Togo is a member of GIABA. This evaluation was conducted by the GIABA secretariat and was then discussed and adopted by its Plenary as a mutual evaluation as follows: GIABA 12th evaluation 5th May 2011.
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<th>Description</th>
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<td>ADB</td>
<td>African Development Bank</td>
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<tr>
<td>AML/CFT</td>
<td>Anti-Money Laundering and Counter Financing of Terrorism</td>
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<tr>
<td>AUDCG</td>
<td>OHADA Uniform Act relating to Company Law and EIG</td>
</tr>
<tr>
<td>AUDSGIE</td>
<td>OHADA Uniform Act relating to Companies and EIG</td>
</tr>
<tr>
<td>BC</td>
<td>Banking Commission</td>
</tr>
<tr>
<td>BCEAO</td>
<td>Banque Centrale des Etats de l’Afrique de l’Ouest</td>
</tr>
<tr>
<td>BIA</td>
<td>Banque Internationale pour l’Afrique au Togo</td>
</tr>
<tr>
<td>BPEC</td>
<td>Banque Populaire pour l’Epargne et le Crédit</td>
</tr>
<tr>
<td>BRS</td>
<td>Banque Régionale de Solidarité</td>
</tr>
<tr>
<td>BRVM</td>
<td>Regional Stock Exchange</td>
</tr>
<tr>
<td>BSIC</td>
<td>Banque Sahélo - Saharienne pour l’Investissement et le Commerce</td>
</tr>
<tr>
<td>BTCI</td>
<td>Banque Togolaise pour le Commerce et l’Industrie</td>
</tr>
<tr>
<td>BTD</td>
<td>Banque Togolaise de Développement</td>
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<tr>
<td>BTP</td>
<td>Civil Engineering and Public Works</td>
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<tr>
<td>C</td>
<td>Compliant</td>
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<tr>
<td>CASIMEC</td>
<td>Support and Supervision Unit for Mutual Institutions and Credit and Savings Institutions</td>
</tr>
<tr>
<td>CEN</td>
<td>Customs Enforcement Network</td>
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<tr>
<td>CENTIF</td>
<td>Cellule Nationale de Traitement des Informations Financières / Financial Intelligence Unit</td>
</tr>
<tr>
<td>CNAD</td>
<td>National Council for Drug Control</td>
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<tr>
<td>CNSA – CI</td>
<td>Comité national de Suivi des Activités du GIABA en Côte - d’Ivoire</td>
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<tr>
<td>CPP</td>
<td>Code of Penal Procedure</td>
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<tr>
<td>DAF</td>
<td>Directorate for Financial Affairs</td>
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<tr>
<td>DC/BR</td>
<td>Central Depository and Settlement Bank</td>
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<tr>
<td>DFS</td>
<td>Decentralized Financial System</td>
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<tr>
<td>DNFBP</td>
<td>Designated Non Financial Businesses and Professions</td>
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<tr>
<td>EICF</td>
<td>Closed-End Investment Company</td>
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<tr>
<td>F.CFA</td>
<td>Francs CFA</td>
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<tr>
<td>FATF</td>
<td>Financial Action Task Force</td>
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<td>FIU</td>
<td>Financial Intelligence Unit</td>
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<td>FONGTO</td>
<td>Federation of NGOs in Togo</td>
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<tr>
<td>GDP</td>
<td>Gross Domestic Product</td>
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<td>GFCF</td>
<td>Gross Fixed Capital Formation</td>
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<td>GIABA</td>
<td>Inter-Governmental Action Group Against Money Laundering in West Africa</td>
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<tr>
<td>IARD</td>
<td>Property and Casualty Insurance</td>
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<tr>
<td>ICPO</td>
<td>International Criminal Police Organization</td>
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<tr>
<td>IDF</td>
<td>General Inspectorate for Finance</td>
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<tr>
<td>IGE</td>
<td>General Inspectorate for Economy</td>
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<tr>
<td>IMF</td>
<td>International Monetary Fund</td>
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<tr>
<td>JPO</td>
<td>Judicial Police Officer</td>
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<tr>
<td>LC</td>
<td>Largely Compliant</td>
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<tr>
<td>LONATO</td>
<td>Togolese State Lottery</td>
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<tr>
<td>Acronym</td>
<td>Full Form</td>
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<tr>
<td>MDGs</td>
<td>Millennium Development Goals</td>
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<td>MEF</td>
<td>Ministry of Economy and Finance</td>
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<tr>
<td>ML/FT</td>
<td>Money Laundering and Financing of Terrorism</td>
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<tr>
<td>MSPC</td>
<td>Ministry of Security and Civil Protection</td>
</tr>
<tr>
<td>NA</td>
<td>Non Applicable</td>
</tr>
<tr>
<td>NC</td>
<td>Non Compliant</td>
</tr>
<tr>
<td>NPO</td>
<td>Non-Profit Organization</td>
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<td>OCRTIDB</td>
<td>Office Central de Répression du Trafic Illicite des Drogues et du Blanchiment / Central Bureau for Anti-Money Laundering and Illicit Drug Trafficking</td>
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<tr>
<td>OHADA</td>
<td>Organization for the Harmonization of Business Law in Africa</td>
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<tr>
<td>ONECCA</td>
<td>Ordre National des Experts Comptables et Comptables Agrées / National Association of Public and Chartered Accountants</td>
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<tr>
<td>OPCVM</td>
<td>Undertaking for Collective Investment in Transferable Securities</td>
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<tr>
<td>PC</td>
<td>Partially Compliant</td>
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<tr>
<td>PRSP</td>
<td>Poverty Reduction Strategy Paper</td>
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<tr>
<td>R</td>
<td>Recommendation</td>
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<td>RCCM</td>
<td>Register of Business Names and Liens</td>
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<td>SDRs</td>
<td>Special Drawing Rights</td>
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<td>SGI</td>
<td>Management and Intermediation Company</td>
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<td>SGP</td>
<td>Private Assets Management Company</td>
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<tr>
<td>SIAB</td>
<td>Société Interafrique de Banque</td>
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<tr>
<td>SIGFIP</td>
<td>Système Intégré de Gestion des Finances Publiques / Integrated Public Finance Management System</td>
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<td>SNTP</td>
<td>Société Nouvelle des Phosphates du Togo</td>
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<td>SR</td>
<td>Special Recommendation</td>
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<td>STR</td>
<td>Suspicious Transaction Report</td>
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<td>TFP</td>
<td>Technical and Financial Partner</td>
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<td>The Mission</td>
<td>Mutual Evaluation Mission to Togo</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
</tr>
<tr>
<td>UNODC</td>
<td>United Nations Office for Drug Control</td>
</tr>
<tr>
<td>UONGTO</td>
<td>Union of NGOs in Togo</td>
</tr>
<tr>
<td>UTB</td>
<td>Union Togolaise de Banque</td>
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<tr>
<td>WAEMU</td>
<td>West African Monetary and Economic Union</td>
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<tr>
<td>WCO</td>
<td>World Customs Organization</td>
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PREFACE

GENERAL INFORMATION AND METHODOLOGY FOR THE TOGO MUTUAL EVALUATION


2. This evaluation was premised on the laws and regulations in force, as well as all other documents provided by the national authorities in Togo. The Evaluation Mission also gathered additional information from the representatives and officials of relevant government agencies and the private sector during the on-site visit to Togo from 15 to 30 November, 2010. The list of agencies that met with the Mission during this visit is appended as Annex II to the full mutual evaluation report.

3. GIABA Secretariat hired five Experts from ECOWAS Member States to man the Togo Mutual Evaluation Mission. The experts were professionals with the requisite level of knowledge in AML/CFT, the desired skills in FATF Assessment Methodology, and experience in the evaluation of the sectors in their areas of expertise. The team included Mrs. Stella Attakpa (Operations Expert), Specialist in AML/CFT Risk Management in Ghana; Mr. Mamadou Thiandoum (Operations Expert), Director, the Judicial Police, Senegal; Mr. Robert Tonde (Financial Expert), Treasury Inspector, President of the Burkina Faso FIU; Mr. Maixent Houndji (Finance Expert), Official Representative of the BCEAO, Permanent Secretary of the Benin FIU; and Dr. Boubacar Diarrah (Legal Expert), Magistrate, Head of Legal and Judicial Department at the Mali FIU.

4. Coordinating the Mutual Evaluation Mission was a team from GIABA Secretariat made up of Mrs. Monique Désiré Bocande (Secretary for the Mission), Secretary of the Deputy Director General, GIABA; Mr. Madicke Niang (Assistant Coordinator), Assistant, Research, Evaluation and Documentation Department, GIABA; and Mrs. Mariame Ibrahim Toure (Mission Coordinator), Officer in charge of Research, Evaluation and Documentation, GIABA.

5. The Experts did an analysis of Togo’s current institutional framework, laws, directives, guidelines and other relevant provisions on AML/CFT. They grounded this work in the context of the institutional and legal frameworks in the sub-region, which encompass the ECOWAS, WAEMU, WAMU, CIMA and OHADA communities. The experts also held meetings with the representatives of regional structures like BCEAO, WAMU Banking Commission and BRVM.

6. This report presents the state of legal and institutional measures for AML/CFT in Togo, focusing on how efficiently and effectively these measures were being implemented at the time of the country visit (15 – 30 November, 2010) and in the two-month period after the country visit. The report sums up the deficiencies in Togo’s national AML/CFT system in the summary table that presents ratings on compliance with FATF’s 40 + 9 Recommendations.
(Cf. table 1). It also recommends remedial measures Togolese authorities should take to enhance national AML/CFT compliance with international norms and standards (Cf. table 2).
SUMMARY OF EVALUATION REPORT

7. This summary presents the salient points in Togo’s anti-money laundering and counter terrorist financing system, observed by the evaluation mission during the on-site visit (from 15 to 30 November, 2010), and in the two-month post-visit period. It describes and analyses the deficiencies in the AML/CFT system, and then recommends corrective measures for the Togolese authorities to take. The report also highlights Togo’s compliance rating with the criteria under the Forty plus Nine Recommendations of the Financial Action Task Force (FATF).

Main conclusions

8. The mainstay of Togo’s economy is the primary sector. In 2009, growth rate was 9.5% in the primary sector, 1.5% in the secondary sector, and -1.8% in the tertiary sector. The formal financial sector, driven mainly by banks and financial institutions, is a sector where Togo is doing well. In fact, the country provides 6.4% of the banking services in the WAEMU zone. Despite this good performance, nationwide bank penetration rate is still low. The informal sector plays a vital role in socio-economic life, especially small and medium-sized businesses, alternative money transfer systems, manual currency exchange services and revolving credit systems. However, there is no study that provides estimates of the financial flows in the informal sector.

9. The Togolese authorities consider that Togo is at risk of money laundering and terrorist financing due to its geographic location (sea access; transit country for landlocked countries) and the predominant role of the informal sector in the nation’s socio-economic life. The evaluation Mission observed that Togo has a legal and institutional system in place for anti-money laundering and counter terrorist financing. The system criminalizes the proceeds of illicit drug trafficking and now has a law against all forms of money laundering. But, the law is weak in two main respects. First, it does not criminalize some predicate offences of money laundering; and secondly, its provisions do not cover self laundering.

10. Togo also has a law on counter terrorist financing. This law criminalizes the financing of terrorism in terms similar to those in Article 2 of the 1999 Vienna Convention, but it lacks clear provisions stating clearly that the criminal judge can deduce the mental element of a terrorist financing offence from objective factual circumstances. The Mission had no evidence that Togo has adopted the sections annexed respectively to the AML law and the CFT law, whereas these annexes contain several obligations for subject categories.

11. Apart from these weaknesses, which the AML/CFT laws in Togo need to address, the Mission observed also that the enforcement of legal provisions is poor, which makes it hard to assess the efficiency of the AML/CFT system. Indeed, Togolese courts have still not issued sentences for the money laundering offences they have been prosecuting for quite some time. Likewise, they have taken no measure to freeze or confiscate criminal assets. No provision has been made for a mechanism to do so and no authority is designated to order the freezing or confiscation of such assets. Overall, record keeping is poor and the Mission noted there was a growing lack of information, as well as poor awareness and training of subjected categories in all the sectors, especially the judicial sector.
12. The Togo Financial Intelligence Unit began operations in 2009. In accordance with the laws in force, the Togo FIU is an administrative FIU and a pillar in the AML/CFT system. However, despite being a pillar in the AML/CFT system, the Togo FIU still lacks technical and financial resources to function properly. During the on-site visit, the Mission observed that the FIU is made up of six mandatory members, appointed from among top-ranking civil servants and officials at the BCEAO, and a support staff team that includes an analyst, an IT officer, an accountant and two secretaries.

13. The Uniform Laws on AML/CFT subject a group of public and private sector players to ML/FT detection and prevention obligations. They provide stringent measures that bind financial institutions to comply strictly with these AML/CFT obligations. In addition, there are other instruments at the sub-regional level that are more or less binding as well. These instruments subject Designated Non Financial Businesses and Professions, as well as other non-financial bodies, to similar obligations. The Mission noted that none of the financial sector players that it encountered was taking a risk-based approach to AML/CFT. There are encouraging signs that the national anti-money laundering and counter terrorist financing strategy, which is still being processed for adoption in Togo, would integrate the risk-based approach in AML/CFT provisions.

14. The financial sector is the only sector doing effective monitoring and supervision of compliance with AML/CFT obligations. This monitoring and supervision role is performed by different bodies and/or institutions whose remit spans the sub-region. Financial institutions, especially banks and micro-finance institutions, are monitored and supervised by the WAMU Banking Commission, the BCEAO and Togo’s Finance Ministry. The regional financial market is regulated, monitored and supervised by the Regional Council for Public Savings and Financial Markets (CREPMF). As for the insurance sector, it is supervised by the Inter-African Conference on Insurance Markets (CIMA) and, more specifically, by the Regional Insurance Control Commission (CRCA). The problem in this sector is poor compliance with AML/CFT obligations among subjected categories and inadequate monitoring of compliance by the competent authorities. The lack of human and financial resources is the cause of such poor monitoring in the financial sector. But no sanctions are being imposed for non-compliance with AML/CFT requirements.

15. Togo has provisions that govern registration of legal persons and Non Profit Organizations (NPOs). The provisions under the OHADA Uniform Act, relating to Commercial Companies and Economic Interest Groups, require real transparency in information on beneficial ownership. But the lack of human and financial resources, especially at the Lome Commercial Court Registrar’s office, makes it difficult to maintain compliance with the said obligations. The Mission found that the process of updating information on commercial companies and their beneficial owners is badly affected by the poor working conditions on the ground.

16. Togo has an appropriate framework for national and international cooperation. The most suitable mechanism for implementing this cooperation at the domestic level is the Inter-Ministerial Committee for AML/CFT, instituted by Order N°0136/MSPC/MEF/MJRIR of 11 August, 2009. Although this normative framework is in place, Togo has been rather weak on international cooperation. The justice system still makes little use of the cooperation mechanisms provided under International Conventions or the Special Resolutions of the United Nations.
Legal systems and related institutional measures

17. Togo criminalizes money laundering under the Uniform Law N° 2007-016 of 6 July 2007 in accordance with relevant United Nations Conventions. This criminalization encompasses acts of conversion, transfer, handling of goods, concealment, disguise, acquisition, possession and use. Law N°80-1 of 13 August 1980, instituting the Penal Code and related criminal provisions, covers almost all the underlying offences provided by FATF. The scope of jurisdiction however leaves out some key offences, such as terrorism, human trafficking and smuggling of migrants, corruption of international civil servants, stock market crimes and cyber crime.

18. The Togolese authorities use the threshold approach to categorize predicate offences of money laundering. This approach is compliant with FATF Recommendations, for it covers offences punishable by prison sentences of 11 days and above. In like manner, the law provides that judges can pass a sentence from evidence assessed on the basis of their intimate conviction. But at the same time, interpretation of criminal law in Togo goes on a stricto sensu basis, which considerably waters down the power judges may derive from using their intimate conviction.

19. Togo’s legal system should clearly criminalize self laundering, especially because this contravenes no general principle of law in the country. Instead, such an approach would ensure the smooth enforcement of criminal law, as it is administered on a stricto sensu basis. And, because Togo has no jurisprudence in this regard, it is quite difficult to side with the judicial authorities when they purport that criminal judges have the latitude to prosecute the authors of an underlying offence, as well as those who have committed a money laundering offence.

20. Under Article 3, paragraph 10 in the AML Act, property is defined as all types of tangible or intangible assets, movable or immovable assets, fungible or non-fungible assets, as well as documents or instruments providing evidence of title to such assets or rights thereto. It would be useful for the law to set out clearly that money laundering is an offence applicable also to indirect goods.

21. Natural persons found guilty of a money laundering offence are liable to a sentence of three to seven years in prison and a fine equal in value to three times the assets or funds involved in the money laundering transactions. Legal persons other than the State who cause a money laundering offence to be committed are liable to a fine that is five times the value of the one charged for natural persons, without prejudice to the sentences these latter may face as the authors of, or accomplices to the offence. No condemnation for money laundering has been reported. The AML Law came into force not too long ago, on 6 July, 2007. And, the FIU began operations barely 18 months ago, on March 1st, 2009. It is worth noting that steps are being taken to prosecute cases of money laundering, but the courts have not yet ruled on them.

22. Togo criminalizes the financing of terrorism, as required by Article 2 under the International Convention for the Suppression of the Financing of Terrorism. Article 4 under Uniform Act N°2009-022 of 28 August, 2009, relating to counter terrorist financing in Togo, provides that «the terrorist financing offence is any act committed by any means whatsoever, either directly or indirectly, with the deliberate aim of providing, gathering or handling, or of
attempting to provide, gather or handle funds, assets, financial or other services to cause them to be used, or in the knowledge that they will be used, in whole or in part, to commit:

- An act that constitutes an offence in the sense provided in one of the international legal instruments annexed to this law, regardless of whether such an act is committed;
- Any other act intended to cause death or inflict serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or abstain from doing any act (…)

23. The funds mentioned under Article 4 of the AML Law concern all assets related directly or indirectly to the transaction. There is no way to distinguish between lawful funds and unlawful funds. The law does not require that funds be used effectively to commit one or several acts of terrorism. It is enough to have “the intention of seeing them used, or the knowledge that they will be used in whole or in part to commit” acts of terrorism.

24. The CFT Law does not prohibit terrorist organizations. The Penal Code, under Articles 187 and 188, makes provision for the prosecution of terrorist organizations, not specifically as terrorist entities, but rather as criminal conspiracy. Considering that criminal law is interpreted on a stricto sensu basis in Togo, we will establish that the Penal Code penalizes, on grounds of complicity in terrorism, those who give terrorists the means to act. Togo’s legal system does not prosecute organisations that gather funds for terrorist activities as terrorist organisations. These latter can be charged only with criminal conspiracy, because Togo’s domestic legal system still does not criminalize acts of terrorism.

25. Under Article 32 of the CFT law, natural persons found guilty of a terrorist financing offence are liable to a sentence of at least ten (10) years in prison and a fine equivalent in value to at least five times the assets or funds used for terrorist financing. Those charged with attempted terrorist financing are liable to the same penalties. The CFT Law, under Article 41, Paragraph 1, sets out obligatory additional penalties, which, among other things, permit courts to confiscate and deposit in the Public Treasury all the funds and other financial resources used to finance terrorism. Considering that legal persons cannot be given custodial sentences, Article 38 of the CFT Law stipulates that legal persons be sentenced to pay a «fine equal in value to five times the fine imposed on natural persons».

26. After adopting the two Uniform Acts on AML/CFT, Togo took regulatory measures to establish and operationalise the Togo Financial Intelligence Unit. It issued Order N°2008-37/PR of 28 March, 2008, instituting the FIU, Order N°2009-008/PR of 14 January, 2009, appointing its members, and a decree appointing FIU institutional correspondents in administrative departments. Under Article 17, paragraph 1 of the AML law and Article 17 of the CFT law, the FIU is a financially independent administrative service with powers to make decisions on issues within its remit. But for the Togo FIU, self-reliance at the operational level remains a far cry, owing to the notorious lack of resources, especially material and financial resources. The FIU does not have a budget line of its own. It cannot raise funds for its projects without turning to the supervising authority. Since inception, the Unit has received nineteen suspicious transaction reports. Its basic legal framework is largely compliant with standard requirements in this regard. The suspicious transaction reporting framework is well structured, complete and detailed. The organization and administration
look adequate for the duties of an FIU. The Mission expects that, with time, the FIU will gain experience and knowledge to improve its capacity to work in an effective manner.

27. Togo’s legal framework sets out a broad definition of the term “asset” and makes provision for confiscating laundered assets, proceeds of money laundering, or funds used for the financing of terrorism. The law also sets out provisional measures that include the freezing or seizure of assets in order to obstruct the transaction, transfer or disposal of confiscated assets. But, there are no domestic provisions that formally establish requirements for implementing the said provisional measures. The competent authorities have extensive powers to trace and confiscate assets in relation to ML/FT. However, no law or regulation states how to protect the rights of bona fide third parties whose assets are seized on unjustified grounds. The law makes no provision either for the annulment of suspicious contractual arrangements that may hinder the recovery of confiscated assets. Likewise, it does not oblige suspected offenders to establish the lawful origin of confiscated property, or provide legal provisions/measures for confiscating assets where there is no criminal sentence.

28. Togo has not been good at implementing UN Security Council Resolutions 1267 and 1373. It has produced only two reports, respectively for the United Nations Sanctions Committee and the Committee against Terrorism, on progress in the delivery of the said Resolutions. It has adopted no domestic laws that name the authority competent to freeze criminal funds and other assets relating to AML/CFT. Togo has no legal mechanism that sets out the modalities for freezing and unfreezing funds. It has no mechanism that compiles the national list of suspected terrorist persons/entities, as required by the United Nations Resolutions.

29. Togo has no courts specialized in money laundering and terrorist financing. In the case where the transactions reported to the FIU bear evidence that may constitute a money laundering or terrorist financing offence, AML/CFT law requires that the FIU submit a suspicious transaction report (STR) to the State Prosecutor, as the representative of the prosecution and head of the investigation authorities. The Prosecutor who receives the report is required to initiate prosecution formalities without delay and refer the matter to an investigating magistrate. In the course of these investigations, the magistrate may, in accordance with the Togolese Code of Penal Procedure (CPP), commission judicial police officers (JPOs) to examine witnesses under his supervision (Article 64, CPP).

30. Togo has not been good at providing basic training in money laundering and terrorist financing to its investigation and law enforcement authorities. Likewise, it does not offer steady on-the-job training. Barely a handful of magistrates and investigation authorities have been trained in AML/CFT. Togolese courts have so far passed no sentences on money laundering and terrorist financing. The dissemination of the AML law and CFT Act among the law enforcement and investigation authorities is inadequate.

31. The communication and information management system on money value transfers and bearer negotiable instruments is far from efficient and does not meet the criteria under FATF Special Recommendation IX. Indeed, the declaration or disclosure of currency or bearer negotiable instruments is done on a regular basis only at the airport and land borders. This is what the Mission gathered during its meetings with the customs authorities (in 2008, a directive from top ranking customs authorities set out a new approach for Togo). The passengers who travel by air do not systematically declare the currency they are carrying. The authorities in charge also fail to carry out random passenger checks with the frequency and
efficiency needed to identify the passengers who make false declarations on the amount of currency they are travelling with. As regards information management, the customs have a system for keeping records on the currency declaration forms they gather from passengers, but are yet to put in place a mechanism by which they can communicate such information systematically to the FIU.

32. Togo does not exercise strict controls on the transportation of precious metals and gemstones. It has no information system in place to alert transit and destination countries about the transfer of precious metals and gemstones. Togo does not produce gold, but plenty of it transits through its national territory in the hands of dealers in precious metals and gemstones (who are not well informed about AML/CFT). Information management regarding crossborder money value transfers and bearer negotiable instruments is inefficient. The information management system is not automated or computerized.

Preventive measures – Financial institutions

33. Under Law N°2007-016 of 6 July 2007, relating to anti-money laundering, and Law N°2009-022 of 28 August 2009, relating to counter terrorist financing, “any natural or legal persons who, in the exercise of their professional duties, are responsible for directing, supervising or providing expertise on transactions for depositing, exchanging, investing, converting or otherwise handling other movements of capital or other assets” are subject to the obligations for preventing and detecting money laundering and terrorist financing. The financial institutions concerned are the Public Treasury, the BCEAO, credit institutions (banks and financial establishments), Post Office financial services, the Consignment Deposits and Loans Fund or other similar bodies, insurance and reinsurance companies, insurance and reinsurance brokers, mutual institutions or credit and savings cooperatives, the BRVM, DC/BR, SGI, SGP, OPCVM, EICF, and Licensed MVT service operators. In addition to these provisions, there are other legal instruments and regulations at the regional level, especially in the WAEMU zone.

34. There are some deficiencies in the legal framework that sets out the obligations of financial institutions in AML/CFT. These especially appear in the measures for customer due diligence and identification, respondent banking relationships, and enforcement of suitable counter measures for countries not applying, or insufficiently applying FATF Recommendations. The Mission observed that the financial professions, which are subjected to AML/CFT, have little knowledge of their obligations. The professional associations in Togo began to take interest in AML/CFT issues only after the recent awareness seminars of the FIU. The sector’s poor awareness of AML/CFT Uniform Laws undermines information and outreach efforts for its members.

35. The banking sector is one of the most conversant with the national AML/CFT system. However, compliance with obligations is more effective in financial institutions within major banking groups, than in the smaller domestic banks. All the banks encountered did have internal procedures for AML/CFT, but these are not always implemented. The banks informed the Mission also that there were no anonymous accounts in their portfolios. They are not authorized to open accounts based on non face-to-face transactions. The services offered in this area are limited to consulting the balances and transaction history of accounts. It is worth noting also that banks are the main reporting entities that send suspicious transaction reports to the FIU on a regular basis.
36. The micro-finance sector does not implement obligations for customer due diligence, record keeping and suspicious transaction reporting required for AML/CFT. This lack of identification procedures poses a major risk for the sector, looking at the huge sums of deposits that it collects. The Mission found that some institutions, with outstanding deposits of about six (6) billion Francs CFA at the time of the on-site visit, had no procedures in place to reasonably identify depositors and account holders. Some players told the Mission they had difficulties in identifying their customers. The difficulties come from the lack of decentralized administrative structures in areas where their institutions are based and the low literacy levels of customers. The institutions try to overcome such difficulties by accepting to identify their customers using their voter’s cards and birth certificates, or those of their children, without keeping copies of the documents. The professional association of micro-finance institutions recently established an online forum where members «exchange information on credit». But in practice, this forum is a whistle blower on customers who have had trouble in paying back their loans.

37. The insurance sector is largely non-compliant with AML/CFT obligations. The Mission found that the Professional Association of Insurance Companies and individual insurance companies were not meeting their obligations. The sector is subject to Community Regulations issued by CIMA. And, the said Regulations set out the sector’s obligations for AML/CFT. Management and Intermediation Companies show a partial level of compliance with identification requirements. They strictly ask customers for their identification papers and documents. The Togo Consignment Deposits and Loans Fund (serving as the Consignment Deposits Fund), at the General Directorate for Treasury, provides banking services to individuals. Yet, it has no customer due diligence measures in place. The officials of this division told the Mission that individuals can open accounts simply upon request. They can deposit as much money as they want into the accounts. They can even do money transfer transactions. And yet, there is no verification on the purpose of such transactions. The licensed MVT service operators, who encountered the Mission, were totally ignorant of their obligations in AML/CFT. They admitted that they were not observing prescribed currency exchange thresholds.

38. In the rapid money transfer sector, banking institutions sign contracts with Western Union and other sub-contractors. These latter do not have to be financial institutions. The sub-contractors are supposed to be chosen on the basis of rigorous criteria for integrity and respectability. But the Mission had no clear explanation in this regard. On customer due diligence requirements, the sub-contractors act under the responsibility of their contracting institutions. But, none of them takes any special measures apart from those put in place by Western Union. It is Western Union also that provides training and an IT platform for their transactions. The sub-contractors take no measures to identify beneficiary owners. The banks in Togo report that they have no other licensed intermediaries for banking transactions, apart from these sub-contractors.

39. On the whole, banking institutions have not put in place adequate AML/CFT risk management systems for determining whether or not a potential customer or beneficial owner is a Politically Exposed Person (PEP). In practice, some banks within large international banking groups establish and update their list of PEPs and seek authorization from their senior management before entering into relations with this category of customers. Other banking institutions take customer due diligence measures for marketing purposes, rather than to put in place a risk management system in accordance with FATF requirements. Togo has to see to it that measures are in place to oblige institutions to take measures, to the extent
possible, for probing the context and purpose of unusual transactions, and to set out their findings in writing. Auditors should be added to the list of persons who receive the findings of the said probes.

40. There are no legal provisions that compel financial institutions to gather certain pieces of information on their respondent banks. In practice, however, financial institutions exchange compliance questionnaires with other banking institutions before entering into business relations with them. But, they do not need authorization from their senior management to establish relations with a respondent bank. In like manner, the information gathered on respondent banks is checked against reliable and publicly available sources. No preventive measure is in place to verify whether this type of relationship includes the opening of transit accounts.

41. Under Article 5 of the AML Law, business introducers and other financial institutions are subject to the same obligations for customer due diligence. CIMA Regulation, Article 17 includes insurance and reinsurance brokers to this list of financial institutions. By virtue of this fact, they are required to comply with all AML/CFT requirements set out for financial institutions.

42. Togo has no laws or regulations for dealing with issues that obstruct the exchange of information between financial institutions under the conditions required by law. The Mission gathered that some banks already exchange information with the competent authorities. Because no legally binding provisions are in place, some banks need prior authorization from their senior management before entering into new relations with respondent banks.

43. On record keeping, banks and insurance companies seem to be complying with set requirements. The Togo FIU reports, however, that these institutions take between one week and one month to reply to its requests for information. Such slow information sharing practices affect FIU efforts to process suspicious transaction reports in a timely manner. In the micro-finance sector, where actors know and observe record keeping requirements, there are some difficulties as well to produce documents in a timely manner. What these institutions do in practice is to keep their records in a room, without filing and archiving them systematically. MVT service operators do not comply with this obligation.

44. On the whole, financial institutions are under no obligation to obtain the address of the originator, or to keep records on wire transfer information. There is no obligation for intermediary institutions or any beneficiary financial institution in the payment chain to verify that all the information required for wire transfers and on the originator are sent properly with the transfer order. The counter terrorist financing law makes no provision obliging financial institutions to adopt effective risk-associated procedures in order to identify and process wire transfers without complete information on the originator. The measures that are proposed in this regard fall within the general framework of compliance with these laws.

45. The AML and CFT laws provide that financial institutions, which do not comply with their obligations, and which fail to implement customer due diligence and/or have deficiencies in their internal control procedures may face sanctions from the control authority with disciplinary powers in the sector concerned. Likewise, criminal sanctions are provided for natural and legal persons under the anti-money laundering and counter terrorist financing efforts being made in Togo (see above – legal system and related institutional measures).
46. On supervision and monitoring of compliance, almost all financial institutions have regulations in place. They have designated supervision and monitoring authorities and taken protective measures to prevent criminals, or their accomplices from taking over institutional transactions. But, the inspections in these financial institutions are not regular and cannot cover all the institutions concerned within a reasonable time period. AML/CFT is given very marginal attention during inspections by supervision and monitoring authorities, because these authorities lack human resources. Financial institutions, in particular banks and micro-finance institutions are supervised and monitored by the WAMU Banking Commission, the BCEAO and Togo’s Finance Ministry. The regional financial market is regulated, controlled and supervised by the Regional Council for Public Savings and Financial Markets (CREPMF). The insurance sector is under the control of the Inter-African Conference on Insurance Markets (CIMA), and specifically the Regional Insurance Control Commission (CRCA).

47. The guidelines for implementing the AML law in Togo’s financial sector are issued by sub-regional bodies. In the banking sector, BCEAO issued Instruction N°01/2007 of 2 July, 2007. The Instruction guides banks and financial institutions, Post Office Financial Services, Consignment Deposits and Loans Fund (or similar bodies), Micro-finance institutions, and licensed MVT service operators on suspicious transactions and internal measures for AML. Likewise, the CIMA Council of Ministers adopted Regulation N°04/CIMA/PCA/08 of 4 October, 2008 for insurance sector procedures in AML. The CREPMF, in November 2009, also issued an Instruction for licensed stakeholders in the WAMU Regional Financial Market to enhance the framework for applying AML measures in financial market activities across the sub-region.

Preventive measures – Designated Non Financial Businesses and Professions

48. Article 5 under Law N° 2007-016 of 6 July, 2007 on anti-money laundering in Togo, and Article 3 under Law N°2009-022 of 7 September, 2009 on counter terrorist financing apply AML/CFT prevention and detection obligations to “any natural or legal person who, in the performance of their duties, is in charge of directing, controlling or providing advice on transactions for depositing, trading, investing, converting or otherwise handling any other movements of capital or property”. These persons include Designated Non Financial Businesses and Professions such as: business introducers to financial institutions, auditors, real estate agents, dealers in high value objects, such as works of art (paintings, including masks,), gemstones and precious metals, cash transporters, casino and gambling establishment owners, directors and managers, including State lotteries, travel agencies, and non-governmental organizations.

49. The DNFBP sector knows little about AML/CFT laws. Hence, players poorly understand AML/CFT requirements for the sector and implement them poorly. The players do not yet seem to know and realize their sector may become a vehicle for money laundering and terrorist financing. Professional associations (Lawyers, Notaries, and Accountants), casinos, gambling establishments and the Togolese State Lottery (LONATO) do little about customer due diligence and beneficial owner identification, record keeping, and suspicious transaction reporting. DNFBPs have sent no STR to the Togo FIU since it was established.

50. The supervision authorities, or self-regulatory mechanisms of these professions, have so far not issued guidelines for their members to implement AML/CFT obligations,
especially internal procedures and policies in their respective activity areas. There is specifically no regulation for the real estate sector and real estate agents.

51. The requirements for opening and running casinos in Togo include inter-ministerial authorization from Ministry of Economy and Finance and Ministry of Security. Applicants must first submit a written request, along with the necessary supporting documents. During inspections for compliance with provisions of the inter-ministerial Order, Article 5 under Law N°61-31 of 26 August, 1961 provides that non-compliant parties may lose their authorization to operate. Article 8 of the said Law sets out penal sanctions against persons that serve as casino directors or deputy directors without prior authorization from the Minister of Security; or those who conceal, or attempt to conceal all or part of the proceeds of gambling. The Mission had no statistics or inspection reports to cross reference the effectiveness and efficiency of these measures. It noted however that inspections for compliance with set requirements did not cover anti-money laundering and counter terrorist financing.

52. Article 13 under the AML Uniform Law requires DNFBPs, on the basis of risk assessment, to apply enhanced customer due diligence measures in their business transactions or relations with Politically Exposed Persons (PEPs). Such measures include taking appropriate steps to determine the origin of property or funds that belong to the PEP. The weaknesses in compliance with FATF Recommendations 6 and 8, 9, 10 and 11, which were stated above in financial institutions, are seen also in DNFBPs. These DNFBPs observe partial compliance with the customer due diligence measures and record keeping requirements under national AML/CFT laws. In practice, they do no risk management.

Legal persons and arrangements and Non Profit Organizations

53. Commercial activities in Togo are governed by the OHADA Uniform Act on General Commercial Law of 1st October 1997 and by the Uniform Act, relating to Commercial Companies and Economic Interest Groups of 17 April 1999, which are based on the OHADA Treaty of 17 October, 1993. These two OHADA Uniform Acts define the legal regime of commercial companies as well as the conditions for creating and registering them in OHADA Member States. Article 27 of the AUDCG requires companies and other groups to get registered at the Registry of Business Names and Liens in the court with jurisdiction over the area where their registered office is located. These formalities must be concluded in the month the business is established.

54. The AUSCGIE requires transparency in information on beneficiary ownership. But, with the lack of human and financial resources, especially at the office of the Registrar at the Lome Commercial Court, observance of the said obligations has been difficult. Record keeping on commercial companies and their beneficial owners will not happen under the difficult conditions the Evaluation Mission found in Togo. Further, the fact that the informal sector plays a predominant role in Togo’s economy makes it difficult to obtain adequate information on economic players and the transactions they actually engage in.

55. Togo has no Trusts or Fiduciary companies. These arrangements are not covered in Togo’s legal system. No clearly stated legal provision, or a mechanism for preventing the creation and unlawful use of such arrangements, is in place in Togo. The Togolese authorities should prepare legislation on Trusts and fiduciary companies, so that they are able to regulate them and, where appropriate, to ban them in an explicit manner.
56. Under Article 1, Decree N°92-130/PMRT of 27 May, 1992, Non Governmental Organizations (NGO) are non-profit, apolitical national and international organizations, established as private initiatives with natural or legal persons that come together for non-commercial purposes to perform activities for the public good, solidarity or benevolent work for development. Togo has about 560 officially licensed national development NGOs. Their activity areas include crop and livestock farming, education and socio-professional integration of young people, health, social infrastructure for grassroots communities, women’s development and protection, social and humanitarian initiatives and capacity building for grassroots community organizations. These licensed NGOs can sign MOUs with the Government of Togo. Although there is a considerable number of NGOs playing an important role in Togo, the Mission had no knowledge of studies conducted to assess their vulnerability to the risks of terrorist financing.

57. AML Law N°2007-016 of 6 July, 2007 on anti-money laundering (AML) provides that non-profit organizations are required to observe due diligence and make suspicious transaction reports to the FIU. Along the same lines, Law N°2009-022 of 7 September, 2009, on counter financing of terrorism imposes specific due diligence obligations on non-profit organizations. These measures include registration of all non-profit organizations in a register at the supervision authority, the registration of all donations they receive, indicating the names of the donors, and the provision of the said records to the FIU as well as to any other competent authority.

58. The monitoring of NGOs is a necessary, yet challenging activity. There are risks tied to the many different activities of these organisations, especially fund raising, grant making and money value transfers. Such risks are even more pronounced because of the privileges of signing an MOU with the State. The services in charge at the Ministry of Plan (Division for Participatory Local Development and Non Governmental Organizations) face huge challenges in identifying these organizations and monitoring their financial status. There is almost no control and monitoring of NGOs in Togo, even though they represent a risk for money laundering and terrorist financing. The Mission was unable to obtain statistics on the inspections conducted for NGOs and the sanctions levied for non-compliance. The lack of resources in supervision bodies is a key factor in this lack of control on NGOs.

National and International Cooperation

59. Togo established an Inter-ministerial Committee for internal cooperation on Anti-Money Laundering and Counter Terrorist Financing with Decree N°0136/MSPC/MEF/MJRIR of 11 August 2009. This multidisciplinary framework brings together public and private sector players to plan, drive and coordinate AML/CFT in Togo. But it does not function properly, because of the dearth of financial and technical resources. Togo also has FIU correspondents in place, appointed under Order N°293/MEF/CENTIF-TG. The FIU has consultation mechanisms, but lacks synergy between AML/CFT players, especially among investigation and prosecution authorities. The Mission observed that the various agencies each work separately, except the Office Central de Répression du Trafic Illicite de Stupéfiants et du Blanchiment de capitaux, which is made up of police and gendarme officers. At land borders, servicemen (Customs, Immigration Police and Secret Service Agents) act as if they were competing rather than collaborating with one another. The Mission considers that the adoption of the national AML/CFT strategy will enable Togo to overcome the deficiencies observed in national cooperation.
60. At the international level, Togo has signed major conventions for combating organized crime, including the 2000 Palermo Convention against Transnational Organized Crime, the 2003 Merida Convention against Corruption, the 1998 Vienna Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances, and the 1999 United Nations Convention against the Financing of Terrorism. Togo has also signed some cooperation agreements at the regional level. For example, the Togo FIU has signed some partnership agreements with the FIUs in the sub-region and with some FIUs in Europe. These partnerships serve as channels for sharing information.

61. On mutual legal assistance, the Togolese legal system upholds dual criminality as a requirement for less intrusive and non compulsory measures. But the practices on the ground seem to be a far cry from this principle. The judicial authorities affirm that they execute all international rogatory commissions, regardless of the mission requested within their remit, and do so on the basis of the above international instruments that the Togolese authorities have signed. However, these authorities take no action to uphold justice when such cases arise, for example, when it comes to choosing which court can most properly deal with persons under prosecution in several countries. In like manner, there is no appropriate mechanism that can respond in a timely and effective manner to requests for mutual legal assistance sent by foreign countries to detect, freeze or confiscate laundered assets that are products and instrumentalities of money laundering or terrorist financing offences. There are also no measures for coordinating the seizure/confiscation and distribution of funds with other countries. Likewise, there is no fund where the authorities concerned can deposit confiscated assets, either in whole or in part.

62. Under the laws in Togo, money laundering and terrorist financing are extraditable offences. But clear measures need to be taken to ensure that dual criminality is not used to obstruct procedures in this regard. On matters relating to counter terrorist financing specifically, Togolese substantive law needs to clearly criminalize certain offences, such as terrorism, human trafficking and the smuggling of migrants, to prevent the obstruction of extradition proceedings.

63. Togo has an appropriate legal framework for cooperation under the anti-money laundering law and the counter financing of terrorism Act. But, even with this normative framework in place, cooperation has been poor, except for the one-off initiatives led by the Togo FIU. The judicial system has still not used any of the cooperation mechanisms provided in the International Conventions and the United Nations Special Resolutions. Togo’s poor record in this regard is turning out to be problematic for domestic and international cooperation.

Resources and Statistics

64. On the whole, Togo lacks human, financial and technical resources for national players in its AML/CFT system. The country has legal and institutional frameworks compliant in some respects with international norms and standards. But the AML/CFT system is painfully ineffective and inefficient. The investigation and prosecution authorities lack adequate and proper training in AML/CFT, particularly investigation and detection techniques. They also suffer a conspicuous lack of human and material resources to perform their duties properly. The emphasis has to be on enabling these authorities, especially magistrates and investigators, to specialize in AML/CFT. The uncertainties surrounding
resource availability for the FIU’s 2010 budget undermine its ability to operate efficiently. The Unit needs IT equipment commensurate with its requirements and still has not set up a secure IT network. All players in the financial and DNFBP sectors need training. The supervision and monitoring authorities in these sectors specifically require more human, financial and technological resources to give them adequate means to do their work.

65. The FIU and Inter-ministerial Committee respectively have taken no steps to assess the effectiveness of the anti-money laundering and counter terrorist financing system that was put in place recently. No substantial record keeping on AML/CFT is being done in Togo. The approach to record keeping used generally by the services concerned fails to provide adequate statistics for the system in place. The judicial authorities keep incomplete records on the underlying offences of money laundering. The courts have no policy on a record keeping system. No seizure, freezing or confiscation of assets in relation to AML/CFT has been reported. Reliable statistics on mutual legal assistance and extradition are scarce.
1. GENERAL INFORMATION

1.1 General Information on the Country and its Economy

Geographic and Political Situation

66. Togo is located in West Africa. It shares borders with Benin to the East, Ghana to the West, Burkina Faso to the North and the Atlantic Ocean to the South. The name Togo comes from «Togodo» that means “the other side of the river”. The land surface area is 56.785 km². It represents half the land surface area of Benin and one-sixteenth that of Nigeria. Togo has a coastline that is about 50 km long. Lome, the economic and political capital, is located between the coastline to the South and Ghana to the West.

67. Togo has a subequatorial climate in the south and sub-sahelian climate in the north. The average annual temperature varies between 27.2° C and 30° C in the coastal area. The land is made up mainly of plains, plateaus and mountains. The Atakora mountain range stretches from the North to the East and from the South to the West of the country. The major rivers in the country take their rise from these mountains, including the Mono River. The lower part of the river and its tributaries, the Anié and Ogou, form a natural boundary with Benin.

68. Togo had an estimated population of 5.858.673 million in 2008 and a population density of 108 inhabitants per square kilometre (km²). The population growth rate is about 2.72 per cent. The majority of the people, about 64 per cent, live in the rural areas, against 36 per cent in the urban areas. Togo has a predominantly young population. About 25.6 per cent are below 25 years, 58.1 per cent between 25 and 64 years, and barely 16.3 per cent are above 65 years.

69. Togo has about forty (40) tribes. The major ones are the Ewé, Kabyè, Kotokoli and Moba. It has three dominant religions. The people are traditional believers (50%), Christians (35%), or Muslims (15%).

70. Togo became independent on 27 April 1960 and had several military regimes from 1963 to 1989. It entered an era of democratic rule in 1990, but this has not completely allayed the socio-political and economic problems facing the country.

71. The Constitution of the 4th Republic was proclaimed on 14 October, 1992 and states that the Republic of Togo is a constitutional, secular, social and democratic State. It reinstates the multiparty, semi-presidential system with a dual executive and a parliament with two chambers. Parliament has eighty one members, elected for a period of five years. The members of parliament can be re-elected several times.

72. Togo has five administrative regions. These regions are organized into districts. The biggest commune in each district serves as the headquarters. The Lome commune has a special status defined by the decentralization and local freedoms Act. The country now has 35 districts and one sub-district.
Togo is a member of the West African Monetary Union (WAMU). The WAMU has eight (8) Member States all from the West Africa sub-region. It was formed on the basis of the treaty signed on 20 January 2007. The Banque Centrale des Etats de l’Afrique de l’Ouest (BCEAO) is the remitting institution that issues bank notes (CFA Franc) for WAMU Member States. The French treasury guarantees convertibility of the CFA franc, a currency pegged to the Euro. Togo is a member of the Franc Zone. It is also a member of the West African Economic and Monetary Union (WAEMU) that has the same Member States as the WAMU. The WAEMU was founded by the Treaty signed on January 1994 and strives to achieve economic integration for its Member States.

Togo is a member of several regional institutions, including the African Union (AU), the Economic Community of West African States (ECOWAS), the Inter-governmental Action Group Against Money Laundering in West Africa (GIABA), the Organization for the Harmonization of Business Law in Africa (OHADA), and the Inter-African Conference on Insurance Markets (CIMA).

Overview of Togo’s economy

In 2009, Togo registered an estimated real GDP growth rate of 3.7 per cent, against 2 per cent in 2008. The growth rate in the primary, secondary and tertiary sectors respectively was 9.5 per cent, 1.5 percent and -1.8 per cent. The GDP deflator index increased by 2.2 per cent due to a significant rise in the supply of food commodities that contributed to reduce production costs for farmers.

The inflation rate, based on the Harmonized Consumer Prices Index (HCPI) for the twelve months in 2009, was 1.9 per cent, against 8.7% in 2008. This change in inflation rate resulted from the drop in food and agricultural commodity prices.

The partial situation of public finances for the year 2009 was as follows:

- Total revenue was 253.9 billion francs CFA with a performance ratio of 99.3 per cent of the objectives set for the year in the FRPC programme;
- Current expenditure and net lending was 227.4 billion francs CFA, against the 221.6 billion target in the programme;
- Capital expenditure was 89 billion francs CFA, against the 87.9 billion target in the programme;
- Net reductions in previous treasury stocks were 20.1 billion francs CFA, against 12.9 billion target in the programme;
- Net domestic financing was 28 billion francs CFA and net external financing was 54.1 billion francs CFA, against projections of -7.7 billion and 34 billion respectively.

Outstanding external debt by 31 December 2009 was 770.1 billion francs CFA, up by 13.3 per cent in December 2008. The stock of domestic debt for the same period was 491.6 billion francs CFA. The overall balance of payment (BoP) was about 5.1 billion francs

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1 The information in this section comes from the document entitled «Mid-term Economic Prospects 2010-2014» that was published in March 2010 by the Ministry of Economy and Finance in Togo.
CFA from a current deficit of 83.4 billion francs CFA and a surplus of 85 billion francs CFA in capital flows.

79. The monetary situation at the end of December 2009 showed a 1.1 per cent increase in net foreign assets; a deterioration in the net position of the government from 78.6 billion francs CFA, at the end of December 2008, to 112.2 billion francs CFA at the end of December 2009, especially following the assistance it received from the BCEAO via the SDR facility; an increase of 51.7 billion francs CFA in economic loans and a 16.1 per cent increase in money supply.

80. With regard to WAEMU criteria for fiscal convergence, Togo is in order on average inflation rate under primary criteria, but still has to improve its performance on secondary criteria, and specifically on the current GDP deficit, excluding grants:

- **Primary criteria:** as at 31 December 2009, Togo had fulfilled the primary criteria regarding:
  - The primary budget balance must be \( \geq 0 \);
  - Non-accumulation of domestic payments arrears;
  - Non-accumulation of external payments arrears.

- **Secondary criteria:** Togo had still not fulfilled the criteria on:
  - The ratio of the wage bill to tax revenue cannot exceed 35 per cent: Togo had a showing of 41.2 per cent at the end of June 2009;
  - The ratio of domestically financed public investment to tax revenue must be at least 20 per cent: Togo recorded a 15.1 per cent;
  - The tax-to-GDP ratio must be greater than or equal to 17 per cent in the community. Togo recorded a 15.3 per cent by the end of 2009.

81. Nominal GDP was 1 498.2 billion francs CFA, an increase of 4.6 per cent over that of 2008. The GDP deflator index was up 2.2 per cent over 2008. Nominal GDP per capita increased from 252 860.9 francs CFA in 2008 to 261 526.7 francs CFA in 2009.

82. The primary sector was the major driver of growth in real GDP in 2009 with the good performance of crops. To a lesser extent, the contribution to the said growth came also from clinker, energy and road construction projects. The drivers of growth in jobs and resources were public GFCF, exports and household consumption.

83. The phosphate and cotton sectors are still under realignment. Hence, production is still not up to the levels attained in previous years.

84. The revised real GDP growth rate was 3.7 per cent in 2009, against 2 per cent in 2008. By September 2009, the estimated growth rate for 2009 was 2.5 per cent. The main reason for this difference was the improved performance of the primary sector. The major drivers of this performance were food crops and cash crops, such as cocoa and coffee, and the good performance of certain branches of the tertiary sector like transport, storage and communications.
The primary sector expanded by 9.5 per cent, against 3.5 per cent in 2008. The sector witnessed such a significant increase in growth rate due to the performance of food crops. The added value of food crops rose by 11.6 per cent, against 4.1 per cent in 2008. For cash crops, the value added rose by 7.3 per cent, up from a 16 percent drop in 2008. This increase was due to the good performance of cocoa that went up 41.9 per cent and of coffee that rose by 22.2 per cent in 2009, against 10.2 percent in 2008. Cotton production dropped in 2009 by 19.4 per cent, confirming the difficulties in 2008 when production levels recorded a deficit of 36.5 per cent. The cash crop sector is driven basically by cocoa, whose growth rate in 2009 was 41.9 percent, up from 2.5% in 2008.

The secondary sector expanded by 1.5 per cent. Extractive industries recorded an increase of 7.5 per cent in 2009, against a drop of 7.7 per cent in 2008. The value added by clinker increased by 19.2 per cent in 2009, against a drop of 26.3 per cent in 2008. Meanwhile, that of phosphate decreased by 11.4 percent in 2009, against an increase of 6.2 percent in 2008. The fruits of the efforts SNPT has been making to renovate production equipment at the mine are slow in coming.

The turnover in manufacturing industries reduced by 6.5 per cent. Meanwhile, the value added of electricity, water and gas progressed by 12.8 per cent in 2009, against 10.7 per cent in 2008. With the increase in public investments in 2009, the value added of road construction projects increased by 10.1 per cent in 2009, against 15.2 per cent in 2008.

The turnover in the service sector reduced by 1.8 per cent. Similarly, turnover in the trade sector contracted by 7.7 per cent. But this was offset by the 4.8 per cent growth rate in the transport, storage and communications sector and the 3.1 per cent growth rate in the banking and insurance sector.

The projections for 2010 showed a substantial increase in food production with the intensification of Government support measures for farmers, such as the distribution of fertilizers. Similarly, a small increase in cotton production was expected, following the far-reaching reforms made in the cotton sector with the launch of Nouvelle Société Cotonièrè du Togo (NSCT). Coffee and cocoa production was expected to go along the trends forecast by the Coffee and Cocoa Sector Coordinating Committee (CCFCC). Likewise, cement production was projected to go along the lines of the forecasts made by major cement companies like WACEM, CIMTOGO and FORTIA. In the manufacturing sector, the big industries were banking on an increase in the year, particularly in the food processing industry. And, with the onset of operations in the power generating facility, Contour Global, the country was expecting to see an end to the power outages it experienced in 2007 and 2008.

Government spending was expected to increase in the 2010 budget. So were exports in the balance of payments, expected to add more impetus to growth in the course of the year.

Vulnerability to climate change and external shocks continues to be the major source of risk for Togo. Nominal GDP in 2010 was going to be about 1572.4 billion francs CFA, an increase by 4 per cent. The GFP deflator index was expected to increase by 1.2 per cent. Nominal GDP per capita would go from 261 526.7 francs CFA in 2009 to 267 967.8 francs CFA in 2010.
1.2 General Situation on Money Laundering and Financing of Terrorism

92. Finding statistics on the major sources of the proceeds of crime in Togo is no easy task. The information the Mission gathered suggests that drug trafficking, trafficking in children, corruption, misappropriation of public funds, tax evasion and smuggling are the major crimes in Togo. With the progress in the information and communication technologies, several new methods of fraud on the Internet have been devised with modern and sophisticated techniques (cybercrime). And, the porous nature of national borders makes it easy for people to move about clandestinely and most often without being checked.

93. Togo reported 19 suspected cases of money laundering in 2009 and 2010. There are many different ways of laundering money. Some of them include the use of non-profit organizations, international transfers and drug trafficking.

94. Many people know little about money laundering and therefore cannot come to terms with the consequences of the problem. This makes it difficult for subjected categories to understand why they have the obligation to report suspicious transactions related to ML/FT to the FIU.

95. No DNFBP has reported any suspicious transaction. The STRs sent to the FIU have so far been from financial institutions –banks, micro finance institutions, licensed MVT service operators and administrative departments.

96. While Togo has recorded no case of terrorist financing, the national authorities pay serious attention to the threat of terrorism that looms over the West Africa region.

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

Formal Financial Sector

97. Togo has several types of financial institutions, which include:

- Banks and financial institutions, whose activities consist in receiving money from the public, handling loan transactions, as well as providing and managing means of payment for their clients;
- Decentralized Financial Systems that collect savings and provide loans to their members;
- Insurance companies that sign and administer life-long contracts for subscribers or solicit and capitalize savings, and that enter into contracts in return for lump sum payments or periodic payments, direct or indirect payments, and fixed-term commitments;
- Financial institutions affiliated to the regional stock exchange (BRVM);
- Currency exchange facilities.
Table on the formal financial sector in Togo

<table>
<thead>
<tr>
<th>Activities</th>
<th>Banks and Financial establishments</th>
<th>Microfinance institutions</th>
<th>Insurance companies</th>
<th>BRVM</th>
<th>Currency exchange agents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Receive money from public</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Manage means of payment</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Collect savings</td>
<td></td>
<td></td>
<td>Insurance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Give loans to members</td>
<td></td>
<td></td>
<td>Savings</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number</td>
<td><strong>11+2</strong></td>
<td><strong>81</strong></td>
<td><strong>12</strong></td>
<td><strong>01</strong></td>
<td><strong>23</strong></td>
</tr>
</tbody>
</table>

98. As at 31 December 2009, the banking system in Togo comprised eleven (11) banks and two (2) financial institutions that break down as follows:

**Table on Banks and Financial Institutions in Togo as at 31 December, 2009**

<table>
<thead>
<tr>
<th>Name</th>
<th>Amount of capital (in millions CFA)</th>
<th>Balance sheet total of francs</th>
<th>Number of agencies or payment outlets</th>
<th>Number of accounts</th>
<th>Number of staff</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ecobank Togo</td>
<td>5 000</td>
<td>176 988</td>
<td>22</td>
<td>86 560</td>
<td>281</td>
</tr>
<tr>
<td>Union Togolaise de Banque</td>
<td>5 000</td>
<td>122 242</td>
<td>39</td>
<td>99 917</td>
<td>246</td>
</tr>
<tr>
<td>Banque Togolaise pour le Commerce et l'Industrie</td>
<td>1 700</td>
<td>130 246</td>
<td>9</td>
<td>44 212</td>
<td>234</td>
</tr>
<tr>
<td>Banque Internationale pour l'Afrique au Togo</td>
<td>4 781</td>
<td>67 939</td>
<td>9</td>
<td>24 258</td>
<td>116</td>
</tr>
<tr>
<td>Banque Togolaise de Développement</td>
<td>6 130</td>
<td>69 101</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Banque Populaire pour l'Epargne et le Crédit</td>
<td>3 000</td>
<td>33 207</td>
<td>28</td>
<td>428 337</td>
<td>154</td>
</tr>
<tr>
<td>Banque Atlantique Togo</td>
<td>5 000</td>
<td>50 016</td>
<td>13</td>
<td>19 552</td>
<td>126</td>
</tr>
<tr>
<td>Financial Bank Togo</td>
<td>3 500</td>
<td>22 186</td>
<td>2</td>
<td>2 915</td>
<td>50</td>
</tr>
<tr>
<td>Banque Sahélo-Saharienne pour l'Investissement et le Commerce Togo</td>
<td>8 067</td>
<td>21 054</td>
<td>9</td>
<td>5 162</td>
<td>83</td>
</tr>
<tr>
<td>Banque Régionale de Solidarité Togo</td>
<td>2 000</td>
<td>4 843</td>
<td>2</td>
<td>5 716</td>
<td>35</td>
</tr>
<tr>
<td>Société Interafricaine de Banque</td>
<td>2 807</td>
<td>5 961</td>
<td>1</td>
<td>3 984</td>
<td>47</td>
</tr>
<tr>
<td>Total in Banks</td>
<td>46 985</td>
<td>703 783</td>
<td>134</td>
<td>720 613</td>
<td>1 372</td>
</tr>
</tbody>
</table>
99. As of December 2009, total assets in the banks and financial establishments in Togo were 732.903 million francs CFA. In the total sum, banks possessed 703.783 million francs CFA and over 80 per cent was held by Ecobank Togo (25%), Banque Togolaise pour le Commerce et l’Industrie (19%), Union Togolaise de Banque (17%), Banque Internationale pour l’Afrique (10%) and Banque Togolaise de Développement (10%).

100. On the side of financial institutions, the Guarantee Fund for Investments in Africa (Fonds de Garantie des Investissements Privés en Afrique) held 25.222 million francs CFA, the lion’s share of total assets.

101. According to the 2009 Annual Report of the WAEMU Banking Commission, the banks and financial institutions in Togo make up 6.4 per cent of the commercial banks operating in the sub-region. Togo has only one bank that specializes in micro-finance. The others provide general banking services.

102. As of 31 December 2009, the deposits and loans collected in the banking system in Togo were 545 billion francs CFA, an increase by 17 per cent from the 464 billion CFA in 2008. In the same period, net equity funds increased by 8.8 per cent from 81.668 to 88.877 billion francs CFA, while net banking income rose by over 6 billion to 48 billion francs CFA. Loans to customers amounted to 336 billion francs CFA, increasing by 8.9 per cent from 2008.

103. The Mission had no information, at the time of its on-site visit, on the existence of BCEAO certified electronic money companies operating in Togo.

104. Decentralized Financial Systems play an active role in Togo and drive the microfinance sector. But a good number of the microfinance agencies have no formal authorization to operate, and are therefore not monitored.

105. On the basis of the statistics it had received by the second quarter of 2010, CAS-IMEC produced the following information:
   - Number of Decentralized Financial Systems: 81
   - Number of cash withdrawal points or service points: 474
   - Number of beneficiaries: 766,548
   - Share capital and similar resources: 4.812 million francs CFA
   - Outstanding deposits: 76.560 million francs CFA
• Loans granted: 22.127 million francs CFA
• Outstanding credit: 68.645 million francs CFA
• Loans outstanding: 4.428 million francs CFA

106. Togo has 23 licensed MVT service operators, but many other offices provide such services through non-official channels.

107. Twelve (12) companies drive the insurance sector in Togo. They provide both casualty and property insurance services. The General Directorate of Treasury and Public Accounting in Togo also has a Cash Deposits Division that serves as a public and investment fund.

