Criminal Investigation Directorate |
| DRG | Directorate of General Information |
| DSP | Directorate of Public Security |
| DST | Directorate of Territorial Surveillance |
| ECOWAS | Economic Community of West African States |
| EUR | Euro |

| | |
|---|---|
| FATF | Financial Action Task Force on Money Laundering |
| FIU | Financial Intelligence Unit |
| 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 |
| NCC | Nigerien Criminal Code |
| NCCP | Nigerien Code of Criminal Procedure |
| OHADA | Organization for the Harmonization of Business Law in Africa |
| OPCVM | Organization for collective investments in securities (mutual fund) |
| 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 |
| UEMOA | WAEMU |

| | |
|---|---|
| UN | United Nations |
| USD | U.S. dollar |
| WAEMU | West African Economic and Monetary Union |

# PREFACE

## GENERAL INFORMATION AND METHODOLOGY USED FOR ASSESSING NIGER

1. The assessment of the Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) regime in Niger was conducted on the basis of the Forty Recommendations 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 the national authorities of Niger, as well as the information gathered in the course of the country visit from June 16 to 27, 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 and the Intergovernmental Anti-Money Laundering Group in West Africa (GIABA). Participants in the assessment included Emile van der Does de Willebois (legal expert and mission chief), Richard Gordon (financial expert and consultant), Boudewijn Verhelst (consultant and expert for questions on the financial intelligence unit and law enforcement), Astou Senghor (GIABA expert and DNFBP specialist), and Elpidio Freitas (GIABA observer). The experts focused their analysis on the domestic Nigerien AML/CFT framework, while also taking into account the WAMU AML/CFT regional and community framework.

3. To this end, they analyzed the institutional framework, the AML/CFT laws and regulations, regulations, guidelines and other obligations, as well as regulatory or other regimes in force in Niger 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 Niger 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. It also sets out Niger's level of compliance with the FATF 40+9 Recommendations. The report was prepared by the World Bank in the broader context of the Financial Sector Assessment Program (FSAP) for Niger. This report will be submitted to the GIABA plenary session in May 2009 for adoption as a Mutual Assessment Report from the regional group.

### NOTE

5. This report on Niger is part of a series of assessments undertaken by the World Bank in the WAMU region. The regional AML/CFT system put in place by the WAMU authorities was assessed against FATF international standards in early 2008, as were Mali and Niger as member jurisdictions of the Union. Other countries in the zone will be assessed in the coming months. Because the AML/CFT standards applicable to Niger are based on WAMU community standards, there is de facto a great deal of common ground, at least at the normative level, between Niger and the other countries in the subregion. Thus, the AML/CFT legal framework, including the supervisory framework, evaluated by the World Bank in Niger is similar in many aspects to the regional framework and that applied in Mali, and several parts of this report repeat descriptions and analysis from previous reports (WAMU and Mali) to ensure equivalent treatment of these systems.

# SUMMARY OF ASSESSMENT

## GENERAL INFORMATION

6. The formal financial sector is small in Niger, and dominated by the banks, while the microfinance sector is growing. The informal sector in Niger accounts for a substantial proportion of economic activity in the country, a characteristic it has in common with other WAEMU member states.

7. The criminal environment is characterized by drugs and arms trafficking, armed robbery, and trafficking in human beings. Corruption, particularly misappropriation of public funds, is recognized as a problem. Niger is ranked 115th (out of 180) in Transparency International's 2008 perception of corruption index.

8. Since February 2007, the social situation has deteriorated in the northern desert region of the country, which has been affected by a violent revolt of Tuareg rebels, who feel marginalized and wish to benefit from the uranium mining wealth in the region (which has two of the largest uranium reserves in the world). The government twice declared the north of the country a military zone, in August 2007 and February 2008. The conflict jeopardizes the economy of the region since it acts as a brake on tourism (the tourist season extends from October to March), the main source of income for most households, which depend on arts and crafts.

## LEGAL SYSTEMS AND RELATED INSTITUTIONAL MEASURES

9. The Nigerien anti-money laundering system is based on Law 2004-041 of June 8, 2004 on anti-money laundering (the AML Law), which transposes into national law Community Directive 07/2002 adopted by the WAEMU Council of Ministers on September 19, 2002.

10. The AML Law defines money laundering and specifies the applicable enforcement measures. The law defines the preventive and operational framework, in particular that of the National Financial Intelligence Unit (CENTIF), as well as the legal framework for international cooperation (mutual legal assistance and extradition).

11. The criminalization of money laundering in the AML law is broadly in compliance with international standards. However, the evidence threshold to obtain a conviction could be quite high. Although this crime has been part of the Nigerien legislative framework for four years, it has yet to be tested for the first time.

12. The financing of terrorism was very recently criminalized in the Law 18 of June 23, 2008. However, this criminalization is not entirely in compliance with international standards. In addition, there is a draft uniform law on combating the financing of terrorism based on a directive of July 4, 2007 of the WAMU Council of Ministers, which sets out the broad outlines of a future preventive and repressive CFT regime.

13. The measures provided by ordinary law and the AML Law on confiscation and seizure are adequate for the proceeds and instruments of crime. The effectiveness of these measures could be improved considerably by introducing mechanisms for the confiscation of funds of corresponding value to the proceeds and instruments of crimes and offenses.

14. The CENTIF, which became operational in April 2005, has received a total of just two reports, in 2006 and 2007. After the fire that destroyed the CENTIF offices in September 2007, the system has yet to become fully operational.

15. Although the efforts made by the CENTIF must be acknowledged, it should be recognized that there are serious effectiveness issues. The CENTIF has a central role in a country's anti-money laundering preventive system and acts as a catalyst in the efforts to combat money laundering as such. It became clear during the mission that the police are waiting for the reporting system to bring to light incidents of money laundering and that they have high expectations in this regard.

16. It is therefore extremely important that all stakeholders concerned, including the CENTIF, obtain a more in-depth knowledge of the field through an accelerated training program in which the CENTIF should take the lead together with the supervisory authorities. The system is unlikely to achieve results when the players have not been able to acquire targeted operational expertise.

17. The FIU is well organized and performs its functions adequately. However, some aspects could be fine-tuned to improve the operation of the unit.

18. The multidisciplinary approach, which is reflected in the composition of the members of the CENTIF, is somewhat unbalanced by the preponderance of police/legal members to the detriment of financial expertise, which does not really reflect the concept of an administrative unit. The financial component should be strengthened through the addition of economic, banking and/or financial experts/analysts.

19. Experience of a case dealt with by the FIU shows that the existing procedures could be reviewed and refined. The use of police telecommunications networks such as IP to supplement the information involves data confidentiality risks as the IP channel is open to all member police forces.

20. The lack of a budget and financial resources for CENTIF is a serious deficiency that cannot continue. Although human resources are currently sufficient, appropriate software and adequate equipment for staff are much needed.

21. Finally, combating the financing of terrorism is as yet not one of CENTIF's responsibilities. Therefore, transposition of the WAEMU Uniform Law on the financing of terrorism should proceed without delay.

22. Generally the police force, including the *gendarmerie's* investigation teams, is adequately trained to perform its duties of investigating offenses under ordinary law, which means that an encouraging number of investigations are followed by prosecution. However, their human resources and logistics are quite limited, given the size of the country.

23. Anti-money laundering and combating the financing of terrorism currently prove a serious challenge for investigators. Especially the new approach of tackling offenses that generate (large amounts of) laundered money in reverse, that is, starting with the material benefits of the crime to identify the predicate offense and its perpetrator, is essentially unknown to them.

24. Consequently, there is a serious need for targeted training in financial crime, and particularly money laundering techniques and evidence. This also implies a change in mentality, moving away from the classic approach of only investigating the underlying predicate offense and leaving it at that. The focus should be placed more on the material benefits in all forms. The detection of such goods in the regulated financial sector is of course largely CENTIF's responsibility, and the police expect it to provide them with the necessary information, but this does not release the police from also directing their efforts this way, especially in the informal sector: the preventive system is an additional source that is very important, but it co-exists with the repressive system, which is the exclusive purview of the police and judicial authorities.

25. Therefore, experience must be developed so that the required expertise can be acquired. Specialist courses are indeed extremely important, but so is experience in the field. There is a great deal of turnover in the police and judiciary, which means that investigators and investigating judges do not really have the time or opportunity to become experienced in the subject matter.

Gradual reorganization is necessary, along with the hoped-for progress in the system of suspicious transaction reports, to allow operational staff the time and opportunity to gain experience.

26. Customs does not have jurisdiction in the field of anti-money laundering and the financing of terrorism. If they are confronted with indications of such crimes, they must pass on the information to the police forces. Moreover, Niger has not yet established a specific system for reporting or communicating AML/CFT information.

27. This being said, there are already some mechanisms in place that can serve or be used in future to detect cross-border currency flows in the WAEMU. The implementing rules for the Exchange Regulations already involve a declaration system and give the customs service the right to obtain information on currency in possession of travelers entering and leaving the WAEMU territory. However, the Exchange Regulations do not apply to internal WAEMU borders.

## PREVENTIVE MEASURES – FINANCIAL INSTITUTIONS

28. The financial sector includes the banking sector (and two financing establishments), microfinance, life insurance, a local agent for the regional financial market, and authorized money and currency changing services.

29. The customer base of the banks in Niger is relatively small. The largest bank has approximately 11,000 active accounts, the second largest 7,000, the third 5,000, the fourth 4,000, and the remainder far fewer. Most customers of these banks are well-known corporations, wealthy individuals who are economically active and use checking account services, and, to a lesser extent, small savers. The banks generally know their customers, the purpose of their financial transactions, their profile, and whether the customer is undertaking a suspicious transaction.

30. In Niger, there are no life insurance products in the form of financial investments. Consequently, there is no risk of money laundering in this sector. There is one stock market intermediary: a management and brokerage firm that has only one customer, a local bank. This therefore also does not present a significant ML or FT risk. There are two types of microfinance institutions: credit institutions and savings- and loan institutions. The ML risk for credit institutions is negligible, and savings accounts in savings and loan institutions are small, also rendering the money laundering risk low.

31. The BCEAO enacted an AML instruction (2007/RB) for the financial institutions of the region on July 2, 2007. This text reiterates the provisions relating to the due diligence obligations of 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.

32. The implementation of preventive AML measures is somewhat, although not entirely, rudimentary. Identification and due diligence obligations are limited, particularly for high-risk situations.

33. Similarly, there is no authorization system permitting financial institutions to apply reduced or simplified measures in low risk situations, especially for microfinance and life insurance not involving financial investment.

34. Moreover, there are deficiencies in connection with banking operations with correspondents and electronic transfers. There are also extensive rules for implementing internal programs that ensure effective AML, including training, examination of employees for honesty and integrity, and internal audits of AML programs.

35. Banks were generally well informed about and understood their obligations. Although the instruction took effect only recently, banks began implementing AML rules when the first community directive was issued in 2002 in an effort to avoid countermeasures by correspondent banks and to minimize legal risks.

36. The reasons for the low volume of reporting seem to be related to the local economy in Niger, which, apart from international trade transactions, is almost entirely cash based. This implies that the formal banking system is not necessary for laundering assets from criminal activities. Moreover, banks fear losing customers if they learn that their transactions may be reported to CENTIF. Nevertheless, in these circumstances, the competent authorities must make those subject to the law aware of the AML rules and prevailing obligations.

37. The Banking Commission (BC) plays a reduced role in the prudential supervision of money laundering. On-site inspections have been carried out in Niger, but they do not focus sufficiently on AML aspects. Apart from the AML instruction, supervisors provide little or no AML information to banks.

38. It appears urgent that the BC strengthen its controls and ensure that its staff is adequately and thoroughly trained on AML/CFT. It is important that the authorities make sure that all detailed AML measures are included in all aspects of compliance inspection. They need an on-site examination methodology that allows the inspector to verify, on the basis of an analysis of operations or documents, that regulatory requirements have been respected by the institution.

39. Informal foreign exchange dealing is a source of concern. The networks operate primarily between Niger and Europe, and with other African countries, in particular in West Africa. These networks are used by the Nigerien diaspora through a multitude of clandestine operators. It is necessary to bring these informal channels for transferring funds into the formal sector.

## PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

40. There has been no dissemination or introduction of preventive standards in the DNFBP sector. The law defines their vigilance and reporting obligations, but “know your customer,” occasional customer identification, beneficial owner

identification, and record-keeping requirements do not apply to DNFBPs, and these professions are not subject to the requirement of introducing internal policies and procedures adapted to their activities. In addition, the scope of application of the law includes other non-designated financial professions, such as those bringing in business to the financial institutions, art dealers (masks and paintings in particular), money couriers, gaming establishments and national lotteries, travel agencies, and nongovernmental organizations. No public awareness effort has been carried out for these professions, and their supervisory authorities or self-regulatory organizations have yet to take any action.

## LEGAL PERSONS AND ARRANGEMENTS, AND NONPROFIT ORGANIZATIONS

41. 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 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 Trade and Personal Property Credit Registry (RCCM) of the jurisdiction in which their head office is located. There is also a new Commercial Code of 1997, although it is of secondary importance, since the OHADA Treaty provides for direct application of the uniform acts *notwithstanding any contrary domestic law provisions.*

42. To date, the registry has not been automated, which meant that the authorities met with could not provide statistics on the number of legal persons registered in the RCCM. They are almost exclusively joint stock companies and limited liability companies. Although there is an obligation for registered companies to update their information, the lack of authority to sanction them means that in practice the information is not always updated.

43. There are various laws and regulations applicable to nonprofit organizations that are in the form of associations. In addition, the Ministry of Planning and Community Development (MAT/DC), which is responsible for monitoring and assessing NGOs, has established a mechanism for formalizing relations between the government and NGOs that lays out the obligations of both parties. The authorities are preparing the new law that will replace the existing arrangement.

44. All associations must be declared and licensed before beginning their activities. After obtaining a license and publication in the official gazette, the NGOs and development associations (DA) sign the Standard Memorandum of Understanding (MOU) with MAT/DC that determines relations between NGOs (national and foreign) and the government. Tax advantages may be obtained by the NGOs only following conclusion of this memorandum.

45. There are 867 NGO/DAs active in Niger (March 2007), of which some 200 are foreign. To date, there have been 7 cases of withdrawal/suspension of licenses—all religious associations, 2 of which were international. In none of these cases were there links with terrorist organizations. According to the authorities, there are no indications that would suggest that a portion of the NGOs are operating without being licensed by the Ministry of the Interior.

46. Although the mechanism for obtaining information was not established for the purpose of combating terrorism, the information provided to the Ministry of the Interior for licensing purposes, to MAT/DC, and to the Ministry of Economy and Finance for tax exemptions, is readily accessible to law enforcement agencies in case of criminal investigations.

47. For the moment, Niger has not undertaken a review of the adequacy of its legal framework applicable to the associations sector, nor has it conducted any specific study to measure the vulnerability of this sector to the risks of terrorist financing. No public awareness campaign has been conducted with associations by the appropriate authorities to raise awareness of the risk of abuse for the purpose of financing terrorism and the measures available to protect themselves against such abuse.

## NATIONAL AND INTERNATIONAL COOPERATION

48. There is no effective mechanism for national coordination of AML/CFT. To improve cooperation between the CENTIF and the other public authorities, the CENTIF has correspondents within some public agencies, specifically the police, *gendarmerie*, customs, and the judicial agencies. These correspondents play the role of liaison officers and are supposed to provide any relevant information in response to a CENTIF request for the analysis of reports . In practice, this operational cooperation has not yet become reality. There is no mechanism for strategic national AML/CFT cooperation, *de jure* or *de facto*. No agency has been designated as national coordinator. Given its legal responsibility, the most appropriate agency to play this role would be the CENTIF.

49. The mutual legal assistance mechanism is well provided for and allows the Nigerien authorities to provide substantial and quite complete assistance to foreign judicial authorities.

50. It should be noted, however, that it is quite difficult to obtain even incomplete statistics, which indicates a lack of organization. International cooperation appears rare in practice and there is little expertise or experience in this area. As money laundering and terrorist financing are forms of criminality in which cross-border activity predominates, international relations should be developed and mutual assistance procedures should be used optimally.

51. The principle of dual criminality could imply that Niger, which has not criminalized the financing of terrorism in conformity with the international standard, will not be able to respond satisfactorily to all international requests in this area. Finally, there is a serious legal loophole limiting the possibility of providing judicial assistance when the request relates to property of corresponding value, since equivalent seizure and confiscation are not part of Niger’s legal arsenal.

52. Direct international cooperation between Nigerien police forces and customs and their respective counterparts is almost daily and takes place without any real difficulties.

53. The situation is not entirely clear regarding the CENTIF's cross-border cooperation powers as the laws and regulations are open to different interpretations. Finally, CENTIF does not yet have the legal authority to exchange information on terrorist financing.

# 1. GENERAL

## 1.1. GENERAL INFORMATION ON NIGER

54. Niger is a vast, but poor and landlocked country. The population, estimated at close to 15 million inhabitants (2008), is clustered in a narrow band of arable land along the southern border. A member of the WAMU, Niger shares borders with Algeria and Libya to the north, Nigeria and Benin to the south, Mali and Burkina Faso to the west, and Chad to the east. It measures 1,267,000 km² (making it the 22nd largest country in the world and 6th largest in Africa) with a population density of 10 inhabitants/km$^2$. It thus connects North Africa and Sub-Saharan Africa. In addition to the capital Niamey, the main cities are Tillabery, Dosso, Tahoua, Zinder, Maradi, Diffa, and Agadez. Fifty-two percent of the territory is not inhabited.

55. Approximately 80 percent of the labor force works in agriculture or fisheries, which provide some 42 percent of GDP. The secondary sector, accounting for some 13 percent of GDP, involves essentially mining and, to a lesser extent, manufacturing and energy production. Mining is dominated by uranium production, which supplies about 60 percent of the value of Niger's exports. A significant percentage of the population—perhaps a third—is nomadic.

56. GDP growth has been very irregular and weak on average, held back by a population growth rate estimated at 3.4 percent in 2006. GDP stood at 5.6 percent in 2007 and 5.2 percent in 2006, after peaking at 7.4 percent in 2005 owing to the good performance of the agricultural sector (around 20 percent in real terms), which improved rapidly after the 2004 drought (the GDP growth rate is 0.8 percent this year).

57. In 2007, Niger was 174th out of 177 on the UNDP's Human Development Index. About 61 percent of its inhabitants survive on less than US$1 per day, and average per capita income was estimated at US$280 in 2006. Social indicators are weak, whether it be infant mortality (81 deaths per 1,000 live births), life expectancy (55.8 years), literacy (28.7 percent in 2005), or the gross school enrollment ratio (54 percent in 2006). The population is young: 49 percent are under the age of 15 and only 2 percent are over 65. The fertility rate is among the highest in Sub-Saharan Africa, averaging almost 8 births per woman and resulting in a population growth rate of 3.3 percent.

58. Niger is a republic with a unicameral parliament. The Republic was proclaimed on December 18, 1958 and it became sovereign under international law on August 3, 1960. The organization of the powers of government is governed by the Constitution of August 9, 1999. The executive branch consists of the President of the Republic, who is elected by universal suffrage for a term of five (5) years renewable once. The current President of the Republic is Mr. Tandja MAMADOU, elected in 1999 and re-elected for a second term in 2004. The government is accountable to the National Assembly. Legislative authority is exercised concurrently by the National Assembly and the government. There are 113 Members of Parliament, who are elected for a renewable term of five (5) years.

59. In the Republic of Niger, justice is administered in civil, commercial, social, criminal, financial and administrative matters by the Court of Cassation, Conseil d'Etat (the highest administrative court), Auditor General's Office, Courts of Appeal, Assize Courts, Regional Courts (*Tribunaux de Grande Instance*), District Courts (*Tribunaux d'instance*), Administrative Courts, the Military Court, Commercial Courts, Rural Land Courts, Labor Courts, and Youth Courts. The first three (3) jurisdictions, namely the Court of Cassation, Conseil d'Etat and Auditor General's Office, are headquartered in Niamey.

60. Administratively, Niger is organized into three (3) administrative levels: regions, departments and communes.

- There are eight (8) regions: Agadez, Maradi, Tahoua, Tillabéry, Zinder, Diffa, Dosso and the Urban Community of Niamey.
- The departments are subdivisions of the regions and number thirty-six (36).
- There are 265 communes.

61. Niger is a member of the West African Monetary Union (WAMU), the West African Economic and Monetary Union (WAEMU), the Economic Community of West African States (ECOWAS), the Intergovernmental Anti-Money Laundering Group in West Africa (GIABA), the Organization for the Harmonization of Business Law in Africa (OHADA), the Inter-African Conference on Insurance Markets (CIMA), the franc zone, and the African Union (AU).

## 1.2. GENERAL SITUATION REGARDING MONEY LAUNDERING AND THE FINANCING OF TERRORISM

62. The criminal environment is characterized by drug and arms trafficking, armed robbery, and trafficking in human beings. Corruption, especially misappropriation of public funds, is recognized as a problem, and Niger is ranked 115th (out of 180) in the 2008 classification of the perception of corruption prepared by Transparency International.

63. Since February 2007, the social situation has deteriorated in the desert region in the north of the country, fueled by a violent revolt by the Tuareg rebels, who feel marginalized and wish to benefit from the wealth generated by uranium operations in the region (which has the largest uranium reserves in the world). The government twice declared the north a military zone, in

August 2007 and in February 2008. The conflict jeopardizes the economy of the region as it acts as a brake on tourism (the tourist season extends from October to March), the main source of income for most households, which live on arts and crafts.

64. Niger is also directly affected by the increasing involvement of West Africa in international drug trafficking (in particular, marihuana, cocaine, and heroin), arms trafficking and, to a lesser degree, trafficking in human beings.

65. Accord to the United Nations Office on Drugs and Crime (UNODC), West Africa has become a transit point for global drug trafficking. An analysis of Nigerien statistics shows that of the drugs seized in Niger, marihuana is most prevalent and most consumed. Marihuana crosses Mauritania, northwestern Mali, southern Algeria and enters Niger to transit toward the Gulf countries, its destination. Worrisome seizures of marihuana resins in the desert suggest that Niger has become a transit country for enormous quantities of all kinds of drugs from the southern coast (Benin, Nigeria, Ghana). According to the authorities met, based on the number and size of the seizures, cocaine trafficking seems to be declining while marihuana trafficking is on the rise.

66. There are no quantitative or qualitative estimates of money laundering in Niger, but the risk does not seem high. Bank customers in Niger are relatively few in number. The largest bank has approximately 11,000 active accounts, the second largest 7,000, the third 5,000, the fourth 4,000, and the others much fewer. Most of the customers of these banks are well-known corporations, very wealthy individuals who are economically active and use checking services, and, to a lesser extent, small savers. The banks generally know their customers, the purpose of their financial transactions, whether they are acting on behalf of another person, their profile, and therefore know when a customer is undertaking an unusual transaction. To date, only two suspicious transactions have been reported to the CENTIF. The reasons for the low volume of reporting seem to relate to the local economy in Niger, which, apart from international trade transactions, is entirely cash based. The formal sector therefore does not seem necessary for laundering proceeds from criminal activities.

67. There are no statistics on the financing of terrorism. The establishment of bases of the Algerian group Al-Qaida in the Islamic Maghreb (AQIM), formerly the GSPC,[1] has been confirmed in northern Niger. Fighting between members of AQIM, on the one hand, and government forces or Tuareg groups, on the other hand, has also been reported. Niger also takes part in the "Trans-Sahara Counter-Terrorism Initiative" (TSCTI), whose aim is to improve the capacity of internal security services to control the borders and fight against illegal activities and terrorism. TSCTI is launched in the context of the Pan-Sahel Initiative and includes Algeria, Chad, Ghana, Mali, Morocco, Mauritania, Niger, Nigeria, Senegal, and Tunisia. In a 2005 report,[2] the International Crisis Group (ICG) mentions as financing sources the collection of ransoms following the kidnapping of Western tourists and the trafficking of cigarettes between West Africa and Europe via Algeria. The CENTIF has not yet received any suspicious transaction reports relating to the financing of terrorism

## 1.3. OVERVIEW OF THE FINANCIAL SECTOR

68. The formal financial sector is underdeveloped in Niger and is dominated by the banks. Financial intermediation was only on the order of 3 percent of GDP at the end of 2006. As of that time, banks mobilized more than 90 percent of the assets of the formal financial sector.

Formal financial sector in Niger

| -as at 12/ 31//2007 | Number of entities |
|---|---|
| - Banks | 10 |
| - Financial establishments | 2 |
| - Financial services of the Post Office | 1 |
| - Microfinance institutions (decentralized financial systems) | 148 |
| - Authorized money or currency changing services | 19 |

1 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.

2 Islamist Terrorism in the Sahel: Fact or Fiction? Africa Report N°92, March 1995

| | |
|---|---|
| - Insurance and reinsurance companies | 13 |
| - Insurance and reinsurance brokers | 17 |
| - Regional stock exchange | 1 |
| - Central securities depository and Securities Settlement Bank | 1 |
| - Management and intermediation firms | 1 |
| - National Directorate of the BCEAO | 1 |
| - Money and value transfer services | 1 |
| - Pension funds | 2 |
| - Public treasury | 1 |

**Banks and financial establishments**

69. The banking system[3] is relatively narrow with 10 commercial banks, including both national institutions and international groups. They are all "generalist." The number of banking institutions has changed little since 2000. Despite the fact that there are 10 banks, the balance sheet for the entire system did not exceed CFAF 380 billion in 2007 (US$864 million), or 20 percent of GDP. The system has 51 branches located primarily in Niamey..

70. There is an important presence of branches of foreign banks both in number (5 out of 10) and in terms of activity (nearly a quarter of bank assets at the end of 2006): (i) three subsidiaries of subregional groups and (ii) 3 subsidiaries of foreign banking groups. The first four banks dominate (85 percent of total bank assets at the end of 2006), and as of that same date, only four banks had a total balance sheet of over CFAF 125 billion or employed over 200 people. The profitability of the banking system is average.

71. The banking sector is not highly concentrated. Four institutions share 80 percent of the market in relatively equal shares, which suggests that the conditions for strong competition are there. The rest of the sector (six banks) consists of small banks with limited activity.

72. Banking intermediation is weak and institutions are located primarily in the principal urban centers. At the end of 2006, less than 2 percent of the population had bank accounts. As of that same point, the majority of points of sale in the banking network were located in Niger's four main cities whereas more than two-thirds of the population lived in rural areas in 2007.

73. The supply of banking services is not very broad and relatively simple. Investment products are limited largely to demand deposits and time deposits, certificates of deposit, and special-scheme savings accounts. Customers who are nonresident Nigeriens do not account for a significant proportion. Lending is primarily to companies and to a lesser extent to individuals.

74. Cash remains the main means of payment for withdrawals as well as deposits. It is not unusual for a business person to withdraw or deposit tens of millions of CFA francs daily. The other means of payment offered are checks, transfers, and, less commonly, payment cards (national, regional or international). Automatic teller machines (ATMs) and point of payment

[3] The banking law draws a distinction between banks and specialized financial establishments. 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 transfer which they use, for their own account or the account of others, in credit or investment operations (Article 3), whereas financial establishments are natural or legal persons other than banks which customarily engage, for their own account, in lending operations, sales on credit, or foreign exchange, and which customarily receive the funds that they use for their own account in investment operations, or which customarily serve as intermediaries as commission agents, brokers, or other capacity in all or part of such operations (Article 4).

terminals (PPTs) are very rare and exist only in the main cities. Foreign exchange transactions are a significant source of income for some institutions.[4]

75. Operations not entailing physical contact with customers are very rare. Internet banking activities are just being developed, not only for account queries but also for performing transactions (transfers in particular). It is not yet possible in Niger to open accounts via the Internet without physical contact with the customer.

76. The customer base is relatively diversified. The most important customers account for approximately three-quarters of the banks' portfolio. The relatively moderate concentration in comparison with other countries in the subregion could be explained by the lack of "large projects" or sectoral developments. This situation could change with national development projects in the mining sector, which will seek out the local banking sector.

77. Nigerien banks are largely open to the rest of the world. Almost all banks in Niger are linked to foreign banking groups. Apart from the Belgian group Fortis-Belgolaise, which is in the process of withdrawing, all leading foreign partners are African groups, most of which have a network in the WAMU. They have banking correspondents abroad (WAEMU, European Union, the United States, Saudi Arabia, China, etc.). However, there are no subsidiaries of Nigerien banks abroad.

78. The banks do not make a great effort to attract resources from the nonresident Nigerien community. However, some institutions have developed associations with foreign banks to facilitate the opening of accounts for Nigeriens abroad. The number of accounts held by foreign individuals has grown, a trend which appears to be on the rise (the volume of assets deposited by nonresident individuals is not available).

79. 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[5]) 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.

**Other financial institutions**

80. The Nigerien microfinance sector is the least developed in the subregion with a penetration rate of 7.5 customers per thousand inhabitants, compared with an average of 29 per thousand inhabitants in 2005 in the WAMU countries. It is characterized by a lack of solid, viable large networks.

81. As of December 31, 2007, the microfinance sector in Niger had grown somewhat, with 202,401 customers accessing services, a 66 percent increase over 2005. According to data available from the MEF, with six licenses granted and eight framework-agreements signed in 2007, the number of licensed microfinance institutions (MFI) had reached 148, but the number that had ceased operations in the same period is not known. Data available from the central bank for the sector shows total deposits of CFAF 6.5 billion and total lending of CFAF 11.7 billion. Capital stood at more than CFAF 4 billion against total estimated assets of more than CFAF 13 billion.

82. The activities of the MFI are not very diversified, but can involve sizable amounts for natural persons. The products offered consist primarily of demand deposits and time deposits as well as small investment or consumer loans. Most transactions are in cash, and decentralized financial institutions taking the form of mutual associations or cooperatives cannot offer checking or transfer services. Some decentralized financial institutions have entered into partnerships with local banks to offer international funds transfer services to their own customers as well as to occasional customers.

83. The life insurance sector is modest, with five property and casualty insurance companies, one life insurance company, and 28 brokerages. There are no life insurance products in the form of financial investments.

84. The central bank (BCEAO) engages in particular in correspondent banking activities and in the management of currency in circulation. According to the information provided to the mission, the concept of Public Treasury covers all the financial authorities, including in particular the Directorate of the Treasury, the Directorate-General of Customs, and the Directorate-General of Taxes and Government Property.

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

- **Postal services**: NIGERPOSTE is authorized to collect funds from the public and offer related products and services, particularly domestic and international funds transfers and means of payment involving any medium or technical process, checking accounts, and passbooks and other savings products. However, NIGERPOSTE's activities were suspended until recently.

[4] Article 2 of the Directive on External Financial Relations of the WAEMU Member States, annexed to Regulation 09/2001/CM/WAEMU, provides that only the BCEAO, Post Office, a licensed intermediary bank, or an authorized money and currency changing service may engage in foreign exchange transactions.

[5] 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.

- **Money or currency changing**: the activities of authorized money and currency changing dealers are limited as a result of competition from the informal sector. For one licensed operator, international rapid funds transfer activities performed under a bank contract had become the sole source of income.

- **Operations in securities and management on behalf of third parties**: there is a management and intermediation firm with a single customer, a bank. There are neither asset management firms[6] nor mutual funds (OPCVMs)[7] licensed in Niger.

- **Pension funds**: There are currently two pension funds in Niger.

86. According to information obtained by the mission, there are no electronic money establishments, electronic money distributors, or electronic money issuers active in Niger.

**Informal financial sector**

87. Although there are no formal accounting records at the national level, the Nigerien authorities conclude that the informal financial sector plays an important role, especially in the areas of international funds transfers, foreign exchange, and, to a lesser extent, *tontines* (grassroots-level solidarity savings and loan systems). The volume of informal transfers can be explained by the limited access for many customers 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. In some cases, these informal transfers can be explained by their lower cost and speed.

88. Informal foreign exchange services supplement the informal transfers of funds. No quantitative estimate of informal foreign exchange services is available. Some banks stressed the importance of the individual operations processed, as well as the very established nature of informal foreign exchange services.

89. Although there are no formal accounting records, the authorities conclude that *tontines* are also a widely used savings instrument.

## 1.4. OVERVIEW OF THE DESIGNATED NONFINANCIAL BUSINESSES AND PROFESSIONS (DNFBP) SECTOR

90. According to Law 2004-041 of June 8, 2004 on anti-money laundering (the AML law), the AML law applies to "members of the independent legal professions … [and] other subject entities, particularly auditors, real estate agents, dealers in high-value items (…) precious stones and metals, and owners, directors and managers of casinos.["] Preventive standards have not been established or disseminated in the DNFBP sector. The law defines their due diligence and reporting obligations, but "know your customer," occasional customer identification, beneficial owner identification, and record-keeping requirements do not apply to the DNFBPs. Moreover, the law covers other professions, such as those bringing in business to financial institutions, art dealers (particularly masks and painting), money couriers, gaming establishments and national lotteries, travel agencies, and nongovernmental organizations

91. **Real estate agents**: This profession does not currently exist in Niger.

92. **Auditors**: There are 39 accountants who have obtained the necessary international certification. However, regulation of the profession is primarily internal; they apply a very strict international code of ethics. The profession has not mobilized to enforce the obligations of its members under the AML law, and the public authorities have made no efforts to provide training for this profession.

93. **Lawyers:** There are about 120 lawyers in Niger, admitted to a single Bar established at the Supreme Court. Lawyers are located primarily in Niamey and the cities of Tillabery, Dosso, Tahoua, Zinder, Maradi, Diffa, and Agadez. Lawyers are free to establish practices anywhere within the WAEMU area, but in practice this doesn't happen. Lawyers 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 Nigerien Bar has not taken any action to enforce the obligations of its members under the AML law, nor have the public authorities made any efforts to provide training for this profession.

94. **Casinos:** There are currently 2 casinos in Niger.

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[6] The General Regulations of the Regional Council on Public Savings and Financial Markets (CREPMF) define asset management firms as legal persons that, through investment and trading on the securities exchange by the management and intermediation firms 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). Asset management firms are not authorized to hold the securities and/or funds of their customers.

[7] 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 securities; or any other form of joint investment authorized by the CREPMF (Art. 72).

95. **Notaries:** Notaries are public officers appointed 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 Chambre des Notaires (Notaries Association), of which the 29 notaries in the country are members, is responsible for supervising and regulating the profession, as well as 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, unwritten regulations on the need to know the identity of their customers.

96. **Trust and company service providers:** Lawyers, notaries, and auditors provide financial, tax, and other advice to enterprises. Lawyers and notaries play a significant role in the creation of legal persons and in real estate transactions. However, it seems there are no companies in Niger specialized as formation agents for legal persons specifically.

97. **Nongovernmental organizations**. There are 3 types of association in Niger: undeclared associations, declared associations, and associations that have signed a framework agreement with the government. Only the last two are subject to registration requirements.

## 1.5. OVERVIEW OF COMMERCIAL LAWS AND MECHANISMS APPLICABLE TO LEGAL PERSONS AND ARRANGEMENTS

98. The law applicable to legal persons established in Niger is governed by the Uniform Act Relating to Commercial Companies that was adopted by the Council of Ministers of April 17, 1997 and came into force on January 1, 1998. In accordance with the Treaty on the Harmonization of Business Law in Africa, the provisions of this Act are directly applicable and mandatory in the 16 states-party, including Niger. 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 mentioning 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 shares issued in exchange for the contributions of members.

99. The same Act adds that the founders must file a certificate at the Trade and Personal Property Credit Register 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 those that are jointly owned, must be listed on the trade register to become legally established. In Niger, 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 general partnership, limited partnership, joint stock company, limited liability company, or jointly owned company. No information was provided to the mission on the number of companies, by category.

100. According to information gathered by the mission, there are no legal arrangements in Niger such as trusts.

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

### 1.6.1. AML/CFT strategies and priorities

101. In order to limit the harmful effects of money laundering and the financial of terrorism and punish the perpetrators of such acts under the law, numerous conventions covering the laundering of money from various sources (drug trafficking, major financial crimes, corruption, the mafia, terrorism, etc.) have been adopted at the international and regional levels. In Niger, the anti-money laundering law was adopted on June 8, 2004, and the CENTIF was created by Decree 2004-262/PRN/ME/F of September 14, 2004.

102. BCEAO Instruction 01/2007/RB of July 2, 2007 on money laundering by financial institutions is intended to set out the implementing regulations for the Uniform Law to Combat Money Laundering of the member states of the WAEMU. However, Niger has not yet established a national AML/CFT strategy or prepared a plan of action in this regard.

### 1.6.2. Institutional AML/CFT framework

103. The Ministry of Finance (MEF) is the principal entity responsible for AML initiatives at the national level. Under the AML law, the CENTIF, which reports to the Ministry of Finance, plays a central role in the AML preventive arrangements in Niger. 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 the council of ministers. It is not independent financially as it does not have its own budget, and its allocated budget remains insufficient (CFAF 10 million) to fulfill its statutory role. It has no law enforcement officials to ensure the security of its offices.

104. The Ministry of the Interior, Public Security and Decentralization also plays an active AML role. It coordinates the actions of the National Police and the Directorate-General of Civil Defense. The Ministry supervises the National Police and Civil Defense, while the National *Gendarmerie* is attached to the Ministry of Defense. Only the National Police and the National *Gendarmerie* have jurisdiction in matters of criminal investigation.

105. The Directorate-General of the Police is supervised by the Ministry of the Interior and includes the Criminal Investigation Directorate, the Directorate of Public Security, the Directorate of Territorial Surveillance, and the General Information Directorate.

106. The Criminal Investigation Directorate has jurisdiction to investigate money laundering and its predicate offenses. The economic and financial centers at the level of the regional courts are responsible for conducting AML investigations and perform their task through agents and officers of the Criminal Investigation Directorate. The intelligence unit of the National Police is tasked with gathering information on state security and crimes.

107. The Criminal Investigation Directorate has a central unit for combating serious crime that is competent to identify offenses that are considered felonies, such as manslaughter, murder, conspiracy, aggravated theft, acts of piracy. A central economic and financial service is responsible for offenses that are economic, financial, or tax-related. A specialized team is responsible for investigating economic and financial offenses.

108. The judicial authority consists of the public prosecutors and judges. Responsibility for conducting investigations and prosecutions for economic and financial crimes and offenses in Niger falls within the competence of the public prosecutors' department. The national police and the *gendarmerie* have the authority to conduct investigations under the direction of the Prosecutor General's Office. In general, judges and prosecutors are not formally specialized in financial matters.

109. Pursuant to the Annex to the Convention creating the WAEMU Banking Commission, the WAMU Banking Commission, which is chaired by the BCEAO Governor, is responsible for ensuring that banks and financial establishments in Niger, as in the eight WAEMU states, are properly organized and supervised, and to this end, it is endowed with powers to impose administrative or disciplinary sanctions. Its jurisdiction includes AML/CFT activities. In addition, the principal tasks of the BCEAO are to draft accounting and prudential (including AML) regulations applicable to financial entities, to handle the technical aspects of transposing the BCEAO regulations into the members states' legislation, and to contribute, through its National Directorates, to the supervision of the banking system.

110. For designated nonfinancial businesses and professions, the situation is as follows: casinos are supervised by the Ministry of Finance. Examinations of the files are conducted by the national gaming corporation—Loterie Nationale du Niger (LONANI)—and the certification is signed by the Ministry of Finance. However, the supervision of casinos does not cover anti money laundering controls. Notaries and lawyers are under the supervision of the Chambre des Notaires (Notaries Association) and Ordre des Avocats (Bar Association), respectively. All of these organizations, being subject to the law, have participated in AML training organized by CENTIF.

#### 1.6.3 **Risk-related approach**

111. There is no national AML/CFT strategy or risk assessment.

#### **1.6.4 Progress made since the last assessment**

112. Niger has never been the subject of an assessment in this area, either by an international institution (World Bank or IMF) or by GIABA.

## 2 LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

### Laws and regulations

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

#### 2.1.1 Description and analysis

113. Money laundering has been a criminal offense in Niger since 1999. Order 99/042 of September 23, 1999 on combating drugs was the first law to institute the offense of "the laundering of money" derived from illegal drug trafficking. The offense of money laundering is also found in Order 92-24 of June 18, 1992.

114. A new and more complete legal framework for money laundering was established by Law 2004-041 of June 8, 2004 on combating money laundering. This law transposes WAEMU Directive 07/2002/CM/UEMOA of September 19, 2002 on combating money laundering in the member states of the WAEMU (the AML directive) into the Nigerien legal apparatus.

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

115. Money laundering is declared a criminal offense in Article 2 of the AML Law. 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, knowing that such property derives from a crime or offense or from an act of participation in such crime or offense, for purposes of concealing or disguising the illicit origin of said property or of assisting any person involved in the commission of such a crime or offense to evade the legal consequences of his actions;*

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

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

Laundered property (c. 1.2)

116. 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 nonfungible, as well as legal instruments or documents evidencing title to this property or 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.

117. The AML Law 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. According to the Nigerien authorities, the expression “derived from” in Article 2 should be interpreted as including indirect provenance. This interpretation is supported by the purpose of the AML Law (the contrary would have implied that money laundering stops at the point when the proceeds of crime are converted for the first time) and by Article 45, which explicitly provides for the confiscation of indirect proceeds.

