



Anti-money laundering and counter-terrorist financing measures

Republic of Togo

JUNE 2022

**Mutual Evaluation
Report**





The Inter-Governmental Action Group against Money Laundering (GIABA) is a specialized institution of ECOWAS and a FATF Style Regional Body that promotes policies to protect member States financial system against money laundering, terrorist financing and the financing of the proliferation of weapons of mass destruction. The FATF Recommendations are recognised as the global anti-money laundering (AML) and counter terrorist financing (CTF) standard.

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This assessment was adopted by GIABA at its June 2022 Plenary meeting.

Citing reference:

GIABA (2022), Anti-money laundering and counter-terrorist financing measures – Togo, Second Round Mutual Evaluation Report, GIABA, Dakar

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Executive Summary

1. This report summarizes the AML/CFT measures in place in Togo as at the date of the on-site visit, from 24th January to 10th February, 2021. It analyzes the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Togo's AML/CFT regime, and provides recommendations on how the system could be strengthened.

Key Findings

- a. Togo has taken the necessary measures to identify, assess and understand the ML/TF risks to which it is exposed, in accordance on its AML/CFT law. However, the lack of specific ML/TF statistical data, as well as the lack of specific risk assessments for Virtual Assets (VA) and Virtual Assets Service Providers (VASPs), environmental crime and maritime piracy with regard to the country's risk context, have negatively impacted the conclusions and findings obtained. Furthermore, although the findings of the NRA have been disseminated to all stakeholders, its limited appropriation by competent authorities in general also accounts for their mixed understanding of ML/TF risks.
- b. The consideration of ML/TF risks in the national strategy policy document is still very recent in Togo. This document, drawn up on the basis of the action plan emanating from the NRA, is yet to be adopted by the Togolese State authorities. The National Coordinating Committee (CONAC) and the Operational Unit for the facilitation of information and data exchanges established in 2018 to revitalize national coordination and cooperation as well as the exchange of information between stakeholders and key AML/CFT actors, are not operational, as their respective members are yet to be appointed. Nevertheless, the assessment team discovered that the coordination of AML/CFT activities was still being carried out by the Inter-ministerial Committee Monitoring AML/CFT Activities repealed in 2018, pending the operationalization of the new bodies established. Besides, the national coordination mechanism does not include the CFP, as the Togolese legal framework does not adequately provide for it.
- c. The FIU has become the cornerstone of the Togolese AML/CFT/FP system. It is all the more operational as it produces and disseminates high quality financial intelligence to the competent authorities, some of which has led to the detection of ML cases. It collaborates and communicates frequently with reporting entities, as well as with counterpart FIUs. However, it has not disseminated any TF-related information. Its analytical capabilities are limited due to inadequate staff strength. The assessment team also has reservations about FIU's capacity to guarantee the protection of the confidentiality of information, in view of the fact that the appointment and swearing in of its members have not been decreed, and its correspondents within State Departments

have not taken any oath either.

- d. ML investigations and prosecutions in Togo are not derived from any prioritization policy. Not only are the Law Enforcement Authorities (LEAs) not specialized in ML matters in Togo, but they are not sufficiently trained to carry out ML investigations effectively, hence the lack of systematic recourse to parallel financial investigations. The Togolese authorities have obtained four (4) convictions for money laundering by a third party, autonomous money laundering and self-money laundering. These convictions relate exclusively to the fraud offence identified in the NRA as the highest ML threat in Togo. The other main ML threats, namely, breach of trust, tax and customs fraud, corruption, drug trafficking, human trafficking, migrants' smuggling and environmental crime are scarcely represented in the investigations and legal prosecutions. The assessment team identified the lack of expertise and resources as significant challenges in investigating and prosecuting complex ML cases.
- e. Confiscation is not established as a criminal policy objective in Togo. Admittedly, the country has an adequate legal framework, allowing for the confiscation of criminal assets and consequently preventing criminals from enjoying the proceeds of their crimes, but there is no mechanism for the recovery and management of seized and confiscated assets other than precious metals and cash. Besides, the LEAs also do not have adequate capacity to identify assets earmarked for confiscation related to criminal activity committed abroad, and cooperation with their foreign counterparts in order to identify assets related to criminal activity committed in Togo. Cash and Bearer Negotiable Instruments (BNIs) of an amount equivalent to the prescribed threshold are only declared at the Lomé airport checkpoint. In the event of default or false declarations, they are not seized with a view to confiscation.
- f. In terms of TF, the criminalization regime does not cover the financing of a terrorist individual, a terrorist organization for any purpose, nor the financing of travel by foreign terrorist fighters. No case of TF had been detected, prosecuted and condemned in Togo as at the time of the on-site visit. Besides, Togo has no counter-terrorism strategy that incorporates the TF component. As part of the implementation of targeted financial sanctions, although the obligation to freeze the assets, funds or other resources of designated persons or entities immediately and without delay is enshrined in the Togolese legal system, it is grappling in practice with a procedure of prior notification of the decision introduced by the competent authority, for persons likely to hold assets and other resources belonging to persons and entities concerned. Moreover, this notification does not cover all reporting entities and is not implemented either. Therefore, there is no immediate implementation of TF-related TFS under UNSCRs 1262, 1373 and subsequent resolutions. The Togolese legal framework also enshrines the implementation of TFS related to PF, but the administrative freezing regime does not clearly define any mechanism that allows the country to implement TFS related to PWMD without delay. Furthermore, the lack of guidelines for reporting entities compromises the implementation of TFS since almost all reporting entities do not understand their obligations in this area.
- g. With regard to preventive measures, Togo has a generally relevant legal framework since the passing of the AML/CFT Law n° 2018-004 in 2018. In spite of everything, and apart from banks belonging to international and regional groups and a few large DFIs which generally have a fairly good understanding of ML/TF risks and of their AML/CFT obligations, the implementation of these measures by the vast majority of reporting

entities is unsatisfactory. Insurance companies, DFIs, market players do not have a good understanding of their risks and their AML/CFT obligations, and consequently they do not apply customer due diligence measures according to the risks identified. Besides, the level of reporting of suspicious transactions is very low, outside the banking sector.