108. The BRVM and DC/BR are the stock markets in the country. The other players in these markets are stakeholders in the business sector (Management and Brokerage Firms, Asset Management Companies, Business Introducers and Direct Marketers).

109. During the Mission’s on-site visit to Togo, SGI Togo was the only company providing management and brokerage services. In spite of the requests it made, the Mission found no evidence that there were business introducers in the financial institutions in Togo.

**Designated Non Financial Businesses and Professions**

110. Togo has no provisions governing the real estate agent profession. However, this has not stopped ordinary traders, in numbers unknown to the authorities, from plying the trade informally. These «informal real estate agents» are trying to organize themselves as a workers’ Union but lack a reference legal framework to guide their efforts.

111. There are efforts under way at the Ministry of Housing and Urban Planning to prepare a draft law for the development of the real estate sector.

112. Casinos and gambling establishments are governed by Law n°61-31 of 26 August 1961 and its implementing order n°72-76, which was issued on 14 March 1972. To open and run a casino in Togo, authorization must be obtained from the Ministry of Economy and Finance and the Ministry of Security. Applicants have to submit a written request and the necessary supporting documents. Management and staff must subject themselves to a prior investigation of moral standards and financial security. Togo has several gaming and gambling establishments with slot machines. There is a casino based in Lome, but it was not running at the time of the Mission’s on-site visit.

113. Legal practice in Togo is governed by Ordinance n°80-11 of 9 January 1980 and its implementing order n°80-37 of 7 March 1980. While these instruments make provision for the establishment of law firms, Bar Associations and pupillage, most lawyers are solo practitioners. There is a Bar Association, and its members are sworn in at the Court of Appeal. The Bar is run by a Council, whose members are elected by secret ballot for a period of three years. All lawyers are required to vote during these elections. This includes attorneys emeritus and newly called barristers in pupillage who get sworn in as professional lawyers by January 1st in an election year. One third of the Bar Council is renewed each year.
114. The Bar guarantees observance of discipline and professional ethics. It had a membership of one hundred and forty one (141) as of 15 November 2010. Before taking up practice, lawyers in Togo must take an oath before the court of appeal. Section 4 in Ordinance N°80-11 of 9 January 1980 on Legal Practice sets out the oath as follows: «I do swear, in my capacity as a lawyer, to say or publish nothing that goes against the laws, regulations, morality, security and peace of the State, and to always pay due respect to the courts and public institutions».

115. Notaries are governed by Law n°2001-009 of 16 November 2001, which defines the status of notaries in Togo. By official records, the Chamber of Notaries in Togo had seventy six (76) notary chambers, as of 15 November 2010, the date of the on-site visit.

116. In accordance with the provisions in force, notaries are public servants as well as officials in ministries. They are appointed for life to handle all documents and contracts that parties have or want to certify for compliance with official requirements. The Notary verifies the date a document was established, registers or enters it on record, and issues certified true copies.

117. Article 26 of the above law sets out the remit of Notaries in the following terms: «documents shall be notarized, in particular where they relate to the following areas:

- Donations: authentic or mystic wills, gifts inter-vivos, marriage contracts, inter-vivos gifts, gifts between spouses, acceptance of gifts, revocation of gifts and wills;
- Deeds of incorporation or transfer of real rights in property, such as auction or private sales, exchanges, donations and mortgage on registered buildings;
- The memorandum and articles of association of companies, established in the form of a private deed, shall, under pain of nullity, be duly certified by a Notary in conformity with the legal and regulatory provisions in force;
- All proxies to consent to the documents mentioned above».

118. In addition to these standard duties, notaries are supposed also to authenticate, certify and legalize all documents under the private signature of the parties.

119. The professions of Certified Public Accountant and Chartered Accountant, as well as the statutory requirements for exercising the mandate and responsibilities of a registered auditor, are governed by Law n°2001-001 of 23 January 2001. This law sets out the provisions for establishing the National Association of Chartered Accountants and Certified Public Accountants (ONECCA). By the time of the on-site visit, the Association had a membership of forty (40) Chartered Accountants and twelve (12) Certified Public Accountants. The Association is the only body that can authorize Chartered Accountants to practice. A Certified Public Accountant is a qualified professional whose duty is to organize, verify, appraise and audit all types of accounts. Certified Chartered Accountants have the authority also to review the situation in business enterprises and the way the economic, legal, financial and social components operate. They can offer consultation services and technical assistance on corporate management, business organization and commercial tax issues.

120. Auditors are specifically concerned with the obligations of Article 5 under the 2007 AML Act. Although these provisions do not clearly target Chartered Accountants or Certified Public Accountants, the latter categories are considered as members of the group of
independent legal professions, given the role they play in assisting or providing counsel to their clients during business transactions and company formation arrangements.

121. Dealers in precious metals or gemstones, including the two companies based in Lome, are governed by Law n°96-004 of 26 February 1996, which sets out the provisions for the Mining Code of the Republic of Togo. Article 5 of the AML Act, Article 3 of the CFT Act and the obligations of customer due diligence apply to persons in this subjected category. Dealers in gemstones and precious metals in Togo do purchase, transfer and re-export mineral and semi-mineral substances through discreet and secret means (often for the purpose of security, they explained).

122. Togo still has no legal instruments that govern service providers to fiduciary companies and Trusts.

123. Non Governmental Organizations (NGOs) are governed by Law n°40-484 of 1st July 1901, relating to contracts of association, and Decree N°92-130/PMRT. The Law sets out the conditions for cooperation between NGOs and the Government of Togo. Article 4 provides that “before any international or foreign organization with NGO status gets established in Togo, it shall obtain official authorization from the relevant authorities in Togo”. The authorities concerned are the Ministry of Territorial Administration and the Ministry of Security. These organizations must comply with the AML/CFT Laws in Togo.

124. National NGOs are controlled and supervised by the Ministry of Planning (Article 7, Decree N°92-130/PMRT). International NGOs are under the control and supervision of the Ministry of Foreign Affairs and Cooperation (Article 8, Decree N°92-130/PMRT). There are about five hundred and sixty (560) authorized local NGOs working on development issues in Togo, according to the first quarter progress report in 2010, released by the Division for NGO activities. The technical services in charge of monitoring NGO activities do lack resources to do so effectively. This makes it difficult for them to know the exact number of NGOs on the ground, and be able to monitor their activities.

**Overview of the Informal Financial Sector**

125. The informal financial sector plays a key role in Togo, particularly in international money transfers, currency exchange transactions and tontines, which are a common and widespread practice. Informal currency exchange transactions are one other component of informal money transfer activities. Those who engage in the activity do so in public, at the airport and at land boundaries with some countries. They deal in hard currency (EUR, USD) as well as local currencies in West and Central Africa (CEMAC). Because no study is available on the informal financial sector, it was not possible for the Mission to have a quantitative estimate of informal financial flows in the sector.

**1.4 Overview of Commercial Law and the Mechanisms Governing Legal Persons and Arrangements**

126. Commercial activities in Togo are governed by the OHADA Uniform Act of 1st October 1997, relating to general commercial law, and the Uniform Act of 17th April 1999, relating to Commercial Companies and Economic Interest Groups, which both derive from the OHADA Treaty of 17 October 1993.
127. These two OHADA Uniform Acts set out the legal regime of business companies. They also provide terms for the establishment and registration of business companies in OHADA Member States. Article 27 of the Uniform Act, relating to General Commercial Law, provides that companies and other groups shall do their registration at the Register of Companies and Liens that controls the area where they are headquartered. Business companies shall fulfill this requirement in the course of the month of their establishment.

128. In Togo, compliance with these obligations is difficult, in the same way as getting information under the said obligations. The Lome court is the only body with national jurisdiction to process and authorize registration with the RCCM. However, information at the RCCM is not computerized, and there is no national data system centralizing information storage on one location. With the predominance of the informal economy in the country, obtaining reliable information on entrepreneurs and their business transactions becomes even more difficult.

1.5 Overview of the Strategy for Preventing Money Laundering and the Financing of Terrorism

a. AML/CFT Strategies and Priorities

i. Government policies and objectives on AML/CFT

129. The Government of Togo embarked on far-reaching administrative and economic reforms in 2007. It established a permanent secretariat for reforms and is reforming public administration services to improve effectiveness and efficiency. At the economic and financial level, the Government is pursuing efforts to stabilize public finance. It has especially set up the General Inspectorate for Finance (GIF), the Financial Information Unit (FIU), and the National Audit Office. The authorities have also initiated significant reforms at the General Directorate for Treasury and Public Accounting.

130. The Government is working towards goals that are commensurate with national challenges and the international economic and financial environment. These include the improvement of the AML/CFT legal and institutional framework, the reinforcement of the DNFBP supervision mechanism, the raising of awareness, the provision of training, the promotion of national and international cooperation, and the institution of a real policy for effective sanctions.

ii. Policy and programme effectiveness

131. The policies and programmes mentioned earlier have been instrumental in the skill gains observed among public servants. The economic and financial reforms underway are encouraging rigorous management, and are building public finance stability. It was by virtue of these reforms, for example, that over sixty thousand Togolese citizens were preserved from losing money in an investment scam that put in place a system of forgery based on the pyramid technique.

132. However, Togo has no measures in place to verify whether AML/CFT policy measures and programme activities are truly making a difference.
Government initiatives on AML/CFT

133. To reinforce the existing provisions and arrangements, the government plans to: enact and enforce legislation against cybercrime; set up an economic and financial crimes unit; share information, with the aim of raising the awareness of school pupils and university students on the measures that are in place for combating money laundering and the financing of terrorism. The government will also take corrective measures to address the deficiencies in the enforcement of the anti-money laundering law, pending a review process by BCEAO.

b. The Institutional Framework on AML/CFT

1. Roles and Responsibilities of the Authorities

Ministries

134. The Ministry of Economy and Finance plays a preventive role in the fight against financial crime. It is responsible for implementing the legal and institutional framework for oversight, monitoring and supervision of the AML/CFT subjected categories within its remit. It is the Ministry with authority over the Financial Information Unit, which is the cornerstone of AML/CFT in Togo. Many services in the Ministry play a key role in the national AML/CFT system. These include the Directorate for Economy, the General Directorate of Customs, CAS-IMEC, the Public Treasury and the Caisse de Dépôt et de Consignation.

135. The Ministry of Justice organizes the judicial system and makes sure that it is working properly. The Ministry sees to it that there is effective administration of penal justice. It implements agreements on mutual legal assistance and cooperation. Administratively, the Ministry is the supervision authority for judges. The Tribunals, Courts of Appeal and the Supreme Court have jurisdiction over money laundering offences and cases of terrorist financing. The responsibility for public prosecution rests with the public prosecutors. These include the Attorney General, the General Counsels at the Supreme Court, State Prosecutors and their Deputy Public Prosecutors at the Court of Appeal, Public Prosecutors and their Deputies at the Court of First Instance.

136. There is no department in the public prosecutor’s office that specializes in judicial organization in Togo. So far, no case of money laundering or terrorist financing has been taken to court. In principle, presiding judges are independent and stay in office for life. Unlike prosecuting attorneys that only present indictments in courts of criminal jurisdiction, the presiding judge actually tries cases in court.

137. Furthermore, the Minister of Justice, Keeper of the Seals, is a member of the GIABA Inter-ministerial Committee that meets each year to review and support sub-regional policy on AML/CFT.

138. The Ministry of Internal Security and Civil Protection plays a prevention and detection role. It supervises the General Directorate of the Police that works hand in hand with the Gendarmerie to ensure the safety and security of persons and property. These duties are performed by police constables and judicial police officers who, as representatives of the law, carry out investigations under the supervision of the Public Prosecutor’s office and the
examining magistrate, including investigations that relate to money laundering and financing of terrorism.

139. The Ministry of Internal Security and Civil Protection also has oversight over the Central Office for Repression of Illicit Drug Trafficking and Money Laundering (OCRTID-B), an entity of gendarme and police officers responsible for coordinating the fight against drug trafficking. This entity has an Anti-Money Laundering section.

140. The **Ministry of Foreign Affairs and Cooperation** is basically responsible for implementing Togo’s international policy. On matters relating to money laundering and the financing of terrorism, it is in charge of implementing the various Conventions on organized crime. The Ministry plays a pivotal role in the fight against money laundering and the financing of terrorism via the enforcement of Resolution 1267 and Resolution 1373, as well as related United Nations Conventions against organized crime. The mission of the Ministry of Foreign Affairs is to, among other things, disseminate the list of persons suspected of involvement in the financing of terrorism.

141. The **Ministry of Commerce and Private Sector Development** is responsible for the regime that applies to legal persons and arrangements. It plays a decisive role in efforts to keep persons involved in financial crime from using legal channels. The ministry now has a department for conducting outreach to, and training of players in the informal sector. The department contributes towards the prevention of financial crime.

**Other AML/CFT Coordination Agencies or Committees**

142. The Inter-Ministerial Committee for Monitoring Activities on AML/CFT plays a national prevention and coordination role in the fight against money laundering and the financing of terrorism. It was instituted by Inter-ministerial Order N°0136/MSPC/MEF/MJRIR of 11 August 2009. The Committee has eighteen (18) members from many different disciplines in the private and public sectors. Besides a few meetings, the committee has not conducted any major activities due to the lack of resources. However, efforts have been made to sensitize the members and a draft training programme has been prepared for 2011.

143. The Anti-Drug Committee plays a prevention role in the AML/CFT system. Instituted by Order N° 96-040/PR of 10 April 1996, the Committee provides advisory support to the Government of Togo on drug control and prevention policies. To do so, it has devised a national strategy for coordinating the efforts of all the agencies involved in combating drug trafficking and use. The Committee works also to promote inter-agency cooperation and collaboration.

144. This anti-drug committee comprises three commissions: the Prevention Commission, the Repression Commission and the International Relations Commission. It has developed a National Integrated Plan for Combating Drug and Crime. This five-year plan (2009 – 2013) is an ambitious programme that could make it possible for Togo to fight efficiently against illicit drug trafficking.

**Criminal justice and operational agencies**
145. Pursuant to Law n°2007-016 of 6 July 2007 on the fight against money laundering, a decree was issued in 2008 to institute the Financial Intelligence Unit, called the Togo FIU. The FIU is a decisive player in combating money laundering and the financing of terrorism. It has a prevention and detection role.

146. The FIU began to operate in March 2009, following the appointment of its members. It is a public agency responsible for «gathering, analyzing and processing the intelligence needed to establish the origin or nature of the suspicious transactions reported by designated persons».

147. The State Prosecutor is a magistrate in the public prosecution service. His duty is to initiate proceedings for justice on behalf of the people. He is the authority that receives all minutes, draft reports on preliminary investigations, and FIU reports. The State Prosecutor is the head of the criminal justice system. This system includes law enforcement authorities like police constables and judicial police officers. The Prosecutor serves as the director of the judicial police, controlled by the Public Prosecutor under the supervision of the Court of Criminal Appeals. He conducts prosecutions in court and can appeal the decisions of the investigating magistrate, should he consider that court rulings and sentences do not serve justice properly.

148. The State Prosecutor gets assistance from the judicial police. Their duty is to arrest and detain suspects for interrogation during preliminary investigations. The investigating magistrate is an important member of the criminal justice system and plays a decisive role on matters relating to money laundering. He has the responsibility to prepare cases for judgment. On the basis of the existing evidence, the investigating magistrate decides whether or not the case can go for court trial. He issues a Closing Order to either send the accused to court for trial, or dismiss the matter for lack of conclusive evidence.

149. The police, gendarmerie, OCRTIDB and other relevant investigation services are responsible for conducting investigations, detecting criminal offences by gathering evidence related thereto, pursuing and arresting the authors to hand them over to the prosecution authorities, including the perpetrators of money laundering and terrorist financing offences. In the police service, it is the Central Directorate for Judicial Police and the Economic and Financial Division that carry out investigations on AML/CFT as well as on other predicate offences of an economic and financial nature.

150. When investigating money laundering or terrorist financing cases, the investigating magistrate can call on these services to perform tasks the judge alone cannot do. The judicial police officers in this Directorate must inform the State Prosecutor about any facts that may constitute a criminal offence, including money laundering and terrorist financing. The Gendarmerie has a unit for serious crimes. It may have money laundering and terrorist financing intelligence of interest to the Prosecutor or investigating magistrate. The Central Office for the Repression of Illicit Drug Trafficking and Money Laundering (OCRTID-B) is made up of gendarmes and policemen who coordinate efforts against drug trafficking and money laundering. The OCRTID-B has a unit on anti-money laundering with a team of four judicial police officers.

151. There are some points worth noting on the judicial authorities who can take part in AML/CFT in Togo. Togo has a criminal justice system based on dual jurisdiction. It has Courts of First Instance, on the one hand, and Courts of Appeal, on the other. In terms of
hierarchy, the Supreme Court is the highest court, and not a third jurisdictional option. The courts handle criminal matters. The Court of Appeal is the appellate body on criminal matters. It has a section for criminal cases that serves also for trial of criminal cases via the Court of Assizes. The Supreme Court has jurisdiction to serve as the court of last resort (Court of Cassation) on cases that have been tried in the courts of first and second instance. It is competent to handle appeals on criminal matters.

152. Togo has no court with special jurisdiction over AML/CFT, not to mention the existence of a trial chamber. Courts try cases of money laundering and terrorist financing in their respective areas of competence, depending on whether the said cases are being tried as an offence, in which event it is the Magistrate’s court; as a crime, in which event it is the Court of Assizes; or as an appeal case, in which event it is the Supreme Court.

153. The Customs Service takes part in the detection, prevention and repression of ML/FT efforts. At the General Directorate of Customs, it is the Legal, Research and Securities Department that works on anti-money laundering and counter terrorist financing. It collaborates closely together with the Anti-drug and money laundering Division, and also with the mobile units that control physical transfers of cash and securities at land borders and airports.

Financial sector agencies

154. The Ministry of Economy and Finance issues licences and other authorizations, and controls and supervises the actors in the financial sector.

155. The activities of lending institutions (banks and financial institutions) are controlled by the BCEAO, the WAMU Banking Commission, and the Ministry of Economy and Finance.

156. Decentralized Financial Systems are placed under the supervision of the Economy and Finance Ministry via the Cellule d’Appui et de Suivi des Institutions Mutualistes d’Epargne et de Crédit (CAS-IMEC). At the moment, BCEAO and CAS-IMEC serve as the supervision authorities for Decentralized Financial Systems. They will do so until WAMU Banking Commission knows the provisions on WAMU and BCEAO Institutional Reform, and can take over supervision and control duties. The inspections done in the sector do not yet cover all players and are limited to the major ones.

157. Currency exchange agents are under the authority of the Ministry of Economy and Finance. The Ministry supervises and controls them jointly together with the BCEAO. The insurance sector is under the authority of the Inter-African Conference on Insurance Markets (CIMA). But, country level control measures for the insurance sector are within the remit of the Directorate for Insurance and the Regional Insurance Control Commission (CRCA).

158. The Caisse de Dépôt et de Consignation (Deposit and Consignment Office) is controlled and supervised by the Ministry of Finance (General Inspectorate of Finance), by the General Inspectorate for State Control (Inspection Générale d’Etat) and by the National Audit Office. Post office financial services also fall under the Ministry of Economy and Finance. The General Inspectorate of Finance, the General Inspectorate for State Control (l’Inspection Générale d’Etat) and the National Audit Office (Cour des comptes) take part in the control measures put in place for this department.
There is a regional capital market for all WAEMU Member States. The market has two sections:

- The public section, with the Regional Council for Public Savings and Financial Markets (CREPMF), represents public interests, guarantees market security and integrity, and supervises stakeholders;
- The private section includes the Regional Stock Exchange (BRVM) and CSD settlement banks (Dépositaire Centrale/ Banque de Règlement - DC/BR). These two institutions are specialized financial institutions. They are not subjected to banking law, and are entitled to an exclusive public service concession in all WAEMU Member States.

These two institutions are headquartered in Abidjan. The BRVM has local branch offices in each Member State of the Union.

Roles and Responsibilities of Non-Designated Businesses and Professions and other elements

Casinos are controlled jointly by the Ministry of Internal Security and Civil Protection and the Ministry of Economy and Finance. Authorizations for casinos are delivered by the Ministry of Economy and Finance. Monitoring activities are carried out by a team of representatives from the two ministries. When the team performs on-site inspections, the members cover matters relating to the duties they each perform on a day-to-day basis, which respectively are administrative supervision, and oversight over special and general accounting practices.

Togo has no regulatory provisions for real estate agents. There is a real lack of control in this area. The duty of supervising and monitoring this sector will be assigned rightfully to the Ministry of Housing and Town Planning, once the draft provisions related thereto have been adopted.

Lawyers and Notaries are under the authority of the Ministry of Justice. They are organized respectively into an Association and a Chamber.

Chartered Accountants and Certified Public Accountants are administered by the National Association of Chartered Accountants and Certified Public Accountants, and placed under the supervision of the Ministry of Finance. Articles 8 to 13, under Act Nº2001-001 of 23 January 2001, set out the conditions of work for Chartered Accountants and Trainee Chartered Accountants. The authority to supervise and monitor Chartered Accountants and Certified Public Accountants rests with Council of the National Association of Chartered Accountants and Certified Public Accountants.

No self-regulatory organ of these subjected categories has conducted AML/CFT activities for its members, besides providing basic information on AML/CFT provisions.

Dealers in gemstones and precious metals in Togo are governed by Law n°96-004 of 1996, which institutes the Mining Code of the Republic of Togo. Article 5 provides that dealers in gemstones and precious metals are required to have a marketing authorization issued by decree during Ministerial Cabinet Meetings. Supervision and monitoring duties are
performed by the Minister of Mines and the Minister of Economy and Finance. Existing monitoring arrangements do not cover AML/CFT. It is hard to correctly report the sector’s vulnerabilities in ML/FT.

167. **Non-Profit Organizations** get their authorizations to operate, from the Ministry of Territorial Administration, first as «Associations» (the 1901 Associations Act), before they can get NGO status.

168. National NGOs are supervised and monitored by the Ministry of Planning. International NGOs are supervised and monitored by the Ministry of Foreign Affairs and Cooperation. NGOs that do not comply with the provisions in force are liable to sanctions after inspections. These sanctions range from outright withdrawal of NGO status to the loss of all entitlements. The mission had no statistics on the effectiveness of the said inspection and monitoring activities.

169. The Federation of NGOs in Togo (FONGTO) and the Union of NGOs in Togo (UONGTO) are self-regulating umbrella organizations in the NGO sector. They monitor members by giving them technical assistance in financial management, regularizing the position of some NGOs, and serving as an interface between civil society and the State.

c. **Overview of policies and procedures**

170. Togo has adopted special procedures on money laundering and the financing of terrorism alongside general criminal law procedures. The State recognizes that the socio-economic environment in Togo presents risks that must be tackled in order to combat these problems. For example, Togo has a cash economy. This has led the State to enact law on banking services and Law on FT that defines a maximum amount of funds that travellers are allowed to carry out of the WAEMU zone. Any sum in excess of the said amount must be declared to the relevant authorities at the border control posts.

171. To prevent, control and stifle the problems emanating from the informal economy, Togo has established a department for the informal sector in the Ministry of Trade. The goal of this department is to educate and guide entrepreneurs towards the formal sector.

172. Togo has set up a specialized service to control drug trafficking, as part of its efforts to combat this scourge.

173. Since GIABA conducted an assessment of Togo’s needs for technical assistance in 2007, the country has made progress in AML/CFT, with specific regard to:

- Criminalizing money laundering, terrorist financing and other predicate offences, including the adoption of the two uniform laws in this area;
- Establishing the FIU by Decree on 28 September 2008;
- Providing working space for the FIU and a budget for its operations;
- Training investigators and judges in the training seminars organized by GIABA;
- Informing, sensitizing and training designated persons on their obligations in AML/CFT with support from the FIU, GIABA, UNODC and other technical partners;
- The technical and financial assistance provided to the FIU and some designated persons in AML/CFT by several partners, including GIABA, UNODC, France and other FIUs; and
- The creation of a framework for sharing ideas and promoting cooperation at the national level among AML stakeholders.

d. Progress made since the last evaluation or mutual evaluation

174. Togo never had a Mutual Evaluation exercise before.

2- LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and regulations

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

Description and Analysis

175. Togo has ratified the relevant United Nations Conventions on organized crime. These are the 1998 United Nations Convention on the Illicit Trafficking of Narcotic Drugs and Psychotropic Substances, which it ratified by virtue of Law n°90-009 of 7 May 1990 (date of submission of the instrument of ratification, 1st August 1990), and the United Nations Convention Against Transnational Organized Crime in 2000 (date of submission of the instrument of ratification, 2 July 2004).

176. Togo’s Law n°2007-016 of 6 July 2007 on anti-money laundering is based largely on the provisions of the Conventions mentioned above.

Recommendation 1

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

177. The Uniform Law on anti-money laundering in Togo covers most of the offences in the Conventions. Article 2 of the Law even goes beyond the offences in the Conventions to define a predicate offence as “any felony or misdemeanour, committed on the territory of a Member State or a Third State, which enabled the author to obtain property or income”. Law n°80-1 of 13 August 1980 on the Penal Code and other related provisions on criminal offences also cover almost all the predicate offences under FATF standards.

178. Togo unequivocally criminalizes money laundering under Uniform Law n° 2007-016 of 6 July 2007, pursuant to United Nations Conventions in this regard. These conventions provide that States should take into account the material element (conversion, transfer, handling of goods, concealment, disguise, acquisition, possession, use). The material element is set out in article 2, paragraphs 2, 3, 4 of the Law, as follows:

- “the conversion, transfer or handling of goods, where the author knows they derive from a crime or offence or from involvement in such a crime or offence, with the aim of concealing or disguising the illicit origin of the said goods, or helping any person
involved in the commission of the crime or offence to evade the legal consequences of such acts;

- The concealment or the disguise of the nature, origin, location, disposition, movement or ownership of real property or rights thereto, where the author knows that such property derives from the proceeds of a crime or offence, as defined by the national laws of Member States, or from participation in the crime or offence;

- The acquisition, possession or use of property, where the author knows, at the time of receiving such property, that it derives from the proceeds of a crime or offence, or from involvement in the said crime or offence.”

**Types of property subjected to money laundering charges (c. 1.2)**

179. Togo’s anti-money laundering legislation defines property in the broad sense and applies to all assets with any relation whatsoever to money laundering.

180. Under article 3, paragraph 10, the term property refers to all types of tangible or intangible assets, tangible or intangible goods, fungible or infungible property or furniture, as well as legal documents or instruments that give evidence of title or rights to such assets, goods and property. The law does not state clearly that this provision also includes indirect goods. The exact stipulation is “goods that have a relation with the offence”. Because the principle of law permits no distinction, unless the law so provides, it would be better to explicitly state such provision to forestall extreme leniency or severity in judgment.

181. Article 4, paragraph 2 of the AML Law provides that there is an established case of money laundering unless the predicate offence is subject to an act of grace;

- If the author of the crimes or offences is neither prosecuted, nor condemned;
- If a prerequisite for legal action does not exist when the crimes or offences are committed.

182. The existence of a predicate offence or conviction for a predicate offence does not oblige the judge to convict the accused for money laundering, being that this latter offence is a separate offence. On the other hand, granting amnesty annuls the offence entirely and renders void any subsequent action to prosecute.

**The scope of predicate offences (c. 1.3)**

183. The predicate offences for money laundering, mentioned in penal provisions and specific laws include serious crimes and a range of offences identified by FATF Recommendations.

184. Togolese law covers most of these predicate offences. But, it still does not criminalize terrorism, the trafficking of persons, smuggling of migrants, illegal stock market activity and cybercrime. Togo has anti-corruption laws, but lacks provisions on corruption of foreign officials. The laws criminalizing these offences are still under preparation.

185. Togolese criminal law takes a threshold approach to predicate offences. Article 3 of the Penal Code scales penalties by the level of gravity of the offences liable to the said penalties. It divides offences into felonies, misdemeanours and petty offences, and issues
sentences proportionate to each category, with a minimum sentence of six months imprisonment.

**Summary table of predicate offences for money laundering**

<table>
<thead>
<tr>
<th>Serious crimes by FATF standards</th>
<th>Togolese criminal law: «Crimes and Misdemeanours» and imprisonment sentences</th>
</tr>
</thead>
<tbody>
<tr>
<td>Participation in an organized group/a racketeering conspiracy</td>
<td>• Criminal conspiracy (PC art.187 to189), 1 - 10 years</td>
</tr>
</tbody>
</table>
| Terrorism and the financing of terrorism | • No criminalization of terrorism  
| | • Financing of terrorism: CFT Act, art. 32 – a minimum sentence of 10 years |
| Human trafficking | • Generally, trafficking in persons is not criminalized  
| | • But, trafficking in children is criminalized (Law N° 2005-009 of 3 August 2005 art. 10 and 11- 2 to 10 years imprisonment)  
| | • Trafficking in children (Code of Child Welfare art. 411-416) - 2 to 20 years |
| Smuggling of migrants | • Usually not criminalized – except in cases relating to trafficking in children (see provision above) |
| Sexual exploitation | • Procuring (Penal Code, art 92 - 95), 1 to 10 years  
<p>| | • Code of Child Welfare, art. 389 and 390 - 1 to 10 years |
| Drug trafficking | • Law N°98-008 on drug control art. 98 et seq. - 6 months to 20 years imprisonment |
| Arms trafficking (except export) | • Law N°59-08 of 6 January 1959 on the regime for small arms and light weapons, and heavy artillery in Togo, art. 3 - 1 to 5 years. |
| Smuggling | • Concealment of stolen property (Penal Code, art. 98, 121,122) - 6 months to life imprisonment |
| Corruption | • Penal Code, art. 208 and 209 -1 to 15 years |
| Fraud and scams | • Penal Code, art. 98, 107 to 109 - 6 months to 5 years |
| Currency counterfeiting | • Law N°89-18 of 7 December 1988, art. 2 et seq. - 6 months to life imprisonment |</p>
<table>
<thead>
<tr>
<th>Serious crimes by FATF standards</th>
<th>Togolese criminal law: «Crimes and Misdemeanours» and imprisonment sentences</th>
</tr>
</thead>
</table>
| Counterfeiting and piracy of commodities | • Law N°91-12 on the Protection of Copyright, Folklore and Neighbouring Rights, art 84 and 85 - 3 months to 2 years imprisonment  
• Bangui Agreement (Revised): trademark counterfeiting, art. 37 to 44 - 3 months to 4 years |
| Environmental crimes | • Law N°2008-005 of 30 May 2008 on the Framework Law on Environment, art. 51 et seq. - 6 months to 10 years |
| Murder | • Penal Code, art. 44 and 48 - 5 years to life imprisonment |
| Kidnapping, illegal detention, hostage-taking | • Penal Code, art. 60 to 64 - 3 months to life imprisonment  
• Code of Child Welfare, art. 378 to 386 - 1 month to life imprisonment |
| Theft | • Penal Code art. 97 to 101 - 6 months to life imprisonment |
| Contraband | • Law N° 66-22 of 23 December 1966 on the Customs Code, art. 286 to 288 - 3 months to 3 years |
| Extortion | • Blackmail: Penal Code, art. 124 and 125 - 1 to 10 years |
| Forgery (except in the case of passport forgery) | • Penal Code, art. 167 et seq. - 3 months to 5 years |
| Piracy | • Ordinance N°29 of 12 August, 1971, instituting the Merchant Marine Code, Articles 147 to 155 – Forced Labour to Life Imprisonment  
• A draft bill is under preparation to extend this criminalization to any other form of piracy |
| Illegal stock market activity | • Not criminalized, draft laws under preparation |

186. We see, therefore, that Togo’s AML Law covers most of the predicate offences under FATF provisions. Article 3 of the said Law defines a predicate offence as any crime or offence punishable by a prison sentence.

**Threshold method for predicate offences (c. 1.4)**

187. In principle, Togo has established three categories of crimes:

- The least serious, called minor offences;
- The serious, called offences; and
- The most serious, called crimes.
188. Offences and crimes are considered as serious breaches of the law, for they are punished with severe custodial penalties. The maximum penalty for offences is five (5) years, while the maximum sentence for crimes is life imprisonment (Penal Code, article 3). We see from these examples that Togo’s legal system makes provision for serious crimes, and that it also makes provision for custodial penalties that may be above or below six (6) months, based on the nature of the offence.

**Extra-territorial offences (c. 1.5) and complementary elements – Acts of money laundering committed in another country where such acts do not constitute an offence (1.8)**

189. Togolese criminal law makes provision for prosecuting all criminal offences that constitute unlawful acts in Togo, even if they do not constitute unlawful acts in the third country where they were committed. Article 37 of the Code of Penal Procedure provides that: “the public prosecutor’s office in the location where an offence is committed, or where the accused is domiciled or resident, is competent to take legal proceedings against the accused and to arrest the accused, even where such an arrest is made for other reasons”.

190. Under article 2, paragraph 2 of the AML Law, “A case of money laundering exists even if the underlying offences for the acquisition, handling and transfer of laundered property were perpetrated on the territory of another Member State or the territory of a third State”. This confirms the provisions under article 37 of the Penal Code, that courts in Togo have jurisdiction to try any case considered as a crime in Togo’s legal system, any crime committed abroad by a Togolese citizen, or any offence committed abroad by a Togolese citizen, where the crime is punishable by the laws of the country where it was committed.

**Where the money laundering offence applies to perpetrators of the underlying offence (c. 1.6)**

191. The fundamental principles of Togolese domestic law make provision for amnesty. Under article 3, paragraph 2 of the AML Law, the money laundering offence applies to any person involved in the commission of a crime or misdemeanour (which includes a predicate offence) in any capacity whatsoever, unless the predicate offence is subject to amnesty law (art.4 para.2 AML).

192. The position taken by the Togolese judicial authorities on the requirement for express criminalization of self laundering is also worth looking at. They assert that the goal of such criminalization would be to prosecute the author of the predicate offence, as well as the money laundering offence, so as to deprive them of the proceeds that derive directly or indirectly from the crime. But, upon careful examination of these goals, one sees that they can be achieved simply by applying or enforcing the AML Law and other relevant provisions in Togo’s legal system. The judicial authorities maintain that these legal provisions would make it possible to not only prosecute the author of the predicate offence of money laundering, but also to seize and confiscate all property belonging to the offender (Article 23, Penal Code).

**Related offences (c. 1.7)**

193. Togo’s AML Law makes provision unequivocally for agreement, association and attempted complicity to commit an act of money laundering. Under article 4 of the AML
Law, “a person who leads or participates in a group to commit an act of money laundering, or who connives to commit the said act, attempts to perpetrate it, provides assistance, encouragement or advice to any person or entity to execute or facilitate the execution of the said act (…) has committed a money laundering offence”. Article 4, paragraph 1 of the AML Law provides also that persons who connive with a view to committing an act of money laundering, who connive to actually commit the said act, attempt to perpetrate it, provide assistance, encouragement or advice to persons or entities to effect or facilitate the execution of the said act, are considered to have committed a money laundering offence.

194. Article 4 of the Penal Code provides as follows: “attempted felony or misdemeanour is punishable as a complete offence …”, while article 13 says: “accomplices to a crime or offence are liable to the same penalty as the principal in the first degree …”. Article 14 adds that: “accomplices to a crime are those who knowingly caused the action “…”, provided the instruments, weapons, vehicles or any other means that were used to prepare the crime “…”, provided a form of help or assistance to the perpetrators of the crime during the acts that prepared, facilitated or committed it”.

195. Article 187 defines an act of criminal conspiracy as “an act where a person joins or participates in a group, regardless of the duration of the act and the number of its members, for the purpose of preparing or committing crimes against persons or property…”

Recommendation 2

The criminal responsibility of physical persons (c. 2.1)

196. Togo’s AML Law applies to physical persons who intentionally and knowingly engage in acts of money laundering. Article 37 of the said Law provides that the physical persons convicted of acts of money laundering shall suffer a prison sentence of three to seven years and pay a fine that is three times the value of property or funds laundered.

197. Under article 37 of the AML Law, the offence committed by an organized gang is usually punished more severely because of the aggravating circumstances.

Intentional element (c. 2.2)

198. The mental element of natural persons is covered by articles 2, 40 et seq. of the AML Law. Article 2 provides that ML “comprises one or more acts committed intentionally …”. Article 40 makes provision for penalizing persons who participate and lead, or persons acting on behalf of the physical or legal persons “who will have intentionally …”

199. The law makes no specific provision for deducing the intentional element of a money laundering offence from “objective factual circumstances”. But it allows the judge to use his discretionary powers and conviction in deducing the intentional element from the underlying causes, or the objective material elements of the offence. Where no sentence is issued, it can be difficult to give credence to this principle and measure its importance in practical terms. This means the AML Law makes no express provision that allows us to do so.

200. Additionally, note should be taken that Togolese procedural law makes provision for the use of deductive and inductive methods to establish evidence. In the case of a criminal offence, it is the evidence of legal facts that prevails. There is provision also for presumption
that allows the judge to deduce unknown facts from the established facts of the case. For this type of evidence, however, Judges are allowed to make the final decision based on their appraisal of the facts. To dispel any doubt, it is crucial for the law to provide clearly that the Judge can deduce the mental element of an offence from objective factual circumstances.

201. The criminal responsibility of legal persons (c. 2.3) and complementary sanctions (c. 2.4)

202. Section IV, article 4 of Togo’s AML Law covers the criminal responsibility of legal persons. Under this provision, entities other than the State, on whose behalf or for whose benefit a money laundering offence is committed by one of their organs, are liable, on conviction, to a fine.

203. Articles 42 and 43 of the Penal Code cover the offences committed by legal persons. They lay out the general principle of criminal responsibility in Togo’s domestic law, as follows: “legal persons are liable on conviction to penalties for crimes committed by organs under their responsibility for their benefit”.

204. In addition to the criminal sanctions, article 35 of the AML Law allows for the application of administrative and disciplinary sanctions, without prejudice to the application of civil penalties. Similarly, article 42 of the AML Law sets out the criminal sanctions that apply to legal persons. It provides specifically that: “Legal persons other than the State, which instigate and benefit from a money laundering offence or one of the offences under this law, where such an offence is committed by one of their organs or representatives, are liable on conviction to a fine five times the fine levied on natural persons, without prejudice to the conviction of these individuals as perpetrators of, or accomplices to these same facts”.

205. Articles 67 et seq. under Law n°2009-019 of 7 September 2009 on bank regulations in Togo set out the criminal penalties against lending institutions. Article 68 provides that «lending institutions are criminally liable under the provisions of Article 42 of the Anti-Money Laundering Uniform Law in the Member States of the West African Economic and Monetary Union».

206. Togo’s Penal Code provides that criminal and civil proceedings can be brought together before the same court. Article 3 of the Code of Penal Procedure says: “A civil action can be brought before the same judges at the same time as public proceedings. Criminal penalties are without prejudice to other civil administrative penalties (art 2, Code of Penal Procedure) or disciplinary action”.

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

207. The AML Law provides different penalties against physical and legal persons. Article 37 says: “persons convicted of a money laundering offence are liable to three (3) to seven (7) years imprisonment and a fine three times the value of property or funds laundered. Attempted money laundering invites the same penalties”.

208. Offenders may also incur other optional criminal penalties set out in Article 41 as “other optional criminal penalties applicable to physical persons”. Natural persons convicted
of the offences defined in Articles 37, 38, 39 and 40 above may incur the following additional penalties:

- Permanent exclusion from the national territory for a period of one (1) to five (5) years against any alien who gets convicted;
- Banishment for a period of one (1) to three (3) years from some districts in the country;
- Prohibition to leave the national territory and seizure of passports for a period of six (6) months to three (3) years;
- Prohibition of civil and political rights for a period of six (6) months to three (3) years;
- Prohibition to drive land vehicles, sea vessels and aircraft and withdrawal of licenses for a period of three (3) to six (6) years;
- A permanent or a three (3) to six (6) year ban from plying the trade or performing the activity used to commit the offence, and disqualification from holding public office;
- Prohibition from issuing checks other than those for withdrawal of funds by the drawer from the drawee or those that are certified, and from using payment cards for three (3) to six (6) years;
- Prohibition from possessing or carrying a weapon that requires a permit for three (3) to six (6) years;
- Confiscation of all or part of the assets of legal origin of the condemned;
- Confiscation of property or effects that were used or intended for use to commit the offence, or effects that are the fruit of the offence, with the exception of returnable articles».

209. The AML Law sets out the aggravating circumstances under which the penalties in Article 37 above are doubled. These circumstances include:

- Where the money laundering offence is committed repeatedly, or by employing the facilities afforded by professional duties;
- Where the offender is a repeat offender in the matter, in which case, convictions abroad are taken into account in determining recidivism;
- Where the money laundering offence is committed by an organized gang.

210. It is important to note that Article 39-2 states: “where the underlying crime or offence for the laundering of property or money is sanctioned by a prison term longer than that imposed under Article 37, laundering is punishable by the penalties related to the predicate offence committed by the author and, where evidence of aggravating factors for the offence exists, by the penalties for the aggravating circumstances.”

211. There are other more repressive provisions, such as Law No98-008 on drug control, whose Article 121-1 provides for the confiscation of all or part of the convict’s legally acquired property, regardless of whether such property is movable or immovable, divided or undivided.
212. Under Article 42 of the AML Law, legal persons incur two types of punishment: a principal penalty, which is a fine five times the rate imposed on physical persons (Article 42 para.1); and the additional penalties listed under paragraph 2 of the article above.

213. Under Paragraph 2, Article 42 of the AML law, legal persons may be subject to dissuasive measures, such as:

- Exclusion from public contracts, either permanently or for a period of five years or more;
- Confiscation of the property used to, or intended for use in committing the offence, or property acquired through commission of the offence;
- Placement under judicial supervision for a period of five years or more to directly or indirectly perform one or more professional or social activities used to commit the offence;
- Prohibition to directly or indirectly exercise one or more professional or social activities during which the offence was committed;
- Permanent closure, for a period no longer than five years, of businesses or business establishments used to commit the offence;
- Dissolution, where such establishments were created to commit the offence;
- Publication of the sentence passed or dissemination thereof via the print media, or any other audiovisual communication channels at the expense of the convicted legal entity.

214. The AML makes provision also for administrative and disciplinary sanctions where, following a serious lack of vigilance, or a weakness in the organization of internal control procedures, a designated business or profession becomes negligent in the performance of its legal obligations. The supervisory authority with disciplinary powers may take action on its own. In this case, it reports to the Financial Intelligence Unit and the State Prosecutor.

215. Provision is made for civil action against similar acts that cause harm to others. Article 2 of Togo’s Code of Penal Procedure states that “civil action to repair the damage caused by a crime, an offence or a misdemeanour can be taken by all those who have personally suffered damage caused directly by the offence”. Further, Article 66 under Law n°2009-019 of 7 September 2009 on banking regulations provides sanctions against legal entities.

216. There has been no conviction on grounds of money laundering or the financing of terrorism. And there have been no freezing or confiscation measures as such. Considering that the AML Law was adopted not too long ago (6 July 2007), and that the FIU was put in place and began its operations barely 18 months ago, on 1st March 2009, the cases that are being prosecuted for money laundering or terrorist financing have not been completed for the court to rule on them.

217. Moreover, the judicial authorities informed the Mission, during the on-site visit, that no case of wire transfer relating to money laundering and terrorist financing had been reported.
Analysis of effectiveness

218. There are tough challenges that affect the effectiveness of money laundering and terrorist financing measures in Togo. Although the judicial authorities say some cases of ML have been submitted to the examining magistrate, we must bear in mind that no legal proceedings for the freezing or confiscation of laundered property or funds destined for the financing of terrorism have been initiated effectively. It is worth recalling, therefore, that no case has been tendered yet for judgement by the courts in Togo.

219. The threshold approach used by the Togolese authorities to define predicate offences for money laundering is compliant with FATF Recommendations, for it includes offences punishable by a penalty of less than 6 months and above.

220. In Togo, the judge is allowed to pronounce a criminal sentence from evidence that he evaluates using his discretion powers of judgment. This situation is however toned down since Togo imposes stricto sensu interpretation of criminal law that holds judges in check.

Recommendations and comments

Recommendation 1

- Togo’s AML Law should explicitly state whether property acquired through a money laundering offence can include the indirect proceeds of crimes or misdemeanours.
- Togo should criminalize terrorism, trafficking in persons, smuggling of migrants, insider trading and cybercrime as predicate offences for money laundering.
- The annex section of Togo’s AML Law should be transposed into the domestic legal system of the country.

Recommendation 2

221. Facilitate the examination of evidence by clearly enacting AML provisions that the intentional element of money laundering can be deduced from “objective factual circumstances”.

Compliance with Recommendations R.1 and R.2

<table>
<thead>
<tr>
<th>REC</th>
<th>Rating</th>
<th>Summary of factors underlying rating</th>
</tr>
</thead>
</table>
| R.1  | PC     | • No criminalization of terrorism, trafficking in persons, smuggling of migrants, insider trading and cybercrime;  
|      |        | • It is doubtful whether the money laundering offence applies to assets representing the “indirect” proceeds of the crime;  
|      |        | • No sound basis of judgment for evaluating the effectiveness of the AML system. |
| R.2  | LC     | • No judgement for assessing the effectiveness of sanctions in AML/CFT; |
2.2 Criminalization of Terrorist Financing (SR.II)

Description and Analysis

Criminalization of terrorist financing (C II.1)

222. The financing of terrorism is criminalized as provided in Article 2 of the Convention on the Financing of Terrorism. Article 4 of the Uniform Law against the financing of terrorism in Togo provides as follows: «for the purposes of this law, the financing of terrorism is defined as the offence committed by any person who by any means, directly or indirectly, wilfully provides, collects or manages, or attempts to provide, collect or manage funds, property, financial or other services with the intention that they should be used, or in the knowledge that they are to be used, in whole or in part, to carry out:

- An act that constitutes an offence within the provisions of one of the international legal instruments listed under annex 4 to this Act, regardless of the occurrence of such an act;

- Any other act intended to cause death or inflict serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or abstain from doing any act (…).”

223. This provision sets out a broad definition of the financing of terrorism in accordance with that under the 1999 International Convention for the Suppression of the Financing of Terrorism. The CFT Law in force in Togo fails to nominally address acts of terrorism. These are covered in the annex to the CFT Uniform Law, which draws on the acts criminalized by the Nine Conventions appended to the International Convention for the Suppression of the Financing of Terrorism. Two remarks need to be made at this point:

224. The Togolese authorities seem to have omitted the annex to the said law in the transposition process. This annex lists out the 9 UN Conventions that relate to counter terrorist efforts, as mentioned by the 1999 International Convention for the Suppression of the Financing of Terrorism. The failure to transpose the annex of the CFT Law constitutes a major deficiency in Togo’s legal system that must be addressed without further delay.
225. Although Togo has signed and ratified the Nine UN Conventions on counter terrorism, it has still not transposed the provisions of the said conventions in its domestic legal system.

226. Further, the CFT Law does not criminalize terrorist organisations. Articles 187 and 188 of the Penal Code make provision for prosecuting terrorist organisations, not specifically from the angle of terrorist entities, but rather as criminal conspiracy. Being that criminal law enforcement in Togo goes on a stricto sensu basis, the Penal Code can be used to prosecute those who give terrorists the means to act on grounds of complicity to criminal conspiracy, and not for terrorism per se, because the Togolese legal system does not criminalize terrorism. It is worth noting that the CFT Law in Togo internalizes the provisions of the Convention for the Suppression of the Financing of Terrorism and its protocols. However, the terrorist financing offence mentioned under the CFT Law criminalizes only the financing of acts of terrorism and not the acts of terrorism per se.

227. Terrorist financing offences apply to all funds, as provided in the definition of the International Convention for the Suppression of the Financing of Terrorism. Funds are defined as goods of any kind, tangible or intangible, movable or immovable, acquired by any means, and legal documents or instruments, including in electronic or digital format, evidencing title to or interest on these assets, including bank loans, travellers’ checks, bank checks, money orders, shares, securities, bonds, drafts and letters of credit.

228. Attempted financing of terrorism is considered an offence in the same way as the terrorist financing offence itself (Art. 4 of the CFT Law). In fine, Article 4 of the CFT Law provides clearly that even if funds are not utilized effectively to commit the acts mentioned above, there is an offence of terrorist financing once evidence exists of an attempt to “provide, collect or manage” funds for that purpose. This means that the commission of terrorist acts is not a pre-condition for establishing and prosecuting a case of terrorist financing. It is a matter of formal procedure. Likewise, it makes no difference whether the funds and other resources mentioned in the law are legitimate or illegitimate.

229. The financing of terrorism is an offence that refers to all forms of conduct mentioned under Article 2 (5) of the International Convention on the Suppression of the Financing of Terrorism, including complicity to organize the commission of an offence, to contribute to the commission of the offence, or to facilitate criminal activity in a group. Indeed, the provisions of Article 4 of the CFT Law state clearly that any person who provides funds to a terrorist or to a terrorist organization is liable to prosecution and punishment. Article 4, paragraph 1 and 2 show that terrorist financing offences are not tied to one or more specific acts of terrorism, but to “international legal instruments …”, whether such an act is committed or not.

230. Predicate offences for money laundering (C. II. 2)

231. The terrorist financing offence is a predicate offence for money laundering, as provided in Article 6 of the CFT Law, which says “The acts mentioned in Articles 4 and 5 above on criminal offences are punishable by the penalties under section III of this Act. They may also constitute predicate offences for money laundering.”
Territorial jurisdiction (C. II. 3)

232. The financing of terrorism applies regardless of extraneous elements, but solely under three conditions of criminal jurisdiction, as follows: the judge is competent to cover the location where the offence was committed, the location of residence of the offender and the location of arrest (Art. 37 of the Code of Penal Procedure).

233. Article 4 of the CFT Law states that a case of terrorist financing can be established even if the underlying reasons for acquiring, handling or transferring assets for the financing of terrorism are committed on the territory of another WAEMU Member State.

234. This provision attests that Togolese courts are authorized to prosecute the perpetrators of terrorist financing, whether they are Togolese citizens, residents in Togo or foreigners, and even if the acts of terrorism were committed in a WAEMU Member country or a third State, it being understood that the location where the terrorist offences were committed is of no little import. Article 42 of the CFT Law states that national courts have jurisdiction over the offences in this Act, committed by any person or entity, regardless of their nationality or the location where they are headquartered, even if this is outside the national territory, in so far as the location where the offence is committed falls within one of the WAEMU Member States. They can also press charges for the same offences if these were committed in a third State, on the condition that an International Convention provides jurisdiction for them to do so.

235. Similarly, Togolese courts are competent to try terrorist financing offences even if these are not termed as such in a third State, provided that at least some of these acts were committed in Togo. Article 6, paragraph 3 of the Penal Code provides that “the courts in Togo have jurisdiction over any offence committed on Togolese territory, including the area of maritime jurisdiction, air space and the sea vessels or aircraft over which Togo has sovereign powers by virtue of the law, international treaties or customary international law.”

Intentional element (under C.2.2 of R2)

236. The intentional element of the CFT offence is highlighted in CFT provisions with expressions such as “deliberately”, “with the intention of” or “in the knowledge that”. In practice, the judge, before filing for conviction, has the responsibility of bringing out the facts and the evidence of the offence of terrorist financing. In fact, Article 302 of the Code of Penal Procedure says “except in cases where the law provides otherwise, offences may be established by any mode of evidence and the ruling of the judge is made according to the intimate conviction of the judge.”

237. With regard to evidentiary issues, Togo’s law on counter financing of terrorism makes no specific provision for the judge to use objective factual circumstances to deduce that there was an intentional element in the offence of terrorist financing. However, Article 4 of the Law provides that the intention is inferred from the acts “knowing that they will be used, in whole or in part, to commit the offence.” But, this is still difficult to maintain because criminal law enforcement is on a stricto sensu basis. (See analysis in paragraphs 200 and 201).

Sanctions for natural and legal persons convicted of money laundering (applying C.5 of R2)
The penalties imposed on physical persons

238. Under Article 32 of the CFT Law, the physical persons convicted of a terrorist financing offence are sentenced to a prison term of at least ten (10) years and a fine of at least five times the value of the property or funds that were the subject of terrorist financing operations. An attempt to finance terrorism is subject to the same penalties. These penalties apply also where individuals act with consent and in organized groups, or where they are complicit to the offence of terrorist financing (Article 33, CFT Law).

239. Further, Article 34, paragraph 1 of the CFT Law provides that the penalties under Article 32 shall be doubled where aggravating circumstances obtain, including where:

- The terrorist financing offence is committed repeatedly or by using the facilities afforded by professional duties;
- The offender is a recidivist;
- The terrorist financing offence is committed by an organized gang.

240. Paragraph 2, Article 34 stipulates further that, where the underlying crime or offence that provided the goods or funds used to commit the terrorist financing offence is punishable by a custodial sentence longer than the term of imprisonment under Article 32, terrorist financing is punishable by the penalties for the related offence that the offender committed and, where this offence comes with aggravating circumstances, by the penalties related only to the surrounding circumstances.

241. Similarly, Article 36 of the CFT Law provides optional additional penalties intended to restrict freedom of action (a ban on entering, residing in, leaving the national territory, on exercising civil and political rights, on issuing checks, etc.), limit the claim on certain assets (a ban on driving land vehicles, sea vessels and aircraft, on possessing or carrying a gun, etc.), and confiscate all or part of assets, whether acquired legally or illegally.

242. Finally, Article 41, paragraph 1 of the CFT Law provides obligatory additional penalties, including the obligation for courts to confiscate funds and other financial resources related to the financing of terrorism and hand them over to the Public Treasury.

Penalties against legal persons

243. Being that custodial sentences cannot be imposed on legal persons, Article 38 of the CFT Law sets out mainly that corporations are liable to a “fine five times the fine imposed on physical persons.” The provision states further that legal persons may be sentenced also to one or more of the penalties listed below:

- Exclusion from public tenders either permanently or for a period of ten (10) years or more;
- Confiscation of property used or intended for use in committing the offence, or property acquired with the proceeds of the offence;
- Placement under judicial supervision for a period of five (5) years or more;
• Prohibition, for an indefinite term or for a period of ten (10) years or more, from exercising, either directly or indirectly, one or several professional or social activities by which the offence was committed;

• Closure on a permanent basis, or for a period of ten (10) years or more, of the establishments or one of the establishments of the company that was used to commit the offence;

• The dissolution of these legal entities, where they were established for the commission of the offence;

• The publication of the court ruling or dissemination thereof in the print media or by any other audiovisual means of communication at the expense of the convicted legal entity.

244. The penalties provided by the CFT Law for physical and legal persons are dissuasive, effective and proportionate. Article 34 of the same law increases these penalties gradually in the event of aggravating circumstances. Once again, proportionality is the criterion used to determine such a scaling of penalties.

245. With regard to civil liability for the financing of terrorism, the law makers did not deem it useful to revise the fundamental principles of civil law that could apply in this area.

Analysis of effectiveness

246. Togo’s CFT Law does not clearly penalize terrorist organisations. Articles 187 and 188 of the Penal Code make provision for prosecution of terrorist organisations, not specifically as terrorist entities but rather as criminal conspiracy. Likewise, the Togolese Penal Code does not criminalize terrorism. These weaknesses show Togo is improperly implementing the Convention for the Suppression of the Financing of Terrorism that it has signed and ratified. Indeed, the provisions on criminalization of terrorist acts, which draw on the 9 Conventions annexed to the law, are not internalized in the Togolese Penal Code.

247. Further, while the CFT Law seems to cover the fundamental requirements of SRII, it is worth noting that the legal obligations related thereto are yet to be put into effect. No case of terrorist financing has been tried by the courts in Togo. Consequently, no penalty has been imposed to assess whether or not the penalties are effective, dissuasive and proportionate. Members of the criminal justice system are not adequately equipped to address the issue (they lack sufficient knowledge of the law, training …). And, none of the courts and persons concerned by the matter has any specialized knowledge.

Recommendations and Comments

248. The Togolese authorities should:

• Criminalize terrorism and terrorist organisations in Togolese substantive law.

• Transpose the annex of the CFT Uniform Law in Togo’s domestic legal system.

• Internalize the provisions of the 9 Conventions listed in the annex of the International Convention for the Suppression of the Financing of Terrorism.
Compliance with Special Recommendation II and R.32

<table>
<thead>
<tr>
<th>REC</th>
<th>Rating</th>
<th>Summary of factors underlying rating assigned</th>
</tr>
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</table>
| SR II | PC     | • Difficulty in assessing the effectiveness of the system in force;  
|       |        | • Failure to transpose the annex of the CFT Uniform Law in Togo’s domestic legal system;  
|       |        | • No criminalization of the terrorist acts listed in the annexes to the International Convention for the Suppression of the Financing of Terrorism; |
| R32  | NC     | • Lack of statistics on the cases prosecuted and the sentences issued for the financing of terrorism;  
|       |        | • No policy on statistical record keeping in the courts. |

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

Description and Analysis

249. On the whole, several legal instruments make provision for the confiscation of property. These include the AML Law, the CFT Law, the Penal Code, the Code of Penal Procedure, the Customs Code, and Drug Control legislation. These legal instruments prescribe two types of forfeiture: mandatory property confiscation and criminal property confiscation.

Recommendation 3

Mandatory confiscation of property (C.3.1)

250. Togolese legislation makes provision for the confiscation of instruments used to commit money laundering offences, terrorist financing offences, and other underlying offences. It provides also for the confiscation of instruments designed for use in committing such offences and property of equivalent value. Article 41, paragraphs 9 and 10 of the CFT Law allow “the confiscation of all or part of property the culprit acquired through unlawful means; as well as the confiscation of the property or the medium used or intended for use in committing the offence, or the products derived from committing the offence, except articles subject to restitution.” Article 42, paragraph 2 of the AML Law provides for “the forfeiture of property used or intended for use in committing the offence, or property that is the product of an offence.”

251. These provisions are complemented by those under Article 45 of the AML Law, which state as follows: “in any case where court pronounces a sentence for money laundering or attempted money laundering, it should order the Public Treasury to confiscate the proceeds of the offence, including all the movable and immovable assets these proceeds have been transformed or converted into, the lawful property these proceeds have been used on, and any other income and benefits from such proceeds, assets they have been used to buy, or property
they have been invested in, irrespective of who the proceeds and assets belong to, except the owner can prove that they had no reasonable foreknowledge of their fraudulent origin”.

252. As for confiscation of the proceeds of a terrorist offence, Article 41 of the CFT Law provides that “in all cases where sentences are pronounced for terrorist financing or attempted terrorist financing, court should order the Public Treasury to confiscate funds and other financial resources tied to the offence, as well as any other fungible or infungible assets destined for, or having been utilized in committing the said offence (…). Where the funds, assets and other financial resources to confiscate cannot be represented, their confiscation can be ordered in value.”

253. Confiscation measures, intended particularly for products from the predicate offence of money laundering, are provided also in articles 118,119,121 and 125 of the Code on drug control, articles 200, 216, 238, 240 of the Penal Code and articles 34, 44 paragraph 2, 64 and 78 of the Code of Penal Procedure.

Property subject to forfeiture (C.3.3.1)

254. The legal provisions in the paragraphs above (Art. 41, 42 and 45 of the AML Law, Art. 41 of the CFT Law, and the articles in the Code on Drug Control, the Penal Code and the Code of Penal Procedures) take into account that property subject to forfeiture includes the proceeds of ML/FT, the instrumentalities used or intended for use in committing the offence, and the property derived directly or indirectly from the proceeds of money laundering, including income, personal property, profits or other benefits derived from the proceeds of crime. Therefore, property can be confiscated if so provided in the law that criminalizes the offence or misdemeanour.

255. On confiscation, AML and CFT laws make no difference as to whether the accused person’s property is held by them or a third party. Confiscation measures apply if the asset is tied directly or indirectly to the offence committed (Article 45, AML Law and Article 41, CFT Law).

256. Article 45 of the AML Law extends jurisdiction for confiscation “... to any person to whom these products and assets belong, unless their proprietor establishes that they had no reasonable foreknowledge of the fraudulent origin of the said products and assets.” The same provisions are set out under Article 41, Paragraph 4 of the CFT Law (See paragraph 250).