118. 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 property constitutes the proceeds of crime. Indeed, Article 3, para. 2, of the Law stipulates that:

- “unless the predicate offense was the subject of an amnesty law, money laundering exists even if:
- -the perpetrator of the crimes or 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 predicate offenses (c. 1.3 and 1.4)

119. The AML Law sets out a broad scope of money laundering offenses, since it covers “all crimes and offenses,” which implies, under Articles 5 and 6 of the Nigerien Criminal Code (NCC) all offenses punishable by imprisonment of over 30 days. All serious offenses designated by FATF constitute “crimes or offenses” under Nigerien law with the exception of insider dealing. For the financing of terrorism, see 2.2 below. Insider dealing is “subject to judicial proceedings” under Article 36 of the Annex to the Convention creating the Regional Council for Public Savings and Financial Markets (CREMPF), which is directly applicable. For the moment, Niger has not provided penalties for this offense. However, according to the authorities, the laundering of proceeds from insider dealing could be pursued as money laundering. Moreover, the authorities are of the opinion that, in this hypothetical case, they could initiate proceedings based on more general offenses, such as fraud.

Extraterritorially committed predicate offenses (c. 1.5)

120. Article 2 of the AML Law provides that “money laundering is deemed to exist even if the events at the origin of the acquisition, possession, and transfer of the property to be laundered are committed on the territory of another member state or on the territory of a third-party country.” According to this Article predicate offenses to money laundering cover acts committed in another country.

Self laundering (c. 1.6)

121. The AML Law contains no provision expressly excluding the possibility that a person may be convicted not only for the predicate offense but also for the laundering thereof. According to the Nigerien authorities met by the mission, money laundering is an autonomousoffense (with reference to Article 3, para. 2, mentioned above) and requires active concealment to hide the fraudulent origin, which constitutes actions distinct from the predicate offense. On this basis, according to these authorities, it appears possible from a legal standpoint for a person to be the perpetrator of the predicate offense and then, in addition, of the laundering of the proceeds thereof. In the absence of case law, this issue of jurisprudential sequencing will need to be resolved by the Nigerien courts. However, regarding the application of penalties, only the heaviest penalty will apply since Nigerien criminal law does not accept the principle of consecutive sentences (Art. 55 of the Nigerien Criminal Code).

Ancillary offenses (c. 1.7)

122. For the purposes of Article 3 of the AML Law, the following are also considered laundering: "the agreement to or participation in an association to commit an act constituting money laundering; association to commit said act; attempts to perpetrate it; aid, incitement or advice to a natural or legal 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 natural persons (c. 2.1)

123. As indicated above, the offense of money laundering requires that the actions be intentional (Article 2 of the AML Law, which defines money laundering as "*one or several […] actions […] committed intentionally*."

Mental element of the ML offense (c. 2.2)

124. The AML Law contains no provision expressly mentioning that the intentional element of the offense of money laundering can be deduced from "objective factual circumstances." Nigerien law, like all civil law systems is based on the principle of *liberté de preuves*, which means that proof of intent to commit an offense is provided by objective material elements. (Cf. Art 74 of the Code of Criminal Procedure, which provides that "*the Investigating Judge examines (…) all information that he deems useful to obtain the truth."*)

125. Order 99-042, in contrast, contains a provision that expressly states that the intentional element of the offense can be deduced from factual objective circumstances. Article 106, second paragraph, provides that: "knowledge, intent or motivation as an element of the listed offenses [which include laundering of money from drugs] (…) could be deduced from factual objective circumstances."

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

126. Article 4 of the AML Law asserts the principle of the criminal liability of legal persons and sets out the sanctions applicable to them in this connection.

127. Making legal persons subject to criminal liability for money laundering does not preclude the option of parallel proceedings. Article 42 provides that legal persons may also be convicted of one or more offenses (see 2.5 below) and the competent supervisory authorities may apply the appropriate sanctions.

128. In addition, Article 42 of the aforementioned law also stipulates that the conviction of legal persons does not exclude the conviction of its representatives, who are natural persons, as perpetrators of or accomplices to the same crimes.

Sanctions for the offense of money laundering (c. 2.5)

129. Criminal sanctions against natural persons are set forth in Articles 37 through 41 of the AML Law. 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. By way of comparison, the penalties provided for fraud and handling of stolen goods are 1 to 5 years and 1 to 10 years, respectively. Attempted money laundering, as well as agreement to, association in, or complicity with a view to committing money laundering are subject to the same penalties.

130. 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).

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

132. Criminal sanctions for legal persons are set forth in Article 42: legal persons (other than the state) are punished by a fine equal to, or exceeding, five times that incurred by natural persons.

133. Additional penalties are set forth in Articles 41 and 45 of the AML Law. They are of two types: a compulsory additional penalty and optional additional penalties.

134. The compulsory additional penalty involves confiscation of the proceeds of the offense, of movable or immovable assets into which these proceeds are transformed or converted and, up to the level of their value, of legitimately acquired property with

which said proceeds are commingled, as well as revenues and other perquisites. This additional penalty applies to both natural and legal persons.

135. The optional additional penalties stipulated for natural persons are aimed at (1) restricting their freedom of action (prohibition on entering, staying in, or leaving the national territory, restriction of civic and family rights, the exercise of certain professional activities, check-writing 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.).

136. The optional additional penalties stipulated for 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.

137. As penalties have not been applied, it is difficult to estimate their effectiveness and dissuasive impact. The final paragraph of Art. 39 (see para. 18) does, however, raise some doubts about proportionality. If the offense of laundering is indeed an independent offense, penalties for of laundering should be linked only to the fact of laundering and not to the predicate offense. Taking into account the penalty for the predicate offense by punishing someone only for laundering could imply some variability in the sanctions for laundering that is not justified by the crime itself.

Statistics (Application of R. 32)

138. Since no money laundering cases have been dealt with (no investigations, proceedings, or convictions) in Niger, there is as yet no mechanism in place for the gathering of relevant information.

139. After the visit, the assessment team was informed that a money laundering case had been brought before the High Regional Court of Niamey.

Analysis of effectiveness

140. Since adoption of the AML Law in 2004, no money laundering matter has been dealt with by the Nigerien authorities on the basis of either the AML Law or Order 99/042 on combating drugs. The first criminal proceeding for unlawful enrichment was initiated in June 2008.

141. The effectiveness of the criminalization of money laundering cannot be definitively assessed until it has been applied by the Nigerien courts. There are nonetheless two provisions in the AML Law that could bring the evidence threshold to a rather high level and thus reduce the effectiveness of criminalizing money laundering. Article 33 provides: "*To establish proof of the predicate offense (…), the investigating judge may order (…).*" As already mentioned, Article 39 stipulates that to criminalize money laundering, the judge takes into account the criminalization of the predicate offense. These two provisions could imply that to prove the offense of money laundering the prosecutor must always very specifically prove the underlying predicate offense even if, for some reason, that is not possible. This could have a harmful effect on the effectiveness of this criminalization.

### 2.1.2 Recommendations and comments

142. Niger is urged to provide sanctions, in its domestic law, for the offense of insider dealing and to make explicit in the AML Law that "derives" in Article 2 includes indirect provenance.

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

### 2.1.3 Compliance with Recommendations 1 and 2

| | Rating | Summary of factors underlying the rating |
|---|---|---|
| R.1 | PC | Lack of demonstrated effectiveness of the criminalization of ML<br><br>The criminalization of the financing of terrorism is not completely compliant with international standards |
| R.2 | LC | Uncertainty around the proportionality of penalties |

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

### 2.2.1 Description and analysis

144. The criminalization of the financing of terrorism is provided by Law 2008-18 of June 23, 2008 (the FT Law), which forms part of the Nigerien Criminal Code (NCC).

145. At the WAEMU level, the Council of Ministers adopted Directive 04/2007/CM/UEMOA on combating the financing of terrorism (FT) in WAEMU member states (the CFT Directive), in order to define the legal framework for combating terrorist financing in the WAEMU countries by implementing the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism, as well as the main international recommendations in this area. On the basis of the CFT Directive, a uniform law has been drafted that will serve as a model for all WAEMU member states. The adoption of this uniform law in Niger (draft CFT Law) is planned for 2009.

Criminalization of FT (c. II.1)

146. The FT Law, Article 399-17 of the NCC, provides that "any person who, by any means whatsoever, directly or indirectly, unlawfully or deliberately, supplies or gathers funds with the intention of their being used or knowledge that they will be used in whole or in part to commit:

(a) an act constituting an offense provided under this title;
(b) 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;

shall be subject to imprisonment of fifteen (15) to thirty (30) years. The confiscation of the funds thus collected shall accrue to the Public Treasury."

147. This definition is almost exactly the same as that contained in the draft CFT Law. The financing of a terrorist organization or individual terrorist is not included in the definition of the financing of terrorism.

148. The NCC contains no provisions that define the concept of "funds." Based on the current interpretation of this term, the Nigerien authorities recognize that "funds" does not cover all the concepts targeted by the 1999 United Nations Convention for the Suppression of the Financing of Terrorism. This term is defined in compliance with international standards in the draft CFT Law

149. A draft law amending the NCC will add a fourth paragraph to Article 399-17 which provides: "The expression 'funds' shall extend to goods of any kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form whatsoever, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travelers' checks, bank checks, money orders, shares, securities, bonds, drafts, letters of credit."

150. The FT Law provides explicitly that "*the offense is constituted even if the funds collected have not actually been used in the commission of the offense."* According to the authorities, this also implies that it is not necessary for the financing to be linked to one or more specific terrorist acts.

151. As for attempts, the NCC criminalizes the attempt to commit a crime. Article 2 of the NCC provides that "any attempted crime, that would be demonstrated by the beginning of execution, even if it has been suspended or did not have its intended effect owing to circumstances independent of the will of the perpetrator, is considered the crime itself." Thus, in application of ordinary law, the attempted commission of the offense of the financing of terrorism constitutes a criminal offense.

152. More specifically on the crime of FT, Article 399-19 provides that "the attempt to commit one of the (...) crimes provided [including FT] is punished as (…) the crime itself."

153. Article 48 of the NCC criminalizes aiding and abetting a crime or offense, providing that "*accomplices (…) shall be punished with the same penalty as the perpetrators themselves."* Article 49 defines aiding and abetting as covering elements (a) and (b) of Article 2 (5) of the Convention on Terrorist Financing. Article 208 of the NCC on the association of criminals applies, inter alia, to the crime of the financing of terrorism and thus covers element (c) of Article 2 (5) of the Convention on Terrorist Financing.

154. The draft CFT Law defines the financing of terrorism as "supplying (…) collecting (…) funds, property, financial and other services" and "property" as "any type of holdings, corporeal or incorporeal, fixed or moveable, tangible or intangible, fungible or nonfungible, as well as legal instruments or documents evidencing title to such assets or the corresponding rights" and "funds and other financial resources" as "all financial assets and economic benefits of any kind, including, but not exclusively, cash currency, checks, cash receivables, drafts, payment orders 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 on Terrorist Financing. Neither the financing of a terrorist organization nor the financing of an individual terrorist is included in the definition of terrorist financing in the draft CFT Law.

Predicate offense for money laundering (c. II.2)

155. The financing of terrorism constitutes a predicate offense for money laundering, which applies to the proceeds of *all* crimes and offenses.

Jurisdiction for TF offense (c. II.3)

156. The NCC contains no provisions regarding territorial jurisdiction if the terrorist act is perpetrated in a third country. According to the Nigerien authorities, even if the jurisdiction to pursue terrorist acts, to which the definition of financing of terrorism refers, requires a link with the Nigerien territory, this does not prevent proceedings from being brought before a Nigerien judge for the financing of a terrorist act in another country. However, they recognize that this is a matter of interpretation and is not certain.

157. Article 4, para. 3, of the draft CFT Law states that the financing of terrorism is considered to exist even if the acts underlying the acquisition, possession or transfer of the property intended for the financing of terrorism are committed in another country.

Mental element of the TF offense (application of c. 2.2 of R.2)

158. In application of Nigerien ordinary 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 present. This approach is in line with the requirement set forth in Recommendation 2.

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

159. According to the Nigerien authorities, the term "*person*" in the NCC refers only to natural persons and not to legal persons.

160. The draft CFT Law posits the principle of the application of criminal liability of legal persons in the same way as the AML Law.

Sanctions for FT (Application of c. 2.5 of R.2)

161. The sanctions for the financing of terrorism contained in Articles 399-17—namely, 15 to 30 years and the confiscation of funds—seem dissuasive and proportionate given the penalties -provided for other terrorist crimes that are criminalized in this same title, which range from 10 to 30 years (hostage-taking) and 15 to 30 years (attempted terrorist bombings, nuclear terrorism). This demonstrates that the financing of terrorism is considered a terrorist act rather than a financial crime. It will not be possible to determine the effectiveness of the sanctions until there have been convictions for the crime of financing terrorism.

162. However, the criminalization contained in the draft CFT Law is much more detailed in that it also provides fines for natural persons (at least equal to five times the value of the property or funds involved in the operations) and for legal persons (at least five times those applied to natural persons) and additional penalties, specifically exclusion from public procurement, placement under court surveillance, prohibition on professional activity for no more than five years, dissolution of the enterprise, and posting or broadcasting of the conviction.

Statistics

163. As the criminalization of the financing of terrorism is quite recent, no FT cases have as yet been dealt with.

Analysis of effectiveness

164. Given that no proceedings have as yet been brought for the financing of terrorism, it is not possible to analyze effectiveness as yet.

### 2.2.2 Recommendations and comments

165. The Nigerien system as provided in Articles 399-17 of the NCC does not cover all the requirements of Special Recommendation II. The adoption of the draft CFT law will remedy the insufficiencies of some current provisions—definition of funds, determination of national jurisdiction, and liability of legal persons. The authorities are urged to adopt the draft as soon as possible.

166. The lack of criminalization of the financing of an individual terrorist or terrorist organization remains, however. The authorities are urged to rectify this either in the draft CFT Law or in the draft law amending the NCC mentioned above.

### 2.2.3 Compliance with Special Recommendation II and R. 32

| | Rating | Summary of factors underlying the rating |
|---|---|---|
| RS.II | PC | Lack of criminalization of the financing of an individual terrorist or terrorist organization<br>Notion of "funds" is insufficiently broad<br>Uncertainty regarding national jurisdiction<br>Lack of liability of legal persons |

## 2.3 CONFISCATION, FREEZING AND SEIZURE OF THE PROCEEDS OF CRIME (R.3 ET 32)

### 2.3.1 Description and analysis

167. The provisions on confiscation, freezing, and seizure of the proceeds and instruments of offenses under ordinary law are found in the NCC (Art. 11) and NCCP (particularly Arts. 49, 70). For money laundering, the relevant provisions are particularly Arts. 36 and 45 of the AML Law. For drugs, Articles 112, 117, 133 and 134 of Order 99-42 cover measures for confiscation (112) and seizure (117, 133 and 134). For the financing of terrorism, confiscation is provided for in Art. 399-17 of the NCC and seizure is dealt with in Art. 399-26 of the NCC.

#### Confiscation of property related to ML,FT or other predicate offenses including property of corresponding value (c. 3.1)

168. The mandatory confiscation of goods constituting proceeds from the commission of a money laundering offense is stipulated in Article 45 of the AML Law, 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 immovable 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 benefits derived from these proceeds, property into which they are transformed or in which they are invested or property with which they are commingled, whoever the owner of said property may be, unless their owner establishes that he is unaware of their fraudulent origin.*"

169. Moreover, as an optional additional criminal sanction applicable to natural and legal persons, Articles 41 and 42 of the AML Law provide for "*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 thereof.*"

170. Thus, the AML Law includes, with the property subject to confiscation, property constituting the proceeds of the offense of money laundering and the instrumentalities used in or intended for use in the offense.

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

172. The following are not included among the property subject to confiscation under the AML Law: proceeds generated by the commission of a predicate offense to money laundering, confiscation of the proceeds of a crime or offense being covered by the NCC. This issue is addressed by Article 11, which states that:

> *"(…) and special confiscation, either of the* corpus delicti *if the convicted party is the owner thereof, or of things produced by the offense, or of those that have served, or were intended to serve, to commit it are penalties that are common to criminal and correctional matters."*

173. It must be emphasized that this provision also applies to the offense of money laundering. This is relevant because Article 45 does not provide for the confiscation of the *corpus delicti* of money laundering, namely the laundered property.

174. Article 112 of Order 99-42 provides for the confiscation of "proceeds presumed to derive from the offense, movable or immovable property in which the proceeds are presumed to be [transformed] or converted up to the value of the proceeds in question, property acquired legitimately into which said proceeds are presumed to have been transformed or converted unless the owners of said proceeds or property provide proof of their legitimate origin." Article 113 also provides an optional criminal sanction of confiscation of all or part of the property of the convicted person, whatever the nature.

175. For FT, Article 399-17 provides: "The confiscation of the funds thus collected will accrue to the Public Treasury."

176. The NCC does not provide for the confiscation of property of corresponding value to the proceeds or instruments of crime. The AML Law seems to make reference to the option when it provides: "*and* ***up to the amount of their value****, property acquired legitimately with which said proceeds* are *commingled."* The problem that arises is that this sentence requires that these goods be commingled with the proceeds of crime. By adding this requirement, it does not allow for the confiscation of *any* property of corresponding value.

177. A comparable problem arises with Article 112, which also seems to provide for confiscation of corresponding value, but requires that the proceeds of crime be presumed to have been transformed or converted into property to be confiscated. By requiring a link, even indirect, between the proceeds of crime and the goods to be confiscated, this rule does not allow for genuine confiscation of property of corresponding value.

Provisional measures to prevent dealing in property subject to confiscation (c. 3.2)

178. The AML Law provides provisional measures to prevent any dealing, transfer or disposal of property subject to confiscation. Article 36 of this law states that "*the investigating magistrate may prescribe precautionary measures in accordance with the law, ordering in particular, at the expense of the State, the seizure or confiscation of property related to the offense under investigation and all items which are likely to permit the identification of the property, and the freezing of the money and financial transactions related to said property*." It should be noted that the use of the term "confiscation" for a precautionary measure that may be taken by an investigating magistrate does not appear correct.

179. For predicate offenses, Section III of the Nigerien Code of Criminal Procedure (NCCP), "Transport, search, and seizure," deals with seizure by an investigating magistrate. Article 49 provides: "*He* [the criminal investigation officer] *seizes the arms and instruments used in or intended for use in the crime, as well as anything that appears to have been a proceed of said crime.*"

180. For drug crimes, Article 117 of Order 99-42 provides for the possibility of seizure of all property derived directly or indirectly from the offense and all documents that can facilitate proof of the offense. Articles 133 and 134 provide precautionary measures to ensure the confiscation of drugs and the proceeds of the crime.

Ex parte application for provisional measures (c. 3.3)

181. Neither the AML Law nor the NCCP require prior notice for an investigating magistrate or the Public Prosecutor to proceed with the initial application to freeze or seize property subject to confiscation ex-parte or without prior notice.

Identification and tracing of property subject to confiscation (c. 3.4) and power to void actions (c. 3.6)

182. The AML Law empowers the investigating magistrate to order a number of investigatory measures to establish proof of the money laundering offenses, including in particular the surveillance of bank accounts and similar accounts; access to computer systems, networks and servers; and the communication of authentic instruments and private instruments, and of banking, financial and business documents.

183. Regarding the possibility for law enforcement agencies to take steps to prevent or void actions, whether contractual or otherwise, where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation, such steps are not explicitly provided for by the AML Law or by the NCCP. According to the authorities met by the evaluation mission, however, in practice neither contractual nor other obligations can prevent the confiscation or seizure of an asset in cases in which the persons involved were aware of or should have known of their illicit origin.

184. Under the terms of Article 28 of the AML Law the CENTIF is in a position to block the execution of a transaction on the basis of reliable, serious and corroborated information for a period not exceeding 48 hours.

185. Moreover, Titles II and III of the NCCP organize criminal investigations and provide for the possibility of seizures and searches by an investigating judge handling a procedure after referral of the case to the court by the prosecutor. For further details on the powers of law enforcement agencies and the CENTIF, see Sections 2.5 and 2.6 of this report.

Protection of bona fide third parties (c. 3.5)

186. The AML Law contains no specific provisions protecting the rights of bona fide 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 that he/she is bona fide. Article 94 of the NCCP enables any person claiming to be entitled to an object placed in judicial custody to request its restitution from the investigating judge.

Statistics (application of R. 32)

187. The Nigerien authorities have thus far not handled any money laundering or financing of terrorism cases.

188. Regarding property frozen, seized or confiscated in relation to predicate offenses—drug seizures, the following statistics were provided to the team:

**STATISTICS PROVIDED BY THE *GENDARMERIE* ON DRUG SEIZURES**

| Year | Indian hemp (in grams) | E14 (in grams) | Amphetamines (in tablets) | Cocaine (in grams) | Heroin (in grams) |
|---|---|---|---|---|---|
| | | | | | |
| 2004 | 1,262,740 | 0 | 3,779 | 759 | 200 |
| 2005 | 185,973.4 | 11,866 | 8,300 | 0 | 0 |
| Difference | -1,076,767 | 11,866 | 4,501 | -759 | -200 |
| % | -85.27 | 0 | 118.48 | -100 | -100 |
| 2005 | 185,973.4 | 11,866 | 8,300 | 0 | 0 |
| 2006 | 2,429,505.03 | 29,475 | 977 | 2 | 20 |
| Difference | 2,243,532.63 | 17,609 | -7,323 | 2 | 20 |
| % | + 1,206.37 | +148.64 | - 88.22 | X | X |
| 2006 | 2,429,505.03 | 29,475 | 977 | 2 | 20 |
| 2007 | 10,709,305.534 [?] | 24,720 | 0 | 0 | 0 |
| Difference | 8,279,800.504 | -4,755 | -977 | -2 | -20 |
| % | 340.801 | -16.132 | -100 | -100 | -100 |

**CUSTOMS STATISTICS ON DRUG SEIZURES**

| Year | Marihuana Kg | Amphetamines Tablets | Other Tablets | Cocaine g | Heroin g |
|---|---|---|---|---|---|
| 2004 | 243.215 | 2280 | 2280 | 759 | 200 |
| 2005 | 487.4 | 51,550 | 3,800 | | |
| 2006 | 116.595 | | | | |

**NATIONAL POLICE STATISTICS ON DRUG SEIZURES**

| Year | Marihuana grass Kg | Marihuana resin Kg | Amphetamines Tablets | Other Tablets | Cocaine g | Heroin g |
|---|---|---|---|---|---|---|
| 2004 | 371.43 | | 1891 | 60,173 | | |
| 2005 | 693.619 | 0.984 | 15,200 | 1,038 | 2.431 | |
| 2006 | 217,717 | 4 | 374 | 511 | 0.566 | |

Analysis of effectiveness

189. Provisions concerning seizure and confiscation put in place by the AML Law have not yet been implemented, and the mission therefore cannot assess their effectiveness. As for the application of the provisions of ordinary law, the above statistics show that in practice customs, the police, and especially the *gendarmerie* regularly use them in the course of their investigations for the instruments, *corpus delicti*, and evidence of a crime or offense. On the other hand, the figures suggest that by using precautionary measures, the services mentioned do not seek to seize the *proceeds* of crime.

### 2.3.2 Recommendations and comments

190. Overall, the laws and regulations establishing the Nigerien freezing, seizure and confiscation mechanism for offenses related to money laundering are in compliance with international standards, except as regards confiscation of corresponding value to the value of the proceeds and instruments of crimes and offenses. The Nigerien authorities are urged to establish, as quickly as possible, a provision to allow such confiscation. For seizures, the customs, police and *gendarmerie* should direct more attention to the proceeds of crime. (For more detail, see part 2.6.)

### 2.3.3 Compliance with Recommendations 3 et 32

| | Rating | Summary of factors underlying the rating |
|---|---|---|
| R.3 | PC | Lack of application of the freezing, seizure and confiscation mechanisms for money laundering offenses and the proceeds of predicate offenses<br><br>Lack of provisions for the confiscation of funds of corresponding value to the value of the proceeds and instruments of crimes and offenses |

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

### 2.4.1 Description and analysis

191. Community Regulation 14/2002/CM/WAEMU of September 19, 2002 (Regulation 14/2002), which is directly applicable, puts in place a mechanism for freezing assets pursuant to UN Security Council Resolution 1267 (*et seq*.) in WAEMU member states in general, and in Niger in particular.

192. 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 states;
- 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 states;
- Decision 14/2006/CM/WAEMU of September 8, 2006 amending Decision 12/2002/CM/WAEMU [*sic*];
- Decision 09/2007/CM/WAEMU of April 6, 2007 amending Decision 14/2006/CM/WAEMU;
- Decision No. 09/2008/CM/UEMOA of March 28, 2008 amending Decision No. 09/2007/CM/UEMOA.
- In the national context, in application of Resolution 1373 of the Security Council, the Nigerien authorities created a National Anti-Terrorism Committee responsible for monitoring anti-terrorism measures by Order No. 022/MAE/C/DAFF/DP of October 25, 2007.

Freezing assets under S/RES/1267(1999) (c. III.1), Application of 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)

193. 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 organization designated by the Sanctions Committee shall be frozen*."

194. 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 that these lists then be disseminated by the BCEAO to banks and financial institutions. To that end, five decisions have been adopted by the Council of Ministers of WAEMU.

195. Between sessions of the Council of Ministers, which take place quarterly, 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. This provision is intended to ensure the application as quickly as possible of actions to freeze funds against the individuals, entities, and organizations on the sanctions list. According to the authorities met, this provision has never been used.

196. In terms of scope, Regulation 14/2002 applies to all banks and financial establishments, as defined by the banking regulations, which operate within WAEMU member states. Furthermore, these financial 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.

197. Review of the mechanism for disseminating the UN Security Council lists pursuant to Resolution 1267 leads to the following observations:

- Regulation 14/2002 is restrictive regarding the entities and persons subject to the freezing mechanism 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 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." As indicated in the Regulation, this definition of "funds" 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 in any form evidencing title to or interest in said assets. The latter category is not covered by the notion of "funds and other financial resources."
- The mechanism put in place by the abovementioned regulation is overly restrictive in scope because it refers only to funds held by financial institutions, whereas the 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 parties, in addition to financial institutions.
- The mechanism put 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 states, 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. The delay between designation by the Committee and the decision of the Council of Ministers of the Union often exceeds two weeks (in one case it was almost three months). Moreover, in the event of an impasse within the Council of Ministers, which makes its decisions unanimously (Article 11 of the WAEMU founding treaty), member states, including Niger, should have clear national procedures for disseminating the lists so that they can take action without delay.

198. Parallel to the mechanism put in place by Regulation 14/2002, in Niger there is an informal mechanism for transmitting the UN lists through embassies. The Embassy of Niger to the U.N. sends the lists to the Ministry of Foreign Affairs, which then takes charge of distributing the lists to other authorities concerned, specifically the Office of the President of the Republic and the Ministries of the Interior and Defense.

Freezing assets under S/RES/1373 (2001) (c. III.2), Freezing actions by other countries (c. III.3), Application of 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)

199. 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.

200. At the national level, Niger 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 proceed to freeze said assets.

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

Guidance to financial institutions (c. III.6)

202. Apart from Regulation 14/2002, which solely concerns financial institutions, no guidance is given to 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 unfreezing funds of de-listed persons (c. III.7)

203. The absence of 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 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)

204. Regulation 14/2002 does not put 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)

205. Regulation 14/2002 does not put 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 extraordinary expenses. The last paragraph of Article 4 of the Regulation does provide that the freezing does not apply to funds and financial resources subject to a waiver granted by the Sanctions Committee and that such waivers may be obtained through the central bank, but no detailed procedure for doing so is provided.

Review of freezing decisions (c. III.10)

206. The absence of appropriate procedures through which a person or entity whose funds or other assets have been frozen can challenge that action with a view to having it reviewed by a court is explained by the lack of a legal mechanism for implementing Resolution 1373.

Freezing, seizing, and confiscation in other circumstances and protection of third parties (application of c. 3.1 - 3.4 et 3.6 in R. 3, c. III.11, III.12)

207. See above: seizure and confiscation actions provided in ordinary law (NCC and NCCP) apply to the financing of terrorism and all other terrorist acts (NCC). Moreover, the draft FT Law on terrorist crimes, which will be incorporated into the NCC, provides that "*the freezing of assets, funds, valuables or property shall be applied after the procedure is initiated* [investigation of a terrorist crime]." Regulation 14/2002 does not contain any provision to protect the rights of third parties acting in good faith.

Enforcing obligations under SR. III (c. III.13)

208. 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 put 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.

209. 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 property belonging to persons or entities designated on the U.N. lists.

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

Statistics (application of R. 32)

211. There is no mechanism for gathering information related to freezing actions taken pursuant to Resolution 1267.

Analysis of effectiveness

212. Among the financial institutions and designated nonfinancial persons and businesses met by the mission, only banks stated that they were aware of lists disseminated by the BCEAO containing the names of persons whose funds should be frozen.

213. In most cases, the controls performed after receiving the abovementioned lists focus on all customers.

### 2.4.2 Recommendations and comments

214. 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 actions taken pursuant to Resolution 1267;
- Expand the freezing actions to all "funds and other assets," which would encompass all financial assets, assets of any type, both tangible and intangible, including real estate and chattels, as well as legal documents or instruments in any form evidencing title to or interest in said assets;
- Expand the regulation's scope to cover all parties who hold funds or other assets belonging to persons or entities involved directly or indirectly in the commission of terrorist acts, such as the property registry, for example, 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;

- Put in place effective and publicly known procedures for the unfreezing of funds or other assets belonging to persons or entities inadvertently affected by a freezing mechanism;
- Put in place appropriate procedures for authorizing access to funds that have been determined to be necessary for basic expenses, the payment of certain types of fees, expenses, and service charges or extraordinary expenses, in accordance with Resolution S/RES/1452 (2003);
- Adopt measures to protect the rights of bona fide third parties.

215. Niger 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, if necessary, put into effect actions taken under the freezing mechanisms of other countries;
- Put 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;
- Put 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;
- Put 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 bona fide third parties.

216. It is recognized that some of the deficiencies noted above with regard to the freezing of funds are addressed in the draft CFT law.

### 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 overly restrictive and incomplete (restrictive scope, restrictive definition of “funds,” etc.) and is not adequately implemented<br><br>-Absence of a complementary national mechanism for implementing Resolution 1267<br><br>-Absence of a legal framework for implementing Resolution 1373 |

## 2.5 **THE FINANCIAL INTELLIGENCE UNIT AND ITS FUNCTIONS** (R26)

### 2.5.1 Description and analysis

#### Legal framework

217. As a member of the West African Economic and Monetary Union, Niger has transposed Directive 07/2002/CM/UEMOA of September 19, 2002 into its internal legal framework by adopting Law 2004-41 of June 8, 2004, which in Article 16 creates a Financial Intelligence Unit called CENTIF (National Financial Information Processing Unit).

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

218. Article 16 of the Law provides that a National Financial Information Processing Unit (CENTIF) be created by decree and placed under the supervision of the minister responsible for finance. In application of this article, Decree 2004-262/PRN/ME/F of September 14, 2004, on the creation, organization and operation of a National Financial Information Processing Unit (CENTIF) was adopted.

219. CENTIF has taken the form of an administrative FIU, "with financial autonomy and decision-making authority on matters within its jurisdiction" (Art. 17 of the AML Law) and is placed under the authority of the Minister of Finance. Operational since April 2005, it is primarily charged with collecting, analyzing, and processing financial information sent to it in

the form of suspicious transaction reports by entities subject to the AML Law in order to look for elements that could constitute money laundering.

220. To date, CENTIF's responsibilities do not include combating the financing of terrorism. However, Niger is in the process of transposing into domestic law the Uniform Law arising from Directive 04/CM/UEMOA on combating the financing of terrorism in the member states of the WAEMU, which was adopted by the Council of Minister of the Union on March 28, 2008. This Law will extend CENTIF's responsibilities to combating the financing of terrorism. The draft law is at the government review stage and adoption by the National Assembly is expected in the coming months.

221. In addition to these responsibilities, CENTIF is also called upon to give advice on the implementation of government policy on money laundering and, if appropriate, proposing any necessary reforms to strengthen the effectiveness of the AML system.

Guidance regarding the manner of reporting (c.26.2)

222. The procedures to be followed for suspicious transaction reporting and specifications regarding the disclosure form are covered by Articles 26 and 27 of Law 2004-041. Entities subject to the law are required to report to CENTIF using a standardized suspicious transaction report adopted by Order No. 143/ME/F/CENTIF of May 26, 2006 of the minister responsible for finance. The standardized suspicious transaction report contains the following sections:

- identification of the reporting entity
- general information
- analysis
- identification of the natural and/or legal person.

223. However, CENTIF has indicated that it would accept non-compliant reports, the content being more important than the form. The missing information can always be collected later.

224. Under the terms of Article 27 of the Law, suspicious transaction reports are transmitted to CENTIF by any means that leaves a written record. Reports made by telephone or other electronic means must be confirmed in writing within forty-eight (48) hours. Such reports must indicate the time period within which the suspicious transaction is to be executed or the reasons why the transaction has already been executed. CENTIF acknowledges receipt of all written suspicious transaction reports.

225. So, in principle, entities subject to the law have the obligation to report suspicious transactions to CENTIF before they are executed. However, even it were impossible to postpone their execution or if it became apparent after the transaction was carried out that it involved sums of money or other property of suspicious origin, the suspicious transaction reporting remains mandatory.

226. The principle of *ex ante* reporting is important since CENTIF has the authority to oppose execution of the suspicious transaction for a maximum of 48 hours (Art. 28 AML Law). This allows it to conduct further research in complicated cases and prevent the disappearance of the assets before they can be seized by the judicial authorities. If at the end of this period, the investigating judge has not intervened with the reporting entity, the latter retains its freedom to act.

227. The decision to oppose thus lies with CENTIF. The regulations do not make explicit who in CENTIF can exercise this authority or how the decision is made (by committee? unanimously? ...). The members of CENTIF are of the opinion that in practice the decision-making authority lies with the president or his substitute in the case of his absence, after consideration of the opinion of the other members in extraordinary session.

228. Finally, the suspicious transaction report to CENTIF is mandatory, notwithstanding any other declaration made to an authority in application of a law other than the AML Law (Art. 26, final paragraph, AML Law).

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

229. In accordance with Article 17 of Law 2004-041, CENTIF has access to financial, administrative, and law enforcement data held by the supervisory authorities, criminal investigation officers, as well as by the entities subject to the law and any natural or legal person, to the extent that these data are necessary to the performance of its mission and likely to add value to and assist in the analysis of suspicious transaction reports. Access to these data is either directly through ex officio designated correspondents or on written request from CENTIF.

230. CENTIF thus has correspondents within certain public services, particularly the police, *gendarmerie*, customs, and the judicial services (Article 19 of the AML Law). These correspondents play the role of liaison officers and are required to provide all relevant information in response to a request from CENTIF in the context of its analysis of reports. Moreover, nothing prevents them from spontaneously reporting information they consider useful to CENTIF.

Obtaining additional information from reporting parties (c. 26.4)

231. Under Article 17, CENTIF has the authority to request additional information from entities subject to the law and any natural or legal person that has information likely to support suspicious transaction reports. The general wording of Article 17

seems to target all entities subject to the law, even outside of a complaint by a specific entity subject to the law and all persons that have relevant information. Thus CENTIF is able to trace the money and complete its analysis.

232. It should be noted, however, that under Article 28, paragraph 1, CENTIF "… if necessary, makes requests for additional information to the reporting party and any public and/or security authority." This divergence from Article 17 could suggest that CENTIF's authority to request additional information would be limited to the reporting party only and could consequently lead to sterile discussions in practice.

Dissemination of financial information (c. 26.5)

233. CENTIF sends a report to the public prosecutors when the disclosed operations are indicative of possible money laundering offenses (Art. 29). Here again the only text relating to the decision-making procedure within CENTIF is found in Article 19 of CENTIF's internal regulations, which provides that the decision be taken by the member in committee under the chairmanship of the President. The regulations do not specify the minimum quorum, whether the decision must be unanimous or by majority, or what action should be taken in case of emergency. In the only case sent to the Public Prosecutor, the decision was taken unanimously by the members of CENTIF.

234. The Public Prosecutor is thus the only recipient of CENTIF reports. The report is accompanied by all relevant evidence, but never contains the suspicious transaction report itself. The identity of the reporting party cannot appear in the report, which is authoritative until proven otherwise. CENTIF advises the reporting party of its conclusions "in a timely manner."

235. All reports are structured as follows:

- information on the identity of the suspect;
- details on the suspicious transactions or operations;
- additional information and results of investigations by the investigation service;
- conclusions on the indications of money laundering and, if possible, the criminal origin.

236. The Public Prosecutor can either initiate a criminal investigation or immediately refer the case to an investigating judge. Under Article 29, the Public Prosecutor is supposed to immediately refer the case to an investigating judge. This provision is not strictly applied: in the only case that was transmitted to the Public Prosecutor in 2006, the investigating judge was not involved as the case was filed by the Public Prosecutor, who thus deems that he maintains the decision-making prerogative regarding whether a judicial investigation should be initiated or not. He considers that cases should be referred to the investigating judge only if he intends to institute proceedings, thus excluding direct summons of the accused before the court (*citation directe*). This practice could run counter to the spirit of the law, which is aimed at avoiding any intervention, not to say political pressure, to bury potentially embarrassing cases..

Operational independence and autonomy (c. 26.6)

237. The law gives CENTIF operational independence and autonomy to protect it from undue interference or influence. Under the supervision of the Minister of Finance, CENTIF has financial autonomy and autonomous decision-making authority in matters under its jurisdiction (Art. 17).

238. According to CENTIF, there have been no cases of interference (or attempts) or inappropriate external pressure until now. However, financial independence is rather theoretical in that CENTIF does not have a real budget.

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

239. CENTIF's members and correspondents swear an oath before taking up their duties. They are required to respect professional secrecy, and the information collected may not be used for purposes other than those provided in the law (Art. 20).

240. To the extent that there are dislcosures to be registered, the database is "stand-alone," without connections to the outside and currently accessible only to the members and to CENTIF's IT specialist. The existing computer hardware was supplied and installed by GIABA after the destruction of CENTIF's equipment during the fire in June 2007.

241. A new computer system and software will be installed in the near future with the help of French cooperation. This database will be populated primarily by suspicious transaction reports, additional information, results of investigations, and information received from counterpart foreign FIUs. Access will be subject to restrictive conditions and organized on a "need-to-know" basis.

242. The law provides three circumstances under which operational information held by CENTIF may be disseminated:

- submission of a report to the Public Prosecutor when indications of money laundering are found (Art. 29);
- exchange of information with an FIU of a member state of the WAEMU after a duly substantiated request (Art. 23);
- exchange of information, subject to reciprocity, with counterpart foreign FIUs responsible for receiving and processing suspicious transaction reports, when they are subject to similar confidentiality requirements (Art. 24).

243. Finally, under Article 20 of CENTIF's internal regulations, CENTIF's premises must be physically protected by 24-hour armed guards provided by the security services (policy or *gendarmerie*) (Art. 20 of CENTIF's internal regulations). During the mission's visit, such arrangements were not in place despite the official request made by CENTIF to the appropriate authorities. Since August 8, 2008, that is after the mission's visit to Niamey, the appropriate authorities have provided a security arrangement consisting of two members of the National Security Intervention Forces (FNIS).

244. A pertinent question arises regarding the right to submit cases to the Public Prosecutor. The only case submitted to the public prosecutor's Office in 2006 involved acts (forgery) that had not yet reached the money laundering stage. However, CENTIF deemed that it should submit a report on the basis of Art. 39, para. 2, of the CCP (duty of the public officer to inform the Public Prosecutor of knowledge of a crime or offense). The question arises here whether the FIU exceeded its authority. The AML Law is quite clear when it limits CENTIF's jurisdiction to "…acts likely to constitute money laundering …" (Art. 29, para. 1), which in the matter in question was not (yet) the case. Even comprising public officers and civil servants, CENTIF is subject to the *lex specialis* (a special law—the anti-money laundering law), which in Art. 20 prohibits the use of information collected by CENTIF for purposes other than combating money laundering. Consequently, it could be argued that it did not have the right to transmit this information to the public prosecutors. The question is not just academic, since, if one could argue the nullity of the transmission and have it accepted, the investigation and resulting proceedings would also be void and inadmissible ("fruit of the poisoned tree").

Public release of periodic reports (c. 26.8)

245. CENTIF must publicly release periodic reports to the Minister of Finance (Art. 17), and to BCEAO to inform the Council of Ministers of the WAEMU (Art. 23). These reports, which are issued at least once quarterly and followed by an annual report, analyze the development of anti-money laundering activities at the national and international levels and assess the disclosures received.

246. Status reports produced by CENTIF contain information on CENTIF's activities, training and public awareness activities, and, normally, an analysis of statistics, typologies, and trends. However, because of the small number of suspicious transaction reports received (2 reports from financial institutions), such analysis could not be conducted.

**Membership in the Egmont Group (c. 26.9)**

247. CENTIF has not yet submitted a request for membership in the Egmont Group because it does not meet the Group's membership requirements (operational status, jurisdiction in the area of terrorist financing). But it does intend to do so in time.

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

248. CENTIF has not yet exchanged any information with a WAEMU or couterpart FIU. However, CENTIF intends to have regard to the Egmont Group principles in its operational relations with other FIUs whenever it exchanges information.