- h. The supervisory authorities of FIs with the necessary powers have not yet effectively implemented the ML/TF risk-based approach in planning and conducting inspections of FIs under their supervision. AML/CFT inspections are grossly inadequate and sanctions, where meted out, are neither proportionate, dissuasive nor effective. Moreover, apart from awareness-raising and training activities organized by the FIU for FIs, the actions undertaken by the supervisory authorities to ensure FIs understand their legal and reporting obligations are relatively weak. For DNFBPs, whose contribution to the reporting activity is very low, supervision is not yet effective, including for those that have self-regulatory bodies. The legal framework for virtual assets and the activity of VASPs is almost non-existent.
- i. The transparency of legal persons in Togo is based on the framework defined by the OHADA Uniform Act on the Law of Business Companies and Economic Interest Groupings (DSCGIE). Indeed, the basic information on legal persons contained in the Trade and Property Registry (RCCM) and Business Formality Centre (CFE) website is accessible to the public in a timely manner, including supervisory authorities, investigative authorities and FIU. However, the accuracy and timeliness of this data cannot be guaranteed. Moreover, there is no mechanism to identify the beneficial owners of these legal persons. Legal arrangements are not recognized in Togo, but their activities are not prohibited. Timely access to adequate, accurate and up-to-date basic information on legal arrangements as well as their beneficial owners is grappling with the challenges of recognizing their existence.
- j. Togo has an adequate legal and institutional framework enabling it to offer the widest possible range of international cooperation in a timely manner. However, the limited resources allocated to the central authority and competent authorities, as well as the lack of mechanisms for managing and monitoring the execution of requests for mutual assistance, do compromise the effectiveness of the international cooperation provided by Togo.

Risks and General Situation

- 2. Togo is exposed to a high ML risk emanating from several offences of a transnational nature committed both abroad and domestically. Indeed, the funds laundered in Togo are generally derived from scam (including cybercrime), tax fraud, corruption (involving PEPs), drug trafficking, human trafficking, migrants' smuggling, wildlife trafficking and cross-border gold smuggling. Furthermore, the preference of landlocked countries for the Lomé port makes it a hub for transit trafficking and cross-border illicit flows. The proceeds of crime are laundered through the relevant sectors of the Togolese economy, namely; the real estate, banks and foreign exchange dealers. These threats are exacerbated by several vulnerabilities and contextual factors inherent in the country and the sub-region.
- 3. Togo is not hosting any terrorist organization in its territory and has never been victim of any terrorist attack. However, the terrorism risk in Togo escalated in 2019 with attack on a customs mobile

checkpoint in Naho, in the Boulgou province in Burkina Faso at the Togolese savannah region border. The incident claimed the lives of five (5) victims including four (4) customs officers and one (1) Spanish priest. The Togolese law enforcement authorities have also dismantled some units attached to some terrorist organizations operating in Burkina Faso. They have also arrested and surrendered to the Burkina be police, some terrorist combatants seeking refuge in Togo. However, no TF case has been detected in Togo.

Overall level of compliance and effectiveness

4. Since its last mutual evaluation in 2010, Togo has strengthened its legal and institutional AML/CFT regime, particularly with the adoption of the new Penal Code and the Uniform AML/CFT Law n°2018-004, the Decree designating the authority responsible for coordinating the national response to ML/TF risks as well as the draft Decree designating the competent authority for administrative freezing. This new legal framework has improved the country's technical compliance on the FATF Recommendations revised in 2012, particularly on the issue of administrative freezing, seizures and confiscations, targeted financial sanctions related to TF and PF, taking into account the risk-based approach in the implementation of preventive measures, monitoring and supervision of reporting entities, national cooperation and coordination, as well as international cooperation. However, the criminalization of TF is still inadequate, as it does not include the financing of a terrorist individual or terrorist organization for any purpose, nor the financing of travel by foreign terrorist fighters. Besides, the legal framework for virtual assets and VASP activities is inadequate.
5. The effectiveness of the outcomes of Togo's national AML/CFT regime is rated low for all of the Immediate Outcomes analyzed. Indeed, the understanding of ML/TF risks by the competent authorities and reporting entities is generally weak. AML/CFT/FP national coordination and cooperation actions are hampered by the dysfunctional of the relevant structures. The ineffectiveness of the legal framework for international cooperation does not make for the appropriate sharing of information, financial intelligence and adequate evidence aimed at combatting criminals and their assets. The reporting entities (FIs, DNFBPs and VASPs) do not satisfactorily implement the preventive measures and in particular the AML/CFT-related STR obligation, based on their risks. Information on commercial legal persons is accessible to the competent authorities, but more often than not it is not current and accurate. Beneficial ownership information, on its part, is virtually never available. Financial intelligence and other relevant information, when available, are often not used appropriately by law enforcement and investigative authorities. ML/TF investigations and prosecutions are very limited and incommensurate with the country's risk profile. Generally, the resources and capacities of Law Enforcement authorities are inadequate for the identification, tracing and confiscation of the proceeds and instrumentalities of crime. Convictions for ML/TF and predicate offences are minimal, given the country's risk profile. The effectiveness in the implementation of TFS related to TF has not improved since Togo's last evaluation, and that of PF lacks an appropriate mechanism. Statistics are not kept in such a way as to enable the effectiveness of the outcomes of Togo's national AML/CFT regime to be assessed.

Risk assessment, coordination and policy definition (Chapter 2; IO.1, R.1, 2, 33 & 34)

6. Togo's AML/CFT legal framework requires countries and reporting entities to identify, assess and understand risks at national and sectoral levels and update them periodically. It was against this backdrop that Togo concluded its NRA in December 2019. Although inclusive, the NRA had to grapple with the issue of unavailability or even non-exhaustive nature of AML/CFT-related statistics at national level and almost all the sectors. This situation had an adverse effect on the conclusions and findings obtained without however questioning the reasonable nature of the process. Indeed, the NRA analyzed the ML threat through the huge quantum of income and proceeds derived from predicate

offences. The ML vulnerabilities, on their part, are deduced from the gaps and deficiencies identified in the AML/CFT regime. The NRA rated the ML/TF risk in Togo as medium-high.

7. The TF threat was analyzed in the NRA particularly taking into account the weakness in monitoring activities related to the highly developed cross-border physical transportation of cash in Lomé, the threat of the country's maritime and ports structures and installations being used for economic activities that could be linked to TF as well as other legitimate and illicit business operations carried out in Togo by certain communities of foreigners, which makes it difficult to monitor goods and persons as well as the financing of activities undertaken by faith-based NPOs. The NRA also rates the overall TF level in Togo as medium-high. The Assessment Team rather considers this risk as reasonable.
8. There is no formal requirement to share the results of the NRA with stakeholders. There no provision either to ensure that these results are incorporated into the internal assessments of FIs and DNFBPs. Despite the CENTIF's awareness-raising sessions on the findings of the NRA, the Togolese competent authorities have generally demonstrated little understanding of ML/TF risks related to the main sectors of the economy. Regarding reporting entities, only banks belonging to international or regional groups and large DFS showed a fairly good understanding of ML/TF risks. The same applies to supervisory authorities and self-regulatory bodies. Moreover, the activities of the criminal investigation and prosecution authorities are not based on Togo's risk profile. Similarly, FI supervisors and supervisors fail to mainstream nationally identified ML/TF risks into their supervisory and control policies and activities. For DNFBPs, AML/CFT monitoring and supervision activities are not implemented even where the supervisory authority or self-regulatory body exists.
9. Togo has also set up a competent authority responsible for coordinating national AML/CFT policies and risk assessments. Indeed, CONAC and the operational unit for the facilitation of information and data exchange establish the national coordination framework for AML/CFT in Togo. However, more than two years after their inception in 2018, these bodies are still not operational as their members are yet to be appointed and sworn in. This situation prevented the assessment team from assessing and evaluating their level of effectiveness, as well as the means and resources allocated to their operations. Nevertheless, it should be noted that the coordination of AML/CFT activities is still carried out by the CIM-SA, the Decree of which was repealed when CONAC was established. As a matter of fact, it was the CIM-SA that coordinated and supervised the development in February 2021 of the national AML/CFT policy and strategy document, which is yet to be adopted by the Togolese State authorities