Provisional measures (C.3.2)

257. Togo’s legal system provides protective or provisional measures when a case is being investigated and when it is being prepared for judgment. Article 36, Paragraph 1 of the AML Law states that “the investigating magistrate can prescribe protective measures, in accordance with the law by ordering, at the expense of the State, the seizure or confiscation of assets in relation with the offence, which are subject to investigation and all elements that can contribute to identify them, as well as the freezing of sums of money and financial transactions on the said assets.” These measures are set out also in Article 29, Paragraph 1 of the CFT Law.

258. Further, the provisions of the Penal Code listed below provide guidance on how to gather evidence. During preliminary investigations, assets suspected to be the products or
instrumentalities of the offence are concerned by these measures. Article 44, Paragraph 2 of the Code of Penal Procedure is much more explicit in this regard, for it clearly describes “the arms and instrumentalities that served in committing the crime, or that were intended for use in committing the crime.”

259. The protective or provisional measures that have been described fall within the jurisdiction for investigation assigned to the investigating magistrate. Article 64 of the Code of Penal Procedure provides that “the investigating magistrate shall, in accordance with the law, carry out all the investigations that he deems useful in the process of gathering evidence.” Article 78 states further that “where there is need to look for documents during an inquiry, the Investigating Magistrate, or the Judicial Police Officer appointed by him, is the only one who has the right to take judicial notice of such documents before confiscating them. All the objects and documents seized are to be listed immediately and placed under seal. Where the objects seized include cash, bullion, bills or values that need not be preserved materially to establish evidence or safeguard the rights of the parties, the investigating magistrate may authorize the Registrar to deposit them in the Treasury.”

Ex parte filing (c.3.3)

260. The AML Law makes no provision to file for ex parte proceedings, unless there is prior notice of a first request for freezing or seizure subject to forfeiture. However, the CFT Law on terrorist financing makes provision to file for ex parte proceedings under Article 30, Paragraph 1: “the competent authority shall, by way of an administrative decision, order the freezing of funds and other financial resources that belong to terrorists, as well as all those financing terrorism and terrorist organisations. Such freezing takes effect without delay and without prior notification of the persons, entities or agencies concerned.....”

261. On the other offences, it is possible to file for ex parte proceedings using the general powers vested in the Public Prosecutor and the investigating magistrate (Articles 44, 64 and 78 of the Code of Penal Procedure).

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

262. The FIU, the Public Prosecutor, the Investigating Magistrate and the Customs have the prerogative to trace the origin of property, where such property is subject to, or may be subject to confiscation, or where the property is suspected to be the proceeds of crime. The prerogatives that have been mentioned are within the remit assigned to the FIU under the AML Law (Article 17 of the CFT Law). In no way can confidentiality be evoked against the Unit (Article 34, AML Law). Better still, the Unit can, on the basis of the corroborating and verifiable evidence in its possession, stop, for a period of 48 hours, any suspicious transaction. These are prerogatives for detecting whether assets have a criminal origin or not.

263. During investigation, Article 34 of the Code of Penal Procedure authorizes the Public Prosecutor to take, or cause others to take all the necessary measures to investigate and prosecute violations of criminal law. Therefore, the Public Prosecutor or Judicial Police Officer under his authority, can, by virtue of this provision, conduct seizures, searches, house searches, and hearings, as well as impose custody or any acts to identify and trace goods that are, or may be subject to confiscation.
264. Under article 64 of the Code of Penal Procedures, the investigating magistrate may undertake all means of investigation that are useful to get the truth during an inquiry. He has the right to delegate such powers to judicial police officers by way of judicial delegation.

265. Moreover, in order to establish evidence of a predicate offence for money laundering, or proof of an offence related to money laundering, the investigating magistrate can issue an order, without being stopped on grounds of confidentiality, to carry out a range of different actions, such as:

- Monitoring bank accounts and similar accounts;
- Getting access to digital systems, networks and servers;
- Communicating authentic documents or documents under private seal, as well as banking, financial and commercial records.

266. Similarly, the investigating magistrate can, within his prerogatives for the identification and detection of criminal assets, seize and confiscate assets related with the offence, as well as freeze money and financial transactions on the said property (Art.33 and 36 of the AML Law).

267. Law N°98-008 on drug control extends the prerogatives for investigations on drug related offences to infiltrations and the monitoring or wiretapping of telephone lines (Art.130, 131 and 133 of the said Law).

268. Under Law N°66-22 of 23 December 1966 on the Customs Code, Article 248, paragraph 1 states as follows: “the customs administration may ask the court, simply by making a request, to confiscate physical objects seized on strangers or on individuals not facing criminal charges, where the fraud is small in scale.” Article 286 of the Customs Code provides that “any act of smuggling and any offence of non-declaration of imports or exports is punishable by the confiscation of the object of fraud, the confiscation of the means of transport, the confiscation of the objects used to commit the fraud, and the payment of a fine, where such offences concern prohibited goods or commodities subject to a heavy customs duty regime.” Article 287 provides further that “smuggling offences committed by a group of three or more individuals, who make up a group of six persons, are liable to the tax penalties under the previous article and to a prison sentence of three months to one year, whether or not all of them are found in possession of the fraudulent goods.”

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

269. In the case of confiscation, there are several provisions that establish the legal basis for protecting the rights of bona fide third parties. Article 45 of the AML Law provides that there is no basis for confiscation, where the owner of the property acts in good faith, or succeeds to establish that he had no reasonable foreknowledge of the unlawful origin of the property. Similarly, Article 41, Paragraph 4 of the CFT Law provides as follows: “anyone who claims right to assets or funds that have been subject to confiscation can, with the aim of seeking redress, submit the matter to the court that issued the confiscation order within a period of six months, beginning from the time notice of the said decision was issued.”

270. On underlying offences, Article 120 of Law N°98-008 on drug control follows the same principle, providing that forfeiture does not apply to property belonging to persons who
can present evidence that they had no reasonable foreknowledge of the fraudulent origin of the property.

271. On a general note, Article 79 of the Code of Penal Procedure allows anyone “who claims to be entitled to an object in judicial custody to demand restitution from the investigating magistrate.”

**Measures to prevent or annul contractual or other actions (C.3.6)**

272. On matters relating to money laundering or the financing of terrorism, the FIU can, under exceptional circumstances, raise an objection to the pursuit of a suspicious transaction (Art.28, AML, art. 20, CFT) on grounds of reliable, serious and corroborating evidence. The objection shall hold for no more than 48 hours.

273. In civil or commercial matters, the civil law judge can prevent and annul the effects of an illegal contract. But, the law makes no specific reference to the possibility of preventing or cancelling other contractual actions relating to AML/CFT.

**Complementary elements (C.3.7)**

**Confiscation of assets of criminal organizations (C.3.7.a)**

274. The AML Law makes no specific provisions for this sub-criterion. However, articles 187 and 188 of the Penal Code allow the criminalization of criminal conspiracy. Within the remit for investigation assigned by law (Art.34 and 64 of the Code of Penal Procedure), the Public Prosecutor and the Investigating Magistrate (or the JPOs acting under their authority) can order the seizure and confiscation of such assets, or cause others to do so.

**Confiscation of property without conviction (C.3.7.a)**

275. Togolese law makes no provision for the confiscation of property without conviction, especially when this is a case of civil forfeiture. But, within the remit for investigation assigned by law to the State Prosecutor and Investigation Magistrate (as well as the JPOs under their authority), they can order the automatic and subsequent seizure of dangerous or harmful objects, considered unlawful to possess. This is the case for the seizure of narcotic substances (Penal Code, art. 34 and 64).

**Establishing proof of lawful origin of goods subject to forfeiture (C.3.7.c)**

276. Togo has no system for reversing the burden of proof. It is incumbent on the public prosecution to prove the charge.

**Recommendation 32 – Statistics on confiscation/freezing**

<table>
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<tr>
<th>YEAR</th>
<th>PROCEEDS</th>
<th>FILE NUMBER</th>
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</thead>
<tbody>
<tr>
<td>2009</td>
<td>1.5 MM</td>
<td>01</td>
</tr>
<tr>
<td>2010</td>
<td>20 MM</td>
<td>03</td>
</tr>
<tr>
<td>Total</td>
<td>21.5 MM</td>
<td>04</td>
</tr>
</tbody>
</table>
277. On matters relating to money laundering, there were four cases of judicial freezing and three cases of administrative freezing of assets. The total sum of those assets was over twenty (20) billion Francs CFA. No cases of freezing or seizure were registered for the financing of terrorism.

Additional elements

278. The FIU and the justice system are making efforts to establish and keep statistical records on STRs for ML/FT. However, there is no clear mechanism for record keeping on the seizures, freezing and forfeitures carried out for money laundering and the financing of terrorism.

Analysis of effectiveness

279. The AML Law provides for the forfeiture of laundered property, or assets acquired from the proceeds of money laundering and the financing of terrorism. The definition of property is broad and covers direct and indirect property. This definition deserves to be stated clearly in criminal law.

280. The law, and its relevant sections, set out the provisional measures to take, including the freezing and seizure of property, in the case of preventing any transaction, transfer or assignment of property subject to confiscation. The Togo Financial Intelligence Unit and the other relevant authorities have extensive powers to trace the origin of assets subject to confiscation for money laundering and terrorist financing.

281. It is worth noting, however, that no mechanism is provided clearly to prevent or annul contractual and other arrangements where the persons involved actually had reasonable foreknowledge, or were expected to have knowledge that their actions would undermine the ability of the authorities to recover property subject to confiscation.

282. The AML Law makes no provision for submitting, without prior notification, a first request for the freezing or seizure of property subject to confiscation on grounds of money laundering. No measures are taken to prevent or annul contractual or other arrangements, where the persons involved actually had knowledge, or were expected to have knowledge that they would undermine the ability of the authorities to recover property subject to confiscation.

283. Overall, the effectiveness of Togo’s confiscation system cannot be evaluated properly owing to the lack of court rulings on money laundering and terrorist financing. In civil law, confiscation takes effect only after the court issues a criminal penalty. Togo is unable to do so, because it has issued no ruling on ML/FT and has no statistics in this regard. Likewise, statistics on the implementation of provisional measures are still on the low side (only 3 cases of administrative freezing have been recorded in investigations for ML).

Recommendations and comments

284. The Togolese authorities should:

- Take measures to clearly prevent or annul contractual and other arrangements in which the persons involved had knowledge or were expected to have knowledge that
they would undermine the ability of authorities to recover property subject to confiscation;

- Authorize clearly the submission, without prior notification, of a first request for the freezing or seizure of property subject to confiscation on grounds of AML.

Compliance with Recommendation R.3 and R 32

<table>
<thead>
<tr>
<th>REC</th>
<th>Rating</th>
<th>Summary of factors underlying rating</th>
</tr>
</thead>
</table>
| R.3 | PC     | • Lack of clearly expressed measures to prevent or annul contractual or other arrangements for confiscation on the grounds of AML/CFT;  
|     |        | • lack of legal provisions for the submission, without prior notification, of a first request for the freezing or seizure of property subject to confiscation on grounds of AML |

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

Special Recommendation III

Description and Analysis

285. In the efforts that Togo is making to combat the financing of terrorism, it directly applies all the decisions or measures on freezing of assets used for terrorist financing that are provided in SR III, Resolution S/RES/1267, and other relevant international instruments in WAEMU Member States. Further, Togo continues to use these community provisions and the CFT Law in Togo. There is no other specific domestic law to implement SR III in an effective manner.

286. There are several instruments in the community for implementing United Nations Resolution 1267, pursuant to FATF Recommendations. These especially include:

- Regulation n° 14/2002/CM/UEMOA of 19 September 2002, relating to the freezing of funds and other financial resources to combat the financing of terrorism in the Member States of the West African Monetary and Economic Union;
- Decision N° 06/2003/CM/UEMOA, relating to the list of persons, entities or organizations targeted for the freezing of funds and other financial resources as part of efforts to combat the financing of terrorism in WAEMU Member States;
- Decision N° 04/2004/CM/UEMOA amending Decision N°06/2003/CM/UEMOA;
- Decision N° 12/2005/CM/UEMOA of 4 July 2005, relating to the list of persons, entities or agencies targeted for the freezing of funds and other financial resources as part of efforts to combat the financing of terrorism in WAEMU Member States;
- Decision N° 09/2007/CM/UEMOA of 6 April 2007;

**Laws and procedures for freezing funds in accordance with the provisions of Resolution 1267 (C.III.1)**

287. The instruments of reference for implementing the provisions of Resolution 1267 of the United Nations Security Council Sanctions Committee are the uniform law criminalizing terrorist financing in Togo and the WAEMU Regulations relating to the freezing of assets of persons and terrorist entities. Based on Regulation n°14/2002/CM/UEMOA of 19 September 2002, relating to the freezing of funds and other financial resources, WAEMU Member States must ensure the required level of national distribution for the list of persons, entities or agencies mentioned in United Nations Resolution 1267. This distribution is designed however for financial institutions only, even though it should reach all actors that can handle the assets or resources targeted by the said freezing measures.

288. Under Regulation n°14/2002/CM/UEMOA, article 4 sets out the conditions for applying measures on the freezing of funds and other financial resources that belong to the entities designated by the United Nations Security Council Sanctions Committee. The said instrument makes provision for freezing all funds and other financial resources that belong to any physical or legal person, entity or organization designated by the Sanctions Committee.

289. When it comes to the distribution of the lists mentioned in the above Regulation, Article 4 stipulates that the Council of Ministers shall adopt the list of persons, entities and organizations whose assets are to be frozen. Thereafter, the BCEAO shall be responsible for disclosing these lists to the banks and financial establishments located in WAEMU Member States.

290. Article 9 of the same Regulation stipulates that it is possible to change the list between two sessions of the Council of Ministers. In the light of this, Article 9 provides that the Chairman of the WAEMU Council of Ministers, on the recommendation of the Governor of the BCEAO, can make amendments or additions to the list of persons, entities and organizations whose funds are to be frozen, based on the decisions of the United Nations Security Council or the United Nations Sanctions Committee. The precautionary measures taken by the Chairman of the Council of Ministers are submitted for approval to the Council of Ministers before distribution to WAEMU Member States.

291. The CFT Law sets out the procedures for judicial freezing of funds and other financial resources that belong to any person, who is directly involved in or who is an accomplice to attempts to commit a terrorist financing offence. The said procedures are described in Articles 29 et seq. The Togolese legal system provides that such freezing should be done without delay and without prior notice to the persons concerned. The order to freeze funds or other resources takes effect a few hours after the names of those concerned are put on the UN Sanctions Committee’s list. The WAEMU zone’s lengthy procedure for adopting and disseminating the UN Sanctions Committee’s list does not meet this requirement. In concrete terms, the Mission noted that there were no clear procedures for easy and effective distribution of the Sanctions Committee’s list to the actors in Togo’s CFT system, so that they can accordingly freeze assets without delay. The authority concerned has not been designated to do so.
292. The funds and other resources subject to freezing are defined under Article 1 of Regulation N°14/2002/CM/UEMOA as “all financial assets and economic benefits of any kind whatsoever, including but not limited to cash, checks, claims on money, drafts and debt claims, traded securities and debt instruments, including stocks and other equity securities, certified stocks, bonds, promissory notes, warrants, debentures, contracts on derivatives, interest, dividends or other income or capital gains earned on assets, credit, set-offs, guarantees, performance bonds or other financial commitments, letters of credit, bills of lading, contracts of sale, any document evidencing ownership or shareholding in funds or financial resources and any other export financing instrument.” Apparently, this definition of “funds”, set out in the WAEMU Regulation, does not cover the full gamut of items concerned by freezing measures under Resolution 1267. It should cover all financial assets as well as all types of property, including tangible and intangible property, mobile and immobile property, and documents and legal instruments in any form, proving ownership of, or shareholding in the said property.

Laws and procedures for freezing funds in accordance with the provisions of Resolution 1373 (C.III.2)

293. It is worth noting that the provisions that apply to this area in Togo describe the freezing of funds as any action to prevent any move, transfer, modification, use or handling of funds that may cause a change in their volume, amount, location, ownership, possession, character and destination, or any other change, including portfolio management, that makes it possible to use the funds. The goods and other financial resources concerned may belong to all those who are directly or indirectly involved in committing the offence, such as the authors of the offence, the accomplices to the offence, and all those who attempt to commit the terrorist financing offence.

294. Therefore, the uniform law on combating the financing of terrorism makes no difference between the property and financial resources of authors, accomplices and others who attempt to commit an offence. On the other hand, the Mission had no tangible evidence that Togo has been implementing Resolution 1373. There is actually no mechanism in place to establish a national list of persons and entities whose funds and other assets are to be frozen. The authority that is supposed to do so has not even been designated. However, Article 30, paragraph 1 of the CFT Law provides that “the authority concerned shall issue an order, by way of an administrative decision, to freeze funds and other financial resources that belong to terrorists, as well as to those who finance terrorism and terrorist organisations. Such freezing is done without further delay and without prior notice to the persons, entities or organisations concerned. A list of these persons, entities or organisations can be compiled as need be.

Effective laws and procedures to review initiatives for applying the freezing mechanisms of other countries (C.III.3)

295. Only Article 30 of the CFT Law refers to the freezing measures to be applied by financial institutions to all types of funds or resources linked directly or indirectly to the lists established by Resolution 1267 of the United Nations Security Council Sanctions Committee. Note should be taken also that Togo has no law or effective procedures in place to review and eventually implement the initiatives taken by other countries to implement Resolution 1373. Similarly, the Mission observed that the procedures required to establish efficient cooperation between countries were not in place. However, judges or administrative authorities are
allowed by law to examine a request from another country to freeze funds or property derived from terrorist activities.

296. It follows from the Uniform Law on Counter Financing of Terrorism that WAEMU Member States, including Togo, have the obligation to make the necessary arrangements to cooperate, to the fullest extent possible, with other States, at the international level, on information sharing, investigations and procedures for provisional measures, as well as on confiscation of the instrumentalities and proceeds of terrorist financing. In this respect, Article 49 of the said law provides that the competent judicial authority shall, at the behest of the requesting State, take all the provisional measures, including temporary detention and seizure, which are compatible with the national legislation. Togo has not been enforcing this legal provision even though it exists and has entered into force.

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

297. Under Article 30 of the CFT Law, freezing measures apply to:

- Funds or other property owned or controlled in whole or in part, directly or indirectly, by designated persons, terrorists, and those who finance terrorism or terrorist organizations;
- Funds or other assets coming from, or generated by funds or other property owned or controlled directly or indirectly by designated persons, terrorists, and those who finance terrorism or terrorist organizations.

298. Moreover, the definition of the funds and other financial resources in question is provided under Article 1 of Regulation 14/2002. This article stipulates that the funds comprise “all financial assets and economic benefits of any nature whatsoever, including, but not limited to cash, checks, money claims, drafts, payment orders and other payment instruments, deposits with banks and financial institutions, account balances, debts and debt securities, traded securities and debt instruments, including stocks and other equities, certificates representing shares, bonds, promissory notes, warrants, debentures, derivative contracts, interest, dividends or other income or capital gains earned on assets, credit, right-offs, guarantees, performance bonds or other financial commitments, letters of credit, bills of lading, contracts of sale, any document evidencing ownership of shares in funds or financial resources and any other export finance instrument”.

299. The practice used by Togolese courts is as follows: once proceedings are opened, whatever be the nature of the offence, the provisional measures taken to investigate the facts of the case, gather evidence and secure the payment of fines, costs, damages and interests, as well as any other costs, include all the property of the defendants, whether it comes directly or indirectly from this offence.

System for communicating lists on mechanisms for freezing funds to financial institutions (C.III.5)

300. Article 3 under Regulation n°14/2002 provides that the obligations for freezing funds apply, in accordance with the Banking Regulation Act, to banks and financial establishments operating in WAEMU Member States, regardless of their legal status, the location of their
headquarters or their main establishment, the nationality of the owners of their capital or their leaders.

301. In principle, the lists of persons or terrorist entities are communicated formally to Togo’s Ministry of Foreign Affairs, which then sends them to designated financial sector businesses and professions involved in AML/CFT. The Mission had no formal evidence that this was being done in a diligent manner. It looks, instead, as if the BCEAO alone takes action to disseminate the said lists to the Ministry of Economy and Finance, which takes no action afterwards.

302. The CFT Law makes provision also for the publication of measures (art. 30, paragraph 5-4), taken on the lists established in accordance with United Nations Resolutions 1267 and 1373, in the Official Gazette and in a Legal Gazette. However, Togo does not put this provision into practice. Under Articles 30, paragraph 1 of the CFT Law, and Article 20, paragraph 2 of the AML Law, the FIU has the power to take measures for administrative freezing, and to order, by way of correspondence, that the measures taken be executed in the financial sector.

**Instructions to Financial Institutions and other persons or entities (C.III.6)**

303. The Mission found that only banking institutions in Togo receive the list prepared by the United Nations Sanctions Committee, in accordance with Resolution 1267. And, it is the BCEAO that sends it around on paper, making it difficult for others to use. The other financial institutions hardly know that such a list exists, and that there are related obligations for them to follow.

304. It is worth noting that only two major Togolese banks, encountered during the mission, did have “software” for screening the list of terrorists from the United Nations Sanctions Committee. As for the others, meaning the ones that knew about the list at all, they had no idea about the obligations incumbent on them in that regard, and lacked efficient software applications for the screening operations banks are required to perform.

305. To conclude, no Togolese financial institution or any other designated entity for the handling of funds or other assets appears to have been trained formally or sensitized to take measures relating to freezing mechanism.

**Effective procedures and publications to request withdrawal from the list and release of funds (C.III.7)**

306. To apply criterion III.7, relating to Resolution 1373, the CFT Law, under Article 30, paragraph 4, provides that: “Any decision to freeze or release should be made known to the public by getting it published in the Official Gazette and in a Legal Gazette. The same applies for the procedures to follow when seeking to withdraw names from the list of persons, entities or organizations linked to terrorist financing or, where appropriate, for unfreezing and releasing funds that belong to them”. But, even though there are legal provisions that so permit, Togo seems to have no appropriate procedure for publishing such information as required in the Official Gazette. This makes it impossible to implement the procedure for releasing funds.

**Procedures for releasing the funds of persons affected by error (C.III.8)**

64
307. The CFT Law sets out the procedures for releasing funds that belong to persons affected inadvertently by a freezing mechanism. Under Article 31, “any physical or legal persons whose funds or other financial resources have been frozen, pursuant to the provisions of Article 30, paragraph 1 “…”, and who considers that the decision to freeze was an error, may lodge an appeal against the said decision within a period of three (3) months, beginning from the date the decision was published in the Official Gazette. The appeal is lodged with the competent authority that ordered the freeze, indicating all the elements that can demonstrate there was an error. Any appeal against the decision to freeze funds and other financial resources, made in accordance with the United Nations Security Council Resolution, should follow the appropriate procedure provided in United Nations Security Council Resolutions. The competent authority shall issue a decision within a maximum period of fifteen (15) working days, from the date of seizure. An appeal to the decisions made, in accordance with the paragraphs mentioned earlier in this article, may be lodged with the competent court”.

**Appropriate procedures for using frozen funds to cover basic expenses (C.III.9)**

308. Togo has no proper procedures in place to authorise access to funds or other assets that have been frozen under Resolution 1267, and that are going to be used to cover essential expenses, the payment of certain commissions, fees and payment of services and extra-budgetary expenses.

**Procedures to appeal for freezing measures to be re-examined in Court (C.III.10)**

309. The CFT Law, under Article 31, paragraph 3, provides for referral to a competent court to litigate against administrative freezing measures. This is the administrative jurisdiction for appealing against administrative freezing measures. In the same vein, Article 79 of the Code of Penal Procedure makes similar provisions that apply only to objects placed in judicial custody by the investigating magistrate. Apart from these two points that have been mentioned, Togo has no litigation provisions to appeal freezing measures before a court of law.

**Freezing, seizure and confiscation in other circumstances, applying C.3.1 to 3.5.4.1 and 3.6 of R3, (C. III.11)**

310. Article 29 of the CFT Law provides that the investigating magistrate can prescribe provisional measures, ordering the seizure or confiscation of funds and assets related to terrorist financing, as well as the freezing of money and transactions involving such property. However, no specific provision exists on the freezing, seizure and confiscation of property and assets acquired from the proceeds of terrorism, it being understood that the offence is not criminalized in the legal system in Togo.

**Protecting the rights of bona fide third persons (C.III.12)**

311. Procedural law provides an opportunity for third parties acting in good faith to claim the protection of these rights. However, there is no specific law or regulation that explicitly mentions the protection of the rights of third parties acting in good faith in mechanisms for freezing funds in accordance with United Nations Resolutions 1267 and 1373.
Monitoring implementation of obligations relating to SRIII in Togo (C.III.13)

312. Togo lacks proper provisions to effectively monitor compliance with the relevant laws, rules or regulations governing the obligations under Special Recommendation III.

Additional elements

Implementing measures recommended in the document on best international practices (C.III.14)

313. Togo does not implement any measure on the implementation of international best practices for compliance with the obligations under SRIII.

Implementing procedures to authorize access to frozen funds (C.III.15)

314. Togo has no procedures for giving access to frozen funds and other property under Resolution 1373. Togo has therefore not been implementing activities in relation to this criterion under SR III.

Record keeping in compliance with R.32

315. There is no mechanism for collecting information on the measures taken for freezing, in compliance with United Nations Resolutions 1267 and 1373. The implementation of obligations relating to these Resolutions is not done effectively, because Togo has no statistics on the freezing of funds or property related to the financing of terrorism.

316. For money laundering, see the table on statistics for R3.

Analysis of effectiveness

317. The relevant legal instruments to which Togo has subscribed are in place, but the efforts made to implement this Recommendation have been far from adequate. No internal standard to guide the process has been provided and no measures for freezing or confiscating assets under investigation have been taken.

Recommendations and comments

318. The Togolese authorities should:

- Develop internal rules for designing procedures and modalities for freezing terrorist funds in accordance with Resolutions 1267 and 1373;
- Review the definition of “funds” to make it compliant with international standards;
- Provide a national mechanism for establishing the list of terrorists or terrorist entities;
- Develop procedures for setting modalities to accommodate the freezing mechanisms of other countries;
- Develop procedures for litigating against freezing measures so that they are re-examined by a court of law;
- Make provision for freezing, seizure and confiscation in other circumstances;
• Ensure effective follow-up to compliance with the legal obligations relating to R3 in Togo;
• Establish an efficient system for communicating freezing measures to the financial sector;
• Develop clear instructions for financial institutions and other fund remitting entities to take appropriate measures for the freezing of criminalized funds.
• Publish in the Official Gazette the names of persons or entities whose funds or other resources are to be frozen, as well as the decisions for unfreezing funds;
• Develop appropriate procedures for authorizing access to funds and other property that have been frozen in accordance with Resolution 1267 and that are going to be used to cover essential expenses, the payment of certain commissions, fees and payments for services, as well as extra-budgetary expenses.
• Institute effective implementation of measures to protect bona fide third parties, using either laws or regulations, as the case may be.

Compliance with Special Recommendation III and R.32

<table>
<thead>
<tr>
<th>REC</th>
<th>Rating</th>
<th>Summary of factors underlying rating</th>
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| SRIII | NC     | • Lack of legal provisions for modalities on freezing of terrorist funds in accordance with Resolutions 1267 and 1373;  
• Non compliance with the definition of “funds” subject to freezing;  
• No national mechanism for establishing a list of terrorists and terrorist entities;  
• Lack of legal standards for setting modalities to accommodate the freezing mechanisms of other countries;  
• Lack of procedures for litigating against freezing measures, so that they can be re-examined in a court of law;  
• No provision for freezing, seizure and confiscation in other circumstances;  
• Lack of efficient monitoring of compliance with the legal obligations relating to R3 in Togo;  
• Lack of an efficient system for disseminating freezing measures to the financial sector;  
• Lack of clear instructions to financial institutions and other fund remitters on the freezing of criminal funds;  
• Lack of procedure for informing the public on updates of the lists of terrorist or terrorist entities;  
• Lack of mechanisms to implement measures for the protection of bona fide third parties. |
2.5 The Financial Intelligence Unit and its Functions (R.26)

Description and Analysis


320. Following the adoption of these two Uniform Laws, regulatory measures were taken to establish the Financial Intelligence Unit and make the necessary arrangements for it to begin operations. It is in this respect that the FIU was established by Decree n°2008-37/PR of 28 March 2008 and its members appointed by Decree n°2009-008/PR of 14 January 2009. In the same vein, the institutional correspondents of the FIU were appointed by decree in public administrative departments. Finally, the Inter-ministerial Committee on AML/CFT was established by inter-ministerial order to define, coordinate and supervise the implementation of Togo’s national strategy on AML/CFT.

321. Although the political authorities in Togo have displayed their political will for AML/CFT, the FIU lacks autonomy to operate properly and do its work well.

Recommendation 26

Establishment of a Financial Intelligence Unit (C.26.1)

322. Pursuant to Law n°2007-016 of 6 July 2007 on Anti-Money Laundering, a decree was issued in 2008 to institute the FIU in Togo. The Unit began its operations in March 2009, following the appointment of its members.

323. The FIU is an administrative body that is responsible for “receiving, analyzing and processing information that can be used to establish the origin of transactions or the nature of transactions mentioned in suspicious transaction reports produced by designated persons”. It also receives any other information that is useful and necessary for the performance of its duties, especially information provided by control authorities, as well as judicial police officers. The FIU may “request designated entities or any other physical or legal person to communicate information in their possession that can make a useful contribution to suspicious reports”.

324. The FIU currently has six members appointed from among senior executives in the public service and the BCEAO, as well as a team of support staff that includes one analyst, a computer specialist, an accountant and two secretaries. The number of staff members is not enough, but the team manages to handle the requirements of AML/CFT.

325. The FIU has developed a plan of action to implement in 2010. The plan basically includes activities for sensitization, training of its members and reporting entities, reinforcement of its human resources and establishment of an efficient IT network.

Tips for preparing Suspicious Transaction Reports (C.26.2)
326. Order n°171/MEF/CENTIF-TG of 13 August 2009 establishes a model for suspicious transaction reporting under the provisions of Articles 26 and 27 of the AML Law and articles 18 and 19 of the CFT Law. This form is a three-page document. Suspicious transaction reports should be established using the model. But in the event of an emergency, the said reports can be made by phone or sent by any other electronic means, subject to written confirmation within a period of 48 hours (art. 27 of the AML Law).

327. The model report is presented as follows:

- Identification of the entity and/or the person filing the report;
- General information;
- Description and status of the suspicious transactions;
- Identification of the natural and/or legal person suspected and the relation they have with the reporter;
- Analysis

328. The FIU has distributed this sample STR widely to the designated entities in the banking sector and to some DNFBPs. It has been following this up with information sessions to explain how the sample report should be filled. It has also been giving advisory support to the subjected categories during information sharing sessions on how to process certain STRs. After attending these sessions, some of the subjected categories were able to make other STRs to the FIU, as a part of efforts to provide feedback. This sample STR should also be shared with reporting entities that have not yet received it, so that the system becomes more effective.

329. It is important to note just how important it is for STRs to be made before transactions. The FIU has the power to obstruct execution of a suspicious transaction for no more than 48 hours (art. 28, AML Law). This gives the FIU time to further investigate complex cases and prevent the transfer of funds, so that the judicial authorities can take measures to seize them. If, at the end of this 48-hour period, the investigating magistrate does not get back to the reporter, this latter is free to return to business as usual.

Ensuring timely FIU access to information (C.26.3)

330. Under Article 17 of the AML law and Article 22 of the CFT Law, the FIU "may require designated entities and any natural or legal persons to disclose the information they have in their possession, where such information may constitute a useful addition to the suspicious report". To do so, the FIU often sends out official letters and formal written requests. In practice, most designated entities respond to these requests. But the time allowed for providing answers is relatively long and lasts from one week to one month, which may penalize FIU efforts to expedite STRs.

331. The FIU can also call on its correspondents in the police, gendarmerie, customs and State judicial services, as well as any other service that can advance the duties it is performing. The FIU’s seventeen correspondents work in the public and private sectors, liaising with the Unit to perform its duties, including information gathering.

Obtaining additional information from reporting entities (C.26.4)
332. Under Article 28 of the Anti-Money Laundering Law, the FIU may also request additional information from the reporting entity or any other public and/or control authority to enrich the STR that it received. The Togo FIU has already taken advantage of this opportunity to request and receive additional information. But the delivery of the said information was most often untimely. Since beginning its activities in 2009, the Togo FIU has submitted about fifty information requests to make STRs to several players in the AML/CFT system. Most of them have been banking institutions that make several STRs to the FIU. It has also asked other subjected entities, such as micro finance institutions, law enforcement authorities, insurance companies, the chamber of commerce and public administration departments (taxation department, Ministry of Commerce ....). The FIU received feedback on each occasion. But, the time of response to these information requests was relatively long, and this does not facilitate efforts for speedy production of STRs.

**Dissemination of financial information (C.26.5)**

333. Under Article 29, paragraph 1 of the AML Law and Article 21 of the CFT Law, the FIU submits suspicious transaction reports on ML or FT to the State Prosecutor, who transfers them without delay to the investigating magistrate "where the transactions show facts that may constitute money laundering or terrorist financing". In the period under review, the Togo FIU received nineteen (19) STRs. It processed four (4) of them, forwarded the reports to the State Prosecutor, and initiated legal proceedings on the said cases, as required. No judgment has yet been passed on any of these cases. However, none of these STRs deals with suspicions on the financing of terrorism.

334. The number of STRs received and processed by the Togo FIU may be on the low side because the Unit began its operations not long ago. It requires a little more time to win the confidence of reporting entities and to become financially self-reliant, so that it can do more in reaching out to, and training designated entities.

**Operational independence and autonomy (C.26.6)**

335. Under Article 17, paragraph 1 of the AML Law and Article 17 of the CFT Law, the FIU is an administrative body that is financially independent and can decide alone over matters within its remit. On the operational side, such autonomy is still a far cry for the FIU-Togo, owing to the conspicuous lack of resources it is facing, especially material and financial resources. The FIU has no budget line of its own. It cannot release the funds needed for its own projects without turning to its supervision authority for assistance.

336. Since the Togo FIU was established and began operating, following the appointment of its members in March 2009, it was not until 2010 that it received budget allocations. The said budget, which the Unit has executed partially, was below the allocations it was expecting initially. Furthermore, the decree setting out the payment regime for members of the Unit has still not been issued, even though FIU members receive some form of incentive from time to time.

**Protection of information held by the FIU (C.26.7)**

337. Under Article 20 of the AML law, and sections 8 and 9 of Decree 2008-037/PR, FIU members and correspondents take the oath of office before they begin to perform their duties.
They must observe strict confidentiality on all official matters, even after they no longer work for the FIU. The members of the Togo FIU were sworn in on February 26, 2009 while the correspondents were sworn in on April 8, 2010.

338. The premises of the Togo FIU are guarded by two teams of two police officers, who are on secondment to the FIU and work by shift. The police officers are supervised by a team leader from the National Police Force. A monthly stipend of 30,000 Francs CFA is paid to the police officers on top of their monthly salaries. It would be useful to raise the amount of the stipend, as a way to encourage them.

339. With specific reference to the physical protection of documents at the FIU, the security guards provide ample protection for the information in the Unit’s keeping (no private visits allowed, round-the-clock watch over the premises by the national security forces, a safe is available on site for storage of documents, including STRs), The Chairman of the Togo FIU is the only one who knows the code of the safe and he can share it with a colleague of his choice, where such a person is designated to act on his behalf when he is not on seat.

340. As regards the protection of electronic data, the FIU does not currently have a secure operational network. It uses ordinary office automation software packages. The Mission gathered that efforts were being made to find a company that can set up a real IT network for the FIU. This has been a limitation, given that STRs may be shared electronically in case of emergency.

**Publishing periodic reports (C.26.8)**

341. Under Article 17, paragraph 3 of the AML and CFT laws and Article 11, paragraph 2 of Decree 2008-037/PR, the FIU has to prepare quarterly and annual reports. To date, the Togo FIU has prepared seven reports, including an annual report. Based on the STRs it received, the Togo FIU attempted, in its report, to describe the money laundering trends in Togo. However, the studies in this area need to drill deeper to produce truly complete typologies for ML and FT in the country.

342. The reports prepared by the FIU review progress in activities for anti-money laundering and counter terrorist financing at both the national and international levels. They are submitted to Togo’s Minister of Economy and Finance, as well as to BCEAO headquarters. The BCEAO prepares summaries of these reports on a regular basis and shares them with the WAEMU Council of Ministers for information purposes.

**Egmont Group Membership (C.26.9)**

343. Togo has adopted the Law on the Financing of Terrorism, which is one of the requirements for admission to the Egmont Group. To prepare for membership in the said body, the Togo FIU tendered a request for sponsorship to TRACFIN, the FIU in France. That request has been granted. Togo is still pursuing contacts with FIUs in the region, at an informal level, to get the backing of a second sponsor. This is likely going to be Senegal or Côte d’Ivoire. The plan of the Togo FIU was to submit its application for membership in the Egmont Group before the end of 2010, so that it gets reviewed in 2012.

**Togo FIU compliance with Egmont Group principles (C.26.10)**
The Togo FIU, in its relations for mutual cooperation and assistance, follows the international standards set by the FATF 40 +9 Recommendations. Under Article 12, paragraph 1 of Decree 2008-037/PR of 28 March, 2008, the FIU can exchange information with the FIUs in third States with similar responsibility to collect and process suspicious transaction reports, on the condition that the said FIUs subject themselves to similar obligations of professional secrecy and confidentiality. These provisions are consistent with the principles of the Egmont Group. The Togo FIU has signed two agreements in this respect with FIUs from third countries, namely France and Belgium.

**Recommendation 30**

**Adequate resources for the FIU and the law enforcement and investigation authorities (C.30.1)**

The FIU has six members:
- The Chairman, who is a senior executive in the customs service, on secondment from the Ministry of Economy and Finance;
- A Magistrate specialized in financial issues who comes from the Ministry of Justice;
- A squadron leader from the Gendarmerie (in charge of investigations), on secondment from the Ministry of Defence;
- A Chief Police Commissioner, on secondment from the Ministry of Security (in charge of investigations);
- A representative of the BCEAO, providing overall stewardship for the FIU permanent secretariat, put on secondment by the Governor of the BCEAO;
- A customs inspector, on secondment from the Ministry of Economy and Finance (in charge of financial investigations);

The members of the FIU work full time for a period of three years. They can serve no more than two terms in this capacity. They were appointed by decree n°2009-008/PR of 14 January 2009.

The members of the FIU are working with able assistance from a team of local support staff, including:
- 1 accountant;
- 1 IT specialist;
- 1 financial analyst;
- 2 secretaries;
- 1 driver;
- 4 armed guards and one team leader, all from the national police force.

The FIU is funded by the State through a line in the general budget. However, these financial resources are inadequate, and only a portion is available. The Togo FIU received
budgetary allocations only in 2010. And the monies received were for operating costs, leaving the Unit with no provision for the staff.

349. The law enforcement authorities also lack the human, material and technical resources to work effectively on AML/CFT. The prosecution authorities (public prosecutor and judges’ chambers) that received FIU reports have still not been able to try cases of money laundering and terrorist financing. The situation is the same for the investigation authorities (Gendarmerie, Police and Customs) who lack resources as well as skilled personnel at times.

Integrity of FIU Staff (C.30.2)

350. FIU members and correspondents took the oath of office in the Court of Appeal before they began to work (Article 20 of the AML law and art. 8 of Decree No. 2008-037/PR). They are required to observe confidentiality on all information they gather during their term of office. Such information shall not be used for other purposes, except those provided by law (art. 20 of the AML law). Confidentiality must be observed even after the members no longer work for the FIU (Article 9 of Decree n°2008-037/PR). Gendarme, customs and police officers also subject themselves to a morality probe before joining the FIU, and they take the oath of office as well before they begin work. FIU support staff members also take a commitment of confidentiality.

351. Confidentiality is observed effectively by FIU members, staff and correspondents (Article 20 of the AML Law), as well as by designated entities and persons (art. 26 of the AML Law). Some weaknesses however need to be addressed to secure confidentiality in transactions with other persons or entities that may be involved in FIU operations. Article 17 of the AML law recognizes that the FIU can request, within its remit, the information held by designated persons and entities, as well as "any physical and legal person". While public services have to observe confidentiality, for their own reasons or ethics, the same should apply for any other individual(s) that may be required to provide information to the FIU.

Appropriate training for staff and relevant authorities (C.30.3)

352. FIU members received proper training with the technical and financial support of other FIUs, GIABA and UNODC. The training was on:

- Investigation techniques and the typology of underlying offences;
- The typologies of money laundering, techniques for tracing property acquired with the proceeds of money laundering or terrorist financing,
- The techniques control authorities should use to make sure that financial institutions comply with their AML/CFT obligations.

353. These training seminars were held at the FIUs in Mali, Burkina Faso, Côte d'Ivoire, and Senegal, as well as in Paris on TRACFIN premises and in Brussels on the premises of the FIU in Belgium. Additional training was provided in Lome, Togo, by experts from GIABA and the Côte d'Ivoire FIU.

Recommendation 32

Verifying the efficiency of the AML/CFT system (C 32.1)
354. There has been little effort, either from the FIU or the Inter-ministerial Committee, to assess the effectiveness of the anti-money laundering and counter terrorist financing system, put in place not long ago.

**Record keeping by FIU and the investigation and prosecution authorities (C 32.2)**

355. The FIU has statistical data on suspicious transaction reports (see table below).

### STATUS OF SUSPICIOUS TRANSACTION REPORTS FROM 2009 TO 2010

<table>
<thead>
<tr>
<th>Year</th>
<th>Designated entities</th>
<th>Number of STRs received</th>
<th>Number of STRs processed</th>
<th>Number of cases referred</th>
<th>Number of cases pending</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>Banks</td>
<td>06</td>
<td>06</td>
<td>01</td>
<td>05</td>
</tr>
<tr>
<td></td>
<td>Micro finance institutions</td>
<td>00</td>
<td>00</td>
<td>00</td>
<td>00</td>
</tr>
<tr>
<td></td>
<td>Administrative services</td>
<td>01</td>
<td>01</td>
<td>00</td>
<td>01</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>07</td>
<td>07</td>
<td>01</td>
<td>06</td>
</tr>
<tr>
<td>2010</td>
<td>Banks</td>
<td>08</td>
<td>08</td>
<td>02</td>
<td>06</td>
</tr>
<tr>
<td></td>
<td>Micro finance institutions</td>
<td>01</td>
<td>01</td>
<td>00</td>
<td>01</td>
</tr>
<tr>
<td></td>
<td>Investigation Authorities</td>
<td>03</td>
<td>03</td>
<td>01</td>
<td>02</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>12</td>
<td>12</td>
<td>03</td>
<td>09</td>
</tr>
<tr>
<td></td>
<td>General total</td>
<td>19</td>
<td>19</td>
<td>04</td>
<td>15</td>
</tr>
</tbody>
</table>

356. Judicial inquiries were opened into the four cases reported, and then forwarded to the prosecution, but there is still no trial, not to mention conviction for money laundering or terrorist financing.

**Analysis of effectiveness**

357. The AML law provides that the Togo FIU is an administrative entity entrusted with the duties of an FIU. It is basically in charge of receiving and processing suspicious transaction reports. This gives the Unit a central role in Togo’s anti-money laundering and counter terrorist financing efforts. The political authorities and AML/CFT stakeholders in Togo all agree on this. But, this show of political will is not matched with the material and financial resources to establish an effective control mechanism.

358. The FIU budget for 2009 had not been approved at the time of the on-site visit. The uncertainty that surrounds resource availability for the FIU budget line in the national budget for 2010 undermines the Unit’s operational capacities. It would be useful to clarify this major aspect, so that STRs are made in the best possible conditions and the public can look at the FIU as an efficient and credible agency. The Unit still lacks proper IT equipment and a secure IT network.

359. Since inception, the Togo FIU has received nineteen STRs. The Unit has a solid legal framework. It has designed a suspicious transaction report sample that is clear, comprehensive, detailed and easy for reporters to follow. The organizational and administrative set-up looks conducive to the effective pursuit of FIU tasks. As the Unit progressively gains experience and specific knowledge in the area of work it covers, the quality of its operations will improve.
Establishing trust in the relationship between designated entities and the FIU is of paramount importance. Unless such trust exists, efficiency in the preventive system will be deeply compromised. Confidentiality on information about suspicious transaction reports is one of the pillars of this relationship. Reporting bodies should know that for their submissions to trigger investigation or prosecution, they must include hard facts on money laundering or terrorist financing. Data has therefore to remain confidential during the information review and analysis phase, and the FIU should see to it that such confidentiality is maintained even when it seeks information from third parties.

Apart from the relationship with reporting entities, the FIU has to build synergy with government institutions and other judicial authorities. Having a magistrate in the Unit can facilitate relations with the judiciary. In this context, systematic feedback on action taken by the judicial authorities is important, so that the FIU can assess the quality of its reports, and correct or improve its analysis, as appropriate.

The FIU is taking a multidisciplinary, balanced approach to AML/CFT. This is evidenced by the composition of the staff team. It is desirable that FIU members acquire, without delay, the expertise expected from them, so that the Unit can establish its authority vis-à-vis the reporting entities.

Recommendations and comments

We therefore recommend to the Togolese authorities to take the following steps:

- Adopt Togo’s national strategy for AML/CFT;
- Share the sample STR effectively to all the reporting entities;
- Provide the FIU with adequate human and material resources;
- Provide the FIU with a predictably available budget commensurate with its duties;
- Provide the FIU with an efficient IT system;
- Enable the FIU to get direct or indirect access to the information held by other relevant authorities.

Compliance with Recommendations R.26 and R30

<table>
<thead>
<tr>
<th>REC</th>
<th>Rating</th>
<th>Summary of factors underlying rating</th>
</tr>
</thead>
</table>
| R.26 | PC     | - Lack of operational autonomy for the FIU;  
|      |        | - The sample STR is not disseminated to all subject categories  
|      |        | - Lack of a secure and reliable IT network, which compromises the storage of immaterial data;  
|      |        | - Delays in the delivery of responses to the financial and administrative information requested by the FIU;  
|      |        | - Lack of an in-depth study on the typology of ML and FT in the reports published by the FIU.  |
2.6 Investigation, Law Enforcement and other Relevant Authorities – Investigation, Law Enforcement and Confiscation/Freezing framework (R.27, 28, 30 & 32)

Recommendation 27

Description and Analysis

364. In accordance with the laws on AML/CFT, the FIU, after processing information it receives on suspicious transactions, shall submit a suspicious transaction report (STR) to the State Prosecutor, as the representative of the prosecution and director of investigations, where the said transactions show facts that may constitute a money laundering or terrorist financing offence. The Prosecutor is required to open a criminal investigation without delay through the services of an investigating magistrate. In the course of these investigations, the investigating magistrate may assign Judicial Police Officers, in accordance with the Code of Criminal Procedure (CCP) in Togo, to investigate the case under his supervision (art. 64 CPC).

365. Under Article 15 of the CPP, JPOs may include:

- The State Prosecutor;
- The magistrates representing the prosecution;
- The investigating magistrates;
- Gendarme officers, Brigade Commanders and Heads of Gendarmerie Posts;
- The National Security Director and his deputy;
- District Officers and Sub-district officers;
- Mayors;
- Police Commissioners and Heads of Police Stations;
- Non-commissioned gendarme officers, Police Officers and non-commissioned police officers.

Designation of competent prosecution authorities (C.27.1)

366. The two laws on AML/CFT make no provision by which the authorities in charge of criminal proceedings can specialize in any one area. However, the law reform under way makes provision for magistrates to specialize in a range of different areas, including anti-money laundering and counter terrorist financing.

367. The Central Office for Anti-Money Laundering and Control of Illicit Drug Trafficking (OCRTIDB) includes police and gendarme officers. It was instituted by virtue of Article 4 of Decree 2004-053/PR, issued on 28 January 2004 and comprises a four-man specialized unit on anti-money laundering.

368. The Customs department in Togo includes a Branch for Litigation, Investigation, and Securities that is responsible for anti-money laundering activities. The unit responsible for
AML/CFT in this section is the Drugs and Money Laundering Division that is made up of the Head of the said Division alone.

369. The Economic and Financial Police Division, and the Division for Narcotics, Procuring and Human Trafficking in the Judicial Police Directorate; the Research and Investigation Unit and Special Intervention Squad of the National Gendarmerie are the departments responsible for combating economic crimes, banditry and terrorism in all its forms (Decree n° 92-090/PMRT of 5 April 1992 on the duties and realignment of the Directorate General of the National Police - Decree 2008 - 010/PR of 25 January 2008 on the National Gendarmerie Service in Togo).

Postponing or waiving the arrest of suspected persons and seizure of money for proper conduct of investigations (C.27.2)

370. The AML/CFT laws do not clearly postpone arrests and seizures to allow the competent authorities investigating cases of money laundering to identify those involved. These techniques are provided only in the case of investigations relating to drug trafficking.

371. On the contrary, Article 33 of the AML law and Article 26 of the CFT law allow the investigating magistrate to make use of a whole range of different techniques, including the surveillance of bank accounts, access to systems, networks and servers used, etc… in order to gather supporting evidence with which to establish the predicate offence.

Additional elements

Authorization of special investigation techniques (C.27.3)

372. The Laws make no provision for recourse to special investigation techniques for cooperation with other countries.

Framework for using special investigation techniques (C.27.4)

373. The Law is silent on this point.

Specialized groups and international cooperation (C.27.5)

374. Specialized groups are not used in international cooperation for AML/CFT, or even for investigations on underlying offences.

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

375. The FIU and the Inter-ministerial Committee for combating money laundering and terrorist financing have done no review of ML/FT trends, and no study on the risks of ML/FT in Togo.

Recommendation 28

Power to compel production of, and search persons or premises for all documents and information (C.28.1)
376. FIU investigators have been able to compel the production of, and obtain documents or evidentiary items (bank cards, copies of identification documents, bank account history ...) needed for investigations on AML/CFT. They were at no instance refused access to the said materials on grounds of confidentiality (art.17 and 34 of Act 27 of AML and CFT Law). Article 17 of the AML Law provides that the FIU "... may request designated entities and all persons or entities to disclose information in their possession, where such information contributes to enrich the STRs. Individual persons cannot invoke confidentiality as the basis for refusing to provide information to control authorities and the FIU. The same applies for information required in an investigation into a money laundering offence, where such an investigation is ordered by the investigating magistrate or carried out at his behest by investigation and law enforcement officers working on money laundering offences".

377. Investigation and law enforcement officers enjoy the same prerogative under the supervision of the magistrate (art. 34 of the AML law, art. 27 of the CFT Law). And the same provisions apply to searches and seizures. The Code of Criminal Procedure provides that law enforcement officers and judicial police officers can, under certain circumstances, be assigned extensive powers for investigation (Article 17, paragraph 4).

378. It is in this respect that investigation authorities and prosecution authorities may, under the provisions of the Code of Criminal Procedure and in accordance with the type of investigation concerned (flagrante delicto or preliminary), search for and seize any document or article relating to an investigation they are conducting for all violations of criminal law, including ML and FT.

379. In practice, investigating officers find it hard to get timely access to the information and documents they need, although legal provisions are in place to enable them to do so.

Power to take and use witness testimonies (C.28.2)

380. During an investigation, the investigating Magistrate has extensive powers to obtain evidence (Art. 75 to 80 of the Code of Criminal Procedure). In the same vein, JPOs and JPAs can conduct evidentiary hearings, depending on the type of investigation concerned (preliminary or flagrante delicto).

381. Upon careful analysis, the Mission finds reason to admit that even if there is a legal framework for compelling the production of documents, for conducting searches and gathering evidence, investigation authorities face challenges in obtaining the information they need for their work. Evaluating Togo’s progress in AML/CFT delivery at this point is no easy task. Investigators admitted that they had so far done no investigation in this regard.

Recommendation 30

Adequate resources for the law enforcement and investigation authorities (30.1)

382. The prosecution authorities also lack the human, material and technical resources they need to work properly in AML/CFT efforts. The public prosecution authorities (the public prosecutor’s office and the judicial investigation units), to whom STRs have apparently been sent, are yet to try the cases for money laundering and terrorist financing. The situation is the same for the investigation authorities (Gendarmes, Police and Customs officers) that lack resources and skilled workers sometimes.
Staff integrity in the investigation and prosecution authorities (30.2)

383. Gendarme, customs and police officers go through a morality probe before they are recruited, sworn in and assigned to begin work.

Appropriate training for staff and relevant authorities (30.3)

384. At least five (5) Public Prosecutors attended the training exercises on investigation techniques. Training for capacity building was designed for police, gendarme and customs officers, as well as for magistrates and members of the taxation department. Some financial institutions (banks and micro finance outlets), non-financial establishments (retailers of used vehicles) and IMC members had already been trained on AML/CFT requirements. The Togo FIU intends to expand these training courses to other designated entities, as well as to civil society groups, through the Inter-ministerial Committee for Monitoring AML/CFT activities. It will be challenging to implement this training programme, owing to the financial difficulties facing the Togo FIU.

385. The majority of persons subjected to AML/CFT in Togo have not been trained. Most of them already attended awareness and information sessions and became familiar with AML/CFT Laws during preparations for the Togo Mutual Evaluation.

Additional elements

Special training programmes for Magistrates (C.30.4)

386. In the national AML/CFT strategy that has been developed and submitted for adoption by the Government of Togo, provision is made to train Judges in AML/CFT. Justice reform efforts that going on also include specialized training in anti-money laundering and counter terrorist financing for Court Judges.

Recommendation 32

Record keeping by the prosecution and investigation authorities (C. 32.2)

387. The investigation and prosecution authorities endeavour to keep statistics on underlying offences. One notes that it is challenging for them to keep reliable, usable statistics due to the lack of IT equipment and skilled workers in this field.

SAMPLE STATISTICS FROM INVESTIGATION AUTHORITIES

The Customs Authorities: Drug Seizures 2005-2010 (Ghana/Togo border)

<table>
<thead>
<tr>
<th>Year</th>
<th>Type of Drug Seized (in Kg)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Cannabis</td>
</tr>
<tr>
<td>2007</td>
<td>26.257</td>
</tr>
<tr>
<td>2008</td>
<td>53.624</td>
</tr>
</tbody>
</table>

* Counterfeit pharmaceutical products
<table>
<thead>
<tr>
<th>YEAR</th>
<th>Armed robbery</th>
<th>Other offences observed</th>
<th>Number of persons interrogated</th>
<th>Number of persons referred to court</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>170</td>
<td>1042</td>
<td>5333</td>
<td>5229</td>
</tr>
<tr>
<td>2009</td>
<td>181</td>
<td>922</td>
<td>4968</td>
<td>4870</td>
</tr>
<tr>
<td>2010</td>
<td>117</td>
<td>802</td>
<td>4062</td>
<td>4023</td>
</tr>
</tbody>
</table>

388. The most common offences found by the gendarmes are fraud, embezzlement and theft.

### General Directorate of the National Police Service – Central Directorate of the Judicial Police: Economic and Financial Division

<table>
<thead>
<tr>
<th></th>
<th>2010</th>
<th>2009</th>
<th>2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cases investigated</td>
<td>232</td>
<td>978</td>
<td>841</td>
</tr>
<tr>
<td>Cases prosecuted</td>
<td>168</td>
<td>899</td>
<td>758</td>
</tr>
<tr>
<td>Cases appealed</td>
<td>806</td>
<td>1061</td>
<td>890</td>
</tr>
</tbody>
</table>

### General Directorate of the National Police – Central Directorate of the Judicial Police - Economic and Financial Division

<table>
<thead>
<tr>
<th>Offences</th>
<th>2010</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Cases investigated</td>
<td>Cases prosecuted</td>
<td>Cases appealed</td>
</tr>
<tr>
<td>Swindling</td>
<td>08</td>
<td>07</td>
<td>09</td>
</tr>
<tr>
<td>Forgery and use of false documents</td>
<td>68</td>
<td>58</td>
<td>166</td>
</tr>
<tr>
<td>Currency counterfeiting</td>
<td>03</td>
<td>02</td>
<td>04</td>
</tr>
<tr>
<td>Fraud</td>
<td>205</td>
<td>173</td>
<td>446</td>
</tr>
<tr>
<td>Breach of confidence</td>
<td>249</td>
<td>192</td>
<td>456</td>
</tr>
<tr>
<td>Usurpation of Functions</td>
<td>01</td>
<td>01</td>
<td>08</td>
</tr>
<tr>
<td>Corruption</td>
<td>01</td>
<td>01</td>
<td>03</td>
</tr>
<tr>
<td>Issuance of bounced cheques</td>
<td>03</td>
<td>02</td>
<td>07</td>
</tr>
<tr>
<td>Occupancy fraud</td>
<td>15</td>
<td>11</td>
<td>28</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>553</td>
<td>447</td>
<td>1127</td>
</tr>
<tr>
<td>Offences</td>
<td>Cases investigated</td>
<td>Cases prosecuted</td>
<td>Cases appealed</td>
</tr>
<tr>
<td>---------------------------------------</td>
<td>--------------------</td>
<td>------------------</td>
<td>----------------</td>
</tr>
<tr>
<td>Swindling</td>
<td>09</td>
<td>08</td>
<td>15</td>
</tr>
<tr>
<td>Forgery and use of false documents</td>
<td>94</td>
<td>94</td>
<td>77</td>
</tr>
<tr>
<td>Currency counterfeiting</td>
<td>19</td>
<td>19</td>
<td>26</td>
</tr>
<tr>
<td>Fraud</td>
<td>275</td>
<td>270</td>
<td>382</td>
</tr>
<tr>
<td>Breach of confidence</td>
<td>353</td>
<td>346</td>
<td>384</td>
</tr>
<tr>
<td>Usurpation of functions</td>
<td>02</td>
<td>02</td>
<td>02</td>
</tr>
<tr>
<td>Concealment</td>
<td>76</td>
<td>62</td>
<td>62</td>
</tr>
<tr>
<td>Issuance of bounced cheques</td>
<td>29</td>
<td>29</td>
<td>29</td>
</tr>
<tr>
<td>Occupancy fraud</td>
<td>119</td>
<td>69</td>
<td>84</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>978</strong></td>
<td><strong>899</strong></td>
<td><strong>1061</strong></td>
</tr>
</tbody>
</table>

General Directorate of the National Police Service – Central Directorate of the Judicial Police: Economic and Financial Division

2008

<table>
<thead>
<tr>
<th>Offences</th>
<th>Cases identified</th>
<th>Cases investigated</th>
<th>Cases appealed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Breach of confidence</td>
<td>332</td>
<td>306</td>
<td>341</td>
</tr>
<tr>
<td>Fraud</td>
<td>274</td>
<td>240</td>
<td>289</td>
</tr>
<tr>
<td>Forgery and use of forged documents</td>
<td>87</td>
<td>84</td>
<td>105</td>
</tr>
<tr>
<td>Counterfeiting</td>
<td>24</td>
<td>22</td>
<td>29</td>
</tr>
<tr>
<td>Swindling</td>
<td>15</td>
<td>14</td>
<td>16</td>
</tr>
<tr>
<td>Usurpation of functions</td>
<td>3</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Issuance of bounced cheques</td>
<td>2</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Concealment</td>
<td>104</td>
<td>87</td>
<td>105</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>841</strong></td>
<td><strong>758</strong></td>
<td><strong>890</strong></td>
</tr>
</tbody>
</table>

**STATISTICS ON DRUG SEIZURES BY OCRTID-B**

<table>
<thead>
<tr>
<th>Type of drugs</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cannabis</td>
<td>702,186 kg</td>
<td>664,8 kg</td>
<td>973,569 kg</td>
</tr>
<tr>
<td>Heroin</td>
<td>12,43 kg</td>
<td>3,264 kg</td>
<td>0,31 kg</td>
</tr>
<tr>
<td>Cocaine</td>
<td>59,06 kg</td>
<td>393,2 kg</td>
<td>34,019 kg</td>
</tr>
</tbody>
</table>

81
Cannabis is the most widely trafficked drug, followed by cocaine. In 2008, cocaine trafficking increased in a considerable manner.