Adequacy of FIU resources CRF (c. 30.1)

249. Currently, CENTIF has six (6) members:

- 1 senior official from the Treasury with the rank of Central Administration Director, seconded to CENTIF by the Minister of Finance; he is the chairman of CENTIF;
- 1 judge specialized in financial matters seconded to CENTIF by the Minister of Justice;
- 1 senior official of the Criminal Investigation Directorate, seconded by the Ministerof Interior;
- 1 representative of BCEAO, providing the technical secretariat for CENTIF;
- 1 investigations officer (an inspector from the Customs Service), seconded to CENTIF by the Minister of Finance;
- 1 investigations officer (an officer of the Criminal Investigation Directorate), seconded to CENTIF by the Minister of Interior.

250. The members of CENTIF perform their duties on a permanent basis for a term of three years, renewable once. They were appointed under Decree 2004-330/PRN/ME/F of October 20, 2004. Their first term has ended and was tacitly renewed.

251. The members of CENTIF are assisted in their mission by a support staff consisting of:

- 1 administrative and financial manager;
- 1 IT specialist;
- 1 secretary;
- 2 civilian guards;
- 2 FNIS agents.

252. CENTIF's financial resources come from a government budget allocation and may be supplemented by contributions from WAEMU and the development partners. However, currently CENTIF does not have its own budget. Among its contributions, the government has provided CENTIF with premises and covers its members' allowances. In 2005, the draft budget totaled CFAF 266,125,000 (€405,678), but the allocation provided totaled only CFAF 10,000,000 and was not released in full. In 2006 the draft budget totaled CFAF 545,524,980 and the budget allocation was only CFAF 10,000,000 (€15,423). In June 2006, a supplementary budget amount of CFAF 30,000,000 (€46,296) was added to this amount, which was partially released. In 2007, the draft budget totaled CFAF 284,328,400. The budget allocation was CFAF 10,000,000, which was not released in full. In 2008, the draft budget totaled CFAF 258,352,000 but no amount was allocated. The African Development Bank provided start-up support for CENTIF in the form of office furniture, various pieces of equipment, and coverage of the expenses for a fact-finding mission and short internship abroad.

253. Following the fire that destroyed the CENTIF offices in June 2007, new premises were provided by the Ministry of Finance, and new furniture and computer equipment were obtained, primarily with foreign assistance (GIABA), at a total cost of about CFAF 23,000,000.

Integrity of FIU staff (c. 30.2)

254. The members of CENTIF are appointed by decree of the President of the Republic on the recommendation of their competent authority (Art. 4 of Decree No. 2004-262PRN/ME/F of September 14, 2004). They swear an oath before taking up their duties and are bound by professional secrecy (Art. 20, AML Law; Art. 8 & 9, Decree). They may not use the information collected by CENTIF for purposes other than those provided in the AML Law. The conditions of their recruitment are governed by the regulations of their respective administrations.

255. The staff and correspondents of CENTIF are also bound by the same confidentiality rules as the members (Art. 9, Decree No. 2004 of 9/14/04 and Art. 18, Internal Regulations of CENTIF).

Adequate training for FIU staff (c. 30.3)

256. The members and staff of CENTIF have participated in the following training:

- 2005: fact-finding mission to the French FIU (TRACFIN) and AML authorities in Senegal;
- 2006: training seminar with the U.S. Treasury, Tracfin, and the World Bank;
  interactive training with UNODC; fact-finding mission to TRACFIN and the Mauritius FIU;
- 2007: training seminar (GIABA); fact-finding mission to Monaco (SICCFIN);
- 2008: participation in the workshop on the CFT draft uniform law.

257. The personnel of the law enforcement authorities and other participants involved in combating money laundering have received training organized by CENTIF with the support of AML/CFT partners. The training covered the following topics:

- introduction to money laundering and the FATF recommendations;
- AML legal framework in Niger;
- definition and role of FIUs;
- money laundering typologies;
- role of supervisory and oversight authorities in monitoring respect of the uniform anti-money laundering law;
- money laundering techniques and practices in the financial sector;
- judicial investigations in economic and financial crime.

Statistics (application of R. 32)

258. CENTIF has appropriate statistics on the suspicious transaction reports (STRs) that it has processed and refers to them in its periodic status reports. Given the very small number of SRTs received, the statistics are quite simple to maintain: since it started up in 2005, CENTIF has dealt with two (2) STRs, in 2006 and 2007, respectively, both from the banking sector.

Feedback (c 32.5)

259. There are no special provisions for feedback from the public prosecutors. However, CENTIF is aware of the follow-up given to the only case forwarded to the Public Prosecutor in 2006, which was classified "closed."

### 2.5.2 Recommendations and comments

260. Law 041/2004 of June 8, 2004 established the legal basis for the creation of CENTIF, the administrative unit that acts as FIU for Niger and is responsible primarily for receiving and processing suspicious transaction reports. Operational since April

2005, after the appointment of its members by decree, CENTIF has received only 2 reports in all, in 2006 and 2007, respectively. Since a fire destroyed its premises in CENTIF in June 2007, the system has not yet really started up again.

261. Although CENTIF's efforts are appreciated, it must be acknowledged that significant effectiveness problems exist. There are several reasons for this, at all parts of the preventive chain, including the FIU itself. CENTIF plays a central role in the anti-money laundering preventive system and as such acts as catalyst in the fight against money laundering. The mission found that the police apparently expects the system of suspicious transaction reporting to bring money laundering to light and that they have great expectations in this regard.

262. It is therefore of the utmost importance that all those involved, including CENTIF, obtain a more in-depth knowledge of the subject through an accelerated training program in which CENTIF should take the lead together with the supervisory authorities. The system is unlikely to yield results when the participants have not had the opportunity to obtain specific operational expertise. It is also essential that a relationship of confidence be established between CENTIF and the entities subject to the law to create an environment that will favor more effective development of the preventive system.

263. The basic legal framework for CENTIF is sound. The suspicious transaction report form developed by CENTIF is well drafted, complete, and detailed, and can serve as a good guide for reporting parties. The FIU is well organized and prepared to perform the unit's tasks adequately. Nevertheless, there are still aspects that should be fine-tuned to improve the unit's functional quality.

264. The multidisciplinary approach, which is reflected in the composition of the members of CENTIF is somewhat imbalanced by the preponderance of the police/judiciary to the detriment of financial representation, which does not really reflect the notion of an administrative service. The financial component should be strengthened with expert analysts in economics, banking and/or finance.

265. The experience of a case dealt with by the FIU shows that the procedures in place could be reviewed and fine-tuned. The use of police communications networks, such as Interpol, to complete the information is a risk to the confidentiality of the data, as the IP channel is open to all member police services. It must be ensured, one way or another, that this information, which is protected for as long as it has not been referred to the public prosecutors, is not used in police investigations. Also, the issue that arises with respect to Arts. 20 and 29 of the AML Law (use limited to anti-money laundering purposes) and Art. 39, para. 2, of the CCP (referral of offenses to the Public Prosecutor), which applies to civil servants such as the magistrates and police, must be resolved.

266. It goes without saying that the lack of a budget and financial resources for CENTIF is a serious deficiency that cannot continue. While the allocated human resources are sufficient at present, appropriate software and adequate equipment for staff are urgently needed. CENTIF's plans, which involve expansion of the team of experts and specialists, are ambitious but will be effective only if the system itself reaches cruising speed.

267. Finally, CENTIF's responsibilities do not yet include combating the financing of terrorism. So the transposition of the WAEMU uniform law must take place without delay.

268. Given the very small number of SRTs, maintenance of the FIU statistics poses no problems at present. However, it is important to ensure that structural follow up of the relevant statistics is possible.

### 2.5.3 Compliance with Recommendations 26, 30, and 32

| | Rating | Summary of factors underlying the rating |
|---|---|---|
| R.26 | PC | Lack of effectiveness of the preventive system owing to a lack of awareness and training of the participants, in which the FIU must take a leading role<br><br>FT not included in the remit of the FIU<br><br>Protection of data confidentiality not entirely assured owing to the use of the IP network and application of Art. 39, para. 2, CC |

## 2.6 LAW ENFORCEMENT, PROSECUTION 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, judicial authorities:

269. Criminal cases, such as ML and FT, are dealt with first of all by the Regional Courts (Tribunaux de Grande Instance). There is a High Regional Court in Niamey and nine Regional Courts located in the departments or regions. There are two Courts of Appeal, in Niamey and Zinder. Finally, the Court of Cassation has final jurisdiction for matters of law.

270. A public prosecution department is installed in each of these courts, namely, the Prosecutor General and his Advocates/Substitutes General at the Court of Cassation and Courts of Appeal, and the Public Prosecutor (Prosecutor of the Republic), assisted by a Deputy and his (first) substitutes, at the level of the Regional Courts.

271. They are autonomous (Law 2007-05 of February 22, 2007) and number 248 in all.

Legal framework, police:

272. The departments of the National Police that are involved in AML/CFT activities are:

- Directorate of Public Security (DSP) – the urban police;
- Criminal Investigation Directorate (DPJ) – inter alia, conducts financial investigations;
- Directorate of General Information (DRG) - intelligence-gathering;
- Directorate of Territorial Surveillance (DST) – border police.

Legal framework, *gendarmerie*:

273. The *gendarmerie* operates throughout the Nigerien territory, especially in rural areas. Apart from maintaining public order, it conducts investigations by means of 3 investigative teams (60-70 officers in all).

274. The most serious challenges facing the police services relate to the instability in the north of Niger, particularly arms and drug trafficking in which Niger plays the role of transit country.

Designation of competent law enforcement authorities (C. 27.1)

275. In terms of police authorities (police and *gendarmerie*), there are no services with specific expertise in money laundering and the financing of terrorism issues. The same is true for the public prosecution departments, which have no specialization in these issues. That said, the police is well aware of the importance of combating these kinds of serious criminality and makes an effort to organize itself adequately for the challenge. Thus the DST has created a unit to combat the (financing of) terrorism, although this unit is not yet really operational.

276. Although until now police investigations have never concentrated on money laundering as an autonomous offense, that does not mean that they have neglected the financial aspects of fraud and property offenses. Financial offenses are dealt with primarily by the Criminal Investigation Directorate, whose investigations generally include investigation of the material benefits. One example is a case of laundering of money from tax fraud by a casino, and another case related to the creation of a company with stolen money, where the investigation had to be abandoned because the company was located in rebel territory. In no cases have the proceeds of crime been seized.

277. Before the introduction of the AML Law, the police had already had cases where it had been warned by the banks. During an investigation, an investigating judge must always be involved to obtain banking documents. Now, all look to CENTIF as an important source of relevant information and documentation on money laundering operations and the discovery of assets of criminal origin. The police services have also become aware that there is a great need for appropriate training and specialization in the AML/CFT field.

278. The difficulties raised by the police investigators regarding AML/CFT investigations essentially involve:

- insufficient human resources and lack of time to conduct in-depth investigations;
- lack of mobility for police officers;
- problem of proof of illicit origin;
- the fact that only a small percentage of the population uses banks, which makes it much more difficult to detect material benefits;
- lack of computerization and centralization of databases.

279. The various police services have developed a practice of collaboration in the field, which mainly consists of the mutual consultation of files. Moreover, if the investigation moves into rural areas, the police transfers the case to the *gendarmerie*. However, there is no system of structural coordination or centralization of data.

280. In the public prosecution departments there are (as yet) no specialized AML and CFT sections. The judicial authorities have no experience in these fields owing to the lack of cases based on the AML Law. The autonomous offense of money laundering is unknown to them in practice, so they are quite uncertain as to how to tackle it, even though they are of the opinion that they need not provide proof of an identified and specific predicate offense owing to the general scope of the criminal definition of money laundering (Art. 2, AML Law). It would be sufficient to prove only the illicit origin.

281. Art. 33 of the AML Law vests specific powers in the investigating judge to collect evidence: surveillance of bank accounts, access to computer systems, and authority to request banking and similar documents. This article seems superfluous, as these acts are part of the general powers of an investigating judge in any case, To be sure, "*Quod abundat non viciat*," but the reference in this article to proof of the predicate offense and offenses related to money laundering risks creating confusion regarding the burden of proof in the context of a proceeding for the autonomous offense of money laundering.

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

282. There are no formal or express provisions in the Nigerien CCP, or in the AML Law, covering postponement of arrest and seizure, except in cases involving drugs and the related money laundering (Order 99-42 of September 23, 1999, on combating drugs in Niger, Arts. 122 – 124). Nevertheless, in practice investigators have full latitude to decide on the most appropriate moment to proceed with the arrest of the individuals involved in these activities or to gather the evidence. All depends on the urgency of the steps to be taken and the circumstances surrounding the crimes and the need to secure property that has been laundered or is to be laundered and to prevent the perpetrators of these actions from escaping justice. In any case, the principles governing the criminal procedure do not place any time limit on the competent authorities to proceed with the arrest of an individual involved in the commission of a crime or offense. Police investigations are conducted under the direction and authority of the Public Prosecutor and, if appropriate, the investigating judge, so any related decision should normally be taken in consultation with these magistrates.

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

283. Order 99-42 of September 23, 1999 on combating drugs in Niger (Arts. 122 – 127) provides for the use of the following special techniques in investigations of drugs and the laundering of drug money:

- controlled deliveries;
- stake-outs and wiretapping;
- access to computer systems;
- monitoring of bank accounts.

284. The Nigerien authorities could not, however, provide statistics on the application of these techniques in investigations.

Powers to compel production of and search all documents and information (c. 28.1)

285. In principle, any search and seizure requires a warrant from the appropriate judicial authority, namely the investigating judge. Articles 33 and 36 of the AML Law even specifically and (abundantly) provide access to bank and financial data and the seizure of evidence by the investigating judge. The police can bypass this fundamental procedure only in cases of *flagrante delicto*, and then only against the suspect and in his domicile or with his consent. However, this procedure has not yet been applied in the money laundering context.

286. In the case of combating the financing of terrorism, the draft law contains similar provisions in Articles 26 and 29.

Powers to take and use witnesses' statements (c. 28.2)

287. Taking and using witnesses' statements are an essential part of any investigation or proceeding, whether involving money laundering or not. The law enforcement authorities, including the police, are thus routinely authorized to take and use witnesses' statements when they discover offenses and gather evidence (Arts. 14 and 21 CCP). Moreover, a specific procedure regarding the appearance of witnesses not being held in custody is provided in Art. 59 of the AML Law in the context of mutual legal assistance.

Adequacy of the authorities' resources (c. 30.1)

288. There are currently 248 judges in Niger, so under the present circumstances the situation is not alarming. However, there are some vacancies, which are being filled gradually as new classes have graduated from the National School of Administration and Justice each year since 2004.

289. The police forces are adequately organized and well-structured, with an appropriate distribution of tasks and specialties. Human and financial resources are limited, however, considering the challenges, which are exacerbated by the size of the country, the economic situation, and the instability in the North, which force the police to set priorities and make careful use of its resources. This is especially true for the *gendarmerie*, which covers the entire country.

Integrity of the authorities' staff (c. 30.2)

290. Nigerien judges must hold at least a master's degree in law or an equivalent degree. They must pass the entrance examination for the National School of Administration and Justice. They are subject to a character check and swear an oath at the time of their internship and before taking on the function of protecting the secrecy of deliberations and not doing or undertaking anything that may damage the honor and dignity of the judiciary.

291. The police and *gendarmerie* must participate in a competition before being admitted to training institutes. They may not have a criminal record, are subject to a character check, and take ethics courses during their training.

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

292. General training is provided in the National School of Administration and Justice for the judicial authorities, in the National Police School for the national police, and in training centers for *gendarmes*. Structural, specialized training on financial crime, the financing of terrorism, and money laundering is not included in this program but is done in the field or on an ad hoc basis in training sessions organized by CENTIF (there have been two with the police and judicial authorities). As a result there is a great deal of uncertainty and even ignorance among the operational staff on the characteristics of the offenses money laundering and the financing of terrorism, the burden of proof, the preventive system, the role of CENTIF, and interaction among the authorities concerned.

Statistics (application of R. 32)

293. The judicial authorities, police, and *gendarmerie* have provided statistics on criminal cases they have dealt with. These statistics show that there have been no cases of money laundering and the financing of terrorism.

### 2.6.2 Recommendations and comments

294. Generally, the police forces, include the investigation teams of the *gendarmerie*, are adequately trained to perform their functions of investigating offenses under ordinary law, as shown by the encouraging number of investigations that are referred to the public prosecutors. Their human and logistical resources are rather limited, however, given the size of the country.

295. Currently, anti-money laundering and combating the financing of terrorism are a significant challenge for investigators and the law enforcement authorities, The new approach, which consists of tackling offenses that generate (large amounts of ) laundered money in reverse, i.e., starting with the material benefits of the crime to identify the predicate offense and its perpetrator, is essentially unknown to them and therefore they do not know how to proceed. This does not mean that they never pay attention to the financial aspect of offenses, particularly property and drug offenses, but generally these investigations yield no results, especially because only a very small proportion of the Nigerien population uses banks and transactions are almost always in cash. Statistics on cash seizures speak for themselves in this regard.

296. Consequently, there is a serious need for targeted training on financial crime, specifically money laundering techniques and evidence. This also implies a change in mentality from the classic approach of investigating the predicate offense and nothing else. The focus must now be more directed on the proceeds in all their forms. The detection of such assets in the regulated financial sector is of course largely the responsibility of CENTIF, from which the police expect the necessary information, but this does not release the police from focusing their efforts in this direction, especially in the informal sector: the preventive system is another very important source, but it co-exists with the repressive system, which is the exclusive purview of the police and judicial authorities.

297. Therefore experience is needed to develop the expertise. Specialized courses specifically covering money laundering, its techniques, typologies, and legal and operational challenges are of primary importance, as is experience in the field. There is a great deal of turnover in the police and judicial services, which means that investigators and investigating judges do not really have the opportunity to gain in-depth knowledge of the subject. It will be necessary to gradually reorganize, with the anticipated progress in the system of suspicious transaction reports, to given operational staff time and opportunity to gain the experience that is essential in dealing with the challenge of the serious crime of money laundering and the financing of terrorism.

### 2.6.3 Compliance with Recommendations 27, 28 et 30

| | Rating | Summary of factors underlying the rating |
|---|---|---|

| | | |
|---|---|---|
| R27 | NC | Serious lack of effectiveness in detecting and investigating criminal proceeds<br>Investigations and proceedings are insufficiently focused on the financial aspect<br>Lack of specialization in money laundering and the financing of terrorism<br>Passive attitude and lack of initiative in gaining expertise in the field |
| R28 | C | |

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

### 2.7.1 Description and Analysis

298. Customs has the primary mission of protecting Niger's borders (1,267,000 km in total) and ensuring that customs duties are collected appropriately. In terms of criminal findings, the customs authorities have reported repeated cases of cigarette and drug trafficking.

299. For cross-border transportation, Niger has two systems of declaration and control based on:

The Exchange Regulations:

300. As WAEMU member states share the same currency (CFA franc) with seven other states, the regulations applied in Niger are community regulations based on Regulation 09CM/UEMOA of December 27, 1998 regarding the external financial relations of Member States of the WAEMU. This regulation is transposed in particular in Law 2000-23 of December 20, 2000 on the 2001 Finance Law and its implementing regulations, specifically Decree 2001-129/PRN/MF of July 26, 2001, Order 0028/MF/E/DGD of January 17, 2002 and Circular 008/MF/E/DGD/DCRI of January 22, 2002. However, legal proceedings regarding exchange offenses in Niger are governed by domestic regulations arising from Law 97-02 of June 2, 1997 and Decree 97-056 bis PRN/MF of January 30, 1997.

301. In accordance with Chapter 4 of Regulation 09CM/UEMOA (Articles 22 to 35), resident travelers going abroad (that is, to non-WAEMU states) are required to declare (and obtain authorization for) the equivalent of over CFAF 2,000,000 in foreign exchange (or around €3,049). The manual transportation of the CFA franc within the Union and the importing of CFA notes or means of payments denominated in foreign exchange by resident travelers is unrestricted. Nonresident travelers are required to declare all means of payments that they have in their possession upon entering and leaving the national territory when the amount exceeds the equivalent of CFAF 1,000,000 (± €1,524).

The Customs Code under Law 61-17 of May 31, 1961 establishing the Customs Regime in Niger:

302. Under Article 45, para. 1, of the Customs Code, all imported or exported goods must be declared in detail so that they can be given the appropriate customs treatment. This article gives rise to all the customs' powers to control imported and exported goods. Niger currently uses this declaration system.

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

303. Niger has not established a specific declaration/disclosure system in the AML/CFT context. The two systems mentioned above cannot be considered even to partially meet the international AML/CFT criteria.

304. First of all, currency and bearer negotiable instruments cannot be considered "goods." The customs controls established by the Customs Code are intended for the collection of import and export duties and the detection and seizure of contraband. This has nothing to do with the tracking and detection of money of criminal origin.

305. The Exchange Regulations are intended primarily to protect the monetary community of the WAEMU states, which explains the fairly low thresholds (CFAF 1,000,000 and CFAF 2,000,000, respectively). Therefore questions arise regarding the implementation of control measures: to date there has been only one finding of a violation of the Exchange Regulations, in February 2008, which was dealt with administratively (fine of CFAF 10,000,000). In addition, there is the impression of insufficient communication to travelers of their obligation to declare: this duty is not mentioned in the forms to be completed by travelers entering the country nor is attention draw to it on posters at border crossings.

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

306. In general terms, customs agents have the right to inspect goods, means of transport and individuals, homes, and a particular right of discovery for customs officers regarding papers and documents of all kinds. In principle, they have the right to interrogate the individuals concerned and conduct investigations in cases of customs offenses. However, as indicated above, this does not apply in the AML/CFT context.

Restraining of currency (c. IX. 3)

307. The stopping and restraining of goods is possible only in case of a flagrant customs offense, and not in an AML/CFT context. Therefore, means of transport and litigious goods that are not subject to confiscation may be restrained as surety for the penalties incurred until bail or a deposit is paid in the amount of the said penalties (Art.155 of the Customs Code).

Retention of information (c. IX.4)

308. Information on customs findings and other information on the identity of the persons concerned are stored, but are not kept or used in support of judicial proceedings against money laundering or the financing of terrorism.

Availability of information to the FIU (c. IX.5):

309. There are no formal provisions requiring the customs service to notify CENTIF of suspicious cross-border transportation incidents. However, there is a CENTIF correspondent in the customs service, in accordance with Art. 19 of the AML Law. Nothing prevents this correspondent from informing CENTIF of findings that may be relevant in support of CENTIF's analytical work. Such information does not have the status of laying information, however.

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

310. Currently, at the domestic level, adequate, structured coordination among the authorities concerned is lacking. Cooperation with other operational services is ad hoc. No problems have been reported in this regard.

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

311. International cooperation among customs services is well regulated. There is not even a need for a cooperation treaty or agreement: Article 34, para. 4, of the Customs Code stipulates that the customs administration is authorized, subject to reciprocity, to provide the competent authorities of foreign countries with any information, certificates, minutes, and other documents likely to establish the violation of the applicable law and regulations at entry to or exit from their territory. However, as the system of declaration/disclosure of currency has not been introduced in Niger, there is no legal basis and practice for providing such international assistance.

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

312. *Nulla poena sine lege*. There is no law, therefore there are no sanctions.

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

313. Cross-border transportation of currency related to money laundering may be punished under Articles 37 to 38 of the AML Law as acts of commission or participation in these offenses. However, the customs agents themselves have no legal basis for intervening; they must leave the findings and investigation to the police forces.

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

314. As customs agents are authorized to seize goods only in cases of customs offenses, they must, if the case arises, refer the matter to the police and judicial authorities to take the appropriate precautionary measures.

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

315. See IX.10

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

316. Nothing is expressly provided for this precise case, but this kind of exchange of information could fall under normal international cooperation between customs services.

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

317. In principle, customs records are confidential and only authorized persons, such as customs agents and police forces, have access to them. Their use is also regulated. However, there are no reports of cross-borders operations within the meaning of SR IX in the customs databases.

318. 30.1 The customs administration is a structure placed under the authority of the Ministry of Economy and Finance (see Decree 2005-228/PRN/ME/F of September 13, 2005). It is primarily responsible for protecting the economic area, collecting customs duties and taxes, seeking out, identifying, and repressing customs fraud, and, secondarily, providing support to other administrations.

319. It consists of central services (directed by a director general and including 6 national directorates and an inspector general's office), decentralized services (including 5 regional directorates, 17 full service bureaus, 27 limited service (border) bureaus, eight intervention and investigation teams, and two customs collection agencies), and an adjunct service (covering bonded warehouses). The staff is governed by autonomous regulations under Law 2005-14 of May 30, 2005. There are currently 830 agents in all grades. More than 200 agents have been recruited and are in training.

320. 30.2 Under Article 19 of the Autonomous Regulations, a number of conditions must be met for direct access to the corps, including, being at least 18 years of age and no more than 35, meeting specific conditions for access to one of the corps within the Customs Service depending on the terms and conditions defined for that particular corps, enjoying full civic rights, being cleared for 24-hour active service by a doctor licensed by the Administration, being recognized as free of any serious illness, and being recognized as being of good moral standing based on an investigation by the appropriate public administrations.

321. After appointment to the customs service, all customs agents must swear an oath before the District Court (Art 26.1 of the Customs Code). In addition, customs agents are prohibited from directly or indirectly receiving any gratuity, reward, or gift (Art 30, Customs Code). Finally, under Article 111 of the Autonomous Regulations: "Customs agents are subject to professional discretion and reserve. They are subject to professional secrecy for the facts or information they obtain in the exercise or during the course of the exercise of their duties. They remain subject to this obligation even after they resign from their duties."

322. 30.3 The customs staff has neither been trained nor made aware of the problem of money laundering and the financing of terrorism. Moreover, the agents are not legal authorized to identify related offenses. There is no training module at the National School of Administration and Justice (ENAM) where customs officers primarily receiving their training.

323. Statistics: Customs does maintain statistics on its activities. There are no statistics on money laundering and the financing of terrorism.

### 2.7.2 Recommendations and comments

Customs has no responsibilities in the field of money laundering and the financing of terrorism. If they are faced with facts indicative of these crimes, they must pass on the information to the police forces. Moreover, Niger does not yet have a specific system for the declaration or disclosure of information in the AML/CFT context. So, specialized awareness-building for the customs staff, and at least some organization and coordination measures, are required. Also, a system of declaration and disclosure for the cross-border transportation of currency is required in the AML/CFT context.

324. This said, there are already some mechanisms in place that can serve or be used in future to detect flows of currency crossing the WAEMU borders. The implementing rules for the Exchange Regulations already provide a declaration system and give the customs service the right to obtain information on currency in the possession of travelers entering or leaving WAEMU territory. However, the Exchange Regulations do not apply to internal WAEMU borders. Moreover, the statistics do now show systematic, effective monitoring of these regulations.

### 2.7.3 Compliance with Special Recommendation IX

| | Rating | Summary of factors underlying the rating |
|---|---|---|
| RS.IX | NC | Lack of a declaration/disclosure system regarding the cross-border transportation of currency in the AML/CFT context |

## 3 PREVENTIVE MEASURES – FINANCIAL INSTITUTIONS
**OBLIGATION OF CUSTOMER DUE DILIGENCE AND RECORD-KEEPING**

### 3.1 RISK OF MONEY LAUNDERING OR THE FINANCING OF TERRORISM

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

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

### 3.2.1 Description and analysis

326. Legal framework:

- The AML law of June 8, 2004 transposing into national law Directive nº 07-02/CM/UEMOA of September 19, 2002 concerning the fight against money laundering in the WAEMU member states;
- BCEAO Instruction nº 01/2007/RB of July 2, 2007 concerning the fight against money laundering within financial entities;
- Regulation 15/2002/CM/UEMOA of September 19, 2002 concerning payment systems within the WAEMU member states;
- BCEAO Instruction nº01/2006/SP of July 31, 2006 concerning the issuance of electronic money and e-money establishments, taken in application of Regulation n° 15/2002/CM/UEMOA of September 19, 2002 concerning payment systems within the WAEMU member states, although at present neither electronic money nor e-money establishments exist in Niger;
- 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 Niger).

327. 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 to be "non-binding," in rating compliance with the various recommendations.

328. The activities engaged in by financial institutions, as defined by the FATF, may be carried out in Niger by:

- Financial entities (FEs) in the meaning of the AML law. The latter are designated by name (see table below), but without reference to the legal texts governing them;
- The BCEAO and the Public Treasury, which the AML law designates as entities subject to the law but does not identify as FEs. The possibility of a national law creating provisions that are binding on the BCEAO, which has a status equivalent to that of an international financial institution, seems uncertain. The BCEAO also has the specific characteristic of being simultaneously one of the authorities charged with ensuring the proper functioning of the AML/CFT mechanism within the WAEMU and of being itself subject to that mechanism;
- Electronic money establishments, issuers of e-money, and distributors of e-money (see comments below), which do not exist in Niger;
- Money and value transfer companies and pension funds. These institutions are not explicitly designated by the AML law. The mission considers that only persons designated by name in that law are bound by its provisions. Indeed, there is nothing in Article 5 of the AML law defining its scope of application that would support a broad interpretation. Such an understanding would be both (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 persons designated by name in this law are unaware of the fact that it applies to them.

Financial institutions to which the AML/CFT laws and regulations apply explicitly:

| | AML law concerning AML | BCEAO Instruction nº 01/07/RB concerning AML | Directive nº 04/2007 concerning CFT (not transposed) |
|---|---|---|---|
| - Banks and financial establishments | X | X | X |
| - Financial services of the Post Office | X | X | X |

| | | | |
|---|---|---|---|
| - *Caisse des dépôts et consignation*(State Savings Deposit Institutions) (or entities serving as such) | X | X | X |
| - Microfinance institutions | X | X | X |
| - Authorized money and currency changing services (*Agréés de change manuel*) | X | X | X |
| - Insurance and reinsurance companies | X | | X |
| - Insurance and reinsurance brokers | X | | X |
| - Regional Stock Exchange | X | | X |
| - Central securities depository and securities settlement bank | X | | X |
| - Management and intermediation firms (*Sociétés de gestion et d'intermédiation*) | X | | X |
| - Asset management firms (*Société de gestion de patrimoine*) | X | | X |
| - Mutual funds (*Organismes de placements collectifs en valeurs mobilières*, OPCVM) | X | | X |
| - Fixed capital investment companies | X | | X |
| - BCEAO | X | | X |
| - Public Treasury | X | | X |
| - Money or value transfer services | | | X |

329. The legal basis for the applicability of the BCEAO Instruction to the financial services of the Post Office and to the *Caisse des dépôts et consignations* (State Savings Deposit Institutions)seems uncertain. Although the AML law 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 of the *Caisse des dépôts et consignations*."

Prohibition of anonymous accounts (c. 5.1)

330. While neither the AML law nor Instruction nº 01/2007/RB specifically prohibits anonymous accounts or accounts under fictitious names, Articles 7, 8, and 9 of the law and Article 4 of the instruction establish the obligation of identifying customers. Under these provisions, anonymous accounts and/or accounts under fictitious names are practically impossible.

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

331. The AML law and Instruction nº 01/2007/RB establish certain due diligence obligations, which must be respected by all financial entities (i) before they open an account; agree to hold, *inter alia*, securities, stocks or bonds; assign a safe deposit box; or enter into any other business relationship with a customer (Article 7 of the law and Article 4 of the instruction); (ii) when they carry out occasional cash transactions exceeding CFAF five (5) million (about US$2,200[8]) or in the case of repeated occasional transactions (Article 8 of the law); and (iii) when the lawful provenance of the funds is uncertain in an occasional transaction (Article 8, para. 2 of the law and Article 8 of the instruction). Regarding the 'know your customer' obligations applicable to occasional customers referred to in (ii) above, these apply whenever there are repeated occasional transactions without regard for the threshold specified in Article 8[9] (which goes farther than the FATF recommendations).

332. On this latter point, the BCEAO Instruction specifies, only for the financial entities to which it applies, that '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)

333. The draft CFT law specifies the 'know your customer' obligations applicable to occasional customers that should be imposed upon financial entities. It urges member states (i) to extend the obligations to all transactions exceeding CFAF 5 million (about US$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 states 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 (c. 5.3)

334. Article 7, para. 1 of the AML law 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 bonds; assigning them a safe deposit box; or establishing with them any other business relationships."

335. The general obligation of identification based on a reliable and independent source is not explicitly mentioned by the AML law for natural or legal persons. This law does, however, define detailed identification measures for these persons based on sources deemed by the authorities to be reliable and independent. Article 7 thus requires (i) that the identity of a natural person be verified by the presentation of a national identity card or any valid original official document serving as such and including a photograph (Article 7, para. 2); and (ii) that the identity of a legal person be verified through the "provision, on the one hand, of the original, duplicate, or certified conformed copy of any certificate or extract from the Trade and Personal Property Credit Register *(Registre du Commerce et du Crédit Mobilier* - RCCM), attesting, *inter alia*, to its legal form and registered office and, on the other hand, the powers of persons acting on its behalf."

336. The identity of legal persons or a branch is verified through the provision (1) of proof of its registration in the Trade and Personal Property Credit Register by presentation of the original, duplicate, or certified conformed copy of any certificate or extract attesting to its legal form and registered office and (2) the powers of persons acting on its behalf (Article 7 of the AML law). The mission's understanding is that verification of the identity of non-WAEMU foreign legal persons (not registered in the Trade and Personal Property Credit Register) is not covered. There is also no obligation to verify, based on reliable and independent data, the identity of legal arrangements in the FATF sense[10] (whereas the services provided by attorneys for the establishment, management or direction of trusts are mentioned in Article 5 d) of the AML law).

Verifications concerning legal persons or legal arrangements (c. 5.4)

337. Regarding legal persons, Article 7 states that financial entities must (i) verify the powers of persons acting in the name of a legal person (Article 7, para. 3); and (ii) verify the identity of natural persons acting in their name under the conditions

8 Dollar equivalents were calculated on the basis of CFAF 100 = US$0.22 (EUR 1 = US$1.45 ).

9 Article 8 stipulates that "occasional customers shall be identified […] for any transaction involving a cash amount of CFAF 5 million or more or having a CFAF value equal to or greater than that 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 […]."

10 The methodology for assessing compliance with the FATF recommendations states that "Legal arrangements refers to express trusts or other similar legal arrangements. Examples of other similar arrangements (for AML/CFT purposes) include fiducie, treuhand and fideicomiso."

provided for in Article 7, para. 2 (see above C. 5.3). Article 7 also states that financial entities must possess documents attesting to the legal form and registered office of the legal person (Article 7, para. 3).

338. Regarding legal arrangements, 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 arrangement.

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

339. Article 9 of the AML law states that: "if the customer is not acting on his own behalf, the financial entity must verify by any and 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 the AML law[11] (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).

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

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

341. There is no obligation for financial institutions to obtain information on the purpose and intended nature of the business relationship in the AML law. However, under Instruction nº 01/2007/RB, financial institutions are required, in internal AML programs, to "allow the provision of specific information on" many customer characteristics for the purpose of complying with the obligation to detect suspicious transactions. To the extent that suspicious transactions cannot be detected without collecting information on the purpose and intended nature of the business relationship, it may be assumed that there is an implicit obligation to obtain the information, but which is not consistent with the FATF recommendations.

342. Ongoing due diligence on the business relationship (c. 5.7)

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

344. Only some aspects related to the exercise of due diligence are indirectly dealt with by AML/CFT regulations, a situation that is not consistent with the FATF recommendations. These aspects include, in particular (i) obligations to report suspicious transactions as required in Article 26 of the AML law, or obligations related to special examinations as stipulated in Article 10, which in practice can only be fulfilled if a certain vigilance is exercised (see comments 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 closely monitor "unusual financial movements and transactions."

345. In addition, Directive nº 04-2007 states that member states must require financial entities to "constantly monitor their customers throughout the course of any business relationship, in a manner consistent with the degree of risk that the customers may be associated with the financing of terrorism." (Article 11-7).

Risk – Enhanced due diligence measures (c. 5.8)

346. There is no provision requiring financial institutions to perform enhanced due diligence for higher risk categories.

347. 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 due diligence. 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 customer profiles that enables them to track and closely monitor unusual financial movements and transactions (Article 7, para. 1).

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

348. Provision is made for reduced measures when the customer is a financial entity subject to the AML law. In such cases, the financial entity concerned is not required to 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 the AML law). This is a very broad exclusion amounting to the

11 That is, a Nigerien financial entity, excluding other WAEMU financial entities.

elimination of any identification requirement. Thus, a financial entity is not required to obtain information on the identity of natural and legal persons and legal arrangements on behalf of which another 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 in the form of wire transfers in Special Recommendation VII (see 3.5).

349. The scope of application of the aforementioned Article 9 is slightly ambiguous. Nevertheless, the mission considers that it extends to relationships with all financial entities within the WAEMU. Although a strict reading of the Article would lead to the conclusion that only financial entities (which are the only ones subject to the provisions of the AML) are included, it seems inconsistent with the fact that (i) the provisions of this uniform law were prepared and adopted at the WAEMU level, which suggests that the financial entities referred to are those that are subject to the provisions of this uniform law as transposed into each country's legislation; and (ii) that the provisions of the annex to the uniform law explicitly stipulate (solely for non face-to-face transactions with natural persons) that identification of the latter is not required "if the counterparty is located within the Union" (Article 6 a). The draft CFT law contains similar provisions. Indeed, it requires that member states 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 established in a member state subject to an equivalent identification obligation (Article 11).

350. 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 natural persons (see description of C. 8.2 below). Article 2 of that annex also stipulates that these simplified provisions do not apply 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.

351. The law of Niger contains no provisions stipulating that (i) financial institutions are authorized to apply simplified or reduced due diligence measures vis-à-vis their customers residing in another country; this option is available only to countries that have satisfied the country of origin that they comply with the FATF recommendations and have actually implemented them; and (ii) simplified customer due diligence measures are not acceptable if there is suspicion of money laundering or terrorist financing, 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, when financial institutions are authorized to determine the scope of customer due diligence measures based on the risks involved, this must be done in compliance with the instructions issued by the competent authorities.

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

Timing of verification – General rule (c. 5.13)

353. The AML law stipulates that financial entities must determine the identity and address of their customers (i) before opening an account for them; agreeing to hold securities, stocks or bonds; assigning them a safe deposit box; 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).

354. Regarding occasional customers, the draft CFT law clarifies the provisions of the AML law. Thus, it stipulates that, if the total amount is not known when the transaction is initiated, member states 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).

Timing of verification – Special circumstances (c. 5.14)

355. When verification of the identity of the customer and the 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 (c. 5.15)

356. The AML law 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 regarding identification of the customer and of the beneficial owner(s). While it does provide for criminal penalties when these obligations are not respected,[12] at the time of the mission these penalties had never been used.

357. In addition, BCEAO Instruction n°01/2007/RB requires only those financial entities to which it applies[13] to "refrain from entering into any relationship" prior to having satisfactorily determined the identity and address of their customers (Article 4, para. 3).

12 Article 40 stipulates six months to two years imprisonment and fines ranging from CFAF 100,000 to CFAF 1,500,000 (about US$220 to US$3,300, respectively) when the offense is intentional and from CFAF 50,000 to CFAF 750,000 (about US$110 to US$1,660) when it is not intentional.

13 Banks, financial establishments, financial services of the Post Office, *Caisses des dépôts et consignation* (State Savings Deposit Institutions) (or entities serving as such), mutual institutions and credit unions, entities or organizations not established in mutual or cooperative form and having as their purpose the collection of savings and/or the granting of credit, and authorized money and currency changing services.

358. Article 9 of the AML law also stipulates that, when doubt persists following verification of the identity of the economic beneficiary, the financial entity must make a suspicious transaction report. In other cases in which a financial entity cannot fulfill the legally mandated identification obligations, the law does not require it to consider making a suspicious transaction report.

Failure to comply with due diligence obligations – Following initiation of the relationship (c. 5.16)

359. When a financial institution has already commenced a business relationship and cannot fulfill the established identification obligations, there is no provision stipulating that it be required to terminate the business relationship and consider making a suspicious transaction report.

Existing customers – Due diligence (c. 5.17)

360. Law n° 2004-04 does not require financial entities to apply due diligence obligations to existing customers based on the materiality of the risks they represent, nor does it require them to conduct due diligence on these existing relationships at appropriate times.

361. 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. However, point 13 of BC Circular Letter n. 01-2001/CB of April 3, 2001 requires each bank to have a code of ethics covering relationships with customers and the due diligence necessary for the detection of illegal and fraudulent transactions.

Existing customers – Anonymous accounts (c. 5.18)

362. There is no law or regulation text requiring financial institutions to apply due diligence measures to their existing customers if they are indeed customers or they hold anonymous accounts under fictitious names or numbered accounts. However, according to the law and the instruction, such accounts do not exist.

Obligation to identify PEPs (c. 6.1)

363. Financial institutions are under no obligation to put in place risk management systems to determine whether a potential customer, customer, or beneficial owner is a politically exposed person (PEP).

364. The draft uniform CFT law stipulates that "each member state must adopt measures requiring financial entities in particular to conduct, based on their assessment of the risk, enhanced due diligence on transactions or business relationships with PEPs residing in another member state or in a 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 wealth or funds" (Article 13). The draft law contains no provision creating a direct obligation for financial institutions to put in place appropriate risk management systems to determine whether a potential customer, customer, or beneficial owner is a PEP.