Financial intelligence, ML investigations, prosecutions and confiscation (Chapter 3; IO.6, 7, 8; R.1, 3, 4, 29-32)

Use of Financial Intelligence (Immediate Outcome 6)

10. The Togolese legal framework gives the FIU the prerogatives required by the standards. It receives and analyzes STRs, and receives any other information relating to ML/TF and the associated predicate offences. The system allows it to have access to information from reporting entities, to carry out operational and strategic analyses, and to disseminate information to the competent authorities. It is authorized to collaborate and exchange information with national AML/CFT stakeholders and with foreign FIUs. Like the FIU, the LEAs have access to the maximum quantum of information and intelligence to be used in investigations. The use of such financial intelligence have sometimes led to the detection of ML, but not TF due to their lack of expertise. The FIU disseminates information on ML and predicate offences but not TF. STRs are obtained mainly from banks. Very little is received from DFIs, DNFBPs, insurance companies, financial authorities and other FIs (excluding the Post Office). CTRs are exclusively obtained from banks and DFIs. None is obtained from the other types of FIs and DNFBPs. The FIU does not receive statistics on cash seizures because the customs does not carry out seizures in the event of breaches of regulatory provisions. The number of strategic reports (03) and typology studies produced by the FIU is low compared to the ML/TF risks identified. The

FIU's analytical capacity remains limited. It has signed a few cooperation agreements with the other competent authorities (only one agreement with the Togolese Revenue Office (OTR). The protection of the confidentiality of the information exchanged with the FIU is limited because there is no Decree on the appointment and swearing in of its members and correspondents within the State Departments.

ML investigations and prosecutions (Immediate Outcome 7)

11. The Togolese legal framework provides for a combination of ML offence methods that covers certain categories of determined predicate offences and extends to all crimes and misdemeanors, including tax evasion. ML applies to any property directly or indirectly derived from the proceeds of the offence.
12. The Togolese authorities obtained four (04) convictions for money laundering by a third party, autonomous money laundering and self-money laundering. These convictions relate exclusively to the offence of fraud, which is the main ML-related threat identified in the NRA. The other main ML threats (breach of trust, tax and customs fraud, corruption, drug trafficking, human trafficking, migrants' smuggling and environmental crime) are hardly captured in criminal investigations and prosecutions. Besides, some of the sanctions for ML are not proportionate and dissuasive because they are illegally suspended. Togo's national policy and strategy document prioritizes ML investigations and prosecutions but this is not implemented. LEAs in Togo are not specialized in ML. Besides, they are not adequately trained to carry out ML investigations effectively, hence the lack of systematic recourse to parallel financial investigations. Those who have received some training are transferred from their posts as they grow mature in the area.
13. The LEAs are grappling with the challenges of reliability of address data, predominance of cash transactions, emergence of virtual assets, lack of database on real estate, lack of beneficial ownership information of legal persons, lack of resources to implement special investigative techniques, which altogether hinder the effectiveness of investigations. Investigations are also hampered by the corruption of stakeholders in the criminal justice chain.

Confiscation (Immediate Outcome 8)

14. The Togolese legal framework provides for the confiscation of criminal assets. However, there is no mechanism to recover and manage seized and confiscated assets other than precious metals and cash. Furthermore, the LEAs do not carry out sufficient screening and confiscation of assets related to criminal activity committed abroad and cooperation with their foreign counterparts in order to identify assets related to criminal activity committed in Togo. In addition, seizures and confiscations are handicapped by the lack of updated data on the real estate sector, even though this sector has a high risk of ML/TF as reported in the NRA.
15. The law enforcement authorities do seize and confiscate in certain cases of ML. The lack of statistical data on seizures and confiscations relating to the offences which constitute the main ML threats does not make it possible to assess the consistency between the results achieved and the ML/TF risks as well as the national AML/CFT policies and priorities.

Financing of terrorism and proliferation (Chapter 4; IO.9, 10, 11; R. 1, 4, 5-8, 30, 31 and 39.)

TF Investigation and Prosecution (Immediate Outcome 9)

16. TF is a criminal offence in Togo, consistent with the United Nations Convention for the Suppression

of TF and its Annexes. Several types of relevant criminal sanctions are meted out. However, the criminalization of TF does not include the financing of a terrorist individual or a terrorist organization for any purpose, as well as the financing of foreign terrorist fighter's travel. The LEAs have all the prerogatives to investigate and prosecute TF. The lack of human, material and financial resources, the lack of specialization, the inadequate criminalization of TF imply that they have not yet identified any TF case. Jurisdictions have not yet prosecuted and convicted for TF either, which is not commensurate with the country's risk profile. Togo has no national counter-terrorism strategy that incorporates TF. With no conviction, the effectiveness of sanctions against natural and legal persons as well as the implementation of criminal, regulatory or other measures to interrupt TF activities where it is not possible to obtain a conviction for TF, could not be assessed.

Preventing terrorists from collecting, moving and using funds (Immediate Outcome 10)

17. Togo has a legal and institutional framework that more or less provides for the implementation of targeted financial sanctions related to terrorist financing issued under the relevant UNSC Resolutions 1267, 1373 and subsequent resolutions. Indeed, the dissemination of lists on TFS related to TF of persons likely to hold assets and other resources belonging to designated persons and entities is not done in a timely manner due to a fairly long circuit and the low level of digitalization of the said lists, thus compromising the immediate implementation of TFS. The national mechanism mapped out for this purpose does not cover all reporting entities and is not implemented. The FIU has tried to minimize the delays in accessing the lists by making them accessible on its website from a link. On the other hand, there is no feedback to ensure that the reporting entities access the said link for the appropriate consultations mainly caused by the ignorance of their obligations and lack of relevant guidelines. The Togolese law does not provide for any particular protection of bona fide third parties in the implementation of TFS related to TF. Besides, although the authority in charge of administrative freezing has been designated and the agency in charge of this issue has been established, it is not yet operational. Therefore, there is still no effective implementation of the obligations of UNSC Resolution 1373 in Togo.