**Analysis of effectiveness**

Togo has a legal and institutional framework for investigation and prosecution authorities that is compliant with FATF Recommendations and the uniform laws on AML/CFT. However, the supervision and control system needs to be more effective and efficient. The investigation and prosecution authorities are not adequately and sufficiently trained in AML/CFT, particularly on investigation and detection. They terribly lack human and material resources to do their work properly. The authorities, especially the magistrates and investigators, lack specialized knowledge in AML/CFT.

**Recommendations and comments**

The Mission recommends, therefore, that the Togolese authorities should:

- Give prosecution and investigation authorities specialized training in AML/CFT;
- Pass laws that clearly prescribe the postponement of arrests or seizures, or the waiving of arrests and seizures in judicial police procedures on AML/CFT;
- Train prosecution and investigation authorities in AML/CFT, and specifically in investigation techniques;
- Provide the investigation and law enforcement authorities with adequate material and human resources;

**Compliance with Recommendations R.27, R.28 and R.30**

<table>
<thead>
<tr>
<th>Rec.</th>
<th>Rating</th>
<th>Summary of factors underlying rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>R 27</td>
<td>PC</td>
<td>- Magistrates in the prosecution (Prosecutor, Investigating Magistrates and Court Magistrates) lack specialized knowledge in AML/CFT;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- No legal provisions clearly prescribe postponement of arrests or seizures, or the waiving of such arrests or seizures in judicial</td>
</tr>
</tbody>
</table>
2.7 Cross-border Declaration or Disclosure (SR IX)

Description and Analysis

392. Togo has a predominantly cash economy. A lot of physical cash is transported easily via public transport channels, used by individual bearers or professional smugglers, especially in the WAEMU region, where the free movement of goods and currency is afforded.

393. WAEMU Regulation R09/98/CM/UEMOA of 20 December, 1998, relating to the external financial relations of WAEMU Member States, institutes controls on foreign currency transactions. Togo, like the other WAEMU Member States, enforces these controls on currency exchange services, including the provisions on anti-money laundering. These provide that all foreign exchange transactions, capital movements and all types of payments to other States should be in compliance with the provisions of the regulation.

394. The control system in place is a dual system and depends on the identity of the person transporting the funds (resident or non-resident) and their destination (WAEMU or non-WAEMU country). Article 23 under Annex II of Regulation R09 provides that travellers to non Union Member States are authorized to carry up to 2,000,000 Francs CFA in bank notes other than CFA notes. Amounts in excess of this threshold may be transported in the form of traveller’s cheques, certified cheques or other means of payment. Conversely, non-residents are required to declare all means of payment in their possession when entering or leaving the national territory, if the amount is more than 1,000,000 Francs CFA. These non-resident travellers can also send foreign currency out of the country without justification, if the amount is below 500,000 Francs CFA.

Special Recommendation IX

Control system for trans-border transportation of physical cash (C.IX.1)

395. External financial relations are governed by Regulation R09 mentioned above and its appendices, as well as law N°88-05 of 26 May, 1998 on litigation and foreign exchange controls. Further, Article 15 of the CFT law provides that any person transporting currency or bearer negotiable instruments physically across the border to an amount equal to, or more than Five Million (5,000,000) Francs CFA should declare the amount when entering or leaving the country. However, by virtue of existing provisions for free movement of goods and persons within the WAEMU, residents are not required to report the physical transportation of currency in the Member States of the Union, in accordance with regulation R09, mentioned above.
Residents travelling to non-WAEMU States are required to declare the sum they are carrying, if the said amount exceeds Two Million (2,000,000) Francs CFA in bank notes. Sums above this threshold can be carried in the form of travellers’ checks, certified checks or other means of payment (Art. 4, 22 and 27 of Regulation No. R09/98/CM/UEMOA of 20 December 1998, relating to the external financial relations of Member States of the West African Economic and Monetary Union).

On the whole, residents are allowed to transport unlimited amounts of cash in the CFA zone, and this presents the risk of ML and FT. In Togo, the Mission gathered, from customs officials at the land borders, that declarations of currency or bearer negotiable instruments transported physically across borders are no longer done systematically since 2008.

**Disclosure of additional information on the origin and use of currency (C.IX.2)**

In the event of untruthful declarations of currency, the customs authorities may, in accordance with law No 88-05 of 26 May 1988 on litigation and foreign exchange controls, require the respondent to disclose additional information on the origin of their currency or bearer negotiable instruments, and on the use to be made thereof. But in practice, these authorities confirm that they encourage trade and, in most cases, restitute the cash to bearers without demanding information on the origin and destination.

**Cash couriers (C.IX.3)**

Under paragraph 2, Article 15 of the CFT Law, "the competent authorities in the Republic of Togo shall proceed to identify persons carrying cash and bearer negotiable instruments up to the amount provided in paragraph one of this article and require them, where necessary, to provide additional information on the origin of the said cash or bearer negotiable instruments. The competent authorities may, as appropriate, block or retain, for a period no longer than 72 hours, the cash or bearer negotiable instruments, if these are suspected to be related to terrorist financing or money laundering, or have been the subject of false declarations or disclosures". No statistical data in this regard shows that this provision is being enforced effectively.

**Concealment of information (C.IX.4)**

The Mission found that the only sources of information on cash declarations and cash bearers’ identity are the trans-border physical cash declaration records available at the airport. Since those records exist, the FIU, in its efforts to prepare STRs, has been asking the customs officials at the airport for the said records to get access to the information they contain.

**Disclosure of information to the FIU (C.IX.5)**

The FIU may, on the basis of reliable corroborative evidence, object to the provision of a report for a period of 48 hours (art. 28 AML Law). Togo has no system in place for Customs to report on physical transportation of cash to the FIU, whereas cash couriers, who are yet to be identified in Togo, are subject to suspicious transaction reports, pursuant to Article 5 of the AML law.
National cooperation between the customs, immigration and other competent authorities (CIX.6)

402. According to customs officials who met with the Mission, there is no cooperation between customs, immigration services and other competent authorities at the borders. These services seem to be competing with one another, and each service performs its duties without cooperating with the other.

International cooperation between competent authorities (CIX.7)

403. Togo is a member of the International Criminal Police Organization-Interpol. It has also signed the agreement on cooperation in criminal police matters among ECOWAS Member States. There is also a four-party agreement on criminal matters between Benin, Togo, Ghana and Nigeria. In the same vein, Togo became a member of the organization of African Gendarmeries in September 14, 2009. These agreements establish mechanisms for sharing information.

404. Articles 23 and 24 of the AML law establish relations between the financial intelligence units of WAEMU Member States and between the FIUs and intelligence services of third States. Sections 5, Articles 46 et seq. of the AML Law, as well as Section 4, Articles 42 et seq. of the CFT Law enshrine the principle of international cooperation in anti-money laundering and the financing of terrorism.

405. The Togolese Customs Service is a member of the World Customs Organization. This makes it a party to several agreements, such as the Marrakech Agreement, the Nairobi Agreement, the Tokyo Round Agreement on procedures, and the Istanbul Convention relating to temporary admission. It is also part of the Customs Enforcement Network (CEN), which is the communication network of the WCO on efforts to combat fraud. Article 41 of the CFT law and Article 284 of Law 66-022 of 23 December 1966, relating to the Customs Code, set out the penalties applicable to infringements of customs regulations and litigation on exchange controls. But in reality, the customs authorities often do not communicate the information they have on cash couriers and bearer negotiable instruments to their counterparts in the other countries concerned.

Sanctions against false declarations/disclosures, pursuant to C.17.1, 2, 3,4 (C.IX.8)

406. Article 42 of the AML law and Article 38 of the CFT Law make provision for penalties applicable to financial institutions under a control authority with disciplinary powers. This authority may impose appropriate sanctions in accordance with specific legislation in force. While such authorities enjoy this prerogative, they take no action unless they are caused by the State Prosecutor to do so.

407. Under Article 40 of the AML Law and Article 35 of the CFT Law, "the law sanctions ..."... "Persons and leaders, or the employees of physical persons or legal entities mentioned under Article 5, where they intentionally or unintentionally ...." The provision covers legal entities as well as their leaders.

408. Articles 18 et seq. of Law N°88-05 of 26 May 1986 set out the penalties for infringements or disputes in the control of exchange transactions. These penalties are proportionate and dissuasive.
409. Article 286 of the Customs Code makes provision for confiscation, payment of fines or imprisonment sentences for any offence relating to the importation or exportation of goods without clearance at the customs, or in the case of false declarations. In practice, these sanctions are never applied for false declarations on the transportation of currency, and the cases end up being settled through transactions.

Confiscation of ML/FT proceeds, applying C.3.1-3.6 (C.IX.10-11)

410. Section 41-10 of the AML law also provides for "the confiscation of property or instruments used, or intended for use in committing the offence, or the proceeds of the offence, excluding returnable items. Article 45 provides for mandatory confiscation of the proceeds of money laundering.

411. Article 36 of the AML Law and Article 29 of the CFT Law prescribe provisional measures: "the investigating magistrate may prescribe provisional measures in accordance with the law by ordering, at the expense of the State, the seizure or confiscation of property related to the offence under investigation and all evidence to identify them, and the freezing of money and financial transactions involving such property". Further, paragraphs 9 and 10 under Article 41 of the AML law make provision for "confiscation, in whole or in part, of property acquired lawfully by the offender, and the property or arrangements used, or intended for use in committing the offence or the instruments derived therefrom, with the exception of returnable items".

Notification of unusual cross border movement of precious metals and gemstones (C IX.12)

412. The Customs Code provides that the sender should tender a Customs certificate for the destination country. In practice, the General Directorate of Mines certifies the originality and quality of gold or precious metals/gemstones prior to import and use. The Togo FIU organized a working session with dealers in gold, precious metals and gemstones to make sure that they cooperate in establishing the source, destination and purpose of transportation.

413. The Togolese Customs Service has established no system for communicating information to the FIU on unusual transportation of precious metals and gemstones, let alone to the Customs or forwarding services of the receiving countries.

Controlling cross border transaction communication systems (C IX.13 IX.14)

414. Reports on cross border transportations of cash do exist and are kept at the Directorate for litigation, investigations and securities in accordance with Article 16 of Decree No. 97-104/PR of 23 July, 1997, relating to the responsibilities and organization of the Customs Service.

415. These trans-border transaction reports are the subject of appropriate security measures. They are filed and archived at the Litigation Branch for Customs inquiries and securities. These reports may be released only with special permission from the Director General of Customs.
416. However, the customs services at border posts have no automated systems for handling information on the subject, and no plans are being made to provide training in this regard.

**Access to a supra-national information management system on transportation of physical cash and bearer negotiable instruments (C IX.15)**

417. The Togolese Customs Service has access to the WCO Customs Enforcement Network (CEN), but customs services at the frontiers have no direct access to it.

**Additional elements**

**Best international practices and computerized databases on physical transportation of cash and bearer negotiable instruments (C IX.16 and IX.17)**

418. Togo is yet to institute international best practices for Special Recommendation IX. This is simply because no supra-national information system for the transportation of cash and bearer negotiable instruments is in place. Similarly, there is no computerized database on the subject.

### SAMPLE STATISTICS ON PHYSICAL TRANSPORTATION OF CASH

**January – December 2005**

<table>
<thead>
<tr>
<th>Entry</th>
<th>Exit</th>
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<tr>
<td>USD</td>
<td>EURO</td>
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<tr>
<td>1.700.000</td>
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<tr>
<td>USD</td>
<td>EURO</td>
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<tr>
<td>3.655.000</td>
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**January-December 2006**

<table>
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<tbody>
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<td>USD</td>
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<td>2.060.000</td>
<td>106.419</td>
</tr>
<tr>
<td>USD</td>
<td>EURO</td>
</tr>
<tr>
<td>4.017.000</td>
<td>329.900</td>
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</table>

**January-December 2007**

<table>
<thead>
<tr>
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</tr>
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<tbody>
<tr>
<td>USD</td>
<td>EURO</td>
</tr>
<tr>
<td>950.000</td>
<td>200.000</td>
</tr>
<tr>
<td>USD</td>
<td>EURO</td>
</tr>
<tr>
<td>2.850.000</td>
<td>263.920.000</td>
</tr>
</tbody>
</table>

419. Findings:

- United States Dollars: A slight increase in the transportation of dollars has been observed over the years;
- Euro: An increase in transportation has been observed, considering the high exchange rate of the European currency;
- Other: An increase has been observed.
420. Overall, these statistics do not reflect the situation in Togo for transportation of physical cash and bearer negotiable instruments.

Analysis of effectiveness

421. The communication and information management system for physical transportation of cash and bearer negotiable instruments is far from efficient and does not meet the criteria of FATF Special Recommendation IX.

422. Apart from the land borders, the airport is the only other place where declarations on the physical transportation of currency take place systematically in Togo, the Mission was told during discussions with the customs authorities (sources suggest that since 2008, a directive from the higher authorities in the customs service prescribed this new approach). The customs officials at the airport do not require passengers to make declarations systematically, and the random checks they do not on passengers are not efficient enough to enable them to identify untruthful declarations.

423. As regards the information management system, the customs service archives cash declaration records, but it has no system for communicating this information methodically to the FIU.

424. Furthermore, the transportation of precious metals and stones is not well controlled, and there is no system in place to provide information to recipient countries and transit countries. While Togo does not produce gold, a considerable amount of this precious metal passes through dealers who have not been sensitized properly to AML/CFT.

425. Lastly, management of information on the physical transportation of cash and bearer negotiable instruments at the supra-national level is inefficient mainly because the system is not automated and is not even computerized.

Recommendations and comments

426. In light of the above, it is imperative for Togo to put in place:

- A system for declaring transportation of cash and bearer negotiable instruments at land borders;
- A system for the Customs to communicate information on the transportation of cash or bearer negotiable instruments to the FIU;
- A system for communicating information on the transportation of precious metals and gemstones to transit and destination countries;
- A system for automated management of information on transportation of cash and bearer negotiable instruments;
- Direct access to the World Customs Organization’s CEN and Interpol’s I-24/7 service for the customs officers at the country’s land, sea and air borders;
- A system for providing training to, and raising the awareness of customs officers and dealers in precious metal and gemstones on AML/CFT.
Compliance with Special Recommendation SR.IX

<table>
<thead>
<tr>
<th>REC</th>
<th>Rating</th>
<th>Summary of factors underlying rating</th>
</tr>
</thead>
</table>
| R.IX | NC | • Lack of rigour in the system for declaring cash and bearer negotiable instruments at land borders;  
• Customs service do not communicate systematically to the FIU the information available on the transportation of physical cash and bearer negotiable instruments;  
• Togo’s customs service does not communicate information on the physical transportation of precious metals to their counterparts in transit and destination countries;  
• There is no automated information management system on the transportation of physical cash and bearer negotiable instruments;  
• No direct access to the World Customs Organization’s CEN for Togo’s customs officers at border posts;  
• Lack of sensitization to AML/CFT for customs officers and dealers in precious stones and gemstones. |

3. PREVENTIVE MEASURES – FINANCIAL INSTITUTIONS

Customer due diligence and record keeping

3.1 Risk of money laundering or financing of terrorism

427. The Mission gathered, from its discussions with the national authorities in Togo, that there was a risk of money laundering and terrorist financing, due to the geographical location of Togo (it has access to the sea and serves as a transit country for landlocked countries), and the predominance of the informal sector.

428. Although the Togolese authorities are aware of such vulnerabilities, they have not implemented an AML/CFT approach that is based on a risk assessment. The same weakness was observed among the majority of designated persons under the AML Law and the CFT Law. Nevertheless, the country is working towards the adoption of a national strategy for AML/CFT.

429. The legislative and institutional framework for anti-money laundering, established by the national authorities as far back as 2007, is not well known. The stakeholders in the sector heard about this framework during the awareness and training activities conducted by the Togo FIU, and the rules imposed on them by their foreign partners. The activities led by GIABA have played a decisive role in this process.
430. However, among the stakeholders that met with the mission, none had adopted a risk-based approach to AML/CFT, and the risk maps they had established were generally more suitable for commercial purposes.

431. 3.2 Customer due diligence, including reinforced or reduced identification measures (R.5 to 8)

Description and analysis

Legal framework

432. Law N°2007-016 of 6 July, 2007 on anti-money laundering, transposing Directive N°07-02/CM/UEMOA of 19 September, 2002, relating to anti-money laundering in WAEMU Member States, hereinafter referred to as AML law, imposes the obligations of preventing and detecting money laundering (see Articles 1 and 5 of the Law) on any physical or legal person who, in their profession, conducts, controls or provides advice on transactions involving deposits, exchanges, investments, conversions or any other movement of capital or all other property. With respect to financial institutions, these include the Public Treasury, the BCEAO, credit institutions (banks and financial establishments, post office financial services, the Caisse des Depots et Consignations or similar bodies, insurance and reinsurance companies, Insurance brokers and reinsurance companies, cooperative or mutual savings and credit institutions, BRVM, DC/BR, SGI, SGP, mutual funds, EICF, and Authorized MVT Operators and Currency Exchange Agents). This law gives no clear indication on the obligations concerning other financial activities that present risks of money laundering and should be covered by customer due diligence obligations. It is therefore uncertain whether all the financial activities defined by the FATF are covered in Togo when it comes to AML obligations.

433. Law N°2009-022 of 7 September 2009, relating to CFT in WAMU Member States imposes obligations on the Member States to put in place internal mechanisms for combating the financing of terrorism.

434. Law N°2009-019 of 7 September, 2009 on bank regulation subjects the banking sector to a number of obligations for AML/CFT.

435. Law N°95-014 of 14 July, 1995 and its enforcement decree regulate mutual or cooperative savings and credit institutions.

436. Instruction N°35/2008 of 23 November 2009, issued by CREPMF, imposes obligations for combating money laundering on certified stakeholders in the WAMU regional financial market.

437. Regulation 0004/CIMA/PCMA/PCE/SG/08 of 4 October, 2008, sets out the procedures that insurance companies in CIMA Member States should apply for anti-money laundering and counter financing of terrorism. This Regulation applies to insurance and reinsurance companies in CIMA Member States (Article 3). It subjects designated persons to customer due diligence requirements (Section III, Article. 8 - Knowledge of customers, Article 9 - Monitoring of customer activities, Article 11 - Monitoring and auditing of means of payment, Article12 – Capitalization of anonymous bonds).
438. Instruction N°01/2007/RB, issued by the BCEAO on 2/7/2007 on anti-money laundering in the financial institutions listed below, or BCEAO AML Instruction, sets out the modalities for application of the AML law. It applies to the financial institutions listed under Article 3, namely: banks and financial institutions, the Deposit and Consignment Office or similar bodies, mutual or cooperative savings and credit facilities, unincorporated structures or organizations that serve as mutual or cooperative facilities and are designed to collect savings and/or grant loans, certified manual currency exchange agents. Article 4, and Articles 6 to 10 give financial institutions general obligations for vigilance (including Customer Identification, detection of suspicious transactions) and specific obligations for vigilance (monitoring unusual transactions, obligations for occasional financial transactions, surveillance of electronic transfers, reinforced vigilance towards non-cooperative countries and territories and persons under fund freezing measures).

**Financial institutions subjected to AML/CFT provisions (Non-electronic money)**

<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>• Banks and financial institutions (OF²)</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>• Post office financial services (OF)</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>• Deposit and Consignment Fund (or similar organizations operating as such) (OF)</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>• Micro-finance institutions³ (OF)</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>• Certified manual currency exchange agents (OF)</td>
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<td>X</td>
<td>X</td>
</tr>
<tr>
<td>• Insurance and reinsurance companies (OF)</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>• Insurance and reinsurance brokers (OF)</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>• Regional stock exchange (OF)</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>• Securities Central Depository and Securities Settlement Bank (OF)</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

² Financial institutions as defined under Article 1 of Law n° 2007-016.
³ Mutual organizations and saving and credit cooperatives, as well as unincorporated structures or organizations, operating as mutual organizations or cooperatives, and designed to collect savings and/or grant loans.
AML related provisions applicable to establishments providing electronic money services

<table>
<thead>
<tr>
<th>Establishments</th>
<th>Law n°2007-016 of 6 July, 2007, relating to AML</th>
<th>Law n°2009-022 of 7 September, 2009, relating to CFT</th>
<th>Instruction n°01/07/RB of the BCEAO, relating to AML</th>
<th>Instruction n°01/2006/SP of the BCEAO, relating to electronic currency</th>
</tr>
</thead>
<tbody>
<tr>
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<td>Asset management companies (OF)</td>
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<td></td>
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<tr>
<td>Mutual Funds for Collective Investment in Transferable Securities OPCVM (OF)</td>
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<td>X</td>
<td></td>
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<tr>
<td>Fixed Capital Investment Companies (OF)</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>BCEAO</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The Public Treasury</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Securities and fund services</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

439. The financial sector in Togo comprises:

- Banks and financial institutions;

**Footnote:**

4 Only certain obligations of each of the provisions mentioned apply to the Public Treasury.
- Post office financial services, as well as deposit and consignment funds or organizations serving as such;
- Insurance and reinsurance companies and brokers;
- Mutual organizations or savings and credit cooperatives, as well as unincorporated structures or organizations operating as mutual organizations or cooperatives with the goal of collecting savings and/or granting loans;
- The Regional Stock Exchange (BRVM), the central depository/settlement bank, management and intermediation companies (SGI), asset management companies, fixed capital investment companies, certified manual currency exchange agents and mutual funds for collective investment in transferable securities (OPCVM).
- The AML/CFT control system especially covers the public treasury, BCEAO, financial institutions, business introducers to financial institutions, auditors, currency conveyors (Article 5 of the AML Law and Article 3 of the CFT Law).

Recommendation 5

Prohibition of anonymous accounts (C.5.1)

440. Legislative or regulatory provisions set out the conditions for financial institutions to open accounts. Under the provisions of Articles 7, 8 and 9 of Law No. 2007-016 on anti-money laundering, the identification and knowledge of customers are prerequisites for opening any account.

441. Article 4 of Directive N°. 01/2007/RB, issued by BCEAO on 2/7/2007 on anti-money laundering in financial institutions requires financial institutions to verify and confirm the identity of the counter-party before entering into a contractual relationship, or to assist their clients in planning or executing a transaction.

442. Under Article 43 of WAEMU Regulation 15/2002/CM/UEMOA, relating to payment systems in WAEMU Member States, it is required that banks, before opening a deposit account, verify and confirm the identity and address of the applicant, upon presentation of an official document, the valid original bearing the applicant’s photograph, with as much information as possible about their origin and business address or residence.

443. Article 4 under CREPMF Instruction N°35/2008 of 23 November 2009, relating to anti-money laundering among certified stakeholders in the WAMU Regional Financing Market, requires the said stakeholders to verify and confirm the identity of their counterparty before entering into a contractual relationship with them, or to assist their clients in planning or executing a transaction.

444. Article 8 under Regulation N°40004/CIMA/PCMA/PCE/SG/O8 of 4 October, 2008 of the CIMA Code requires insurance companies in CIMA Member States to verify and confirm the identity of their counterparties (full name, date and place of birth, nationality), regardless of the amounts paid to them by these latter.

445. In case of non compliance with these provisions, criminal penalties are provided in Article 40, paragraphs 2, 3 and 7 of Act N° 2007-016 on anti-money laundering. Article 33 of
Law N° 2009-019 on Banking Regulations requires that credit institutions with registered offices in Togo issue shares only in registered form.

446. However, these provisions do not explicitly prohibit the opening of anonymous or numbered accounts in Togo. There is not enough ground, therefore, to conclude that opening these types of accounts is prohibited. Similarly, it is hard to establish that numbered accounts are prohibited, owing to the lack of specifications in that regard. In practice, however, opening and maintaining such accounts is difficult, considering the obligations that financial institutions must fulfill to do so. This was confirmed in interviews with the BCEAO and financial institutions, and by the mandatory documents providing customer information for opening new accounts. These documents were put at the disposal of the mission team.

Framework for customer due diligence (C.5.2)

Due diligence at the beginning of a business relationship (C.5.2.a)

447. Article 7 of Law N°2007-016 on anti-money laundering provides that "financial institutions must verify the identity and addresses of their customers before opening an account for them, paying attention especially to securities, stocks or bonds, and before assigning a trunk or establishing any business relationship with them". The same requirement applies to occasional transactions.

448. Article 8, paragraph 1 of the AML law provides that due diligence measures apply to any transaction on a cash sum equal to, or more than 5 million Francs CFA, or an amount of a franc CFA equivalent that is more than, or equal to the said sum. It is the same for a series of separate transactions for an amount below the individual threshold of 5 million Francs CFA (about 7,622 euros), or when the legal origin of capital is uncertain.

449. Article 8 of the BCEAO Instruction on AML also provides that financial institutions "must verify and confirm, in accordance with Articles 7 and 8 of the Uniform Act, the identity of any client who occasionally performs transactions with a sum more than or equal to 5 million Francs CFA, or with an amount whose equivalent in Francs CFA is equal to or in excess of the said sum".

450. Article 9 of the same Instruction states that "financial institutions that permit the execution of transactions via the Internet or other electronic means, must have an adequate system for monitoring these transactions. They are also required to centralize and analyze unusual transactions over the Internet or other electronic media".

451. The provisions of Articles 8 and 9, paragraph 1 of Uniform Act N°2009-022 on Counter Terrorist Financing in WAEMU Member States, bear the same contents as Article 7 of the AML law, and require financial institutions to verify and confirm the identity of their clients when establishing business relations with them.

Due diligence for occasional transactions above the designated threshold (C.5.2.b)

452. Article 8 of Law N°2007-016 on Anti-Money Laundering provides that occasional customer identification should be performed for any transaction involving a cash sum equal to, or in excess of five million (5,000,000) Francs CFA, or an equivalent value higher than the said sum. The same applies where there is a series of transactions done separately for an
individual amount below the said threshold amount, or where the legal origin of capital is unknown.

453. Article 9, paragraph 2 of Uniform Act N°2009-022, relating to Counter Financing of Terrorism in WAEMU Member States, makes provision for customer identification in any transaction that is about Five Million Francs CFA, or of an equivalent value in another currency (Euro 7623)

**Due diligence for occasional transactions in the form of electronic transfers (C.5.2.c)**

454. Article 12 of Uniform Act N°2009-022 on counter financing of terrorism states that "any cross-border electronic transfers must be accompanied by accurate information on the payer." This law does not give more details on the pieces of information required.

455. Article 9 under Instruction N°01/2007/RB of 2 July, 2007, on anti-money laundering in financial institutions provides that "financial institutions that allow transactions via the Internet or by other electronic means must have an adequate system for monitoring these transactions. They are also required to centralize and analyze unusual transactions over the Internet or other electronic media".

456. Article 7 under BCEAO Instruction No. 01/2006/SP of 31 July, 2006, relating to the remittance of electronic money and to electronic money institutions, provides that the e-money remitting establishments or distributors should establish an automated system for monitoring unusual electronic money transactions.

457. CIMA Regulation and Law 95-014, governing the insurance and micro finance sectors, do not include provisions on transactions that are done using wire transfers.

**Suspicion of money laundering and financing of terrorism (C.5.2.d)**

458. Apart from the obligation to report suspicious transactions, there are no specific provisions with measures that financial institutions should take where there is suspicion of money laundering or terrorist financing, regardless of any exemptions or thresholds referred to elsewhere under the FATF Recommendations.

**Suspicion of the authenticity or relevance of previously obtained customer identification data (C.5.2.e)**

459. Where there are doubts on the veracity or adequacy of customer identification data previously obtained (C.5.2.e), it is only BCEAO Instruction No. 01/07/RB which sets out that "customer knowledge procedures" should apply to existing customers, "including the customers who are the subject of doubts, regarding the reliability of information previously collected" (art. 4 para. 4). It is worth noting, however, that this statement applies solely to lending establishments.

460. The banking sector stakeholders who met with the Mission stated clearly that they refused to open an account or close it, where there were doubts about the information provided. But this concerns only new accounts to a large extent. For example, before a new account is opened, a correspondence is sent to the address provided by the applicant. The
relationship between the bank and the prospective client actually begins only after the bank
gets proof that the said correspondence was duly received.

Identification measures and verification sources (C.5.3)

461. The provisions under Articles 7, 8 and 9 of Law No. 2007-016, relating to anti-money
laundering, require financial institutions to verify and confirm the identity and address of
their regular customers, occasional customers and rightful beneficiaries, using a national
identity card or any other official document that can serve as a valid replacement, which
document shall have a photograph, a copy of which shall be provided to the bank for its
records. Customers acting on behalf of third persons shall also provide documentary evidence
of the authority delegated to them or the mandate given to them, as well as information on the
identity and address of the rightful beneficiary. Similarly, Article 9 of the CFT Law provides
that financial institutions should establish the identity of their clients “and, where appropriate,
of the persons on whose behalf they are acting, subject to the provision of supporting
evidence at the time business relations are being established.”

462. Similarly, Article 43 under WAEMU Regulation 15/2002/CM/UEMOA, relating to
payment systems in WAEMU Member States, says banks shall make sure that, before
opening a deposit account, they have the right information on the identity and address of the
applicant, which information shall be evidenced by a valid official document bearing the
photograph of the holder, and as much information as possible on the family origin, business
or home address of the holder.

463. Article 8, under Regulation No.0004/CIMA/PCMA/PCE/SG/O8 of 4 October 2008
in the CIMA Code, requires that insurance companies in CIMA Member States verify and
confirm the identity of their contractors (full name, date and place of birth, nationality),
regardless of the amounts of money paid to them by these latter.

464. In case of non-compliance with these provisions, Article 40, paragraphs 2, 3 and 7
under Law No. 2007-016 on anti-money laundering, makes provision for criminal penalties,
including a prison sentence from six (6) months to two (2) years and a fine ranging from One
Hundred Thousand (100,000) to One Million Five Hundred Thousand (1,500,000) Francs
CFA. Article 28 of the CFT Law also provides administrative and disciplinary sanctions
against defaulters.

465. The legal and regulatory provisions that were made available to the evaluation
Mission made no mention of a requirement of due diligence, on the part of financial sector
stakeholders in Togo, in verifying identification data from reliable and independent sources,
as recommended by FATF.

466. From the discussions held by the evaluation mission, only banks are implementing the
requirement to collect documentary evidence on customer identification and to verify
reliability. However, no reliable and independent source was provided to the mission.

467.  While Article 4 under BCEAO Instruction 01/2007/RB of 2 July, 2007 on the AML
sets out provisions, it is each establishment, in practice, that defines the customer due
diligence measures for identifying customers. In some cases, therefore, the required
documents may even include a voter's card or birth certificate. One microfinance institution
reported to the mission that where there was no document, some accounts were opened, using
the birth certificate of a child or parent of the account holder.

468. The certified exchange agents that met with the evaluation mission indicated that they
took no documents produced from their customers and did no verification at all. In the other
sectors, the stakeholders accept the documents produced by their business partners.

Verification of legal entities (C.5.4)

469. Article 9 under Law N°2007-016 on anti-money laundering provides that where the
client is not acting in their own name, financial institutions should gather information by all
means on the identity of the person that the said client is representing. The provisions under
Articles 8 and 9, paragraph 1 of Uniform Law N°2009-022, relating to counter financing of
terrorism in WAEMU Member States, are similar to those under Article 7 of the AML Law.

470. On legal persons, Article 7 of the AML Law provides that a legal person is identified
by information on its registration and documents authorizing the persons who purport to act
on its behalf (Article 7, paragraph 3). Financial institutions should also verify the identity of
physical persons purporting to act on behalf of a legal entity under the conditions set out in
Article 7, paragraph 2 (cf. c. 5.3 above). Article 7 provides also that financial institutions
should have documentary evidence of the legal status and registered office of the legal person
(article 7, para. 3).

471. Paragraphs 2 and 3 of Article 8 under CIMA Regulations set out specific provisions
for identifying legal entities. When legal entities have their registered office in a CIMA
Member State, they should provide the names of directors (Chairman, Executive Director,
and Senior Directors), as well as demand, examine and take copies of the identity of
directors, representatives and their remit, authorizations for persons acting on their behalf and
the powers of other representatives. Legal persons of foreign origin should present the names
of directors (Director General, Senior Directors). If the legal entity is a Trust, the financial
institutions should verify that the trustee has powers to take out insurance; if it is a
foundation, they should demand, examine and take copies of all the necessary documents for
identifying the Trust, the Trustee and the beneficiaries of the Trust.

Beneficial owner identification and verification measures (C5.5)

472. Paragraphs 2 and 3 under Article 7 of Law N° 2007-016, relating to anti-money
laundering, provide, among other things, that “a legal entity or branch office is identified
from original, duplicate or certified true copies of any document, as well as the business
licence, legal status, registered office and the provisions regulating the power to bind the
legal person or arrangement”.

473. Under Article 7 of Law N° 2007-016 on anti-money laundering, financial institutions
should collect information by all means on customers who are not acting on their own
account, as well as on the identity of the person they are representing. Article 8 and Article 9,
paragraph 1 of Uniform Law N°2009-022, relating to the financing of terrorism in WAMU
Member States, set out provisions similar to those under Article 7 of the AML Law.

474. Articles 8.2 and 8.3 of the CIMA Regulation make specific provisions for identifying
legal persons: the name or business name, legal status, names of directors, and identification
documents. Paragraph 4 under the same article provides that “when a transaction is performed on behalf of a third party, the insurance company should collect information on the true identity of the third party”. Furthermore, Article 14 of the Regulation establishes cases of “aggravated suspicion” to report to anti-money laundering authorities, if the “identity of one party (counterparty or beneficiary) is concealed behind a shell company (a Trust Company, Foundation, etc.)”.

475. Paragraphs 3 and 4 under Article 7 of Law N° 2007-016, relating to anti-money laundering, provide that “identification of legal persons or branches should involve the production of original, duplicate or certified true copies of any document, or the business registration number at the Register of Business Names and Liens, as well as the legal status, registered office, and provisions regulating the power to bind the legal person or arrangement. Financial institutions should verify (...) the true identity and address of directors, employees and the provisions regulating the power to bind the legal person or arrangement. These latter, in turn, should produce papers authorizing or mandating them to act, and also give the identity and address of beneficial owners”.

476. Article 10, paragraph 2 of the AML Law makes provision for identifying the instructing person, the beneficiary, and the actors of a transaction. Article 5 under WAEMU Regulation 09/98/CM/UEMOA of 20 December, 1998, relating to the external financial relations of WAEMU Member States and Annex N°9 of the said regulation, provide for the identification of beneficiary owners and presentation of supporting documents on the transaction in cross-border transfers.

477. The banking sector stakeholders that met with the evaluation mission said they demand all necessary documents for identifying beneficial owners (proof of incorporation, business licence number at the Register of Business Names and Liens …). Other sector stakeholders indicated that they do not always demand the said documents when identifying beneficiary owners.

478. There are some weaknesses in the AML Law that need to be raised at this point:

i. Financial institutions are not bound specifically to take appropriate measures for identifying the ownership and control structure of the customer, or the control structure of the legal person;

ii. The same gap is observable in the ownership and control structure of the customer;

iii. Financial institutions are not bound to verify, from a reliable source, the information they obtain when identifying beneficiary owners (as recommended in C.5.3);

iv. There is also no provision for Trusts and other legal arrangements.

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

479. There are no legal provisions binding financial institutions to collect information on the purpose and nature of the relationship they plan to have with customers. However, the financial sector stakeholders that met with the evaluation mission said that they demand, at
the very beginning of the business relationship, the purpose and type of business relationship that the customer seeks to establish. But this is more of a marketing requirement aimed at identifying the products that can be useful to the customer. It is not an evaluation of risk-responsive customer engagement in ML/FT.

**Due diligence on the business relationship (C.5.7)**

480. Items 5, 6 and 7, under Article 9, Paragraph 1 of Uniform Law N°2009-022, relating to anti-money laundering and counter financing of terrorism in WAMU Member States, prescribe close and steady monitoring of customers, as well as the transactions they make. In the same vein, Article 7 under Instruction N°01/2007/RB of 2 July, 2007 makes provision for profile-oriented customer due diligence in the case of unusual transactions.

481. The AML Law and the CFT Law do not bind financial institutions to exercise customer due diligence in their business relationships, or to attentively scrutinize the transactions they make throughout their business relationships. The purpose of such diligence is to ensure that transactions are coherent with the information institutions have on customers and their business activities, their risk profiles and, where appropriate, the origin of their funds. Further, financial institutions fail to observe due diligence in updating relevant customer documents, data or information and reviewing existing documents, especially for high risk customers or business relations. Even in this case, they are not bound by customer due diligence to update documents, data or information they collect under customer record keeping procedures.

482. Nevertheless, the Regulation addresses certain aspects, relating to customer due diligence, including:

   i. The obligation to process suspicious transactions (art. 13, AML Law), which cannot be done unless there is overall customer due diligence;

   ii. Centralization of information on the identity of customers, mandatory instructing parties and beneficial owners;

   iii. The mechanism for analyzing customer profiles and transactions in order to track and monitor unusual transactions (art. 7, Instruction 01/2007/RB) in financial institutions only;

   iv. The ongoing monitoring of customers during business relations, where the level of such relations depends on risk of associating the customer with terrorist financing (art. 11-7, Directive 04-2007).

483. These aspects are addressed only indirectly and do not feature explicitly in a law or regulation in force in Togo. Hence, they do not have the binding character required by the asterisk that complements the measures to take under criterion 5.7.

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

484. Generally, no provisions bind financial institutions to establish due diligence measures for anti-money laundering through risk association. For example, existing
provisions make no mention of non-resident customers, private bank customers, or agent-owned companies or bearer share companies.

485. However, Instruction N°001/2007/RB sets out some indirect provisions for financial institutions to exercise enhanced due diligence, which requires them to especially:
   i. Define the types of customers to avoid in business relations (art. 4 paragraph 3);
   
   ii. Put in place a customer profile and transaction review mechanism to especially track and monitor unusual financial transactions (art. 7 paragraph 1);
   
   iii. Identify conditions for reinforcing specific aspects of customer due diligence, particularly in unusual transactions and those with counterparties in FATF non-cooperative countries and territories/jurisdictions (art. 7).

486. Article 13 of the CFT Law states that financial institutions should assess the risks of applying enhanced due diligence in business transactions or relations with Politically Exposed Persons (PEPs) resident in other Member States or in a Third State, especially to prevent or detect transactions associated with terrorist financing. In this regard, financial institutions should take appropriate measures to establish the source of wealth or funds of PEPs.

487. Paragraphs 1, 5, 6 and 7 under Article 9 of the CFT Law also make provision for risk-associated ongoing customer due diligence and confidential record keeping on the major aspects of transactions, including the identity of instructing and beneficiary persons, so that comparisons can be made, if need be.

Reduced or simplified customer due diligence measures (C.5.9)

488. The last paragraph under Article 9 of the AML Law exempts financial institutions from customer due diligence, where the customer is a designated financial institution under AML Law. The last paragraph under Article 9 of the CFT Law makes the same provision. In principle, this measure exempts from customer due diligence a good number of the business partners of Togolese financial institutions. Being that these laws apply to all WAEMU Member States, and there are no other provisions, the financial institutions are free to interpret them in a strict or broad sense, where necessary, to not collect information on the identity of physical persons, legal entities or legal arrangements for which other financial institutions in the WAMU are acting for. This offers no guarantee to know the beneficiary owner (C.5.4), or the sources of their financial flows (RS VII).

489. Similarly, the provisions above, instead of establishing reduced or simplified measures as provided in FATF requirements, dispense financial institutions totally from implementing customer due diligence obligations where the client is a financial institution. Consequently, this approach infringes on the general rule that binds all subjected categories to adopt identification measures for all customers and to implement simplified due diligence measures only where there is a low risk of AML/CFT.

Limitations of simplified due diligence measures in countries not complying with FATF Recommendations (C.5.10)
490. Article 30 of CFT Law and the last paragraph under Article 7 of Instruction N°01/2007/RB of 2 July 2007 provide information on FATF non-cooperative countries, territories and/or jurisdictions, as well as persons subjected to freezing measures. This makes it possible to draw up a list of customers to whom financial institutions should not apply simplified customer due diligence measures, as well as those whose property should be frozen.

491. The annex to the AML Law, relating to non-face-to-face business relationships, provides that where the counterparty is located outside the Union, the financial institution should verify their identity by consulting a publicly available and accessible financial directory. The last paragraph under Article 9 of the CFT Law makes the same provision. However, no specific requirement limiting simplified customer due diligence measures is prescribed in an explicit manner.

**Suspicious or higher risk cases of ML/FT (C.5.11)**

492. Compliance with this criterion under FATF Recommendations is made even more difficult for financial institutions by the provisions under Article 9 of AML Law (See analysis provided under C.5.9). However, no law or regulation clearly limits application of simplified customer due diligence in suspicious or high-risk cases. But, because exemptions from due diligence obligations apply to a wide range of cases, it would be difficult for a financial institution to raise suspicions of money laundering or the financing of terrorism.

**Observance of instructions given by the competent authorities on the scope of customer due diligence measures (C.5.12)**

493. During the on-site visit, no provision in the current legislation provided guarantees that this criterion would be met.

**Timing of verification – General Rule (C.5.13)**

494. Financial institutions are bound to observe the provisions of Article 7 of the AML Law and Article 4 of BCEAO Instruction N°01/2007/RB of 2 July, 2007, relating to customer identification. Similarly, paragraphs 1, 2 and 3 under Articles 8 and 9 of the AML Law and Article 8 of the BCEAO Instruction make it mandatory on financial institutions to identify occasional and habitual customers. Articles 8 and 9 of the AML Law make provision also for due diligence in the identification of customers and beneficial owners.

495. It is worth noting, however, that none of these provisions sets out the timing of verification.

**Timing of verification – Particular Requirements (C.5.14)**

496. Under the requirements set by FATF, Togo has no provisions in place for financial institutions to verify the identity of customers and beneficiary owners after business relations are established.

497. During the discussions on site, banks informed the evaluation Mission that any account opened without presentation of all required documents is not operational unless the missing information is submitted. In some cases, the account holder is given three (3) days to
come up with the remaining documents. During this period, the account remains dormant, and cannot be used for debit transactions.

498. Insurance companies informed the mission that, in practice, they did not allow payment of premiums in the absence of the subscriber.

**Non-compliance with customer due diligence measures – before business relations (C.5.15)**

499. The anti-money laundering law binds subject categories to fully identify the customer before entering into any business relations with them. Under the existing provisions, business relations without customer identification are not allowed.

500. Paragraph 3, under Instruction N°01/2007/RB of 2 July, 2007 prohibits financial institutions from entering into business relations with customers, if they have not done satisfactory checks on their identity, address and the type of transactions allowed with such customers.

501. Paragraphs 1 and 2 under Article 9 of the AML Law bind financial institutions to identify their customers and report suspicious transactions to the FIU where they are in doubt, but do not explicitly prohibit them from entering into the relationship.

502. The above laws provide criminal penalties for non-compliance with relevant legal requirements. However, this customer due diligence is limited to identification of beneficiary owners. Financial institutions are therefore not bound formally to prepare suspicious transaction reports, where they have doubts over other credentials. The penalties provided by the law were not yet effective at the time of the on-site visit.

503. The CIMA Regulation binds insurance companies to report suspicious transactions to the FIU, when in doubt over the identity of persons that benefit from transactions, regardless of their own ability to refuse the transaction (art. 8.4). Here again, legal provisions cover only doubts over the beneficiary owner.

**Non-compliance with customer due diligence measures – before business relations (C.5.16)**

504. Beside Article 9 of the AML Law and Article 8.4 of the CIMA Regulation above, which limit reporting requirements to cases where financial institutions have doubts on the beneficiary owner, no other provision binds these institutions to terminate business relations. Article 8 of the CFT Law sets out similar due diligence requirements as those the AML Law provides on prevention and detection of terrorist financing. This implies that the laws have the same limitations.

**Risk associated application of CDD measures to existing customers (C.5.17)**

505. The provisions of the AML Law on customer due diligence measures apply to all customers, which means even those that were there before the law came into force.
506. Financial institutions are required to apply CDD measures to existing occasional
customers, where these occasional customers conduct cash transactions equal to, or more than
5,000,000 Francs CFA, or the CFA equivalent of the said sum in another currency (art. 8,
paragraph 1 of the AML Law). Article 10 of the AML Law binds financial institutions to
particularly monitor certain transactions.

507. Article 4, paragraph 4, under Instruction N°01/2007/RB of 2 July, 2007, provides that
customer knowledge procedures apply to both new and existing customers. Circular N°04-
2001/CB of 3 April, 2001, of the WAEMU Banking Commission, contains recommendations
for improving corporate governance in WAEMU banking and financial institutions.
Paragraph 13, for example, requires each bank to have a Code of Ethics for customer
relations.

508. The AML Law provides no risk associated customer due diligence measures. Article
13 requires financial institutions to perform enhanced due diligence measures in their
business relations or transactions with politically exposed persons (PEP), on the basis of their
assessment of risk.

CDD measures for existing customers subjected to criterion 5.1 (C.5.18)

509. No provisions require financial institutions to apply due diligence measures to
existing customers with anonymous accounts.

Recommendation 6

Due diligence in identification of Politically Exposed Persons – PEP - (C.6.1)

510. The AML Law and CIMA Code make no provision for identification of PEPs.

511. Under Article 13 of the AML Law, financial institutions should, on the basis of their
risk assessment, apply enhanced due diligence measures in business relations or transactions
with PEPs resident in another Member State or in a third State, in order to prevent or detect
transactions related to terrorist financing. To do so, the financial institutions are required to
take the appropriate measures to establish the PEP’s sources of wealth or funds.

512. From the discussions the Mission had with stakeholders in this sector, it gathered that
some banks had put in place a mechanism for monitoring PEPs, based on a regularly updated
list of PEPs, including those at the national level. But this list was drawn up for the purpose
of customer segmentation to enable banks to provide the quality of service desired. It was not
drawn up necessarily on the basis of sensitivity to the risk of ML/FT.

Senior management authorization for business relations with PEPs (C.6.2)

513. No provision binds financial institutions to get authorization from their senior
management before entering into business relations with PEPs.

514. One banking institution told the Mission that it sought authorization from the Director
General before entering into business relations with PEPs, in accordance with the internal
rules and regulations on AML/CFT that it has developed.
Identifying the source of wealth and funds that belong to PEPs (C.6.3)

515. Article 13 of the CFT Law, relating to customer due diligence measures for PEPs, provides that financial institutions should take «appropriate measures to establish the origin of wealth or funds». In practice, financial institutions lack adequate means to establish the origin of the wealth or funds of PEPs.

Ongoing and enhanced monitoring of relations with PEPs (C.6.4)

516. Article 13 of the CFT Law provides that customer due diligence measures should be reinforced in relations with PEPs.

Additional elements

Applying R6 to national PEPs (C.6.5)

517. No specific provision extends customer due diligence measures to politically exposed persons in high profile positions at the national level.

Transposition of the Merida Convention (C.6.6)

518. The 2003 United Nations Convention against Corruption has been signed, and was ratified by Law N°05-007 of 18 May 2005. However, it is not yet transposed in Togo’s domestic legal system.

Recommendation 7

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

519. No provision in the AML Law binds financial institutions to gather enough information on the respondent institution to understand fully the nature of the respondent’s 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.

520. In practice, banks share a questionnaire with their respondent institutions to be able to identify them. The questionnaire used to do so, provides information on Board Members and directors, major activities, the structure of capital as well as the rules and regulations. In general, there is no verification based on publicly available information. Banks that are members of groups based in several countries informed the mission that such due diligence is performed by the Director of the group, who decides on the list of respondent banking institutions and establishes relations with them. The verification measures in the other banks are limited to selecting their own “well known” banks as respondent institutions.

Evaluation of controls put in place by correspondent banking institutions (C.7.2)

521. Financial institutions are not bound to evaluate the control measures that respondent institutions have put in place to combat money laundering or terrorist financing, or to ensure the relevance and effectiveness of such measures.
522. In practice, the questionnaires that financial institutions exchange with respondent banks contain information that is quite useful for evaluating the controls they have put in place. However, the Mission was not able to verify how the responses provided in the questionnaires were used.

Approval from senior management before establishing new correspondent relationships (C.7.3)

523. No provision binds financial institutions to get approval from senior management before establishing new relations with correspondent banks. However, these financial institutions are required to perform due diligence in all their relations. And, even without explicit legal provisions in this regard, some banks state that they seek approval from senior management before establishing relations with correspondent banking institutions.

Due diligence in documenting the respective AML/CFT responsibilities of each institution (C.7.4)

524. No provision binds financial institutions to document their respective AML/CFT responsibilities. As mentioned above, financial institutions share a questionnaire with correspondent banks. This questionnaire sets out their AML/CFT responsibilities.

Rules for payable-through accounts (C.7.5)

525. Where a correspondent relationship involves the maintenance of payable through accounts, financial institutions should be satisfied that:
   i. Their customer (the respondent financial institution) has performed all the normal CDD obligations set out in R.5 on those of its customers that have direct access to the accounts of the correspondent financial institution; and
   
   ii. The respondent financial institution is able to provide relevant customer identification data upon request to the correspondent financial institution.

Recommendation 8

Preventing misuse of technological developments (C.8.1)

526. The AML Law has no provisions binding financial institutions to have policies in place or take such measures as may be needed to prevent the misuse of technological developments in money laundering or terrorist financing schemes. Article 12 of the CFT Law requires designated banking institutions to have measures in place for identifying the sender in cases of electronic transfers.

527. Article 9 of Instruction N°1/2007/RB provides that financial institutions that authorize transactions via the Internet or by any other electronic means should have a proper system in place for supervising such transactions. They are required also to centralize and analyse unusual transactions by the Internet or by any other electronic means.

528. Article 7 of Instruction N°01/2006/SP of 31 July, 2006 provides that “remitting institutions or electronic money institutions should put in place an automated supervision system for unusual electronic money transactions”.

105
Managing risks tied to non-face to face customers (C.8.2)

529. Under the last paragraph in Article 7 of the AML Law, financial institutions engaging in non-face to face transactions are required to identify their customers in accordance with the provisions of the law. The annex section of the AML Law provides that the identification procedures that financial institutions apply to non-face to face transactions with customers can be used:

i. Where there is no cause, beyond reasonable doubt, to believe that the customer is avoiding face to face contact in order to conceal their true identity and suspicions of money laundering (art. 2), and

ii. Where the transactions do not involve the use of cash (art. 3).

530. It is worth noting that the annex section of the AML Law applies only to physical persons and there are no provisions on the measures to take, should the above conditions not exist (as in criteria C.5.15 and C.5.16: refusal to establish a relationship and a suspicious transaction report).

531. Article 4 under the annex section of the AML Law provides also that the internal control procedures in financial institutions should particularly cover non-face to face transactions. Article 5 sets out the conditions for identification in non-face to face transactions, should the counterparty of the financial institution performing the transaction (contracting financial institution) be a customer. This provision requires that the identification should be done by direct contact with the customer, through a branch office or an office representing the contracting financial institution that is nearest to the customer; or in the absence of direct contact, the customer should provide (i) a copy of an official identification document, and (ii) a first payment should be made from an account opened in a credit institution within the WAEMU region or in a third State that applies equivalent anti-money laundering standards. The financial institution is then required to:

i. Pay special attention to verifying the address on the identification document (where mention is made thereof); and

ii. Verify carefully that the identity of the account holder who receives the payment corresponds with that of the client (by contacting the banking institution that opened the account, if need be).

532. However, the Mission had no evidence that Togo has formally adopted the annex section of the AML Law.

Analysis of effectiveness

Recommendation 5

533. The evaluation Mission met with the Professional Association of Banks and Financial Institutions (Association Professionnelle des Banques et Etablissements Financiers - APBEF) in Togo, three (3) banks, the BCEAO National Agency, the Director General of the Public Treasury, the Fund Depository Division, the Professional Association of Insurance Companies, one (1) insurance company, the Postal Service in Togo, the Professional Association of FUCEC Micro Finance Institutions, three (3) micro finance institutions, one
(1) certified exchange agent, one (1) management and brokerage company and the BRVM National Branch Office. The Mission noted that the designated professions participating in AML/CFT were not conversant with the uniform laws on AML/CFT and, hence, did not implement them.

534. The respective professional associations became aware of AML/CFT during the awareness seminars organized by the Togo FIU. Uniform Laws on AML/CFT still need to be distributed widely. Officials of the APBEF told the mission that they began raising awareness extensively among practitioners in the sector long before the inception of the Togo FIU, but gave no specifics on the modules they used or the periods when these training or awareness workshops took place.

535. Workers in the banking sector seem to be better informed about AML/CFT provisions. But implementation of these obligations varies from one institution to the other, and is generally more complete in establishments that belong to the large banking groups. All the banks that met with the mission said that they had put in place AML/CFT procedures at the internal level, but that the application of these procedures was poor. They informed the mission also that their portfolios contained no anonymous accounts.

536. The BCEAO authorities who met with the Mission affirmed that their institution, as a subjected party to AML/CFT laws in Togo, had taken proper measures to deal with these areas. The Bank sees to it that all the transfers made to its staff, the Treasury, banks and international institutions are compliant with AML/CFT requirements. It is vigilant and carefully examines all transfer records and licensing requests to stifle any attempts to go against the rules”. However, the Mission had no information, either from the National Director, or the services in charge of AML/CFT, on the internal procedures in place for AML/CFT. By the day the Mission met with the officials, BCEAO had sent no STR to the Togo FIU.

537. In the insurance sector, there seems to be little knowledge of the obligations. The mission found that the Professional Association of Insurance Companies and individual insurance companies were not implementing the obligations.

538. The officials of Post Office Financial Services know about AML/CFT obligations and have put in place internal procedures for AML/CFT. However, no suspicious transaction reports have been sent to the FIU, and this makes it hard to provide evidence that these procedures are being implemented in an effective manner.

539. The micro-finance sector does not implement the obligations for identification, record keeping and suspicious transaction reporting. This lack of identification procedures poses a high risk to the sector, because of the high amounts of deposit collected in some areas. The mission learned that some micro-finance institutions, with outstanding deposits worth six (6) billion Francs CFA at the time of the on-site visit, had still not put in place proper procedures for identifying depositors and account holders. Some of the stakeholders that met with the mission team had real difficulties to identify their customers, because some of the customers had a low level of education and the public administrative services did not cover all the areas where their institution is based. The institutions have been using stop-gap measures for customer identification, for example, by using voter’s cards, or the birth certificate of account holders or those of their children, without keeping copies thereof.
540. The professional association of micro-finance institutions has set up an on-line forum “for sharing information on credit” among its members. But in practice, the centre serves as a whistle blowing mechanism for credit defaulters, for it releases to members the names of persons who have had difficulty paying back their loans.

541. Asset management and brokerage companies have been complying partially with identification obligations. They collect the evidence and documents needed for customer identification.

542. The Fund Deposits Division (which serves as the Deposit and Consignment Fund), based at the General Directorate of the Treasury, provides banking services to people without having a customer identification system or customer due diligence measures. The officials who met with the mission team said that individuals could open accounts upon request, deposit limitless amounts of money in the said accounts, and even transfer money without due diligence as to the reasons for such transfers. As of the date of the mission’s visit, there were no more individual accounts in the portfolio of the Fund Deposits Division. Such practices are not prohibited, and are even encouraged to replenish the coffers of the Treasury.

543. The licensed money value transfer service operators, who met with the mission team, knew nothing about their AML/CFT obligations, and did not even observe the thresholds prescribed by currency exchange regulations.

544. Regarding express money transfer arrangements, the banks that met with the mission team had signed contracts with Western Union and other arrangements with sub-contractors that were not necessarily financial institutions. The mission was told that these sub-contractors had been chosen strictly by virtue of their good character and repute, but did not have the opportunity of putting them to test. On matters relating to customer due diligence, the sub-contractors, even though acting under the authority of their mandators, had no measures outside those of Western Union, which trains agents and offers an IT platform for transactions. There was no provision made for the identification of beneficiary owners.

545. The Post Office Services in Togo provide these same services via Western Union, Mandate Express International, Post Cash and Post Giro.

Recommendation 6

546. On the whole, financial institutions have not put in place adequate systems for AML/CFT associated risk management to determine whether a potential customer or beneficiary owner is a politically exposed person.

547. In practice, some banks that belong to international banking groups, prepare and update the list of PEPs, and get approval from their senior management before establishing new relations with this type of person. Other banking institutions have practices closer to marketing goals than to FATF objectives for AML/CFT risk management systems.

Recommendation 7

548. Although no specific provisions exist for collecting information on respondent banks, the banks that met with the mission share questionnaires with their correspondent banks and get approval from their senior management before establishing new relations. But such
information is not verified, using reliable and publicly available sources. And, no measures are in place for handling relations that involve payable through accounts.

Recommendation 8

549. The financial institutions that met with the mission do not permit non-face to face arrangements when it comes to opening new bank accounts. The services they provide in this regard are limited to checking account balances and transaction history.

Recommendations and comments

550. The mission recommends that the Togolese authorities should follow the steps below.

Recommendation 5

- Apply customer due diligence measures to all financial activities defined by FATF.
- See to it that financial institutions implement AML/CFT measures in an effective manner;
- Review the AML Law to include the identification obligations prescribed by FATF;
- Adopt formally the annex to the CFT Law;
- Prohibit explicitly the holding of anonymous accounts, or accounts with fictitious names;
- Adopt clear measures for identifying beneficiary owners;
- Ensure effective implementation of provisions binding financial institutions to collect information on the purpose and envisaged nature of the business relationship;
- See to it that financial institutions adopt customer due diligence measures and update their customer information;
- Adopt provisions binding financial institutions to take enhanced customer due diligence measures for high risk customers, and to maintain simplified due diligence measures for financial institutions subject to the AML Law.

Recommendation 6

- Encourage financial institutions to take a risk sensitive approach to AML/CFT;
- Ensure that financial institutions adopt specific obligations for PEPs.

Recommendation 7

- Ensure that financial institutions collect sufficient and verifiable information from databases that are offer reliable and publicly available information sources before establishing any new relations with a respondent bank;
- Require financial institutions to systematically seek approval from senior management before establishing new relations with correspondent banks;
• Require that all necessary measures be taken to evaluate the control and supervisory system put in place on AML/CFT by the customer institution and assess their relevance and efficiency;

• See to it that financial institutions document their respective responsibilities on AML/CFT;

• Implement FATF provisions for payable through accounts in correspondent banking relations.

Recommendation 8

• Define clear and complete policies for preventing misuse of technological developments in AML/CFT systems.

Compliance with Recommendations R.5 to R.8

<table>
<thead>
<tr>
<th>REC</th>
<th>Rating</th>
<th>Summary of factors underlying rating</th>
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| R.5 | NC | • The scope of application for customer due diligence on AML does not cover all the financial activities identified by the FATF.  
• Designated persons generally do not know identification obligations (except those in the banking sector);  
• Maintenance of anonymous accounts is not prohibited;  
• No obligation to verify identification data using reliable and independent sources;  
• Requirements for identifying beneficiary owners are too limited;  
• No requirement to gather information on the purpose and nature of business relation envisaged;  
• Lack of ongoing customer due diligence in business relations;  
• No obligation to take customer due diligence measures for high risk customers;  
• Simplified customer due diligence measures are too broad and imprecise;  
• No details on the timing for verifying the identity of beneficiary owners or customers;  
• No provisions in place in case of non-compliance with customer due diligence measures;  
• Doubts about the adoption of the annex to the CFT Law. |
| R.6 | NC | • No obligation for PEPs in AML;  
• Very poor implementation of obligations for PEPs in CFT. |
| R.7 | NC | • Lack of obligations relating to respondent banks. |
| R.8 | NC | • Poor coverage of obligations to design policies for preventing the misuse of technological development in the AML/CFT system;  
• No obligations in place for risk management including specific and efficient customer due diligence measures. |

3.3 Third parties and introduced business (R.9)

Recommendation 9

Description and Analysis

551. Article 5 of the AML Law places business providers to financial institutions under the same obligations as these latter, particularly on customer due diligence requirements. CIMA Regulation, Article 17 considers insurance and reinsurance brokers as financial institutions, which subjects them to the same provisions. In this respect, they are required to meet the same obligations set for financial institutions in AML/CFT.