Senior management approval of business relationships with PEPs (c. 6.2)

365. Financial institutions are under no obligation to obtain senior management approval (i) before entering into a business relationship with a PEP, or (ii) to continue the business relationship when a customer has been accepted and the customer or beneficial owner is subsequently found to be, or subsequently becomes a PEP.

366. The draft CFT law contains no provision on this subject.

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

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

368. The draft CFT law contains some ambiguous provisions. Its wording seems to indicate that each member state should take appropriate measures to determine the origin of wealth or of funds.[14]

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

369. Financial institutions are under no obligation to conduct enhanced ongoing monitoring of their business relationships with PEPs.

14 Article 15 stipulates that "each member state must adopt measures requiring financial entities in particular to conduct, based on their assessment of the risk, enhanced due diligence on transactions or business relationships with PEPs residing in another member state or in a 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 wealth or funds."

370. The draft CFT law stipulates that each member state must adopt measures requiring financial entities to conduct, based on their assessment of the risk, enhanced due diligence on transactions or business relationships with PEPs residing in another member state or in a third-party country, particularly for purposes of preventing or detecting transactions linked to the financing of terrorism (Article 15). The directive (i) seems to indicate that due diligence may not be enhanced if the financial entity deems this unnecessary ("based on their assessment of the risk") and (ii) creates confusion since it appears to link enhanced due diligence on PEPs and the fight against FT ("particularly for purposes of preventing or detecting transactions linked to the financing of terrorism"), whereas money laundering is the main reason for the measures imposed with regard to PEPs.

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

371. In Niger there are no obligations transcribing the provisions of FATF Recommendation 6, either for foreign PEPs or for domestic PEPs

372. The draft CFT law applies only to PEPs residing in another WAEMU member state or in a third-party country (Article 15).

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

373. On June 9, 2008, the National Assembly ratified the United Nations Convention against Corruption (signed in Mérida on December 9, 2003).

Sufficient information on crossborder correspondents (c. 7.1)

374. Regarding relationships with crossborder correspondents and other similar relationships, financial institutions are under no obligation to gather sufficient information on the respondent institution to understand fully the nature of its business and to determine from publicly available information the reputation of the institution and the quality of supervision (including whether it has been subject to a money laundering or terrorist financing investigation or regulatory action).

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

376. Directive nº 04-2007 contains no provision pertaining to correspondent relationships.

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

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

Approval from senior management before entering into a correspondent relationship (c. 7.3)

378. Financial institutions are under no obligation to obtain senior management approval before entering into new correspondent relationships.

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

379. Financial institutions are under no obligation to document the respective AML/CFT responsibilities of each institution.

Rules pertaining to "payable-through accounts" (c. 7.5)

380. When a correspondent relationship involves the maintenance of "payable-through accounts,"[15] financial institutions are under no obligation to determine whether (a) their customer (the respondent financial institution) has performed all the normal due diligence obligations set out in Recommendation 5 on those of its customers that have direct access to the accounts of the correspondent financial institution; and (b) the other respondent financial institution is able to provide relevant customer identification data upon request to the correspondent financial institution.

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

381. BCEAO Instruction n° 01/2007/RB requires only those financial entities to which it applies[16] and which allow transactions via the Internet or by any other electronic means: (i) to put in place an appropriate system for monitoring such

15 There is no provision explicitly prohibiting the maintenance of such payable-through accounts in Niger.

16 Banks, financial establishments, financial services of the Post Office, *Caisses de dépôts et consignation* (State Savings Deposit Institutions) (or entities serving as such), mutual institutions and credit unions, entities or organizations not established in mutual or cooperative form and having as their purpose the collection of savings and/or the granting of credit, and authorized money and currency changing services.

transactions; and (ii) to centralize and analyze unusual transactions carried out via the Internet by any other electronic means (Article 9). Financial institutions not covered by the aforementioned instruction are under no obligation to have policies in place or to take such measures as may be needed to prevent the misuse of technological developments in money laundering or terrorist financing schemes.

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

382. Article 7 of the AML law stipulates that, in the case of non face-to-face financial transactions, financial entities must identify natural persons in accordance with the principles set forth in the annex to the law. There is no provision concerning non face-to-face transactions with legal persons or legal arrangements.

383. The annex to the uniform law (which has not yet entered into force in Niger) contains ambiguities that make its interpretation difficult and uncertain. The concept of 'non face-to-face transaction' is not defined and there seems to be some 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 because of the contractual relationship that this entity has established with another financial entity whose services these persons are using (such as a transfer received in Niger by a possibly occasional customer from another financial entity using the correspondent services that the entity in Niger makes available to it.) There does not appear to be any specific due diligence measure 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 governing the identification of natural persons, but does not define the concept of identification, which is a source of uncertainty.

384. The annex to the uniform law specifies that the identification procedures implemented by the financial entities in their non face-to-face relationships with natural 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 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., possible suspicious transaction report, refusal to enter into a business relationship, etc.).

385. 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.

386. Article 5 of the annex to the uniform law pertains to the conditions governing 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 branch or a representative office. 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 institution or with a third country that applies equivalent anti-money laundering standards. The financial entity must then (i) pay special attention to verification of the address appearing on the identity document (if an address is provided); 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 entity 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.

387. Despite its vague wording, Article 6 of the annex to the uniform law seems to pertain to the situation in which a financial entity carries out a transaction with another financial entity acting on behalf of a customer.[17] Two types of due diligence are stipulated and pertain, respectively, to (i) the financial entity* acting on behalf of a customer; and (ii) the customer in question. They differ depending on whether or not the financial entity* concerned is established in the WAEMU.

388. When the financial entity* concerned "is located" in the WAEMU, no due 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 the financial institution carrying out a transaction on behalf of its customer is a WAEMU financial institution. This wording runs counter, in particular, to the provisions of Special Recommendation VII concerning wire transfers.

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

390. This article also specifies that the financial entity must take reasonable steps to verify the identity of the beneficial owner of the transaction, which steps include (i), "when the country of the counterparty applies equivalent identification obligations," requesting the name and address of the customer, and, (ii), when the country of the counterparty does not apply equivalent identification obligations, requesting from the financial entity * concerned a certificate confirming that the

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

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.

391. In addition, Article 11 of the draft CFT law stipulates that member states must adopt the provisions needed to address the increased risk of terrorist financing 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, in particular, 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 effected through 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):

392. The mission met with the Professional Association of Banks and Financial Establishments of Niger, five banks (and examined documents from five others concerning ML), a money transfer company, the association of professional microfinance institutions, a microfinance credit institution, a mutual savings and microfinance credit institution, and the Committee of Insurers.

393. The implementation of the applicable ML provisions has begun primarily in the banking sector. In most banks, customer due diligence is conducted primarily by employees responsible for opening accounts, who are required to follow written procedures. Some banks extend due diligence to include a higher-level review. In these banks, the approval of a senior manager is required to open a new account. For legal persons, most banks verify the legal form or structure and the directors, as well as the provisions governing the power to commit the legal person. Most legal persons are small partnerships. In Niger, the natural persons who control a small partnership are easily identifiable.

394. Most banks do a good job of identifying their customers, both natural and legal persons, because they have established internal identification rules that are followed in practice. Moreover, the banks have virtually no customers who do not reside in Niger. There are few corporate customers whose business is not well known to the banks. Although the BCEAO instruction does not impose any specific obligations with regard to ongoing due diligence, the banks in practice constantly update information on their customers, including their income, their address, their annual financial statements, and, for legal persons, any change in their legal status.

395. In most banks these surveillance activities are officially (i.e., according to their internal procedures) limited to transactions aimed at satisfying Article 10 of the AML law (all payments of more than CFAF 50 million and payments of more than CFAF 10 million made in unusual conditions, etc.). Because the banks are generally familiar with their customers' business, they are able to detect any unusual transactions.

396. All the banks in Niger pay close attention to relations with their correspondents, most of which are headquartered in Europe and the United States. Because these banks must exercise their own "due diligence," banks in Niger know that they must comply with international standards, at least to the extent of being able to convince their correspondents that they comply with the FATF rules.

397. Since the directive concerning the financing of terrorism has not yet entered into force, most banks have not instituted programs for PEPs or other higher-risk customers. Because the rule on PEPs applies only to foreign PEPs, and because most banks have no foreign customers, this omission does not appear to have any significant effect.

398. Money transfers are carried out by transfer companies such as Western Union, MoneyGram, etc. or by banks. According to the banks and transfer services, due diligence obligations are observed only by the latter when the transfers are smaller than US$1,000, and are observed by banks as well when the transfers are greater than US$1,000. According to the banks and transfer services, customer identification is required when the funds are paid. However, it is possible that the message accompanying the transfer does not require any identity document during the remittance of the funds. Nevertheless, in the case of transfer services headquartered in western countries, the ML risk is not significant.

399. The microfinance institutions have not adopted any significant measures to implement the law and the instruction. However, the risk of money laundering in this sector seems slight, owing to the small amounts recorded in individual savings accounts.

400. In Niger, there are no investment-linked life insurance products. Consequently, there is no risk of money laundering in that sector.

401. The stock market sector in Niger consisted of only one intermediation and management firm and no independent broker-dealers. The only intermediation firm has just one client, a bank, which trades "bonds" for its own account. Consequently, this sector poses no real money laundering risk.

402. The instruction requires the establishments to which it applies to put in place an AML unit and to submit an annual report[18] to the BCEAO and the BC-WAMU on the implementation of the entire AML mechanism. AML inspections are too lax. See the section on Guidelines for financial institutions (C. 25.1).

18 According to Article 17, this report must: •describe the organization and resources of the establishment in respect of preventing and combating money laundering; • report the training and informational activities carried out during the past year; • list the controls performed to ensure proper implementation and compliance with procedures governing customer identification, data storage, and the detection and

### 3.2.2 Recommendations and comments

403. The legal framework defining the obligations of financial institutions is incomplete and often vague. The identification and due diligence obligations are thus limited, particularly with regard to beneficial owners or due diligence obligations in high-risk situations. Understanding of the texts is further complicated by their vagueness. The lack of clarifications by supervisors (or by CENTIF) compounds this difficulty.

404. The AML/CFT laws and regulations that are binding in Niger are well known to the banks, but are not well known by the other entities to which they apply. The implementation of AML/CFT obligations has actually begun only in the banking sector. But all the covered entities, banks and others, are in need of awareness-raising activities, not only on the subject of the law, but also on the importance of having strict internal systems and mechanisms.

405. The authorities should consider the following measures:

- Broaden the obligations set forth in Recommendations 5 through 8 to apply to money transfer services:
- Determine with certainty the legal validity of subjecting (i) the BCEAO to the provisions of the AML law, and (ii) the *Caisse des dépôts et consignations* (State Savings Deposit Institutions ) and the financial services of the Post Office to the provisions of BCEAO Instruction n° 01/07/RB;

**Recommendation 5**

- Require financial institutions to fulfill the established due diligence obligations:
- when they carry out non-cash occasional transactions exceeding the CFAF 5 million threshold;
- when they carry out occasional transactions in the form of wire transfers under the circumstances described in the Interpretative 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;
- Require financial institutions to assess, for all their customers, whether the customer is acting for his own account.
- With regard to beneficial owners, require financial institutions to:
  - identify the natural person(s) who ultimately own or control their customer (including identification of persons who exercise ultimate effective control over a legal person or arrangement);
  - take reasonable measures 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 measures with regard to customers that are legal persons or arrangements, to: (i) understand the ownership and control structure of the customer; and (ii) identify the natural persons who ultimately own or control the customer.
- In all cases, require financial institutions to obtain information on the purpose and intended nature of the business relationship;
- Require financial institutions to conduct ongoing due diligence on their business relationships;
- Require financial institutions to scrutinize transactions undertaken throughout the course of their business relationships to ensure that the transactions being conducted are consistent with the institutions' knowledge of their customers, their business activities and risk profiles, and, where necessary, the source of their 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, by undertaking reviews of existing records, particularly for higher risk categories of customers or business relationships;
- Require financial institutions to perform enhanced due diligence for higher risk categories;
- Examine possible cases in which, on account of low risks, financial institutions may be authorized to apply reduced or simplified measures, at the same time specifying the conditions in which these measures are to be carried out;

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reporting of suspicious transactions; • disclose the results of investigations, particularly with regard to weaknesses observed in the procedures and in compliance therewith, as well as statistics on implementation of the suspicious transaction reporting mechanism; * indicate, where appropriate, the type of information transmitted to third-party institutions, including those outside the country of establishment; • prepare a map of the most current suspicious activities, indicating the nature and type of changes observed, if any, in the area of money laundering; and, finally, * describe the outlook and the action program for the coming period.

- Prohibit a financial institution from opening an account, entering into a business relationship, or carrying out a transaction when it cannot comply with the legal requirements regarding identification of the customer and of the beneficial owner(s), and stipulate that, in such cases, it must consider making a suspicious transaction report;
- When the financial institution has already established a business relationship and is unable to comply with the legally established identification obligations, ensure that the financial institution is required to terminate the business relationship and to consider making 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 appropriate time;

**Recommendation 6**

- Regarding politically exposed persons (PEPs), require financial institutions to:
  - put in place appropriate risk management systems to determine whether a potential customer, customer, or beneficial owner is a PEP (in addition to application of the due diligence measures prescribed in Recommendation 5);
  - obtain senior management approval (i) before entering into a business relationship with a PEP, or (ii) to continue the business relationship when a customer has been accepted and the customer or beneficial owner is subsequently found to be, or subsequently becomes a PEP;
  - take all reasonable measures to determine the origin of the wealth and the origin of the funds of customers and beneficial owners identified as PEPs;
  - conduct enhanced ongoing monitoring on their business relationships with PEPs.

**Recommendation 7**

- Regarding crossborder correspondent relationships and other similar relationships, require financial institutions to:
  - gather sufficient information about a respondent institution to assess the reputation of the institution and the quality of supervision (including whether the institution concerned has been subject to a money laundering or terrorist financing investigation or regulatory action);
  - assess the respondent institution‘s AML/CFT controls, and ascertain that they are adequate and effective;
  - obtain senior management approval before entering into new correspondent relationships;
  - document the respective AML/CFT responsibilities of each institution.
  - when a correspondent relationship involves the maintenance of “payable-through accounts,” require financial institutions to determine whether (a) their customer (the respondent financial institution) has performed all the normal due diligence obligations set out in Recommendation 5 on those of its customers that have direct access to the accounts of the correspondent financial institution; and (b) the other respondent financial institution is able to provide relevant customer identification data upon request to the correspondent financial institution.

**Recommendation 8**

- Require financial institutions to have policies in place or to take such measures as may be needed to prevent the misuse of technological developments in money laundering or terrorist financing schemes.

### 3.2.3 Compliance with Recommendations 5 through 8

| | Rating | Summary of factors underlying the rating |
|---|---|---|
| R.5 | PC | - Identification obligations too limited, particularly for beneficial owners;<br>- No obligation to obtain information on the purpose and nature of the relationship;<br>- No ongoing due diligence obligation;<br>- No obligations pertaining to existing customers;<br>- Lack of implementation by financial institutions. |

| | | |
|---|---|---|
| R.6 | NC | - No obligations pertaining to PEPs. |
| R.7 | NC | - No obligations pertaining to correspondent banking. |
| R.8 | NC | - Obligations incomplete and vague;<br>- Lack of implementation. |

## 3.3 RELIANCE ON THIRD PARTIES AND OTHER INTERMEDIARIES (R.9)

### 3.3.1 Description and analysis

406. Legal framework (see also 3.2.1 for more detail on the laws and regulations referred to):

- AML Law 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 Niger).

407. The current laws and regulations allow financial institutions to rely on intermediaries or third parties only in certain instances of establishing a non face-to-face relationship, under difficult-to-interpret conditions that are set forth in the annex to the AML law (see discussion of Criterion 8-2 above).

Analysis of effectiveness

408. The banks indicated that they rely on third parties, upon whom they devolve some of their AML due diligence obligations. This is true in particular of (i) banks when they initiate certain relationships with nonresident Nigeriens (where some of the identification obligations can be carried out by a bank located abroad); (ii) funds transfer services along the lines of Western Union, MoneyGram, and Money Express carried out by banks (some of the due diligence obligations are performed by these funds transfer companies when the transfer is less than US$1,000).

### 3.3.2 Recommendations and comments

409. It would be advisable to define the precise conditions in which reliance on third parties and intermediaries is allowed in the area of AML/CFT:

- Financial institutions relying upon a third party should be required to immediately obtain from the third party the necessary information concerning certain elements of the customer due diligence process (Criteria 5.3 through 5.6);
- Financial institutions should be required to take adequate steps to satisfy themselves that copies of identification data and other relevant documentation relating to the customer due diligence obligation can be made available by the third party upon request and without delay;
- Financial institutions should be required to satisfy themselves that the third party is regulated and supervised (in accordance with Recommendations 23, 24, and 29), and that it has measures in place to comply with the customer due diligence requirements set out in Recommendations 5 and 10;
- In determining in which countries the third party that meets the conditions can be based, competent authorities should take into account information available on whether those countries adequately apply the FATF Recommendations;
- The ultimate responsibility for customer identification and verification should remain with the financial institution relying on the third party.

### 3.3.3 Compliance with Recommendation 9

| | Rating | Summary of factors underlying the rating |
|---|---|---|
| R.9 | NC | - Lack of clear and complete requirements regarding reliance on third parties and |

| | | |
|---|---|---|
| | | intermediaries in the area of AML/CFT, where this practice exists. |

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

### 3.4.1 Description and analysis

Lack of obstacles to implementation of the FATF Recommendations regarding the professional secrecy applicable to financial institutions (c. 4.1)

410. Article 34 of the AML law stipulates that "notwithstanding any contrary legal or regulatory provisions, professional secrecy may not be invoked by the persons referred to in Article 5 (persons subject to the law) for the purpose of refusing to provide information to the oversight authorities and to CENTIF, or refusing to make the reports required by this law. The same is true of information required in the context of an investigation pertaining to money laundering actions, ordered by an examining judge or carried out under that judge's authority, by government agents charged with detecting and preventing offenses linked to money laundering." For microfinance institutions, the lifting of professional secrecy is provided for by Article 68 of Order N° 96-024 of May 30, 1996.

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

Analysis of effectiveness

412. Both the Ministry of Finance and the BCEAO reported good cooperation on the part of financial entities in giving them access to information covered by professional secrecy, when necessary for the fulfillment 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 the data to the embassy in question. The financial institutions met with also indicated that they have no problem communicating the information requested of them to the authorities (judicial officials and supervisors in particular).

### 3.4.2 Recommendations and comments

413. The authorities should consider establishing provisions making it possible to ensure that the laws on the professional secrecy of financial institutions do not hamper the exchange of information between financial institutions when this is required by Recommendations 7 and 9 or Special Recommendation VII.

414. In addition, it is important to ensure that access to data covered by professional secrecy is strictly limited to needs deriving from the mandates entrusted to public authorities.

### 3.4.3 Compliance with Recommendation 4

| | Rating | Summary of factors underlying the rating |
|---|---|---|
| R.4 | LC | No provision guaranteeing that professional secrecy does not hamper the exchange of information between financial institutions, when this is required |

## 3.5 RECORD-KEEPING AND RULES APPLICABLE TO ELECTRONIC FUNDS TRANSFERS (R.10 AND SR.VII)

### 3.5.1 Description and analysis

Maintenance of all records needed to reconstruct various transactions (c. 10.1* and c. 10.1.1*)

415. Article 11 of the AML law requires that financial entities (i) maintain records and documents pertaining to the identity of their usual and occasional customers for a period of ten years from the date of closure of their accounts or the cessation of their relationships with them; and (ii) maintain records and documents pertaining to transactions they have carried out for a period of ten years from the end of the fiscal year during which the transactions occurred.

416. Moreover, additional clarifications are provided, solely for banks and financial establishments, by laws and regulations of a more general scope than AML/CFT. Thus, Article 20 of Community Regulation n° 15/2002/CM/UEMOA on payment systems in the WAEMU member states stipulates that (i) the data message of records in electronic format must be maintained for five years in the form in which it was created, sent, or received, or in a form for which it can be proven that its content is not subject to modification or alteration and that the record transmitted and the one maintained 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 maintained if they exist. In addition, Banking Commission Circular n° 10-2000/CB of June 23, 2000 stipulates that the system of internal controls of these institutions must ensure the existence of an audit trail making it possible to (i) reconstruct transactions in chronological order; (ii) support any information by means of an original record 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, due to the keeping of records on any activity that has affected the accounting entries. These constituent elements of the audit trail must be maintained for at least ten years. This requirement regarding an audit trail does not, however, cover all the information needed to reconstruct the various transactions so as to provide evidence, if necessary, in the event of criminal proceedings.

417. There is no requirement (i) that records be maintained longer if a competent authority so requests in a specific matter and for the purpose of fulfilling its mandate, nor is there a requirement (ii) that transaction records be sufficient to allow reconstruction of the various transactions so as to provide evidence, if necessary, in the event of criminal proceedings.

418. On this latter point, Article 12 of the draft CFT law requires financial entities to maintain the records for at least 10 years.

### Maintenance of identification data, account books, and business correspondence (c. 10.2*)

419. Article 11 requires financial entities to maintain, for a period of ten years, all records and documents concerning the transactions they have carried out. The very broad reference to transaction records and documents is not further clarified, particularly in terms of explicitly including books of account and business correspondence.

### Information made available to competent authorities (c. 10.3*)

420. The AML law stipulates (i) that judicial authorities, government agents responsible for detecting and preventing offenses related to money laundering (ML) acting on a court order, oversight authorities, and CENTIF may ask persons subject to the AML law to communicate to them information related to customer identification, which these persons subject to the law are required to gather and maintain (Article 12) and (ii) that CENTIF may ask persons subject to the law or any other natural or legal person to communicate information held by them and of a nature to enhance suspicious transaction reports (Article 17).

421. Article 12 of the AML law grants broad access to oversight authorities, since their access to information is not limited to information necessary for the fulfillment 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 the WAEMU empowered, by virtue of a law or regulation, to conduct investigations of natural and legal persons.” In an extreme scenario, then, it might be concluded from a reading of the law, that a government agent responsible for verifying compliance with physical security standards by a person subject to the law would have access to all the information gathered in application of the AML law concerning ML.

422. The AML law also does not require financial entities to ensure that all customer and transaction records are made available in a timely manner to the competent national authorities for the fulfillment of their mandates.

### Transfers (SR. VII)

423. Regulation n° 15/2002/CM/UEMOA of September 19, 2002 concerning payment systems in the WAEMU member states sets out 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 systems (DFSs), and any other institution duly authorized by the Law (Articles 42, 131 and 132[19]). No institution belonging to this last category was identified.

### Obtaining information on the originators of transfers (c. VII.1)

424. Ordering financial institutions are under no obligation to obtain and maintain, for all transfers, the following information pertaining to the originator of the transfer and to verify that this information is accurate and useful: name of the originator and the originator’s account number. On the contrary, Article 4, para. 3, like the provisions of the annex to the uniform law, eliminates or

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

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 decentralized financial institutions that are authorized to promote the use of modern means of payment, particularly through the formation of groups with a view to instituting national or regional wire transfer mechanisms and instruments; and (ii) according to Article 132 , which defines the scope of application of Title II, only to banks and financial establishments.

substantially limits the customer identification obligations of other financial entities acting for the account of these customers (see C. 5-5 and 8-2).

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

425. For crossborder transfers (including batched transfers and transmissions using credit or debit cards to effect a funds transfer), the ordering financial institution is under no obligation to include complete originator information in the message or payment form accompanying the transfer.

426. The draft CFT law does not require countries to demand that a financial institution include full originator information, i.e., the originator's name, account number, and address, in the message or payment form accompanying the transfer. Indeed, although its Article 14 stipulates that member states must take the necessary steps to ensure that every crossborder wire transfer is accompanied by originator information, only the originator's account number (or, failing that, a unique reference number) must necessarily accompany a transfer.

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

427. For domestic transfers (including transactions using a credit or debit card as a payment system to effect a transfer), the ordering 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 originator or, if an account number is unavailable, a unique reference number.

428. The draft CFT law stipulates that "member states must ensure that any domestic wire transfer includes the same data as in the case of crossborder transfers, unless all the originator information can be made available by other means to the beneficiary's financial entities and to the competent authorities."

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

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

Maintenance of originator information (c. VII.5)

430. There is no obligation for each intermediary financial institution in the payment chain to maintain all necessary originator information with the corresponding transfer.

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

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

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

432. Financial institutions are under no obligation to adopt effective procedures based on risk assessment to identify and process transfers not accompanied by complete originator information.

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

433. As the provisions of Special Recommendation VII have not been transposed in Niger, there are no measures required to monitor compliance by the financial institutions with those provisions.

Application of Criteria 17.1 through 17.4 in relation to SR VII (c. VII.9)

434. There are no obligations relating to SR VII in Niger.

Analysis of effectiveness

435. Among the institutions met with, only the banks were aware of the record keeping obligations set out in the AML law. Although unaware of the obligations, the other financial institutions indicated that they maintain due diligence and transaction records for a period of ten years.

436. The banks met with indicated that their primary correspondent relationships were within the European Union and the United States. Because of the standards applicable there, they pointed out that they take care to ensure that the originators and beneficiaries are clearly mentioned when they make transfers to those jurisdictions. In the case of transfers received, they indicated that the originator and beneficiary information was systematically included, owing to the AML/CFT standards in force in those jurisdictions. No bank mentioned having in place a specific computerized AML mechanism to monitor the information accompanying wire transfers (e.g., regarding transfers received from or sent to countries that do not apply the provisions of SR VII).

437. The instruction requires establishments to which it applies to put in place an AML unit and to submit an annual report to the BCEAO and the BC-WAMU on the implementation of the entire AML mechanism. AML inspections are at present too lax. See the section on Guidelines for financial institutions (C. 25.1).

### 3.5.2 Recommendations and comments

438. Transfers represent 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 of only those measures envisaged in the draft CFT law is not sufficient in this regard. They should be supplemented and clarified at the time of their transposition into Nigerien law.

439. Record-keeping obligations are incomplete and not well known to those subject to the law. In addition, financial sector supervisors have not verified compliance with existing obligations (including those applicable to banks).

440. The authorities should consider establishing the following provisions:

**Recommendation 10**

- Stipulate that documents may be kept longer if a competent authority so requests in connection with a specific matter and for the fulfillment of its mandate;
- Stipulate that transaction records must be sufficient to permit reconstruction of the various transactions so as to provide evidence, if necessary, in the event of criminal proceedings;
- Specify that the obligation of financial entities to maintain, for a period of ten years, all records and documents concerning the 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 competent authorities have access to the confidential information maintained by those subject to the law;
- Require financial institutions to ensure that all customer and transaction records are made available in a timely manner to the competent national authorities for the fulfillment of their mandates.

**Special Recommendation VII**

- Require ordering financial institutions to obtain and maintain, for all transfers, the following information concerning the originator of the transfer and to verify that this information is accurate and useful: originator's name, account number (or unique reference number if there is no account number), and address (or national identity number, customer identification number, or date and place of birth, if Niger decides to authorize it);
- For crossborder transfers (including batched transfers and transmissions using a credit or debit card to effect a funds transfer), require the ordering financial institution to include complete originator information in the message or payment form accompanying the transfer;
- For domestic transfers (including transactions using a credit or debit card as a payment system to effect a transfer), require the ordering financial institution to comply with Criterion VII.2 above or to include only the account number of the originator, or lacking an account number, a unique reference number 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 terrorist financing;
- Require each intermediary financial institution in the payment chain to maintain all necessary originator information 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 originator information;
- Put in place effective measures to monitor the implementation of SR VII;
- Ensure that Criteria 17.1 through 17.4 apply in relation to SR VII.

### 3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

| | Rating | Summary of factors underlying the rating |
|---|---|---|
| R.10 | PC | - Lack of sufficient clarifications as to the nature and availability of documents to be maintained. |

| | | |
|---|---|---|
| | | - No supervision of compliance with AML obligations, the content of which is most often not well known to those subject to the law |
| SRVII | NC | - No obligations related to wire transfers |

## 3.6 MONITORING OF TRANSACTIONS (R. 11 AND 21)

### 3.6.1 Description and analysis

Obligation to pay special attention to all complex, abnormally large, and unusual transactions (C. 11.1)

441. The AML law stipulates that financial entities and, more generally, all persons subject to it (including, therefore, the BCEAO and the Public Treasury) must carefully examine any transaction involving a sum of CFAF 10 million (about US$22,000) or more which is carried out in unusually complex circumstances and/or has no apparent economic justification or lawful purpose (Article 10, para. 1). The law does not require financial entities to pay special attention: (i) to transactions involving less than CFAF 10 million (about US$22,000); or (ii) to unusual types of transactions, when they have no apparent economic or lawful purpose.

Examination, as far as possible, of the background and purpose of such transactions (C. 11.2)

442. Article 10, para. 2 of the AML law stipulates that persons subject to the law "are required to obtain information from the customer, and/or by any other means, concerning the origin and destination of the sums of money in question, as well as the purpose of the transaction and the identity of the persons involved." The measures to be implemented are imprecise (e.g., "obtain information," whereas the FATF recommends that financial institutions be required to "examine as far as possible the background and purpose of such transactions and to set forth their findings in writing").

443. Article 12 of Instruction n° 01/2007/RB stipulates that the financial entities to which it applies must in all cases obtain information from their customers concerning the origin and destination of these sums, as well as the purpose of the transaction and the identity of the persons who are its beneficiaries. The systematic obligation to seek additional information from the customer regarding the transactions referred to in Article 10 is of such a nature as to tip off the customer ahead of any suspicious transaction report.

Ongoing availability of results to competent authorities and auditors (C. 11.3)

444. The main characteristics of the transaction, the identity of the originator and the beneficiary, and that of all others involved in the transaction must be recorded in a confidential register (Article 10, para. 3) and kept available for judicial authorities, government authorities responsible for detecting and preventing ML offenses who are acting on a court order, oversight authorities, and CENTIF. Auditors are not among those able to access this information.

Special attention to countries that do not or insufficiently apply the FATF Recommendations (C. 21.1)

445. The AML law creates no obligation for financial institutions to pay special attention to their business relationships and transactions (particularly with legal persons and financial institutions) residing in countries that do not or insufficiently apply the FATF recommendations. This aspect is only addressed partially and vaguely in the annex to the uniform law (see analysis of Criterion 8-2).

446. BCEAO Instruction n° 01/2007/RB requires only those financial entities to which it applies[20] to have a transaction analysis and client profiling mechanism enabling them to track and "closely monitor" unusual financial flows and transactions (Article 7). It specifies that the latter include, in particular, transactions carried out with persons targeted by asset-freezing measures on account of their presumed ties to an organized criminal entity[21] and with counterparties located in countries, territories and/or jurisdictions declared by the FATF as being non-cooperative (which is more restrictive than the provisions of Recommendation 21 pertaining to countries that apply FATF recommendations insufficiently or not at all).

20 Banks, financial establishments, the financial services of the Post Office, *Caisses de dépôts et consignations* or entities serving as such, mutual institutions and credit unions, entities or organizations not established in mutual or cooperative form and having as their purpose the collection of savings and/or the granting of credit, and authorized money and currency changing services.

21 As of the date of the mission, there was no mechanism for freezing assets because of their presumed links to an organized criminal entity (terrorist movements, which have not been criminalized, are not included in this category).

Establishment of effective measures (C. 21.1.1)

447. No effective measures exist to advise financial institutions of concerns about weaknesses in the AML/CFT systems of other countries.

Examination of transactions having no apparent economic or lawful purpose (C. 21.2)

448. For transactions with countries that apply FATF recommendations inadequately or not at all, there is no obligation to examine the background and purpose of such transactions, as far as possible. *A fortiori*, there is no obligation to make the written results of these examinations available to the competent authorities and auditors.

Ability to apply appropriate countermeasures to countries continuing to apply the FATF recommendations insufficiently or not at all (C. 21.3)

449. When a country continues to apply FATF recommendations insufficiently or not at all, Niger does not require the application of appropriate countermeasures.[22]

Analysis of effectiveness

450. Of the financial institutions met with by the mission, only certain banks were aware of the specific examination obligations set out in Article 10 of the AML law. In addition, there are great disparities between banks with similar activity profiles regarding 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 transactions, including for sums that can often be as large as CFAF 100 million to CFAF 200 million, or about US$221,000 to US$442,000, respectively). However, in view of the ML risk, most banks have a relatively effective system.

### 3.6.2 Recommendations and comments

451. The due diligence obligations pertaining to the transactions referred to in Article 11 are too narrow in scope and excessively vague in nature. They could, moreover, constitute an undue tip-off for a party in a business relationship ahead of any suspicious transaction report. In addition, these obligations are still largely unknown to most financial institutions and only a few banks have begun to implement them. All financial institutions need to be informed and be made aware of these obligations, and compliance with the provisions of the applicable laws and regulations on this subject needs to be monitored.

452. No provision is in place regarding countries that apply the FATF recommendations insufficiently or not at all.

453. 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 seek additional information from customers concerning the transactions referred to in Article 10, as this is of such a nature as to tip off the customer ahead of any suspicious transaction report;
- Require financial institutions to pay special attention to all complex individual transactions involving unusually large sums, when they have no apparent economic or lawful purpose, whatever the sum involved (i.e., not only when the sum involved is CFAF 10 million or more);
- Require financial institutions to pay special attention to all unusual types of transactions, when they have no apparent economic or lawful purpose;
- Allow auditors, in the performance of their duties, access to the confidential register referred to in Article 10;
- Require financial institutions to pay special attention to their business relationships and transactions, particularly with legal persons and financial institutions, from or in countries that apply the FATF Recommendations insufficiently or not at all;
- Put in place effective measures to advise financial institutions of concerns about weaknesses in the AML/CFT systems of other countries;
- Put in place appropriate countermeasures that Niger may decide to implement when a country continues to apply FATF recommendations insufficiently or not at all.

22 For example, (i) application of stringent customer identification rules and enhancement of advisories, particularly on jurisdiction-specific issues, to financial institutions for identification of the beneficial owners before business relationships are established with natural or legal persons from these countries, (ii) enhancement of relevant reporting mechanisms or systematic reporting of financial transactions in view of the fact that financial transactions with such countries are probably suspicious, (iii) in considering requests for approving the establishment in countries applying the countermeasure of subsidiaries or branches or representative offices of financial institutions, consideration of the fact that the financial institution concerned is from a country that does not have adequate AML/CFT systems, (iv) warning to nonfinancial sector businesses that transactions with natural or legal persons in that country might entail the risk of money laundering, or (v) limitation of business relationships or financial transactions with the identified country or persons in that country. The instruction requires establishments to which it applies to put in place an AML unit and to submit an annual report to the BCEAO and the BC-WAMU on the implementation of the entire AML mechanism. AML inspections are at present too lax. See the section on Guidelines for financial institutions (C. 25.1).

### 3.6.3 Compliance with Recommendations 11 and **21**

| | Rating | Summary of factors underlying the rating |
|---|---|---|
| R.11 | NC | - Excessively restrictive definition of the transactions concerned (threshold of CFAF 10 million and failure to mention unusual types of transactions);<br>- Lack of implementation by financial institutions other than banks, and highly uneven implementation within the banking sector |
| R.21 | NC | - No provisions pertaining to countries that apply FATF recommendations insufficiently or not at all |

## 3.7 SUSPICIOUS TRANSACTION REPORTS AND OTHER REPORTING (R.13-14, 19, 25 AND SR.IV)

### 3.7.1 Description and analysis

454. Legal framework:

- Order n° 99-42 of September 23, 1999 concerning the fight against drugs in Niger;
- The AML law of June 8, 2004 establishing the uniform law on anti-money laundering efforts;
- BCEAO Instruction n° 01/2007/RB of July 2, 2007 concerning anti-money laundering efforts within financial entities;
- 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 Niger)

Obligation to make a suspicious transaction report (STR) in the event of suspicion of money laundering or terrorism (C. 13.1*, 13.5 and SR IV.1)

455. From a legal standpoint, there are two parallel mechanisms for making suspicious transaction reports: (i) the mechanism created by Order n° 99-42 solely for cases of money laundering related to drug production and trafficking, and (ii) the mechanism created by the AML law for all cases of money laundering linked to any crime or offense (Article 2). Indeed, the AML law specifies that no report made to another authority constitutes an exemption from the reporting obligations it institutes (Article 26, para. 6).

456. Order n° 99-42: Article 129 of Order n° 99-42 stipulates that "persons who, in the performance of their profession, carry out, supervise or advise on transactions entailing capital movements, public and private banking and financial establishments, financial services of the Post Office, insurance companies, mutual insurance companies, stock market companies, and currency changing merchants are required to alert the competent judicial authority as soon as they become aware that funds or transactions involving such funds could be derived from the offenses referred to […]."[23]

457. The AML law: Article 26 of the AML law stipulates that financial entities as well as other persons subject to the law[24] are required to report to CENTIF, (i) sums of money and all other property in their possession, when these could derive from money laundering (ML); (ii) transactions involving property, when such transactions could be part of a money laundering operation; and, (iii) sums of money and all other property in their possession, when such items, suspected of being intended to finance terrorism, appear to derive from ML-related activities. Predicate offenses for ML comprise all crimes or offenses (Article 2 of the AML law). Article 9 stipulates, in addition, that financial entities must report cases in which, despite verifications made, doubts persist as to the identity of an economic beneficiary.

23 These articles deal with the growing, production, manufacture, processing, and international trafficking in drugs and precursors (see also comments on compliance with Recommendation 1 above).

24 Financial entities: Banks and financial establishments, the financial services of the Post Office, *Caisses des dépôts et consignations* (State Savings Deposit Institutions ) (or entities serving as such), insurance and reinsurance brokers, mutual institutions and credit unions, as well as entities or organizations not established in mutual or cooperative form and having as their purpose the collection savings and/or the granting of credit, regional stock exchange, central securities depository and securities settlement bank, management and intermediation firms, asset management firms, mutual funds, fixed capital investment enterprises, and authorized money and currency changing services;Other subject entities: Public Treasury, BCEAO, members of independent legal professions when they represent or assist clients outside any legal procedure in the circumstances set forth in Article 5, introducers of business to financial entities, auditors, real estate agents, dealers in high-value items, funds transporters, owners, directors and managers of casinos and gaming establishments, travel agencies, nongovernmental organizations.

458. The expressions "could derive from," "could be part of," and "appear to derive from" do not refer explicitly to the concept of suspicion (although Article 26 is entitled "Obligation to report suspicious transactions") or to the existence of reasonable grounds to suspect that the funds derive from a criminal activity. Article 27 on the reporting process, however, refers to "suspicious transaction reports."

459. In addition, Article 26 specifies that STRs must be made "using a reporting form established by order of the Minister of Finance." As mentioned above (Criterion 26.2), this form was established by Order n° 143/ME/F/CENTIF of May 26, 2006. The form, attached to the order entitled "Suspicious Transaction Report," specifies that in providing the relevant information, a description must be given of the evidence supporting the assumption that the transaction is linked to an attempt to launder money and/or an intention to conceal the source of funds derived from criminal activities or offenses.

460. BCEAO Instruction n° 01/2007/RB also includes provisions pertaining to the suspicious transaction reporting obligations incumbent upon certain financial entities.[25] Article 11 specifies that the following must be reported: "transactions involving funds that could be part of a money laundering operation, and particularly (i) sums recorded in their books that could be derived from drug trafficking or organized criminal activities and (ii) transactions involving funds that could be derived from drug trafficking or organized criminal activities."

461. In addition, Article 11 of Instruction n° 01/2007/RB clarifies the reporting obligations set out in the AML law in the event that the identity of the beneficial owners is unknown. This article stipulates that financial entities to which it applies must report (i) any transaction in which the identity of the originator or beneficiaries remains in doubt, despite due diligence performed in accordance with the provisions of Articles 7 through 9 of the AML law, as well as (ii) transactions carried out by financial entities for their own account or on behalf of third parties with natural or legal persons, including their subsidiaries or establishments, acting in the capacity of, or for the account of, trust funds or any other instrument for the management of a special-purpose fund, where the identity of the constituents or beneficiaries is not known.

STR obligation in the case of funds related to terrorism (C. 13.2* and SR IV)

462. Article 26 of the AML law creates an obligation to report to CENTIF all ML transactions that are also suspected of being intended for FT. This provision does not create any new obligation relative to the other provisions of Article 26, but specifies that transactions linked to ML must be reported to CENTIF, even when they are also suspected of being intended for FT.

463. Apart from funds covered by the STR obligation in regard to ML, the obligation to make an STR does not apply to funds for which there are reasonable grounds for suspecting, or of which it is suspected, that such funds are linked or related to, or are to be used for terrorism, terrorist acts or by terrorist organizations or those who finance terrorism.

464. The draft CFT law also stipulates that member states must take essential measures to ensure that persons subject to the law proceed without delay to make suspicious transaction reports to CENTIF when they suspect, or have reasonable grounds to suspect, that the funds are linked to, related to, or are to be used for the financing of terrorism or terrorist acts (Article 18).

Obligation to report all suspicious transactions (C. 13.3*)

465. STRs must be made regardless of the amount of the transaction, according to both Order n° 99-42 (drugs) and the AML law (AML).