Proliferation Financing (Immediate Outcome 11)

18. The TFS related to the financing of the proliferation of weapons of mass destruction (FPWMD) are provided for by the Togolese legal framework, though yet to be implemented. Indeed, the administrative freezing mechanism does not clearly define the mechanism for implementing TFS related to PWMD. Togo has not identified any funds or other assets belonging to designated individuals and entities to be frozen in accordance with UN Security Council Resolutions on PF. Besides, almost all reporting entities are unaware of their relevant obligations. Furthermore, the level of awareness of the competent authorities and most reporting entities on the issue of PF is very limited. The reporting entities also lack guidelines to improve their understanding for effective implementation of the TFS. Besides, the Togolese law does not provide for any particular protection of bona fide third parties in the implementation of TFS related to PF.

Preventive measures (Chapter 5; IO.4; R.9-23)

19. Since the passing of the AML/CFT Law No. 2018-004, Togo has developed a generally satisfactory legal framework with regard to the preventive measures to be implemented by FIs. However, there are outstanding deficiencies, particularly with regard to customer due diligence, the definition of PEPs and related due diligence measures, the use and development of new technologies including virtual assets, wire transfers and suspicious transaction reporting, impacting Togo's level of technical compliance.
20. Banks belonging to large international or regional groups and certain large DFIs generally have a good

understanding of their AML/CFT risks and obligations, unlike other categories of FIs. However, the due diligence measures are not applied effectively according to the risks identified at the national level, nor within the FIs after internal assessments based on the risk maps that they have developed. Other FIs have not developed internal AML/CFT policies, programs and procedures aimed at adequately mitigating ML/TF risks.

21. Banks, large-scale DFIs and some insurance companies implement customer due diligence measures by identifying and verifying customers. Nevertheless, beneficial ownership identification, though included in certain Know Your Customer (KYC) forms, is not always effective, especially where the customer is a legal person. The same obtains for PEPs and high risk countries where adequate due diligence is required. Besides, they are not required by law to apply due diligence measures and countermeasures proportionate to the risks where the FATF calls for them to do so. On the other hand, FIs generally comply with their record keeping obligations. With regard to reporting obligations, it is the banks that comply the most (+80% of STRs filed to the FIU) while the others do very little.
22. Despite the NRA findings sharing and sensitization sessions organized by the FIU for all categories of DNFBPs, none of them has truly demonstrated a sound knowledge of the ML/TF vulnerabilities and threats to which their respective professions are exposed. Besides, the vast majority of DNFBPs are unaware of their AML/CFT obligations. The implementation of preventive measures is therefore not effective within the DNFBPs, all categories combined. This situation has a negative impact on the effectiveness of Togo's AML/CFT regime with regard to the importance of their activities and the ML/TF risks deemed high for the most important categories among them.

Supervision (Chapter 6; IO.3; R.14, R.26-28, 34, 35)

23. Togo has taken legal and regulatory measures to ensure that criminals and their accomplices do not hold or become beneficial owners of a significant stake or control of FIs. These measures are particularly implemented by the supervisory authorities of large banks and DFIs when entering the market, by requiring documentary evidence on the fit-and-proper status of directors and managers, but also by exchanging information with supervisory authorities especially where the FI belongs to a group. However, the authorities have difficulty in effectively identifying and determining the person who ultimately controls an FI, namely the beneficial owner, and also his fit-and-proper status.
24. Supervisory authorities have not demonstrated a good understanding of ML/TF risks in general. For these authorities, the NRA was a maiden exercise in the identification and assessment of risks both at domestic and sectoral levels. Also, they have not developed any risk profile for each FI. Indeed, the implementation of a risk-based supervision of FIs has been ineffective. The UMOA Banking Commission (CBU) has just adopted the risk-based approach through a rating system for credit institutions, but this does not take into account ML/TF risks in the programming and conduct of their inspections. Specific inspections or those including an AML/CFT component are grossly inadequate, given the high risk generally identified in the financial sector.
25. Togo has a range of disciplinary and pecuniary sanctions provided for in the laws and regulations governing the various financial sectors. However, these texts do not clearly target breaches related to AML/CFT obligations, but are rather of a general nature. The few sanctions meted out are not linked to any AML/CFT-related violations in spite of the significant deficiencies identified, particularly during the inspection missions conducted. These sanctions are neither proportionate, dissuasive nor effective. They can be considered as minor as they are mere injunctions, warnings and reprimands.
26. The actions of supervisory authorities to ensure proper understanding and implementation of AML obligations by FIs are inadequate, although they have participated in sensitization and training sessions organized by the FIU. The BCEAO and CIMA have published directives and guidelines for FIs clearly

outlining the modalities for the implementation of the Uniform Law. However, no guidelines have been developed specifically aimed at explaining to FIs their reporting obligations to help them better detect and report suspicious transactions, which may be responsible for the low number of STRs filed to the FIU outside banking sector.

27. The independent legal and accounting professions each have a control and self-regulatory body whose mission is, most often, to coordinate and supervise access to the profession and to deal with issues of ethics and professional conduct relating to the practice of the profession. Even where these self-regulatory bodies have "fit and proper" criteria or other similar measures to allow access to the profession while preventing their control by criminals, entry controls do not include elements targeting AML/CFT. The same obtains for the gaming, dealers in gems and precious metals, travel agencies and security companies sectors with licensing or authorization granting bodies, which do not take AML/CFT into account when considering applications for licensing or authorization. The other categories of DNFBPs and VASPs suffer are grappling with the lack of legal framework, which explains why the practice of this profession by a large number of informal actors with a very high risk of these sectors, is being taken over by financial criminals of all kinds.
28. No category of DNFBP is subject to AML/CFT supervision in Togo. Supervisory authorities or self-regulatory bodies, where they exist, are unaware of both the ML/TF risks and AML/CFT requirements and have neither the means nor adequately trained human resources to carry out a risk-based supervision. The lack of AML/CFT monitoring and supervision, and therefore the lack of sanctions in the event of a breach, is not likely to compel DNFBPs to put in place AML/CFT compliance systems for effective implementation of preventive measures.

Transparency and Beneficial Ownership (Chapter 7; IO.5; R.24, 25)

29. The OHADA Uniform Act on the Law of Business Companies and Economic Interest Groupings defines the framework for the establishment of various types of legal persons and business companies. Information on the creation and types of legal persons, business companies, is made available to the public by the Ministry of Trade through the website of the Business and Administrative Formalities Centre of the RCCM of the Commercial Court. They are accessible to the public in a timely manner, including supervisory authorities, investigative authorities and the FIU.
30. Togo assessed the risks of the various types of legal persons established on its national territory in February 2021. However, there is a lack of understanding of the risks identified due to the non-dissemination of the findings of this assessment, including the action plan adopted and yet to be implemented. Apparently, legal persons can be misused for various purposes, in particular tax and customs fraud as well as ML. At the same time, LEAs are grappling with certain challenges, including the non-domiciliation, the unreliability of the information provided at the time of creation, the ineffectiveness in keeping the beneficial ownership register at the registered office of the company and the existence of bearer shares which hinder the effectiveness of their investigations. However, the Togo-FIU has received STRs involving business some companies.
31. There is no mechanism for collecting beneficial ownership information at the RCCM, even though the identification form has been developed. Nevertheless, some basic information of the RCCM could also be information on the beneficial ownership of legal persons but there is no control mechanism to ensure is accurate and up-to-date. No sanction has been meted out for submitting inaccurate basic and beneficial ownership information, failure to submit such updated information in a timely manner, on any director of legal persons.
32. Legal arrangements are not recognized in Togo, but their activities are not prohibited. Timely access to adequate, accurate and up-to-date basic information on legal arrangements as well as their beneficial owners is grappling with the challenges of recognizing their existence.