552. Financial institutions outsource some of their customer due diligence requirements in AML to third parties by establishing sub-contracting arrangements. This is the case, for example, for Western Union and Money Gram money transfer services performed by banks. Apart from these agents acting under sub-contracting arrangements, banks told the mission that they had no authorized intermediaries for performing transactions. The Mission was unable to meet with an insurance broker, although it had expressed the wish to do so.

Obtaining information for financial institutions from business providers (C.9.1)

553. No provision binds financial institutions to obtain information required for certain aspects of customer due diligence without delay from third party business providers (C.5.3 à 5.6).

554. The mission realized that in money transfers via Western Union, financial institutions and their agents outsource their obligations for customer due diligence to Western Union. In practice, information and documents remain with third party business providers.

Record keeping of identification data and other relevant information on customer due diligence (C.9.2)

555. No provision requires financial institutions to take adequate measures to ensure that the third party can provide, upon request and without delay, copies of identification data and other relevant information for customer due diligence.

Application of regulations and measures for due diligence, in accordance with R. 5, 10, 23, 24, and 29 (C.9.3)
556. Financial institutions are subjected to AML/CFT Laws. They are bound to ensure that their agents comply with these laws. However, there is no provision that binds financial institutions to supervise these third parties and see to it that they take measures to apply the customer due diligence measures under Recommendations 5 and 10.

557. CIMA Regulation, Article 17 provides that insurance and reinsurance brokers are financial institutions. They are required, therefore, to fulfil the same obligations for anti-money laundering as financial institutions. Article 6.2, under the same regulation, provides that insurance companies should require insurance brokers to sign an undertaking of good conduct in AML/CFT.

Choice of country by third party business providers in relation to AML/CFT (C.9.4)

558. No provision under the AML Law requires the competent authorities, when determining the country of location of the compliant third party, to consider the available information on whether these countries properly apply FATF Recommendations.

Responsibility for customer identification and verification in financial institutions using business providers (C.9.5)

559. Under Instruction N°07/99/RC of 1st February, 1999, Article 7, all certified intermediary institutions and their sub-contracting agents are jointly and severally responsible for customer identification and verification. CIMA Regulation, Article 17 imposes the same obligations to insurance or reinsurance companies or brokers. The AML Law, on its part, provides no obligation on ultimate responsibility for identification and verification of the financial institution operating on a sub-contracting arrangement.

Recommendations and comments

560. The mission encourages the Togolese authorities to enact provisions that bind financial institutions using third party institutions to:

- Obtain information on customer due diligence measures without delay;
- See to it that these third parties have the ability to provide, upon request, data relating to customer identification and due diligence;
- Put in place measures to verify whether the conditions under which the third party is complying with criteria can apply to a country that is not implementing FATF Recommendations;
- State the institution with ultimate responsibility for customer identification and verification, where there is need for third parties.

Compliance with Recommendation R.9

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<tr>
<td>R.9</td>
<td>NC</td>
<td>No requirement for financial institutions using third parties to obtain information on customer due diligence measures without delay;</td>
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</table>
3.4 Financial Institution Secrecy or Confidentiality (R.4)

Description and Analysis

561. The legal and regulatory provisions above apply to this Recommendation.

Recommendation 4

There are no financial institution secrecy laws inhibiting the implementation of FATF Recommendations (C.4.1)

562. Article 34 under Law N° 2007-016 of 6 July, 2007, relating to anti-money laundering in Togo, provides that the persons mentioned under Article 5 cannot refuse to provide information on grounds of confidentiality. Similarly, Article 27 of Law N°2009-022 of 7 September, 2009, relating to counter financing of terrorism, provides that confidentiality cannot be invoked by the persons mentioned under Article 33 to refuse to provide information. Similar provisions fall under Article 3 of the CIMA Regulation.

563. However, no specific provisions are in place to remove any obstacle to information sharing between financial institutions, as required under Recommendations 7 and 9, or Special Recommendation VII. On the whole, the stakeholders that met with the mission had already shared, or were prepared to share information with the prosecution authorities or the FIU.

Recommendations and comments

564. The Togolese authorities should:

- Adopt provisions for sharing information among financial institutions, as required by Recommendations 7 or 9, or FATF Special Recommendation VII.

Compliance with Recommendation R.4

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<td>LC</td>
<td>No specific provisions for preventing any inhibition of</td>
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</table>
information sharing among financial institutions when so required.

3.5 Record Keeping and Wire Transfer Rules (R.10 & SR.VII)

Description and Analysis

565. The legal and regulatory provision described above also applies to these Recommendations, especially the AML/CFT Laws and the OHADA Uniform Act, each of which is legally binding in Togo’s domestic legal provisions.

Recommendation 10

Keeping of all records that can be used to reconstitute transactions (C.10.1*, C.10.1.1 and C.10.2*)

566. Article 11 of Law N°2007-016 on AML requires financial institutions to keep information and other relevant documents on customers’ identity for a period of ten (10) years, beginning from the closure of their accounts or termination of business relations with them, whether they are usual or occasional customers. The financial institutions are required also to keep records and documents on transactions for a period of 10 years, beginning from the end of the financial year when the transactions were performed.

567. Article 10 of Law N°2009-022 of 7 September, 2009, on CFT also binds financial institutions to keep customer identification documents, including copies or references of required documents, for a period of ten (10) years, beginning from the time their accounts are closed or their relations with usual or occasional customers are terminated. They should also keep supporting documents and records of transactions, including originals and copies of documents serving similar purposes under the provisions of the legislative and regulatory provisions in force, beginning from the year when the transactions were performed, and without prejudice to longer record keeping periods prescribed by the other legislative or regulatory provisions in force.

568. Article 20 of Regulation N°15/2002/CM/UEMOA, relating to payment systems, provides for the storage of documents in electronic format for a period of five (5) years and under the following conditions:

- Information in the data message is accessible for subsequent reference;
- The data message is kept in its original form, as a message sent or received, or in a form that shows its content has neither been modified nor altered, and that the document transferred and the one stored are strictly identical; and information that makes it possible to determine the origin and destination of the data message, as well as indications of the date and time the data message was sent or received should be kept, if they do exist.

569. Article 24 of OHADA Accounting Law provides also that accounting records, or documents in lieu thereof, as well as supporting documents should be kept for a period of ten (10) years.
570. Upon close examination, these provisions make no explicit mention of commercial correspondence. The need to use information and documents that are enough to reconstitute transactions and can serve, where appropriate, as evidence in criminal proceedings, is not covered by the AML Law. Conversely, Article 10 of the CFT Law provides that documents relating to customer identification and transactions should be kept «for the purpose of providing evidence in criminal investigations on terrorist financing».

571. CIMA Regulation, Article 13 requires insurance sector stakeholders to keep, for a period of ten (10) years, documents for customer identification and transactions, as well as a complete audit trail, so that transactions are easy to trace during court inquiries.

572. The Banking Commission’s Circular n° 10-2000/CB, of 23 June 2000, provides that internal control systems in financial institutions should provide an audit trail that makes it possible to:

i. Reconstitute transactions in a chronological order;

ii. Justify any information, using an original document to trace the way back to the summary document; and

iii. Explain changing trends in balances from one statement to the other by documenting the transactions that may have affected the accounting items.

573. These elements of the audit trail should be kept for at least ten years. However, they do not include all the information needed to reconstitute transactions in a way that they can be used, where necessary, as evidence for criminal proceedings.

574. There are no specific provisions for keeping documents over longer periods of time, if a competent authority so requests under particular circumstances, or needs to used them in performing their duties.

Information made available to competent authorities (C.10.3*)

575. Articles 12 and 17 of the AML Law provide that designated persons should, upon request, communicate records and documents relating to identification requirements to the FIU, control authorities, judicial authorities, and law enforcement officers in charge of detecting and repressing offences relating to money laundering, where they are acting under a warrant.

576. BCEAO Instruction, Article 6, relating to electronic money, requires the remitting institution to keep records of remittances and receipts of electronic money and share them solely with the monetary and control authorities.

577. The notion of transmission “in a timely manner” is not taken into account in the legislation, which requires financial institutions to provide documents and evidence to the authorities upon request. With such an approach, the said authorities do not obtain the information they need early enough to use it in value adding ways, since the time period depends on the financial institutions. The provisions that have been mentioned do not make it possible for:
i. Financial institutions to ensure timely delivery of documents on customers and transactions to the national authorities, so that they perform their duties effectively (this is the case for documents not covered by these provisions);

ii. Reconstituting and providing, where necessary, evidence for legal proceedings (obligation to maintain a specific audit trail); and

iii. Sending information to all domestic authorities (in the case of electronic money).

Analysis of effectiveness

578. In practice, banking institutions and insurance companies seem to be complying with record keeping obligations. But the Togo FIU reckons that it waits between one week and one month to get answers to its requests for information. This does not facilitate speedy processing of the suspicious transaction reports that it receives.

579. Stakeholders in the micro-finance sector know about record keeping obligations, and have apparently been implementing them. But, the timely provision of documents to prosecution authorities and the FIU continues to be difficult. Record keeping in these establishments consists simply in stocking documents in a room without a good filing system. The fact that each agency on the national territory keeps its own records in this manner, without a centralized information system in place, poses a major obstacle to compliance with the obligations of Recommendation 10.

580. Licensed MVT service operators have little or no knowledge of their record keeping obligations, and still take no copies of identification documents.

581. There are no controls in place for MVT services to ensure that they keep records under the required conditions, especially for sub-agents that are not financial institutions.

Recommendations and comments

- Togo should amend its legislation to require designated institutions to provide the information required by competent authorities in a timely manner;
- There should be more clarity on the type of records to keep, especially concerning business correspondence;
- Stakeholders in the micro-finance sector, licensed MVT service operators, and currency exchange agents should implement existing record keeping provisions.

Compliance with Recommendation R.10

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<tr>
<td>R.10</td>
<td>PC</td>
<td>• No clear provisions on the type and availability of records that financial institutions should keep;</td>
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<tr>
<td></td>
<td></td>
<td>• No application of prescribed record keeping obligations in the micro finance sector and among certified currency exchange agents and money and securities transfer services.</td>
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Special Recommendation VII

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

582. Article 12 of Law 2009-022 on counter terrorist financing provides that “any cross-border wire transfer should be accompanied by exact information on the originating person. This information especially includes his account number or, in the absence of this, a unique reference number accompanying the transfer”. The law provides the same obligation for domestic transfers. This requirement is made regardless of the threshold of the transfer and, therefore, applies to all transfers between financial institutions. However, there is no obligation on financial institutions to obtain the address of the originating person, or to keep the information obtained.

583. Including information on the originating person of an international wire transfer (C.VII.2)

584. Article 12, mentioned above imposes an obligation to include information on the originating person, including the person’s name and account number, for any cross-border wire transfer.

Including information on the originating person of a domestic wire transfer (C.VII.3)

585. Article 12 of the CFT Law requires that all domestic and cross-border electronic transfers should be accompanied by accurate information on the originating person. Such information should especially include the account number of the originator or, where this is not available, a unique reference number accompanying the wire transfer.

Processing non-routine transactions (C.VII.4)

586. Under the provisions in Articles 7, 8 and 9 of Law N° 2007-016, relating to anti-money laundering, financial institutions are required to fully identify their customers, including occasional partners and beneficial owners. The requirement to identify customers applies, regardless of the nature of the transaction.

587. There is no obligation on intermediary institutions or any beneficiary financial institution in the payment chain to verify that all information required on the originating person during wire transfers is actually sent with the transfer order.

Adoption of effective risk-based procedures (C.VII.5)

588. The CFT Law makes no provision requiring financial institutions to adopt efficient procedures, based on risk assessment, in order to identify and process wire transfers that are not accompanied by complete information on the originator.

Effective measures for checking compliance with the rules and regulations for implementing RV VII (C.VII.6)

589. There is no such obligation in the laws on anti-money laundering and counter terrorist financing, relating specifically to SR VII. The measures provided fall within the broader framework of compliance with these laws.
Application of criteria 17.1 to 17.4 (C.VII.7)

590. There is no system for monitoring financial institution compliance with SR VII specifically. The penalties imposed for non-compliance are of a rather general nature.

591. CFT Law, Article 28 provides that when, on the basis of a serious lack of vigilance, or a deficiency in the organization of its international control procedures, a designated person under the CFT Law defaults on the obligations incumbent on them under the provisions of Articles 8, 18 and 19, the control authority with disciplinary powers can take action automatically in accordance with specific legislative and regulatory provisions in force.

Extending obligations to wire transfers less than EUR/USD 1000 to or from the territory (C.VII.8 ant C.VII.9)

592. CFT Law, Article 12 mentions cross-border wire transfers regardless of the threshold or destination. There is reason, therefore, to consider that wire transfers destined for Togo are taken into account under this article.

Recommendations and comments

- Measures should be taken to mention the address of the originator in Swift messages and keep it on record;
- Intermediary institutions, or any other financial institutions involved in wire transfer transactions, should be required to verify that all the information required is sent along with the transfer order;
- Measures should be taken to put in place efficient, risk-based procedures for processing wire transfers that do not carry all the information required.

Compliance with SR VII

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<td>SR VII</td>
<td>PC</td>
<td>• No explicit obligation to mention the address of the originator on Swift messages and to keep these information on record;</td>
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<td></td>
<td>• No obligation for intermediary or any other financial institution to verify that all the information required for wire transfers is actually sent along with the transfer order;</td>
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<td></td>
<td></td>
<td>• No obligation for the adoption of efficient risk-based procedures.</td>
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3.6 Monitoring of Transactions and Business Relationships (R.11 & 21)

Description and Analysis

593. The legal and regulatory provisions applicable in this area are mentioned in the introduction to section 3.
Recommendation 11

594. Obligation to pay special attention to all complex, unusually large transactions, or to all types of unusual patterns of transactions (C.11.1)

595. Financial institutions are required to apply CDD measures to existing occasional customers when they conduct transactions in cash amounts equal to or more than CFA 5.000.000, or in a currency with a CFA value equal to, or more than the said sum (Art. 8, para.1, AML Law).

596. AML Law, Article 10 requires all designated persons to pay special attention to any transaction involving a sum equal to, or more than CFA Ten Million, conducted under unusual, complex conditions and/or that has no apparent economic purpose.

597. CFT Law, Article 8 provides that the obligations imposed on designated persons under the provisions of Chapter 4, Section 2 of the CFT Law should apply automatically. These obligations relate to the monitoring of specific transactions.

598. BCEAO Instruction, Article 7 provides that “financial institutions should provide measures for analysing customer profiles and transactions to trace and track unusual financial transactions and cash transfers”. Article 7 of BCEAO Instruction N°1/2006/SP of 31 July, 2006 provides that electronic money remitting establishments should put in place an automated system for monitoring unusual electronic money transactions.

599. CIMA Regulation, Article 17.2 provides that “insurance companies should provide a system for analysing customer profiles and transactions, so that they can trace and track unusual transactions”.

600. AML Law, Article 14 binds certified currency exchange agents to pay special attention to transactions that exceed all limits required by the law and that could be conducted for the purpose of laundering money, where the amount is equivalent to CFA 5.000.000.

Description of the context and purpose of transactions (C.11.2)

601. Paragraphs 2 and 3 under Article 10 of the AML Law provide that financial institutions are required, for certain specific transactions, to collect information from the customer and/or by any other means on the origin and destination of the money in question, as well as on the purpose of the transaction and the identity of the persons involved. In addition, the main aspects of the transaction, the identity of the originator and beneficiary, and the persons involved in the transaction are kept in a confidential register to make comparisons if need be.

602. Article 12 of Instruction N° 01/2007/RB provides that the financial institutions to which it applies should collect information in any case from customers on the origin and destination of these sums, as well as on the purpose of the transaction and the identity of the beneficiaries. However, no provision requires financial institutions to examine as far as possible the background and purpose of these transactions and to set forth their findings in writing.

Making findings available to the competent authorities and auditors (C.11.3)

119
603. CFT Law, Article 12 provides that designated persons should, upon request, provide records and documents relating to identification obligations to the FIU, control authorities, judicial authorities, and law enforcement officers in charge of detecting and repressing money laundering related offences, where these latter are acting under a warrant. CFT Law, Article 10 also imposes record keeping obligations “for the purpose of serving evidence in any investigation relating to the financing of terrorism”.

604. Article 13, Section 3 of the CIMA Code stipulates that financial institutions are required to keep, for a period of at least 10 years, records of subscribers to anonymous capitalization bonds and persons who want to redeem or repay the said bonds.

605. None of these provisions attempts to make records and documents available to auditors.

**Recommendation 21**

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

606. Article 7 of Instruction N°01/2007/RB of 2 July, 2007, relating to anti-money laundering in financial institutions, provides, in its last paragraph, that financial institutions should provide a system for analysing customer profiles and transactions in order to trace and monitor any unusual financial transactions and transfers, including the transactions done with counterparties located in FATF non-cooperative countries, territories and/or jurisdictions and persons who are at risk of facing asset freezing measures for their alleged ties with an organized crime organization.

607. In the insurance sector, CIMA Regulation Article 8.3, relating to due diligence measures for foreign legal persons (read: living abroad), provides a non-exhaustive list of «special cases» for which a suspicious transaction report to the FIU should be prepared, if information on the identity of the beneficiary owner is denied during special monitoring arrangements.

608. No effective mechanism is in place for informing financial institutions about the concerns raised by weaknesses in AML/CFT systems of other countries.

**Examination of transactions with no apparent economic or licit purpose (C.21.2)**

609. Togo has no measures or legal provisions in place to examine, as far as possible, the background and purpose of transactions with no apparent economic or lawful purpose, and to make the findings available in writing to competent authorities and auditors.

**Ability to apply appropriate counter-measures in countries that do not or insufficiently apply FATF Recommendations (C.21.3)**

610. There is no provision for applying counter-measures where countries do not apply, or insufficiently apply FATF Recommendations.

**Recommendations and comments**
Recommendation 11

- Measures should be taken to oblige institutions to examine, as far as possible, the background and purpose of unusual transactions and to set forth their findings in writing;
- The findings from such examinations should be made available to Auditors as well.

Recommendation 21

- The Togolese authorities should put in place effective mechanisms for informing financial institutions about the concerns raised by weaknesses in the AML/CFT systems of other countries;
- Financial institutions should be required to examine the background and purpose of transactions with no apparent lawful or economic purpose, and to set forth the findings in writing. These findings should also be made available to auditors;
- Counter-measures should be applied to countries that do not apply, or insufficiently apply FATF Recommendations.

Compliance with Recommendations R.11 and R.21

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| R.11  | PC     | • Lack of provisions to examine, as far as possible, the background and purpose of unusual transactions and set forth the findings in writing;  
|       |        | • Lack of provisions that put auditors on the list of recipients of the findings of these examinations. |
| R.21  | NC     | • Lack of effective mechanisms for informing financial institutions about the concerns raised by weaknesses in the AML/CFT systems of other countries;  
|       |        | • No obligation for financial institutions to examine the background and purpose of transactions with no apparent economic or lawful purpose, and to set forth their findings in writing;  
|       |        | • No mechanism for implementing counter-measures to countries that do not apply, or insufficiently apply FATF Recommendations. |

3.7 Suspicious Transaction and other Reporting (R.13-14, 19, 25 & SR.IV)

Description and Analysis

Recommendation 13 & Special Recommendation IV
Obligation to make suspicious transaction reports (STR) in case of suspected money laundering or terrorist financing (C.13.1, 13.2, 13.5 and SRIV.1)

611. AML Law, Article 26 requires financial institutions to make Suspicious Transaction Reports (STR) to the FIU on:

- Sums of money and all other assets in their possession, if these are suspected to be the proceeds of money laundering;
- Transactions involving assets, in case such assets are suspected to be used for money laundering;
- Sums of money and all other assets in their possession, if these are suspected to be used in the financing of terrorism, or to be the proceeds of transactions relating to money laundering.

612. In the same vein, Article 6 of BCEAO Instruction N°01/2007/RB includes obligations on financial institutions to make STR. The last paragraph under Article 7 of Instruction N°01/2006/SP, relating to the remittance of electronic money, binds financial institutions to make STR.

613. CFT Law, Article 18 prescribes the same obligation for STR relating to sums of money and any other assets in the possession of designated persons, transactions involving assets that are suspected to be the proceeds of, or that are being used for the financing of terrorism, or in the case where the money suspected to be used for terrorist financing is suspected to come from transactions related to money laundering.

614. AML Law, Article 9 also sets out an obligation to make a suspicious transaction report where a financial institution is in doubt about the identity of a beneficial owner after the financial institution has tried in vain, by all means, to collect information on the identity of the person on whose behalf it is acting.

615. The AML Law and CFT Law limit STRs to money laundering and terrorist financing offences and do not take account of the proceeds of all the predicate offences listed under Recommendation 1.

Obligation to report all suspicious transactions (C.13.3*, SR IV.2)

616. There is no provision either in the AML or CFT Law that sets a threshold for making suspicious transaction reports or specific conditions for reporting. The obligation to report should, therefore, be made for all suspicious transactions.

617. CFT Law, Article 18 prescribes the obligation for STR on sums of money and any other assets in the possession of designated persons, on transactions involving assets that could be the proceeds of terrorist financing, or that could be used in financing terrorism, …where these are suspected to be for use in terrorist financing, or appear to be the proceeds of money laundering.

618. The AML Law makes no provision for suspicious transaction reporting in cases of attempted money laundering. However, the model suspicious transaction report used in Togo makes it possible for the financial institutions to do so.
Obligation to report suspicious transactions related to tax matters (C.13.4* and SR IV.2)

619. Being that suspicious transaction reporting is obligatory once sums of money or transactions can be related to money laundering, tax matters should, therefore, be included in the scope of jurisdiction for obligatory reporting and do not have to be invoked as a reason for not making suspicious transaction reports.

Recommendation 14

Protection for STR (C.14.1)

620. AML Law, Article 30 provides that “persons or managers and officials of the persons listed under Article 5 who, in good faith, send information or make a suspicious transaction report in accordance with the provisions of this law, are exempt from any penalties for violation of confidentiality”.

621. The same article states further that “no civil action or criminal proceedings can be instituted, or professional sanctions imposed against persons or managers and officials of the persons listed under Article 5 who acted under the same conditions as those provided in the above paragraph, even if the court rulings passed on grounds of the reports mentioned in this same paragraph do not impose a sentence”. CFT Law, Article 23 makes the same provisions.

622. AML Law, Article 32 sets out similar provisions that extend this protection of the reporter to two other cases;

   i. Where the suspicious transaction has been conducted and the STR is made in accordance with the law;

   ii. Where the transaction has been done at the request of the judicial authorities, law enforcement officers in charge of detecting and repressing ML related offences, acting under a warrant or at the behest of the FIU.

Prohibition from disclosing (“tipping off”) that a STR is being prepared (C.14.2)

623. CFT Law, Article 18, Paragraph 4 and the last paragraph under Article 26 of the AML Law provide that STRs are confidential and cannot be disclosed to money owners or the authors of transactions being reported. AML Law, Article 20 also imposes the confidentiality requirement on FIU members.

624. CIMA Regulation, Article 15 stipulates that “the reporter or any other person in the business enterprise (director, employee, permanent or part-time officials) should, at no instance, disclose any information to the suspected persons that a suspicious transaction report is being made or on the consequences of the said report. Breach of such confidentiality is punishable by law. This confidentiality should apply also to the suspicions brought to the attention of the reporter by any person in the business enterprise (director, employee, permanent and part-time officials), even if such suspicion does not lead to the making of an actual suspicious transaction report.”
Article 17 of the same Regulation states, with regard to brokers, that “while insurance and reinsurance brokers represent insured parties or subscribers, those who make suspicious transaction reports must not inform their customers, or they would be liable to the sanctions provided by the regulation on anti-money laundering and terrorist financing”.

The scope of jurisdiction for these sanctions is very limited and does not respond fully to FATF Recommendations. In fact, the prohibition on disclosure should not be limited to suspicious reports alone. Rather, it should encompass any other information that could be sent to the FIU to enable it to perform its duties properly.

Confidentiality of the identity of financial institution workers making STRs (C.14.3)

AML Law, Article 29, Paragraph 2 provides that «the identity of the official making the STR should not feature» on the report that the FIU sends to the State Prosecutor. CFT Law, Article 21 makes the same provision.

Recommendation 19

Study on a system for reporting transactions made in cash (C.19)

No feasibility or utility study, commissioned on a system that allows financial institutions to report all transactions in cash over a given threshold to a national central agency with a computerized database, was reported to the Mission.

Recommendation 25

Guidelines (C.25.1)

The Togolese authorities are yet to adopt guidelines for designated persons under the AML Law and CFT Law who can help them meet their obligations.

In the banking sector, Instruction 01/2007 of 2 July, 2007 was issued from the BCEAO with provisions to complement the ones set out in the AML Law in force in the WAEMU Member States. The said Instruction covers three types of transactions that may raise suspicion (art. 11), and the measures to take in applying the provisions of the AML Law. The Instruction applies to banking and financial institutions, Post Office financial services, the Deposits and Consignment Fund (or organizations in lieu thereof), micro-finance institutions and certified exchange agents.

The CIMA Council of Ministers has adopted Regulation №04/CIMA/PCA/08 of 4 October, 2008, which sets out the procedures insurance companies should apply in AML/CFT. The CREPMF, on its side, issued an Instruction in November 2009 for certified stakeholders of the WAEMU Regional Financial Market.

Feedback on suspicious transaction reports (C.25.2)

AML Law, Articles 28 and 29 provide that the FIU should acknowledge receipt of STRs and report the findings of its investigations to the designated persons involved in the STR. The same provisions feature under Article 20 and Article 21, paragraph 2 of the AML Law.
In practice, feedback from the Togo FIU is limited to specific recipients at the reporting institutions. The Togo FIU has produced annual reports. These reports do not yet cover the types of suspicious transactions that would allow designated persons to learn about the techniques, methods and trends in ML/FT. Similarly, the reports do not contain concrete examples of AML/CFT that have been dealt with in Togo. In the absence of trials for ML/FT, the designated institutions have little knowledge about the outcomes or decisions made after they submitted a suspicious transaction report.

**Analysis of effectiveness**

**Recommendation 13**

635. The mission noted, during its on-site visit, that the subject categories were beginning to observe the obligation to report suspicious transactions. From 2009 to 2010, only nineteen (19) STRs were received at the Togo FIU, including fourteen (14) from banking institutions, three (3) from the public administration and one (1) from the micro-finance sector.

**Recommendation 14**

636. After meeting and discussing with the required actors, the evaluation mission underlines that the reporting entities face no major difficulty in observing confidentiality when making STRs. There only need is to extend the obligations for confidentiality to all the information provided to the FIU during the making of STRs.

**Recommendation 19**

637. The Mission saw no feasibility or utility study for the implementation of a system by which financial institutions would declare all cash transactions above a certain threshold to a central national agency with a computerized database.

**Recommendation 25**

638. The Togolese authorities have still not developed guidelines to assist the categories subjected to the AML/CFT Laws in meeting their respective obligations. Likewise, the FIU does not give necessary feedback after processing STRs. It barely acknowledges receipt of the STRs.

**Recommendations and Comments**

**Recommendation 13**

- Suspicious transaction reporting should also cover funds from the list of underlying offences under Recommendation 1, as well as attempted money laundering transactions.

**Recommendation 14**
• The confidentiality requirements that are imposed on financial institutions, to their senior management and staff members, should be extended to all the information sent to the FIU.

Recommendation 19

• The Togolese authorities should make plans to conduct a feasibility and utility study for implementing a system to report on cash transactions.

Recommendation 25

• Guidelines should be developed and shared with all subject categories.

• The FIU should conduct typology studies and present concrete cases to subject categories.

Special Recommendation IV

• Dissemination of the CFT Law and sensitization of subject categories to their obligations in this regard, should be pursued.

• Financial institutions should be bound to report on attempted terrorist financing cases.

Compliance with Recommendations R.13, R14, R19, R25 and Special Recommendation IV

<table>
<thead>
<tr>
<th>REC</th>
<th>Rating</th>
<th>Summary of factors underlying rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>R.13</td>
<td>PC</td>
<td>• STRs are limited to money laundering and terrorist financing (and hence do not cover predicate offences as provided under R1);&lt;br&gt;• No obligation to report attempted money laundering transactions; &lt;br&gt;• No effective implementation of AML/CFT requirements by all the reporting entities</td>
</tr>
<tr>
<td>R.14</td>
<td>LC</td>
<td>• Confidentiality requirement on STRs sent to the FIU is limited to the directors and employees of financial institutions.</td>
</tr>
<tr>
<td>R.19</td>
<td>NC</td>
<td>• No feasibility and utility study for implementing a reporting system for cash transactions.</td>
</tr>
<tr>
<td>R.25</td>
<td>NC</td>
<td>• Overall lack of guidelines; &lt;br&gt;• Feedback non-compliant with set requirements.</td>
</tr>
<tr>
<td>SR.IV</td>
<td>PC</td>
<td>• General lack of understanding of STR compliance for CFT; &lt;br&gt;• No obligation to report attempted terrorist financing; &lt;br&gt;• Lack of effectiveness: the FIU has not yet received STRs on terrorist financing.</td>
</tr>
</tbody>
</table>
3.8 Internal Controls, Compliance and Foreign Branches (R.15 & 22)

Description and Analysis

Recommendation 15

Establishment of procedures, policies and internal control measures for prevention of AML/CFT in Financial Institutions (C.15.1)

639. AML Law, Article 13 prescribes that financial institutions should establish internal control procedures and programmes. These programmes should include, inter alia:

i. Centralization of information on the identity of customers, originators, representatives, beneficial owners;

ii. The processing of suspicious transaction reports;

iii. The designation of officers to supervise application of internal anti-money laundering programmes;

iv. Continuing staff training; and

v. The establishment of an internal system to supervise application and effectiveness of measures adopted under this Law.

640. The last paragraph of this Article provides that the supervisory authorities should, in their respective areas and as appropriate, define the content and modalities for implementing the prevention programmes.

641. BCEAO Instruction 01/2007/RB sets out these obligations under Article 13 (establishment of an anti-money laundering unit), Article 15 (internal anti-money laundering programme), and Article 16 (supervision of the anti-money laundering programme). Article 17 of this same Instruction provides that banking and financial institutions are required, within a period of two (2) months, from the end of the financial year, to submit to BCEAO and the Banking Commission, a report on implementation of the anti-money laundering system in force in WAEMU Member States. This report should, especially:

i. Describe the organization and its resources for preventing and combating money laundering;

ii. Present initiatives for training and information carried out in the course of the past year;

iii. List out the controls done to ensure proper implementation of, and compliance with customer identification procedures, record keeping, detection and suspicious transaction reporting;

iv. Highlight the findings of investigations, particularly regarding the weaknesses in procedures and observance of the said procedures, as well as statistics relating to the application of the suspicious reporting system;

v. Cover, as appropriate, the type of information sent to third party institutions, including those outside the country of location;
vi. Do a mapping of the most common suspicious activities, indicating eventually the nature and form of the changes observed in money laundering practices;

vii. Present the way forward and programme of activities for the reporting period ahead.

642. WAMU Banking Commission Circular N° 10/2000/CB of 23 June, 2000 provides that banking and financial institutions should establish an efficient internal control system, adapted to their organization, to the nature and volume of their activities, as well as to the risks they face. Section I of the document states that the goal of the internal control system is to verify that transactions are done, and that the organization and its internal procedures are compliant with the legislative and regulatory provisions in force (meaning those applicable for AML/CFT). It states further that the executive and decision making bodies must see to it that the internal control system functions smoothly (Section II). Chapter IV also provides that the system should be based on total formalization of procedures, processing modalities and record keeping in relation to transactions. It must, at each professional level, provide a suitable control system. Chapter V requires banks to make provision for a system to track and reconstitute transactions (or audit trail) in chronological order, and to provide supporting evidence on record for all pieces of information, which are to be retained for a period of at least ten years.

643. In the insurance sector, CIMA Regulation, Article 4 provides obligations that bind insurance companies to institute anti-money laundering procedures and policies. This position can be assigned to an audits or management controls officer.

644. Under Article 54 of the General Regulations, relating to the organization, functioning and control of the WAEMU financial market, any company with stakes on the market (SGI and SGP) is required to designate an internal control officer from within the company. The internal control officer will be responsible, in particular, for ensuring compliance, in the company itself, with all professional rules, including the prudential rules that apply to it.

645. The Mission noted that all banking institutions had AML/CFT procedures in writing. However, these procedures are not implemented in several cases. Consequently, very few banking institutions have identified suspicious transactions and reported them to the FIU.

646. The micro-finance institutions that met with the Mission did not have internal procedures and policies for combating ML/FT. Those that purported to have them could provide no proof or justify implementation thereof.

647. Management and intermediation companies generally have internal control procedures that do not include, or barely cover AML/CFT matters.

648. The Post Office financial services in Togo have procedures in writing, but could not give evidence that these were being implemented, because the establishment had made no suspicious transaction report. As for the certified exchange agents, they have no knowledge of their obligation in this regard.

**Designation of a compliance officer (C.15.1.1)**

649. AML Law, Article 13 requires financial institutions to designate an AML Officer. And in practice, it is the compliance officer that is designated in certain financial institutions,
especially banks. In some cases, this job is given to the internal auditor or lead auditor, with no clear definition of his tasks. In other cases, no officer is appointed for this purpose.

**Right of access to information (C.15.1.2)**

650. Under the provisions mentioned above, the AML control officer and the other members of staff concerned should have timely access to customer identification data and other information relating to customer due diligence, to transaction records and other relevant information.

651. The Mission was not informed of any obstacles that kept the compliance officer from getting access to the said information.

**Maintenance of an independent and adequately resourced internal control system (C.15.2)**

652. Article 13 of BCEAO Instruction N°01/2007/RB of 2 July 2007 obliges the executive organs of financial institutions to provide the anti-money laundering officer with adequate and sufficient human and material resources, and give him the operational leeway to perform his duties. Article 13 of the AML Law and Article 14 of BCEAO Instruction N°01/2007/RB of 2 July, 2007 require that staff should be given continuing training and sensitization to the typologies of ML/FT, so that they fully understand their AML/CFT manual.

653. Article 16 of the 2007 BCEAO Instruction provides that “the internal anti-money laundering programme should be placed under the scope of jurisdiction and investigation of a body or structure that is independent from the one in charge of implementing it”.

654. CIMA Regulation, Article 4.1 requires insurance companies to see to it that the officer who is in charge of monitoring internal implementation of the AML programme is given «sufficient powers».

655. With the exception of a few financial institutions, the others have insufficient or no human, technical and material resources to perform their duties properly. Similarly, their control systems often lack the desired level of autonomy that a specific organization or a procedures manual would provide. The compliance units that exist generally also embrace the duties of internal auditor or resident auditor, with no changes to organizational and operational patterns.

**Continuing training of financial institution staff in AML/CFT (C.15.3)**

656. AML Law, Article 13 makes provision for continuing training of staff members, as part of in-house anti-money laundering programmes. Article 14 of BCEAO Instruction 01/2007/RB provides also that staff should be given information (communication of the legal provisions in force) as well as training (provision of procedure manuals and a plan for training in, and sensitization to typologies). The same provisions feature in the CREPMF Instruction that came into force in November 2009.

657. In the insurance sector, raining requirements are set for AML officers and the other persons concerned (Article 4.1).
658. Staffing in financial institutions is based on the vacancies available. Candidates who attend job interviews may be asked about their level of knowledge of AML/CFT laws, if they are being employed for the anti-money laundering unit in the financial institution.

659. Financial institutions informed the Mission that their existing training programmes comprised an anti-money laundering component. The mission however had no detailed information on the modules used for such training, nor on the period, frequency and targets for training. It also received no information on future training exercises.

**Establishment of appropriate procedures for hiring employees (C.15.4)**

660. The AML and CFT Law provide no specific criteria on staff employment. It is Article 28 under Law 2009-19, relating to bank regulation in Togo, which provides that anyone convicted of one or more of the offences under Articles 26 and 27 of the same Law (ordinary crimes, forgery or use of false documents, theft, fraud, crimes punishable as fraud, embezzlement, bankruptcy, misappropriation of public funds, extortion of money or securities, corruption, etc.) shall not be employed in any capacity whatsoever by a credit institution. A prison sentence of one (1) to five (5) years and a fine between CFA 10.000.000 and CFA 25.000.000 is provided for offences committed by the person concerned, and a fine between CFA 25.000.000 and CFA 50.000.000 for the employer.

661. CIMA Regulation, Article 4.6 requires insurance companies “to establish appropriate compliance control measures and procedures when hiring employees to ensure that the employment process is done in accordance with rigorous criteria”.

662. In the banks that met with the mission, new workers undergoing orientation are given training in AML/CFT. But the other designated entities do not implement specific measures when hiring their staff.

**Recommendation 22**

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

663. Togo has no provisions in place for implementing AML measures in foreign branches and subsidiaries.

**Particular case of countries not applying, or insufficiently applying FATF Recommendations (C.22.1.1)**

664. There is no specific provision to apply more stringent measures in foreign branches and subsidiaries in countries not applying, or insufficiently applying FATF Recommendations.

**Application of the higher standard (C.22.1.2)**

665. Togo’s legislation makes no specific provision that binds financial institutions to apply the higher standard, to the extent that local laws and regulations so permit, where the minimum requirements for AML/CFT in the home and host country differ.
Informing the host country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures (C.22.2)

666. Under AML legislation in force in Togo, financial institutions are not required to inform home country supervisors when a foreign branch or subsidiary is not observing appropriate AML/CFT measures because this is prohibited by local laws, regulations or other local measures.

Consistency in CDD measures at the group level (C.22.3)

667. Togo’s legal system makes no provision on this criterion.

Recommendations and comments

668. The Togolese authorities should implement the following recommendations.

Recommendation 15

- Provide designated entities with sufficiently resourced independent internal audit systems, so that they can perform their duties properly;
- Develop and implement continuing training programmes for staff in financial institutions;
- Develop and implement appropriate employment procedures to ensure compliance with rigorous standards.

Recommendation 22

- Adopt measures binding financial institutions to ensure their foreign branches and subsidiaries observe the AML/CFT measures prescribed by FATF;
- Establish a requirement for financial institutions to inform the supervisory authorities in their home countries when a foreign branch or subsidiary is not observing appropriate AML/CFT measures.

Compliance with Recommendations R.15 and R.22

<table>
<thead>
<tr>
<th>REC</th>
<th>Rating</th>
<th>Summary of factors underlying rating</th>
</tr>
</thead>
</table>
| R.15 | PC     | - Lack of independence and resources for internal audit systems;
      |        | - Lack of continuing training programmes and appropriate procedures for staff employment outside the banking sector;
      |        | - Failure to implement prescribed obligations. |
| R.22 | NC     | - Total lack of AML/CFT obligations for branches and subsidiaries. |
3.9 Shell Banks (R.18)

Description and Analysis

Recommendation 18

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

669. Togo has no law in force that explicitly prohibits the establishment of shell banks. However, the conditions of access to the banking profession, with the certification and supervision process involved, make it impossible to establish shell banks in Togo.

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

670. The law has no express provision forbidding financial institutions from entering into, or continuing correspondent banking 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)

671. There are no specific provisions that require financial institutions to satisfy themselves that their respondent financial institutions in foreign countries do not permit their accounts to be used by shell banks.

Recommendations and comments

672. The Togolese authorities should adopt measures to:

- Explicitly prohibit financial institutions from entering into, or continuing relationships with shell banks;
- Require financial institutions to ensure that their respondent banks do not permit their accounts to be used by shell banks.

Compliance with Recommendation R.18

<table>
<thead>
<tr>
<th>REC</th>
<th>Rating</th>
<th>Summary of factors underlying rating</th>
</tr>
</thead>
</table>
| R.18 | NC     | • No ban on financial institutions to enter into or continue correspondent banking relations with shell banks;  
|      |        | • No obligation for financial institutions to ensure that the respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks. |

REGULATION, SUPERVISION, MONITORING AND SANCTIONS

3.10 The Supervision and oversight system – Competent Authorities and Self-Regulatory Organizations - Role, Functions, Obligations and Powers (including sanctions) - R.17, 23, 29 & 30
Description and Analysis

673. The supervision and oversight system for financial institutions in Togo is governed by a set of laws adopted at the sub-regional and national level.

674. In the banking and micro-finance sector, supervision and oversight are governed by:
   - Law N°2009-019 on Bank Regulation;
   - Law N°95-014 of 14 July, 1995 on Regulation of Mutual Institutions and Credit and Savings Cooperatives, as well as Decree 96-038 of 1st April, 1996 for application of the law;
   - BCEAO statutes;

675. These provisions set out the remits of the regulation and supervisory bodies in charge of banking activities, as well as the conditions under which they operate. Similarly, they assign regulation, supervision and sanction functions among the various bodies or institutions: Council of Ministers, Finance Ministers, Central Bank and the Banking Commission.

676. As concerns the regional financial market, its regulation body is the Conseil Régional de l’Épargne Publique et des Marchés Financiers (Regional Council for Public Savings and Financial Markets), which was founded in 1996. The role of the said body is to, on one hand, organize and supervise public calls for savings and to, on the other, empower and supervise stakeholders in the regional financial market. To this effect, CREPMF regulates the way the market functions. This includes setting specific regulation for the stock market. The body also has disciplinary power and the ability to refer matters to the judicial authorities.

677. The provisions for the supervisory and oversight system in the insurance sector are contained in the Code of the Inter-African Conference of Insurance Markets. The Code sets out common rules for the insurance companies in Franc Zone countries, the provisions made for applying them, the Statutes of the Regional Commission for Insurance Control (CRCA), and national provisions made in particular by the Ministry of Finance, concerning the roles and responsibilities of the National Directorate for Insurance.

Market entry – R.23

AML/CFT regulation and oversight (C.23.1)

678. Article 5 of the AML Law and Article 3 of the CFT Law bind subject categories, including financial institutions, to anti-money laundering and counter terrorist financing obligations. They are regulated by, and subject to oversight from the Finance Ministry, the Central Bank and the Banking Commission. Further, Article 67 under Law n°95-014 of 14 July, 1995, regulating mutual institutions and credit and savings cooperatives, provides that the Central Bank and Banking Commission can, on their own initiative or at the request of the Minister of Finance, do on-site inspections of financial bodies and all institutions under the supervision of these latter. It is the same for banking and financial institutions. The oversight authorities of financial institutions also cover AML/CFT. But on the other hand, it is still uncertain whether such inspections cover all the financial activities identified by FATF (Cf. paragraph 431).
Apart from banks, financial institutions and micro-finance institutions, the laws above establish the same obligations for the BCEAO, the Public Treasury, Post Office Financial Services, the Consignment Deposits and Loans Fund, insurance and reinsurance companies as well as their brokers, the Regional Stock Exchange, the Central Depository/Settlement Bank, Management and Intermediation Companies, Asset Management Companies and their Business Providers, Fixed Capital Investment Companies and Certified Exchange Agents.

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

Article 28 of the counter financing of terrorism Law provides that when a person defaults on their obligations under Articles 8, 18 and 19, the oversight authority with disciplinary powers can act directly under the conditions provided in the laws and regulations in force.

Article 70 under Law N° 95-014 of 14 July, 1995, makes provision for transitional administration and attendant suspension of leadership prerogatives, which powers are transferred, in whole or in part, to the transitional authority.

The competent authorities for supervision and regulation of financial institutions are summarized in the table below:

<table>
<thead>
<tr>
<th>Designated Persons and professions (Art.5, AML Law)</th>
<th>Supervisory Authorities</th>
<th>Regulation and self-regulation authorities</th>
<th>AML/CFT Oversight Authorities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Banking and financial institutions</td>
<td>MEF (Directorate for Economy)</td>
<td>MEF BCEAO</td>
<td>WAMU Banking Commission BCEAO</td>
</tr>
<tr>
<td>Insurance and reinsurance companies and brokers</td>
<td>MEF (Directorate for Insurance)</td>
<td>MEF CIMA</td>
<td>CRCA Directorate for Insurance</td>
</tr>
<tr>
<td>Mutual institutions or loan and credit cooperatives</td>
<td>MEF (CAS IMEC)</td>
<td>BCEAO MEF (CAS IMEC)</td>
<td>BCEAO CB UMOA MEF (CAS IMEC)</td>
</tr>
<tr>
<td>Unincorporated, sub-mutual or cooperative structures or organizations for collecting savings and/or granting loans</td>
<td>MEF (CAS IMEC)</td>
<td>BCEAO MEF (CAS IMEC)</td>
<td>BCEAO CB UMOA MEF (CAS IMEC)</td>
</tr>
<tr>
<td>Post Office financial services</td>
<td>MEF/Ministry of Communication</td>
<td>MEF</td>
<td>MEF (IGE, IGF), National Audits Office</td>
</tr>
<tr>
<td>Designated persons and professions (Art.5, AML Law)</td>
<td>Supervisory authorities</td>
<td>Regulation and self-regulation authorities</td>
<td>AML/CFT oversight authorities</td>
</tr>
<tr>
<td>Designated Persons and professions (Art.5, AML Law)</td>
<td>Supervisory Authorities</td>
<td>Regulation and self-regulation authorities</td>
<td>AML/CFT Oversight Authorities</td>
</tr>
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<td>--------------------------------------------------</td>
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</tr>
<tr>
<td>Fund Deposits Division, serving as the Consignment Deposits and Loan Fund</td>
<td>MEF (Public Treasury)</td>
<td>MEF</td>
<td>MEF (IGE, IGF), National Audits Office</td>
</tr>
<tr>
<td>The Public Treasury</td>
<td>MEF</td>
<td>MEF</td>
<td>MEF (IGE, IGF), National Audits Office</td>
</tr>
<tr>
<td>BCEAO</td>
<td>WAMU Council of Ministers</td>
<td>WAMU Council of Ministers</td>
<td>Trustee Authority of the Directorate for Inspection and Audit Oversight Commissioner</td>
</tr>
<tr>
<td>BRVM, Central Depository/Settlement Bank, SGI and SGP</td>
<td>CREPMF</td>
<td>CREPMF</td>
<td>CREPMF</td>
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<tr>
<td>OPCVM</td>
<td>CREPMF</td>
<td>CREPMF</td>
<td>CREPMF</td>
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<tr>
<td>Fixed capital investment companies</td>
<td>CREPMF</td>
<td>CREPMF</td>
<td>CREPMF</td>
</tr>
<tr>
<td>Business providers to financial institutions</td>
<td>CREPMF CIMA MEF</td>
<td>CREPMF CRCA MEF</td>
<td>CREPMF CRCA MEF</td>
</tr>
<tr>
<td>Certified exchange agents</td>
<td>MEF</td>
<td>BCEAO MEF</td>
<td>BCEAO MEF</td>
</tr>
</tbody>
</table>

683. The banks and other financial institutions in Togo are under the supervision of the WAMU Banking Commission and the BCEAO, as provided in Article 13 of the Convention for the Creation of CB-UMOA and Articles 1 and 59 of Law 2009-019, which relates to bank regulation in Togo.

684. The BCEAO also has autonomous supervisory authority, under paragraph 2 of the same Article, which provides that “the Banking Commission conducts or causes others, especially the Central Bank, to conduct on-site checks on documents and records in banking and financial institutions to ensure compliance with the provisions applicable to them. On-site controls can extend to the branches and subsidiaries of banking and financial institutions, to legal entities that have de facto or de jure leadership authority over the said institutions, as well as the said branches and subsidiaries. The Central Bank can also conduct such controls on its own initiative, in which case it notifies the Banking Commission of the checks on site”.

685. Insurance companies fall under the supervision of CIMA, whose registered office is in Libreville, Gabon. CIMA relies on national insurance company offices to perform its supervisory role. Insurance brokers are themselves under the prudential regulatory authority of national directorates for insurance. In accordance with Article 6 of the CIMA Treaty, the Conference’s Council of Ministers is the executive body that pursues the goals of the Treaty. To that end, it has adopted the model law for insurance. And as part of the mission it has been
assigned, the Council proposes regulations to amend and refine the model law for insurance that is annexed to the Treaty. It ensures Member State compliance with the model law and execution of their obligations under the Treaty.

686. Article 16 of the said Treaty defines the Regional Commission of Insurance Control (CRCA) as the regulating body of the Conference. It deals with corporate control, general supervision and organization of national insurance markets.

687. Under Article 10 of CIMA Statutes, the Commission exercises the powers it has been given by the Treaty. It is in charge, especially, of corporate oversight. It does general supervision and helps organize national insurance markets. To do so, the Commission has a control body at the CIMA permanent secretariat. National directorates “serve as relays bodies for the work done by CRCA in Member States” (Annex II to the CIMA Treaty).

688. Decentralized financial systems are under the supervision of the Ministry of Economy and Finance (CAS IMEC), as well as the BCEAO. Once the BCEAO Instruction on DFS control pursuant to institutional reform comes into force, DFS will also be under the control of the WAMU Banking Commission. On a more specific note, the unions, federations or confederations are responsible for individual on-site supervision of operations by affiliates and their financial bodies. To do this, they can issue all procedure manuals, provided that they comply with the standards set by the Central Bank or Banking Commission. They are required, at least once a year, to inspect affiliates and their financial bodies (art. 57 of Law 95-014 of 14 July, 1995).

689. The Regional Council for Public Savings and Financial Markets sees to it that the sub-regional financial market functions well. Under Article 23 of the annex to the general regulation, the Regional Council oversees the work of all stakeholders, verifies that security remitting agents comply with requirements for public calls for savings. It can, in this respect and as appropriate, carry out inspections of shareholders, parent companies and subsidiaries, or any physical or legal person working directly or indirectly with these stakeholders.

690. Certified currency agents are supervised jointly by the BCEAO and Finance Ministry.

**Prevention of criminal presence (C.23.3)**

691. The provisions that set conditions of access to the banking profession restrict banking practice to persons of good repute and character. Under Article 26, Law N°2009-019 of 7 September 2009 on bank regulation, persons who have been condemned, among other things, for the underlying offences of money laundering are prohibited from leadership, administration or management of a credit institution or one of its agencies. Likewise, they are banned from working in a bank, setting up a credit institution, and buying shares in the capital of a credit institution. BCEAO is supposed to obtain all information on people providing capital, on their guarantors, and on the experience of persons appointed as directors, administrators or managers of banking or financial institutions and their affiliate agencies. The certification to practice banking is issued by the Economy and Finance Minister.

692. Under Articles 29, 30 and 31, financial institutions are required to inform the Economy and Finance Minister and BCEAO of changes made to the statutes, transfer of shares and major changes in leadership.
693. In the insurance sector, applications for certification are submitted to CRCA by the competent Directorate for Insurance with a recommendation for approval (Part II, chap. 1, section 1 of the Insurance Code). This recommendation of compliance conditions the delivery of certification by the Finance Minister.

694. In this procedure, assessors closely examine capital shares, as well as the character and reputation of company directors (criminal record). Assessors pay special attention to shareholders when reviewing applications for certification, or during any significant changes in capital or voting rights. Article 329, paragraph 7 provides that any transaction to transfer shares over 20% or the majority of voting rights should be approved by the Ministry of Insurance, upon the recommendation of CRCA.

695. Article 9 under Law 95-014 of 14 July, 1995 requires savings and loan institutions or establishments to get approval or certification from the Finance Minister in accordance with the modalities under Part II of Decree 96-038 of 10 April, 1996, which sets out approval and certification procedures. Article 28 of this Decree requires management, administrative or supervisory authorities to submit a criminal record. Any changes in the statutes or list of directors, as well as reports or minutes that nullify or dissolve an institution or organize to liquidate it, should be submitted to the Registrar of a competent court and reported in writing to the Minister no more than one month after the general assembly meeting where these changes were decided (art. 18, Law 95-014).

696. On regional financial market structures, any company set up to run activities at the BRVM across WAMU Member States, is required to submit a documented application to CREPMF for certification. This dossier should include:
   i. The statutes of the applicant company;
   
   ii. Shareholder distribution and shareholder names;
   
   iii. The rules and regulations applicable to stakeholders in the stock exchange; and
   
   iv. Any other information deemed necessary by the regional council. This requirement applies also to companies established for dc/br activities.

697. Requirements are provided also for the business sector (including SGI and SGP). Article 27 of the General Regulation mentioned earlier stipulates that “to submit their application for certification, applicant companies should present sufficient guarantees, especially concerning the composition and amount of their capital, organization, human, technical and financial resources, the reputation and character of their directors, as well as measures for secure customer transactions”. Article 32 excludes physical persons who have suffered any of the sanctions listed (forgery, fraud, misappropriation of public funds, violations of banking and currency exchange provisions, etc.).

698. Currency exchange agents get their authorization by decree from the MEF with recommendation from the BCEAO. Under BCEAO Instruction 11/05/RC, authorizations are valid for a period of one year from the issue date, on condition that the holder begins activities within said period. Applications for authorization are screened at the BCEAO, which looks specifically at the candidate’s criminal record, and then issues a recommendation of compliance that is forwarded to the MEF to deliver the authorization. Further, exchange
agents declare to the BCEAO the volume of their transactions. They are required to observe the provisions of WAMU Regulation 09/98/CM/UMOA, relating to external financial relations of WAMU Member States, including ceilings for issuing hard currency to travelling residents.

699. In practice, the criteria for probing the character of leaders in several categories of financial institutions are based on the certificate of non-conviction issued by the Court Registrar. While this document attests that the holder has never been convicted, it gives no other information on their good repute as a morality check would have done by providing information on the social and economic environment, for example, or on the activities of the person concerned.

700. Note should be taken that the above-mentioned provisions and procedures in force in Togo include specific relevant sections that aim to prevent criminals or their accomplices from taking over financial institutions, becoming the beneficial owners, acquiring a significant percentage of the shares or taking ownership thereof, or from occupying a leadership position, including membership in the Board of Trustees, Board of Directors, or the oversight body of the institution.

Application of prudential regulation for AML/CFT (C.23.4)

701. Apart from banks and financial institutions, the other financial institutions do not have prudential regulations that apply to AML/CFT. Circular N° 10-2003 of 23 June, 2000 from the WAMU Banking Commission, sets out the basic principles of risk management that are relevant to AML/CFT.

702. By virtue of this Circular, WAEMU banking and financial institutions are required to establish effective internal control systems, adapted to their organization, the nature and volume of their activities, as well as the risks they face. The provisions in Circular N° 10-2000 of 23 June 2000 require full formalization of procedures, processing modalities and record keeping for transactions, clear delegation of powers and responsibilities, as well as strict separation of duties. The system to put in place should institute, at each level of transaction, a first level of audit that serves as an authorization or a validation. The second level of internal audit should serve as a dedicated, independent control exercise. The executive body decides how internal audits should run. It makes sure there is an adequate system in place and supervises the activities and outcomes at least once a year. It should get regular feedback on all the risks the institution is facing. The executive body can set up an audit committee to assess how the audit system is organized and operational.

Certification of money transfer and currency exchange services (C.23.5)

703. Certification for currency exchange and money value transfer operators is delivered by decree from the Ministry of Economy and Finance, upon recommendation from the BCEAO. Under BCEAO Instruction 11/05/RC, such authorizations remain valid only where the holders show evidence that they began to run activities within a period of one year after getting the authorization. The BCEAO reviews the requests for authorization and checks the conviction record of the applicant. The BCEAO delivers a recommendation, which it submits to the MEF, before the authorization is issued.

704. See SR VI for money transfer services (Section 3.11.).
Supervision and oversight of money transfer and currency exchange services (C.23.6)

705. Currency exchange operators are supervised jointly by the BCEAO and the Ministry of Finance. They are required to send reports to the BCEAO on the volume of their transactions, and to comply with the provisions of Regulation 09/98CM/UMOA, relating to the external financial relations with the Member States of the Union, especially on the ceilings for delivering allocations in hard currency to resident travellers.

706. For money transfer services, See SR VI (Section 3.11).

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

707. Generally, financial institutions other than banking and financial establishments (Cf. table for criteria), also require prior authorization from, or registration with the competent authorities indicated. They are subject also to supervision or oversight requirements. However, the conditions for such supervision in AML/CFT are either inadequate or inexistent. Further, there is no risk assessment in this sector that justifies the application of strict or less strict measures in this regard.

Recommendation 17

Existence of effective, proportionate and dissuasive sanctions (C.17.1)

708. Under the bank regulation law in Togo, the WAMU Banking Commission can take administrative measures (Art.63), disciplinary sanctions (Art.66), penal sanctions (Art. 67 to 74) and other sanctions, including penalties against a credit giving institution. Even though these sanctions are not stated in an explicit manner, they can apply where the said institutions default on their AML/CFT obligations, as is the case in any prudential matter.

709. Section III of the AML Law provides administrative and disciplinary sanctions, preventive measures, applicable penalties and the penalties set out under Articles 28 et seq. Under AML Law, Article 35 provides that administrative and disciplinary sanctions should be applied by the oversight authority that has disciplinary powers, which, in this specific case, are the BCEAO and the Banking Commission. The preventive measures are prescribed by the Investigating magistrate in accordance with Article 36 of the same Law.

710. Section IV of the anti-money laundering law makes provision for administrative, disciplinary and penal sanctions against certain money laundering related activities.

711. In the micro-finance sector, the power to issue disciplinary sanctions, ranging from warnings to reprimands and withdrawal of the business licence, rests with the MEF. Likewise, the amendment to the Convention that founded CREPMEF provides two types of sanctions where a stakeholder contravenes the market rules:

i. Non-penal financial sanctions in some limited cases, where the amount charged depends on the severity of the faults, omissions and violations committed (art. 32);

ii. Administrative sanctions.
712. The Finance Ministry may issue sanctions against certified exchange agents “in conformity with the laws or regulations in force in Member States, including those relating to litigation of breaches of currency exchange controls”, as provided under Article 5 of Instruction N°11/05/RC, relating to conditions of validity and modalities for withdrawal of authorizations for currency exchange agents.

Designation of an authority empowered to apply these sanctions (C.17.2)

713. Article 35 of the AML Law and Article 28 of the CFT Law provide that oversight authorities with disciplinary power can take action directly under the conditions stipulated in the specific laws and regulations in force. As mentioned earlier, the administrative and disciplinary sanctions provided for by specific regulations are imposed by the oversight authorities with the prerogative to do so (with the obligation to notify the public prosecutor). Otherwise, the Public Prosecutor can impose the said sanctions, where the financial institution is prosecuted and taken to court (article 42 of Law AML and article 38 of the CFT Law).

Application of sanctions to directors and senior management (C.17.3)

714. AML Law, Article 40 provides prison sentences that range from six (6) months to two (2) years and a fine that may fall between CFA 100.000 and CFA 1.500.000 for “persons, directors and senior management or employees of physical or legal persons”

715. Article 35 of the CFT Law provides penalties under the same conditions for prison sentences ranging from twelve (12) months to four (4) years and a fine that may fall between CFA 200.000 and CFA 3.000.000.

716. In addition, Articles 67, 68 and 73 of the Law on bank regulation provides sanctions against persons who have performed banking activities without prior authorization and for those who, in performing their duties, violated the provisions under Articles 42 and 53 of the Uniform Law on anti-money laundering.

Broad and proportionate sanctions (C.17.4)

717. The AML Law and the CFT Law provide a very broad range of sanctions. These include disciplinary sanctions, financial sanctions and criminal sanctions. The sanctions imposed are proportionate to the severity of the deficiency observed by the competent authority and can include withdrawal of the licence or authorization of the financial institution. (See C.17.1)

Resources (Supervisory authorities)

Recommendation 30

Adequacy of means available to the supervisory authorities (C.30.1)

718. While regional oversight bodies (CB-UMOA, BCEAO, CREPMF, CRCA) enjoy an appreciable level of autonomy in the performance of their duties, the evaluation mission noted that they lack resources, and especially human resources. This affects the number of institutions they supervise and how well they cover AML/CFT.
The WAMU Banking Commission’s 2009 annual report states that it used five teams for on-site inspection tours in the WAEMU zone in 2009. Each team, working under the responsibility of a head of mission, had nineteen (19) officials, against twenty-two (22) in 2008. The teams were supported for certain inspections by four (4) officials from another directorate. In all, the teams covered one hundred eighteen (118) credit institutions (including 99 banks and 19 financial institutions, three of which had not started working as at 31 December, 2009). This gives each official an average of 6 institutions to deal with.

The review of documents is done by nineteen (19) officials and three (3) subordinates, which makes a total of twenty-two (22) persons, against twenty-five (25) in 2008 (in the WAEMU zone).