466. There is no obligation to report attempted transactions in Niger.

Obligation to report suspicious transactions related to tax matters (C. 13.4*)

467. The obligation to make an STR in application of the AML law pertains to any transaction that could be linked to ML. Predicate offenses for ML comprise all crimes and offenses. They therefore include tax matters, which are directly covered by the STR obligation (and therefore cannot be put forward as a reason for not making an STR).

468. The predicate offenses referred to in Order 99-42 (drugs) do not include tax matters. This law does not specify that the obligation to report suspicious transactions applies whether or not these transactions are considered to involve tax matters as well.

Protection in the event of an STR (C. 14.1)

469. Article 131 of Order n° 99-42 (drugs) stipulates that "no prosecution for violation of professional secrecy may be instituted against the directors or senior management of the entities enumerated in Article 26 [26] above, even if subsequent investigations or court decisions reveal that the report they made in good faith was groundless."

25 Banks, financial establishments, financial services of the Post Office, *Caisses de dépôts et consignation* (State Savings Deposit Institutions) (or entities serving as such), mutual institutions and credit unions, entities or organizations not established in mutual or cooperative form and having as their purpose the collection of savings and/or the granting of credit, and authorized money and currency changing services.

26 Article 129 concerns precautionary measures, whereas the entities required to make STRs are mentioned in Article [ ].

470. Article 30 of the AML law stipulates that "persons or the directors and senior management of the persons referred to in Article 5 who, in good faith, have disclosed information or made any report in accordance with the provisions of this law, are exempt from any sanctions for breach of professional secrecy. No civil liability or criminal action may be brought against, nor may any professional sanction be imposed upon, persons or the directors and senior management of the persons referred to in Article 5 who have acted in the same circumstances as those described in the preceding paragraph, even if court decisions rendered on the basis of the reports referred to in that same paragraph did not result in any conviction."

471. The AML law does not specify that this protection is available to them (i) even if they did not know precisely what the criminal activity 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 against disclosing an STR (C. 14.2.)

472. Order n° 99-42 contains no provision against disclosing the existence of an STR to a third party.

473. The AML law stipulates that the "reports are confidential and may not be communicated to the owner of the funds or to the originator of the transactions" (Article 26, para. 4). As worded, this provision 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 funds or the originator of the transactions, and it is too restrictive since it pertains only to the STR, without including other information communicated or provided to CENTIF.

474. Article 40 of the AML law also stipulates that persons having intentionally "revealed to the owner of the funds or to the originator of the transactions referred to in Article 5 the report that they are required to make or the follow-up that has resulted" shall be punished by criminal sanctions ranging from six months to two years in prison and fines of CFAF 100,000 to CFAF 1,500,000 (about US$220 to US$3,300, respectively). There is no sanction when a person reveals information about the report unintentionally.

Confidentiality of the identity of staff of financial institutions making STRs (C. 14.3)

475. Order n° 99-42 contains no provision protecting the confidentiality of staff of financial institutions making STRs.

476. The AML law stipulates (i) that information held by CENTIF is confidential (see 2.5) and (ii) that, when CENTIF submits a report to the Public Prosecutor following the examination of an STR, the latter must not be communicated, nor may the name of the official responsible for the report appear in it (Article 29, para. 1).

Study of a system for reporting currency transactions (C. 19)

477. Niger has not studied the feasibility and utility of implementing a system where financial institutions report all transactions in currency above a fixed threshold to a national central agency with a computerized data base.

Reporting guidelines (C. 25.1)

478. Article 13 of the AML law allows oversight authorities to issue enabling provisions in the area of AML.[27] The BCEAO is the only agency to have issued, in 2007, an instruction[28] containing additional clarifications of the AML law, although the latter are as yet too limited. These clarifications pertain to (i) the types of transactions that may arouse suspicion (Article 11) as well as (ii) the measures to be taken to implement the provisions of the law concerning AML mechanisms. This instruction applies to banks and financial establishments, the financial services of the Post Office, *Caisses des dépôts et consignation* (State Savings Deposit Institutions) (or entities serving as such), microfinance institutions[29] and authorized money and currency changing services. Regarding other financial institutions, as well as designated nonfinancial businesses and professions, no guideline has been issued by the authorities to help them implement and comply with their AML obligations.

Feedback on reporting (C. 25.2)

479. Article 29 of the AML law stipulates that "CENTIF shall, at the appropriate time, inform those required to make STRs of the conclusions of its investigations."

Maintenance of statistics (C. 32.2)

480. There is no mechanism in place for the gathering of relevant statistics.

27 Article 13 specifies that " oversight authorities may, in their respective areas of authority and when necessary, specify the content and methods of implementation of programs to prevent money laundering."

28 BCEAO Instruction nº 01/2007/RB of July 2, 2007 concerning anti-money laundering efforts within financial institutions.

29 Mutual institutions and credit unions, as well as entities or organizations not established in mutual or cooperative form and having as their purpose the gathering of savings and/or the granting of credit.

Analysis of effectiveness

481. The clientele of banks in Niger is, relatively speaking, very small. The largest bank has only about 11,000 active accounts; the second 7,000; the third 5,000; the fourth 4,000; and the others far fewer. It appears that most of the customers of these banks are well known companies of very wealthy individuals who are economically active and who use checking services; and, to a lesser extent, small savers. The banks generally know who their customers are and what they do with their funds; they know whether they are acting for the account of another, they know their profile, and they know whether a customer is undertaking a dubious transaction.

482. Only two banks have as yet identified transactions (one per bank) that they considered suspicious and reported to CENTIF.

483. The reasons for the small number of reports are the following: The local economy in Niger is, with the exception of international commercial transactions, almost entirely cash-based so criminals do not need to go through the formal banking system to use the proceeds of predicate offenses and consequently, there is no need for a criminal to make a bank deposit; banks are afraid that they will lose customers if they learn that their transactions may be reported to CENTIF. They prefer to close an account rather than make a suspicious transaction report. The banks believe that making an STR is "vulgar" and contrary to "the banking tradition" of protecting customers.

484. The instruction requires establishments to which it applies to put in place an AML unit and to submit an annual report to the BCEAO and the BC-WAMU on the implementation of the entire AML mechanism. AML inspections are too lax. See the section on Guidelines for financial institutions (C. 25.1).

### 3.7.2 Recommendations and comments

485. The reporting obligations created by the AML law are indeed vague, which is especially unfortunate since these provisions are new, in practice, for most of the institutions required to implement them. The institutions (with the exception of banks) were unaware of the existence of such reporting obligations, though the risk of ML is not very great. Information and outreach by the authorities to persons subject to the law should therefore be priorities. The fact that two banks have already identified transactions that they believed to be suspicious is an encouraging sign (see analysis of effectiveness above).

486. The authorities should consider taking the following measures:

- Unify the system of suspicious transaction reports;
- Require all financial institutions to make suspicious transaction reports in accordance with FATF recommendations (including e-money institutions);
- Institute an obligation to make an STR regarding funds for which there are reasonable grounds for suspecting, or of which it is suspected, that such funds are linked or related to, or are to be used for terrorism, terrorist acts or by terrorist organizations or those who finance terrorism
- Establish an obligation to report attempted transactions;
- 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 where financial institutions report all transactions in currency above a fixed threshold to a national central agency with a computerized data base;
- Ensure that all financial institutions and designated nonfinancial businesses and professions are given guidelines issued by the competent authorities (CENTIF and/or oversight authorities in particular) for purposes of implementing and complying with their AML/CFT obligations);
- Ensure that the competent authorities, and CENTIF in particular, provide designated financial institutions that are required to report suspicious transactions with useful and appropriate feedback in keeping with FATF guidelines.

### 3.7.3 Compliance with Recommendations 13, 14, 19 and 25 (C. 25.2), and Special Recommendation **IV**

| | Rating | Summary of factors underlying the rating |
|---|---|---|
| R.13 | PC | - Obligations largely unknown to all persons subject to them;<br>- No obligation to report transactions linked to FT;<br>- Existence of two competing, inconsistent reporting mechanisms. |

| | | |
|---|---|---|
| R.14 | PC | - Insufficient protection of the confidentiality of information communicated to CENTIF. |
| R.19 | NC | - No study of the feasibility of a system for reporting currency transactions. |
| R.25 | NC | - No guidelines apart from a BCEAO instruction containing few details. |
| SRIV | NC | - No obligation to report transactions linked to FT. |

487.

## 3.8 INTERNAL CONTROLS, COMPLIANCE, AUDITS, AND FOREIGN SUBSIDIARIES (R.15 AND 22)

### 3.8.1 Description and analysis

Legal framework

488. Banks.

489. By virtue of Article 13 of the AML law, financial entities are required to develop harmonized programs to prevent money laundering. These programs include in particular :

- the centralization of information on customer identity, originators, agents, economic beneficiaries;
- the processing of suspicious transactions;
- the designation of internal officers responsible for implementing anti-money laundering programs,
- ongoing staff training; and
- the establishment of an internal mechanism for monitoring the implementation and effectiveness of measures adopted within the framework of this law.

490. WAMU Banking Commission Circular n° 10/2000/CB of June 23, 2000[30] also requires banks and financial establishments to put in place an effective internal control system adapted to their organization and to 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 internal control system is to verify that the transactions carried out, the organization, and the internal procedures are in keeping with the legal and regulatory provisions in force (and, therefore, implicitly consistent with the applicable AML/CFT provisions). The circular points out that the deliberative and executive bodies are responsible for the proper functioning of the internal control system (Title II). Title IV also stipulates that the system must be based, among other things, upon the complete formalization of procedures and of the methods of processing and recording transactions, 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 reconstruct transactions in chronological order and to support any piece of information by means of an original document, which must be retained for a period of at least ten years.

491. BCEAO Instruction 01/2007/RB also imposes upon banks (and financial establishments) an obligation to submit to its departments and to the Banking Commission, within two months of the end of the fiscal year, a report on the implementation of the entire internal mechanism established in the WAEMU member states to combat money laundering. This report must contain several items of information making it possible to assess the quality and depth of the controls put in place within each establishment.[31] Each bank has submitted a report to the BC-WAMU.

492. Contrary to the provisions of the community directive on AML, the law does not specify that internal control procedures pertaining to anti-money laundering efforts must give special attention to non face-to-face transactions.

493. **DFS sector**. For the microfinance sector, community texts require DFSs to put in place internal control systems.

30 This refers to the enabling circular for the prudential mechanism applicable to WAMU banks and financial establishments as of January 1, 2000, Article 6 of which (Internal Operations Control), stipulates that "the internal control obligations incumbent upon banks and financial establishments are set out in central bank instructions or Banking Commission circulars."

31 This report must: •describe the organization and resources of the establishment in respect of preventing and combating money laundering • report the training and informational activities carried out during the past year • list the controls performed to ensure proper implementation and compliance with procedures governing customer identification, data storage, and the detection and reporting of suspicious transactions; • disclose the results of investigations, particularly with regard to weaknesses observed in the procedures and in compliance therewith, as well as statistics on implementation of the suspicious transaction reporting mechanism; * indicate, where appropriate, the type of information transmitted to third-party institutions, including those outside the country of establishment; • prepare a map of the most current suspicious activities, indicating the nature and type of changes observed, if any, in the area of money laundering; and * describe the outlook and the action program for the coming period.

Analysis of effectiveness

494. **Banking sector**. For practical reasons, the mission met with representatives of the main banks in Niger. These meetings revealed that the banks concerned have internal audit or inspection departments responsible for internal AML surveillance.

495. These visits afforded an opportunity to observe several control practices intended to prevent the risk of AML. One bank indicated that it had created tools to detect "noteworthy transactions." These alerts are issued at the end of the business day and examined by back office departments. Another department examines all "large" transactions (more than US$5,000). Another bank indicated that it had put in place a detection system at a high level within the bank: a control officer. Another establishment indicated that its internal audit department examined proper compliance with AML standards. The internal instructions of banks to which the mission had access also define the terms of internal AML controls.

496. 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 neighborhoods in Niamey and other large cities 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 doubtful transactions, the banks were unanimous in declaring that they did not know what approach to take. In addition, there are problems with identity cards, which are produced in a manner easy to forge.

497. In the area of training, there have been some real efforts, except perhaps at the BCEAO National Agency, which has trained only four persons in AML procedures; a lackluster result, given the coordinating role the entity is supposed to play.

498. In the microfinance sector, although community laws and regulations require DFSs to establish internal control systems, these have proven imperfect and even ineffective, in practice. In addition, internal AML surveillance is nonexistent. Training and awareness-raising activities for the relevant staff are also inadequate or entirely absent.

499. The instruction requires establishments to which it applies to put in place an AML unit and to submit an annual report to the BCEAO and the BC-WAMU on the implementation of the entire AML mechanism. AML inspections are at present too lax. See the section on Guidelines for financial institutions (C. 25.1)

Obligation to establish internal controls (C. 15.1)

Designation of a compliance officer (C. 15.1.1)

500. By virtue of Article 13 of Law 2001-041, financial entities are required to designate an internal officer responsible for implementing AML programs. In banks, it usually the compliance officer who ensures compliance with AML standards and assumes the role of national CENTIF correspondent.

Right of access to data (C. 15.1.2)

501. According to the current standards described above, the AML/CFT compliance officer and other appropriate staff should have timely access to customer identification data and other information related to due diligence measures, transaction records, and other relevant information.

Independence and means of internal control (C. 15.2)

502. Pursuant to Title IV of BC-WAMU Circular 10-2000/CB concerning internal controls in credit institutions, internal controls, still referred to as 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 institution.

503. Article 16 of the BCEAO Instruction of 2007 also stipulates that "the internal program to combat money laundering must fall within the scope of authority and investigation 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."

Ongoing staff training (Criterion15.3)

504. Article 13 of the AML law stipulates that financial entities must establish ongoing 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 entities must put in place a specific policy for the information and training of all staff…"

505. Most banks met with reported to the mission that their staff had received AML training. This training had been provided to all front office staff (window clerks) and agency heads. The BCEAO national office (which is itself subject to the AML law) trained four persons. In the internal instructions provided by banks to the mission, explicit provision is made for the issue of AML training. The instructions thus state that "staff must be trained so as to understand the seriousness of the incidence of money laundering (…). The officer responsible for compliance with standards must initiate training sessions at least twice a year, or whenever the need arises, in order to keep all staff informed of all developments or experiences that have occurred in other

units of the Group (…).” The mission was unable to determine, however, whether the training is provided when staff are hired or is part of an ongoing training program.

506. Each year, all banks are required to submit a special report on their internal AML mechanism (with an internal audit). AML inspections are at present too lax; see the section Guidelines for Financial Institutions (C. 25.1).

Hiring criteria (C. 15.4)

507. The Banking Law establishes criteria for hiring bank employees. Article 17 prohibits the hiring, in any institution of any person convicted for committing, conspiring to commit, or attempting a long list of offenses (including forgery, use of forged public/private documents, fraud). In practice, before hiring, each bank requires presentation of the criminal record.

Independence of the AML/CFT control officer (C. 15.5)

508. 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.

509. Each year, all banks are required to submit a special report on their internal AML mechanism (with an internal audit). AML inspections are at present too lax.

Application of AML/CFT measures to foreign branches and subsidiaries (C. 22.1)

510. Neither the community laws and regulations nor the laws of Niger 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 entities must identify natural persons, in accordance with the principles set forth in the annex to that law. This provision is also reproduced *in extenso* in the AML law.

511. The provisions of point 6 of the annex to the uniform law, as reflected in the national law, deal with the identification procedures required when the counterparty is located (or not) within the Union, and also when the identification obligations are not equivalent. Thus, when the counterparty is located within the Union, customer identification by the contracting financial entity is not required. When the counterparty is located outside the Union, the financial entity must verify the counterparty’s identity by consulting a reliable financial directory. In case of doubt in this regard, the financial entity must request confirmation of its counterparty’s identity from the oversight authorities of the third country. The financial entity is also required to take “reasonable measures” to obtain information on its counterparty’s customer, i.e., the beneficial owner of the transaction.[32]

512. By virtue of the provisions of Article 9 of the Directive, as reflected in Nigerien law, if the customer is not acting for its own account, the financial entity must obtain information by any means available concerning the identity of the person for whose account the customer is acting.

513. In accordance with the last paragraph of that same article, financial entities are not subject to the identification obligations set forth, if the customer is a financial entity subject to the law.

514. In practice, it emerged from the mission’s meetings with several banks that, in their relationships with their foreign branches and subsidiaries, the same due diligence measures are observed.

515. In sum, although the provisions of the Uniform Law are not clearly defined with regard to the implementation of this criterion, the above-cited articles implicitly require financial institutions to apply the rules.

Especially in host countries that apply the FATF recommendations insufficiently or not at all (C. 22.1.1)

516. Nigerien law contains a provision requiring financial institutions to ensure that their foreign branches and subsidiaries, in countries that apply FATF recommendations insufficiently or not at all, observe AML/CTF measures in accordance with the obligations set forth in the AML law.

Application of stricter standards (C. 22.1.2)

517. There are no standards in Niger requiring that, when the minimum AML/CFT standards of the host and home countries differ, branches and subsidiaries in host countries should be required to apply the higher standard, to the extent that the local (i.e. host country) laws and regulations permit.

Obligation to inform the supervisor when a foreign branch or subsidiary is unable to observe AML/CFT measures (C. 22.2)

518. Nigerien law, as well as the community instructions, is silent on this point. Financial institutions are not required to inform the oversight authorities of their home country when a foreign branch or subsidiary is unable to observe the appropriate AML/CFT measures.

32 These “reasonable measures” may be limited when the counterparty’s country applies equivalent identification obligations to ask for the customer’s name and address, but it may be necessary, when these obligations are not equivalent, to require the counterparty to submit a certificate confirming that the customer’s identity has been duly verified and recorded.

Consistency of due diligence measures at the group level (C. 22.3)

519. This criterion does not exist in Nigerien law.

### 3.8.2 Recommendation and comments

520. The authorities should

- Define obligations with regard to staff hiring procedures;
- Adopt sectoral regulations, for entities other than those under BC-WAMU authority, governing internal AML controls;
- Clarify the internal control obligations of microfinance establishments
- Ensure that subject entities promptly begin monitoring compliance with their obligations
- Create, for all banks and financial establishments, an obligation to ensure that their foreign branches and subsidiaries apply AML/CFT standards.

### 3.8.3 Compliance with Recommendations 15 and 22

| | Rating | Summary of factors underlying the ratings |
|---|---|---|
| R.15 | PC | Inadequate regulatory mechanism for the banking sector<br><br>No sectoral mechanism outside the banking system, particularly in the microfinance sector<br><br>Lack of effective implementation of internal AML control obligations |
| R.22 | NC | No obligation for the nonbank financial sector<br><br>Credit institutions not required to inform the banking supervisor |

## 3.9 SHELL BANKS (R.18)

### 3.9.1 Description and analysis

Prohibition of the establishment of shell banks (C. 18.1)

There are no provisions directly prohibiting the establishment 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 establishment of shell banks or the conduct of their activities.

Prohibition of correspondent relationships with shell banks (C. 18.2)

There is no provision prohibiting financial institutions from entering into or maintaining correspondent relationships with shell banks.

Obligation to verify that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks (C. 18.3)

There is no provision requiring financial institutions to ensure that financial institutions that are part of their foreign clientele do not permit their accounts to be used by shell banks.

### 3.9.2 Recommendations and comments

521. The authorities should consider (i) prohibiting financial institutions from entering into, or maintaining, correspondent relationships with shell banks; and (ii) requiring financial institutions to ensure that financial institutions that are part of their foreign clientele do not permit their accounts to be used by shell banks.

### 3.9.3 Compliance with Recommendation 18

| | Rating | Summary of factors underlying the ratings |
|---|---|---|
| R.18 | PC | No prohibition against entering into, or maintaining, correspondent relationships with shell banks<br><br>No obligation to ensure that financial institutions that are part of their foreign clientele do not permit their accounts to be used by shell banks |

REGULATIONS, SUPERVISION, OVERSIGHT AND SANCTIONS

## 3.10 SUPERVISION AND CONTROL SYSTEM. COMPETENT AUTHORITIES AND SELF-REGULATORY ORGANIZATIONS. ROLE, FUNCTIONS, OBLIGATIONS, AND POWERS (R. 17, 23, 29 AND 30)

### 3.10.1 Description and analysis

522. To understand the AML supervision system in Niger, it is first important to describe the regional framework. Indeed, where supervision is concerned, as in other areas, the established architecture is of a regional type for all WAMU countries. This architecture pertains to the supervision of banks and other financial entities, insurance companies,[33] stock markets, and microfinance.

523. **Banking sector**: As a member of the West African Economic and Monetary Union (WAEMU), the Republic of Niger, 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 basis within the WAMU. Indeed, banking regulation and supervision within the Union are organized and regulated by the law establishing banking regulations, which entered into force on October 1, 1990. This framework law constitutes the basic text of the bank supervision mechanism and, more generally, of the organization and surveillance of banking activities within the WAMU. This framework law was transposed into the legislation of Niger by Law N° 90-06 of June 26, 1990 (establishing banking regulations).

524. In addition, in application of the aforementioned framework law, a number of laws and regulations have been adopted. These include the Convention creating the Banking Commission, which entered into force on October 1, 1990, and the prudential mechanism applicable to banks and financial establishments within the WAMU, which was amended by the Council of Ministers in its session of June 17, 1999 and effective as of January 1, 2000.

525. With more specific regard to bank supervision, the above-cited framework law defines the division of authority between the bank regulatory and supervisory bodies, as well as the conditions governing their actions. It also makes a distinction between the regulation functions, on the one hand, and the supervision and sanctioning functions, on the other, among the various bodies or institutions: Council of Ministers, finance ministers, central bank, and the Banking Commission.

526. 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 credit policy instruments and rules as well as the managerial standards applicable to banks (including solvency, risk spreading, liquidity, etc., and by extension, AML/CFT standards).

527. The authority of the Minister of Finance – in Niger, as in every country in the Union – covers mainly licensing (see C. 23.3 below for more information), the appointment of provisional administrators or liquidators, and the suspension of operations of all banks and financial establishments. In addition, regarding microfinance networks, the oversight responsibilities traditionally assigned to the Minister of Finance will be transferred this year to the BC-WAMU (see C. 29.2 below for more information).

528. Regarding bank supervision (apart from the microfinance network), the Central Bank of West African States (BCEAO, headquartered in Dakar) shares its on- and off-site supervision powers with the WAMU Banking Commission (based in Abidjan, Côte d'Ivoire). The BCEAO is empowered to make on-site visits to banks and financial establishments after notifying 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, holds all the supervisory prerogatives within the eight countries that make up the WAEMU zone, including Niger. In exercise of its powers, it gives approval for the licensing of banks and other financial establishments, and conducts or orders on- and off-site supervision of establishments subject to its authority. It may, as the situation requires, extend its supervision to affiliated companies.

529. **Microcredit sector**: Regarding the microfinance networks, a law setting forth the regulation of mutual institutions and credit unions (IMCEC) was adopted by the WAMU Council of Ministers in 1993. This law sets forth the prerogatives of the authorities regarding regulation and supervision. Pursuant to this law, authorized microfinance institutions are placed under the oversight of the Ministry of Finance. They are required to submit an array of information and to submit to the supervision and

33 The insurance supervision mechanism transcends WAEMU boundaries and indeed extends to the entire franc zone.

prudential rules of the authorities. Thus, under the terms of Order 96-024 (and of the Parmec Law, which is the source of Order 96-024) of May 30, 1996 (governing microfinance activities), the Minister, the central bank and the Banking Commission are empowered to request the submission of all documents, statistical statements, reports and any other information deemed necessary for the fulfillment of their mandates. Article 66 stipulates that the Minister may conduct or order any supervision of institutions. Along the same lines, Article 67 stipulates that the central bank and the BC-WAMU may, on their own initiative or at the request of the Minister, conduct on-site supervision of financial bodies and of any companies under the latter's control.

530. In Niger, the licensing, oversight, and sanctioning procedures are governed by [to be verified]. The latter confers on the Supervision and Oversight Unit for Decentralized Financial Systems (CCS/SFD) the power to process license applications; supervise entities (whether mutual or not); collect, analyze and disseminate statistical data; and, finally, propose sanctions for failure to observe prudential standards.

531. **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 issues, and, on the other, for authorizing and supervising participants in the regional financial market. In this capacity, the CREPMF regulates the operation of the market, particularly by issuing regulations specific to the stock market. It also has disciplinary and legal investigative powers (e.g., handling of complaints).

532. The stock market sector consisted of only one intermediation and management firm and no independent broker-dealers. The only intermediation firm has just one client, a bank, which trades bonds for its own account. Consequently, this sector poses no significant money laundering risk.

533. **Insurance sector**: In the insurance sector, the fourteen countries of the franc zone established the Inter-African Conference on Insurance Markets (CIMA) in the Yaoundé Treaty of July 10, 1992. This treaty seeks to remedy the shortcomings of insurance law by standardizing it pursuant to the CIMA Code, which entered into force in 1995. It establishes a legal framework for engaging in the profession in the franc zone, and therefore in Niger, and defines the regulatory and sanctioning powers of the competent authorities. The Conference's Regional Insurance Supervision Commission (CRCA) is the regulatory body and is responsible for general oversight of the insurance markets as well as the supervision of insurance companies, with the assistance of the National Insurance Directorates (DNA) in the member states. In actual practice, the General Secretariat of the Conference supervises the insurance companies. In Niger, there are no investment-linked life insurance products. Consequently, there is no risk of money laundering.

### AML/CFT regulation and supervision (C. 23.1)

534. The AML law lists the persons and entities subject to AML obligations, particularly financial entities, which specifically include banks and financial establishments, the financial services of the Post Office, insurance companies, mutual and savings institutions, and authorized money and currency changing services. In the stock market 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 firms, asset management firms, and introducers of business.[34]

### Designation of competent authorities (C. 23.2)

535. Banking sector. Banks and other financial establishments are subject to the supervision of the BC-WAMU pursuant to Article 13 of the convention establishing the BC. The BCEAO also enjoys autonomous supervisory power according to para. 2 of that same article, since it can also conduct supervision on its own initiative (see C. 29.1 for more details).

536. Insurance sector: Insurance companies are subject to the supervision of CIMA, based in Libreville (Gabon), which relies on the national insurance directorates to carry out such supervision. Insurance agents are subject to the prudential supervision of the national insurance directorates.

537. Microfinance sector: Decentralized financial systems are under the supervision of the MOF. In practice, this role is played by the DFS Supervision and Oversight Unit. The latter is headed by a unit chief appointed by decree of the Council of Ministers at the suggestion of the MOF. The Office of Financial Analysis, Oversight, and Supervision is responsible for overseeing DFSs and, if necessary, proposing sanctions, penalties, or even provisional administration.

538. Stock market sector. The Regional Council on Public Savings and Financial Markets is responsible for overseeing the proper functioning of the WAMU financial market, of which Niger is a member. Pursuant to Article 23 of the annex to the general regulation,[35] the Regional Council supervises the activity of all participants, particularly market management bodies and authorized commercial participants.[36] It also verifies compliance, on the part of issuers of securities, with their obligations in respect of public issues. In this connection, it may, as necessary, conduct investigations of their stockholders, parent companies and subsidiaries, or of any legal or natural person having a direct or indirect interest in these market participants. It emerged from the mission's meetings with the market authorities that no AML oversight is conducted, even though the main market participants are subject to the AML law.

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34 Introducers of business are natural or legal persons who bring customers into contact with a management and intermediation firm or an asset management firm for purposes of: (a) opening a securities account; (b) obtaining investment or trust management advice; (c) transmitting their customers' orders.

35 On the organization, operation, and supervision of the WAMU regional financial markets.

36 Management and intermediation firms, asset management firms, regional stock exchange, and central depository/ settlement bank.

Prevention of the presence of criminals (C. 23.3)

539. **Access to the banking profession**: The banking profession is subject to regulation that limits practicing 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 integrity and experience of persons called upon to direct, administer or manage the bank or financial establishment and its branches. Article 15 excludes from the banking profession any person who has been convicted of crimes and offenses covered by ordinary law.[37]

540. In practice, license applications are sent to the finance minister of the country concerned and filed with the central bank, which processes them. The central bank verifies whether the natural or legal persons applying for the license fulfill the conditions and obligations contained in the aforementioned Articles 14 [38] and 15, among others. The BCEAO also assesses the fitness of the applicant 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 integrity and experience of persons called upon to direct, administer or manage the bank or financial establishment and its branches.

541. Regarding verification of the origin of capital, there is no particular procedure within the BCEAO. In addition, the mission was unable to determine whether the licensing authorities systematically track back to the beneficial owner when they are asked to process an authorization request.

542. It should be pointed out that these provisions apply when an establishment is being created for the first time in the WAMU zone. For other, already existing banks, the single license rule (*agrément unique*) applies.[39]

543. **Access to the profession of insurer.** The minimum capital required to form an insurance company is appropriate: CFAF 1 billion for joint stock companies and CFAF 750 billion for mutual insurance companies. License applications are submitted to the competent National Insurance Directorate (DNA) and then forwarded to the Regional Insurance Supervision Commission (CRCA), which issues an opinion (Title II, Chapter 1, Section 1 of the Insurance Code). This favorable opinion is a prerequisite for issuance of the license by the minister responsible for the insurance sector in the member state (Niger in this case). Under this procedure, the distribution of capital, and the quality and integrity of the company's managers are examined in particular. Assurances are sought, in particular, that members of the managerial bodies have no prior criminal convictions. The CRCA may reject a license application, especially if the company does not present all of the guarantees required to engage in this activity.

544. The stockholders are the subject of particular attention when the license is applied for, but also when there is any significant change in the capital or voting rights. Thus, Article 329-7 stipulates that any transaction whose purpose is to confer an equity interest of more than 20 percent or the majority of the voting rights must be approved by the Minister responsible for insurance, subject to the favorable opinion of the CRCA. Still, there is no particular procedure, whether in the field of insurance or banking, aimed at ensuring that capital investment does not derive from criminal activity.

545. **Access to the microcredit profession**. Regarding microfinance networks, which are among the persons subject to the AML law, the conditions for access to the profession are governed by Order 96-024. Article 9 stipulates that financial institutions or entities whose purpose is to engage in savings and loan activities must first be approved or licensed in specific conditions. Indeed, Article 13 stipulates that local institutions affiliated with a network may not operate within the territory unless they have been previously licensed or approved by the Minister of Finance. The terms governing the organization, establishment and operation of institutions are set forth in a decree.[40] At the time of the mission, there were three types of authorization to operate (license, approval, and convention), depending on the nature of the institution (local institution, Union, Federation or Confederation). Since the existence of three (3) types of authorization can cause a certain amount of confusion, the regional authorities decided to simplify the structure of the Parmec Law (source of Order 96-024) as well as the modalities of DFS licensing and the terms governing their oversight. In future (i.e., from 2008 onward), licensing will be the only form of authorization to practice the profession and about 60 IMCECs[41] will transition to direct oversight by the BC-WAMU.

546. The examination of requests for authorization to operate focuses especially on the integrity and expertise of the management. Apart from the obligation to file their articles with the court registry, DFSs must at the same time submit a list of the directors and manager, with an indication of their profession and place of residence (Article 18 of Order 96-024 and the

37 Anyone convicted of an ordinary law crime, for forgery or use of forged public documents, for forgery or use of forged private documents in trade or banking, for theft, for fraud or offenses punished as fraud, for breach of confidence, for bankruptcy, for embezzlement of public moneys, for misappropriation by a person exercising public authority, for extortion of funds or securities, for issuing bad checks, for violation of the exchange legislation, for undermining government credit, or for receiving articles obtained through these offenses (Article 15 of the Banking Law) is, by operation of law, prohibited from directing, administering, or managing a bank or financial establishment or one of its branches.

38 No one may direct, administer, or manage a bank or financial establishment, or one of its branches, unless he/she holds (…) nationality or that of a WAMU member state.

39 Pursuant to the decision of the WAMU Council of Ministers in its meeting of July 3, 1997 adopting the single license principle, and the decision of the WAMU Council of Ministers in its meeting of September 25, 1998 adopting procedures for implementation of the single license, the single license gives a duly constituted bank or financial establishment the right to carry out a banking or financial activity in a WAMU member state and to establish or freely offer services of the same kind throughout the Union, without being required to request additional licenses.

40 It should be pointed out that certain activities require a specific authorization to operate. This is the case, for example, of money and currency changing activities.

41 This refers to the largest DFSs, which account for 90 percent of transactions and hold more than CFAF 300 million.

Parmec Law).[42] In Niger, the license is issued by the MOF. The application is processed by the CCS/SFD, which formulates an opinion. In support of their license applications, applicants must also provide articles signed by the founding members, the list of capital subscribers, and the minutes of the constitutive general meeting. The integrity of candidates is also verified by examining their criminal records. As for the lawful origin of capital contributions, the CCS/SFD usually requires documentary evidence.[43]

547. 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 things by a certain laxness in the terms under which licenses are granted and also because of inadequate oversight of DFSs.[44]

548. In Niger, there are no investment-linked life insurance products. Consequently, there is no risk of money laundering in that sector.

549. **Access to the stock market.** The 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 issues and, on the other, for authorizing and overseeing participants in the regional financial market. In this connection, CREPMF regulates market operations, particularly by issuing regulations specific to the stock market. It also has disciplinary and legal investigative powers (see Criterion 29.4 below for more detail).

550. Two main types of participants on the regional financial market should be distinguished: (a) market structures, i.e., the Regional Stock Exchange (BRVM) and the Central Depository/Settlement Bank; and b) commercial participants such as management and intermediation firms (SGIs), asset management firms (SGP), stock investment advisors, business introducers, and canvassers.

551. Concerning the market structures, the company created to carry out the activities of the Regional Stock Exchange within the West African Monetary Union is required to submit an application to the Regional Council to request a license from it. This application must include: (i) the articles of the applicant company; (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.

552. Regarding commercial participants (management and intermediation firms and asset management firms, in particular), the licensing procedures appear to be stricter. Thus, Article 27 of the General Regulation stipulates that, for purposes of the examination of their license application, applicant companies must present sufficient guarantees, especially regarding the composition and amount of their capital; their organization; their human, technical and financial resources; the integrity and experience of their managers; and the provisions intended to ensure the security of customer transactions. Article 32 of the same regulation states that the following may not be stockholders, corporate officers, or directors of a company applying in the capacity of management and intermediation firm: natural persons having, in any country, one more convictions for an ordinary law crime or offense, an attempted crime or offense, complicity, or the receipt of stolen goods or for (i) forgery or use of forged documents; (ii) fraud, breach of confidence, embezzlement of public moneys, extortion of funds or securities and counterfeiting; (iii) violation of banking and 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 may, but do not systematically, obtain a hearing. The processing departments also require a copy of the criminal records of the managers. However, there is no specific procedure aimed at ensuring the lawful origin of the capital contributions.

553. Although banks and management and intermediation firms can create OPCVMs, approval from the CREPMF is needed and the integrity of managers must be verified. It should be added that, for Niger, the ML risk seems limited because the country has only one management and intermediation firm and no asset management firms. At the time of the mission, there were as yet no specific AML rules pertaining to the financial market. A draft text is under study, however.

554. The stock market sector consisted of only one intermediation and management firm and no independent broker-dealers. The only intermediation firm has just one client, a bank, which trades bonds for its own account. Consequently, there is no significant money laundering risk.

555. **Money and currency changing services**. Licenses for money and currency changing services are issued by order of the MOF following receipt of a favorable 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 beneficiary's activities within a period not exceeding one year from the date of notification of said order. License applications are processed by the BCEAO, which examines the criminal record of the license applicant. The BCEAO issues a favorable opinion which is then transmitted to the Ministry of Finance. The licensing agreement is then issued by the minister. In addition, money and currency changing services must report the volume of their transactions to the BCEAO. The delivery of foreign exchange to resident travelers is governed by the provisions of Regulation 09/98/CM/UMOA on the external financial relations of members of the Union. Article 23 of Annex II of the said regulation states that travelers to nonmember states of the Union are authorized to bring, per person, up to the equivalent of CFAF 2,000,000 in banknotes other than CFAF banknotes. Amounts in excess of this ceiling may be brought in the form of travelers checks, certified checks, and other means of payment.

42 Any subsequent change in the articles or the aforementioned list of directors must be filed with the court registry and a written report must be sent to the Minister.

43 Copy of the contract in the case of a bank loan, written document for allocated funds, protocol or other document attesting to a grant.

44 The mission was informed that certain DFSs applied for a license after operating completely illegally for two or three years.

Fit and proper criteria (C. 23.3.)

556. The criteria concerning the expertise and integrity of the directors of banks and insurance companies and the commercial participants in financial markets are examined by the competent authorities. However, 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 C. 23.3 above) and money and currency changing services. The rules concerning verification of the criteria of expertise and integrity of DFSs are not clearly established.

Application of AML/CFT prudential rules (C. 23.4)

557. Banking Commission Circular n° 10-2000 of June 23, 2000 stipulates that banks and financial establishments in the WAMU must put in place effective internal control systems adapted to their organization, the nature and volume of their activities, and the risks to which they are exposed. These standards apply, obviously, to Nigerien banks.

558. The principles described above in Circular n° 10-2000 of June 23, 2000 require, in particular, a complete formalization of procedures and of 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 monitor activity and results. This body must be kept informed on a regular basis of all risks to which the institution is exposed. The deliberative body may create an audit committee responsible, in particular, for issuing an assessment of the organization and the operation of the control system.

559. These general risk management provisions are relevant to anti-money laundering efforts.

Licensing of money or value transfer and money or currency changing services (C. 23.5)

See SR VI.

Monitoring and control of money or value transfer and money or currency changing services (C. 23.6)

See SR VI.

Prior authorization or registration, regulation and control of other financial institutions (C. 23.7)

560. Other non-bank financial institutions (DFSs and money and currency changing services, for example) are also subject to prior authorization and supervision. The oversight conditions applicable to them in the area of AML are, however, insufficient and even nonexistent in the case of microfinance establishments.

Guidelines for financial institutions (C. 25.1)

561. **In the banking (and financial establishments) sector,** the only existing instruction is that of the BCEAO dated July 2, 2007 (Instruction 01/2007/RB concerning anti-money laundering efforts within financial entities). This document is thus of recent creation, which means that for the past several years, banks and financial establishments, in Niger and elsewhere, did not have detailed information on how to comply with AML laws and regulations. According to regional authorities, this hiatus separating the initial community-level AML laws and regulations and the appearance of the instruction was explained by the fact that it had been necessary to wait for community laws and regulations to be transposed into the national legislation of the countries in the sub-region. The mission notes, incidentally, that the current legal procedure in the region is sometimes an obstacle to the rapid implementation of laws and regulations at the national level. This situation is particularly disadvantageous with regard to laws and regulations on money laundering or the financing of terrorism, which require the prompt establishment of operational structures.[45]

562. According to its Article 3, the BCEAO instruction applies to Banks, financial establishments, the financial services of the Post Office, *Caisses de dépôts et consignations* (State Savings Deposit Institutions) or entities serving as such, mutual institutions, credit unions, entities or organizations not established in mutual or cooperative form and having as their purpose the collection of savings and/or the granting of credit, and authorized money and currency changing services. It does not apply, however, to money or value transfer services.

563. This instruction repeats the broad outlines of the community uniform law of 2003. It reiterates the provisions pertaining to the due diligence obligations of financial entities, especially the standards on identification, document retention, and the detection of suspicious transactions. It also reiterates the specific obligations of enhanced due diligence and those pertaining to occasional financial transactions. The instruction also specifies obligations pertaining to the suspicious transaction report and staff training.

45 More than 5 years elapsed between the community directive of 2002 and its transposition by the member states (Togo having transposed it at end-2007), despite the member states being required to transpose regional laws and regulations within 6 months of their publication. It appears that the enforcement mechanisms of the regional authorities had little practical effect. Although the same approach that was taken for transposition of the AML directive of 2002 also applies to transposition of the CFT directive of July 2007, the mission has serious doubts about the rapid implementation of CFT standards in the sub-region.

564. Finally, the instruction requires entities to which it applies to put in place an AML unit and to submit an annual report[46] to the BCEAO and the BC-WAMU on the implementation of the entire AML mechanism.

565. A close reading of this Instruction raises the following comments:

566. The document does not provide all the necessary clarifications, and this is true in several respects. With regard to (i) customer identification, the instruction refers only to customers who are natural persons; it provides no explanation of how customers that are legal persons are to be identified. It also does not specify how the covered 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 type of identification document is accepted in the sub-region, nor does it define enhanced due diligence measures for certain categories of customer (e.g., nonresident customers, foreign customers). In the area of (ii) implementation of AML standards within financial entities, although the instruction indicates that the latter must put in place internal programs to combat money laundering, it does not specify in what way these programs must be consistent with "*the legal and regulatory provisions in force in the WAMU member states*." The instruction also makes no mention of the obligation of financial entities to obtain information on the purpose and intended nature of the business relationship, or on the need to update customer files on a regular basis.

567. The instruction also contains certain provisions likely to cause confusion within the financial establishments to which it applies. Thus, Article 4 stipulates that customer identification must be based, in particular, upon "*precise ethical rules*." In addition to the fact that these ethical rules are not specified in the instruction, they are also not included in the FATF standards.[47] Along the same lines, the instruction stipulates that financial entities "*must define the types of customer that they cannot accept*." Lacking any further detail, this provision is devoid of practical application.