International Cooperation (Chapter 8; IO.2; R.36-40)

33. Togo has an adequate legal and institutional framework that provides for the widest possible and timely range of international cooperation through multilateral and bilateral agreements, and through exchanges of financial intelligence through its FIU and other forms of cooperation, particularly with the law enforcement authorities. However, the allocation of limited resources to the central authority and competent authorities, as well as the lack of mechanisms for managing and monitoring the execution of requests for mutual assistance, compromises the effectiveness of the international cooperation provided by Togo. Furthermore, the LEAs are not sensitized or trained in using mutual legal assistance in their investigations and prosecutions. Besides, the virtual lack of statistics at all levels has made it impossible to properly assess the effective and efficient implementation of international cooperation in Togo.

Priority Actions

The Togolese authorities should:

- a. criminalize the financing of a terrorist organization or terrorist individual for any purpose, foreign terrorist fighter travel. They should improve the mechanism for the notification and publication of the lists of sanctions taken under the UNSCRs to all reporting entities and all natural and moral persons that could hold the assets of the designated persons or entities, for the immediate implementation of freezing obligations. They should also operationalize the agency in charge of administrative freezing, and develop guidelines for reporting entities to help them effectively implement targeted financial sanctions related to TF and PF;
- b. adopt the Decree enforcing the Uniform Law (AML/CFT Law n°2018-004) to make the FIU an agency endowed with financial autonomy and autonomous decision-making power, regularly appoint its members and ensure they are sworn in, as well as its correspondents within the State Departments;
- c. collaborate with the other UEMOA member countries and GIABA Secretariat, to mobilize the supervisory authorities of the Community, particularly the Banking Commission and the Regional Insurance Supervision Commission, urging them to address the issue of AML/CFT an essential component of their work, particularly when developing supervision-based control strategies, plans and tools. They should provide for and apply a range of proportionate and dissuasive disciplinary and financial sanctions against FIs that fail to comply with their AML/CFT reporting obligations. They should ensure that all DNFBPs have supervisory or self-regulatory authorities with AML/CFT supervisory and sanctioning powers. They should provide FI and DNFBP supervisory authorities with human, material and financial resources to apply risk-based AML/CFT supervision.
- d. adopt the national AML/CFT policy and strategy document, and consequently allocate the necessary resources for the implementation of the measures to mitigate the ML/TF risks identified in its action plan. They should operationalize the coordination and cooperation mechanism by diligently swearing in the members of CONAC and the operational unit design to facilitate information and data exchanges, and providing them with adequate resources. They should ensure that this coordination mechanism incorporates the issue of PF and involves all the relevant law enforcement authorities as well as the authorities responsible for the protection of personal data and

respect for privacy;

- e. develop an operational mechanism for collecting and keeping comprehensive AML/CFT statistics to improve the quality of its risk assessments and ensure the relevance of the findings obtained with regard to its risk profile and its context. Updating the NRA in a timely manner should incorporate the assessment of risks related to virtual assets and VASPs, maritime piracy, environmental crime and all relevant contextual factors to determine the appropriate level of ML/TF risks. They should also map out a mechanism for the competent authorities to take ownership of the findings of the NRA in order to improve their level of understanding of the risks identified;
- f. ensure that reporting entities have a good understanding of their risks in order to develop and implement internal AML/CFT programs and procedures that take these risks into account, with a view to mitigating them. They should implement awareness-raising and training measures to reinforce the knowledge of all FIs, DNFBPs and VASPs of their AML/CFT obligations, especially on fulfilling their customer due diligence requirements. They should also publish guidelines for FIs, DNFBPs and VASPs and organize awareness-raising actions/training on the monitoring, detection and reporting of suspicious transactions to help them effectively meet their reporting obligations;
- g. organize awareness-raising and training sessions for State Prosecutors, investigating and trial courts, particularly on the judicial handling of ML evidence, to have a number of prosecutions and convictions of various types of ML cases consistent with the country's risk level. They should also help LEAs specialize in ML investigations and strengthen their capacities through training on special investigative techniques as well as parallel financial investigations;
- h. ensure that confiscation becomes a criminal policy target. They should strengthen the capacities of LEAs on seizures and confiscations, particularly through training on assets tracing domestically and abroad; develop and disseminate a guide on seizure and confiscation for LEAs; put in place a mechanism for the recovery and management of seized and confiscated assets. They should also put in place measures to monitor the cross-border transportation of cash and BNIs above the prescribed threshold at all its borders and confiscate both cash and BNIs in the event of non or false declaration ;
- i. put in place a mechanism for collecting BO information at the RCCM, ensure the RCCM and CFE departments have adequate resources and infrastructure to ensure the accuracy and reporting of information by the companies in a timely manner;
- j. strengthen the capacities of the central authority in charge of mutual assistance and the other competent authorities with substantial human, material and financial resources to enable them accomplish their mandates. They should also sensitize and train stakeholders in the criminal justice chain to make optimal use of international cooperation in investigations of ML/TF and associated predicate offences of a transnational nature.

Ratings of Effectiveness and Technical Compliance

Table 1. Effectiveness Ratings

IO.1	IO.2	IO.3	IO.4	IO.5	IO.6	IO.7	IO.8	IO.9	IO.10	IO.11
LE	LE	LE	LE	LE	LE	LE	LE	LE	LE	LE

Note: Effectiveness Ratings may indicate High (HE), Substantial (SE), Moderate (ME), or Low (LE) Effectiveness.

Table 1. Technical Compliance Ratings

R.1	R.2	R.3	R.4	R.5	R.6	R.7	R.8	R.9	R.10
PC	PC	C	LC	PC	PC	PC	PC	C	PC
R.11	R.12	R.13	R.14	R.15	R.16	R.17	R.18	R.19	R.20
LC	PC	LC	PC	NC	PC	LC	LC	NC	PC
R.21	R.22	R.23	R.24	R.25	R.26	R.27	R.28	R.29	R.30
C	PC	PC	PC	PC	PC	C	PC	PC	C
R.31	R.32	R.33	R.34	R.35	R.36	R.37	R.38	R.39	R.40
C	PC	PC	PC	PC	LC	LC	LC	LC	LC

Note: Technical Compliance ratings can be as follows: C - Compliant, LC - Largely Compliant, PC - Partially Compliant or NC - Non Compliant.