The Mission was not able to obtain figures on the number of staff members and the level of human and financial resources the BCEAO has for its duties as a supervisory body. The discussions the mission had with respondents confirmed that the human resources assigned to this function were inadequate.

The 2008 annual report of the Regional Council states that it conducted on-site inspection tours for 17 institutions, against 22 in 2007. These missions mainly covered eight Management and Intermediary Companies (MIC), two mutual fund management companies, two Mutual Management Funds (MMF), one variable capital investment company (SICAV), two business introducers, two central bodies (BRVM and DC/BR), and one thematic inspection targeting asset management, security management and cash management agents. There were fifty six (56) agents authorized to work in the financial market as of 31 December, 2008, against forty five (45) a year before.

The Mission could not obtain statistics on the inspections concerning insurance companies.

National bodies suffer a conspicuous lack of resources. According to the officials of the said bodies, this gap makes it difficult for them to perform their duties. However, CAS IMEC officials told the mission that they had enough staff, but lacked financial and technical resources. However, the Mission obtained no quantitative data to support its analysis.

**Integrity of supervisory authority workers (C.30.2)**

The members of the Banking Commission and the persons who contribute to its work are bound by professional secrecy (art. 6 of the Convention on the Creation of the Banking Commission).

According to the general rules and regulations on organization, operation and supervision of the WAEMU regional financial market, the members of the Regional Council and persons acting under the Council’s responsibility are required to maintain absolute secrecy on the facts and acts they witness in the course of their duties, if such facts and acts are not meant for public knowledge. Non-compliance with this requirement invites the disciplinary sanctions provided in the Internal Rules and Regulations of the Regional Council for non-compliance, without prejudice to legal proceedings that may be brought against offenders.
727. Under BCEAO statutes, Article 47 stipulates that the Governor, Vice-Governor and all workers at the Central Bank are bound to secrecy, otherwise they will face the penalties in force under criminal law. As concerns the Regional Insurance Control Commission, Article 25 provides that the Commission members and non-voting members are bound to professional secrecy. In like manner, all public servants are required to observe professional secrecy.

728. However, no specific provisions require the members of these respective bodies and the national supervisory authorities to maintain high integrity and be appropriately skilled. It is worth noting, however, that the BCEAO has a Code of Ethics that applies to all its staff members.

729. The AML Law and CFT Law require FIU staff to observe confidentiality and take an oath of office in the Court of Appeal before assuming duty. The staff members are required also to follow the Code of Ethics. Further, AML Law, Article 18 sets out the requisite skills for FIU members.

Training for supervisory authority staff (C.30.3)

730. Generally, the supervisory authorities have not received specific training on AML/CFT. The mission’s findings on site were that, the FIU ran some sensitization activities and GIABA organized a few seminars that gave the national supervisory authorities the occasion to learn about AML/CFT.

731. BCEAO workers attend training on AML/CFT in Togo and at the regional level.

732. FIU staff members attend regional and international training seminars. They also get AML/CFT training from regional training groups, such as GIABA, UNODC and World Bank. The Togo FIU, in turn, provides training to the persons subject to AML/CFT laws at the domestic level.

Authorities: powers and sanctions – R.29 & 17

Powers of the supervisory authorities (C.29.1)

733. The WAEMU Banking Commission and BCEAO have the necessary powers to perform their supervision and monitoring duties on the financial institutions under their authority. Under Article 17 of the Convention on the Creation of the WAMU Banking Commission, the BC can conduct, or cause others, and especially the BCEAO, to conduct on-site inspections and reviews of the documents of banking and financial institutions to ensure compliance with the provisions they are subjected to, including AML/CFT. Article 19 provides further that “the administrative and judicial authorities in the Member States of the West African Monetary Union should provide assistance to the inspections conducted with regard to Article 17 mentioned above”.

734. BCEAO can also conduct inspections on its own. It notifies the Banking Commission on such on-site inspection exercises. Article 24 of BCEAO Statutes gives it the right to obtain all the documents it needs to perform its duties. It can also contact enterprises and professional groups directly for investigations it considers necessary for its own information purposes, or for the provision of information to the Council of Ministers. It is quite feasible
for the BCEAO to employ such powers in investigating applications for licensing from credit institutions, and particularly to know the origin of funds that go into their business capital base.

735. Under Article 22 of the Annex to the Convention, financial institutions cannot, on grounds of bank confidentiality, refuse to subject themselves to the injunctions of the Banking Commission. Article 53 under the Bank Regulation Law also carries this provision and stipulates that it is prohibited for credit institutions to refuse BC inspection (art.57 of the Law).

736. The Support and Oversight Unit of Mutual Institutions or Credit and Loans Cooperatives (CAS-IMEC), the BCEAO and the Banking Commission (for decentralized financial systems with outstanding credit and savings above or equal to two billion Francs CFA) have the powers they need to supervise micro-finance institutions and ensure that they comply with AML/CFT obligations, even though no specific supervision is done in this area in practice.

737. With regard to the Post Office in Togo, it is the General State Inspectorate that has the necessary power to oversee compliance with existing legal obligations, apart from the Public Audit Office under the Supreme Court, as mentioned above.

738. Under the CIMA Code, the Regional Insurance Supervision Council (CRCA or the Council), in the frame of its supervisory duties, organizes on-site inspections and policy/procedure reviews for insurance and reinsurance companies working in CIMA signatory countries. To do so, a supervisory body has been established at the Conference’s Permanent Secretariat. This body receives findings that are considered of use to the supervisory activities of National Insurance Directorates working in various areas (including general market supervision). On-site inspections may cover parent companies, subsidiaries of inspection targets, and any intermediary or technical expert, if the conditions comply with those in the supranational insurance law (article 17). Where the Council finds non-compliance with insurance regulations, or insurance company conduct that is detrimental to commitments made with respect to insured parties, it orders the company concerned to apply the remedial measures it proposes. If the said remedial measures are not implemented within the prescribed time period, the insurance company is liable to sanctions.

739. As concerns financial market players in the region, the CREPMF has the ability, in the process of reviewing documents, to ask for regular information in the form it wants and through the transmission channels it prefers. It is the CREPMF that sets the rules for accounting which market players are going to use. And, it can convene and interview whoever it sees as a good source of information (article 25 of Annex).

**Powers to conduct inspections (C.29.2)**

740. The Banking Commission has the necessary authority to carry out inspections of financial institutions, including on-site inspections, to ensure compliance with their obligations. The discussions that the mission had with the BCEAO Country Director in Togo confirmed that these inspections did include the review of policies, procedures, books and records, and extended to sample testing.
741. The inspections by WAMU Banking Commission are organized «on the basis of an annual programme approved by the Chairman of the Banking Commission, taking account of the need for regular evaluations in each credit institution. This programme is adapted in the course of the year, depending on the particular concerns raised by documentary review exercises (Annual Report 2009). On-site inspections may extend to affiliate companies, especially parent companies, and to the subsidiaries of the institutions under inspection. The inspections are comprehensive, one-off or thematic in nature.

742. In the micro-finance sector, the authority to conduct inspections is set out in Article 6 of Law 95-014, which provides that “the Minister can conduct, or cause others to conduct inspections of micro-finance institutions”, and Article 67 provides that “the BCEAO and the Banking Commission can, on their own initiative or upon the Minister’s request, carry out on-site inspections of financial institutions and all companies that are controlled by them”. There is a similar provision under Article 26 of the Annex to the Convention governing the WAMU Banking Commission.

743. As for insurance companies, it is the duty of CRCA inspectors to conduct on-site inspections and documentary reviews of insurance and reinsurance companies that operate in the signatory countries.

744. Article 56 of the General Rules and Regulations provides that «the Regional Council conducts on-site or documentary inspections of Management or Intermediary Companies». It states further that «The Regional Council has inspectors whose remit covers all players involved in public calls for savings, or who run activities with authorization from the Regional Council» (article 24 of the Annex to the General Rules and Regulations).

745. Article 5 under Instruction N°11/05/RC provides that “periodic inspections shall be done by the BCEAO and/or Finance Ministry to ensure compliance of licensed institutions with currency exchange provisions”.

Power to access necessary documents (C.29.3)

746. Banks and financial institutions are bound to provide, upon request by the Banking Commission and on the materials desired, all the documents, information, clarifications and records necessary for the BC to perform its duties (Article 16 of the Annex to the Convention on the Creation of the WAMU Banking Commission).

747. Paragraph 2, Article 20 provides that bank and financial institution auditors are bound, upon request, to give the BC all reports, information, documents and other records the Commission needs to do its work. Article 22 affirms the non-invocability of bank confidentiality. The Banking Law also makes provision for non-invocability of bank confidentiality, and Article 53, Paragraph 4 provides that “banks and financial institutions cannot invoke confidentiality against the Banking Commission or the BCEAO…”

748. Article 17 of the BCEAO Instruction on AML provides that “in the inspections provided under Article 46 of the Law on Bank Regulation, banks and financial institutions should produce all the necessary documents for evaluating the quality of their anti-money laundering system. In this regard, the procedure manual and internal documents should be made available in French”. 
749. Article 58 under Law N°95-09 of 14 July 1995, relating to regulation of mutual institutions or credit and savings cooperatives, makes provision for the communication of all documents without invoking confidentiality. AML Law, Article 34 makes the same provisions.

750. Supervision and oversight bodies have the right of access to all documents, which access cannot be predicated on confidentiality (art. 58). Article 68 under Law N° 95-014 of 14 July, 1995, relating to regulation of mutual institutions or credit and savings cooperatives, provides that confidentiality shall in no case whatsoever be invoked against the judicial authorities.

751. Under its review activities for documentary inspection, the Regional Council has the authority to demand regular production of information and to define the content of such information, as well as the conditions under which it shall be submitted (Article 25, Annex to the General Rules and Regulations). Further, inspectors or any other persons acting under the authority of the Regional Council to conduct their inspections and supervision have the right to demand communication of all information and to obtain copies, regardless of the material used to provide it, in accordance with domestic laws. Confidentiality cannot be invoked against persons who have been mandated duly by the Regional Council (Article 39, Annex to the General Rules and Regulations).

752. In the insurance sector, the Directorate for Insurance has the authority to access all information that is necessary for its work. Article 13 of CRCA Statutes provides that “The Commission can request insurance company auditors for any information on the activities of the company under inspection. In this case, the auditors are no longer bound to confidentiality. Professional secrecy or confidentiality of commercial documents does not apply to either the Commission or Insurance Control Commission, where these are on assignment to an insurance company”.

**Powers not predicated on a Court Order (C.29.3.1)**

753. Considering the provisions in force, the power of supervisory authorities to compel production of, or obtain access to records or information for supervision purposes should not be predicated on the need to require a court order.

**Powers of enforcement and sanction (C.29.4)**

754. In the banking sector, it is the WAMU-BC that issues sanctions, depending on the severity of the violations committed. These sanctions may range from warnings to withdrawal of licences (The Convention, art. 27 to 30), without prejudice to financial and/or criminal penalties. Decisions relating to the appointment of a temporary administrator or a liquidator are made by the Finance Minister, based on a list prepared by the Banking Commission. Banking Commission injunctions, decisions, warnings and proposals have to be based on clearly stated motives (The Convention, art. 30). The decisions of the Commission are binding across the Union once the parties concerned receive due notification from the authority, or from the Finance Minister in cases of licence withdrawals. Penalized parties can appeal against the decisions to the CMU, except on decisions to withdraw licences that are issued by the Finance Minister of the State where the decision is binding.
Article 28 of the CFT Law and Article 35 of the AML Law provide that where, either due to a severe lack of vigilance or a deficiency in the organization of internal procedures for supervision, a person subjected to the core principles defaults on their obligations for customer due diligence and suspicious transaction reporting, the supervisory authority with disciplinary powers can take action directly under the conditions provided in the relevant laws and regulations in force.

Article 30 under the addendum to the Convention on the establishment of CREPMF authorizes the Regional Council to impose financial and/or administrative sanctions. It is provides that “any action, omission or attempt to take initiative, which is detrimental to the general interest and smooth running of the financial market, and/or harmful to the rights of customers shall be punished by financial, administrative and disciplinary sanctions on a case by case basis, without prejudice to the judicial penalties that can be levied on the authors, following legal action by individual persons to seek reparation for damages they may have incurred from the said misconduct”.

In the insurance sector, decisions relating to the withdrawal of licenses and sanctions imposed on insurance companies are taken by the Regional Insurance Supervision Council (CRCA). In the micro-finance and MVT service operations sector, the authority to impose sanctions rests with the Finance Minister.

Guidelines – R.25 (Guidance for financial institutions other than on STRs)

Guidelines for financial institutions (C.25.1)

See Section 3.7.

Feedback on suspicious transaction reports (C.25.2)

See Section 3.7.

STR statistics coming from financial institutions R.32

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<th>Year</th>
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<th>Number of STRs processed</th>
<th>Number of cases referred to court</th>
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<td>Banks</td>
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</tr>
<tr>
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<td>15</td>
<td>03</td>
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</table>
Recommendations and comments

760. The Togolese authorities should implement the following recommendations.

Recommendation 17
- Implement financial sanctions against legal persons who fail to meet their obligations in AML/CFT.

Recommendation 23
- Extend to all financial institutions the measures that prevent criminals from taking control of legal entities;
- Expand the scope of application for customer due diligence and control measures to all the financial activities identified by FATF;
- Institute licensing for, and supervision of sub-contracted agents providing rapid money transfer services;
- Develop rules and regulations on prudential matters for all players in the financial sector.

Recommendation 29
- Integrate AML/CFT more profoundly in the supervision systems of financial institutions;
- Increase the frequency of inspections in financial institutions;
- Extend inspections to licensed currency exchange agents as well as money and value transfer service providers;
- Organize frequent and adequate inspections including AML/CFT at the Post Office service in Togo and the Division for Fund Deposits.

Recommendation 30
- Provide adequate human, financial and technological resources to the supervisory and oversight authorities.

Compliance with Recommendations R.17, R.23, R.29 and R.30

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<th>Rec.</th>
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<th>Summary of reasons for assigning rating</th>
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<td>PC</td>
<td>• Lack of implementation of prescribed obligations;</td>
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<td>• Sanctions are not applied, so it is difficult to determine whether or not they are efficient, proportionate and dissuasive;</td>
</tr>
<tr>
<td>R.23</td>
<td>PC</td>
<td>• Lack of clear information on the system for preventing criminals from taking over financial institutions beside banks and insurance companies;</td>
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<td>• The scope of application of customer due diligence measures for AML does not cover all the financial activities identified by FATF;</td>
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<tr>
<td></td>
<td></td>
<td>• No licensing for sub-contracted agents providing money and value transfer services;</td>
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Lack of rules and regulations on prudential matters applicable to AML/CFT beside banks and micro-finance institutions;  
No implementation of AML/CFT obligations.

R.29  PC

- Poor or complete lack of integration of AML/CFT in the supervision systems of financial institutions;  
- Inspections are infrequent, making it difficult to ensure timely coverage of all financial institutions;  
- Inspections in the micro-finance sector do not cover all players, and are limited to the most prominent institutions;  
- No inspection of licensed currency exchange agents and money and value transfer services;  
- The type and scope of inspections at the Postal Service in Togo and the Division for Fund Deposits are difficult to determine.

R.30  PC

- The resources of supervision and oversight authorities are conspicuously inadequate.

3.11 Money or Value Transfer Services (SR.VI) – Prior Authorization or Registration, Regulation and Supervision of Other Financial Institutions (C.23.7)

Special Recommendation VI

Description and Analysis

761. Under Article 11 of the CFT Law, “natural or legal persons, other than banks, that wish to provide money or value transfer services as a full-time or part-time activity, on their own account or as representatives, should obtain prior authorization from the Finance Minister, under the conditions in the relevant provisions in force».

762. In practice, these services are offered by banks and the Postal Services in Togo, which have received authorization as intermediaries licensed by the BCEAO and Finance Ministry. These institutions provide the products of rapid money transfer companies, such as Western Union, Money Gram and Money Express, with which they have signed contracts.

763. Similarly, banks and the post office authorities designate sub-agents, that are not necessarily financial institutions and that run rapid money transfer operations. On AML/CFT, these sub-agents work under the responsibility of their mandators.

764. Provision has been made for administrative, civil or criminal sanctions against the unlawful practice of this activity.

Registration and licensing (C.VI.1)

765. Licensed intermediaries are authorized formally by the BCEAO or Finance Ministry. They are required to inform the BCEAO of any delegation of authority to any other body. This obligation applies only after a delegation agreement has been signed between the two
parties. During the meetings held by the Mission, some subject categories seemed to be unaware of this regulation.

766. From its discussions with the national authorities, the Mission gathered that banks and Post Office authorities conduct their inspections after the transactions of their subcontracted agents, and that these inspections are based primarily on the system put in place by the specialized money transfer institution (Western Union, Money Gram and Money Express).

767. There is no authority designated to maintain an updated list of names and addresses of licensed MVT service operators, which are registered or authorized to work, and to check compliance with obligations for licensing and registration.

**MVT service compliance with FATF Recommendations (C.VI.2)**

768. CFT Law, Article 11 provides that natural or legal persons that wish to provide a money or value transfer service are subjected to the “general and specific obligations applicable to financial institutions with relation to the prevention and detection of transactions tied to money laundering and terrorist financing”.

**Supervision of MVT service operators (C.VI.3)**

769. The Mission was not able to establish the effectiveness of inspections that national or regional authorities carry out in MVT institutions, or the existence of a supervisory or oversight mechanism for these institutions.

**Maintenance of an updated list of MVT service operators (C.VI.4)**

770. There is no provision that binds each MVT service operator to keep an up-to-date list of its agents and to observe the requirement of making it available to the designated competent authority. In practice, as mentioned above, the competent authorities are not informed about the agreements that financial institutions pass with subcontracted agents.

**Sanctions for MVT under Recommendation 17 (C.VI.5)**

771. The sanctions provided under Section III of the CFT Law apply also to MVT services.

**Recommendations and comments**

772. The Togolese authorities should realign MVT services by:

- Designating an authority that will be responsible for issuing authorizations to conduct and monitor activities;
- Establishing an effective supervision and oversight system;
- Maintaining a list of agents to communicate to the competent authority.
Compliance with Special Recommendation VI

<table>
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<th>REC</th>
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<th>Summary of reasons for assigning the rating</th>
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</table>
| S RVI | PC     | • No competent authority responsible for giving MVT service operators authorization to conduct activities;  
          • No supervisory mechanisms for MVT services;  
          • No obligation for each MVT service operator to keep a list of agents and be compelled to forward it to the designated competent authority. |

4. PREVENTIVE MEASURES

4.1 Customer Due Diligence and Record-Keeping (R.12) Applying R.5, 6, 8-11 & 17 (only Sanctions for these Recommendations)

Description and Analysis

773. Article 5 under Law N° 2007-016 of 6 July, 2007 on anti-money laundering and Article 3 under Law N°2009-022 of 7 September, 2009 on counter financing of terrorism in Togo extend obligations for preventing and detecting money laundering and terrorist financing to “any natural or legal person that, in the exercise of their duties, do perform, supervise or provide advice for transactions concerning deposits, trade, investments, conversions or any other movements of capital or any other property”.

774. These are financial institutions, and members of independent legal professions when they represent or assist clients on matters that do not involve judicial procedure (buying and selling of real estate, business enterprises or business assets; management of client money, securities or other assets; opening or management of bank, savings or securities accounts; creation, operation or management of companies, trusts or similar structures, and performance of other financial transactions), as well as the members of independent accounting professionals. They include:

- Business providers to financial institutions;
- Auditors;
- Real estate agents;
- Dealers in high value items, such as works of art (paintings, including masks), gemstones and precious metals;
- Money transport companies;
- Proprietors, directors and managers of casinos and gambling establishments, including State lotteries;
- Travel agencies;
- Non-governmental organizations.

775. The way the scope of these legal provisions on the professions above has been demarcated is not complete, especially when one considers the businesses or practitioners performing those activities in Togo. For example, chartered accountants are not covered by the AML Law, which mentions only auditors. On the other hand, the AML Law goes even further than the FATF list to include travel agencies, money transport companies, dealers in
objects of art, gambling establishments, State lotteries and non-governmental organizations (NGOs).

Recommendation 12

Conditions for applying Recommendation 5 to DNFBPs (C.12.1)

776. It is worth noting that although Sections II and III of the AML Law are applicable to Designated Non Financial Businesses and Professions (article 5), several specific obligations relating to financial institutions (identification of occasional customers – article 8, identification of beneficiary owners – article 9) also apply in this case.

777. From the foregoing, the basic obligations of Designated Non Financial Businesses and Professions are:

- Compliance with currency exchange regulations (Article 6);
- Special monitoring of certain transactions (Article 10);
- Communication of records and documents (Article 12);
- Suspicious transaction reporting (Article 26).

778. AML and CFT Laws are still not well known to the DNFBP sector in Togo. On the whole, none of the DNFBPs that met with the mission seemed at the time to be applying the AML Law of 6 July, 2007. No sensitization in this regard had been done for them. Likewise, no communication was done by the supervising and oversight authorities of the professions covered by the Law.

779. Togo has no law in force on Internet casinos. But, beside the general obligations for customer identification, Article 15 of the AML Law provides specific obligations to:

- Give evidence to the public authorities, upon applying to open a casino, that the funds for the establishment’s capital come from lawful sources;
- Identify players who buy or trade casino chips or tokens equal to, or more than CFA 1,000,000 or of equivalent or higher value, by asking them to present a valid national identity card bearing a photograph, or any official document in lieu of the original, and keeping a copy thereof.
- Recording, by chronological order in a special register, all the transactions in the above paragraph, their nature and amount, indicating the family and first names of the players and the number of the identification papers they present, and preserving the said register for ten (10) years after the last transaction put on record.

780. In the case where the casino or gambling establishment is controlled by a legal person that owns several branches, the chips should reflect the branch of remittance. In no case can the chips from one branch be reimbursed by another branch, whether located on the national territory, in another Member State of the Union or in a third State.

781. The CFA 1,000,000 threshold is about USD 2000, which means it is below the USD/EUR 3000 standard threshold set by FATF for customer identification in a casino. The one in Togo seems, therefore, to be more binding.

782. According to the authorities that met with the mission, Togo has no operational casino. But they are considering an application to open a casino at a hotel in Lome. In the
absence of any functional casino, the Mission could not verify whether or not customer due diligence requirements were being met in practice.

783. With regard to real estate agents, considered under Article 5 of the AML Law as subjects to AML requirements, Togo still has no regulation in place for the profession. The technical services at the Ministry of Housing and Town Planning are drafting a bill to develop real estate in Togo, and will soon submit it to the Council of Ministers for deliberation, before it goes to Parliament for adoption.

784. Several informal structures purporting to be «real estate agents» are performing transactions for house rental, rent collection for their clients, and buying or selling of real property (developed or undeveloped land) in Togo or in France. They work in the sector as traders. These informal real estate sector players are trying to organize themselves into a union, which is not yet recognized by the Togolese authorities.

785. Considering the high level of interest, the significant number of activities and the large volume of financial transactions that go into the informal real estate sector in Togo, there are obvious risks of money laundering and terrorist financing. This makes it imperative to put in place legislative and regulatory measures to regulate real estate development in Togo.

786. As regards dealers in precious metals and gemstones, Law N°96-004 of 26 February, 1996 on the Republic of Togo Mining Code makes no provision binding them to meet customer due diligence requirements. However, Article 5 of the AML Law and Article 3 of the CFT Law impose this obligation on them.

787. Two gemstone and precious metal dealers are now installed regularly in Togo. They buy, transfer and re-export mineral and semi-mineral substances especially to Europe. Each of them boasts of an annual turnover above CFA 11 billion, according to their official sources. These two dealers have no internal procedures on customer due diligence for anti-money laundering and terrorist financing. And, they claim to conduct their activities in a totally discreet manner for the purpose of security.

788. Unlike FATF Recommendations, which require dealers in gemstones and precious metals to establish customer due diligence measures particularly when conducting cash transactions equal to or above USD/EUR 15 000, Togo’s domestic laws for AML/CFT provide no specific threshold for imposing customer due diligence measures for the profession, which is bound to the same obligations as other DNFBPs.

789. Lawyers, Notaries and other members of independent legal and accounting professions, when they represent or assist their clients on matters that do not involve judicial procedure (buying and selling of real estate, business enterprises or business assets; management of client money, securities or other assets; opening or management of bank, savings or security accounts; creation, operation or management of companies, trusts or similar structures, and performance of other financial transactions), are subjected to customer due diligence requirements, inter alia, the application of customer identification measures in accordance with the provisions of AML/CFT Laws.

790. Legal practice in Togo is mainly on a solo basis. But, Ordinance N°80-11, relating to legal practice, makes provision for establishing law firms and bar associations. Tutelage in
legal practice is allowed as well. At the time of the on-site visit to Togo, the Mission observed that there were two professional Lawyers Chambers (SCP MARTIAL AKKPO and SCP AQUERE BURU AND PARTNERS).

791. Article 53.b under Decree N°82-50 of 15 March, 1982, instituting the Code of Civil Procedure, provides that any legal action should mention “the identity of the party on whose behalf it was performed”. In accordance with this provision, before the lawyer establishes contact with a client, he should identify this latter and takes a copy of their identification documents.

792. Bar Association members say that they have no knowledge of anti-money laundering and counter terrorist financing laws in Togo and the attendant requirements. And yet, they play a pivotal role in the profession, which consists in ensuring the observance of professional discipline and ethics. It is worth noting that the Bar of the Court of Appeal in Lome boasts one hundred and forty one (141) registered Lawyers. Some of them seem to be aware of AML/CFT issues, because they have attended seminars, forums and other meetings.

793. Owing to the lack of national ownership of domestic laws on AML/CFT among legal practitioners, no customer due diligence measures on identification and verification are in place yet for anti-money laundering and counter terrorist financing efforts.

794. Notaries are public officers appointed for life. They receive all documents and contracts that parties have to, or want to certify and make official. The Notary verifies the date for accuracy, legalizes the documents and issues certified true copies (article in the law above). The Chamber of Notaries in Togo officially boasts a membership of seventy six (76) Studies.

795. Articles 13 and 15 of Law N°2001-009 of 16 November, 2001, defining the status of Notaries in Togo, set out provisions for customer due diligence, including name, first name, home address and any other supporting document. Documents certified by the Notary have to bear the names, first names, profession and home address of parties on pain of nullity. And the Notary is required to take responsibility for making the necessary verification to ascertain the identity of parties.

796. However, the law provides no obligation that copies of identification documents used to compile official papers should be kept on record. On the other hand, the accounting journal records by chronological order, on a day to day basis, and without omissions or alterations, the names of parties and the monies paid to the Notary, including receipts and expenses.

797. The members of the Chamber of Notaries that met with the mission deplored the fact that most property sales were not registered and certified with the Notary. The parties involved preferred to use private agreements prepared with forms provided and registered by the tax authorities (Department of Lands). In most cases, therefore, the Notaries are unable to play the role expected of them in efforts to combat money laundering through the real estate sector.

798. To conclude, there is wide ignorance among practitioners of the due diligence obligations incumbent upon Notaries.
Chartered accountants, certified public accountants and auditors are governed by Law N°2001-001 of 23 January, 2001 on the Establishment of the National Order of Chartered Accountants and Certified Public Accountants (ONECCA). ONECCA - Togo began its activities on 15 May, 2003. As of the date of the on-site visit, forty (40) chartered accountants and twelve (12) certified public accountants were enrolled in the National Order. As a reminder, a chartered accountant is an expert whose work consists in organizing, verifying, evaluating and checking all types of accounts. A licensed chartered accountant can also analyse the situation in companies and how the economic, legal, financial and social aspects function. Chartered accountants are allowed to provide consultation and advisory services to companies on management, organizational and tax issues.

Anybody aspiring to become a licensed chartered accountant must enrol with the National Order. The person must be in a position to freely enjoy their civic rights and have a clean conviction sheet with no court rulings that put their integrity in jeopardy. They should be of good character and especially be clear of all the acts, which, under the laws in force, deprive them of the right to hold managerial and administrative responsibilities in a company.

Auditors are directly concerned by the obligations under the 2007 AML Law, for it mentions them clearly under Article 5. Chartered accountants, or certified public accountants are not mentioned directly, but they should be included in the category of independent legal professions when they assist their clients with transactions, the creation of companies …

At the time of the visit, ONECCA members had no clear understanding of AML/CFT Laws in Togo. There are no provisions for due diligence in anti-money laundering and terrorist financing. With regard to customer identification, international standards (ISA) provide measures for enhanced customer due diligence. But, these are not captured in a code for the context in Togo.

According to the authorities that met with the mission, Togo has no Trusts or companies providing services to Trusts. However, Article 5 of the 2007 AML Law mentions independent legal professions among the activities covered.

It is worth highlighting that with the lack of ownership of AML/CFT laws in the DNFBP sector, no measures are in place for customer due diligence measures that align with FATF requirements for terminating business relations with persons whose identity is unknown. The risks of vulnerability to money laundering and terrorist financing are real in the DNFBP sector.

Application of Recommendations 6 and 8, 9, 10 and 11 to DNFBP (C.12.2)

Article 13 of the Uniform Law on AML provides that «financial institutions should, on the basis of their risk assessment, apply enhanced customer due diligence measures during transactions or business relations with Politically Exposed Persons (PEPs)…, appropriate measures for establishing the origin of their property or funds».

The deficiencies noted above for financial institutions are valid also for DNFBPs, including:

- The lack of specific provisions on PEP in the AML Law in Togo (R.6);
• The lack of provisions on new or developing technologies for concealing identity (R. 8);
• The use of intermediaries (R9);
• The close monitoring of unusual and suspicious transactions;

807. Similarly, the measures for customer due diligence, documentation and book-keeping (10) that are contained in national AML/CFT laws apply only in part to designated non-financial businesses and professions. In practice, there is no risk management system in DNFBPs.

808. As of the date of the Mission, no measure had been put in place in DNFBPs for detecting and preventing money laundering and terrorist financing.

809. In addition to customer due diligence requirements applicable to the financial institutions listed under Article 7 of the AML Law, DNFBPs are subject also to the following obligations on prudential matters:

• Special monitoring of certain transactions (Article 10, AML Law): any payment in cash or securities, made to the bearer of a sum of money under normal conditions, per unit amounts or in a total amount equal to or more than CFA 50,000,000, and any transaction on a sum equal to or more than CFA 10,000,000, made under unusual and complex conditions and/or with no apparent economic or lawful purpose;
• Communication of records and documents, with book keeping and confidential records for monitoring the above-mentioned transactions for 10 years (article 12, AML Law and Article 10 of the CFT Law);
• Suspicious transaction reporting (Article 26, AML Law, Article 18, CFT Law);
• Establishing internal anti-money laundering and counter terrorist financing programmes (Article 13, AML Law, Article 8, CFT Law).

Analysis of effectiveness

810. There has been no ownership so far or any implementation by DNFBPs of Togo’s anti-money laundering and counter terrorist financing system.

Recommendations and comments

811. The Togolese authorities should especially:

• Subject those who provide services to companies and trusts to prudential obligations and suspicious transaction reporting;
• Subject chartered accountants and certified public accountants clearly to AML/CFT Laws when they provide advisory support to their clients;
• Undertake wide dissemination of national AML/CFT Laws to designated professions as well as to their supervisory and oversight authorities;
• Conduct an information and sensitization campaign on the risks of using the DNFBP sector for money laundering and terrorist financing purposes;
• Impose prudential obligations to casinos as legal persons;
- Establish a threshold for customer due diligence for dealers in precious metals and gemstones in accordance with FATF Recommendations;
- Include in AML Law the obligation for customer due diligence with regard to PEPs.

Compliance with Recommendation R.12

<table>
<thead>
<tr>
<th>REC</th>
<th>Rating</th>
<th>Summary of factors underlying rating</th>
</tr>
</thead>
</table>
| R.12 | NC     | - Trusts and service providers are not subjected to AML/CFT laws;  
- No information on the missions of the Chartered Accountants’ Council;  
- National AML/CFT laws are not disseminated widely to designated professions;  
- No prudential obligations imposed on casinos as legal persons;  
- No threshold for customer due diligence provided for dealers in precious metals and gemstones;  
- No regulation for real estate agents;  
- No law for developing real estate;  
- No obligation in the AML Law on customer due diligence for PEPs. |

4.2 Monitoring transactions and other issues (R.16) (applying R.13-15, 17 & 21)

Description and Analysis

Recommendation 13

Obligation to make STRs to the FIU (applying C.13.1 and I3.4 to DNFBPs)

812. Article 26 of the AML Law and Article 18 of the CFT Law provide that DNFBPs are bound to make suspicious transaction reports. AML Law, Article 5 subjects these DNFBPs to AML. Paragraph 1 under Article 26 of the said law provides that “the persons mentioned under Article 5 are required to report to the FIU, under the conditions provided in this law and in an agreed reporting model ….the sums of money and all other assets in their possession, where these are suspected to be intended for the financing of terrorism, and appear to come from money laundering related transactions”.

813. Under the provisions of these Articles, the said subjected persons are required to report all suspicious transactions, purportedly linked to money laundering and terrorist financing, to the FIU. The money or property concerned may come from any predicate offence. Under Article 3 of the AML Law, a predicate offence is any crime or offence committed on the territory of a WAEMU Member State or that of a third State, and that enables the author to obtain property or income. There is no need therefore for an offence to be termed an underlying offence.
814. CFT Law, Article 18 applies to funds for which there are reasonable grounds to suspect, or that are suspected to be linked or connected with, or that will be used for the financing of terrorism or for terrorist organizations or for those who finance terrorism.

815. The two laws mentioned above include attempted money laundering or terrorist financing. They also cover all crimes or offences, including tax issues.

816. Under Article 5 of the AML Law and Article 3 of the CFT Law, the members of independent legal professions are not required to make an STR when they represent or assist their clients in judicial proceedings. In these cases, there are bound to confidentiality.

817. The two laws mentioned above do not cover all cases of exemption from the obligation to make an STR, especially when the members of independent legal professions engage in administrative procedures and professional relationships with their clients. In addition, Article 716 of the OHADA Uniform Law on business enterprises and EIGs sets out early warning measures that allow auditors and chartered accountants to report offences to the Public Prosecutor.

818. Casinos (including internet casinos) are under the obligation to make STRs to the FIU (AML Law, Article 26 and CFT Law, Article 18). Dealers in precious metals and gemstones are under the obligation to make STRs, but there is no threshold for customer due diligence required in FATF Recommendations, which prescribe it for cash transactions with a client for an amount equal to or over USD or EUR 15 000.

819. Togo’s AML Law, Article 26 and CFT Law, Article 18 provide that Lawyers, Notaries and other members of independent legal professions make suspicious transaction reports (STRs) directly to the Financial Intelligence Unit (The Togo FIU). They are not required to pass through a self-regulatory body.

**Protection and non-disclosure in case of STR (applying C.14.1 and 14.2)**

820. Articles 30 and 31 of the AML Law and Article 23 of the CFT Law exempt people who make suspicious transaction reports in good faith from civil and criminal liability. In Togo, there is legal protection for reporters, including DNFBPs. In fact, no civil action or criminal proceedings shall be instituted, or professional sanctions taken against persons, directors and employees mentioned under Article 5 of the AML Law, who act in good faith to send information or make suspicious transaction reports to the competent authorities.

821. The 2009 CFT Law provides that “reports are confidential and cannot be communicated to money owners or authors of transactions” (art. 18). Article 40 of the 2007 AML Law provides further that persons who intentionally «disclose information on the suspicious transaction report they are required to make, or on the likely consequences to the money owner or author of the transactions mentioned under Article 5,» shall be penalized with a prison sentence ranging from six months to two years, and a fine of between CFA 100,000 francs and CFA 1,500,000 francs.

**Internal control to prevent ML/FT, applying C.15.1 to 15.4**

822. AML Law, Article 13 makes provision for the development of anti-money laundering programmes by designated persons. Under this Article, “financial institutions are required to
develop harmonized anti-money laundering programmes”. Similar provisions apply also for
the financing of terrorism.

823. Article 5 of the 2007 AML Law provides that Sections I and III of the law apply to
financial and non-financial institutions alike. However, the Article is worded in such a way
that it explicitly covers only financial institutions. Hence, the obligation for these institutions
to establish internal programmes for combating anti-money laundering may not apply in a
rigorous, de facto manner to DNFBPs.

824. The last paragraph under Article 13 of the AML Law provides that the supervisory
authorities can, in their respective areas of competence, and as appropriate, design the content
and modalities for implementing anti-money laundering programmes. They shall conduct on-
site inspections, as necessary, to verify that such programmes are implemented in an effective
manner. In practice, however, internal control systems are not implemented effectively in the
DNFBP sector.

Special attention imposed on DNFBPs with relation to non-cooperative countries
(applying C.21.1 to 21.3)

825. Togo has no law that clearly requires DNFBPs to observe or pay special attention to
their business relationships and their transactions with persons or financial institutions in
countries that do not apply, or insufficiently apply FATF Recommendations.

Analysis of effectiveness

826. In the absence of legal requirements, the conditions for applying FATF
Recommendation 21 are not met. There is no effective implementation of AML/CFT in the
area.

Recommendations and comments

827. Chartered accountants and accountants are not designated explicitly as persons
subjected to AML/CFT laws, which clearly mention “Auditors” (Article 5, 2007 AML Law).
From the discussions it had with the Association of Chartered Accountants and Certified
Public Accountants licensed in Togo, the mission gathered that Togo’s legal system does not
differentiate between auditors, certified public accountants and chartered accountants. Hence,
chartered accountants and certified public accountants serve as auditors.

828. In paragraph 2, Article 14 under Law 2001-001 of 23 January, 2001, instituting the
National Association of Chartered Accountants and Certified Public Accountants in Togo,
“the certified public accountant is authorized to certify that companies and institutions that
ask them to check their accounts have accurate financial statements that truly reflect the
situation on the ground”. Further, Article 716 under the OHADA Uniform Law on business
enterprises and EIGs makes provision for an early warning system that allows auditors and
chartered accountants to report criminal acts to the Public Prosecutor.

829. To be able to certify that the financial statements of business enterprises are accurate
and faithfully reflect the situation on the ground, and then report criminal acts to the Public
Prosecutor, auditors need to have audited the accounts of the said business enterprises.
Article 15 of the 2007 AML Law requires the managers, owners and directors of casinos and gambling establishments to provide evidence that their funds come from lawful sources and to observe customer due diligence with regard to customer identification, record keeping on transactions, transfers and book keeping for a period of ten years, from the date of the last transaction.

The Mission recommends that the Togolese authorities should:

- Institute a requirement for DNFBPs to pay special attention to their business relationships and transactions with countries that do not apply, or insufficiently apply FATF Recommendations;
- Set out the obligation for DNFBPs to put in place internal anti-money laundering and terrorist financing programmes;
- Organize sensitization campaigns and training on AML/CFT, covering the different categories of DNFBPs.

Compliance with Recommendation R.16

<table>
<thead>
<tr>
<th>REC</th>
<th>Rating</th>
<th>Summary of factors underlying rating</th>
</tr>
</thead>
</table>
| R.16 | NC | - No obligation for DNFBPs to establish internal control systems and programmes for AML/CFT;  
- No obligation for DNFBPs to pay special attention to their business relationships and their transactions with natural and legal persons residing in countries that do not apply, or insufficiently apply FATF Recommendations;  
- No regulation;  
- Prescribed obligations are not implemented effectively. |

4.3 Regulation, supervision and monitoring (R.24-25)

Description and Analysis

Recommendation 24

The table below presents, for each DNFBP, the authority in charge of its regulation and supervision, as well as the legal basis and scope of liability to measures for money laundering and terrorist financing.

<table>
<thead>
<tr>
<th>DNFBP</th>
<th>Regulatory/Supervisory Authority</th>
<th>General framework</th>
<th>Scope of application of AML/CFT law</th>
</tr>
</thead>
</table>
- Order N°72-76 implementing Law N°61-31 of 26 August 1961 | Yes, owners, managers, directors |
<p>| Gambling | Ministry of Security and Civil | - Ordinance N°3 of 4 | Yes |</p>
<table>
<thead>
<tr>
<th>DNFBP</th>
<th>Regulatory/Supervisory Authority</th>
<th>General framework</th>
<th>legal application of AML/CFT law</th>
</tr>
</thead>
<tbody>
<tr>
<td>Real estate agents</td>
<td>Ministry of Housing and Town Planning</td>
<td>Ongoing (draft bill on real estate development)</td>
<td>Yes</td>
</tr>
<tr>
<td>Dealers in gemstones and precious metals</td>
<td>Ministry of Mines</td>
<td>- Law N°96-004 of 1996 on the Mining Code of the Republic of Togo</td>
<td>Yes</td>
</tr>
<tr>
<td>Notaries</td>
<td>Ministry of Justice/Chamber of Notaries</td>
<td>- Law N°2001-009 of 16 November, 2001 on the status of Notaries in Togo</td>
<td>Yes</td>
</tr>
<tr>
<td>Auditors</td>
<td>Ministry of Finance / Association of Chartered Accountants and certified public accountants</td>
<td>- Law 048-2005/AN-024 of 20/12/2005</td>
<td>Yes</td>
</tr>
</tbody>
</table>

**Regulation and supervision of Casinos (C.24.1)**

833. The opening and operation of casinos are subject to inter-ministerial authorization from the Ministry of Economy and Finance and the Ministry of Security. This authorization is subject to an application with supporting documents. The directors and staff should do a morality and financial security check before they assume duty (Article 2, Law N°61-31 of 26 August 1961). The application filed for authorization should include a copy of the applicant’s birth certificate, a certificate of non-conviction no more than three months old, a certificate of Togolese nationality or a legalized photocopy of a passport for foreigners, a copy of the curriculum vitae and three most recent identity card photos.
A decree, issued jointly by the Ministry of Internal Security and the Ministry of Economy and Finance, sets the duration, conditions for operating the casino, for supervision and monitoring by officials of the said Ministries, the conditions of admission to gaming, and the opening and closing hours.

Supervision is done jointly by a team of officials from the Ministry of Finance and the Ministry of the Interior, who conduct on-site inspections in their respective duties, as follows:

- Police officers and gendarmes do police administration;
- Economy and Finance Ministry officials supervise and monitor special and general accounting.

Supervision is done jointly by a team of officials from the Ministry of Finance and the Ministry of the Interior, who conduct on-site inspections in their respective duties, as follows:

Article 5 under Law N°61-31 of 26 August, 1961 provides sanctions after inspection missions. These include the withdrawal of licenses in the case of non-compliance with the prescriptions of the inter-ministerial order. Article 8 of the same law provides criminal sanctions against anybody who holds the position of director or deputy director without prior approval from the Ministry of Security, or who conceals, or attempts to conceal part or all of the proceeds of the games. Under Article 12 in Order N°72-76 of 14 March 1972, supervision officials can close down a casino immediately, where they find that there has been an attempt to fraud or break seals.

The Mission was not able to obtain statistics or inspection reports to ascertain whether or not the said measures were effective and efficient. In any case, these inspections still do not include compliance with anti-money laundering and counter terrorist financing measures.

The meetings the Mission had with the first officials of the State lottery in Togo (LONATO) suggest that the organization of lottery games, by natural or legal persons, is subject to prior authorization by the Finance Minister. To do this, an inter-ministerial committee, made up of representatives of the six departments concerned and LONATO, carry out a preliminary study of the applications submitted in this regard. The lottery is supervised by officials from the Ministry of Interior and a Bailiff.

Measures on prudential matters, put in place by the Loterie Nationale du Togo, are basically to ensure close monitoring, across the network of agencies, of persons who win lottery prizes from CFA 400 000 upwards. LONATO still has no provisions to apply anti-money laundering and counter terrorist financing measures, especially for preventing, detecting and reporting suspicious transactions to the FIU.

**Supervision and monitoring of other DNFBPs (C.24.2)**

**Lawyers**

The practice of law is governed by Ordinance N°080-11 of 9 January, 1980, relating to the practice of law. Article 10 of the Ordinance mentioned above and Articles 12 to 16 of the Enforcement Order of the said Ordinance set out the conditions of access to the legal profession.

- Articles 13 and 14 of the Ordinance above and Articles 8, 9, 62 to 71, and 87 of Enforcement Order N°80-37 of 7 March, 1980 confer supervisory and monitoring powers to
the President of the Bar Association, the Council of the Bar Association and the Attorney General at the Court of Appeal.

842. Articles 15 and 16 of the Ordinance above accord disciplinary powers and the right to appeal respectively to the Bar Council and the Court of Appeal. Under Article 73 of the Enforcement Order mentioned above, the Disciplinary Council can take one of the following disciplinary sanctions:

- Warning;
- Reprimand;
- Suspension for a period of no more than three years;
- Removal from the table or list of candidates for tutelage or withdrawal of emeritus status.

843. The Bar Council has legal status, but there are no provisions for disciplinary sanctions against it.

844. After meeting with the Bar Association, the mission noted that there was total ignorance, on their part, of the national AML/CFT laws, due to the lack of information on the provisions of the said laws among law practitioners. It was during preparations for the meeting with the evaluation meeting in Togo that the President of the Bar Association obtained and read the AML/CFT laws, to bring himself up to speed. In such a context, the monitoring done by the Bar Association does not cover AML/CFT requirements.

Notaries

845. The profession of Notary is strictly regulated in Togo. Article 34 to 61 set out the conditions for aptitude, tutelage, appointment by Decree in the Council of Ministers, swearing in and establishment as a Notary.

846. Article 207 under Law N°2001-009 of 16 November, 2001 provides that “Notary Chambers are under the supervision of the Attorney General, who, in the company of a member of the National Chamber of Notaries or a Notary, can conduct inspections at any time, or decide to get assistance from any person he deems useful in this regard.”

847. Article 208 provides that “inspections are organized by the National Chamber of Notaries at the behest of the Chairman and under the conditions provided in the present law. These inspections concern all the professional activities of the Notary, especially the accounting arrangements, organization and functioning of his Chambers”.

848. The two articles of the previous law relate to supervision as well as internal and external oversight of Notaries.

849. Under Article 112 of the law mentioned above, “the Notary may face disciplinary sanctions either before the National Chamber of Notaries or before the Court of Appeal”. Articles 113 to 147 of the same law set out the disciplinary procedures before the Chamber of Notaries and the Court of Appeal. The sanctions are proportionate and dissuasive. Under Article 110, a Notary facing disciplinary measures may suffer the following sanctions: calls to order, reprimands, temporary bans (suspension) and dismissal. The Chamber of Notaries has legal status and can suffer disciplinary sanctions (Articles 162 to 165) and financial sanctions. The same applies to those at the helm of the Chamber of Notaries.
The findings from the meeting with the Chamber of Notaries were that the Chamber, as the self-regulatory body of the profession, has an administrative, disciplinary and oversight role to monitor member compliance with laid down rules. It has supervisory authority and the power to impose sanctions for deficiencies observed: warning, reprimand, suspension, dismissal. The Chamber has still not developed its Code of Ethics. The sector has poor knowledge of domestic provisions on ML/FT, and the relevant authorities need to take this seriously.

Chartered Accounts and Certified Public Accountants

The profession of chartered accountant and certified public accountant is governed by Law N°2001-001 of 23 January, 2001, instituting the National Association of Chartered Accountants and Certified Public Accountants. Administratively, the Finance Minister is the public authority with powers over the National Association of Chartered Accountants and Certified Public Accountants.

Supervisory and monitoring authority, over chartered accountants and certified public accountants, rests with the Council of the Association (Article 46, paragraphs 1 and 7; Article 47 under Law N°2001-001 of 23 January, 2001, instituting the National Association of chartered accountants and certified public accountants).

Articles 53 to 56 of the law mentioned above accord jurisdiction for disciplinary sanctions and for appeal respectively to the Council of the Association and the National Chamber of discipline. Under paragraph 1, Article 59, the National Chamber of Discipline can issue one of the following disciplinary sanctions:

- A warning in the cabinet of the President of the Association’s Council;
- A reprimand before the National Chamber of Discipline;
- An official warning that goes on record;
- Suspension for a period no longer than three years;
- Dismissal from the list of Chamber members, which includes an indefinite ban from practice.

Dealers in gemstones and precious metals

The commercialization of gemstones and precious metals is governed by Law N°96-004 of 1996 on the Mining Code of the Republic of Togo. Article 5 of this law provides that those who aspire to become dealers in gemstones and precious metals should obtain a marketing authorization. Article 44 provides that the right to commercialization can be requested only by virtue of a marketing authorization. For precious metals and gemstones, this authorization is given by Decree, issued by the Ministerial Cabinet Meeting. Supervisory and oversight authority rests with the Minister of Mines and the Minister of Economy and Finance.

Inspection is done by experts of the General Directorate for Mines and Geology and the General Directorate of Customs during transactions for the export of mineral and semi-
mineral substances by procurement agents. The inspectors verify the texture, quality and value of the product in carats, and calculate the taxes to levy on the exporters.

856. Article 59 of the law above sets out the criminal sanctions that apply to offenders. Dealers who are at fault, or who are found guilty of any of the offences under the law are liable to penalties that may range from a fine of CFA 100,000 F to withdrawal or non-renewal of authorizations.

857. Anti-money laundering and counter terrorist financing issues are not addressed at the level of the supervisory authority in charge of oversight, owing to the same lack of knowledge of the said laws in the sector.

858. The mission urges the competent authorities in Togo to diligently conduct sensitization and training initiatives on AML/CFT for the mining sector, where the level of risk of ML/FT is high.

**Recommendation 25 (Guidance for DNFBPs other than guidance on STRs)

Guidelines for DNFBPs (C. 25.1)**

859. The competent authorities, particularly the FIU and various professional associations (Lawyers, Notaries, Chartered Accountants...), have still not designed guidelines that could boost DNFBP compliance with requirements in anti-money laundering and counter terrorist financing laws.

**Feedback by the FIU and competent authorities (c. 25.2)**

860. DNFBPs have not yet submitted suspicious transaction reports to the FIU since its inception.

**Analysis of effectiveness of Recommendations 24 and 25**

861. The Mission found that there was a lack of effective compliance with the legal requirements on criteria set by Recommendations 24 and 25.

**Recommendations and comments**

862. The Togolese authorities should implement the recommendations mentioned below.

**Recommendation 24**

- The role of the supervision and control authorities for casinos and gambling establishments should be defined in the national AML/CFT laws in Togo.
- The authorities should take the necessary measures to include AML/CFT in the monitoring system for casinos and gambling establishments.
- The profession of real estate agent should be regulated in Togo.
Recommendation 25

- The competent authorities (FIU, supervision authorities) and professional associations under DNFBPs should provide guidance to their members to enable them to meet their obligations for anti-money laundering and terrorist financing.
- These competent authorities and professional associations under DNFBPs should be provided with adequate resources to meet their commitments.
- Because DNFBP supervisory authorities lack resources and knowledge of anti-money laundering and counter terrorist financing issues, the development of the said guidelines should initially be handled by the Financial Intelligence Unit.

Compliance with Recommendations R.24 and R.25

<table>
<thead>
<tr>
<th>REC</th>
<th>Rating</th>
<th>Summary of factors underlying rating</th>
</tr>
</thead>
</table>
| R.24 | NC     | • No laws for the supervision and control authorities of casinos and gambling establishments in AML/CFT;  
|      |        | • Inadequate, or total lack of control on DNFBPs;  
|      |        | • Sanctions provided are not effective. |
| R.25 | NC     | • No guidelines on AML/CFT;  
|      |        | • No effective STR obligations: no suspicious transaction report has been made by DNFBPs |

4.4 Other Non-Financial Businesses and Professions – Modern Secure Transaction Techniques (R.20)

Description and Analysis

Other DNFBPs at risk of ML/FT (C.20.1 applying R.5, 6, 8 to 11, 13 to 15, 17, 21)

Travel agencies

863. To run a travel agency in Togo, one needs to “obtain a business licence delivered by the Ministry of Tourism” (Article 2 under Decree N°89-139/PR of 23 August, 1989, on the regulation of travel agencies). Article 14 of the Decree mentioned above states that “travel agencies will be inspected periodically to monitor application of this decree”. Article 18 makes provision for the Tourism Minister to suspend business transactions for travel agencies being prosecuted for criminal offences or libel against the designated agency director or head.

864. Decree N°89-139/PR of 23 August, 1989, on regulation of travel agencies makes no provision on customer due diligence. But in practice, travel agencies systematically identify their clients during registration formalities. According to Tourism Ministry authorities, there are about thirty travel agencies in Lome. Travel agents have vague understanding of national AML/CFT laws in Togo. Hence, no internal anti-money laundering and counter terrorist financing programme exists in the sector to enhance customer knowledge. This increases the risks of vulnerability to ML/FT in the sector.
865. Travel agencies do not yet master the issue of anti-money laundering and counter financing of terrorism. The leaders of professional associations for travel agencies in Togo know little about national AML/CFT laws. This makes it necessary for the Togolese authorities to run a sensitization and training programme for designated persons in this sector.

866. The Mission was unable to lay hands on inspection reports of travel agencies, statistics on inspections, or information on effective delivery of inspections and the sanctions applied by the oversight authority, the Tourism Ministry.

**Surveyors**

867. Surveying is a profession regulated by Law N°88-4 of 2 May 1988 on the Establishment of the Association of Surveyors in Togo. The first section of this law is on plying the trade of surveying. The Association of Surveyors is run by a Council under the supervision of the Ministry of Public Works.

868. Supervision and monitoring are done by the Board of the Association (Article 14). Surveyors are presently under the authority of the Minister of Housing and Town Planning.

869. Article 17 under Law N°88-4 of 2 May, 1988, on the Establishment of the Association of Surveyors in Togo, states that “any deficiency in professional conduct exposes the author to disciplinary measures, without prejudice to penal sanctions provided under Article 25…” Under Article 18, a surveyor at fault is liable to one of the following disciplinary sanctions:
- Warning;
- Reprimand;
- Suspension for a period of no more than two years;
- Dismissal from the Association, which involves a ban from plying the trade of surveyor.

870. It is worth noting that Law N°88-4 of 2 May, 1988, establishing the Association of Surveyors in Togo is silent on customer due diligence requirements, but in practice, surveyors systematically identify their clients during land sharing operations, topographic surveys, etc.

871. Owing to the lack of ownership of national AML/CFT laws by the members of this profession, the inspections done by the supervising authority and the Board of the Association of surveyors do not include anti-money laundering and counter terrorist financing obligations.

**Non Governmental Organizations (NGOs)**

872. Articles 4, 5, 7 and 8 under Decree N°92-130/PMRT on conditions for cooperation between NGOs and the government, set out the conditions for establishing and recognizing NGOs. According to Article 4 of the said Decree, “before establishing any office in Togo, any international or foreign association, serving as an NGO, should obtain formal authorization from the competent Togolese authorities», including the Ministry of Territorial Administration and the Ministry of Security.
873. National NGOs in Togo are under the supervision and oversight of the Ministry of Planning (Article 7), while international NGOs are under the supervision and oversight of the Ministry of Foreign Affairs and Cooperation (Article 8).

874. Articles 20 and 21 of the Decree mentioned above provide sanctions for NGOs that fail to comply with the legal provisions in force. The sanctions can range from outright withdrawal of NGO status to the loss of all attendant entitlements.

875. From the discussions the mission had with the supervision authorities, it appears that the few inspections conducted on NGOs do not cover the due diligence requirements for AML/CFT.

**Fund transportation companies**

876. The transportation of funds is an activity that is not regulated in Togo. The two AML/CFT Laws are silent on the issue. There are no private companies in the sub-region providing these services for banks. The Mission could gather no reliable information on the formal or informal existence of this type of activity in Togo.

**The table below presents the other DNFBPs that are covered in Article 5 under Law N°2007-016 of 6 July 2007 on anti-money laundering, their regulation and supervisory authorities, as well as the legal provisions for their activities.**

<table>
<thead>
<tr>
<th>Other DNFBPs</th>
<th>Regulation/supervisory authority</th>
<th>Legal framework</th>
<th>Scope for applying AML/CFT laws</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dealers in works of art (dealers in cultural assets)</td>
<td>Ministry of Tourism</td>
<td></td>
<td>Yes</td>
</tr>
<tr>
<td>National Lottery (LONATO)</td>
<td>Ministry of Economy and Finance</td>
<td></td>
<td>Yes Owners, directors and managers</td>
</tr>
<tr>
<td>Surveyors</td>
<td>Ministry of Housing and Town Planning</td>
<td>Law N°88-4 of 2 May 1988, establishing the Association of Surveyors in Togo</td>
<td>Yes</td>
</tr>
<tr>
<td>Travel agencies</td>
<td>Ministry of Tourism</td>
<td>Decree N°89-139/PR of 23 August, 1989, regulating travel agencies</td>
<td>Yes</td>
</tr>
</tbody>
</table>
877. The Mission was not able to lay hands on studies presenting the risks of money laundering or terrorist financing in the DNFBP sector in Togo.

878. Under the provisions of the law on AML/CFT, dealers in valuable items, travel agencies, gambling establishments and the State lottery are subject to the obligations from Recommendations 5, 6, 8 to 11, 13 to 15, 17 and 21.

879. In most cases, non-financial businesses and professions are subject to inspections by a supervisory authority, but they are not sufficiently sensitized to the laws and other measures relating to AML/CFT. The self-regulatory bodies do not have enough resources for education, training, dissemination of laws, development of guidelines or international best practices in this regard.

**Developing secure modern transaction techniques (C.20.2)**

880. Regulation N°15/2005/CM/UEMOA on payment systems in WAEMU Member States sets out a series of provisions for promoting and using non-cash means of payment. The provision institutes the «right to a bank account» and common banking services for any natural or legal person with a regular income. It requires traders to open bank accounts.

881. BCEAO Instruction N°01/2003/SP of 8 May, 2003, pursuant to WAEMU Directive n°08/2002/CM/UEMOA of 19 September 2002, sets at CFA 100.000 F the threshold for transactions in bank money between private persons and public entities. Under Article 3 of Law N°2003-020 of 3 December 2003 on measures for promoting use of banking services and non-cash means of payment, “all financial transactions on sums of money equal to, or more than the threshold amount under the BCEAO Instruction …are done by cheque or bank transfers into an account opened in the financial serves of the Post Office, the Public Treasury, a bank or financial institution”.

882. All these provisions apply to DNFBPs. For Notaries and Lawyers, the settlement of their dues and any other services to clients should be done by cheque, where the amount is in excess of CFA 100.000 F.

**Analysis of effectiveness of Recommendation 20**

883. The mission found that the AML/CFT system was not implemented.
Recommendations and comments

884. The relevant remarks and recommendations made earlier for financial institutions (section 3) should apply also to DNFBPs.

- On a more specific note, the competent authorities are recommended to develop guidelines to enable DNFBPs to comply with the obligations for combating money laundering and the financing of terrorism;
- In the very short term, the FIU should raise the awareness of designated persons and DNFBPs;
- AML/CFT training programmes should be provided to the various categories of DNFBPs.

Compliance with Recommendation R.20

<table>
<thead>
<tr>
<th>REC</th>
<th>Rating</th>
<th>Summary of factors underlying rating</th>
</tr>
</thead>
</table>
| R.20 | NC | • DNFBPs lack knowledge of STR obligations;  
• No effective implementation of AML/CFT obligations by DNFBPs;  
• No implementation of measures for promoting bank penetration and use of non cash means of payment;  
• No guidelines for enhancing DNFBP compliance with AML/CFT requirements. |

5. LEGAL PERSONS, LEGAL ARRANGEMENTS AND NON-PROFIT ORGANIZATIONS

5.1 Legal Persons – Access to beneficial ownership and control information (R.33)

Description and Analysis

Measures to prevent unlawful use of legal persons (C.33.1)

885. The law that establishes the conditions for exercising the profession mentions «the conduct of commercial activities and incompatibilities provided by the laws and regulations in force. The nationality of the profession is determined by the level of involvement of nationals or the State. The law establishes the obligation to have a business card delivered by the Ministry of Commerce.

886. Under the OHADA Uniform Law, relating to General Trade, “any natural person that is a trader under the provisions of this Uniform Law, should, within the first month of business activity, request the Registrar in the competent court under whose jurisdiction the business is run, for a business registration number”. The central Register of Business Names and Liens is at the Court of First Instance in Lome.