568. It should also be pointed out that the BC-WAMU has not issued any AML-related circular or circular letter. Even though the regulatory power is held by the BCEAO (since the BC has only a supervisory and oversight role), it can still clarify certain points in the current regulation by issuing circulars. This option has not yet been exercised where AML is concerned.

569. From the preceding considerations, the mission concludes that the only document now in force in Niger, as in the rest of the sub-region, does not provide sufficient guidelines that could help financial entities implement and comply with their AML obligations.

570. **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 in this area and prepared a draft AML instruction. This text was approved by the Regional Council in September 2007 and is scheduled to enter into force in the course of 2008. It provides for three types of obligation pertaining to the customer identification, record-keeping and due diligence measures. It also defines enhanced oversight measures for unusual transactions and reiterates the reporting obligations of market participants.

571. **In the microfinance sector.** The mission's meetings with DFSs as well as with the supervisory authorities revealed the lack of AML directives or guidelines in the profession. The AML law has not been disseminated within the networks, nor has the BCEAO instruction of July 2007. The meetings also revealed a certain amount of confusion as to how AML laws and regulations are to be disseminated within the profession. Some of those met with felt that this was the responsibility of the professional association, not the competent authorities. In the insurance sector, there are no AML guidelines. In Niger, there are no investment-linked life insurance products; consequently, there is no risk of money laundering.

572. **Banking sector**: As indicated above, bank supervision is governed by community and national provisions whose implementation is divided among four oversight authorities:[48] (i) the WAMU Council of Ministers, which determines the general legal and regulatory framework applicable to credit activity; (ii) the finance ministers of the member states (such as Niger), who have powers, in particular and each within the borders of his/her national territory, to grant and withdraw the licenses of banks and financial establishments, and to deal with problems experienced by these establishments; (iii) the BCEAO, whose primary responsibilities are the preparation and technical transposition of the accounting and prudential regulations applicable to financial entities, and to help supervise the banking system through its national directorates; and, finally (iv) the BC-WAMU, chaired by the Governor of the BCEAO, which is responsible for ensuring the organization and supervision of banks and financial establishments operating in the eight member states of the Union and which has, for this purpose, powers to impose administrative and disciplinary sanctions.

573. The power of supervision over financial entities is organized in this way. According to Article 13 of the Convention creating the BC-WAMU, the Banking Commission conducts on- and off-site controls, or orders such controls to be performed, particularly by the central bank, to ensure that banks and financial establishments comply with the provisions applicable to them.

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46 According to Article 17, this report must : • describe the organization and resources of the establishment in respect of preventing and combating money laundering; • report the training and informational activities carried out during the past year; • list the controls performed to ensure proper implementation and compliance with procedures governing customer identification, data storage, and the detection and reporting of suspicious transactions; • disclose the results of investigations, particularly with regard to weaknesses observed in the procedures and in compliance therewith, as well as statistics on implementation of the suspicious transaction reporting mechanism; * indicate, where appropriate, the type of information transmitted to third-party institutions, including those outside the country of establishment; • prepare a map of the most current suspicious activities, indicating the nature and type of changes observed, if any, in the area of money laundering; and, finally, * describe the outlook and the action program for the coming period.

47 FATF Recommendation 5 concerning customer identification makes no reference to ethical rules.

48 This configuration is dictated by the need to put in place a uniform oversight mechanism throughout the zone while at the same time having local relay points to facilitate the implementation of prudential provisions and decisions made by the regional authorities.

The central bank can also perform such controls on its own initiative. It informs the Banking Commission in advance of on-site controls.[49] Oversight of microfinance networks is the responsibility of the MOF of each country, through "ministerial units responsible for monitoring/SMS," but both the BCEAO and the BC-WAMU are involved in sectoral supervision, through verification of the consistency of procedures manuals with the standards they set, off-site supervision, and oversight of financial entities. Supervision of the services of the Post Office and of money and currency changing services is the responsibility of the BCEAO. This overlap of authority and the sometimes joint exercise of certain tasks, especially in the area of supervision, among the MOFs, the BCEAO and the BC-WAMU, reduce overall efficiency.[50]

574. With regard to money laundering, the monitoring of compliance with legal standards by the subject entities is the responsibility of the above-cited authorities. CENTIF has no responsibility to supervise subject entities, either in Niger or elsewhere in the sub-region.

575. Concerning the monitoring of AML compliance within banks and other similar establishments, the BC-WAMU exercises primary oversight through its General Secretariat (SGCB). In that connection, supervision consists of on- and off-site controls. The Department of Banking Research conducts ongoing supervision (off-site) with the Legal Directorate; their employees number 25 and 5, respectively. The Research Directorate is responsible, in particular, for examining periodic financial statements and end-of-fiscal-year documents, analyzing inspection reports, and preparing follow-up letters[51] to the inspection reports. This Directorate also ensures that comments resulting from on-site controls are implemented.

576. On-site supervision is provided 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 audit records of the auditors. These auditors are also systematically questioned by the inspectors during their on-site visits. According to statements of the BC-WAMU, 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 inspections are reported by the Banking Commission to the Minister of Finance, the central bank, and the board of directors of the institution concerned, or to the body serving as such.

577. Bank supervision in the area of AML suffers from several handicaps:

578. Resources appear to be quite deficient. The BC-WAMU has a total of 111 employees, but only 22 inspectors to cover 115 banks located throughout the WAMU zone.

579. The inspection department of the BC-WAMU has not yet undertaken any AML-themed inspection. The mission was informed, however, that since 2002 every general inspection has included a money laundering component.

580. The AML controls carried out by the BC-WAMU lack depth. The mission learned, from information received from Nigerien banks, that the scope of the controls carried out by the BC-WAMU is still confined to a simple analysis of compliance. There is no analysis of the ML risk facing a bank, nor is there any assessment of the relevance of the bank's own internal AML mechanism given its risk exposure.

581. The degree of AML specialization is limited, given the small size of the existing staff. An annual training program is organized for BC staff, which includes internal training as well as training abroad.[52] However, the training of SGCB staff in the area of money laundering is partial. The various meetings and seminars organized recently on the subject of money laundering fail to provide specific knowledge and an adequate level of practical experience. These programs are more geared toward awareness-raising than to actual training in AML supervision.[53]

582. Since the BCEAO instruction is very recent, the SGCB, in Niger and elsewhere, has data only about the status of AML implementation in the countries of the zone. As a result, except for inspection reports and the internal control reports that banks are required to produce each year,[54] the SGCB does not yet have a simultaneously comprehensive and individual picture of the degree of progress in implementing AML standards in Niger or in the rest of the sub-region, nor of the typologies of money laundering. Because there are no tools for analyzing and monitoring 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.

583. The SGBC's inspection department has only one partial methodological tool for assessing the extent of banks' compliance with AML standards. In addition, the Research Directorate has not yet developed procedures enabling it to collect, on an individual and periodic basis (i.e., outside the biannual and triennial inspection cycles), data on the implementation of banks' internal AML mechanisms. In this regard, the BC-WAMU indicated that it is studying the possibility of adopting the methods developed by the Central African Banking Commission in the CAEMC zone, which will enhance the AML-related operational

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49 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 any other anomalies in the management of banks and financial institutions of which it is aware.

50 An institutional reform currently in progress is expected to improve the distribution of responsibilities among these various institutions.

52 Most BC staff have an extensive university background (Bac +5) and enjoy demonstrated credibility within the profession (source: FSAP).

53 In its 2006 annual report, the BC-WAMU mentions several meetings concerning AML. The SGCB participated in regional seminars organized by the BCEAO on "Validation of the directive on combating the financing of terrorism." At the international level, the SGCB participated in various AML/CFT seminars organized by the World Bank, the IMF, and the AfDB. The report does not indicate, however, how many SGCB employees took part in these training/awareness-raising activities.

54 These reports sometimes contain a money laundering component; see in this regard BC Circular 10-2000 of June 23, 2000, Title VI, and Internal Control Regulation 01-2001.

capacities of the BC-WAMU, in terms of both on- and off-site inspections. Thus, the plan is to acquire an on-site inspection methodology enabling the inspector to determine, based on an analysis of files and transactions, whether the regulatory requirements are in fact being observed by the establishment. The BC-WAMU could likewise, over the medium term, design a questionnaire (of the self-assessment type) to be completed by banks; the answers given would enable the Research Directorate responsible for off-site inspections to ensure that the internal mechanism is consistent with the laws and regulations in force and, thus, to identify any weaknesses.

584. Regarding ongoing supervision, the centralization of the accounting or prudential data transmitted periodically by banks is still not sufficiently automated and the analysis thereof is still hampered by excessively lengthy processing times.[55] This situation may affect the early detection of possible money laundering problems. Off-site supervision is also not conducted on a consolidated basis, although the region has several banking groups.[56]

585. In conclusion, AML supervision in banks and other financial establishments remains embryonic.

586. **Insurance sector.** All CFA franc zone countries, including Niger, have signed the Treaty of the Inter-African Conference on Insurance Markets (CIMA) and are bound by common laws and regulations concerning insurance. Decisions regarding the granting or withdrawal of licenses and the 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 the regional professional insurance association. The members of the Commission include three individuals, one with insurance experience, one who has held positions of responsibility in the insurance sector, and one with insurance experience in Africa, plus six representatives of the national insurance directorates, all appointed by the Council; and the director-general of CICA-RA, a person appointed by mutual agreement of the governors of the BEAC and the BCEAO. The Council appoints one of the members of the Commission as its chair. There are also four non-voting members: the president of the FANF, the secretary-general of the Conference; the director-general of the IIA, and a representative of the minister responsible for insurance in the member state.

587. 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 division of responsibilities between the Secretariat and the national insurance authorities. (The treaty called for responsibilities to be shared by the Secretariat and the national authorities.)

588. CIMA's resources are very limited and budget constraints have forced it to reduce the frequency and the thoroughness of its on-site inspections. The means provided to the national authorities are likewise very limited, and they therefore have difficulty attracting and retaining competent staff.

589. With the hiring in 2008 of three new insurance supervisors (*commissaires contrôleurs*), the staff of the supervision unit was increased to ten. The frequency of supervision will be boosted with a view to enabling enterprises to comply with the regulation in force. In addition, the Secretariat needs to improve off-site supervision and establish an early detection system. Off-site supervision software has been developed and will be disseminated in the member states. The inspectors of the CIMA Secretariat are currently analyzing the annual statements of companies manually, which considerably delays the detection of problems.

590. In Niger, there are no investment-linked life insurance products; consequently, there is no risk of money laundering in this sector.

591. At the time of the mission, **the microfinance sector** was characterized by the overlapping powers of the various institutions, i.e., the MOF, through "ministerial monitoring/SMS units," the BCEAO, and the BC-WAMU, not to mention the internal controls performed by the apex structures of certain microfinance networks. This situation generates confusion about the role of each participant and reduces the effectiveness of the whole mechanism. In terms of supervision, the specific oversight of microfinance companies or decentralized financial institutions is the responsibility of a unit within the Ministry of Finance (Supervision and Oversight Unit for Decentralized Financial Systems, (CCS/SFD)).

592. In Niger, this unit employs about [to be verified] people (all categories combined) for a portfolio of 148 entities (mutuals and non-mutuals alike). Supervision of these institutions is carried out at two levels. Off-site supervision is performed by teams from the unit, targeting certain financial entities only and the financial statements they are required to prepare. DFSs 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 oversight is very scant, or even non-existent, in DFS networks. In Niger, for example, meetings with several DFSs confirmed that, although joint BCEAO/MOF inspection missions had indeed occurred, none had addressed the issue of ML risk.

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55 Source : FSAP, Report on the Assessment of Compliance with the Basel Core Principles for Effective Banking Supervision, 2007

56 Although the regulation calls for the production of consolidated accounts for banking groups, the latter are not subject to specific controls and the observance of prudential standards is approached on a broader, corporate basis (source FSAP, ibid.).

593. **Foreign exchange sector**: Niger has 18 exchange bureaus, only four of which are in operation. The BCEAO has supervisory authority over these establishments. In 2006, the BCEAO, jointly with Niger's MOF, conducted a verification mission focusing on about 40 exchange bureaus. These controls exclusively concerned compliance with foreign exchange regulations. The team heard reports of the existence of an informal foreign exchange sector. If these reports are true, this sector escapes any oversight and is thus a factor in AML/CFT vulnerability.

594. **Stock market sector**. In the stock market sector, the authorities have conducted several inspections of market participants. These inspections 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 the 'know your customer' rules set out in the community AML laws and regulations. Thus, as yet there is no AML oversight in this sector. The stock market sector in Niger consisted of only one intermediation and management firm and no independent broker-dealers. The only intermediation firm has just one client, a bank, which trades bonds for its own account. Consequently, this sector poses no significant money laundering risk.

Powers of inspection (C. 29.2)

595. In the case of **banks**, BC inspectors possess the necessary powers to inspect financial institutions, including on-site, to ensure that they comply with their obligations. Lacking detailed information, the mission is unable to determine with certainty whether BC inspections include a review of policies, procedures, books, and accounting records and 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[57] states that "the on- and off-site inspection procedures do not include any provisions specifically pertaining to the assessment of anti-money laundering mechanisms."

596. 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 off-site inspections, the Regional Council is empowered to request information on a regular basis, and to determine the content of this information as well as how it is to be provided. The stock market sector in Niger consisted of only one intermediation and management firm and no independent broker-dealers. The only intermediation firm has just one client, a bank, which trades bonds for its own account. Consequently, this sector poses no significant money laundering risk.

597. In the **microfinance** sector in Niger, CCS/SFD inspectors are responsible for ensuring compliance with the regulations applicable to DFSs. In this regard, they are expected not only to inspect and monitor DFSs, but also to propose sanctions against them and to ensure that the sanctions are enforced.[58]

598. In the **insurance** sector, CRCA inspectors exercise oversight authority over the member states' markets through the CRCA inspection unit. The National Insurance Directorates serve as relay points for the Commission in the member states. In Niger, there are no investment-linked life insurance products; consequently, there is no risk of money laundering in this sector.

**Powers of access to necessary records (C. 29.3)**

599. Within the **banking sector** in a broad sense, the BC-WAMU possesses the most extensive powers of access to information. Pursuant to Article 16 of the convention establishing the BC-WAMU, "*banks and financial establishments are required to provide, in response to any and all requests from the BC-WAMU and in the desired format, all records, information, clarifications, and supporting documentation necessary for it to fulfill its responsibilities.*" The Banking Law also states, in Article 46, that "*banks and financial establishments may not oppose the controls performed by the Banking Commission and the central bank.*" Niger's banking law states that banks may not oppose the controls performed by the BC and the BCEAO. The same law states that professional secrecy may not be invoked against the BC-WAMU or the BC, or against judicial authorities acting in the context of a criminal proceeding.

600. Within the specific sector of **microfinance**, the law states that professional secrecy may not be invoked against the minister or against the prudential authorities. BCEAO instruction 01/2007 of July 2, 2007 on anti-money laundering efforts within financial entities further states, in regard to the controls stipulated under Article 46 of the abovementioned Banking Law establishing banking regulations, "*banks and financial establishments must be able to produce all the information required to assess the quality of their mechanism for preventing money laundering.*"

601. 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).[59]

602. In the **stock market sector**, the general regulations pertaining to the organization, operation, and supervision of the WAMU regional financial markets define the oversight authority 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 on- and off-site inspections of management and intermediation firms.*" In addition, Article 24 of the annex to the general regulation[60]

57. Report on the Assessment of Compliance with the Basel Core Principles for Effective Banking Supervision, 2007.

58 AML Law, Article 1.

59 Anyone who, acting for his own account or that of another, knowingly submits inaccurate documents or information to the central bank or the Banking Commission, or who opposes any of the controls mentioned in Article 46 will be punished with imprisonment of one month to one year and a fine of CFAF 1,000,000 to CFAF 10,000,000 , or to one of these two penalties only. If the offense is repeated, the maximum penalty will be raised to two years of imprisonment and a fine of CFAF 20,000,000.

60 Annex determining the composition, organization, operation, and responsibilities of the Regional Council on Public Savings and Financial Markets.

states that "*the Regional Council shall have inspectors whose area of competence shall extend 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 off-site inspections, the Regional Council is empowered to request information on a regular basis, and to determine the content of this information as well as how it is to be provided*." However, the abovementioned provisions do not spell out the precise scope of the right of access conferred upon the Regional Council's inspectors when they inspect market participants. There are no explicit provisions in the regulations provided to the mission stating that RC agents enjoy the most extensive right of access and communication, similar, for example, to the right conferred upon BCEAO or BC-WAMU inspectors. Consequently, this situation is not consistent with the FATF recommendation (Rec. 29) which states that supervisors should have adequate powers to compel the production of all records, documents, or information needed to monitor compliance with AML/CFT requirements.

603. The stock market sector consisted of only one intermediation and management firm and no independent broker-dealers. The only intermediation firm has just one client, a bank, which trades bonds for its own account. Consequently, there is no significant money laundering risk.

604. In the **insurance sector**, in each member state of the CIMA, a national insurance directorate serves as liaison for the general secretariat and concurrently shares with it powers of access to information.

Power not predicated on a court order (C. 29.3.1)

605. The power of the supervisory authorities regarding the production of records or access to them is not predicated on the need to obtain a court order.

Powers of enforcement and sanction (C. 29.4)

606. **Banking sector**: To exercise the powers ascribed to it, the BC-WAMU is authorized to impose disciplinary sanctions based on the gravity of the offenses committed. Sanctions may range from a 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 enforceable throughout the countries of the Union once notification of same is provided to the parties concerned, either directly by the Commission or by the minister of finance in the case of a decision to withdraw a license. Such decisions may be appealed to the CMU, with the exception of decisions to withdraw a license made by the Minister of Finance of the country in which the decision is operative.

607. With respect to money laundering more specifically, Article 35 of the AML law states that when, in the case of a serious lack of due 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), the supervisory authority holding disciplinary powers may automatically take action under the conditions set forth in the relevant laws and regulations in force.

608. **In the stock market sector**, the authority to impose sanctions is held by the CRBV. Article 30 of the amendment to the Convention establishing the CREPMF gives the Regional Council power to impose non-criminal and/or administrative monetary sanctions. The article states that "*any action, omission, or operation that would prove contrary to the general interests of the financial market and its proper functioning, and/or harmful to the rights of investors, shall be punished with monetary, administrative, and disciplinary sanctions, depending on the specifics of the case, without prejudice to any judicial sanctions that could be leveled against the liable parties in a legal action for redress lodged individually by the persons harmed by said offenses*." However, it is not certain that the provisions of Article 30 also apply to anti-money laundering cases.

609. The stock market sector consisted of only one intermediation and management firm and no independent broker-dealers. The only intermediation firm has just one client, a bank, which trades bonds for its own account. Consequently, this sector poses no significant money laundering risk.

610. **Insurance sector**: All CFA franc zone countries, including Niger, have signed the Treaty of the Inter-African Conference on Insurance Markets (CIMA) and are bound by common laws and regulations concerning insurance. Decisions regarding the granting or withdrawal of licenses and the 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 the regional professional insurance association. In Niger, there are no investment-linked life insurance products; consequently, there is no risk of money laundering in this sector.

611. **Microfinance sector**: In this sector, enforcement authority is held by the MOF.

Existence of effective, proportionate, and dissuasive sanctions (C. 17.1)

612. **Banking sector**: In the event of a violation of the banking regulations, the BC-WAMU may impose disciplinary sanctions, without prejudice to criminal or other sanctions that may be handed down by the competent courts (Article 47 of the Banking Law and Article 23 of the Convention). Such sanctions may include a warning, censure, the suspension or banning of

some or all operations, limitations on practicing the profession, automatic suspension of the directors, and, in the most serious cases, withdrawal of the license. The traditional arsenal of sanctions set forth in the abovementioned Article 47 applies to money laundering, just as it does to any other prudential matter.

613. Neither the Banking Law nor the Convention establishing the BC provides for monetary sanctions in the event of failure to observe prudential standards. Thus, a bank that is seriously deficient in meeting its due diligence obligations would incur no penalties other than disciplinary sanctions. The mission concludes that the sanctions provided for in the Banking Law are not dissuasive. It bears repeating that no sanctions have been imposed by the BC for failure to comply with AML requirements.[61]

614. In the **microfinance sector**, the authority to sanction is held by the Minister of Finance through the CCS/SFD. Articles 76, 78, and 79 of Order 96-024 of May 1996 provide sanctions for cases such as failure to report statistics and financial information, and abusive use of the name credit union, etc., without prior approval or authorization. In other cases (also concerning prudential regulation) the laws and regulations organizing the system of sanctions is inadequate for purposes of gauging the effectiveness and proportionality of the sanctions. The law establishing the Supervision and Oversight Unit states, without further detail, that the CCS will propose sanctions against decentralized financial systems and ensure 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 doubt about the adequacy of the sanctions. It indicates that the CCS will recommend to the MOF "*the penalties to be imposed*." The CCS may also recommend "*placement under provisional administration*." None of the provisions specifies the criteria to be used in determining what sanction to impose, nor the amount of the penalties incurred. The CCS has withdrawn, on disciplinary grounds, roughly 30 licenses from decentralized financial institutions that failed to observe the prudential regulations. None of these sanctions were related to money laundering. In 2008, however, the managers of a network received a disciplinary sanction in the form of a warning from the Minister of Finance for violation of the prudential regulation.

615. **Stock market sector**: The amendment to the Convention establishing the CREPMF calls for two types of sanctions when a market participant violates the rules of the market. The first involves non-criminal financial sanctions. The amount of monetary sanctions imposed by the Regional Council depends on the severity of the errors, omissions, and violations committed (Article 32). It should be noted, however, that the criteria justifying a sanction of this type are enumerated restrictively[62] and do not apply to cases in which a market participant violates its anti-money laundering obligations. Discussions with RC representatives confirm this point of view.

616. The RC may also impose administrative sanctions, which, once again, appear not to apply to money laundering situations.[63] Lastly, the RC possesses the power to hand down disciplinary sanctions when it finds that a violation of the regulations has occurred. In such cases, it may 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 removal of managers, and (v) temporary or permanent withdrawal of a license or certification previously granted, or striking from the professional lists kept by the Regional Council. In the event of noncompliance with anti-money laundering rules, the RC 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.

617. The stock market sector consisted of only one intermediation and management firm and no independent broker-dealers. The only intermediation firm has just one client, a bank, which trades bonds for its own account. Consequently, there is poses no significant money laundering risk.

### Designation of an authority empowered to apply these sanctions (C. 17.2)

618. In the banking sector, the BC-WAMU decides sanctions against banks and credit institutions. Its chair is the Governor of the BCEAO (Article 2 of the Annex to the Convention establishing the BC). The BCEAO itself holds equity interests in many banks, as it does elsewhere in the sub-region, which creates a potential conflict of interest.

### Sanctions applied to directors (C. 17.3)

619. Regarding the directors of financial institutions, Article 40 states that the directors and senior management of the natural or legal persons referred to in Article 5 may be punished with six months to two years of imprisonment and a fine of CFAF 100,000 to CFAF 1,500,000 when they have intentionally committed offenses in connection with their AML/CFT obligations (destruction of records that must be retained, revealing information about a report to the originator of a suspicious transaction).

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61 The BC told the mission that the sanctions imposed were "global" and not based on a single instance of noncompliance but rather on a range of violations, which could include contravention of the AML standards. Because the mission was not given examples of the sanctions already imposed, despite its request, it is unable to verify this point.

62 Monetary sanctions will be imposed on anyone who, acting alone or in concert with others, derives any benefit, specifically defined as a material gain or the 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) failure to make public disclosures.

63 Article 34 of the amendment states that if the Regional Council finds that a commercial entity has violated the profession's rules of good conduct or no longer meets the conditions required for a license, it may send the entity in question 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.

Broad and proportionate range of sanctions (C. 17.4)

620. See criterion 17.1

Adequacy of resources for competent authorities (C. 30.1)

621. The resources allocated to the BC-WAMU appear to be very inadequate. The BC-WAMU has a staff of 111, but just 22 inspectors to cover 115 banks spread throughout the WAMU zone. Thirty employees are assigned to off-site supervision, but five of them deal with legal issues, other regulatory issues in coordination with the BCEAO, or cooperation with other supervisors. The number of staff dedicated to off-site supervision is therefore small, about 17. In this regard, the BC-WAMU is planning to reorganize its internal structures, which will apparently include an increase in staffing and greater specialization, but still without attaining a satisfactory level. The transfer of responsibility for supervising the largest DFS networks (roughly 60, holding more than CFAF 300 million at a minimum) should be accompanied by a transfer of resources on the order of 11 additional staff. The contingent of BC staff assigned to oversight tasks, even if increased from 47 to 58, will remain significantly undersized compared to the number and size of the financial entities to be overseen (175 banks and DFSs). In addition, the participation of staff of the national directorates of the BCEAO is not a solution for this shortage, especially since their contribution would focus more on tasks related to the central bank's needs in its capacity as monetary or exchange control authority.

622. The oversight of microfinance also suffers from understaffing. The MOF oversight unit has a staff of about [to be verified] (all categories combined) for a portfolio of 148 entities (mutuals and non-mutuals alike). Only [to be verified] of the staff are assigned to supervision responsibilities in the strict sense. Of course, the BCEAO and the BC-WAMU also conduct on-site inspections, but the number of such inspections is small compared to the number of entities to be overseen.

623. Oversight entities in the stock market sector have a total staff of about 20, which does not seem inappropriate in relation to the market activity in the zone. However, the stock market sector consisted of only one intermediation and management firm and no independent broker-dealers. The only intermediation firm has just one client, a bank, which trades bonds for its own account. Consequently, there is no significant money laundering risk.

Integrity of staff of competent authorities (C. 30.2)

624. **Banking sector**: Members of the Banking Commission and the persons who help it function are bound by professional secrecy (Article 6 of the Convention creating the BC). In the laws and regulations provided to the mission, there is no specific provision on the integrity of the persons involved. In the **stock market sector**, in accordance with the general regulation on the organization, operation, and supervision of the WAMU regional financial market, 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 documents of which they are aware, either in carrying out or in connection with their duties, if said facts and documents 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 person committing the violation, without prejudice to any judicial proceedings that may be lodged against him. However, there is no provision stating that members of the CREPMF should be of high integrity and be appropriately skilled.

Training of staff of competent authorities (C. 30.3)

625. An annual training program is organized for BC staff that includes internal 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.[64] The various meetings and seminars organized recently on the prevention of money laundering are not adequate to provide both specific knowledge and a sufficient level of practical experience. They are more like awareness-raising exercises than real training in AML supervision. The BC-WAMU reports a few meetings related to money laundering. Thus, at the regional level, the SGCB has participated in seminars organized by the BCEAO on "Validation of the directive on combating the financing of terrorism." At the international level, the SGCB has participated in various AML/CFT seminars organized by the World Bank, the IMF, and the AfDB. The report does not indicate, however, how many SGCB staff took part in these training/awareness-raising activities.

Existence of statistics (C. 32.2)

626. The BC-WAMU keeps statistics on the number of inspections performed in banks. Similarly, the BCEAO keeps statistics on the number of joint inspections it has performed with the MOF. However, no precise statistics are available on the number of sanctions handed down by the BC.

627. Analysis of effectiveness (Recommendations 17, 23, 25, 29, 30 and 32)

628. Implementation of the system of regulations, controls, and sanctions in the financial sector is unsatisfactory because it is still too limited. Participants in the stock market and insurance sectors have not received any guidelines to show them how to comply with their AML obligations. The guidelines for banks are too recent to have been properly assimilated and applied. Bank

64 Most BC staff have an extensive university background (Bac +5) and enjoy demonstrated credibility within the profession (source: FSAP).

supervision is deficient in AML matters and nonexistent in the microfinance, stock market, and insurance sectors. The system of deterrents has not been implemented either. No sanctions have been imposed in the financial sector for nonobservance of AML standards. The sanctions that can be imposed by the BC-WAMU are not dissuasive inasmuch as they do not include monetary penalties (although, as mentioned above, there are disciplinary sanctions). The effectiveness of the supervision arsenal is also compromised by insufficient resources and the embryonic state of the training.

### 3.10.2 Recommendations and comments

629. Since the issue of financial sector supervision arises not only at the community level (banks, exchange bureaus, and other financial establishments) but in Niger as well (microfinance, in particular), this section provides a series of recommendations aimed at both Nigerien and regional authorities.

630. At the regional level, the BC-WAMU and the BCEAO should, each within its own sphere, ensure full implementation of community laws and regulations (Uniform Law, BCEAO Instruction of 2007) as well as national laws and regulations (AML law) within the banking sector. In the financial markets sector, the Regional Council should adopt a sectoral AML instruction for all participants, management and intermediation firms, asset management firms, investment advisors, and others. In general, the staffing of the regional financial supervisors should be increased to handle the additional task of integrating AML duties 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 laws and regulations to the entities they apply to, so as to guarantee rapid and thorough dissemination of AML regulations in all relevant sectors. Finally, with regard to enforcement, monetary sanctions should be provided for banks that commit violations, since disciplinary sanctions alone appear to be insufficiently dissuasive.

631. With respect to microfinance operations in Niger, awareness-raising and training actions should be undertaken as soon as possible. The sector remains unaware of the laws and regulations on money laundering and the associated risks. In view of the large sums managed by DFSs and the weaknesses of both the internal and the external control mechanisms, prudential authorities and microfinance institutions need to be mobilized to ensure rigorous compliance with AML/CFT requirements in this sector.

632. In addition, the mission recommends the following:

- Strengthen exchange controls in the informal sector and carry out specific actions targeting money and currency changing services in the informal sector. Specifically, joint action by the public authorities (Ministry of Finance, Customs, Police, *Gendarmerie*) could focus on the best-known informal sector money and currency changing services that carry out 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 money and currency changing services, especially in terms of supervision – without, however, enhancing the "comparative advantages" of informal sector money and currency changing services, at the risk of otherwise reinforcing them.
- Carry out awareness-raising actions within Western Union subcontractors to promote more rigorous identification of customers.

### 3.10.3 Compliance with Recommendations 17, 23 (Criteria **23.2, 23.4, 23.6-23.7), 29 and 30**

| | Rating | Summary of factors underlying the ratings |
|---|---|---|
| R.17 | NC | • The sanctions provided by the Banking Law and the laws and regulations applicable to financial markets are not dissuasive insofar as they do not call for financial penalties.<br>• The nature and scope of the sanctions applicable to DFSs are not clearly defined.<br>• There is a conflict of interest within the BC-WAMU due to the presence in its midst of representatives of the BCEAO and the member states, who happen to be, at the same time, shareholders in banks. |
| R.23 | NC | • The rules for monitoring the criteria of expertise and integrity of DFS directors are not clearly established.<br>• There are no specific procedures for verifying the lawful origin of the capital contributed for the creation of a bank or any other financial organization such as a DFS, an asset management firm, an intermediation and management firm, or an insurance company, nor are there any procedures for verifying the beneficial owner. |
| R.25 | NC | • There are no AML guidelines for the insurance and financial markets sectors.<br>• BCEAO Instruction 01-2007 of July 2, 2007 has not been fully disseminated.<br>• The BCEAO instruction contains inaccuracies and does not provide all necessary information for financial organizations to be able to implement and comply with |

| | | |
|---|---|---|
| | | their AML obligations.<br>• In the absence of CENTIF, there are no AML directives other than the BCEAO instruction, which is manifestly inadequate, particularly in regard to reporting requirements. |
| R.29 | NC | • The AML controls performed by the BC-WAMU in banks are insufficient and lack precision.<br>• DFS supervision is deficient and does not focus on compliance with AML standards. |

## 3.11 MONEY/VALUE TRANSFER (MVT) SERVICES (SR.VI)

### 3.11.1 Description and analysis

633. 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 on the premises of preexisting businesses (dry-cleaners, pharmacies, cafeterias, travel agencies, etc.). The money transfer companies are thus backed by a bank, which lends its name (for example, Western Union – *Banque Atlantique*)).

634. Money transfer companies have grown significantly in Niger, apparently resulting in a decline of the informal sector. Formerly, the money transfer companies were located inside 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.

635. 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 this system relies on a distribution network in very close proximity to beneficiaries, most 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.

Registration or licensing (C. VI.1)

636. 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 FATF 40 Recommendations and the FATF 9 Special Recommendations (R.4-11, 13-15, and 21-23 and C.VI.2)**

637. The banks report that they perform only one upstream supervision control of the activities of money transfer companies in regard to implementation of the FATF 40 + 9 Recommendations. They have no contact with the customers, do not verify that the identification documents presented are kept on file, etc. It even appears that the computer system set up in the money transfer companies is not blocked in the event that information pertaining to the identification documents presented by customers (when funds are either sent or received) is not provided. Money transfers may thus take place without presentation of identification documents.

Monitoring MVTs (C. VI.3)

638. The banking supervisor has not provided any oversight of this sector of activity. The national BCEAO sent a circular letter 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 MVT agents (C. VI.4)

639. The current plan is for the banking supervisor to compile a list in the very near future of all money transfer services.

Sanctions (C.17.1-17.4 & C. VI.5)

640. 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 their failure to ensure that the MVT services attached to them implement the anti-money laundering law.

### 3.11.2 Recommendations and comments

641. The authorities should adopt a more active approach toward the money transfer services currently 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. The BCEAO could be charged with maintaining this registry.

642. With respect to the formal sector, the authorities should ensure, as part of their supervision of banking establishments, that the banks provide effective oversight of the activities that they delegate to money transfer companies.

### 3.11.3 Compliance with Special Recommendation VI

| | Rating | Summary of factors underlying the ratings |
|---|---|---|
| SR VI | NC | No competent authority responsible for issuing authorizations to MVT service operators<br>No oversight of the activity of providing MVT services<br>No list of agents |

## 4 PREVENTIVE MEASURES – DESIGNATED NONFINANCIAL BUSINESSES AND PROFESSIONS (DNFBPS)

### 4.1 CUSTOMER DUE DILIGENCE AND RECORD-KEEPING (R.12)

(Applying R.5, 6, and 8-11)

#### 4.1.1 Description and analysis

643. Article 5 of the AML law 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:

644. 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 in high-value goods, 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

645. 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)

646. 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 beneficial owner – Article 9).

647. As a result, the only obligations on DNFBPs are:

- compliance with foreign exchange regulations (Article 6),
- enhanced due diligence for certain transactions (Article 10),
- provision of papers and records (Article 12),

- reporting of suspicious transactions (Article 26).

648. This implies a lack of basic due diligence as prescribed by Recommendation 12.

649. None of the DNFBPs apply the provisions of the AML law concerning DNFBPs. They have nevertheless been provided with training about the law by CENTIF through awareness raising seminars. However, no communication concerning the due diligence requirements of the uniform anti-money laundering law has been provided by their supervisory authorities.

650. 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."

651. "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."

652. The Nigerien National Lottery (LONANI), created by decree on March 26, 1993, is responsible for organizing gaming operations in Niger, including **casinos**. LONANI holds a monopoly covering the entire country. Niger has two casinos and some thirty gaming rooms. Applications for authorization to operate such establishments are reviewed by LONANI, but the approval is signed by the Minister of Finance. Special dispensations are granted to private operators to run them. An ad hoc committee has been established to monitor gaming operations. The only controls performed on these casinos and gaming rooms is an on-site control that looks only at the number of machines declared by LONANI. The committee does not track the clientele of these casinos and gaming rooms, nor the transfers of funds that they carry out. No mechanism for overseeing these structures has been set in place. In this regard, the provisions of the law pertaining to DNFBPs, and specifically to casinos, are not followed in practice.

653. **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 profession of real estate agents does not exist in Niger.

654. There is no specified threshold that triggers the obligations of due diligence for **traders of precious metals or precious stones**. There is no law regulating this sector. Access to the profession is unrestricted. None of the activities carried out in this sector require prior authorization to engage in the profession.

655. Members of the **independent legal professions** (notaries, lawyers) are subject to the AML law when they represent or assist clients other than related to 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). There are no trusts in Niger. No program to prevent money laundering has been developed for such entities. These professions do not apply money laundering prevention and detection measures.

656. The profession of **notary** is regulated by Law 98-06 of April 29, 1998. Notaries are public officials and members of the legal profession who are solely empowered to draw up all documents and contracts for which the relevant parties must or would like to establish the authenticity ascribed to instruments of public authority. They must establish the intentions of the parties. They are charged with certifying the date of said documents and contracts, recording the information submitted, and issuing copies and certificates. Appointments to the position of notary are made by order of the Minister of Justice. Notaries are required to perform their duties with full integrity and diligence. There is a national chamber of notaries representing the entire profession in regard to public services. Notaries may be disciplined by either the national chamber of notaries or the court of appeal.

657. The profession of **lawyer** is regulated in Niger by Law 2004-42 of June 8, 2004. A lawyer is a representative of the law. The profession is open and independent. Lawyers exercising their profession are protected by the statutes in effect and the immunities established by the abovementioned law. They enjoy immunity of speech and writing while exercising their profession, subject to the requirements stemming from their professional oath and the relevant laws and regulations. The lawyers operating under each court of appeal in Niger form a Bar Association, administered by a board that is chaired by a president of

the Bar. With respect to applying the provisions of the AML law pertaining to client identification, lawyers are reticent citing concerns over professional privilege.

658. **Auditors.** The association of certified public accountants and chartered accountants is governed by Law 2003-023 of June 13, 2003 which regulates the professions of chartered accountant and certified public accountant. For the purposes of this law, certified public accountants are listed in the association's register and are typically involved in reviewing and assessing the accounting records of businesses and organizations to which they are not bound by a work contract. They are also authorized to attest to the accuracy and truthfulness of summary financial statements. A certified public accountant may also keep and organize accounting records and use accounting techniques to analyze the position and operations of businesses from an economic, legal, financial, and social standpoint.

659. No person may carry the title of certified public accountant, nor practice this profession, unless he is listed in the association's register (Article 5 of Law 2003-023).

660. 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 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.

661. The list of professions covered by the law makes no mention of certified public accountants and chartered accountants. Only auditors are designated and subject to the law. Certified public accountants are not, except when performing the functions of an auditor, but not all certified public accountants perform such functions.

### Applying Recommendations 6 and 8-11 to DNFBPs (c. 12.2)

662. 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.

663. The due diligence and record-keeping requirements set forth in the AML law that apply to the financial institutions described above (Section 3) partially apply to nonfinancial 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.

664. DNFBPs are subject to the following 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 rationale or legitimate 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).

### 4.1.2 Recommendations and comments

665. The recommendations made in Section 3 concerning non-bank financial institutions should also apply to DNFBPs.

666. In particular, the authorities should:

- introduce the obligation for DNFBPs to identify their clients, along with specific thresholds for triggering this obligation;
- subject certified public accountants and chartered accountants to anti-money laundering obligations;
- set in place a due diligence mechanism in regard to politically exposed persons;
- increase awareness of the provisions of the AML law on the part of all DNFBPs.

### 4.1.3 Compliance with Recommendation 12

| | Rating | Summary of factors underlying rating |
|---|---|---|
| R.12 | NC | Absence of basic due diligence requirements for DNFBPs<br><br>Absence of certified public accountants and chartered accountants on the list of persons covered by the law<br><br>Absence of a due diligence mechanism concerning politically exposed persons |

| | | |
|---|---|---|
| | | Absence of application of the mechanism by DNFBPs |

## 4.2 SUSPICIOUS TRANSACTION REPORTS (R.16) (APPLYING R.13 AND 15-21)

### 4.2.1 Description and analysis

Obligation to report suspicious transactions to the FIU (applying c. 13.1 & IV.1 to DNFBPs)

667. Article 26 of the AML law 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.
- The provisions of Titles II and III of the AML law (Article 5) apply to 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 and thus apply to DNFPBs.

668. Protection and restriction on disclosure in the case of suspicious transaction reporting (applying c. 14.1 and 14.2)

669. Reference is made to the analysis and description given in Section 3.

Internal controls to prevent money laundering/terrorist financing (applying c. 15.1-15.4)

670. 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.

Special attention to countries that do not sufficiently apply the FATF Recommendations (applying c. 21.1-21.3)

671. 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.

672. Lawyers and notaries are somewhat reticent about fulfilling anti-money laundering obligations citing legal privilege, which however may not be invoked by the persons specified in Article 5 as grounds for refusing to provide statements required by the AML law. The provisions of Article 34 (lifting of professional secrecy) of said law should be applied for this purpose.

673. Certified public accountants and chartered accountants are not covered by the law. Only auditors are.

674. No suspicious transaction reports have been sent to CENTIF by DNFBPs.

### 4.2.2 Recommendations and comments

675. The recommendations made in Section 3 concerning R.13, 14, 15, and 21 also apply to DNFBPs.

676. DNFBPs should set in place anti-money laundering programs by implementing the provisions of Article 13 of the AML law and file suspicious transaction reports.