MUTUAL EVALUATION REPORT

Preface

This report summarizes the AML/CFT measures in force on the date of the on-site visit. It analyzes the level of compliance with the FATF 40 Recommendations and the level of effectiveness of the AML/CFT regime, and proffers recommendations on how the regime could be strengthened.

This evaluation is based on the 2012 FATF Recommendations and was prepared using the 2013 Methodology. The evaluation was based on information provided by the country and information obtained by the assessment team during its on-site visit from 25th January to 10th February, 2021.

The assessment was conducted by a team of experts comprising:

- Dr. Néné Amy OUEDRAOGO (Née TRAORÉ), Divisional Commissioner of Police at the General Directorate of the National Police of Burkina Faso, as operational expert.
- Mr. Koffi GOUA, Commissioner of Police, Head of the Investigation Division at the High Authority for Good Governance of Côte d'Ivoire, as operational expert.
- Mr. Ait-Ahmed AM DJALIM, Executive of the Central Bank and Permanent Secretary of the Financial Intelligence Service of the Union of the Comoros, as financial expert.
- Mr. Serge HOUEDANOU, Executive of the BCEAO and Secretary General of the Benin-FIU, as financial expert.
- Mr. Mamadou THIANDOUM, Divisional Commissioner of Police of Exceptional Class, Director of Police Investigations at the Senegal-FIU, as operational expert.
- Mr. Seydou BARRO, Magistrate, Deputy Prosecutor of Faso at the Ouaga 1 High Court, member of the Economic and Financial Prosecutor's Office of Burkina Faso, as legal expert.
- With the support of Mrs. Mariame Ibrahim TOURE and Mr. Idrissa OUATTARA, from the Research and Policy Department of the GIABA Secretariat.

The MER was reviewed by Mr. Mamane Hamidine ABOU, Magistrate, former Director of Legal Affairs at the Niger-FIU and Mr. Cheikh Mouhamadou Bamba NIANG, Director of Legal Affairs and International Cooperation at the Senegal-FIU and by the FATF Secretariat.

Togo was previously subjected to a GIABA Mutual Evaluation in November 2010, conducted using the 2004 FATF Methodology. The evaluation report adopted in May 2011 as well as the 10 follow-up reports produced between May 2012 and November 2018 are available and accessible at the following address: <http://www.giaba.org>.

The 2011 mutual evaluation concluded that Togo was rated Largely Compliant on 4 Recommendations, Partially compliant on 26 Recommendations, Non-compliant on 18 Recommendations, and not applicable for FATF recommendation 34. Thus, Togo was rated Compliant or Largely Compliant on only one (1) of the 16 Core or Key Recommendations. Based on these findings, Togo was placed under the Expedited Regular Follow-up Process which requires the country to submit an annual report on the country's progress, consistent with the GIABA Mutual Evaluation Process and Procedures. However, following the consideration of its 5th Follow-up report in May

2016, Togo was downgraded from the "expedited regular follow-up" process to the "enhanced follow-up" process, which required the country to produce half-yearly follow-up reports with effect from November, 2016. It was in November 2018 that the 30th GIABA Technical Commission/ Plenary Meeting assessed the country's efforts to be sufficiently encouraging and brought it back to the expedited regular follow-up process. Togo was also allowed to exit the follow-up process during this same Plenary Meeting in readiness for its mutual evaluation, which had finally been rescheduled for February 2021 due to the country's elections which coincided with the initial dates.

Chapter 1: ML/TF RISKS AND CONTEXT

34. Togo is a country in West Africa which shares borders with Ghana and Benin of more than 600 km of the coast, Burkina Faso in the North and has a wide coast on the Gulf of Guinea. Its area is 56790 square km. Lomé is its economic and administrative capital. The other main cities are: Kara, Sokodé, Kpalimé, Atakpamé and Dapaong.
35. In 2020, the Togolese population was estimated at 8.28 million inhabitants, with 57% rural population, 43% urban population with an annual population growth of 2.4% and a density of 145 inhabitants per square kilometers¹. Togo's human capital index remains low at 0.41². Its human development index stands at 0.513 according to the UNDP, ranking it 167th out of 189 countries in 2019. The adult literacy rate was estimated at 64% by the World Bank in 2015. The unemployment rate is the lowest in the West African sub-region, with an employment rate estimated at 75% over the last decade according to World Bank statistics modeled on data from the International Labor Organization³. The poverty rate dropped from 55.1% in 2015 to 53.5% in 2017⁴.
36. Togo is a decentralized unitary State. The central power is spread out into 39 districts (administrative sub-divisions of the country). From the decentralization viewpoint, the country has six economic and administrative regions sub-divided into 117 municipalities. Togo is a constitutional democracy currently governed by the Constitution of the Fourth Republic of 14th October 1992, adopted by referendum. The Constitution establishes a semi-parliamentary system with three structures sharing delegated powers. The Executive power is embodied by a President of the Republic, Head of State and a Prime Minister, Head of Government; the Legislative power is exercised by a bicameral Parliament comprising two legislative chambers, namely, the National Assembly and the Senate. The Judiciary power embodied by the Supreme Court is exercised by the Courts of Appeal and Tribunals.
37. Togo is a member of several international and regional bodies, including the United Nations, African Union, Economic Community of West African States (ECOWAS)⁵, Organization for Harmonization in Africa Business Law (OHADA), Inter-African Insurance Conference (CIMA), West African Economic and Monetary Union (UEMOA)⁶ and the Franc Zone. The country is a member of the WTO and has also ratified the agreement establishing the AfCFTA (African Continental Free Trade Area). In its capacity as a member State of UEMOA and UMOA, Togo has devolved the regulatory role of financial institutions to the BCEAO, while the UMOA Banking Commission is their monitoring and supervisory body, as well as the CREPMF for the capital market. The same obtains for CIMA, which

¹ World Bank, 2020

² <https://www.banquemondiale.org/fr/publication/human-capital>

³ <https://donnees.banquemondiale.org/indicateur/SL.EMP.TOTL.SP.FE.ZS?locations=TG>

⁴ 2017 poverty mapping from the National Institute of Statistics and Economic and Demographic Studies (INSEED)

⁵ ECOWAS is the Economic Community of West African States established by the Treaty of Lagos signed on May 28, 1975 and which brings together 15 West African countries (Benin, Burkina, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo). It includes several specialized agencies and institutions, including the Intergovernmental Action Group against Money Laundering in West Africa (GIABA).

⁶ WAEMU is the West African Economic and Monetary Union created by the Treaty of January 10, 1994 and which brings together 08 countries of the West African sub-region (Benin, Burkina Faso, Côte d'Ivoire, Guinea-Bissau, Mali, Niger, Senegal and Togo). Its currency is the CFA. The BCEAO is the regulatory authority for financial institutions in member countries while the WAMU Banking Commission is their control and supervisory body.

regulates and supervises the insurance sector in Togo.