887. Pursuant to the Uniform Law on General Business Law (Chapter I), business companies and sole proprietorships are required to register with the RCCM at the Registry of the Court of First Instance in Lome.

888. The RCCM includes:
- A record of entries in chronological order with the date and number of each authorized declarant, the names, first names, company name or profession of the declarant, as well as the subject of their declaration;
- The collection of individual files by alphabetical order. These include:
  
  a. **For natural persons**: their names, first names, date and place of birth, the type of profession and address of their main place of business, as well as those of the establishments set up under the supervision of the registered office, or outside that remit, all the declarations, documents and papers filed on them;
  
  b. **For legal persons and other designated commercial businesses**: the business name, legal status, area of activity, address of the registered office for establishments set up under or outside its jurisdiction, all the declarations, documents and papers filed on them.

889. Article 20 of the above-mentioned Uniform Law states that the RCCM is kept by the Registrar of the competent court under the supervision of the Chief Justice or a judge designated for that purpose.

890. It is worth noting, however, that OHADA requirements for business registration data do not cover all the details on the various forms of beneficiary ownership. Such is the case where corporate capital is owned by other legal persons. Likewise, there is no specific requirement to distinguish between figureheads and true shareholders.

**Access to information on beneficial owners (C.33.2) and Additional Elements – Financial institution access to information on beneficial owners of legal persons (C.33.3)**

891. Service providers and businesses are required to verify and keep records on beneficial ownership. This information can be made available to investigation and prosecuting authorities. At the behest of the State Prosecutor, the prosecuting authorities can compel designated persons subject to AML/CFT laws to provide relevant information during investigations into matters relating to ML/FT.

892. The information in the Togo RCCM is available to the public, to prosecuting authorities and to financial institutions. As concerns legal persons, information is available also at the taxation department. These persons are required to inform the tax authorities on any changes in the senior management team and the list of shareholders. Where appropriate, the authorities may impose penalties for non-compliance with regulations.

**Preventing the misuse of bearer shares (C.33.4)**

893. Under Articles 744 et seq. in the AUSCGIE, limited companies are allowed to issue securities (shares and bonds) in the form of “bearer shares or registered shares”. For companies not involved in savings, the transfer of bearer shares may be done by mere delivery. The security holder is deemed to be the owner (art 764, paragraph. 1.). But the provisions of the Uniform Act do not make it possible for bearer shares issued by limited liability companies to be misused.
894. No measures are in place to prevent legal persons from using shares to launder money.

Analysis of effectiveness

895. The obligations set out in AUSCGIE provisions require some level of transparency in the information provided on beneficial owners. In the final analysis, it is not clear whether the said obligations make it possible to identify beneficial owners in all cases. Likewise, the lack of human and financial resources, particularly at the Registry of the Lome Commercial Court, makes it harder to comply with the said obligations. Updating information on business companies and their beneficial owners is not likely to become reality any time soon, considering the difficult conditions that the evaluation Mission observed in Togo.

Recommendations and comments

896. The Togolese authorities should implement the following recommendations.

- Take better measures to regulate the informal sector;
- See to it that there is effective application of AUSCGIE obligations on CDD and record keeping for beneficiary ownership;
- Make provision for identifying beneficiary owners in all cases;
- Put in place an institutional framework for collaboration and cooperation between the services in charge of providing reliable information on beneficiary owners.
- Establish an e-Register of Business Names and Liens;
- Establish a national database with a centralized repertoire for the Register of Business Names and Liens;
- Provide more human, technical and financial resources for RCCM management;
- Train those responsible for ACCM management.

Compliance with Recommendation R.33

<table>
<thead>
<tr>
<th>REC</th>
<th>Rating</th>
<th>Summary of factors underlying rating</th>
</tr>
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</table>
| R.33 | NC     | - The measures for compliance with this Recommendation are inadequate, especially for handling and managing the RCCM that contains information on beneficiary owners.  
|      |        | - CDD on beneficiary ownership is inadequate;  
|      |        | - No digital format of the Register of Business Names;  
|      |        | - No national database with information on the regional database of OHADA. |

5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)

Description and Analysis

897. The legal system in Togo provides no legal framework for establishing Trusts and other similar legal arrangements. AML Law, Article 5 and CFT Law, Article 3 make
reference to this type of legal vehicle in the following terms: “…the establishment, management or direction of companies, trusts or similar entities, conduct of financial transactions under the transactions carried out by legal practitioners”. There is no foreign trust engaged in any activity whatsoever in Togo.

898. Besides, Togo is a signatory to the OHADA Treaty, which is the defining document on business law in the 16 countries of the region. The only companies and entities under OHADA law are:

- Joint venture companies;
- Joint stock companies;
- Limited liability companies;
- Limited companies; and
- Economic interest groups.

Analysis of effectiveness

899. Togo has no trust or fiduciary company. The legal system in Togo does not know this architecture. However, Togo has no clear legal provision, or a mechanism for preventing the creation and misuse of these legal arrangements.

Recommendations and comments

- The Togolese authorities should pass laws on trusts, regulating them and, where appropriate, prohibiting them explicitly.

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<tr>
<th>REC</th>
<th>Rating</th>
<th>Summary of factors underlying rating</th>
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<tbody>
<tr>
<td>R.34</td>
<td>NA</td>
<td>• The domestic laws in Togo make no provision for trusts and fiduciary companies.</td>
</tr>
</tbody>
</table>

5.3 Non-profit organizations (SR.VIII)

Description and Analysis

Reviewing the adequacy of laws and regulations that relate to NPOs (C.VIII.1)

900. The creation of an NPO is subject to application to the Ministry of Territorial Administration, Decentralization and Local Government Areas. The application should be filed with four copies each of the statutes, rules and regulations, full names and addresses of the founding members (including age and position).

901. CFT Law, Article 14 considers NPOs as designated persons subject to CFT and requires them to comply with the obligations for due diligence, record keeping and communication of documents. It prescribes the obligation for all NPOs, wishing to raise funds, receive or transfer money, to be enrolled on a register.
902. The Mission had no knowledge of available studies that assess the vulnerability of the sector to the risks of terrorist financing in Togo.

**Protecting the NPO sector from misuse for terrorist financing (C.VIII.2)**

903. The competent authorities have conducted no major outreach initiative to raise awareness in the NPO sector about the risks of terrorist abuse and the available measures to protect against such abuse.

**Supervision and monitoring of NPOs given the significant portion of international resources or activities (C.VIII.3), Information kept by NPOs and its availability to the public (C.VIII.3.1), NPO accreditation or registration and availability of this information (C.VIII.3.3)**

904. The measures for registration or declaration take account of the portion of funds that the organization possesses. Togo currently has no mechanism for reviewing the laws and regulations relating to NPOs.

**Establishing sanctions against violations of oversight rules by NPOs (C.VIII.3.2)**

905. The departments in charge of Security and territorial administration should do regular inspections and supervision of the activities and size of NPOs. These should be documentary reviews based on periodic reports produced by the NGOs and submitted to the competent authorities.

906. CFT Law, Article 14, provides that NPOs are required to keep information on the subject and purpose of their activities, as well as on the identity of the persons that own them. Paragraph 1 under this article makes provision also for the registration of NPOs. Paragraph 3 provides that the information contained in the register should be preserved for a period of ten (10) years, without prejudice to the longer periods of record keeping prescribed by other contrary laws or regulations.

**Cooperation, coordination and information sharing at the national level (C.VIII.4.1); Access to information on the administration and management of a particular NPO during the course of an investigation (C.VIII.4.2), Sharing of information, preventive measures and investigative expertise and capability to examine the NPOs that are suspected of being exploited for the financing of terrorism (C.VIII.4.3), and responding to international requests for information about NPOs (C.VIII.5)**

907. The Ministries of Planning and Territorial Administration have focal points for sharing information about NPOs. The Ministry of Foreign Affairs handles matters relating to foreign NPOs.

908. Togo has no effective cooperation mechanism for sharing information and investigations, designed to prevent the abusive use of non-profit organizations.

**Analysis of effectiveness**

909. There is a lack of implementation.
Recommendations and comments

910. The Togolese authorities are recommended to implement the actions provided below.

- Organize information and outreach campaigns to prevent the risk of misusing NPOs for the financing of terrorism;
- Establish supervisory and control mechanisms for associations and NGOs, and reinforce the number of bodies responsible for monitoring national NGOs and international NGOs;
- Reinforce the staff teams of the authorities in charge of supervising national and international NGOs;
- Put in place a reporting system that would protect NGOs against misuse;
- Commission a study on NGO vulnerability to the financing of terrorism;
- Create and maintain a database on control activities and sanctions against NPOs;
- Give NPOs adequate financial and material resources to implement their action plans.

Compliance with Special Recommendation SR VIII

<table>
<thead>
<tr>
<th>REC</th>
<th>Rating</th>
<th>Summary of factors underlying rating</th>
</tr>
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</table>
| SR.VIII | NC | - The authorities lack supervisory and oversight capacities to cover all the NPOs that need supervision;  
- No obligation to preserve records on the financial transactions of NPOs;  
- No outreach campaigns on the risk of terrorist financing. |

6. NATIONAL AND INTERNATIONAL COOPERATION

6.1 National co-operation and coordination (R.31)

Description and Analysis

911. Mechanisms are in place for domestic co-operation between the FIU, investigation and prosecuting authorities, financial institutions, Designated Non-Financial Businesses and Professions and other competent authorities in AML/CFT. The most suitable framework for implementing this cooperation is the Inter-Ministerial Committee on AML/CFT, instituted by Decree N°0136/MSPC/MEF/MJRIR of 11 August 2009. In the same vein, FIU correspondents were appointed in the public and private sector by Order N°293/MEF/CENTIF-TG. In the seventeen (17) correspondents appointed, fourteen (14) have already taken the oath of office.

Establishment of effective international cooperation mechanisms (C 31.1)

912. Togo has set up an Inter-ministerial Committee to monitor anti-money laundering and counter terrorist financing activities (See Order above). While this coordination body has a multidisciplinary membership base, it lacks the means to carry out is mission. Indeed, the Inter-ministerial Committee is not fully operational and has done little apart from a few meetings.
Further, Article 19 of the AML Law provides that «to perform its duties, the FIU may use correspondents in the police, gendarmerie and customs, as well as in public judicial service and any other service that can be of assistance in combating money laundering». Likewise, Article 22 of the CFT Law requires designated persons to cooperate fully with the competent authorities in charge of combating terrorist financing. In Togo, seventeen (17) FIU institutional correspondents have been appointed not just from the public sector, and fourteen of them have already taken the oath of office. These correspondents, who should normally have been given incentives to motivate them, are still waiting for their allowances.

**Additional elements**

**Mechanisms for consultation between the competent authorities, the financial sector and other sectors (C.31.2)**

The Inter-ministerial Committee, albeit the limitations mentioned above, is the only formal framework for consultation between the FIU and the competent authorities in the financial sector and designated non-financial businesses and professions. The Togo FIU has conducted outreach sessions for financial institutions and some DNFBPs.

**Analysis of effectiveness**

Cooperation between stakeholders in anti-money laundering and counter financing of terrorism, especially the FIU, the investigation authorities, the prosecution authorities and other competent authorities, should be based on effective mechanisms for information sharing and coordination of prevention efforts.

In spite of the mechanisms in place for consultation between the Togo FIU and the other competent authorities, there is no synergy in actions between stakeholders in the AML/CFT system, especially the investigation and prosecution authorities. It has been observed that the different agencies each act on their own, apart from the Office Central de Répression du Trafic Illicite de Stupéfiants et du Blanchiment, which is made up of police and gendarme officers. At the borders, for example, the respective forces (Customs, Immigration Police and Intelligence Agency) on the ground have more of a competitive relationship than a collaborative one.

The only source of contentment is the Inter-ministerial Committee, which is a framework with members from many different disciplines. If this consultation framework were truly operational, it would have been able to better assume its responsibilities for planning, driving and coordinating AML/CFT.

**Recommendations and comments**

These are the reasons why it is vital to:
- Put in place a formal and efficient mechanism for cooperation between the prosecution and investigation authorities;
- Render the Inter-ministerial Committee truly operational.
Compliance with Recommendation R.31

<table>
<thead>
<tr>
<th>REC</th>
<th>Rating</th>
<th>Summary of factors underlying rating</th>
</tr>
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</table>
| R.31 | PC     | • Lack of mechanism for cooperation between the investigation and prosecution authorities;  
|      |        | • The Inter-ministerial Committee does not work well, even though it has a multidisciplinary membership. |

6.2 The Conventions and United Nations Special Resolutions (R.35 & RS.1)

Description and Analysis

Recommendation 35 & Special Recommendation I


920. An extradition Treaty exists between Togo, Benin, Ghana and Niger. It has also signed several multilateral cooperation agreements on human trafficking in West Africa. Togo is also a State party to criminal police cooperation among WAEMU Member States.


Ratification and implementation of Conventions on anti-money laundering (C.R35.1) and counter financing of terrorism (C.I.1)

922. Togo has signed and ratified the various Conventions indicated in this regard (See description above). However, it has not been good at implementing all the obligations of these relevant provisions.


923. Institutional or legal challenges make it hard to implement United Nations Security Council Resolutions for the Prevention and Suppression of the Financing of Terrorism in Togo. These are Resolution 1267, adopted by the Security Council at its 4053rd session on 19 October, 1999 and subsequent Resolutions, as well as Resolution 1373, adopted by the Security Council at its 4385th session on 28 September, 2001. Togo has not developed the laws or procedures and the attendant measures required to implement them.

924. Resolution 1267, more specifically, requires States to implement the International Conventions against terrorism, inter alia, by adopting a law against terrorism. Togo still has no law that criminalizes terrorism. It also has no national listing, as provided under Resolution 1373. There has been poor distribution, among subjected categories, of the
terrorist listing, established by the United Nations Sanctions Committee on the basis of Resolution 1267. The country has not designated the authority to issue measures for administrative freezing. Further, it has sent no report to the United Nations Committee on the measures taken to follow up on implementation of Resolution 1373. See the weaknesses identified in the Analysis of effectiveness of SRIII.

Additional elements

Ratification or implementation of other appropriate International Conventions (C.35.2)

925. There is an Extradition Treaty between Togo, Benin, Ghana and Niger. The country has also signed several multilateral cooperation agreements on human trafficking in West Africa. It is a State party to criminal police cooperation between WAEMU Member States.

Review of the effectiveness of Recommendation 35 and Special Recommendation I

926. Togo has signed and ratified the relevant United Nations Conventions against organized crime relating particularly to money laundering and the financing of terrorism. But in practice, it has been slow in implementing the Conventions mentioned above, given that there is a dearth of domestic legal and institutional frameworks in place.

Recommendations and comments

927. The Togolese authorities should implement the recommendations listed below.

Recommendation 35

- Take measures to fully implement the Vienna Convention, Palermo Convention and the International Convention for the Suppression of the Financing of Terrorism, inter alia, by addressing the weaknesses identified in the course of reviewing RI and SRIII:
  - The AML Law in Togo should clearly state whether the assets derived from the commission of a money laundering offence can include the indirect products of the crime or misdemeanour;
  - Togo should criminalize terrorism, human trafficking and the smuggling of migrants as underlying offences of money laundering;
  - Self laundering should be prescribed clearly in the laws on AML in Togo;
  - Criminalize terrorism and terrorist organisations in Togolese substantive law.

Special Recommendation I

- Take effective measures to implement Resolutions 1267 and 1373, particularly by addressing the weaknesses identified while reviewing SRIII:
  - Develop internal provisions for determining the procedures and modalities for freezing terrorist funds in accordance with Resolution 1267;
  - Provide a national mechanism for establishing a listing of terrorists or terrorist entities;
  - Develop procedures for litigating against freezing measures so that a court of law can re-examine them;
- Make provision for freezing, seizure and confiscation under other circumstances;
- Secure efficient monitoring of compliance with the legal obligations for SRIII in Togo;
- Install an efficient system for communicating freezing measures to the financial sector;
- Provide clear instructions to financial institutions and other fund remitting entities to take proper measures for freezing criminalized funds;
- Publish in the Official Gazette the list of persons or entities whose funds or other resources should be frozen, as well as the decisions made to unfreeze funds;
- Develop suitable procedures to authorize access to funds or other assets frozen under the provisions of Resolution 1267 and earmarked to cover essential expenditure, the payment of certain types of commissions, fees and payment of services, as well as extraordinary expenses;
- Enact law or regulations, as the case may be, for effective implementation of measures to protect third parties acting in good faith.

**Compliance with Recommendation 35 and Special Recommendation SR I**

<table>
<thead>
<tr>
<th>REC</th>
<th>Rating</th>
<th>Summary of factors underlying rating</th>
</tr>
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<tbody>
<tr>
<td>R.35</td>
<td>PC</td>
<td>Lack of effective implementation of the Vienna Convention, Palermo Convention and the International Convention for the Suppression of the Financing of Terrorism.</td>
</tr>
<tr>
<td>RS.I</td>
<td>NC</td>
<td>No effective implementation of United Nations Resolutions 1267 and 1373;</td>
</tr>
</tbody>
</table>

**6.3 Mutual legal assistance - R.32, 36-38, RS.V**

**Description and Analysis**

**Recommendation 36**

928. Togo has signed and ratified the conventions and cooperation agreements for multilateral and bilateral mutual legal assistance, including the:

- 2000 Palermo Convention on Organized Crime;
- 2003 Merida Convention on Corruption;
• Cooperation Agreement on Mutual Legal Assistance among the Member States of Conseil de l’Entente (Benin, Burkina Faso, Côte d’Ivoire, Niger and Togo) of 20 February, 1997
• ECOWAS Convention of 29 July, 1992 for Mutual Legal Assistance on Criminal Matters of 29 July, 1992;
• General Cooperation Agreement on legal matters of 12 September 1961, signed by the Joint African and Malagasy Organization (OCAM), ratified by Togo on 17 March 1971;
• Cooperation Agreement on legal matters of 24 July 1961 between France and Togo;
• Convention for Legal Cooperation between the Member States of ANAD of 21 April, 1987, ratified on 7 December, 1988;
• Extradition Treaty between the Republic of Benin, the Republic of Ghana, the Federal Republic of Nigeria, and the Republic of Togo, signed in Lagos on 10 December, 1984, and ratified on 31 January, 1985;
• Convention on Mutual Legal Assistance on criminal matters, signed in Dakar, on 29 July, 1992, and ratifies on 4 December, 1995;
• Cooperation Agreement on criminal police matters among the ECOWAS Member States, signed on 19 December 2003.

Range of mutual legal assistance measures in AML/CFT (C. 36. 1) – Application of powers of the competent authorities (applying R.28, c.36.6 and c.36.8)

929. AML Law, Article 53 and CFT Law, Article 50 provide a broad range of mutual legal assistance measures that can be used in investigation and prosecution between WAEMU Member States, and with a third State where there is a reciprocal agreement.

930. Under Article 53, paragraph 2 of the AML Law and Article 50, paragraph 3 of the CFT Law (identical measures), mutual legal assistance may include:

• Taking of evidence and statements;
• Providing assistance for detainees or other persons to give evidence or assistance to the judicial authorities of requesting States during their investigations;
• Providing court documents;
• Searches and seizures;
• Examining objects and sites;
• Providing information and evidentiary items;
• Providing originals or certified true copies of relevant files and documents, including bank statements, accounting records, registers on business company activities or operations.

931. Article 54 of the AML Law and Article 51 of the CFT also stipulate the form and content of requests for mutual legal assistance. Under Article 54 of the AML Law, «any
request for legal mutual assistance, submitted to the competent authority, shall be made in writing and shall include:

- The name of the authority requesting the measure;
- The name of the competent authority and the authority conducting the investigation or proceedings relating to the request;
- Information on the measure that is being sought;
- A description of the facts of the offence and applicable legislative measures, except if the request is for the sole purpose of delivering pleadings or court decisions;
- All available elements for identifying the person or persons concerned and, especially the civil status, nationality, address and profession;
- All necessary information for locating instruments, resources or property;
- A detailed statement on any procedure or particular request the requesting State wishes to prosecute or execute;
- A time period during which the requesting State wishes to see the request implemented;
- Any other information needed to satisfy the request properly.

**Mutual Legal Assistance not predicated on unreasonable, disproportionate or unduly restrictive conditions (C.36.2)**

932. The anti-money laundering law and counter financing of terrorism law authorize mutual legal assistance without reservation. MLA is not subject to any irrational and disproportionate condition.

933. Under AML law and CFT law, judicial authorities can engage in timely, constructive and effective mutual legal assistance. AML Law, Article 55 and CFT Law, Article 52 both set out the grounds for refusing mutual legal assistance. Under Article 55 of the AML law, «a request for mutual assistance can be refused, if:

- It comes from an authority not competent to do so under the laws of the requesting country, or goes against laid down procedures;
- It presents risks of undermining public order, sovereignty, security or fundamental principles of law;
- It concerns a matter under criminal prosecution, or a case closed already in the courts of the country concerned;
- The measures requested, or any other measures with similar effects, are not authorized or applicable to the offence mentioned in the request for mutual legal assistance, under the laws in force;
- The measures requested cannot be imposed or executed, owing to limitations in legal provisions for money laundering offences under the laws in force, or under the laws in the requesting State;
- There are no provisions under the laws in force to execute the decision that the requesting country wants to get implemented;
• The decision for execution was made in the requesting country under conditions that do not sufficiently guarantee the rights of the defendant;
• There are serious reasons to believe that the measures demanded, or the decision submitted for application, is based only on the race, religion, nationality, ethnic origin, political opinion, sex or social status of the defendant.

934. Confidentiality cannot be used as grounds to refuse to execute mutual legal assistance. The prosecution may lodge an appeal against the decision to refuse execution of the ruling passed in court within a period of sixty (60) days after the said decision. The government of Togo shall communicate without delay to the requesting country, the reasons for refusing to apply its request».

935. Therefore, Togo does not prohibit mutual legal assistance, nor does it subject such assistance to unreasonable, disproportionate or unduly restrictive conditions.

Clear and efficient processes for the execution of mutual legal assistance (C.36.3)

936. Articles 53 to 70 under the AML law and Articles 50 to 67 under the CFT law, which relate to mutual legal assistance, as well as the relevant provisions in the Code of Criminal Procedure (Articles 92 to 96 on transport, search and seizure, Articles 97 to 111 on mandates and their execution, Articles 125 to 130 on letters of request) make provision for effective execution of requests for mutual legal assistance. However, there is no provision that prescribes by law a reasonable period of time for the execution of mutual legal assistance. Article 51, paragraph 8 of the CFT law stipulates that the requesting State should indicate the time it would like the request for mutual legal assistance to be addressed. So, therefore, if a request for mutual legal assistance were addressed to the judicial authorities, they would, in principle, be required to act within the time limit of the requesting State, as provided in the instruments above. The Mission was not able to assess the effectiveness of this provision, owing to the lack of examples to use in doing so.

Mutual legal assistance on fiscal issues (C.36.4)

937. A request for mutual legal assistance should not be refused on grounds of fiscal considerations, as provided under Article 55 of the AML Law and Article 52 of the CFT Law. Consequently, the Togolese authorities cannot refuse a request for mutual legal assistance by virtue of the fact that it involves fiscal matters. To conclude, the laws in Togo on anti-money laundering and counter financing of terrorism make provision for extradition even where fiscal matters are involved.

Mutual legal assistance not predicated on laws that impose secrecy or confidentiality (C.36.5)

938. The identical provisions of Article 55, paragraph 2 under the AML law and Article 52, paragraph 2 under the CFT law dispose clearly that «a request for mutual legal assistance cannot be refused on the grounds of confidentiality». Confidentiality and secrecy do not constitute obstacles for mutual legal assistance.

939. The AML law (Article 57et seq.), the CFT law (Article 54 et seq.) as well as the Code of Penal Procedure (Articles 92 to 96 on transport, search and seizure, Articles 97 to 111 on
mandates and their execution, Articles 125 to 130 on letters of request, Articles 81 to 91 on the hearing of witnesses) give extensive powers to competent authorities taking investigation and prosecution measures to address a request for mutual legal assistance.

**Powers of competent authorities extended to mutual legal assistance, applying Recommendation 28 (C.36.6)**

940. The powers of competent Togolese authorities in charge of investigating cases of money laundering or terrorist financing can be used in response to a request for mutual legal assistance.

941. There is a functional link, not only between the actors of the criminal chain, but also in the collaborative initiatives between investigation and supervision services. Judicial police officers have a relational link with the prosecutors, investigating magistrates and the Financial Intelligence Unit. However, there is no legal provision that supports or rejects these assertions.

**Dual criminality (C.36.7)**

942. There is no legal provision, whether in the AML law or in the CFT law, or in any other subsequent provision in Togo, which makes it possible to determine, in the interest of justice, the most appropriate court for prosecuting persons involved in cases subject to prosecution in several countries.

**Additional elements**

**Powers of competent authorities prescribed, applying Recommendation 28(C.36.8)**

943. The powers of competent authorities, in charge of conducting investigations in Togo on cases of money laundering or the financing of terrorism, can be invoked where direct requests are made by the judicial or criminal authorities of foreign countries to their national counterparts. Article 46 et seq. under the AML law set out a wide range of measures for judicial and legal cooperation, especially regarding the use of all the prerogatives and other powers for foreign counterparts, in collecting evidence to elucidate cases and establish the truth.

**International cooperation concerning SR V, applying C.1-8 of R36 (C.V.1)**

944. The provisions on criminal matters make it possible to prosecute all offences that constitute unlawful acts in Togo, even if these are not unlawful in a third country. Article 37 of the Code of Criminal Procedure provides that: “the jurisdiction to prosecute lies in the hands of the prosecution authorities at the place where an offence is committed, those that have jurisdiction over the place of residence or the home of the accused, and those that arrest the accused, even if such an arrest is done for other reasons”.

945. Togo proposes a wide range of possibilities for mutual legal assistance, investigation and prosecution measures in cases of money laundering and terrorist financing. As mentioned earlier, there is no cooperation agreement for mutual legal assistance in money laundering and the financing of terrorism. These are set out in Articles 4 and 5 of the AML and CFT
laws. However, there is still no specific mutual legal assistance agreement on anti-money laundering and counter financing of terrorism.

946. Under Articles 53, 54, 57 and 62 et seq. of the AML Law and Articles, 50, 51, 54, 59 et seq. of the CFT Law, Mutual legal assistance comprises assistance for production, seizure, extradition, signing of legal documents, identification, freezing, seizure or confiscation of laundered assets, or those intended for laundering or for use in the financing of terrorism. It is incumbent on the requesting foreign authority to specify in its request which acts it wants to be performed during the mutual legal assistance process.

**Recommendation 37**

**Dual criminality relating to mutual legal assistance (C.37.1 and 37.2)**

947. The Laws in Togo do not make provision to render mutual legal assistance in the absence of dual criminality for less intrusive and non compulsory measures. This is watered down by the acts of the Togolese authorities, who claim that they execute all international rogatory commissions, regardless of the missions involved, on the basis of the international instruments that Togo has signed.

948. Technical differences between the laws in the requesting and requested States do not pose an impediment to the provision of mutual legal assistance. In the cases where certain elements of the offence exist, which make it possible to denominate it as an offence, the law in Togo makes provision for prosecution.

949. Article 53, paragraph 1 under the AML law and Article 50, paragraph 1 under the CFT law provide similarly that “at the behest of a WAEMU Member State, requests for mutual legal assistance relating to the offences under Articles 37 to 40 are executed in accordance with the principles set out by Articles 54 to 70 of this law”. Paragraph 2 under Article 53 of the AML law and Article 50 of the CFT law make provision for the principle of reciprocity with relation to dual criminality with third States in the following terms: “the provisions of the preceding paragraph shall apply to requests made by a third State, where the law of that State obliges it to respond to requests of that nature from the Competent Authority”.

950. Courts have jurisdiction to try any offence committed abroad by a Togolese, if the act is punishable also by the laws of the country where it was committed. Togolese courts have jurisdiction also to try foreigners outside the national territory who are found guilty as perpetrators of, or accomplices to offences against the security of the State, forgery of the seal of the State, and currency counterfeiting, where they were arrested in Togo or extradited under normal conditions. Togo has ratified several international conventions and committed itself to executing them, and it seems to pay special attention to any request for mutual legal assistance consistent with its laws in force. In this case, the principle of judicial cooperation to the widest extent possible is set out under Article 2 of the ECOWAS Convention to which Togo is a party.

**Special Recommendation V**

**International cooperation on SR V, applying C.1 and 2 of R.37, (C.V.2)**
951. Mutual legal assistance in combating the financing of terrorism does not include assistance for producing, searching and seizing information, documents or evidentiary items, including financial records. There is no provision also for facilitating the voluntary appearance of persons to provide information or give testimony to the requesting country.

952. Terrorist financing is an extraditable offence. Togo tries its nationals in cases where it does not extradite them. The country collaborates on aspects of evidence concerning procedure and evidence to ensure effective prosecution. However, there are no measures for handling, without undue delays, all extradition procedures concerning counter terrorist financing.

953. To the extent possible, the competent authorities take part in international cooperation with their foreign counterparts. The criminal prosecution authorities can conduct investigations on behalf of their foreign counterparts where domestic law so permits. There are safeguards for confidentiality of information under the laws that apply to this area.

954. The powers of supervisory authorities can be used in response to a request for mutual legal assistance in combating the financing of terrorism.

955. To avoid conflicts of jurisdiction, Togo has no plans in place to implement mechanisms for determining, in the interest of justice, the most appropriate court for referral of persons who are accused in cases that are subject to prosecution in several countries. There is also no asset forfeiture fund into which all or a portion of confiscated property will be deposited. The country has no measures in place for the sharing of confiscated assets. Non penal confiscation is a reality in procedural law in Togo and foreign decisions thereon are recognized and executed, subject to exequatur.

956. The prosecution authorities can conduct investigations on behalf of their foreign counterparts with relation to extradition procedures concerning acts of terrorist financing, not terrorism, given that the latter offence is not criminalized in Togolese substantive law.

957. Mechanisms for timely and constructive exchange of information with non-counterpart authorities are in place. The FIU can obtain relevant information from other competent authorities or other persons, where such information is requested by a foreign FIU under counter financing of terrorism efforts.

958. Under Togolese law, underlying offences are classified as crimes or misdemeanours and can give rise to mutual legal assistance, even if these offences are not denominated in the same manner in the requesting State.

Recommendation 38

Requests for mutual legal assistance by foreign countries regarding provisional measures and confiscation (C.38.1, C.38.2 and C.38.6)

959. The AML law, CFT law and Togolese common law each set out the procedures for timely and effective response to requests for mutual legal assistance on identification, freezing or confiscation. In fact, Article 63, paragraph 1 and Article 2 of the CFT law provide that «where the request for mutual legal assistance relates to a confiscation order, the competent court shall decide at the behest of the competent authority of the requesting State."
There is no deadline for handling cases. The confiscation order shall apply to property that constitutes the proceeds or instrumentalities of one of the offences mentioned by this law and located on the national territory, or comprise the obligation to pay a sum of money corresponding to the value of the said property». Article 60 of the CFT law sets out these same provisions.

960. In addition, Article 64 of the AML law provides that “where the request for mutual legal assistance is to find the products of the offences under this law that are purported to be on the national territory, the competent authority may conduct investigations and communicate the findings to the competent authority in the requesting State. To that end, the competent authority shall take all the necessary measures to track the source of the said assets, investigate on the appropriate financial transactions and collect all other relevant information or other evidence to facilitate the confiscation of the products of the offence.

961. Where the investigations covered in paragraph one of this Article yield positive results, the competent authority in the requested State shall, at the request of the competent authority in the requesting State, take all the appropriate measures to prevent the negotiation, assignment or disposition of the products mentioned above, pending a final decision of the competent court in the requesting State.

962. In addition to the information in Article 54 above, any request to obtain the measures mentioned in this Article should set out the reasons that cause the competent authority of the State to believe that the products or instrumentalities of the offences committed are on its territory, as well as the information on how to locate them”. Article 61 of the CFT law sets out similar provisions.

963. Finally, Article 62 of the AML law and Article 59 of the CFT law provide further that “where the request for mutual legal assistance is about implementing search warrants and seizure measures to gather evidence, the competent authority shall make it possible to do so to the extent consistent with the laws in force, and on condition that the measures requested do not infringe on the rights of third parties acting in good faith”.

964. In general, Articles 75 to 78 of the Code of Penal Procedure gives the competent authorities the possibility to conduct searches and seizures.

**Coordination of seizure and confiscation actions with other countries (C.38.3)**

965. There is no mechanism in place for coordinating seizure and confiscation initiatives with other countries. Such provisions also do not feature either in the AML/CFT laws, or in any other laws in force in Togo.

**Funds for confiscated assets (C.38.4)**

966. Togo has no fund for confiscated assets in which all or part of confiscated assets could be deposited and used for law enforcement, health, education or other appropriate purposes. There is a deposits fund that does not these aspects into account.

967.
Sharing of confiscated assets (C.38.5)

968. Togo has no legal mechanism to authorize the sharing of confiscated assets, where confiscation results directly or indirectly from coordinated operational actions. Article 66 of the AML law and Article 63 of the CFT law make provision for agreement between the Government of Togo and the Government of the requesting State on the steps to take on confiscated assets. On this basis, the Togolese judicial authorities maintain that this agreement may consist in the sharing of the confiscated assets, and that the modalities for sharing the said assets could be defined on account of the particular circumstances of the case.

Additional elements

Recognition of foreign non criminal confiscation orders (C.38.6)

969. AML law, Article 45 and CFT law, Article 41 paragraph 3 deal with this case. They provide that “in all cases of conviction for money laundering or attempted money laundering, the courts order the seizure and payment into the Public Treasury of products derived from the offence, real or personal property the products have been transformed or converted into, and, to the extent of their value, the acquired property that has been mixed with the proceeds of the offence, as well as the income and other benefits from property mixed with the said proceeds that accrue to the owners of the products and assets, unless these owners establish that they knew nothing about the fraudulent origin of those products and assets”.

970. Paragraphs 1 and 2 under Article 41 of the CFT law stipulate that “in all cases of conviction for the financing of terrorism or attempted terrorist financing, the courts order the confiscation and payment into the Public Treasury of funds and other financial resources related to the offence, as well as any movable or immovable property designed for use, or having been used in committing the said offence». Further, Article 41, paragraph 3 of the CFT law, provides that «the confiscation order identifies and localizes the funds, assets and other financial resources to confiscate. Where the funds, assets and other financial resources concerned cannot be represented, their confiscation can be ordered in value».

Special Recommendation V, applying C.38.1 to 38.3 (C.V.3) and C.38.4-38.6 of R.38 (C.V.7)

971. The responses given under criteria 36.1 to 36.6, 37.1 to 37.2 and 38.1 to 38.3 are valid also for this section.

Recommendation 32

Review of national AML/CFT system effectiveness (C.32.1)

972. AML/CFT system effectiveness is severely undermined because Togo does not criminalize money laundering or terrorist financing, and also because it lacks legal measures for rogatory commission, freezing or confiscation, not to mention mutual legal assistance and legal cooperation in AML/CFT. The Mission was informed that efforts were underway to prosecute three cases of money laundering, but these had not yet reached the stage of judgment. The Mission gathered data from the 1st and 5th Investigation Units in the Prosecutor’s Office in Lome, Togo, relating to ten international rogatory commissions (see
table below), including one that was on a money laundering offence. But, only one rogatory commission from 2008 had been executed in this regard. The others seemed to be under execution, but the Mission was given no clear indications in that regard.

973. Statistics from International Rogatory Commissions – 1st and 5th Investigation Units

<table>
<thead>
<tr>
<th>No</th>
<th>Country of origin</th>
<th>Offences</th>
<th>Level of progress</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>2008</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>01</td>
<td>France</td>
<td>Trafficking of narcotic substances</td>
<td>Executed</td>
</tr>
<tr>
<td>02</td>
<td>Germany</td>
<td>Drug trafficking</td>
<td>Ongoing</td>
</tr>
<tr>
<td>02</td>
<td>Belgium</td>
<td>Grave charges under Belgian legislation</td>
<td>Ongoing</td>
</tr>
<tr>
<td>03</td>
<td>France</td>
<td>Absconding juvenile with aggravating circumstances</td>
<td>Ongoing</td>
</tr>
<tr>
<td>04</td>
<td>France</td>
<td>Grave misappropriation of funds</td>
<td>Ongoing</td>
</tr>
<tr>
<td>05</td>
<td>France</td>
<td>High risk international drug trafficking</td>
<td>Ongoing</td>
</tr>
<tr>
<td>06</td>
<td>Côte d’Ivoire</td>
<td>Fraud and uttering and attempted swindling</td>
<td>Ongoing</td>
</tr>
<tr>
<td><strong>2009</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>07</td>
<td>Canton of Geneva</td>
<td>Trafficking of narcotic substances</td>
<td>Ongoing</td>
</tr>
<tr>
<td>08</td>
<td>Côte d’Ivoire</td>
<td>Breach of confidence, forgery and complicity</td>
<td>Ongoing</td>
</tr>
<tr>
<td>09</td>
<td>Niger</td>
<td>Illicit enrichment</td>
<td>Executed</td>
</tr>
<tr>
<td><strong>2010</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>France</td>
<td>Assassination, concomitant murder, diversion of small arms and light weapons</td>
<td>Ongoing</td>
</tr>
<tr>
<td>11</td>
<td>Belgium</td>
<td>Money laundering</td>
<td>Ongoing</td>
</tr>
<tr>
<td>12</td>
<td>Angola</td>
<td>Deadly attack</td>
<td>Ongoing</td>
</tr>
</tbody>
</table>

974. The Mission noted that justice system members suffered a recurrent lack of material and human resources. In the same manner, the AML/CFT law is not well disseminated. It is still unknown to a large portion of stakeholders in prevention efforts, including those in the legal sector. Apart from this cursory analysis, there is no milestone at the moment for an objective review of the AML/CFT system in Togo.

**Maintenance of statistics and smooth functioning of AML/CFT systems (C.32.2)**

975. At the current stage of implementation of Togo’s AML/CFT system, there is no evaluation tool with which to verify objectively whether the system is efficient. On the whole, statistics are not maintained in a reliable manner, especially when it comes to statistics on AML/CFT. Togo has no statistics planning service that can give a clear picture on
statistical matters. No assets have been frozen or confiscated for AML/CFT. Mutual legal assistance is apparently not served properly, although the laws make provision thereto.

**Additional elements**

**Maintenance of comprehensive statistics (C.32.3)**

976. Without convictions and a regime for freezing and confiscating assets, it is hard to assess statistics on predicate offences and their amounts. The investigation authorities, OCRTIDB and the National Police services in this case, try to keep statistics on AML/CFT (see sector concerned above). In the final analysis, only STR statistics maintained by the FIU seem to be comprehensive enough on AML/CFT issues.

**Recommendations and comments**

**Recommendation 32**
- Keep statistics on money laundering and terrorist financing, in particular on:
  - Training and specialization of AML/CFT stakeholders, in particular, for magistrates;
  - Signing cooperation agreements and mutual legal assistance arrangements.
- See to it that a planning and statistics unit, specialized on AML/CFT, is in place.

**Recommendation 36**
- Provide a legal mechanism for the diligent treatment of requests for mutual legal assistance.
- To serve justice, take measures to determine the most appropriate court for prosecuting persons involved in cases subject to prosecution in several countries.
- Criminalize terrorism, human trafficking, the smuggling of migrants, insider trading and cybercrime in Togo’s legal system to remove any barriers to mutual legal assistance.

**Recommendation 38**
- See to it that laws and appropriate procedures are in place for timely and effective response to requests for mutual legal assistance from foreign countries and on the identification, freezing or confiscation of laundered assets derived from the products and instrumentalities for committing any money laundering or terrorist financing offence.
- Plan to establish a mechanism to coordinate seizure/confiscation initiatives and the sharing of funds with other countries.
- Create a fund for depositing all or part of confiscated assets for use in appropriate ways.

**Special Recommendation V**
- Facilitate voluntary appearance of persons to provide information or testimony to requesting countries.
• Ensure that laws clearly state an imperative deadline, binding national authorities to respond to requests for mutual legal assistance on the financing of terrorism.
• Establish a mechanism for coordinating initiatives for seizure/confiscation and sharing of funds with other countries.

Compliance with Recommendations R.32, R.36, R.38, and SR V

<table>
<thead>
<tr>
<th>REC</th>
<th>Rating</th>
<th>Summary of factors underlying rating</th>
</tr>
</thead>
</table>
| R.32  | NC     | • Lack of statistics on prosecution and conviction for money laundering, terrorist financing and freezing mechanisms.  
           • No statistics on training of stakeholders in combating money laundering, in particular, magistrates. |
| R.36  | PC     | • Certain underlying offences for money laundering that can be a barrier to requests for mutual legal assistance are not criminalized. Such offences include terrorism, smuggling of migrants, human trafficking, insider trading and cybercrime.  
           • Togo has no laws or regulations in place to determine, in the interest of justice, the most appropriate court to prosecute persons involved in cases that are subject to prosecution in several countries.  
           • No legal mechanism for due diligence on requests for mutual legal assistance in AML/CFT. |
| R.38  | PC     | • No procedural laws and norms on response to requests for mutual legal assistance with relation to the identification of laundered assets or the proceeds of terrorist financing.  
           • Lack of a legal mechanism for coordination, seizure and confiscation with other countries.  
           • No legal means for the sharing of confiscated assets. |
| SR.V  | PC     | • Mutual legal assistance in CFT does not facilitate voluntary appearance of persons who provide information or give testimony to a requesting country.  
           • There is no time imperative for according due diligence to requests for mutual legal assistance;  
           • There is no fund for depositing seized and/or confiscated assets.  
           • The country has no measures in place for the sharing of confiscated assets. |

6.4 Extradition (R. 37 & 39, & SR.V)

Description and Analysis

Recommendation 39

Legal framework
Togo, like the other countries in French West Africa, uses a common law regime on extradition, based on the Law of 10 March, 1927, relating to the extradition of foreigners, which was promulgated on 2 April, 1927. Apart from this law, Togo has signed and ratified several conventions, multilateral and bilateral cooperation agreements for mutual legal assistance, which are mentioned above (See section above).

Money laundering as an extraditable offence (C.39.1)

The AML law considers money laundering as an extraditable offence. Under Article 71, “those subject to extradition include:

- Individuals prosecuted for the offences under this law, regardless of the duration of the penalty on the national territory; and
- Individuals who, for offences covered by this Act, are sentenced finally by the courts of the requesting State without need to consider the sentence.
- There is no derogation from the normal rules of extradition, including those relating to dual criminality”.

Similarly, Article 72 of the same law sets out the conditions and procedures of this extradition. It stipulates that «where the request for extradition concerns a person who has committed one of the offences under the present law, it is addressed directly to the Attorney General of the requested State and copied, for information purposes, to the Minister of Justice. The request is sent along with:

- The original or certified true copy of either a firm sentence, or a warrant of arrest or any other document of the same significance, delivered in the forms prescribed by the law of the requesting State, with a clear indication of the time, place and circumstances of the facts that constitute the offence and the denomination of the offence;
- A certified true copy of the legal provisions applicable, with details on the penalty;
- A document with as accurate a description as possible of the person being sought, as well as all other information that can be used to determine his identity, nationality and location».

Extradition of nationals and, where appropriate, their judgment on national territory (C.39.2)

A request for extradition that solicits the extradition of a Togolese national cannot be executed. This features under Article 5 of the Law of 10 March, 1927 on extradition, which is still in force in Togo.

In general, Article 7 of the Penal Code paves the way for such prosecution. For, it provides that “Togolese courts have jurisdiction to try any crime under Togolese law, committed abroad by a Togolese. They have jurisdiction also to try any crime committed abroad by a Togolese, if the crime is punishable also by the laws of the country where it was committed…”

On a more specific note, Article 47 under the AML law provides that where the prosecution authority of a WAEMU Member State considers, for one reason or the other, that there are obstacles to prosecution or the pursuit of ongoing prosecution measures, and that proper criminal proceedings can be conducted on the national territory, it can ask the
competent legal authority to take the necessary measures against the alleged offender. This principle applies also where the request comes from an authority in a third State (outside the WAEMU framework) and the rules in force in that State authorize the national prosecution authority to lodge a complaint for the same purpose. The request to transfer prosecution shall include documents, records, files, articles and information in the possession of the prosecution authority of the requesting State.

983. Under Article 73 of Togo’s CFT law, “in case extradition is refused, the matter is taken to the competent national courts to prosecute the person concerned for the offence that motivated the extradition request”.

984. In light of the above, Togo has provisions in place to judge or extradite persons with relation to AML/CFT.

Cooperation with a third State on procedural and evidentiary aspects (C.39.3)

985. AML law, Article 53 covers the issue of cooperation, providing that “at the request of a WAEMU Member State, requests for mutual legal assistance relating to the offences under Articles 37 to 40 shall be executed in accordance with the principles under Articles 54 to 70 of the present law.

986. The provisions of the preceding paragraph shall apply to the requests sent by a third State, where the laws of this State require it to respond to requests of that nature from the competent authority. Such mutual assistance may include:

- Taking evidence or statements;
- Providing assistance to the judicial authorities of the requesting State to reach persons under detention or other persons who can provide evidence or support in the conduct of investigations;
- Making available court documents;
- Searches and seizures;
- Examination of objects and sites;
- Provision of information and evidentiary items;
- Provision of original or certified true copies of relevant files and documents, including bank statements, accounting records, documentation on the running of the business enterprise or its commercial activities”.

Measures and procedures for handling extradition requests and procedures without undue delay (C.39.4)

987. The AML law provides measures and procedures for handling extradition requests and procedures on money laundering offences without undue delay. Under Article 54 of the AML law, the requesting State should indicate a time period when it would like its request to be executed.

988. Domestic law in Togo, especially the provisions of the Code of Penal Procedure, provides short and regular periods for handling criminal proceedings. For example, when the
court of criminal appeal receives a request for an extradition order, it is required to take a
decision within one month (art.167 CPP), failing which the accused shall be released.
Likewise, any person arrested under a warrant of arrest is taken immediately to stand trial
before the public prosecutor (art.108 CPP).

Additional elements

Existence of simplified procedures of extradition, including consenting persons who
waive formal proceedings, and extradition on based on warrants of arrest or
judgements (C.39.5)

989. As mentioned earlier, Article 72 of the AML law sets out the principle for normal
procedures of extradition. Article 68 of the CFT law provides the same measures. However,
the ECOWAS Member State cooperation agreement, signed in Accra on 19 December, 2003,
makes provision for simplifying procedures for police officers to hand over wanted persons
to other police officers. This may be considered as simplified procedure for extradition. There
are several conditions set out for implementing such procedure. The most important one is to
be a Member State of the ECOWAS. In the case of third States (non-ECOWAS), they are
required to have an agreement or a convention with Togo to be able to enjoy the benefits of
this type of procedure.

990. The same articles mentioned above provide for the extradition of persons solely on the
basis of a warrant of arrest or judgement. But the warrant of arrest can be executed only if the
offence deserves a prison sentence above 3 months (Article 106, Code of Penal Procedure).

991. In Togo, appeals are lodged on a voluntary basis. In the absence thereof, court rulings
are executed with immediate effect.

Recommendation 37 (dual criminality relating to extradition)

992. Togo permits extradition only under dual criminality. Paragraph 3 under Article 71 of
the AML law provides that «there is no derogation from the rules of law on extradition,
including those relating to dual criminality». Paragraph 3 under Article 68 of the AML law
makes provision for the same principle.

993. In Togo, the only obstacle to a request for extradition lies in the political nature of the
offence. This comes out clearly in the cooperation agreements and mutual legal assistance
arrangements signed between Togo and France on 23 March 1976, and the extradition treaty
between Ghana, Benin, Nigeria and Togo, which was signed on 10 December 1984.

Special Recommendation V C.4

994. Criteria 39.1 and 39.4 (relating to R.39) apply to extradition proceedings related to
terrorist financing. Article 68 of the CFT Law provides that “the persons who can be
extradited are:

- Individuals charged for the offences mentioned in the present law, irrespective of
  the duration of the sentence issued on the national territory;
• Individual who are charged for the offences in this law and condemned finally by the courts in the requesting country without paying attention to the sentence pronounced.

995. There is no dispensation from the principles of common law, especially those relating to dual criminality.”

996. Article 70 of the same law provides more information, as follows “where the information sent by the competent authority is insufficient for decision making”. In this case, “the State requests that the necessary additional information be sent to it within a time period no more than 15 days, unless this deadline is incompatible with the nature of the case.”

997. However, because Togo does not criminalize terrorism, there is no need to apply the proceedings in this case. The situation turns out to be this way, even though the Conventions relevant for this matter and the provisions of the Penal Code (Articles 222 to 228) criminalize to some extent the acts categorized as acts of terrorism.

998. The Lome Appeal Court statistics on international cooperation from 2004 to 2009 show that Togo responded favourably and satisfactorily to three demands for extradition. There was no demand for extradition on the offence of money laundering or acts of terrorism. Togo also has no statistics on extradition, where the Togolese authorities are the requesting party.

Additional elements – SRV C.8

999. Article 69 of the CFT Law provides procedures, considered as simplified procedure, for extradition. The Article states that demands for extradition should be addressed directly to the Attorney General of the requested State and copied, for information purposes, to the Minister of Justice. Such demands should be submitted along with:

- “the original copy or certified true copy of a conviction order, or a warrant of arrest, or any other enforceable provision delivered in the form prescribed by law in the requesting State, indicating the place and circumstances of the facts that constitute the offence, or the designation of the said offence;
- A certified true copy of the applicable legal provisions with an indication of the sentence passed;
- A document that gives as clear a description as possible of the individual concerned by the demand for extradition, as well as all other pieces of information with details on their identity, nationality and area of location.”

Recommendations and comments

Recommendation 32
• Take appropriate measures to maintain accurate statistics on:
  - the requests for extradition sent and received by the Togolese authorities;
  - the follow-up on requests for extradition with relation to ML/FT;
  - the reasons for refusing to grant extradition.

Recommendation 37
• Take clear measures to ensure that dual criminality does not impede mutual legal assistance and extradition.

• Make legal provisions to ensure that mutual legal assistance is granted for less intrusive and non compulsory measures.

**Recommendation 39**

• Establish clear legal provisions for extradition on certain underlying offences (still not criminalized in Togo), such as terrorism, human trafficking, the smuggling of migrants, cybercrime and insider trading, so that this does not obstruct the extradition proceedings.

**Special Recommendation V**

• See to it that the law clearly sets out a period of time binding national authorities to respond to requests for extradition relating to terrorist financing.

• Ensure that legal provisions clearly cover the criminalization of certain underlying offences, such as terrorism, human trafficking, the smuggling of migrants, cybercrime and insider trading, so that this does not obstruct proceedings on demand for extradition.

• Grant extradition, regardless that criminal law requires dual criminality.

**Compliance with Recommendations 32, 37, 39 and SR V**

<table>
<thead>
<tr>
<th>REC</th>
<th>Rating</th>
<th>Summary of factors underlying rating</th>
</tr>
</thead>
</table>
| R.37  | PC     | • Dual criminality is an obstacle to mutual legal assistance.  
|       |        | • There is no legal provision stating that requests for mutual legal assistance should be granted for less intrusive and non compulsory measures. |
| R.39  | PC     | • Lack of legal premises for judging or extraditing persons who have committed certain offences that are not criminalized in Togo, such as terrorism, human trafficking, the smuggling of migrants, insider trading and cybercrime. |
| SR.V  | PC     | • Extradition is not granted in the absence of dual criminality, especially concerning less intrusive and non compulsory measures.  
|       |        | • No provision in principle to judge or extradite persons charged with certain offences not criminalized in Togo, such as terrorism, human trafficking, smuggling of migrants, insider trading and cybercrime.  
|       |        | • The law gives no clear indication of the time period for according due diligence to requests for extradition. |

**6.5 Other forms of international cooperation (R. 40, SR.V & R.32)**

**Description and Analysis**

**Recommendation 40**
1000. The mechanisms for cooperation between Togo and other countries are provided in the norms indicated below:

- International Convention on Mutual Administrative Assistance for the Prevention, Investigation and Repression of Customs Offences, 9 June, 1977;
- International Convention on Mutual Administrative Assistance on Customs Matters, 27 June 2003;
- Convention for Cooperation and Exchange of Information between the WAMU Banking Commission and the Regional Council for Public Savings and Financial Markets (CREPMF)
- Convention for Cooperation and Information Exchange between WAMU-BC and the Commission Bancaire Française, 19 September, 2000;
- OHADA Treaty;
- AML/CFT Uniform Law,
- ECOWAS Cooperation Agreement on Criminal Police Matters, 19 December, 2003;
- Cooperation Agreement for Exchange of Administrative Information between the Togo FIU and the CTIF, Kingdom of Belgium
- The ICPO / Interpol Agreements

Scope of international cooperation mechanism (C. 40.1)

1. Cooperation with foreign counterparts

1001. The Togo FIU engages in international cooperation in AML with FIUs in third States to the extent possible. The relevant legal provisions feature under Articles 21 and 22, which deal with relations between the Togo FIU and the FIUs of WAEMU Member States, on one hand, and with those of third countries, on the other.

1002. Under Article 21, the Togo FIU is required, where the FIU in a WAEMU Member State conducting investigations so requests, to provide all relevant information and data needed to elucidate the findings set out in a suspicious transaction report made in one country. With relation to foreign FIUs, the Togo FIU can, on condition of reciprocity, share information with the financial intelligence units that receive and process suspicious transaction reports in other countries, if these latter are bound to similar obligations of confidentiality. In addition, the last paragraph under Article 22 of Togo’s AML law provides that exchanges between the Togo FIU and intelligence units in third States (non-WAEMU zone) should be predicated on agreements made in writing and approved by the Minister of Finance.

1003. On anti-money laundering and counter financing of terrorism, the police and gendarme services can cooperate with their colleagues via the Interpol network to the extent where such cooperation is not perceived as mutual legal assistance.

1004. The customs administration engages in cooperation arrangements, based on the agreements signed with foreign countries. It is a member of the World Customs Organization.
Moreover, the customs administrations in WAEMU and ECOWAS Member States, including Togo, cooperate in monitoring regulation at the community level.

2. **Cooperation between supervisors**

1005. On cooperation between financial system supervision authorities, Togo, as a Member of WAMU, is under the supervision and oversight of relevant community authorities and CIMA. As mentioned earlier, bank supervision and control are done by the WAMU Banking Commission and the BCEAO. The CREPMF has supervisory authority over financial markets, while CIMA plays the same role in the insurance sector.

1006. There is no cooperation, in the strict sense of the word, between WAEMU Member States, given that they are subjected to the same bodies within the membership body. However, international cooperation goes on between the said bodies and foreign supervision bodies (non-WAEMU zone). So, therefore, Article 35 under the WAMU-BC cooperation agreement provides that this latter can share information on banks and financial institutions with the supervision authorities of similar institutions in other countries, subject to reciprocity and on the condition that the said authorities themselves are bound to confidentiality. Further, the rules and regulations on financial markets provide that the Regional Council can commit to reciprocal cooperation agreements with the supervision and oversight organizations responsible for savings and foreign financial markets.

1007. While these provisions do not clearly say so, CIMA, in practice, can cooperate also with foreign supervision authorities on insurance sector issues.

3. **Rapid, constructive and effective assistance (C. 40.1.1)**

1008. As part of the rapid assistance they give their foreign counterparts, Togo’s competent authorities can apply the simplified procedures under Article 72 of the AML law, as the case may be, and submit additional information within a period of 15 days. Further, Article 54 under the AML law provides that the requesting State shall indicate the period when it wants its request to be handled.

1009. The Togo FIU has been exchanging information with the FIUs in Senegal and Cote d’Ivoire, and has signed a cooperation agreement with Belgium.

4. **Clear and effective mechanisms for facilitating exchanges of information between counterparts (C. 40.2)**

1010. Cooperation with the FIUs of WAEMU Member States is unconditional. But, cooperation with other FIUs is based on mutual reciprocity and confidentiality. When the Togo FIU gets admitted into the Egmont Group, it will gain access to the secure ESW network and use it to improve the exchange of information with other FIUs.

1011. The police and customs services exchange information through the secure communication networks of Interpol and WCO.

5. **Spontaneous exchanges of information (C. 40.3)**
While not stated in an explicit manner, the Togo FIU can exchange information with the FIUs of third countries spontaneously and upon request, wherever there is reciprocity (Art. 22, CFT Law). The law does not provide clearly for disclosure of information at the request of an FIU in the WAEMU (Art. 21, CFT law). It makes sense, however, to consider that spontaneous exchanges of information are allowed.

6. **Inquiries conducted on behalf of foreign counterparts (C. 40.4)**

The way Article 21 is worded suggests that the Togo FIU can cooperate with the FIU of a WAEMU Member State “within the framework of an investigation”. This may imply that the Togo FIU is allowed to conduct investigations on behalf of its counterparts. In the same vein, Article 22 under the CFT law uses different and more restrictive phrasing, making reference only to the exchange of information, and thereby raising doubts as to the ability of the Togo FIU to extend its activities to requests from foreign FIUs (non-WAEMU zone).

7. **Inquiries by the FIU on behalf of its foreign counterparts (C. 40.4.1)**

Where the FIU receives a request from a foreign FIU – outside the WAEMU zone, it has the authority to communicate the information it has already in its database. It is not very clear whether this authorization includes the gathering of information from external sources to which it has access in the exercise of its duties as an FIU (Art. 17, CFT law).

8. **Investigations by law enforcement authorities on behalf of their foreign counterparts (C. 40.5)**

The judicial authorities can conduct investigations on behalf of their counterparts, within an International Rogatory Commission that sets out the objective of the investigation and actions to take, in accordance with the Code of Penal Procedure in Togo. These acts may be led by the judge appointed to that effect or sub-delegated to a Judicial Police Officer (Police or Gendarmerie Officer). The police and gendarmes, on their part, have the latitude, if a request comes from a foreign police service, either directly or via Interpol, to provide the information requested without framing it as an investigation. The customs, on the other hand, have the power to initiate investigations on crimes against customs regulations at the request of their counterparts and on the basis of customs treaties.

9. **Lack of disproportionate or unduly restrictive conditions for exchange of information (C. 40.6)**

The exchange of information is subject to the following conditions:

- A request received by an FIU in a WAEMU Member State during an investigation;
- Reciprocity and similar obligations of confidentiality for exchange of information with the FIUs of third countries, in which case a Memorandum of Understanding, approved by the Finance Minister, is required in writing to ensure that confidentiality is guaranteed.

10. **Cooperation involving fiscal matters (C. 40.7)**

There are no provisions which say a request might be refused on the sole ground that it involves fiscal matters. In this regard, none of the respondents who met with the mission
was of the view that there was a specific problem or reason not to respond to a request for cooperation because it involves fiscal matters.

11. **Cooperation against laws that impose secrecy or confidentiality (C. 40.8)**

1018. AML law, Article 32 waives the use of confidentiality against the FIU and supervision authorities in the performance of their duties, as well as police officers investigating acts of money laundering under the supervision of the investigating magistrate. Hence, confidentiality or secrecy cannot be invoked as the sole grounds to refuse to cooperate.

12. **Controls and safeguards in the use of information (C. 40.9)**

1019. Under Article 19 of the AML law, FIU members and officials are bound to observe confidentiality with respect to the information they receive, which shall be used only for authorized purposes.

**Additional elements**

13. **Cooperation with non-counterpart authorities (C.40.10)**

1020. Togo has made no regulatory provisions in this regard.

14. **Information obtained from other competent authorities by FIU on behalf of a foreign FIU (C.40.11)**

1021. The Togo FIU can, on behalf of an FIU in the sub-region or a foreign FIU bound under a Memorandum of Understanding, request information from other competent Togolese authorities that are bound by the law to provide the information required. This can be a financial institution, a DNFBP or an investigation or prosecution authority.