677. DNFBP authorities should implement training and awareness-raising programs for their members.

678. DNFBPs should file suspicious transaction reports with CENTIF.

### 4.2.3 Compliance with Recommendation 16

| | Rating | Summary of factors underlying rating |
|---|---|---|
| R.16 | NC | Absence of internal controls to prevent money laundering<br><br>Absence of special attention to countries that do not sufficiently apply the FATF recommendations<br><br>Nonexistence of suspicious transaction reports from DNFBPs |

| | | |
|---|---|---|
| | | Lack of implementation of the AML law<br><br>Absence of anti-money laundering programs<br><br>Make certified public accountants and chartered accountants subject to the law |

## 4.3 REGULATION, SUPERVISION, AND MONITORING (R. 24-25)

### 4.3.1 DESCRIPTION AND ANALYSIS

#### REGULATION AND SUPERVISION OF CASINOS (C. 24.1)

679. There are no effective controls aimed at ensuring that casinos actually apply the provisions related to the AML law. The only controls performed by the supervisory authority focus on the number of machines and fiscal matters. No controls are performed for anti-money laundering purposes.

680. Casinos must first obtain a license (operating authorization) by order of the Minister of Finance.

Monitoring and oversight of other DNFBPs (c. 24.2)

681. No DNFBP monitoring and oversight program is in place for ensuring compliance with the obligations under the AML law.

682. The profession of real estate agent does not exist in Niger.

683. The profession of **trader of precious metals or precious stones** is open in Niger and requires no prior operating authorization, but this profession is still subject to the law. Yet sector stakeholders have no idea of the provisions of the AML law of 2004, for lack of awareness-raising actions.

684. The profession of **lawyer** is regulated in Niger by Law 2004-42 of June 8, 2004. A lawyer is a representative of the law. The profession is open and independent. Lawyers exercising their profession are protected by the statutes in effect and the immunities established by the abovementioned law. They enjoy immunity of speech and writing while exercising their profession, subject to the requirements stemming from their professional oath and the relevant laws and regulations. The lawyers operating under each court of appeal in Niger form a Bar Association, administered by a board that is chaired by a president of the Bar. With respect to applying the provisions of the law pertaining to client identification, lawyers are reticent and explain this by claiming professional secrecy in regard to their clients. The anti-money laundering law is not followed by lawyers at this time.

685. The profession of **notary** is regulated by Law 98-06 of April 29, 1998. Notaries are public officials and members of the legal profession who are solely empowered to draw up all documents and contracts for which the relevant parties must or would like to establish the authenticity ascribed to instruments of public authority. They must establish the intentions of the parties. They are charged with certifying the date of said documents and contracts, recording the information submitted, and issuing copies and certificates. Appointments to the position of notary are made by order of the Minister of Justice. Notaries are required to perform their duties with full integrity and diligence. There is a national chamber of notaries representing the entire profession in regard to public services. Notaries may be disciplined by either the national chamber of notaries or the court of appeal.

686. **Auditors.** The association of certified public accountants and chartered accountants is governed by Law 2003-023 of June 13, 2003 which regulates the professions of chartered accountant and certified public accountant. For the purposes of this law, certified public accountants are listed in the association's register and are typically involved in reviewing and assessing the accounting records of businesses and organizations to which they are not bound by a work contract. They are also authorized to attest to the accuracy and truthfulness of summary financial statements. A certified public accountant may also keep and organize accounting records and use accounting techniques to analyze the position and operations of businesses from an economic, legal, financial, and social standpoint.

687. No person may carry the title of certified public accountant, nor practice this profession, unless he is listed in the association's register (Article 5 of Law 2003-023).

688. 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 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.

Guidelines for DNFBPs (c. 25.1)

689. DNFBPs lack the information or documentation that would enable them to fall in line with their obligations under the anti-money laundering law.

Feedback from the FIU and competent authorities (c. 25.2)

690. No suspicious transaction reports have been sent to CENTIF by DNFBPs.

### 4.3.2 Recommendations and comments

691. The authorities should ensure compliance, on the part of casinos and other categories of designated nonfinancial businesses and professions, with their obligations related to the fight against money laundering and terrorist financing.

692. Through training and awareness-raising actions, the authorities should induce all DNFBPs to implement and fulfill their anti-money laundering obligations.

### 4.3.3 Compliance with Recommendations 24 and 25

| | Rating | Summary of factors underlying rating |
|---|---|---|
| R.24 | NC | Absence of implementation of AML regulations by casinos<br><br>Absence of oversight by authorities of compliance with AML obligations by casinos and other DNFBPs |
| R.25 | NC | Absence of training and awareness-raising programs organized by the authorities and aimed at DNFBPs<br><br>Absence of suspicious transaction reporting |

## 4.4 OTHER NONFINANCIAL BUSINESSES AND PROFESSIONS AND MODERN AND SECURE TRANSACTION TECHNIQUES (R.20)

### 4.4.1 DESCRIPTION AND ANALYSIS

Other DNFBPs that present ML/FT risks (c. 20.1, applying R.5, 6, 8-11, 13-15, 17, and 21)

693. Other professions are covered by the anti-money laundering law in Niger, namely: business introducers to financial organizations; auditors; traders of high-value articles, such as art objects (particularly paintings and masks); money carriers; owners, directors, and managers of casinos and gaming establishments, including the national lotteries; travel agencies; and nongovernmental organizations (NGOs).

694. There are no business introducers to financial organizations in Niger.

695. There is reportedly just one money carrying company in Niger, and it is not aware of the anti-money laundering obligations that pertain to it.

696. Nongovernmental organizations are also covered by the law of June 8, 2004. In March 2007, Niger had 867 NGOs and development associations about, 200 of them foreign, specializing in the fields of education, health, and nutrition. There were seven cases of withdrawal of authorization performed by the Ministry of the Interior.

697. NGOs, similar to other DNFBPs, are not aware of the anti-money laundering mechanisms, nor do they meet the obligations incumbent upon them in this area.

Development of modern and secure transaction techniques (c. 20.2)

698. Niger has not transposed Directive 08/02/CM/WAEMU concerning measures to promote the use of banking facilities and representative means of payment into national law. According to 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, a bank, or the Treasury Department;
- 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.

699. 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 an established bank in a member state.

700. 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.

#### 4.4.2 Recommendations and comments

701. The Nigerien authorities should strive to make all the designated nonfinancial businesses that are covered by the law more aware of the risks of money laundering by providing them with the relevant statutes and regulations.

702. Niger should transpose Directive 08/02/CM/WAEMU concerning measures to promote the use of banking facilities and representative means of payment into national law, so as to promote the use of banking facilities, which remains at a very low rate of roughly 3 percent, and reduce the use of cash payment methods, which stands at a relatively high rate in Niger.

#### 4.4.3 Compliance with Recommendation 20

| | Rating | Summary of factors underlying rating |
|---|---|---|
| R20 | NC | Absence of any analysis of money laundering risks in non-designated nonfinancial businesses and professions<br><br>Absence of training and awareness-raising for actors of designated nonfinancial businesses and professions<br><br>Absence of any monitoring of compliance with measures taken to encourage the development of modern and secure transaction techniques |

## 5 LEGAL PERSONS AND ARRANGEMENTS AND NONPROFIT ORGANIZATIONS

### 5.1 LEGAL PERSONS – ACCESS TO BENEFICIAL OWNERSHIP AND CONTROL INFORMATION (R.33)

#### 5.1.1 Description and analysis

703. The Uniform Act on General Commercial Law (Acte Uniforme relatif au Droit Commercial Général: AUDCG) and the Uniform Act on 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 Niger. According to Article 10 of the OHADA Treaty, uniform acts are directly applicable and obligatory in countries that are party to the Treaty, which includes Niger, notwithstanding any conflicting provisions in national law.

704. There is also the "New Commercial Code of Niger" (from December 1997) that largely sets forth the same rules for starting and registering legal persons. However, in view of Article 10 of the OHADA Treaty, this law is of secondary importance and for this reason will not be discussed below.

705. No statistics on legal persons were provided to the assessment mission.

706. Measures to prevent the unlawful use of legal persons (c. 33.1)

707. *Registration of commercial companies*: Article 27 of AUDCG states that companies and other legal persons covered by the Uniform Act on Commercial Companies and Economic Interest Groups must register their activity, during the month of their incorporation, at the Trade and Personal Property Credit Register of the jurisdiction in which their registered office is located.

"All companies shall possess legal status upon registration at the Trade and Personal Property Credit Register" (Article 98 of AUSCGIE).

708. All applications for registration must contain a number of pieces of information including, in particular:

709. company name;

710. commercial name, acronym, or sign, if applicable;

711. description of activities carried out;

712. form of the company or legal person;

713. address of registered office and, if applicable, address of principal establishment and all other establishments;

714. duration of the company or legal person as set by its articles of association;

715. full names and residence of business partners 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;

716. 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 legal person;

717. full names, date and place of birth, and residence of auditors, if appointment of same is required under the Uniform Act on Commercial Companies and Economic Interest Groups.

718. More specifically, the registration requirement for commercial companies covers general partnerships, limited partnerships, limited liability companies (SARLs), joint stock companies (SAs), and economic interest groups (GIEs). A GIE "does not in and of itself result in profit creation and sharing" (Article 870 of AUSCGIE).

719. 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:

720. 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;

721. 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

722. the identity of persons enjoying special benefits and the nature of such benefits.

723. Changes occurring throughout the life of a commercial company or other legal person 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).

724. 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.

725. *Keeping of the Registers*: There are eight Trade and Personal Property Credit Registers in Niger, one in each of the regions. The Registers have not yet been automated, which explains why the authorities with whom the assessment mission met were unable to provide statistics on the number of legal persons listed in the Registers. Only joint stock companies and limited liability companies are involved. There are also a small number of GIEs set up for specific projects (such as road construction) or as a collaboration among artisanal traders or farmers. Although registered companies are required to update the information, in the absence of any power to impose sanctions on them, in practice this information is not always up to date.

726. Access to information on the beneficial ownership (c. 33.2)

727. The information contained in the Trade and Personal Property Credit Registers is accessible to the public, to authorities responsible for criminal prosecutions (police and gendarmerie departments and judicial authorities), and to financial institutions. In practice, access to the Registers is most often requested by parties engaged in trade with registered legal persons and parties involved in a dispute.

728. However, the authorities responsible for prosecutions indicated that, in practice, they obtain information on legal persons from the tax authorities. The latter possess much more detailed information on legal persons than the information contained in the Registers, particularly with respect to the shareholders of a legal person. Legal persons are required to inform the tax authorities of any change in their leadership or shareholders, and the authorities may impose sanctions if this information is not provided. In practice, such sanctions have been enforced. The prosecuting authorities can obtain this updated information; even though the tax controller always requests hierarchical approval, this approval is generally given directly in less than 24 hours. General information (including information on the director) is kept in an automated data base, while more detailed information is kept in physical form at the various tax departments, of which there are a total of ten: one in each administrative region (eight),

one at the large enterprise directorate, and one at the small and medium enterprise directorate. This information must be provided by mail, which can take a maximum of four days.

729. Preventing the misuse of bearer shares (c. 33.3)

730. According to Articles 744 and following of AUSCGIE, joint stock 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, bearer shares "*may be represented by registration in an account opened in the name of their owner and held either by the issuing company or by a financial intermediary licensed by the Ministry of Economy and Finance; the shares may then by conveyed by transfer from one account to another*."

731. The provisions of the OHADA regulations are not in themselves sufficient to ensure that bearer shares issued by joint stock companies are not misused. However, according to the authorities with whom the assessment team met, no such case has to date been detected.

732. Analysis of effectiveness

733. With respect to implementation of the OHADA law in Niger**,** the mission was unable to verify the level of compliance, in practice, with the various provisions of the OHADA regulations. Similarly, the mission was unable to verify that the information is updated.

734. However, based on the information obtained, the information kept by the tax authorities is accurate and up to date. In most cases, this information would also be adequate, unless the shareholders of a joint stock company include a foreign company. In this hypothetical case, the tax authorities would not be in a position to provide information on the directors and shareholders of this foreign company, i.e. the beneficial ownership. In practice, such cases are very rare. Given the insignificant extent of foreign interests (except in the mining sector), this does not pose a high risk.

735. In addition, independent of the issue of compliance with all the rules set forth in the OHADA statutes regarding company registrations and articles of association, the very substantial role of the informal economy in Niger makes it virtually impossible to obtain adequate, relevant, and up-to-date information. In fact, the authorities confirmed the existence of many economic actors that operate as legal persons but have not been registered as such.

### 5.1.2 Recommendations and comments

736. It is recommended that the national authorities implement all the provisions of the OHADA regulations, particularly with respect to the updating of information.

737. The national authorities could consider having the tax departments obtain more information on foreign companies who are shareholders in Nigerien companies. Another possibility would be to assign the responsibility for obtaining, verifying, and preserving papers related to actual ownership and control of legal persons to notaries, whenever they establish the statutes of same.

738. The national authorities are encouraged to take all appropriate measures to reduce the relative size of the informal economy.

### 5.1.3 Compliance with Recommendation 33

| 739. | 740. Rating | 741. Summary of factors underlying rating |
|---|---|---|
| 742. .33 | 743. PC | 744. Lack of information on foreign beneficial ownership<br>745. Possibility to issue bearer shares<br>746. The substantial role of informal activities makes it virtually impossible to obtain adequate, relevant, and up-to-date information on all economic operators |

## 5.2 LEGAL ARRANGEMENTS – ACCESS TO BENEFICIAL OWNERSHIP AND CONTROL INFORMATION (R.34)

### 5.2.1 Description and analysis

747. Article 5 of the AML law 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 could be possible in Niger to set up trusts. However, the Nigerien authorities with whom the mission met clearly indicated that such mechanisms did not exist in Niger and that there are no legal provisions that allow for setting up trusts. The OHADA law does not contain any provisions in this area.

748. According to the information gathered, there are also no foreign trusts in the country.

#### 5.2.2 Compliance with Recommendation 34

| | Rating | Summary of factors underlying rating |
|---|---|---|
| R.34 | N/A | |

### 5.3 NONPROFIT ORGANIZATIONS (SR.VIII)

#### 5.3.1 Description and analysis

749. In Niger, the statutes applying to nonprofit organizations (NPOs) are Order 84-06 of March 1, 1984, establishing the regulations for associations; Decree 84-49 of March 1, 1984, establishing the arrangements for implementing the Order; Order 84-50 of December 5, 1984, amending Article 15 of the Order; Law 91-006 of May 20, 1991, amending Order 84-06; Decree 92-292 of September 25, 1992, establishing the arrangements for applying Article 20.1 of Order 84-06; and the Circular of November 24, 1995, concerning the standard letter of understanding between a nongovernmental organization and the Government of the Republic of Niger. In addition, the Ministry of Planning and Community Development (MATDC), responsible for the monitoring and evaluation of NGOs, has set in place a mechanism for formalizing relations between the Government and NGOs, specifying the duties of both parties, based on a standard letter of understanding.

750. Since the regulations for associations date back to 1984, while the activities of civil society in Niger are relatively recent, the authorities are now in the process of drafting a new law to replace the existing system. This new bill was not reviewed by the assessment team.

751. In any event, NPOs that are not NGOs (sports associations and others) are not involved. Accordingly, the assessment below focuses solely on NGOs.

Review of the adequacy of laws and regulations pertaining to nonprofit organizations (c. VIII.1)

752. To date Niger 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 terrorist financing.

Assistance to the nonprofit sector to protect it from being misused for purposes of terrorist financing (c VIII.2.)

753. To date, 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.

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)

754. Article 1 of Order 84-06 defines a nonprofit organization as "an agreement by which two or more natural or legal persons willingly and knowingly combine their capacities or activities, on an ongoing basis for a prescribed length of time, for a specific purpose other than profit-sharing." All nonprofit organizations must be reported and authorized before commencing their activities.

755. According to Article 3 of the Order, a nonprofit organization must file a statement of formation at the administrative authority within whose jurisdiction the nonprofit organization's registered office is located. This statement lists the name and purpose of the nonprofit organization, its registered office, the persons in charge of its administration, their addresses, and the report of the formative meeting, composed of founders and potential members. For NGOs and development associations, this statement must be accompanied by an action plan in order to obtain tax exemptions. The authority sends a copy of this file to the Ministry of the Interior (Directorate of Public Liberties), which then issues an order to grant or withhold authorization.

756. A foreign NGO is required to obtain approval from the Government of Niger before commencing its activities. The request for approval is filed at the diplomatic mission of the Government of Niger and must indicate the name and purpose of the NGO, the location of its registered office abroad, the place where its principal office in Niger will be located, and all identifying information on the person who will be responsible in Niger for the NGO's activities. This request must be accompanied by a document establishing that it possesses legal status and, in practice, an action plan.

757. Article 9 of Decree 84-49 states that nonprofit organizations must record, in a register kept at the nonprofit organization's registered office, any amendments to the articles of association or changes occurring in the nonprofit organization's administration or management. This register must be made available to government or judicial authorities.

758. Legally declared nonprofit organizations may, without special authorization, and within the limitations of their articles of association, manage any gifts, bequests, or grants that they receive.

759. The Ministry of the Interior gives its approval after receiving the opinion of the Ministry of Planning and Community Development (MATDC). This authority is charged with coordinating the monitoring and evaluation of NGOs and development associations.

760. After obtaining approval and being listed in the Official Record, NGOs and development associations sign the standard letter of understanding with MATDC. This standard letter of understanding was adopted by Order in 1999 and amended several times, most recently in 2005. The standard letter of understanding determines the relations between NGOs (both national and foreign) and the Government, and no tax benefits can be obtained by NGOs until it has been signed. To monitor implementation of the letter of understanding, a joint committee of Government and NGOs was created in 2000 by Order of the Minister of Planning, amended in 2005. The purpose of this committee is to see to proper implementation of the standard letter of understanding and resolve, in a spirit of partnership, any possible disputes that may arise during implementation.

761. According to the standard letter of understanding, before any project can be implemented, the NGO must first sign (Article 8) an implementation agreement with the technical ministry responsible for the sector in which the NGO is involved. With respect to geographical jurisdiction, the agreement must also be signed with the relevant government authority. This agreement includes the context and rationale of the project or program, its objectives, the expected results, the contribution from the any financial partner, and the monitoring arrangements.

762. To enable the competent authorities to perform a posteriori controls, the NGO is required (Article 11) at the start of each fiscal year to submit to the supervisory and tax authorities a copy of its projected annual program of activities, and also to submit, within four months of the end of the fiscal year, a program implementation report, accompanied by a summary statement of exemptions obtained and deductions and payments made for miscellaneous taxes.

763. All this information is provided to the NGO/Development Association Directorate at MATDC and both the Directorate-General of Taxes and the Directorate-General of Customs at the Ministry of Economy and Finance.

764. Tax exemptions can only be granted to NGOs for an annual budget of at least CFAF 5 million.

### Implementation of sanctions for violations of oversight rules by NPOs (c. VIII.3.2)

765. If a nonprofit organization is active in Niger without having obtained proper approval, the Ministry of the Interior may suspend its activities or ban the nonprofit organization altogether. If the nonprofit organization does not adhere to its organic framework, the Ministry may withdraw or suspend its approval.

766. An NGO that fails to provide to MATDC all the information required by the standard letter of understanding may have its tax privileges suspended (Article 10).

### Recording of NPO transactions and availability of this information (c. VIII.3.4)

767. To date, there is no obligation in Niger for nonprofit organizations to keep records of their domestic and international transactions. The financial report submitted to the authorities is not sufficient to identify individual transactions.

768. However, the anti-terrorist financing bill lays out the obligation to record, in a register set in place by the competent authority, all donations of CFAF 500,000 or more made to a nonprofit organization (*association*), including the donor's complete contact information, the date, the nature, and the amount of the donation (Article 14). This register must be kept for ten years, without prejudice to longer requirements stipulated by other statutes or regulations in effect.

769. The mechanism set in place by the anti-terrorist financing bill thus goes beyond FATF recommendations and, because of its cumbersome nature, might discourage legitimate charitable activities. In fact, contrary to the bill's mechanism which requires that all donations of CFAF 500,000 or more be recorded in a register at the administrative authority, SR.VIII simply requires that NPOs maintain *internal* procedures that will enable them to make 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.

770. In addition, given the shortage of technical and human resources confronting administrative authorities in Niger, plus the large number of NPOs active in the country, it should be pointed out that the mechanism prescribed by the anti-terrorist financing bill seems inconsistent with realities in the field, which could compromise its implementation from a practical standpoint.

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)

771. Even though the mechanism for obtaining information has not been established for counter terrorism purposes, the information provided to the Ministry of the Interior to obtain its approval and to MATDC and the Ministry of Economy and Finance for tax exemptions is readily accessible to the agencies responsible for criminal prosecutions. This information includes information on the administration and management of NGOs. Similarly, the Ministry of the Interior can obtain information from the police in cases where there are questions about the background of persons seeking approval.

772. At the present time, there is no special mechanism or focal point for responding to international requests for information on NGOs. To date, the Nigerien authorities have never received such a request.

Analysis of effectiveness

773. There are 867 NGO/development associations active in Niger (March 2007), of which roughly 200 are of foreign origin. In general, the Ministry of the Interior grants its approval without any legal investigation of the persons involved, but there have been cases of religious nonprofit organizations where the Ministry has conducted inquiries on the grounds of protecting law and order.

774. To date there have been seven cases of withdrawal/suspension of approval, all involving religious nonprofit organizations, two of them international. The authorities stressed that there were no ties to terrorist organizations in any of these cases. There are no indices, according to the authorities, to draw conclusions about the existence of a significant informal sector of NGOs, operating without receiving approval from the Ministry of the Interior. Such cases are very rare.

775. In practice, the annual reports and summary financial statements are not often sent, which is why MATDC now signs a standard letter of understanding only after receiving these documents (obviously only in the case of NGOs that already exist). Until now, tax exemptions have been suspended very rarely in such cases. To facilitate submission of these reports, MATDC has prepared and made available to NGOs an outline of how this information can be provided, which in practice is not followed.

776. MATDC is empowered to verify the information provided in the annual status report and make site visits. Although there are some instances of site visits, they are quite rare, due to the lack of material resources at MATDC, and they most often concern NGOs located in Niamey or the surrounding area.

### 5.3.2 Recommendations and comments

777. In drafting the bill on NGOs, the Nigerien authorities are encouraged to examine the adequacy of the laws and regulations pertaining to NGOs so as to assess the vulnerability of the nonprofit organizations sector to the risks of terrorist financing and set in place an effective and efficient mechanism for monitoring and evaluating the activities of NGOs.

778. It is recommended that, in this bill, the Nigerien authorities institute obligations for NGOs to keep information on financial transactions for five years, and for this information to be accessible to the authorities upon request.

779. It is recommended that the Nigerien authorities organize awareness-raising campaigns with an eye to forestalling the risk of nonprofit organizations being misused for purposes of terrorist financing.

780. The Nigerien authorities are encouraged to examine the reliability of the system of recording all donations of CFAF 500,000 or more, as planned under the anti-terrorist financing bill, 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 Niger's economy.

### 5.3.3 Compliance with Special Recommendation VIII

| | Rating | Summary of factors underlying rating |
|---|---|---|
| SR. VIII | PC | Absence of awareness-raising in the NGO sector<br><br>Absence of scrutiny of the adequacy of laws and regulations pertaining to NGOs<br><br>Absence of the requirement to keep records on financial transactions |

# 6 NATIONAL AND INTERNATIONAL COOPERATION

## 6.1 COOPERATION ON THE NATIONAL LEVEL AND COORDINATION (R.31)

### 6.1.1 Description and analysis

Mechanisms of cooperation and coordination to combat money laundering and terrorist financing (c. 31.1)

781. The AML law institutes a mechanism calling for the submission of information by parties subject to the law, analysis thereof by CENTIF, and transmission to the authorities responsible for prosecutions, all of which presupposes close operational cooperation among the different actors. CENTIF receives information not only from parties subject to the law, but also "any and all other useful information" from supervisory authorities and the criminal investigation department. To improve the cooperation between CENTIF and other government authorities, CENTIF has correspondents within certain government departments, particularly the police, the gendarmerie, customs, and judicial services. These correspondents play the role of liaison officers and they are supposed to provide any relevant information pursuant to a request from CENTIF in the context of analyzing statements (see 2.5 above). In practice, such operational cooperation has not yet taken place.

782. In strategic terms, there is no *de jure* or *de facto* mechanism for initiating anti-money laundering/terrorist financing cooperation on the national level. No agency has been designated as the national coordinator.

Additional element – Mechanisms for consultation between competent authorities, the financial sector, and other sectors (c. 31.2)

783. 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 the AML law. Although CENTIF has organized training for parties subject to the law for awareness-raising purposes and has also organized a workshop on national strategy, the fight against money laundering and terrorist financing has not yet been joined on a sustainable and permanent basis.

### 6.1.2 Recommendations and comments

784. The absence of a mechanism to bring together relevant AML/CFT actors and develop a strategy is a serious deficiency. Given its essential role in the AML/CFT system, CENTIF appears to be the authority that should be responsible for such a development, and the fact that CENTIF was able to organize and bring together on very short order representatives of all parties subject to the law and all relevant government authorities to attend a video conference and a three-day workshop in preparation for this assessment mission demonstrates that CENTIF is capable of playing this role.

### 6.1.3 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 |

## 6.2 UNITED NATIONS CONVENTIONS AND SPECIAL RESOLUTIONS (R.35 AND SR.I)

### 6.2.1 Description and analysis

Ratification of anti-money laundering conventions (c. 35.1)

785. The Republic of Niger signed the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (the Vienna Convention) on November 10, 1992 and ratified the United Nations Convention Against Transnational Organized Crime of 2000 (Palermo Convention) on June 2, 2004.

786. The provisions of both Conventions have, to a large extent, been incorporated into national law through Order 99/042 of September 23, 1999 (concerning drug control) and the AML law.

787. The Order came into effect in 1999 and is properly enforced by the departments involved. However, it does not incorporate all the obligations of the Vienna Convention (such as correspondent value confiscation).

788. The statistics given to the mission concerning drug seizures demonstrate the existence of the practice of seizing the matter of the crime, i.e. the drugs, but also show that the authorities responsible for prosecutions do not make every effort to seize the proceeds of the crime.

789. The AML law does not reflect all the provisions contained in the Palermo Convention. The law does not provide for the possibility of joint investigations, nor for measures to protect witnesses and provide assistance or protection to victims.

Ratification of Conventions related to terrorist financing (c. I.1)

790. Niger ratified the International Convention for the Suppression of the Financing of Terrorism of 1999 on November 17, 2003. Niger has ratified all the Conventions and Protocols related to the fight against terrorism to which the Convention's Annex refers.

791. WAEMU Directive 04/2007/CM/WAEMU concerning the fight against terrorist financing has not yet been transposed into national law in Niger.

Implementation of the United Nations Security Council Resolutions relating to the prevention and suppression of terrorist financing (c. I.2)

792. As described, Niger has incorporated into its system of national law the standard WAEMU statutes pertaining to implementation of United Nations Security Council Resolution 1267 on Al-Qaida and the Taliban (see 2.4 above); the main deficiency concerns the time lag between designation by the Committee and decision-making by the WAEMU Council of Ministers. Neither WAEMU nor the Nigerien authorities have taken steps to set in place a legal mechanism for enforcing United Nations Security Council Resolution 1373 in regard to measures to combat terrorist financing. As mentioned above (see 2.4), a national committee has been set up with responsibility for monitoring anti-terrorist measures.

793. 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)

794. With regard to investigations and prosecutions of criminal offenses, Niger has signed and ratified the following conventions and agreements:

- United Nations Convention Against Corruption of December 9, 2003, ratified by the National Assembly on June 9, 2008;
- Organization of African Unity Convention on the Prevention and Combating of Terrorism of July 14, 1999, ratified on September 14, 2004;
- Protocol to the Organization of African Unity Convention on the Prevention and Combating of Terrorism of January 27, 2005, ratified on December 1, 2005;
- Convention of the Organization of the Islamic Conference (OCJ) on Combating International Terrorism of July 1, 1999, ratified on August 27, 2004;
- Community of Sahel-Saharan States Security Cooperation Convention of May 15, 2004, ratified on July 18, 2007.

### 6.2.2 Recommendations and comments

795. Even though Niger 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 Nigerien national law. The reader is referred to the recommendations provided in the relevant sections of this report (2.1- 2.4 and 2.6 with respect to the proceeds from crime).

### 6.2.3 Compliance with Recommendation 35 and Special Recommendation I

| | Rating | Summary of factors underlying rating |
|---|---|---|
| R.35 | PC | The provisions of the Vienna and Palermo Conventions and the International Convention for the Suppression of the Financing of Terrorism have not been implemented in full |
| SR.I | NC | Failure, in practice, to implement UN Resolutions 1267 and 1373 and the WAEMU instruments for combating terrorism and the financing of same |

## 6.3 MUTUAL LEGAL ASSISTANCE ON THE INTERNATIONAL LEVEL (R.32, 36-38, SR.V)

### 6.3.1 Description and analysis

Legal framework

796. Except for a single provision in the extradition law (Article 30), there are no formal statutes governing mutual legal assistance. This type of international assistance is conducted mainly on the basis of bilateral treaties[65] and conventions, such as the OCAM General Convention on Judicial Cooperation of September 12, 1961,[66] ECOWAS Convention 1/7/92 on Mutual Legal Assistance of July 29, 1992,[67] and the Convention for Cooperation and Mutual Legal Assistance between member states of the Conseil de l'Entente of February 20, 1997,[68] and it is handled through diplomatic channels or between Ministries of Justice.

797. In regard to money laundering, on the other hand, the AML law devotes four chapters to international cooperation, including Chapter III which contains quite detailed provisions concerning mutual legal assistance, although these provisions have not yet been implemented.

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)

798. In general terms, Article 30 of the Law of March 10, 1927 concerning the extradition of foreigners, still in effect, stipulates that "in the event of nonpolitical criminal prosecutions in a foreign country," requests for mutual legal assistance in the form of letters rogatory are handled through diplomatic channels and sent on to the Ministry of Justice. In urgent situations, the requests are addressed directly to the judicial authorities.

799. ECOWAS Convention 1/7/92 on Mutual Legal Assistance of July 29, 1992 establishes a fairly complete and flexible system of mutual assistance, subsequently forming the basis of the mutual legal assistance section of the AML law. The Convention for Cooperation and Mutual Legal Assistance between member states of the Conseil de l'Entente of February 20, 1997 covers all criminal matters (letters rogatory, extradition, transfer of criminal prosecutions, seizure and confiscation, etc.), while the OCAM Convention is more limited in scope (and does not cover the transfer of prosecutions and seizure/confiscation). The 1992 and 1997 Conventions contain relevant provisions on criminal assets (respectively Articles 18-20 and Articles 28-30: "fruits of criminal activity") which are to be seized as "exhibits" at the request of the requesting country.

800. In the area of money laundering, the provisions of Title V, Chapter III of the AML law stipulate first of all the arrangements for unconditional mutual legal assistance between member countries of WAEMU, and at the request of a third country subject to reciprocity.

801. In all cases, this mutual assistance encompasses:

802. gathering testimony or depositions;

803. making detained persons or other persons available for the purpose of testimony or assistance in conducting the investigation;

804. handing over legal documents;

805. carrying out searches and seizures;

806. examination of objects and inspection of places;

807. providing information and exhibits;

808. providing the originals or copies of files and documents, including banking, accounting, and business records.

809. The anti-money laundering provisions have not yet been applied because the situation has not arisen. However, the authorities stated that, if such a case should arise, they would strive to execute the letters rogatory as quickly and completely as

[65] Niger has signed bilateral conventions on mutual legal assistance and extradition with Algeria, France, Mali, and Nigeria.

[66] The member countries of OCAM are Cameroon, Central African Republic, Congo, Côte d'Ivoire, Dahomey (Benin), Gabon, Upper Volta (Burkina Faso), Madagascar, Mauritania, Niger, Senegal, and Chad.

[67] The member countries of ECOWAS are Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo.

[68] Benin, Burkina Faso, Côte d'Ivoire, Niger, and Togo.

possible, especially within the WAEMU framework. The statistics provided to the mission did not cover letters rogatory based on the abovementioned conventions and treaties that could involve the material benefits accruing from a criminal activity.

Mutual legal assistance not made subject to unreasonable, disproportionate, or unduly restrictive conditions (c. 36.2)

810. The grounds for refusal are enumerated in Article 55 of the AML law:

811. request improperly submitted (i.e. according to Article 54) or submitted by an authority that lacks competence;

812. risk of undermining law and order, sovereignty, security, or the underlying principles of law;

813. the facts are already the subject of a criminal prosecution or have been definitively judged in Niger *(ne bis in idem)*;

814. the requested measures, or analogous measures, are not authorized or are not applicable to the offense cited in the request;

815. the money laundering offense has lapsed under Nigerien law or the law of the requesting party;

816. the decision is not legally enforceable;

817. the foreign decision was not surrounded by adequate guarantees of the rights of the defendant;

818. the measures appear to be motivated by considerations related to the race, religion, nationality, ethnic origin, political opinions, sex, or status of the person under investigation.

819. Similar regulations can be found in the 1992 and 1997 Conventions.

Clear and efficient processes for the execution of mutual legal assistance requests (c. 36.3)

820. The chapter of the AML law dealing with mutual legal assistance and ECOWAS Convention 1/7/92 on Mutual Legal Assistance of July 29, 1992 consistently refer to the "competent authority" without specifying to whom a request should be addressed. According to the Nigerien authorities, the competent authority is the Ministry of Justice, as is the practice between member states of the Conseil de l'Entente (Convention for Cooperation and Mutual Legal Assistance of February 20, 1997, Article 15). The procedures for mutual legal assistance in money laundering matters are not likely to cause unreasonable delays if they are carried out with normal diligence. The formal conditions concern the content of the request (Article 54), the formalities to be completed in order for pleadings and judicial decisions to be handed over (Article 58) and for court appearances of undetained witnesses (Article 59) and detainees (Article 60), requests for searches and seizures (Article 62), requests for confiscation (Article 63), and protective measures (Article 64).

821. As already indicated, there has not yet been any mutual legal assistance provided on the basis of the AML law. The statistics provided by the Ministry of Justice for 2007 and 2008 show a low frequency of incoming letters rogatory (two in 2007, three in 2008) and outgoing letters rogatory (three in 2007, five in 2008), although there is an upward trend. Moreover, since 2000 only two letters rogatory have been sent through diplomatic channels. Unfortunately, the statistics do not give any idea of the object of the letters rogatory, nor the outcomes.

Mutual legal assistance on fiscal matters (c. 36.4)

822. The Nigerien authorities did not clarify their position as to whether the fact that an offense also involves fiscal matters could constitute grounds for refusing to provide mutual assistance. However, neither the law on extradition nor the AML law, nor the two Conventions mentioned above, make reference to a fiscal exception.

Mutual legal assistance notwithstanding laws that impose secrecy or confidentiality requirements (c. 36.5)

823. Article 55, Paragraph 2 of the AML law is very clear in stating that professional secrecy may not be invoked as grounds for refusing to execute a request, as is Article 4.2 of the ECOWAS Convention. Since banks in Niger are not bound, in any event, by banking secrecy requirements per se, there is no problem in executing a request pertaining to banking documents by applying the appropriate procedure, even if the request also involves other situations covered by professional secrecy requirements.

824. Applying the powers of competent authorities (applying R.28, c.36.6)

825. The provisions of the AML law 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)

826. The AML law 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. The same holds true when a request is made by the authorities of a third country, provided that the authorities of the requesting country are legally empowered to introduce such a request.

International cooperation regarding SR.V (applying c. 36.1-36.8 of R.36, c. V.1)

827. All the comments voiced above regarding the general framework of mutual legal assistance will also apply to the crime of terrorist financing once this has been criminalized. Within the WAEMU context, the uniform law on terrorist financing is about to be transposed into Nigerien law. This uniform law applies rules identical to those of the AML law.

Dual criminality and mutual legal assistance (c. 37.1 and 37.2)

828. Legal framework

829. For mutual legal assistance, the principle of dual criminality under ordinary law is established by Article 4, Paragraph 2 of the law of March 10, 1927 regarding the extradition of foreigners, inasmuch as this law applies to letters rogatory as set forth in Article 30.

830. The AML law does not expressly state this condition for mutual legal assistance. However, dual criminality is implicit and automatic for member states of WAEMU since they are all subject to the same uniform law requiring them to criminalize the same money laundering acts as specified in Articles 37-40 of the law, and because, according to Article 53, Paragraph 1, mutual legal assistance requests must be executed in accordance with the principles set forth by the law. For mutual legal assistance requests coming from third countries in conformity with Article 53, Paragraph 2, only the principle of reciprocity is raised. Nevertheless, there is a presumption that the rule of dual criminality also applies in this case, because the article is specifically aimed at mutual assistance in money laundering matters.

831. An additional impediment could arise if, under a restrictive interpretation, the principle of dual criminality were applied not only to money laundering acts but also to acts constituting the predicate offense. The same is true of terrorist financing, if the proscribed activities do not match those proscribed in the requesting jurisdiction. For lack of legal precedents and practical examples, the officials with whom the mission met were unable to speak about this issue with full certainty.

Non compulsory measures (37.1)

832. Under Article 2 of the ECOWAS Convention, member countries agree to render "mutual legal assistance to the greatest extent possible," which leaves open the possibility of some degree of flexibility. This was also the opinion of the judicial authorities with whom the mission met, although they were unable to cite examples.

833. Criminalization of conduct (37.2)

834. In the absence of relevant precedents, it is necessary to look elsewhere to find objective elements supporting the thesis that the offenses are what matter, not the technical category in which the offenses fall. The 1927 law on extradition frequently refers to "facts" that can give rise to extradition (Article 4). Article 24 continues in the same direction by stipulating that, in the context of extradition effects, "the same jurisdictions shall be judge of the categorization given to the facts that formed the grounds for the extradition request." Otherwise, based on the statutes, there are no arguments either for or against. The representatives of the judicial authority were also of the opinion that it is criminalization of unlawful conduct that counts, both for legal mutual assistance and for extradition.

International cooperation regarding SR.V (applying c. 37.1 and 37.2 of R.37, c. V.2)

835. All the comments voiced above regarding the general framework of mutual legal assistance will also apply to the crime of terrorist financing once this has been criminalized. Within the WAEMU context, the uniform law on terrorist financing is about to be transposed into Nigerien law. This uniform law applies rules identical to those of the AML law.

Mutual legal assistance requests from foreign countries related to provisional measures or confiscation (c. 38.1, c. 38.2, and c. 38.6)

836. The ECOWAS Convention (Articles 17-20), the Conseil de l'Entente Convention (Articles 28-30), and the AML law (Articles 62-66) attach great importance to search, seizure, and confiscation requests. All refer to the concept of "*exhibits*" in this context, which is supposed to cover the proceeds of the crime (or "fruits of criminal activities"). The AML law (Article 63) also makes reference to "*the instruments of any of the offenses covered by the law*." The absence of a specific list of instruments intended to be used in the commission of a crime can hardly be counted as a deficiency, as the concept of "exhibits" is sufficiently broad, and the confiscation of "*things … that were intended to be used to … commit* [the crime]" is specifically stipulated in Article 11 of the Criminal Code. The confiscation of property of corresponding value is not, however, part of the legal arsenal in Niger.

Coordination of seizure and confiscation actions with other countries (c. 38.3) and sharing of confiscated assets (c. 38.5)

837. There are no such mechanisms for coordination with other countries. Article 66 of the AML law gives the requested country the right to dispose of the confiscated assets, while leaving open the possibility of an agreement to share said assets with the requesting country. Niger has not concluded any such agreements and the authorities did not indicate any intention to do so.

Funds for confiscated assets (c. 38.4)

838. 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)

839. All the comments voiced above regarding the general framework of mutual legal assistance will also apply to the crime of terrorist financing once this has been criminalized in the Criminal Code. Within the WAEMU context, the uniform law on terrorist financing is about to be transposed into Nigerien law. This uniform law applies rules identical to those of the AML law.

840. Statistics (applying R. 32)

841. The statistics made available to the assessment team are lacking in detail and insufficient for drawing conclusions. The authorities were unable to provide details on the purpose, outcome, sender or addressee (only partial), duration, etc., which gives the impression that mutual legal assistance does not play a major role in the activities of public prosecutors and examining magistrates in Niger.

### 6.3.2 Recommendations and comments

842. The mechanism of mutual legal assistance is well organized and enables the authorities of Niger to provide substantial and quite complete assistance to foreign judicial authorities. The conditions are not prohibitive and are minimal in regard to the AML law. Grounds for refusing requests are universally recognized and have not been invoked in recent years, according to the information received from the Ministry of Justice. The principle of dual criminality has not resulted in impediments to execution and is interpreted in a flexible way.

843. It should however be noted that it was very difficult, if not impossible, to obtain complete and reliable statistics, which indicates a lack of organization. The impression was given that international cooperation does not often occur, and that there is not a great deal of expertise, not to mention experience, in this area. Since money laundering and terrorist financing are types of crime with an important cross-border dimension, it is essential to develop international relations and make optimal use of mutual legal assistance.

844. The requirement of dual criminality may pose an impediment to the execution of enforcement measures if money laundering is taken together with the predicate offences and terrorist financing does not cover all acts that should be suppressed according to international criteria (see SR.II above).

845. Lastly, there is a serious legal gap that limits the possibility of providing legal assistance when the request relates to property of corresponding value, since corresponding-value seizure and confiscation are not part of the legal arsenal in Niger.