1.1. ML/TF risks and scoping of higher risk issues

1.1.1. Overview of ML/TF risks

38. The understanding of ML/TF risks in Togo is essentially based on the findings of its national risk assessment. It reveals that the funds laundered in Togo are generally derived from fraud (including cybercrime), tax evasion, corruption, drug trafficking, human trafficking, migrants' smuggling, trafficking in wild animals and cross-border gold smuggling. Indeed, cases of corruption involving nearly €57,388,064, and involving various profiles (PEPs, actors in the criminal chain)⁷ have led to 21 convictions over the last decade⁸. With regard to human trafficking, the sums involved are not known although the criminal activity is significant and lucrative in Togo⁹. With regard to wildlife crime, studies have shown that the country serves as a transit zone for the illegal wildlife trade (pangolin scales and elephant/rhinoceros tusks) with a confirmed link between criminal networks of East Asia and Togo¹⁰. As for cybercrime, although there are no precise statistics, estimates point to hundreds of thousands of victims per year¹¹, involving more than € 46,085,895¹². In addition, reports have been mentioning since 2014 that Togo has been a major smuggling corridor for gold illegally mined in Burkina Faso and Ghana, resulting in 20.5 tons of legal gold exports and generated nearly of 1807290€ of taxes for the country¹³. These threats are exacerbated by numerous vulnerabilities and contextual factors highlighted by the NRA, including deficiencies in the legal system, the widespread use of cash, the difficulty in tracing transactions within the informal sector and the porosity of land borders.
39. In addition, the Gulf of Guinea¹⁴, which includes an extensive Togolese coastline, is considered to be one of the epicenters of piracy in the world, the cost of which amounts to several billion dollars annually. This state of affairs places Togo among the coastal States at high maritime risk. Indeed, in 2012, Togo recorded the greatest number of piracy acts perpetrated in the Gulf of Guinea after Nigeria¹⁵. Despite the regional anti-piracy programs and ¹⁶government efforts aimed at securing the Togolese maritime sector¹⁷, piracy appears to be a great threat to ML in Togo, although the lack of

⁷ Organized Crime Index 2019

⁸ Togo NRA report

⁹ United States Department of State, 2018 Trafficking in Persons Report - Togo, 28 June 2018

¹⁰ Organized Crime Index 2019

¹¹ Togo NRA report, page 33

¹² Ibid. page 29

¹³ A Golden Racket: The True Source of Switzerland's "Togolese" Gold. In Bern Declaration Investigation, September, 2015

¹⁴ The Gulf of Guinea has nearly 6000 kilometers of coastline and includes eight countries on its coastline: Liberia, Ivory Coast, Ghana, Togo, Benin, Nigeria, Cameroon, Equatorial Guinea, Gabon, Sao Tome and Principe, Republic of Congo, the Democratic Republic of the Congo and Angola.

¹⁵ ICC International maritime bureau, Piracy and armed robbery against ships, 2015 Annual Report

¹⁶ According to the OECD (2018) report on Illicit Financial Flows in West Africa: "Liberia and Togo are the only States in the region with up-to-date anti-piracy legislation". pg.80.

¹⁷ The country benefits from the French project to support the reform of the maritime security sector in the Gulf of Guinea (ASECMAR), from that of the European Union (EU) called "Critical maritime route project for the Gulf of Guinea (CRIMGO) ", as well as Operation Obangame Express through which the United States conducts annual security incident simulation exercises

statistics has made it impossible to determine its magnitude in the NRA report¹⁸. Besides, the preference of landlocked countries for the port of Lomé makes it a hub for transit trafficking and illicit cross-border flows.

40. At the sectoral level, the NRA reveals that all relevant sectors of the economy are affected at varying degrees by ML. The real estate sector is identified as having the highest level of risk due to the fact that it concentrates most of the ML activities and that the real estate agency profession is not regulated in Togo. The banking sector is also a major channel for financial flows linked to ML, due to its strategic importance in the economic and financial system. The foreign exchange sector is also mentioned as having a high level of ML risk in Togo.
41. The TF threat assessment reveals that even though Togo does not harbor any terrorist organization on its territory and has not been the victim of any terrorist attack, and that the pressure on its northern border is escalating because of the security situation in neighboring Burkina Faso. The terrorism risk in Togo increased in 2019, with the attack on a mobile customs post in Nohao, in the province of Boulgou in Burkina Faso on the border of the Togolese savannah region. The incident recorded five (05) victims including four (04) customs officers and one (01) Spanish priest. The Togolese security forces have also dismantled some cells attached to terrorist organizations operating in Burkina Faso. They have also arrested and handed over to the Burkinabe authorities, terrorist fighters who had retreated to Togo. However, no TF case has been detected in Togo. Nevertheless, given the low level in the legal framework of the NPO sector with regard to CFT and other contextual factors inherent in the sub-region, the TF risk is considered as medium-high in Togo.

1.1.2. Country risk assessment and scoping of highest risk issues

42. Togo concluded its first NRA in December 2019. The process was inclusive, with the participation of various public and private actors involved in the fight against ML/TF, in this case the FIU, the investigation and prosecution, reporting entities and their regulators, civil society organizations and technical partners. The methodology essentially consisted of analyzing the data and contributions collected from national actors and stakeholders. The findings of the NRA highlight the ML/TF risks identified both at the national and sectoral levels, taking into account, at each scale, the levels of threats and vulnerabilities. The analysis was conducted using the World Bank tool, based on both a quantitative and qualitative approach in order to assess the combination of threats and vulnerabilities. It reveals that the risk of ML as well as that of TF is medium-high in Togo.
43. Although the NRA process appears to be consistent and inclusive in many ways, it does not, however, incorporate virtual assets and virtual asset service providers. Besides, maritime piracy is not identified as a high risk area despite the existence of a real threat in the Gulf of Guinea due to the lack of statistics. The same obtains for environmental crime (wildlife, in this case), while Togo experienced an exponential rise in cases of illicit wildlife trafficking between 2013 and 2016, to the point of being considered as a "global hub"¹⁹. It also seems the Mombasa cartel, operating from Entebbe, Uganda and Lomé, is involved in this trafficking²⁰.
44. The assessment team relied on the findings of the Togo NRA and other credible sources of information to pay particular attention to the following areas during the on-site visit to be reflected in their analyses.

a. High-risk areas

¹⁸NRA report : page 25

¹⁹ <http://environnement.gouv.tg/node/377#:~:text=L'exploitation%20ill%C3%A9gale%20et%20le,esp%C3%A8ces%20entre%202013%2D2016>.