**STATE OF EXCHANGE OF INFORMATION BETWEEN THE TOGO FIU AND THE OTHER FIUs**

<table>
<thead>
<tr>
<th>Country</th>
<th>Requesting State</th>
<th>Requested State</th>
<th>Type of request</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Togo</td>
<td>Benin</td>
<td></td>
<td>• Information on money transfers</td>
<td>01</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Currencies</td>
<td></td>
</tr>
<tr>
<td>Togo</td>
<td>Côte d’Ivoire</td>
<td></td>
<td>• Money transfers</td>
<td>03</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>• Scams</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>• Business transactions on chemicals</td>
<td></td>
</tr>
<tr>
<td>Senegal</td>
<td>Togo</td>
<td></td>
<td>• Money transfers</td>
<td>01</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Currencies</td>
<td></td>
</tr>
<tr>
<td>Benin</td>
<td>Togo</td>
<td></td>
<td>• Request for information on the identity of certain persons</td>
<td>01</td>
</tr>
</tbody>
</table>
Special Recommendation V - C.5

Scope of international cooperation mechanisms (C. 40.1)

1022. In practice, the law enforcement authorities, FIU and supervision authorities can maintain the same type of cooperation on CFT with their foreign counterparts as the cooperation on AML described in paragraphs 987 et seq. Togo’s CFT Law includes a sub-heading on international cooperation under section IV, but it actually sets out no other forms of cooperation apart from cooperation on legal matters. Article 43, paragraph 3 of the CFT Law provides as follows: “Where the prosecution authority of another WAEMU Member State considers, for any reason whatsoever, that the conduct of prosecution or the pursuit of ongoing prosecution measures is obstructed by major obstacles, and that adequate criminal procedure can be provided on the national territory, it can request the competent judicial authority to take the necessary measures against the alleged perpetrator”. Such cooperation can be extended to third States outside the WAEMU zone, as provided under paragraph 2 of the same article that states: “the provisions of the previous paragraph apply also where the request comes from the authority of a third State, and where the rules in force in the said State authorize national prosecution authorities to submit a request for the same purposes”.

1023. In either case, the request to transfer prosecution proceedings should be submitted with documents, identification papers, files, objects and information available to the prosecution authority of the requesting State.

1024. Similarly, Article 44 of the CFT Law provides that “the requests submitted by competent foreign authorities to establish facts on terrorist financing, execute or pronounce protective or confiscation measures, or for the purpose of extradition should be sent through the diplomatic channel. In the case of emergency, the requests can be submitted through the International Criminal Police Organization or communicated directly by the foreign authorities to the national judicial authorities by any means of rapid transmission that leaves evidence in writing or an equivalent form of material evidence.

1025. All requests and appended material should be sent along with a translated version in the official language of the Republic of Togo.”

Controls and safeguards in use of information (C. 40.9)

1026. Togo has no controls and safeguards in place to ensure that the information received by the competent authorities is used only for authorized purposes.

Analysis of effectiveness

1027. Togo has a proper legal cooperation framework other than the one on judicial matters. The anti-money laundering law and counter financing of terrorism law should clearly make provision for this type of cooperation between all the competent authorities and their foreign counterparts.

1028. It is worth noting also that although this normative framework is in force, cooperation is not adequately implemented, except in a few isolated cases – the FIU. There are no reliable statistical records for implementing Recommendation 40. Hence, there is no evidence of
international cooperation. The implementation of Recommendation 40 has been effective only in part.

Recommendations and comments
- Review AML laws to encourage effective cooperation between the Togo FIU and foreign FIUs in the WAEMU zone.
- The CFT Law should cover international cooperation among all the other competent authorities and their foreign counterparts in all the areas required for international cooperation.
- In the absence of agreements on mutual legal assistance, the judicial authorities should be authorized to conduct less complex investigations for their foreign counterparts;
- Togo should put in place controls and safeguards to ensure that information received by the competent authorities on CFT is used only for the authorized purposes;

Compliance with Recommendation 40

<table>
<thead>
<tr>
<th>REC</th>
<th>Rating</th>
<th>Summary of factors underlying rating</th>
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</table>
| R.40 | PC     | - No clear provisions for the FIU to conduct investigations at the request of a third FIU from a non-WAEMU country;  
- The judicial authorities do not have the powers to carry out simplified investigations in the absence of agreements for mutual legal assistance;  
- Cooperation mechanisms in AML are not implemented effectively. |
| SR.V | PC     | - Togo lacks controls and safeguards to ensure that the information received by the competent authorities on CFT is used only for authorized purposes.  
- No possibility for international cooperation among all the other competent authorities and their foreign counterparts in all the areas required for international cooperation.  
- Mechanisms for cooperation in CFT are not implemented effectively. |

7. OTHER ISSUES

7.1 Resources and statistics

1029. The earlier sections of this report do a review of resources and statistics. The tables below only underline, in a concise manner, the final rating assigned for each of these Recommendations, as well as the key reasons why the said rating was assigned.

Resources

Compliance with Recommendation 30

<table>
<thead>
<tr>
<th>REC</th>
<th>Rating</th>
<th>Summary of factors underlying rating</th>
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<tbody>
<tr>
<td>R30</td>
<td>PC</td>
<td>- The FIU lacks material and financial resources to carry out its activities properly.</td>
</tr>
</tbody>
</table>
• The investigation and prosecution authorities are well structured, but suffer a conspicuous lack of human and material resources to deliver AML/CFT properly.
• Prosecution and investigation authorities lack training in AML/CFT: judges, prosecutors, police officers, customs officers and gendarme officers, to name just a few.
• The human resource, financial and technological allocations made to supervisory authorities of the financial sector and DNFBPs are not enough.

Statistics

Compliance with Recommendation 32

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<th>REC</th>
<th>Rating</th>
<th>Summary of factors underlying rating</th>
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</table>
| R32 | NC     | • Lack of statistics on assets confiscated and frozen with regard to money laundering and terrorist financing;  
|     |    | • Statistical records on underlying offences are incomplete;  
|     |    | • Lack of statistics in courts on trials for money laundering and the financing of terrorism;  
|     |    | • No detailed statistics on mutual legal assistance, extradition and other forms of cooperation;  
|     |    | • Total lack of policy for keeping statistical records in the departments that met with the Mission. |

7.2 Other measures and issues relevant to AML/CFT

N/A
<table>
<thead>
<tr>
<th>Forty Recommendations</th>
<th>Rating</th>
<th>Summary of factors underlying rating</th>
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<tbody>
<tr>
<td><strong>Legal systems</strong></td>
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</tbody>
</table>
| 1. ML offence                                 | PC     | • No criminalization of terrorism, human trafficking, smuggling of migrants, insider trading and cybercrime;  
• It is doubtful whether the money laundering offence applies to property representing the “indirect” proceeds of the crime;  
• No judgment to use in evaluating the effectiveness of the AML system. |
| 2. Mental element and corporate liability      | LC     | • No judgement that makes it possible to assess the effectiveness of AML/CFT obligations;  
• Difficulty is evaluating evidence in the absence of clear provisions on the possibility of deducing the mental element from objective factual circumstances. |
| 3. Confiscation and provisional measures       | PC     | • No measures for preventing or cancelling contractual or other arrangements on the confiscation in relation to AML/CFT;  
• No legal provisions for making submissions, without notification, for a first request to freeze or seize assets in AML proceedings. |
| Preventive measures                           |        |                                                                                                                                                                                                                                     |
| 4. Secrecy laws consistent with the Recommendations | LC     | • No specific provisions for preventing any impediment to the exchange of information between financing institutions when it is requested. |
| 5. Customer due diligence                     | NC     | • Poor knowledge of customer due diligence obligations by designated persons (except those in the banking sector);  
• The scope of application of CDD measures in AML does not cover all the financial activities identified by FATF;  
• No prohibition of anonymous accounts;  
• No obligation to verify identification data through reliable and independent sources;  
• Obligations for identification of beneficiary owners are too limited;  
• No obligation to gather information on the purpose and nature of business |
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<th>Forty Recommendations</th>
<th>Rating</th>
<th>Summary of factors underlying rating</th>
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<tr>
<td></td>
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<td>relationship envisaged;</td>
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<td>• No requirement for ongoing customer</td>
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<td>due diligence in business relationships;</td>
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<td>• No obligation for enhanced customer</td>
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<td>due diligence measures for high-risk</td>
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<td>clients;</td>
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<td></td>
<td></td>
<td>• Simplified customer due diligence</td>
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<td>measures are too broad and imprecise;</td>
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<td>• Lack of clarity on the moment to</td>
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<td>verify the identity of the beneficiary</td>
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<td>owner of client;</td>
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<td>• No obligations in case of non-compliance</td>
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<td>with customer due diligence;</td>
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<td>• Uncertainties on the adoption of the</td>
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<td>annex to the CFT law.</td>
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<td>6. Politically exposed persons</td>
<td>NC</td>
<td>• Lack of obligations relating to PEPs in the AML framework;</td>
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<tr>
<td></td>
<td></td>
<td>• Very poor compliance with obligations relating to PEP in the AML framework.</td>
</tr>
<tr>
<td>7. Correspondent banking</td>
<td>NC</td>
<td>• No obligations relating to correspondent banking.</td>
</tr>
<tr>
<td>8. New technologies and non face-to-face business</td>
<td>NC</td>
<td>• Partial compliance with the requirements to design policies for preventing misuse of technological developments in national AML/CFT systems;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• No obligation to have risk management measures in place, including specific and effective customer due diligence measures.</td>
</tr>
<tr>
<td>9. Third parties and introducers</td>
<td>NC</td>
<td>• No obligation on financial institutions using third parties to implement timely customer due diligence measures;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• No requirements for financial institutions using third parties to make sure the said parties have the ability for delivery, without undue delay, of customer due diligence measures with regard to identification;</td>
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<tr>
<td></td>
<td></td>
<td>• No provisions for verifying whether the third party compliant with criteria can be established in host countries that do not apply FATF Recommendations;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• No clear provisions on the institution responsible for identification and verification of third parties.</td>
</tr>
<tr>
<td>10. Record keeping</td>
<td>PC</td>
<td>• No specific provisions on the nature and availability of the records that financial institutions should keep;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Poor implementation of prescribed...</td>
</tr>
<tr>
<td>Forty Recommendations</td>
<td>Rating</td>
<td>Summary of factors underlying rating</td>
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<td>----------------------------------------------------------------</td>
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</tbody>
</table>
| 11. Unusual transactions                                       | PC     | • No provisions for examining, to the extent possible, the context and purpose of unusual transactions, and to set out the findings in writing;  
|                                                              |        | • No provisions that include auditors among the recipients of the findings of these examinations. |
| 12. Designated Non Financial Businesses and Professions – R.5, 6, 8-11 | NC     | • Service providers and trusts are not subjected to the core principles of AML/CFT;  
|                                                              |        | • No provisions on the duties of the Council of Chartered Accountants;  
|                                                              |        | • Limited dissemination of national AML/CFT laws to subjected professionals in the DNFBP sector;  
|                                                              |        | • No obligations on prudential matters are imposed on casinos as legal persons;  
|                                                              |        | • No threshold for applying due diligence measures on dealers in precious metals and gemstones;  
|                                                              |        | • No regulation in place for real estate agents;  
|                                                              |        | • No law on real estate development;  
|                                                              |        | • The AML law provides no requirements with respect to customer due diligence for PEPs. |
| 13. Suspicious transaction reporting                           | PC     | • STRs are limited to money laundering and financing of terrorism. As such, they do not cover the underlying offences provided under R1;  
|                                                              |        | • Lack of obligations for reporting attempted money laundering transactions;  
|                                                              |        | • No effective implementation of STR obligations by all reporting entities. |
| 14. Protection of reporters and no tipping-off                 | LC     | • Confidentiality measures that the senior management and employees in financial institutions are required to observe are limited to the STRs sent to the FIU. |
| 15. Internal controls, compliance and audit                    | PC     | • Internal control systems are not sufficiently independent and lack adequate resources;  
<p>|                                                              |        | • Ongoing training programmes and appropriate procedures for employment of non-banking sector workers are inadequate; |</p>
<table>
<thead>
<tr>
<th>Forty Recommendations</th>
<th>Rating</th>
<th>Summary of factors underlying rating</th>
</tr>
</thead>
</table>
| 17. Sanctions                                                                        | PC     | • Implementation is lacking for obligations on sanctions;  
• In the absence of application, it is difficult to assess whether sanctions are effective, proportionate and dissuasive;                                                                                                                                                                                                                                                |
| 18. Shell banks                                                                     | NC     | • No obligation to not enter into or continue respondent banking relations with shell banks;  
• No obligation to ensure that respondent banks abroad do not authorize shell banks permit use of their accounts.                                                                                                                                                                                                                  |
| 19. Other forms of reporting                                                          | NC     | • No feasibility and utility study on the establishment of a system for reporting on cash transactions.                                                                                                                                                                                                                                                                                 |
| 20. Other Non Financial Businesses and Professions and secure transaction techniques  | NC     | • DNFBPs have poor knowledge of requirements for suspicious transaction reporting;  
• Poor DNFBP compliance with AML/CFT obligations;  
• No measures are being implemented to promote bank penetration and use of non cash payment systems;  
• No guidance for enhancing DNFBP compliance with AML/CFT requirements.                                                                                                                                                                                                                                           |
| 21. Special attention for higher risk countries                                       | NC     | • No effective mechanisms for informing financial institutions about the concerns raised by the deficiencies in the AML/CFT systems of other countries;  
• No obligation on financial institutions to examine the context and intent of transactions with no apparent economic or lawful purpose and set out the findings in writing;                                                                                                     |
<table>
<thead>
<tr>
<th>Forty Recommendations</th>
<th>Rating</th>
<th>Summary of factors underlying rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>22. Foreign branches and subsidiaries</td>
<td>NC</td>
<td>• Total lack of AML/CFT requirements for branches and subsidiaries.</td>
</tr>
<tr>
<td>23. Regulation, supervision and monitoring</td>
<td>PC</td>
<td>• No details on measures for preventing criminals from taking over financial institutions other than banks and insurance companies;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• The scope of application of CDD measures for AML does not cover all the financial activities identified by FATF;</td>
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<tr>
<td></td>
<td></td>
<td>• No licensing for MVP service operators;</td>
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<td></td>
<td></td>
<td>• No regulation on prudential matters relating to AML/CFT in non-banking institutions;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• No effective implementation of prescribed obligations.</td>
</tr>
<tr>
<td>24. Designated Non Financial Businesses and Professions - regulation, supervision and monitoring</td>
<td>NC</td>
<td>• National laws do not define role of supervision and control authorities for casinos and gambling establishments with relation to AML/CFT;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Inadequate control, or complete lack of control on DNFBPs;</td>
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<tr>
<td></td>
<td></td>
<td>• Sanctions provided are not applied effectively.</td>
</tr>
<tr>
<td>25. Guidelines and feedback</td>
<td>NC</td>
<td>• No guidance on AML/CFT matters;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• No suspicious transaction report sent to the FIU by DNFBPs</td>
</tr>
<tr>
<td>Institutional and other measures</td>
<td></td>
<td>•</td>
</tr>
<tr>
<td>26. The Financial Intelligence Unit</td>
<td>PC</td>
<td>• FIU lacks operational self-reliance, owing to the lack of financial resources;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• The sample STR is not shared among all the subject categories;</td>
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<tr>
<td></td>
<td></td>
<td>• The absence of a secure and reliable telephone network undermines efforts to store immaterial data;</td>
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<td></td>
<td></td>
<td>• Responses to the financial and administrative information requests from the FIU are slow;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• The FIU lacks the means for direct or indirect access, upon demand, to financial and administrative information;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• No in-depth examination of ML/FT typologies in the FIU reports.</td>
</tr>
</tbody>
</table>
| 27. Law enforcement authorities                                                       | PC     | • Magistrates in the prosecution (public
<table>
<thead>
<tr>
<th>Forty Recommendations</th>
<th>Rating</th>
<th>Summary of factors underlying rating</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>prosecutor, investigating magistrates and court magistrates) lack specialized knowledge in AML/CFT;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• No legal provisions that clearly prescribe deferred arrests or seizures, or prohibit law enforcement authorities from using such arrests and seizures on AML/CFT issues.</td>
</tr>
<tr>
<td>28. Powers of competent authorities</td>
<td>LC</td>
<td>• No effective application of the obligations under this Recommendation, owing to the lack of human, material and technical resources.</td>
</tr>
<tr>
<td>29. Supervisors</td>
<td>PC</td>
<td>• Poor or no integration of AML/CFT in the monitoring systems of financial institutions;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Inspections are too few and do not cover all financial institutions within a reasonable time frame;</td>
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<td></td>
<td>• Inspections in the micro finance sector do not cover all players and are limited to the bigger institutions;</td>
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<td></td>
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<td>• No inspection of licensed MVT service operators;</td>
</tr>
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<td></td>
<td></td>
<td>• Type and scope of inspections done at the Post Office services in Togo and the Deposits Fund Division are difficult to understand.</td>
</tr>
<tr>
<td>30. Resources, integrity and training</td>
<td>PC</td>
<td>• The FIU lacks the material and financial resources to carry out its duties properly.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Investigation and law enforcement authorities are well-structured, but suffer a notorious lack of human and material resources to implement AML/CFT properly.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Confidentiality is not well protected, considering the additional requests for information that have to be processed.</td>
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<tr>
<td></td>
<td></td>
<td>• Lack of AML/CFT training for prosecution and investigation authorities: judges, prosecutors, police officers, customs officers, gendarme officers, to name just a few.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• The human, financial and technological resource allocations for the supervision and oversight authorities in the financial and DNFBP sectors are inadequate.</td>
</tr>
<tr>
<td>31. National cooperation</td>
<td>PC</td>
<td>• No mechanism for cooperation between investigation authorities and law</td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>Forty Recommendations</th>
<th>Rating</th>
<th>Summary of factors underlying rating</th>
</tr>
</thead>
</table>
| 32. Statistics        | NC     | • No statistics on assets confiscated and frozen with relation to money laundering or terrorist financing;  
                     |        | • Statistics on underlying offences are incomplete;  
                     |        | • No statistics in courts for trials on money laundering and terrorist financing;  
                     |        | • No detailed statistics on mutual legal assistance and extradition;  
                     |        | • No policy for storing statistics in the services that met with the Mission. |
| 33. Legal persons – beneficial owners | NC | • Measures taken are inadequate to meet the criteria under this Recommendation, particularly with regard to handling and managing RCCM that holds information on beneficiary owners.  
                                                   ✓ The Register of Business Names and Liens is not computerized;  
                                                   ✓ There is no national database that can provide information to the OHADA regional database.  
                     |        | • No CDD for identification of beneficiary owners. |
| 34. Legal arrangements – beneficial owners | NA | • There are no Trusts and Fiduciary companies in the domestic legal system in Togo. |
| International Co-operation |         | • |
| 35. Conventions       | PC     | • No effective implementation of the Vienna Convention, the Palermo Convention and the International Convention for the Suppression of the Financing of Terrorism |
| 36. Mutual Legal Assistance (MLA) | PC | • No criminalization of underlying offences for money laundering (terrorism, smuggling of migrants, human trafficking, insider trading and cybercrime), which can obstruct mutual legal assistance requirements.  
                     |        | • Togo has no laws or regulations in place to determine, in the interest of justice, the most appropriate court to try persons charged with offences subject to prosecution in several countries;  
<pre><code>                 |        | • There is no legal mechanism for |
</code></pre>
<table>
<thead>
<tr>
<th>Forty Recommendations</th>
<th>Rating</th>
<th>Summary of factors underlying rating</th>
</tr>
</thead>
</table>
| 37. Dual criminality   | PC     | • Dual criminality is an obstacle to mutual legal assistance.  
|                       |        | • No legal provision determining mutual legal assistance exists for less intrusive and non compulsory measures. |
| 38. Mutual Legal Assistance on confiscation and freezing | PC     | • No procedural law and standard for responding to requests for mutual legal assistance when it comes to identifying laundered assets or the proceeds of terrorist financing.  
|                       |        | • No legal mechanism for coordinating seizure and confiscation with other countries.  
|                       |        | • No legal means for planning how to share confiscated assets. |
| 39. Extradition       | PC     | • No clear legal provisions for extradition on certain offences (not criminalized in Togo), such as terrorism, human trafficking, smuggling of migrants, insider trading and cybercrime. |
| 40. Other forms of co-operation | PC     | • No clear indication on how the FIU can use its power for investigation to respond to a request from a non-WAEMU zone third country;  
|                       |        | • The judicial authorities lack the powers to simply investigate without MOUs on mutual legal assistance;  
<p>|                       |        | • Cooperation mechanisms on AML are not functioning well. |</p>
<table>
<thead>
<tr>
<th>Nine Special Recommendations</th>
<th>Rating</th>
<th>Summary of factors underlying rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>SR.I Implement United Nations instruments</td>
<td>NC</td>
<td>• No effective implementation of United Nations Resolutions 1267 and 1373;</td>
</tr>
<tr>
<td>SR.II Criminalize terrorist financing</td>
<td>PC</td>
<td>• Difficult to evaluate the effectiveness of the system in force;                                                                                                                                  • Annex to CFT Uniform Law not transposed to Togo’s domestic legal system;                                                                 • No criminalization of the acts of terrorism set out in the annex to the International Convention for the Suppression of the Financing of Terrorism.</td>
</tr>
<tr>
<td>SR.III Freeze and confiscate terrorist assets</td>
<td>NC</td>
<td>• No legal provisions in place that set out the modalities for freezing funds that are used for terrorist financing in accordance with Resolutions 1267 and 1373;                                                                 • Non-compliance with the definition of “funds” subject to freezing.                                                                 • No national mechanism for drawing up a listing of terrorist or terrorist organisations;                                                                 • No legal standards that set out the modalities for integrating the freezing mechanisms of other countries;                                                                 • No procedures in place for litigating against freezing measures so that the courts can re-examine them;                                                                 • No provision for freezing, seizure and confiscation in other circumstances;                                                                 • No effective monitoring of compliance with the legal obligations for SRIII in Togo;                                                                 • Lack of an efficient system for disseminating freezing measures in the financial sector and the other sectors concerned;                                                                 • No clear instructions to financial institutions and other remitting establishments on how to freeze criminal funds;                                                                 • No procedure for public information on updated lists of terrorists and terrorist organisations;                                                                 • No effective application of legal provisions for protection of bona fide third parties.</td>
</tr>
<tr>
<td>SR.IV Suspicious transaction reporting</td>
<td>PC</td>
<td>• General lack of understanding on STR requirements for CFT.</td>
</tr>
<tr>
<td>Nine Special Recommendations</td>
<td>Rating</td>
<td>Summary of factors underlying rating</td>
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<td>• No obligation to report attempted terrorist financing transactions;</td>
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<td>• Lack of effectiveness. The FIU has received no STR on the financing of terrorism since inception.</td>
</tr>
<tr>
<td>SR.V International co-operation</td>
<td>PC</td>
<td>• Mutual legal assistance in FT does not facilitate the voluntary appearance of persons who can provide information or give testimony to a requesting country.</td>
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<td></td>
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<td>• Lack of set time period for due diligence in handling requests for mutual legal assistance;</td>
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<td>• There is no fund for seized assets in which all or part of the confiscated assets could be deposited.</td>
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<td>• The country has no measure in place for the sharing of confiscated assets.</td>
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<td>• Extradition is not granted in the absence of dual criminality, especially when it comes to less intrusive and non compulsory measures.</td>
</tr>
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<td></td>
<td>• No principle to judge or extradite in relation to certain offences not criminalized in Togo, such as terrorism, human trafficking, smuggling of migrants, insider trading and cybercrime.</td>
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<td></td>
<td>• No period of time is prescribed specifically by law for due diligence in requests for extradition.</td>
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<td>• No controls and safeguards to ensure that information received by the competent authorities for CFT are used only for authorized purposes.</td>
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<td></td>
<td></td>
<td>• No possibility for international cooperation among all the other competent authorities and their foreign counterparts in all areas required for international cooperation.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Failure to effectively implement mechanisms for cooperation in CFT.</td>
</tr>
<tr>
<td>SR VI AML/CFT requirements for money/value transfer services</td>
<td>PC</td>
<td>• No competent authority that authorizes MVT services.</td>
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<tr>
<td></td>
<td></td>
<td>• No mechanisms for supervising and controlling MVT services.</td>
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<td></td>
<td></td>
<td>• No obligation to maintain a list of MVT service operators by each MVT service and submit it to the designated competent authority.</td>
</tr>
<tr>
<td>Nine Special Recommendations</td>
<td>Rating</td>
<td>Summary of factors underlying rating</td>
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</tr>
</tbody>
</table>
| **SR VII  Wire transfer rules** | PC    | ● Clear lack of requirements to mention the address of the originating person on messages and to keep this information on record.  
● Lack of obligations for any intermediary or any financing institution to verify that all information required for wire and value transfers is submitted in due form with the transfer order.  
● No obligation to adopt effective procedures based on risk assessment. |
| **SR.VIII Non-profit organisations** | NC    | ● Oversight authorities lack the capabilities to supervise all the NPOs they need to cover.  
● No obligation to keep the receipts of NPO financial transactions.  
● No outreach campaigns on the risks of terrorist financing. |
| **SR. IX  Cross Border Declaration or Disclosure** | NC    | ● Lack of rigour in the system for declaration of cash and bearer negotiable instruments at land borders.  
● Customs authorities do not systematically send the FIU information available on the transportation of physical cash and bearer negotiable instruments.  
● The customs authorities in Togo are not good in communicating information on the physical transportation of precious metals and gemstones to their counterparts in transit and destination countries.  
● No automated system for the management of information on physical transportation of cash, values and bearer negotiable instruments.  
● Togolese border customs authorities lack direct access to the World Customs Organization’s CEN.  
● Outreach on AML/CFT to customs and dealers in precious metals and gemstones is inadequate. |
### TABLE 2: RECOMMENDED ACTION PLAN TO IMPROVE THE AML/CFT SYSTEM

<table>
<thead>
<tr>
<th>FATF 40 + 9 Recommendations</th>
<th>Main recommended measures</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Legal system and related institutional measures</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Scope of application of the money laundering offence (R 1, R 2)</strong></td>
<td><strong>Recommendation 1</strong></td>
</tr>
<tr>
<td></td>
<td>- Togo’s AML law should state clearly if the assets that derive from a money laundering offence can include the proceeds of crime.</td>
</tr>
<tr>
<td></td>
<td>- Togo should criminalize terrorism, human trafficking, smuggling of migrants, insider trading and cybercrime as predicate offences for money laundering.</td>
</tr>
<tr>
<td></td>
<td>- The annex to the AML law in Togo should be transposed in the domestic legal system.</td>
</tr>
<tr>
<td></td>
<td><strong>Recommendation 2</strong></td>
</tr>
<tr>
<td></td>
<td>- Facilitate the evaluation of evidence by making clear provision for legal measures to state that the mental element of money laundering can be deduced from objective factual circumstances.</td>
</tr>
<tr>
<td><strong>Criminalization of terrorist financing (SR II)</strong></td>
<td>The Togolese authorities should:</td>
</tr>
<tr>
<td></td>
<td>- Criminalize terrorism and terrorist organisations in Togolese substantive law.</td>
</tr>
<tr>
<td></td>
<td>- Transpose the annex to the CFT Uniform Law in Togo’s domestic legal system.</td>
</tr>
<tr>
<td></td>
<td>- Internalize the provisions of the 9 Conventions listed in the annex to the International Convention for the Suppression of the Financing of Terrorism.</td>
</tr>
<tr>
<td><strong>Confiscation, freezing and seizing of proceeds of crime (R3)</strong></td>
<td>The Togolese authorities should:</td>
</tr>
<tr>
<td></td>
<td>- Take measures to prevent or cancel contractual or other arrangements where the persons involved had knowledge, or were supposed to have had knowledge that they would undermine the ability of the competent authorities to recover assets subject to confiscation.</td>
</tr>
<tr>
<td></td>
<td>- Authorize the submission, without prior notification, of a request for freezing or seizure in AML proceedings.</td>
</tr>
<tr>
<td><strong>Confiscation of the proceeds of crime or assets used for terrorist financing (SR III)</strong></td>
<td>The Togolese authorities should:</td>
</tr>
<tr>
<td></td>
<td>- Develop domestic measures for defining the procedures and modalities for freezing terrorist funds in accordance with Resolutions 1267 and 1373;</td>
</tr>
<tr>
<td></td>
<td>- Revise the definition of “fund” to make it compliant with international standards;</td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>FATF 40 + 9 Recommendations</th>
<th>Main recommended measures</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>- Provide a national mechanism to draw up a list of terrorists or terrorist organisations;</td>
</tr>
<tr>
<td></td>
<td>- Establish procedures for defining the modalities of taking into account the freezing mechanisms of other countries;</td>
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<td></td>
<td>- Establish procedures for litigating against freezing measures so that the courts can re-examine them;</td>
</tr>
<tr>
<td></td>
<td>- Institute measures for freezing, confiscation and seizure in all circumstances;</td>
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<tr>
<td></td>
<td>- Ensure effective monitoring of compliance with the legal obligations relating to SRIII in Togo;</td>
</tr>
<tr>
<td></td>
<td>- Establish an efficient system for communicating freezing measures to the financial sector;</td>
</tr>
<tr>
<td></td>
<td>- Develop clear instructions for financial institutions and other remitting establishments to take appropriate measures for freezing criminal funds;</td>
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<td></td>
<td>- Develop procedure to inform the public on the examination of requests for withdrawal;</td>
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<td></td>
<td>- Publish in the Official Gazette the list of persons or entities whose funds or other resources are going to be frozen, as well as the decisions made to unfreeze funds;</td>
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<tr>
<td></td>
<td>- Establish proper procedures to authorize access to funds or other assets that were frozen in accordance with Resolution 1267, and that are to be used in covering essential expenses, payment of certain types of commissions, fees and payment for services, as well as extraordinary expenses;</td>
</tr>
<tr>
<td></td>
<td>- Institute, via laws or regulations, as appropriate, a measure for protecting bona fide third parties.</td>
</tr>
<tr>
<td>The Financial Intelligence Unit and its functions (R26)</td>
<td>The Togolese authorities should implement following recommendations:</td>
</tr>
<tr>
<td></td>
<td>- Adopt the national AML/CFT strategy in Togo;</td>
</tr>
<tr>
<td></td>
<td>- Distribute the sample STR to all the reporting entities;</td>
</tr>
<tr>
<td></td>
<td>- Provide the FIU with adequate financial and human resources;</td>
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<td></td>
<td>- Give the FIU a big budget under conditions that are predictable;</td>
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<tr>
<td></td>
<td>- Give the FIU requisite resources to operate independently;</td>
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<td></td>
<td>- Provide the FIU with a state-of-the-art IT system;</td>
</tr>
<tr>
<td></td>
<td>- Give the FIU direct or indirect access to information in the hands of the other competent authorities.</td>
</tr>
<tr>
<td>FATF 40 + 9 Recommendations</td>
<td>Main recommended measures</td>
</tr>
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</tr>
<tr>
<td><strong>Law enforcement, prosecution and other competent authorities (R 27, R28)</strong></td>
<td>The Togolese authorities should:</td>
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<tr>
<td></td>
<td>• Enable the prosecution and investigation authorities to gain specialized knowledge in AML/CFT;</td>
</tr>
<tr>
<td></td>
<td>• Institute a legal provision that clearly prescribes the deferment of arrests or seizures, or prohibits such arrests and seizures in judicial police investigations on AML/CFT issues;</td>
</tr>
<tr>
<td></td>
<td>• Train prosecution and investigation authorities in AML/CFT, specifically in investigation techniques;</td>
</tr>
<tr>
<td></td>
<td>• Provide adequate material and human resources to the FIU, investigation authorities and law enforcement authorities;</td>
</tr>
<tr>
<td></td>
<td>• Allocate and makes available an adequate budget to the FIU.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Cross border declaration and disclosure (SR IX)</th>
<th>The Togolese authorities should implement the following recommendations:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• A system for declaring cash and bearer negotiable instruments at land borders;</td>
</tr>
<tr>
<td></td>
<td>• A system for customs authorities to communicate information on cash or bearer negotiable instruments and value transfers to the FIU;</td>
</tr>
<tr>
<td></td>
<td>• A system for communicating information on precious metal and gemstone transfers to transit and destination countries;</td>
</tr>
<tr>
<td></td>
<td>• A system for automated management of information on cash, value and bearer negotiable instrument transfers;</td>
</tr>
<tr>
<td></td>
<td>• Give the customs authorities at land, sea and air borders direct access to the WCO/CEN and Interpol’s I-24/7 network;</td>
</tr>
<tr>
<td></td>
<td>• Sensitize and train customs authorities and dealers in precious metals and gemstones in AML/CFT.</td>
</tr>
</tbody>
</table>

### Preventive measures applicable to financial institutions

<table>
<thead>
<tr>
<th>Risk of money laundering or terrorist financing</th>
<th>Recommendation 5</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Customer due diligence Devoir, including customer identification and record keeping (R. 5 to 8)</strong></td>
<td>• Financial institutions should effectively implement AML/CFT measures;</td>
</tr>
<tr>
<td></td>
<td>• Apply CDD measures to all the financial activities defined by FATF;</td>
</tr>
<tr>
<td></td>
<td>• Revise the AML law to include the identification requirements prescribed by FATF;</td>
</tr>
<tr>
<td>FATF 40 + 9 Recommendations</td>
<td>Main recommended measures</td>
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<tr>
<td></td>
<td>• Adopt the annex to the CFT law in a formal manner;</td>
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<td></td>
<td>• Prohibit, in an explicit manner, all anonymous accounts or accounts under fictitious names;</td>
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<td></td>
<td>• Adopt clear provisions for identifying beneficiary owners;</td>
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<td></td>
<td>• Implement effective measures that require financial institutions to gather information on the subject and nature of the business relationship they envisage;</td>
</tr>
<tr>
<td></td>
<td>• Financial institutions should adopt ongoing customer due diligence measures and update customer information;</td>
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<tr>
<td></td>
<td>• Adopt measures binding financial institutions to take enhanced customer due diligence for high risk customers and maintain reduced customer due diligence for financing institutions subject to the AML law.</td>
</tr>
<tr>
<td><strong>Recommendation 6</strong></td>
<td>• Financial institutions should effectively implement a risk sensitive approach to AML/CFT;</td>
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<tr>
<td></td>
<td>• Financial institutions should adopt specific requirements for PEPs.</td>
</tr>
<tr>
<td><strong>Recommendation 7</strong></td>
<td>• Financial institutions should collect adequate and reliable information from verifiable, publicly available sources before entering into any respondent banking relations;</td>
</tr>
<tr>
<td></td>
<td>• Financial institutions should systematically seek authorization from their senior management before entering into new correspondent banking relations;</td>
</tr>
<tr>
<td></td>
<td>• Take all necessary measures to evaluate the controls in place for AML/CFT in the client institution and assess their relevance and effectiveness;</td>
</tr>
<tr>
<td></td>
<td>• Write out the responsibilities of each institution in AML/CFT;</td>
</tr>
<tr>
<td></td>
<td>• Implement the measures prescribed by FATF when using transit accounts in a respondent banking relationship.</td>
</tr>
<tr>
<td><strong>Recommendation 8</strong></td>
<td>• Define clear and comprehensive policies to prevent misuse of technological development in national AML/CFT systems.</td>
</tr>
<tr>
<td>FATF 40 + 9 Recommendations</td>
<td>Main recommended measures</td>
</tr>
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</tr>
</tbody>
</table>
| Third parties and introduced business (R9) | The Togolese authorities are encouraged to enact provisions that require financial institutions using third parties to:  
  - Obtain, without delay, information on customer due diligence measures;  
  - Ensure third parties have the capacity to provide, upon request, data on customer identification and due diligence;  
  - Make provision for verifying if the conditions under which third parties comply with criteria are applicable in countries not implementing FATF Recommendations;  
  - Clarify the institution with ultimate responsibility to do customer identification and verification. |
| Financial institution secrecy or confidentiality (R4) | The Togolese authorities should:  
  - Adopt measures for exchange of information between financial institutions where required by FATF Recommendation 7 or 9 or Special Recommendation VII. |
| Record keeping and wire transfer rules (R10 and SR VII) | Recommendation 10  
  - Togo should amend its legislation to compel designated institutions to communicate, in a timely manner, the information requested by the competent authorities.  
  - Better clarify the type of documents to keep, especially when it comes to business correspondence.  
  - Micro finance players and licensed MVT service operators should apply the existing provisions on record keeping.  
  Special Recommendation VII  
  - Measures should be taken to mention the address of the originator in wire transfer messages and put on record.  
  - Intermediary institutions or any other financial institutions involved in the process should be required to verify that all the information required is sent with the transfer order.  
  - Measures should be taken to institute effective risk sensitive procedures for processing transfers without all the information required. |
| Monitoring of transactions and relationships (R11 and R21) | Recommendation 11  
  - Measures should be taken to compel institutions to examine, to the extent possible, the context and purpose of unusual transactions and to set out the findings in writing. |
<table>
<thead>
<tr>
<th>FATF 40 + 9 Recommendations</th>
<th>Main recommended measures</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Recommendation 21</strong></td>
<td>• Auditors should also receive the findings of these examinations.</td>
</tr>
<tr>
<td><strong>Suspicious Transaction Reporting (R. 13, R14, R19, R 25 and SR IV)</strong></td>
<td><strong>Recommendation 13</strong></td>
</tr>
<tr>
<td>• Suspicious transaction reporting should also cover funds from the list of underlying offences under Recommendation 1, as well as attempted suspicious transactions in ML/FT.</td>
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</tr>
<tr>
<td><strong>Recommendation 14</strong></td>
<td>• The confidentiality observed on STRs by the senior management and employees in financial institutions should be extended to cover all information sent to the FIU.</td>
</tr>
<tr>
<td><strong>Recommendation 19</strong></td>
<td>• The Togolese authorities should consider conducting a feasibility and utility study on the establishment of a system for reporting cash transactions.</td>
</tr>
<tr>
<td><strong>Recommendation 25</strong></td>
<td>• Guidelines should be developed and shared with all designated persons subject to AML/CFT laws.</td>
</tr>
<tr>
<td><strong>Special Recommendation IV</strong></td>
<td>• The FIU should conduct typology surveys and present concrete cases to the designated persons.</td>
</tr>
<tr>
<td></td>
<td>• Dissemination of the CFT law and outreach to designated persons on their obligations under the law should be pursued.</td>
</tr>
<tr>
<td>FATF 40 + 9 Recommendations</td>
<td>Main recommended measures</td>
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<tr>
<td><strong>Internal controls, compliance, audit and foreign branches (R15 and R22)</strong></td>
<td>The Togolese authorities should implement the following recommendations:</td>
</tr>
<tr>
<td><strong>Recommendation 15</strong></td>
<td>- Establish for designated persons an independent control system with adequate resources to deliver its activities properly;</td>
</tr>
<tr>
<td></td>
<td>- Develop an implement continuing training programmes for staff in financial institutions;</td>
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<td></td>
<td>- Design and apply appropriate measures for employment to ensure the hiring process is compliant with fit and proper criteria.</td>
</tr>
<tr>
<td><strong>Recommendation 22</strong></td>
<td>- Adopt measures compelling financial institutions to ensure that their foreign branches and subsidiaries observe the AML/CFT measures prescribed by FATF;</td>
</tr>
<tr>
<td></td>
<td>- Institute the obligation for financial institutions to inform the supervision authorities in their countries of origin when one of their foreign branches or subsidiaries is not observing appropriate AML/CFT measures.</td>
</tr>
<tr>
<td><strong>Shell banks (R18)</strong></td>
<td>The Togolese authorities should adopt measures to:</td>
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<tr>
<td></td>
<td>- Prohibit, in an unequivocal manner, the entering into or maintenance of relations with shell banks;</td>
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<tr>
<td></td>
<td>- Compel financial institutions to ensure that their client financial institutions do not permit shell banks to use their accounts.</td>
</tr>
<tr>
<td><strong>The supervisory and oversight system – competent authorities and their duties, functions, roles and powers (R17, R23, R25, R29, R30)</strong></td>
<td><strong>Recommendation 17</strong></td>
</tr>
<tr>
<td></td>
<td>- Implement financial sanctions against legal persons that default on their AML/CFT obligations.</td>
</tr>
<tr>
<td></td>
<td><strong>Recommendation 23</strong></td>
</tr>
<tr>
<td></td>
<td>- Extend measures to prevent criminals from taking over all legal entities;</td>
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<td></td>
<td>- Expand the scope of application of CDD and control measures to all financial activities identified by FATF;</td>
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<tr>
<td></td>
<td>- Establish licensing and monitoring of MVT service sub-agents;</td>
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<tr>
<td></td>
<td>- Develop regulation on prudential matters for all financial sector players.</td>
</tr>
</tbody>
</table>
### FATF 40 + 9 Recommendations

#### Main recommended measures

**Recommendation 29**
- Integrate AML/CFT more profoundly into the supervision system for financial institutions;
- Increase the frequency of inspections in financial institutions;
- Extend inspections to cover MVT service operators;
- Organize frequent and adequate inspections that include AML/CFT at the Post Office Services and the Deposits Fund Division.

**Recommendation 30**
- Provide adequate human, financial and technological resources to the supervision authorities.

#### Money value transfer services (SR VI)

**The Togolese authorities should reorganize MVT services by:**
- Designating an authority responsible for issuing authorizations and monitoring activities;
- Establishing an effective supervision system;
- Maintaining a list of operators to send to the designated competent authority.

#### Preventive measures applicable to Non Financial Businesses and Professions

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<table>
<thead>
<tr>
<th>Customer due diligence and record keeping (R12)</th>
<th>The Togolese authorities should especially:</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Subject service providers to companies and trusts to the obligations on prudential matters and suspicious reporting;</td>
</tr>
<tr>
<td></td>
<td>Clearly subject chartered accountants and certified public accountants to AML/CFT laws;</td>
</tr>
<tr>
<td></td>
<td>Ensure wide dissemination of domestic AML/CFT laws among designated professions and their supervision authorities;</td>
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<tr>
<td></td>
<td>Conduct an information and outreach campaign on the risks of using the DNFBP sector for money laundering and terrorist financing purposes;</td>
</tr>
<tr>
<td></td>
<td>Impose prudential obligations on casinos as legal persons;</td>
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<td></td>
<td>Establish a threshold for dealers in precious metals and gemstones to apply customer due diligence measures in accordance with FATF Recommendations;</td>
</tr>
<tr>
<td></td>
<td>Institute customer due diligence measures for PEPs in the AML law.</td>
</tr>
<tr>
<td>FATF 40 + 9 Recommendations</td>
<td>Main recommended measures</td>
</tr>
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<td>-----------------------------</td>
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</tbody>
</table>
| Suspicious transaction reporting (R16) | **The Togolese authorities are recommended to:**  
- Compel DNFBPs to pay special attention to their business relations and their transactions with countries that do not apply, or insufficiently apply FATF Recommendations.  
- Clearly state the requirement for DNFBPs to put in place internal monitoring programmes for combating money laundering and terrorist financing.  
- Organize training and outreach campaigns on AML/CFT for the various categories of DNFBPs. |
| Regulation, Supervision and Monitoring (R24 and R25) | **The Togolese authorities should put in place the following recommendations.**  
**Recommendation 24**  
- The role of supervision and control authorities of casinos and gambling establishments should be defined in Togo’s domestic AML/CFT laws.  
- The authorities should take the necessary measures to include AML/CFT in the supervision and monitoring systems for casinos and gambling establishments.  
- The profession of real estate agent should be regulated in Togo.  
**Recommendation 25**  
- The competent authorities (FIU, supervision authorities) and Professional Associations in the DNFBP sector should establish guidelines to enable their members to apply and meet their obligations in anti-money laundering and counter terrorist financing efforts.  
- These competent authorities and DNFBP professional associations should be given adequate technical resources to perform their duties properly.  
- Because DNFBP supervision authorities lack resources and have limited knowledge of money laundering and terrorist financing issues, the duty of developing the said guidelines should be entrusted initially to the Financial Intelligence Unit. |
<p>| Other non-financial businesses and professions, | <strong>The relevant observations and recommendations, made previously for financial institutions (Section 3), should apply</strong> |</p>
<table>
<thead>
<tr>
<th>FATF 40 + 9 Recommendations</th>
<th>Main recommended measures</th>
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<tr>
<td>and modern and secure fund management techniques (R20)</td>
<td>also to DNFBPs.</td>
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<td></td>
<td>• More specifically, the competent authorities are recommended to establish guidelines to enable DNFBPs to apply and meet their obligations in anti-money laundering efforts;</td>
</tr>
<tr>
<td></td>
<td>• In the very short term, the FIU should sensitize the designated persons and develop guidelines for DNFBPs;</td>
</tr>
<tr>
<td></td>
<td>• AML/CFT training and outreach programmes should be put in place for the various categories of DNFBPs subjected to AML/CFT laws.</td>
</tr>
</tbody>
</table>

Legal persons and arrangements and non-profit organizations

<table>
<thead>
<tr>
<th>Legal persons - Access to beneficial ownership and control information (R 33)</th>
<th>The Togolese authorities should implement the following recommendations.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Improve the policy for regulating the informal sector.</td>
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<td></td>
<td>• See to it that obligations under AUSCGIE on identification and preservation of information on beneficial owners are applied effectively.</td>
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<tr>
<td></td>
<td>• Make provision for the identification of beneficial owners in all cases.</td>
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<td></td>
<td>• Put in place an institutional framework for exchanges and cooperation between the main services provided to ensure that the information gathered on beneficial owners is reliable.</td>
</tr>
<tr>
<td></td>
<td>• Computerize the Register of Business Names and Liens.</td>
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<td></td>
<td>• Establish a national database to store in one central place the data in the Register of Business Names and Liens.</td>
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<tr>
<td></td>
<td>• Grant more human, financial and technical resources for RCCM management.</td>
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<td></td>
<td>• Train the stakeholders responsible for RCCM management.</td>
</tr>
</tbody>
</table>

Legal Arrangements – Access to beneficial ownership and control information (R.34)

| | The Togolese authorities should prepare legislation on fiduciary companies that regulates them and, where appropriate, prohibits them in a clear and unambiguous manner. |

Non-profit organisations (SR VIII)

<p>| | The Togolese authorities are recommended to implement the following measures: |
| | • Organise information, outreach and training campaigns to prevent the risks for NPOs to be misused for terrorist financing; |
| | • Establish supervision and control mechanisms for |</p>
<table>
<thead>
<tr>
<th>FATF 40 + 9 Recommendations</th>
<th>Main recommended measures</th>
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<tbody>
<tr>
<td>associations and NGOs;</td>
<td>• Increase the number of staff in bodies that monitor national and international NGOs;</td>
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<td></td>
<td>• Commission a study on the NGO sector vulnerability to the risks of terrorist financing;</td>
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<td></td>
<td>• Establish and maintain a database on control activities and sanctions against NPOs;</td>
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<tr>
<td></td>
<td>• Give NPOs financial and material resources to implement their action plan;</td>
</tr>
</tbody>
</table>

### National and international cooperation

#### National co-operation and coordination (R31)

**The Togolese authorities are recommended to:**

- Put in place a formal and effective mechanism for cooperation between investigation and law enforcement authorities.
- Render the inter-Ministerial committee operational.

### The Conventions and United Nations Special Resolutions (R35 and SR I)

#### Recommendation 35

- Implement fully the Vienna Convention, Palermo Convention and the International Convention for the Suppression of the Financing of Terrorism, particularly by addressing the weaknesses identified during the review of RI and SRII;
  - the AML Law in Togo should clearly state whether the assets derived from the commission of a money laundering offence can include indirect products of the crime or misdemeanor.
  - Togo should criminalize terrorism, human trafficking, and the smuggling of migrants as underlying offences of money laundering;
  - Self laundering should be clearly prescribed by the legal provisions on AML in Togo
- Criminalize terrorism and terrorist organisations in Togolese substantive law.

#### Special Recommendation 1

- Take effective measures to implement Resolutions 1267 and 1373, particularly by addressing the weaknesses identified during the review of SRIII;
  - develop internal provisions for determining procedures and
FATF 40 + 9 Recommendations

<table>
<thead>
<tr>
<th>Main recommended measures</th>
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<tbody>
<tr>
<td>modalities for freezing the funds of terrorists in compliance with Resolution 1267;</td>
</tr>
<tr>
<td>- provide a national mechanism to draw up a listing of terrorists and terrorist organisations;</td>
</tr>
<tr>
<td>- establish procedures for setting the modalities to accommodate the freezing mechanisms of other countries;</td>
</tr>
<tr>
<td>- develop procedures for litigating against freezing measures so that the courts can re-examine them;</td>
</tr>
<tr>
<td>- institute provisions for freezing, seizure and confiscation in all circumstances;</td>
</tr>
<tr>
<td>- provide effective monitoring of compliance with the legal obligations on SR III in Togo;</td>
</tr>
<tr>
<td>- establish an efficient system for communicating freezing measures to the financial sector;</td>
</tr>
<tr>
<td>- give clear instructions for financial institutions and other currency remitting institutions to take proper measures for freezing criminalized funds;</td>
</tr>
<tr>
<td>- publish in the official gazette the list of persons or entities whose funds or other resources should be frozen, as well as the decisions made to unfreeze funds;</td>
</tr>
<tr>
<td>- develop suitable procedures for authorizing access to funds or other assets that were frozen under the provisions of Resolution 1267 and are going to be used to cover essential expenses, pay for certain forms of commissions, fees and payment for services, as well as extraordinary expenses;</td>
</tr>
<tr>
<td>- enact laws or regulations for implementing measures to protect third parties acting in good faith.</td>
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</table>

Mutual legal assistance (R 32, 36-38 and SR V)

<table>
<thead>
<tr>
<th>Recommendation 32</th>
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<tbody>
<tr>
<td>Statistics on money laundering and terrorist financing should be kept, especially regarding:</td>
</tr>
<tr>
<td>- Training and specialization of AML/CFT stakeholders, in particularly, magistrates;</td>
</tr>
<tr>
<td>- Signing MOUs for cooperation and mutual legal assistance in AML/CFT.</td>
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<tr>
<td>The authorities are encouraged vigorously to provide a specialized planning and statistical unit on AML/CFT.</td>
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</tbody>
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<table>
<thead>
<tr>
<th>Recommendation 36</th>
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<tbody>
<tr>
<td>Establish a legal mechanism for diligent treatment of requests for mutual legal assistance.</td>
</tr>
</tbody>
</table>
| Measures should be taken to determine, in the interest of justice, the most appropriate court for prosecuting persons accused in
<table>
<thead>
<tr>
<th>FATF 40 + 9 Recommendations</th>
<th>Main recommended measures</th>
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<tbody>
<tr>
<td>cases subject to prosecution in several countries.</td>
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<tr>
<td>• Criminalize terrorism, human trafficking, smuggling of migrants, insider trading and cybercrime in Togo’s legal system to prevent the obstruction of mutual legal assistance.</td>
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<tr>
<td><strong>Recommendation 38</strong></td>
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<tr>
<td>• Appropriate laws and procedures should be in place to respond effectively and without undue delay to requests for mutual legal assistance sent by foreign countries and relating to the identification, freezing or confiscation of laundered assets resulting from products and instrumentalities intended for use in committing any money laundering and terrorist financing offence.</td>
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<tr>
<td>• A mechanism to coordinate initiatives for seizure/confiscation and the sharing of confiscated funds with other countries, should be put in place.</td>
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<tr>
<td>• A fund should be established into which to deposit all or part of the confiscated assets for use in more appropriate ways.</td>
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<tr>
<td><strong>Special Recommendation V</strong></td>
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<tr>
<td>• Voluntary appearance of persons should be facilitated in order to provide information or testimony to the requesting country.</td>
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<tr>
<td>• A binding deadline should be set out clearly in the law, obliging national authorities to respond to requests for mutual legal assistance in terrorist financing.</td>
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<tr>
<td>• A mechanism for coordinating seizure/confiscation initiatives and the sharing of funds with other countries should be put in place.</td>
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<tr>
<td>• The CFT Law should cover international cooperation among all the other competent authorities and their foreign counterparts in all the areas required for international cooperation.</td>
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<tr>
<td>• Togo should put in place controls and safeguards to ensure that the information received by the competent authorities in CFT should be used only for authorized purposes.</td>
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<tr>
<td><strong>Extradition (R32, 37 and 39, SR V)</strong></td>
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<tr>
<td><strong>Recommendation 32</strong></td>
<td></td>
</tr>
<tr>
<td>• Appropriate measures should be taken to keep accurate statistics on:</td>
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<tr>
<td>• The extradition requests sent and received by the Togolese authorities;</td>
<td></td>
</tr>
<tr>
<td>• Next steps on the cases processed for extradition requests on ML/FT;</td>
<td></td>
</tr>
<tr>
<td>• The reasons why some requests for extradition are not granted.</td>
<td></td>
</tr>
<tr>
<td><strong>Recommendation 37</strong></td>
<td></td>
</tr>
<tr>
<td>• Clear measures should be taken to ensure duality criminality does not obstruct mutual legal assistance and extradition.</td>
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<tr>
<td>FATF 40 + 9 Recommendations</td>
<td>Main recommended measures</td>
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<td></td>
<td>• Legal provisions should be in place to grant mutual legal assistance under less intrusive and non compulsory conditions.</td>
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<tr>
<td></td>
<td><strong>Recommendation 39</strong></td>
</tr>
<tr>
<td></td>
<td>• Legal provisions should clearly criminalize certain underlying offences (terrorism, human trafficking, smuggling of migrants, cybercrime and insider trading) so that this does not obstruct extradition proceedings.</td>
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<tr>
<td></td>
<td><strong>Special Recommendation V</strong></td>
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<tr>
<td></td>
<td>• Laws should clearly set out a period when national authorities must respond to requests for extradition in relation with terrorist financing.</td>
</tr>
<tr>
<td></td>
<td>• Legal provisions should clearly criminalize certain underlying offences (terrorism, human trafficking, smuggling of migrants, cybercrime and insider trading), so that this does not obstruct extradition proceedings.</td>
</tr>
<tr>
<td></td>
<td>• Extradition should be granted, regardless of dual criminality provided in criminal law.</td>
</tr>
</tbody>
</table>

**Other forms of cooperation (R40 and SR V)**

|                             | • AML/CFT laws should be revised to allow for effective cooperation between the Togo FIU and the FIUs in non-WAEMU countries. |
|                             | • The CFT Law should make provision for international cooperation between all other competent authorities and their foreign counterparts in all areas deemed necessary for international cooperation. |
|                             | • The judicial authorities should be authorised to conduct, on behalf of their foreign counterparts, all less complicated investigations in the absence of agreements on mutual legal assistance. |
|                             | • Togo should put in place controls and safeguards to ensure that CFT information received by the relevant authorities is used solely for duly authorized purposes. |

**Other Issues**

<table>
<thead>
<tr>
<th>Other relevant AML/CFT measures or issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>General framework – Structural issues</td>
</tr>
</tbody>
</table>
## ANNEX

**Annex I: List of Documents annexed to Togo’s Response to the Mutual Evaluation Questionnaire**

<table>
<thead>
<tr>
<th>No</th>
<th>Item</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>La Constitution de la IV République</td>
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<tr>
<td>2</td>
<td>Le Statut des Magistrats</td>
</tr>
<tr>
<td>3</td>
<td>Code de l’Enfant</td>
</tr>
<tr>
<td>4</td>
<td>Organisation Judiciaire</td>
</tr>
<tr>
<td>5</td>
<td>Loi n° 98-008, portant Contrôle des Drogues</td>
</tr>
<tr>
<td>6</td>
<td>Loi n°95-014 du 14 juillet 1995, portant réglementation des Institutions Mutualistes ou Coopératives d’Epargne et de Crédit et</td>
</tr>
<tr>
<td></td>
<td>Décret n°96-038 du 10 avril 1996 pris en application de la loi n°95-014</td>
</tr>
<tr>
<td>7</td>
<td>Code Pénal- Code de Procédure Pénale- Code de Procédure Civile</td>
</tr>
<tr>
<td>8</td>
<td>OHADA, Traité et Actes uniformes commentés et annotés</td>
</tr>
<tr>
<td>9</td>
<td>Code des Assurances</td>
</tr>
<tr>
<td>10</td>
<td>Plan National Intégré de lutte contre la Drogue et le Crime, 2009-2013</td>
</tr>
<tr>
<td>11</td>
<td>CODE des DOUANES</td>
</tr>
<tr>
<td>12</td>
<td>Projet de CODE des DOUANES</td>
</tr>
<tr>
<td>13</td>
<td>Instruction n°01/2006/SP du 31 Juillet 2006, relative à l’Emission de Monnaie Electronique et aux Etablissements de Monnaie Electronique</td>
</tr>
<tr>
<td>14</td>
<td>Arrêté n°171/MEF/CENTIF-TG, fixant un Modèle de déclaration des opérations suspectes</td>
</tr>
<tr>
<td>15</td>
<td>Règlement Général Relatif à l’Organisation, au Fonctionnement et au Contrôle du Marché Financier Régional de l’UEMOA</td>
</tr>
<tr>
<td>Numéro</td>
<td>Document Description</td>
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<tr>
<td>18</td>
<td>CREPMF : Réglementation</td>
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<tr>
<td>19</td>
<td>Décret n° 2005-072/PR, portant Attribution et Organisation du Ministère de la Sécurité</td>
</tr>
<tr>
<td>20</td>
<td>Décret n° 92-130/PMRT, fixant les conditions de coopération entre les Organisations non gouvernementales (ONG) et le Gouvernement</td>
</tr>
<tr>
<td>21</td>
<td>Règlement n°14/2002/CM/UEMOA, relatif au Gel des Fonds et Autres Ressources Financières dans le cadre de la lutte contre le Financement du terrorisme dans les États Membres de l’UEMOA</td>
</tr>
<tr>
<td>23</td>
<td>Directive n°7/2002/CM/UEMOA, relative à la lutte contre le blanchiment de capitaux dans les États Membres de l’UEMOA</td>
</tr>
<tr>
<td>24</td>
<td>Décret n° 86-109, portant organisation et attributions du Ministère de l’Économie et des Finances</td>
</tr>
<tr>
<td>25</td>
<td>Décret n°2009-186/PR, Portant approbation du plan d’action national intégré de lutte contre la drogue et le crime au Togo</td>
</tr>
<tr>
<td>26</td>
<td>Décret 2010-026/PR, Portant nomination du Directeur National des Marchés</td>
</tr>
<tr>
<td>27</td>
<td>Décret n°2004-053/PR, Portant création et attributions de l’Office Central de Répression du Trafic Illicite des Drogues et du Blanchiment</td>
</tr>
<tr>
<td>28</td>
<td>Décret n°2005-118/PR, portant attributions et organisation du Ministère des Affaires Étrangères et de l’Intégration Africaine</td>
</tr>
<tr>
<td>29</td>
<td>Décret n°97-104/PR, portant attributions et organisation de l’Administration des Douanes</td>
</tr>
<tr>
<td>30</td>
<td>Ordonnance n° 80-11, relative à l’exercice de la profession d’Avocat</td>
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<td>31</td>
<td>Convention Régissant la Commission Bancaire de l’Union Monétaire Ouest-Africaine</td>
</tr>
<tr>
<td>32</td>
<td>Décret n°88-167, portant Création, Composition et Attributions de la Commission du contentieux des changes</td>
</tr>
<tr>
<td>33</td>
<td>Règlement n°15/2002/CM/UEMOA, relatif aux systèmes de paiement dans les États Membres de l’Union Économique et Monétaire Ouest-Africaine (UEMOA)</td>
</tr>
<tr>
<td>34</td>
<td>Règlement n°0005/CIMA/PCMA/CE/SG/2009, Modifiant et complétant le code des assurances des États membres de la CIMA</td>
</tr>
<tr>
<td>35</td>
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<td>Loi Organique n°2009-003, portant statut des Magistrats de la Cour des Comptes</td>
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| 146 | Formation des Membres de la CENTIF du TOGO en matière de lutte contre le blanchiment de capitaux et le financement du terrorisme  
     Président  
     Magistrat  
     Directeur des Enquêtes et de la Coopération  
     Secrétaire Général  

# Annex II: List of Institutions encountered during the on-site visit for the Mutual Evaluation of Togo

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<td>The National Lottery</td>
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<td>Directorate for Economy (Banking Commission)</td>
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<td>Ministry of Security and Civil Protection</td>
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