### 6.3.3 Compliance with Recommendations 32, 36-38, and Special Recommendation V

| | Rating | Summary of factors underlying rating |
|---|---|---|
| R.36 | LC | • The authorities have not considered a mechanism to determine the place of prosecution in the event of jurisdictional conflicts<br>• Insufficient statistics, making it difficult to assess the effectiveness of the system |
| R.37 | C | |
| R.38 | PC | • The principle of dual criminality may pose an impediment to the execution of enforcement measures if money laundering is taken together with the predicate crimes (terrorist financing)<br>• Absence of a coordinating mechanism for seizures and confiscations<br>• Absence of a legal basis for executing letters rogatory related to corresponding-value seizures and confiscations<br>• The sharing of confiscated assets with other countries has not been |

| | | |
|---|---|---|
| | | considered |
| SR.V | PC | • The principle of dual criminality may pose an impediment to the execution of enforcement measures based on terrorist financing (criminalization not in full conformity with standard)<br>• Absence of a legal basis for executing letters rogatory related to corresponding-value seizures and confiscations<br>• The sharing of confiscated assets with other countries has not been considered |

## 6.4 EXTRADITION (R.32, 37, AND 39 AND SR.V)

### 6.4.1 Description and analysis

Legal framework

846. The general principles of Niger's extradition mechanism are still governed by the law of March 10, 1927 on the extradition of foreigners, which has never been repealed. This general law is however superseded by the special laws of the OCAM General Convention on Judicial Cooperation of September 12, 1961 (Title VIII), the ECOWAS Extradition Convention of August 6, 1994, the Convention for Cooperation and Mutual Legal Assistance between member states of the Conseil de l'Entente of February 20, 1997 (Chapter IX), the AML law, and bilateral treaties.

Money laundering as an extraditable offense (c. 39.1)

847. Money laundering is indeed an extraditable offense by virtue of Article 71 of the AML law. Extradition is possible for any of the offenses cited in Articles 2, 3, and 37-41 of said law, regardless of the penalties set forth under national law in the event of a prosecution, and regardless of the sentence handed down by the courts of the requesting country. The principle of dual criminality applies to extradition. Article 71 is broad in scope and is not limited to requests from WAEMU countries. However, the deficiencies noted in regard to the crime of terrorist financing (SR.II) reduce the possibility of extradition from Niger when such crimes are the subject of a request.

Extradition of its own nationals by a country (c.39.2(a))

848. Nigerien nationals cannot be extradited. The AML law is silent on this issue, so the general rule applies, i.e. the provisions of Article 5.1 of the law on extradition, which prohibits the extradition of nationals. This principle is restated in Article 42 of the OCAM Convention.

Cooperation in criminal prosecutions of its own nationals (c. 39.2(b), c. 39.3)

849. Niger may apply the principle of *aut dedere, aut judicare* and assume responsibility for prosecuting the suspect at the request of a WAEMU member country, or a third country on condition of reciprocity (Article 47 of the AML law).[69] The request is sent to the Nigerien judicial authorities, who must refuse the request in the event of the statute of limitation having expired or application of the rule of *non bis in idem* (Article 48). The requested judicial authorities are not required to assume responsibility for prosecution, but they must keep the prosecuting authorities of the requesting country informed of their decisions, with copies (Article 50). The Nigerien authorities did not provide any concrete information on this matter. No indication was given as to the policy adopted, or to be adopted, by Niger toward such requests**.**

Effectiveness of extradition procedures (c. 39.4)

850. The mission was unable to perform an analysis of the effectiveness of the extradition procedures due to the absence of specific information on actual cases and the amount of time it took for them to be executed.

Additional element – Existence of simplified extradition procedures (c. 39.5)

851. Article 72 of the AML law lays out a simplified procedure by which extradition requests are sent directly to the public prosecutor. In the absence of concrete information, it was not possible to confirm the effectiveness and speed of this procedure.

[69] This possibility was already established by Article 42, Paragraph 2 of the OCAM Convention.

Additional element regarding SR.V (applying c. 39.5 of R. 39, c. V.8)

852. All the comments voiced above regarding the general framework of mutual legal assistance will also apply to the crime of terrorist financing once this has been criminalized in the Criminal Code. Within the WAEMU context, the uniform law on terrorist financing is about to be transposed into Nigerien law. This uniform law applies rules identical to those of the AML law.

Statistics (applying R.32)

853. The statistics made available to the assessment team are lacking in detail and insufficient for drawing conclusions. The authorities were unable to provide details on the purpose, outcome, sender or addressee (only partial), duration, etc.

### 6.4.2 Recommendations and comments

854. The legal framework for extradition in money laundering and terrorist financing cases is appropriate and largely consistent with international criteria. But here once again, the principle of dual criminality, both for money laundering and for terrorist financing, may constitute grounds for refusal until such time as the deficiencies noted under SR.II are remedied. In addition, there is a need to improve and refine the statistics so that they can serve as an instrument for evaluating the system.

### 6.4.3 Compliance with Recommendations 32, 37, and 39 and Special Recommendation V

| | Rating | Summary of factors underlying rating |
|---|---|---|
| R.37 | C | |
| R.39 | LC | In the absence of detailed statistics, the effectiveness of the mechanism cannot be measured |
| SR.V | PC | The principle of dual criminality poses an obstacle to extradition because of deficiencies in regard to the criminalization of terrorist financing |

## 6.5 OTHER FORMS OF INTERNATIONAL COOPERATION (R.32 AND 40 AND SR.V)

### 6.5.1 Description and analysis

Range of international cooperation mechanisms (c. 40.1)

**Cooperation between law enforcement authorities**

855. In the area of money laundering and terrorist financing, the police and the gendarmerie can cooperate with their colleagues through the Interpol network when said cooperation does not fall into the category of mutual legal assistance.

856. The customs service is a member of the WCO and, through the Customs Enforcement Network (CEN), it cooperates directly with its counterparts based on the International Convention on Mutual Administrative Assistance for the Prevention, Investigation, and Repression of Customs Offenses of June 9, 1977 and the International Convention on Mutual Administrative Assistance in Customs Matters of June 27, 2003. In addition to these conventions, Niger has also concluded bilateral assistance agreements with the neighboring countries of Burkina Faso, Benin, and Togo.

857. Information sharing between FIUs

858. CENTIF is in a position to provide the broadest possible cooperation to FIUs of third countries. The relevant legal provisions are contained in Articles 23 and 24 which address relations between CENTIF and FIUs of WAEMU member states, on the one hand, and FIUs of third countries, on the other. It should however be noted that, at the present time, such cooperation is limited to money laundering cases, since terrorist financing does not yet fall within CENTIF's remit.

859. Based on Article 23, CENTIF is required to report, at the legitimate request of a CENTIF of a WAEMU member state and in connection with an investigation, any and all information and data relevant to investigations undertaken pursuant to a suspicious transaction report at the national level.

860. With respect to other foreign FIUs, CENTIF may, subject to reciprocity, share information with the Financial Intelligence Units of third countries responsible for receiving and processing suspicious transaction reports, provided that the latter are bound by similar confidentiality requirements.

861. According to CENTIF, information sharing between CENTIF and the intelligence unit of a third country (non-WAEMU) requires a written agreement (Article 24, final paragraph) and must be authorized by the Minister of Finance (Article 24).

**Cooperation between supervisors**

862. The status of cooperation between the supervisory authorities of the financial system (banks, insurance, and stock market) is discussed below:

- **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.[70] 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.
- 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 establishments 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 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.[71]
- **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.
- **Insurance sector**: For this particular sector, the mission has no data concerning cooperation.

Rapid, constructive, and effective assistance (c. 40.1.1)

863. FIU: To date, there has been no information sharing whatsoever with other FIUs, nor any other form of operational communication, but the plan is for direct and protected communication between FIUs.

Clear and effective mechanisms to facilitate exchanges of information between counterparts (c. 40.2)

864. FIU: The cooperation with the WAEMU FIUs is unconditional. With the other FIUs it is subject to the reciprocity condition and to confidentiality guarantees. Accession to the Egmont Group will allow the use of the ESW secured network of the Group for exchanging information with other member FIUs. The police and customs use the direct communication lines of Interpol and the WCO. The police made reference to frequent delayed responses and unanswered requests.

865. .

Spontaneous exchanges of information (c. 40.3)

866. FIU: Although this is not explicitly stated, exchanges with FIUs of third countries may take place spontaneously or upon request, provided that there is reciprocity (Article 24). Curiously, the law only calls for information to be provided at the request of a WAEMU CENTIF (Article 23), but logic dictates that spontaneous exchanges must also be deemed admissible.

Inquiries conducted on behalf of foreign counterparts (c. 40.4)

867. FIU: The wording of Article 23 indicates that CENTIF may cooperate with any other WAEMU CENTIF "within the framework of an inquiry," which seems to imply that it is permissible for CENTIF to conduct inquiries on behalf of a

[70] Source: Assessment report of compliance with Basel Core Principles and bank soundness, World Bank, 2007.

[71] 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.).

counterpart. The wording of Article 24 is different and more limited, referring only to exchanges of information, which raises doubts as to whether this power to conduct inquiries also extends to requests from other foreign FIUs.

Inquiries by the FIU on behalf of foreign counterparts (c. 40.4.1)

868. FIU: It goes without saying that, at the request of a non-WAEMU FIU, CENTIF is empowered to provide information that it already holds in its data base. It is less clear whether this power extends to the gathering of information from external sources to which it has access in carrying out its FIU functions (Article 17). Based on Articles 17, 23, and 24, CENTIF considers that this power is implicit and that it is clearly in a position to provide the requested assistance, even if external sources must be consulted.

Investigations by law enforcement authorities on behalf of foreign counterparts (c. 40.5)

869. Outside the context of a mutual legal assistance request, the judicial authorities are not empowered to conduct investigations, even simple ones. The police and the gendarmerie, for their part, have a little more latitude if a request comes from a foreign police department either directly or through Interpol. Nevertheless, these are not investigations in the strict sense, which always require letters rogatory, but rather information-gathering exercises. According to the Nigerien authorities, the customs service does however have the power to institute investigations of customs offenses at the request of a counterpart, based on customs treaties. Still, no specific legal provision was cited.

870. Absence of disproportionate or unduly restrictive conditions on exchanges of information (c. 40.6)

871. FIU: Exchanges of information are subject to the following conditions:

872. legitimate request from a CENTIF of a WAEMU member state, within the framework of an investigation;

873. in the case of FIUs of third countries, exchanges of information are conducted on condition of reciprocity and when the FIUs are subject to similar confidentiality requirements. A written agreement on cooperation (i.e. a memorandum of understanding) must also be concluded, which must then be authorized by the Minister of Finance, to ensure that confidentiality is guaranteed.

Cooperation also involving fiscal matters (c. 40.7)

874. There is no statute indicating that a request would be inadmissible because fiscal matters could be involved. In any event, none of the officials with whom the mission met saw a problem or a reason for not satisfying such a request.

Cooperation notwithstanding the existence of laws that impose secrecy or confidentiality requirements (c. 40.8)

875. Article 34 of the AML law lifts professional secrecy requirements vis-a-vis CENTIF and the supervisory authorities in the performance of their duties, and for police officers conducting a money laundering investigation under the direction of an examining magistrate.

Controls and safeguards concerning the use of information (c. 40.9)

876. Based on Article 20 of the AML law, CENTIF members and officials are required to respect the secrecy of the information gathered, which may not be used for any purposes other than those specified by the law. Apparently, similar requirements apply to police departments, although no specific legal provision was cited.

877. International cooperation concerning SR.V (applying c. 40.1-40-10 of R.40, c. V.5, and c. V.9)

878. All the comments voiced above regarding the general framework of mutual legal assistance will also apply to the crime of terrorist financing once this has been criminalized in the Criminal Code. Within the WAEMU context, the uniform law on terrorist financing is about to be transposed into Nigerien law. This uniform law applies rules identical to those of the AML law.

Statistics (applying la R.32)

879. Relevant statistics were not submitted to the assessment mission.

### 6.5.2 Recommendations and comments

880. In practice, direct international cooperation between police forces and customs officers is almost a daily event. It takes place with no real difficulties, if not for the occurrence of irritating practices such as late responses and unanswered requests. However, it should be noted that there have been no incoming or outgoing requests related to acts of money laundering or terrorist financing.

881. As regards CENTIF's powers of cross-border cooperation, the situation is not entirely clear. The statutes lend themselves to different interpretations: it is not totally indisputable that CENTIF may gather information from external sources or correspondents at the request of a non-WAEMU third country FIU. The wording of Article 24 provides no further detail and is

limited to the exchange of information alone. According to Article 17, CENTIF is empowered to request additional information in connection with analyzing and processing reports that are sent to it, nothing more. Even though it can be argued that Article 24 carries no prohibition, this remains a matter of minimal or maximal interpretation. This issue should be clarified by a provision that expressly gives to CENTIF the same responsibilities and powers as Article 17 when the purpose is to act on a request from a foreign FIU. Legally, such a request should then have the same status as a suspicious transaction report as intended by Article 17 of the AML law.

882. Lastly, CENTIF does not yet possess legal authority to exchange information related to terrorist financing.

### 6.5.3 Compliance with Recommendation 40 and Special Recommendation V

| | Rating | Summary of factors underlying rating |
|---|---|---|
| R.40 | LC | • Absence of information needed to assess the effectiveness of exchanges of information with foreign counterparts<br>• Doubts about the possibility for CENTIF to conduct inquiries on behalf of its foreign counterparts<br>• No exchanges of information on money laundering and terrorist financing matters<br>• |
| SR.V | PC | • Exchanging information on terrorist financing suspicions does not yet fall within CENTIF's purview |

## 7 OTHER ISSUES

## 7.1 RESOURCES AND STATISTICS

#### 7.1.1 Resources and statistics

883. The description and analysis concerning Recommendations 30 and 32 are contained in the relevant sections of this report. The reader is referred to the relevant sections of the report, particularly 2.5-2.7, 3.10, 6.3, and 6.4.

884. After the site visit, the team was informed that the issue of statistics is a concern of the senior national authorities, and that a statistics directorate has been created within each ministry.

**Compliance with Recommendations 30 and 32**

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **R.30** | **NC** | • CENTIF: Insufficient financial resources and absence of a specific budget, lack of financial analysts<br>• Absence of resources and lack of training for the authorities in charge of investigations, law enforcement authorities, and other competent authorities, and inadequate training in financial matters<br>• The means allocated to the organizations of control and supervision are insufficient. Lack of training in all sectors. |
| **R.32** | **NC** | • No money laundering cases have been handled in Niger; no device for collection of relevant information has been put in place.<br>• Absence of statistics on the number of sanctions handed down by the |

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| | | BC that involve breaches of AML standards<br>• Insufficient statistics on international cooperation, making it difficult to assess the effectiveness of the system<br>• Absence of statistics on extradition |

## 7.2 OTHER MEASURES AND RELEVANT SUBJECTS OF AML/CFT

N/A

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 Authorities to the Assessment (to follow)

## TABLE 1. RATINGS OF COMPLIANCE WITH THE FATF RECOMMENDATIONS

C: Compliant

NC: Noncompliant

LC: Largely compliant

PC: Partially compliant

| **40 Recommendations** | **Rating** | **Summary of factors underlying rating** |
|---|---|---|
| Legal system | | |
| 1. Money laundering offense | PC | • Lack of demonstrated effectiveness of money laundering criminalization<br>• Terrorist financing is not criminalized in line with international standards |
| 2. Mental element and corporate liability | LC | Questions about the proportionality of penalties |
| 3. Confiscation and provisional measures | PC | • Absence of implementation of freezing, seizure, and confiscation mechanisms for money laundering offenses and the proceeds of predicate offenses<br>• Absence of provisions for the confiscation of property of corresponding value to the value of the proceeds and instruments of crimes and offenses |
| 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 | PC | • Overly lenient identification requirements, especially for beneficial owners<br>• Absence of a requirement to obtain information on the purpose and nature of the relationship<br>• Absence of a due diligence requirement<br>• Absence of requirements covering existing customers<br>• Absence of implementation by financial institutions |
| 6. Politically exposed persons | NC | Absence of PEP requirements |

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| 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<br>• Absence of implementation |
| 9. Third parties and intermediaries | NC | • Absence of clear and complete requirements regarding the use of third parties and intermediaries in AML/CFT matters, notwithstanding the fact that this practice does exist |
| 10. Record-keeping | PC | • Absence of sufficient specificity concerning the nature and availability of records to be kept<br>• Absence of supervision of compliance with AML requirements, and general unawareness of the content of these requirements by persons covered by same |
| 11. Unusual transactions | NC | • Overly restrictive definition of the transactions covered (threshold of CFAF 10 million and no mention of types of unusual transactions)<br>• Absence of implementation by financial institutions other than banks and very uneven implementation in the banking sector |
| 12. Designated nonfinancial businesses and professions – R.5, 6, 8-11 | NC | • Absence of basic due diligence requirements for DNFBPs<br>• Absence of certified public accountants and chartered accountants on the list of persons covered by the law<br>• Absence of a due diligence mechanism concerning politically exposed persons<br>• Absence of application of the mechanism by DNFBPs |
| 13. Suspicious transaction reporting | PC | • General unawareness of reporting requirements by persons covered by the law<br>• Absence of a requirement to report transactions related to terrorist financing<br>• Existence of two competing and mutually inconsistent reporting mechanisms |
| 14. Protection of informants and no tipping-off | PC | Overly restrictive protection of the confidentiality of information provided to CENTIF |
| 15. Internal controls, compliance, and auditing | PC | • Incomplete regulatory system for the banking sector<br>• Absence of sectoral mechanism apart from the banking system, especially in the microfinance sector<br>• Absence of actual implementation of internal controls for the prevention of money laundering |
| 16. Designated nonfinancial businesses and professions – R.13-15 & 21 | NC | • Absence of internal controls for the prevention of money laundering<br>• Absence of special attention to countries that do not adequately apply FATF recommendations<br>• Nonexistence of suspicious transaction reports from DNFBPs<br>• Absence of implementation of the AML law<br>• Absence of anti-money laundering programs<br>• Certified public accountants and chartered accountants should be covered by the law |
| 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<br>• The nature and scope of the sanctions applicable to DFIs are not clearly defined<br>• There is a conflict of interest within BC-WAEMU due to the presence in its midst of representatives of |

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| | | BCEAO and member states, who happen to be, at the same time, shareholders in banks |
| 18. Shell banks | PC | • Absence of a ban on forming or maintaining a correspondent banking relationship with a shell bank<br>• 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 nonfinancial businesses and professions and modern transaction techniques | NC | • Absence of a money laundering risk analysis in non-designated nonfinancial businesses and professions<br>• Absence of training and awareness-raising for actors of designated nonfinancial businesses and professions<br>• Absence of monitoring of compliance with 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 |
| 22. Foreign branches and subsidiaries | NC | • Absence of requirements for the non-bank financial sector<br>• Absence of a requirement to report to the banking supervisor in the case of credit institutions |
| 23. Regulation, supervision, and monitoring | NC | • The rules for monitoring the criteria of competence and integrity of DFI directors are not clearly established<br>• 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 ownership |
| 24. Designated nonfinancial businesses and professions – regulation, supervision, and monitoring | NC | • Absence of implementation of AML regulations by casinos<br>• Absence of monitoring by authorities of compliance with AML requirements by casinos and other DNFBPs |
| 25. Guidelines | NC | • Absence of guidelines, apart from a BCEAO directive that contains few details<br>• There are no AML guidelines for the insurance and financial markets sectors<br>• BCEAO Directive 01-2007 of July 2, 2007 has not been fully disseminated<br>• 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<br>• 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<br>• Absence of training and awareness-raising programs organized by the authorities for DNFBPs |
| Other institutional measures | | |
| 26. Financial Intelligence Unit | PC | • Limited effectiveness of the prevention system due to a lack of training and awareness-raising for relevant actors, where the FIU should take the leading role<br>• Terrorist financing does not fall within the purview of |

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| | | the FIU<br>• Protection of the confidentiality of data is not fully guaranteed by use of the IP network and implementation of Article 39, Paragraph 2 of the Criminal Code |
| 27. Law enforcement authorities | NC | • Serious lack of effectiveness in regard to detection and investigation of criminal proceeds<br>• The investigations and prosecutions do not focus enough on financial issues<br>• Absence of specialization in anti-money laundering and terrorist financing matters<br>• Passive attitude and lack of initiatives to acquire expertise in the field |
| 28. Powers of competent authorities | C | |
| 29. Supervisors | NC | • The AML controls performed by BC-WAEMU in banks are insufficient and lack rigor<br>• DFI supervision is deficient and does not focus on compliance with AML standards |
| 30. Resources, integrity, and training | NC | • CENTIF: Insufficient financial resources and absence of a specific budget, lack of financial analysts<br>• Absence of resources and lack of training for the authorities in charge of investigations, law enforcement authorities, and other competent authorities, and inadequate training in financial matters<br>• The means allocated to the organizations of control and supervision are insufficient; lack of training in all sectors |
| 31. National cooperation | NC | Absence of any mechanism for coordination and cooperation between competent authorities in regard to efforts to combat money laundering and terrorist financing |
| 32. Statistics | NC | • No money laundering cases have been handled in Niger; no device for collection of relevant information has been put in place<br>• Absence of statistics on the number of sanctions handed down by the BC that involve breaches of AML standards<br>• Insufficient statistics on international cooperation, making it difficult to assess the effectiveness of the system<br>• Absence of statistics on extradition |
| 33. Legal persons – beneficial ownership | PC | • Lack of information on foreign beneficial ownership<br>• Possibility to issue bearer shares<br>• The substantial role of informal activities makes it virtually 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 | The provisions of the Vienna and Palermo Conventions and the International Convention for the Suppression of the Financing of Terrorism have not been implemented in |

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| | | full |
| 36. Mutual legal assistance | LC | • The authorities have not considered a mechanism to determine the place of prosecution in the event of jurisdictional conflicts<br>• Insufficient statistics, making it difficult to assess the effectiveness of the system |
| 37. Dual criminality | C | |
| 38. Mutual legal assistance on confiscation and freezing | PC | • The principle of dual criminality may pose an impediment to the execution of enforcement measures if money laundering is taken together with the predicate offense (terrorist financing)<br>• Absence of a coordinating mechanism for seizures and confiscations<br>• Absence of a legal basis for executing letters rogatory related to corresponding-value seizures and confiscations<br>• The sharing of confiscated assets with other countries has not been considered |
| 39. Extradition | LC | In the absence of detailed statistics, the effectiveness of the mechanism cannot be measured |
| 40. Other forms of cooperation | LC | • Absence of information needed to assess the effectiveness of exchanges of information with foreign counterparts<br>• Doubts about the possibility for CENTIF to conduct inquiries on behalf of its foreign counterparts<br>• No exchanges of information on money laundering and terrorist financing matters<br>• Questionable legal basis for permitting CENTIF to exercise all its investigatory powers at the request of a non-WAEMU third country |
| Nine Special Recommendations | | |
| SR.I Implement UN instruments | NC | Failure, in practice, to implement UN Resolutions 1267 and 1373 and the WAEMU instruments for combating terrorism and the financing of same |
| SR.II Criminalize terrorist financing | PC | • Absence of criminalization of funding for an individual terrorist or a terrorist organization<br>• Excessively narrow concept of "funds"<br>• Uncertainty about national competence<br>• Absence of responsibility on the part of legal persons |
| SR.III Freeze and confiscate terrorist assets | NC | • The regional mechanism for freezing funds based on Resolution 1267 is incomplete and overly restrictive (limited scope of implementation, restrictive definition of "funds," etc.) and has not been adequately implemented<br>• Absence of a complementary national mechanism for the implementation of Resolution 1267<br>• Absence of a legal framework for implementing Resolution 1373 |
| SR.IV Suspicious transaction reporting | NC | Absence of a requirement to report transactions related to terrorist financing |
| SR.V International cooperation | PC | • The principle of dual criminality may pose an impediment to the execution of enforcement |

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| | | measures based on terrorist financing (criminalization not in full conformity with SRII)<br>• Absence of a legal basis for executing letters rogatory related to corresponding-value seizures and confiscations<br>• The sharing of confiscated assets with other countries has not been considered |
| 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<br>• Absence of oversight of the activities of money/value transfer services<br>• Absence of a list of agents |
| SR.VII Wire transfer rules | NC | Absence of requirements relating to wire transfers |
| SR.VIII Nonprofit organizations | PC | • Absence of awareness-raising in the NGO sector<br>• Absence of scrutiny of the adequacy of laws and regulations pertaining to NGOs<br>• Absence of the requirement to keep records on financial transactions |
| SR. IX Cash couriers | NC | Absence of a reporting or communication system on cross-border transport of cash within the AML/CFT framework |

## 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) | Niger is urged to provide sanctions, under national law, for insider dealing and to implement statistical tools for issues relating to the effectiveness and proper functioning of anti-money laundering mechanisms. |
| Criminalization of terrorist financing (SR.II) | The authorities are urged to adopt the CFT bill as soon as possible.<br>The authorities should rectify the absence of criminalization of funding for an individual terrorist or a terrorist organization, either in the CFT bill or in the bill to amend the Nigerien Criminal Code. |
| Confiscation, freezing, and seizing of property of criminal origin (R.3) | The Nigerien authorities are urged to set in place as soon as possible provisions for the confiscation of property of corresponding value to the value of the proceeds and instruments of crimes and offenses.<br>In regard to seizures, the customs service, the police, and the gendarmerie should pay more attention to the proceeds of crime. |
| Confiscation of proceeds of crime or assets used for terrorist financing (SR.III) | 885. The Nigerien authorities are urged to modify their mechanism for freezing funds pursuant to Resolution 1267 in order to:<br>• apply the freezing measures stipulated under Resolution 1267 to funds or other assets held or controlled either directly or indirectly by persons or entities explicitly designated by the Sanctions Committee, or by persons acting on their behalf or |

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| | on their instructions;<br>• expand the freezing measures to all "funds and other assets," which would encompass 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;<br>• 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 – for example the land registry – and ensure effective monitoring of compliance with these obligations by the supervisory authorities;<br>• provide a clear and rapid mechanism for disseminating the lists of the Sanctions Committee nationwide, to complement the regional mechanism;<br>• 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;<br>• set in place appropriate procedures for authorizing access to funds 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 pursuant to Resolution S/RES/1452(2003);<br>• adopt measures to protect the rights of third parties acting in good faith;<br>886. and to modify their mechanism for freezing funds pursuant to Resolution 1373 in order to:<br>• be able to designate persons and entities whose funds or other assets should be frozen;<br>• provide a clear and rapid procedure to review and, if necessary, follow up on actions taken under the freezing mechanisms of other countries;<br>• 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;<br>• 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;<br>• 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;<br>• adopt measures to protect the rights of third parties acting in good faith. |
| Financial Intelligence Unit (R.26) | It is of critical importance that all the actors involved, including CENTIF, acquire more in-depth knowledge of the subject through an expedited training program, for which CENTIF should take the lead, together with the supervisory authorities.<br>It is also essential that a relationship of trust be established between CENTIF and the entities covered by the law, thus creating an environment conducive to more effective development of the preventive system. |

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| | The multidisciplinary approach, as reflected in the composition of CENTIF membership, is slightly out of balance due to the preponderance of the police/prosecutorial component at the expense of the financial component, which does not truly match the concept of an administrative service. The financial component should be strengthened with analysts who are experts in economic, banking, and/or financial matters.<br><br>The experience gained from a case handled by the FIU demonstrates that the procedures in place should be reviewed and refined. The use of a police communications network, such as Interpol, to add information carries a risk in terms of protecting the confidentiality of the data, since the Interpol channels are open to all member police departments. Steps should be taken to ensure, in one way or another, that this information, which is protected so long as it has not been sent to the public prosecutor, is not used for police investigations. There is also the issue raised by Articles 20 and 29 of the AML law (use limited to anti-money laundering purposes) and Article 39, Paragraph 2 of the Code of Criminal Procedure (exposure of crimes to the public prosecutor), which applies to civil servants and thus to examining magistrates and police officers, that should be resolved.<br><br>The lack of a budget and of financial resources for CENTIF is a major deficiency that must not be allowed to continue. While the human resources are currently adequate, there is a great need to develop appropriate software and properly equip the staff. CENTIF's plans involving expansion of its core group of experts and specialists are ambitious, but will not be optimally effective unless the system itself gets up to cruising speed.<br><br>The fight against terrorist financing should be added to CENTIF's powers. In addition, the WAEMU uniform law should be transposed without delay.<br><br>It is of particular importance to maintain the ability to ensure structural monitoring of relevant statistical data. |
| Law enforcement, prosecution, and other competent authorities (R.27, R.28) | At the present time there is a need to focus more on the issue of material benefits of all forms. The detection of such assets in the regulated financial sector is of course largely a matter for CENTIF, from whom police officers wait for the necessary information to be provided, but that does not exempt the police from leading its own efforts along the same lines, especially in the informal sector: the preventive system is a very important additional source, but it coexists with the repressive system, which is the exclusive domain of the police and the judicial authorities.<br><br>Experience needs to be built up in order to acquire expertise. Specialized courses that specifically address money laundering, its techniques, its typologies, and the legal and operational challenges involved are of great importance, but so is field experience. There is great mobility within the ranks of police officers and magistrates, which means that investigators and examining magistrates do not really have the opportunity to deepen their knowledge of the subject. There will be a need for gradual reorganization, in step with the hoped-for progress of the suspicious transaction reporting system, in order to give the relevant actors the time and opportunity to gain experience, an essential element for meeting the challenges posed by the serious crimes of money laundering and terrorist financing. |
| Reporting/communication of cross-border transactions (SR.IX) | The authorities should organize specific awareness-raising for customs officers and, if need be, institute measures of organization and coordination in this area. It will also be necessary to introduce within the AML/CFT framework a system of reporting or communication regarding cross-border |

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| | transportation of currency**.** |
| Preventive measures for financial institutions | |
| Risk of money laundering or terrorist financing | The authorities 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) | 887. The authorities should consider the following measures:<br>• broaden the obligations set forth in Recommendations 5 through 8 to include money transfer services;<br>• determine with certainty the legal validity of (i) BCEAO's subjection to the provisions of the AML law and (ii) that of the "Caisse des dépôts et consignations" and the financial services of the Post Office to the provisions of BCEAO Directive 01/07/RB;<br>• require financial institutions to fulfill the stipulated due diligence obligations:<br>• - when they carry out occasional transactions exceeding the CFAF 5 million threshold, but that are not in cash;<br>• - when they carry out occasional transactions in the form of wire transfers under the circumstances described in the interpretive note to Special Recommendation VII;<br>• - in all cases where there is suspicion of money laundering or terrorist financing;<br>• - when the institution has doubts as to the veracity and relevance of previously obtained customer identification data;<br>• supplement the prevailing statutes by instituting a clear obligation for financial institutions to identify customers on the basis of reliable and independent sources;<br>• require financial institutions to gauge, for all their customers, whether the customer is acting on his own account.<br>In regard to beneficial owners, require financial institutions to:<br>• - identify the natural person(s) who ultimately own or control their customer;<br>• - take reasonable steps to verify the identity of beneficial owners;<br>• - take all reasonable steps, regarding customers that are legal persons or legal arrangements, to: (i) understand the ownership and control structure of the customer; and (ii) identify the natural persons who ultimately own or control the customer;<br>• require financial institutions to obtain, in all cases, information on the intended purpose and nature of the business relationship;<br>• create an obligation for financial institutions to exercise ongoing monitoring with regard to their business relationships;<br>• 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;<br>• 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 for 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;
- 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 the beneficial owner(s) and stipulate that, in such cases, 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.

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

- have adequate risk management systems to determine whether a potential customer, a current customer, or the beneficial owner is a PEP;
- 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 the beneficial owner is a PEP or could become 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.

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

- gather enough information on the customer institution to assess the reputation of the institution and the quality of the surveillance (including verification of whether the institution has been the object of an investigation or intervention by the money laundering or terrorist financing surveillance authority);
- evaluate the AML/CFT controls put in place by the customer institution and ensure their relevance and efficacy;
- obtain permission from senior management before entering into new correspondent banking relationships;

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| | • specify in writing the respective AML/CFT responsibilities of each institution;<br>• require financial institutions, when a correspondent banking 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 to all of its customers with direct access to the accounts of the corresponding financial institution; and (ii) the other customer financial institution is able to provide relevant identification data on its customers at the request of the corresponding financial institution;<br>• require financial institutions to develop policies or to take the necessary steps, within their AML/CFT mechanisms, to prevent the misuse of new technologies. |
| Reliance on intermediaries (R.9) | 888. The authorities are urged to precisely define the conditions under which the use of third parties and intermediaries is allowed in the area of AML/CFT:<br>• 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);<br>• 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;<br>• 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;<br>• when there is a need to decide in which country the third party complying with the criteria may be established, the competent authorities should take into account available information indicating whether these countries apply FATF recommendations properly;<br>• ultimately, the responsibility for identification and verification of identity should rest with the financial institution that used the third party. |
| Bank secrecy and confidentiality (R.4) | The authorities should consider establishing provisions making it possible to ensure that the 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.<br>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. |
| Record-keeping and wire transfers (R.10 and SR.VII) | 889. The authorities should consider establishing the following provisions:<br>• stipulate that documents may be kept longer if a competent authority so requests in connection with a specific matter and for the accomplishment of his mandate;<br>• 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 |

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| | prosecution;<br>• 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;<br>• clarify the definition of "oversight authorities" so as to ensure that only the competent authorities have access to confidential information conserved by those subject to the law;<br>• require financial institutions to ensure that all documentation on customers and transactions is made available in a timely manner to the competent national authorities for the accomplishment of their mandates;<br>• 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 Niger decides to authorize this);<br>• for cross-border 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;<br>• for domestic transfers (including transactions 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;<br>• 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 terrorist financing;<br>• require each intermediate financial institution in the chain of payment to keep all necessary information on the instructing party with the corresponding transfer;<br>• 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;<br>• establish effective measures to monitor the implementation of SR.VII;<br>• ensure that Criteria 17.1 through 17.4 apply to SR.VII. |
| Monitoring of transactions (R.11 and R.21) | 890. The authorities should consider establishing the following provisions:<br>• eliminate the systematic obligation imposed by Directive 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; |

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| | • 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);<br>• require financial institutions to pay particular attention to all unusual types of transactions, when they have no apparent economic rationale or legitimate purpose;<br>• allow auditors, in the performance of their duties, access to the confidential register referred to in Article 10;<br>• institute an obligation for financial institutions to pay particular attention to their business relationships and transactions, particularly with legal persons and financial institutions based in countries that apply the FATF recommendations insufficiently or not at all;<br>• establish efficient measures to inform financial institutions of the concerns aroused by shortcomings in AML/CTF mechanisms in other countries;<br>• establish appropriate countermeasures that Niger may choose when a country continues to apply FATF recommendations insufficiently or not at all. |
| Suspicious transaction reporting (R.13, R.14, R.19, R.25, and SR.IV) | 891. The authorities should consider taking the following steps:<br>• unify the regime of suspicious transaction reports;<br>• require all financial institutions to make suspicious transaction reports in accordance with FATF recommendations (including institutions active in the area of e-money);<br>• 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;<br>• institute an obligation to report attempted transactions;<br>• prohibit the communication of this information to any third party not duly authorized to have access to it;<br>• study the feasibility and utility of implementing a system by means of which financial institutions would report all cash transactions exceeding a certain amount to a national central agency equipped with a computerized database;<br>• ensure that all financial institutions and designated nonfinancial businesses and professions are given guidelines issued by the competent authorities (CENTIF and/or oversight authorities in particular) for purposes of enforcing and complying with their AML/CFT obligations;<br>• ensure that the competent authorities, and CENTIF in particular, provide designated financial institutions that are required to report suspicious transactions with useful and appropriate feedback in keeping with FATF guidelines. |
| Internal controls, compliance, audit, and foreign branches (R.15 and R.22) | 892. The authorities should:<br>• define obligations with regard to staff hiring procedures;<br>• adopt sector regulations, apart from subject persons under the authority of the WAEMU Banking Commission, with regard to internal anti-money laundering controls; |

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| | • clarify obligations with regard to internal controls incumbent upon microfinance institutions;<br>• ensure that subject persons begin rapidly to fulfill their obligations;<br>• create, for all banks and financial establishments, an obligation to ensure that their foreign branches and affiliates enforce AML/CFT standards. |
| Shell banks (R.18) | The authorities should consider:<br>• prohibiting financial institutions from entering into, or maintaining, correspondent banking relationships with shell banks;<br>• requiring financial institutions to ensure that financial institutions belonging to their foreign clientele do not authorize shell banks to use their accounts. |
| Regulation and supervision, competent authorities and their powers (R.17, R.23, R.25, R.29, and R.30) | 893. At the regional level, the authorities should consider the following:<br>• ensure full implementation of community statutes (uniform law, BCEAO Directive of 2007) and national statutes (AML law) within the banking sector;<br>• ensure that the staff of regional financial supervisors is adequate;<br>• create methodological tools for on-site inspection staff in order to promote supervision based on risk;<br>• institute sufficiently dissuasive sanctions.<br>894. In Niger, the authorities should consider the following:<br>• undertake awareness-raising and training actions in the microfinance sector;<br>• strengthen exchange controls in the informal sector and carry out targeted actions against manual moneychangers in the informal sector (particularly to send a signal that the competent authorities have been mobilized);<br>• 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;<br>• carry out awareness-raising actions targeting Western Union sub-delegates to promote more rigorous identification of customers. |
| Alternative remittance (SR.VI) | The authorities should:<br>• 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;<br>• ensure, as part of their supervision of banks, that the banks provide effective oversight of the activities that they delegate. |
| Preventive measures applicable to designated nonfinancial businesses and professions | |
| Customer due diligence and record-keeping (R.12) | The authorities should:<br>• institute the obligation for DNFBPs to identify their customers, along with specific thresholds for triggering this |

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| | obligation;<br>• subject certified public accountants and chartered accountants to anti-money laundering obligations;<br>• set in place a due diligence mechanism in regard to politically exposed persons;<br>• increase the awareness of all DNFBPs concerning the provisions of the AML law. |
| Suspicious transaction reporting (R.16) | The recommendations made in Section 3 concerning R.13, 14, 15, and 21 also apply to DNFBPs. |
| Regulation, supervision, and monitoring (R.17, R.24, and R.25) | The authorities should:<br>• ensure compliance with their AML/CFT obligations by casinos and other categories of designated nonfinancial businesses and professions;<br>• induce all DNFBPs to implement and meet their anti-money laundering obligations through training and awareness-raising. |
| Other nonfinancial businesses and professions and modern and secure transaction techniques (R.20) | The authorities should:<br>• raise awareness of money laundering risks on the part of all designated nonfinancial businesses covered by the AML law by making the relevant statutes available to them;<br>• transpose Directive 08/02/CM/WAEMU concerning measures to promote the use of banking facilities and representative means of payment into national law, so as to promote the use of banking facilities. |
| Legal persons and arrangements and nonprofit organizations | |
| Legal persons – Access to beneficial ownership and control information (R.33) | The authorities should implement all the provisions of the OHADA regulations, particularly with respect to the updating of information.<br>The national authorities should:<br>• consider having the tax departments obtain more information on foreign companies who are shareholders in Nigerien companies; or<br>• assign the responsibility for obtaining, verifying, and preserving papers related to actual ownership and control of legal persons to notaries, whenever the notaries establish the statutes of same.<br>The national authorities are encouraged to 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) | In drafting the bill on NGOs, the Nigerien authorities are encouraged to examine the adequacy of the laws and regulations pertaining to NGOs so as to assess the vulnerability of the nonprofit organizations sector to the risks of terrorist financing and set in place an effective and efficient mechanism for monitoring and evaluating the activities of NGOs.<br>It is recommended that, in this bill, the Nigerien authorities institute obligations for NGOs to keep information on financial transactions for five years, and for this information to be accessible to the authorities upon request.<br>It is recommended that the Nigerien authorities organize awareness-raising campaigns with an eye to forestalling the risk of nonprofit organizations being misused for purposes of terrorist |

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| | financing.<br><br>The Nigerien authorities are encouraged to examine the reliability of the system of recording all donations of CFAF 500,000 or more, as planned under the anti-terrorist financing bill, 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 Niger's economy. |
| National and international cooperation | |
| National cooperation and coordination (R.31) | Given its essential role in the AML/CFT system, the authorities should designate CENTIF to be responsible for the development of a mechanism to bring together all relevant AML/CFT actors and develop an AML/CFT strategy. |
| International Conventions and UN Resolutions (R.35 and SR.I) | Complete the transposition of, and ensure conformity with, the provisions of the Vienna and Palermo Conventions.<br><br>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) | Since money laundering and terrorist financing are types of crime where there is often a cross-border dimension, the authorities should develop international relations and make optimal use of mutual legal assistance.<br><br>The Nigerien authorities are urged to set in place as soon as possible provisions for the confiscation of property of corresponding value to the value of the proceeds and instruments of crimes and offenses. The principle of dual criminality may constitute grounds for refusal until such time as the deficiencies noted under SR.II are remedied. |
| Extradition (R.32, 37, and 39, SR.V) | The authorities should improve and refine the statistics so that they can serve as an instrument for evaluating the system. |
| Other forms of cooperation (R.40 and SR.V) | The authorities should:<br><br>• set in place mechanisms to facilitate cooperation on money laundering matters between competent authorities and their foreign counterparts;<br><br>• adopt the terrorist financing law to permit international cooperation in combating the financing of terrorism;<br><br>• set in place a system for collecting information concerning international cooperation on AML/CFT matters;<br><br>• strengthen the controls and safeguards on exchanges of information and mutual assistance requests. |