²⁰ 5 Organized Crime Index 2019 - Togo (pages 1 to 4)

- **Consistency of investigations and prosecutions and capacity of competent authorities :** Illicit financial flows in Togo are mainly generated by fraud (including cybercrime), tax evasion, corruption, drug trafficking, human trafficking, migrant smuggling, wildlife trafficking and cross-border gold smuggling. The assessment team sought to understand to what extent ML investigations and prosecutions are consistent with the country's risk profile. They tried to determine the capacities and resources of the law enforcement to understand its correlation with the low rate of conviction and confiscation of ML in Togo. Similarly, the team tried to understand how financial intelligence and national/international cooperation are used in investigations and criminal prosecution of ML and predicate offences.
- **Implementation of risk-based approach in monitoring and supervision of reporting entities:** since the financial sector, in this case banks, is considered in the NRA as a major vector of illicit financial flows, the assessment team examined the scope of AML/CFT sector supervision, particularly risk-based supervision, as well as the resources and capacities of designated competent authorities. It determined the nature and extent of the supervisory measures, including the implementation of proportionate and dissuasive sanctions by the supervisory authorities. The assessment team also focused on the monitoring and supervision of DNFBPs, based on the conclusions of the NRA which classifies the real estate sector including, as being at high risk.

TF detection and suppression capacities: according to the NRA, the TF risk is medium-high in Togo. The assessment team sought to understand the capacities of the competent authorities to track terrorist assets, particularly in relation to the NPOs at risk identified in the sector assessment report (finalized in 2021 during the on-site visit); whether they resort to international cooperation given the nature and characteristics of the TF threat.

- **Transparency of legal persons with regard to ML:** In February 2021, during the on-site visit, Togo concluded an assessment of the ML/TF risks to which legal persons are exposed. Togo's attractiveness for its business climate having been underscored in the NRA as well as in the World Bank's *Doing Business Report*, the assessment team wanted to examine the stakeholders' understanding of the sector's risks as well as the transparency mechanism put in place for the collection of and public access to relevant information, particularly for beneficial ownership identification.

b. Medium-risk areas

- **National Policy and coordination:** Togo has established several structures at national level to coordinate AML/CFT and related offences. However, not all of them are operational and the texts establishing them have still not specified any mechanism to ensure cooperation among them. The Assessors reviewed the effectiveness of this coordination, the challenges relating to the incorporation of ML/TF risks in developing policies/strategies and coordinating their implementation for their mitigation.
- **Insurance sector:** Because of the development of the life-insurance activity in Togo, the Assessment Team examined the understanding of ML/TF risks by the sector stakeholders as well as the implementation of the risk-based approach in the supervision of the sector.
- **Targeted financial sanctions:** Togo has issued a Decree designating the Administrative Freezing Authority and mapping out the mechanisms/procedures for the implementation of UNSC Resolutions 1267, 1373 and subsequent ones relating to targeted financial sanctions. The assessment team also examined the effectiveness in the implementation of the standards,

particularly in respect of the timelines.

c. Low risk areas

- **Virtual Assets and Virtual Asset Service Providers:** Although Togo claims not to have any Virtual Assets or Virtual Asset Service Providers, the Assessment Team tried to ascertain Togo's understanding of this new issue with regard to the standards, particularly the identification of ML/TF risks as well as regulatory and supervisory issues.

1.2. Materiality

45. Togo's GDP stood at 3,199.1 billion CFA francs or €4,876,996.5 in 2019. The country's real economic growth stood at 5.3% in 2019 as against 4.9% in 2018, driven mainly by the impressive performance of the tertiary sector (trade, seaport, airport and banking activities) representing almost 44% of GDP, followed by the primary (24.5%), secondary (15.5%) sectors and tax collection (16%). According to the World Bank criteria, Togo is considered as a low-income country.²¹
46. Togo has a deep-water seaport considered as the largest container seaport in West Africa, which has become the hub of significant trade with several countries in the sub-region, particularly those in the Hinterland such as Burkina Faso, Niger and Mali. The country also has an international class airport which is the hub of the sub-regional company ASKY. Another characteristic element of the economy is the Togolese financial center hosting the headquarters of some financial institutions belonging to sub-regional organizations, including EBID for ECOWAS and BOAD for UEMOA, as well as the headquarters of two major African banking groups, ECOBANK Transnational Incorporated (ETI) and Oragroup.
47. With regard to the DNFBPs, the Togolese legal framework provides for real estate agents and real estate brokers, legal and accounting professionals (lawyers, notaries, bailiffs, chartered accountants and certified accountants), casinos and gaming, dealers in gems and precious metals.

1.3. Structural elements

48. There is political and institutional stability in Togo. The institutional mechanism includes structures not only to fight against ML/TF, but also against predicate offences. However, corruption remains a major concern in Togo, in all sectors. Although it is independent, the Togolese judicial system needs resources and capacity building for its actors to be more effective in the fight against financial crime, including ML/TF. The adoption of the 2018-2022 National Development Plan (PND), incorporating the issue of AML, reflects the Togolese authorities' desire to make the country a first-class financial center in the sub-region while preserving the integrity of the national financial system. Togo has also adopted the 2020-2024 five-year drug supervision plan which includes "the freezing and confiscation of criminal assets".

1.4. Context and other contextual elements

49. The business climate has improved significantly with a 40-place improvement in the ranking of the World Bank's Doing Business report, which ranks Togo 97th out of 190 countries in 2020²². This

²¹ <https://data.worldbank.org/?locations=TG-XM>

²² <https://www.worldbank.org/en/news/feature/2019/10/24/doing-business-2020-sustaining-the-pace-of-reforms>.

performance makes the country one of the best reformers in Africa and worldwide, and has a positive impact on the attractiveness of investors and the ease in setting up businesses²³. Economic dynamics, the business climate, as well as security and contextual factors are exacerbating the country's crime environment, particularly the porosity of the borders, the lack/inadequacy of public services in certain regions, the relatively weak links between the populace and the defence and security forces, as well as the age-old poorly managed conflicts (related to land, traditional chieftaincy, community tensions and transhumance), and unchecked cross-border physical transportation of cash.

50. Togo is a country characterized by an informal sector which accounts for more than 35% of the GDP²⁴ and predominant cash transactions despite the fact that the country has the highest banking rate in the UEMOA zone. Considering the accounts held in the micro-finance sector, Togo's extended banking rate stands at 85.4%. From a structural viewpoint, the latest financial technologies coexist with a very massive use of cash in transactions²⁵ and the cross-border transportation of cash. Furthermore, in 2018, the World Bank estimated remittances from the Togolese in the diaspora at \$500 million, or €45,760,500 (8.5% of GDP).

1.4.1 AML/CFT Strategy

51. Togo developed a national AML/CFT/FP policy and strategy document in February 2021. Although it includes strategic areas and a relevant action plan aimed at mitigating the ML/TF risks identified in the NRA, this document is yet to be formally adopted by the State authorities. However, following its NRA, Togo had already developed up an action plan aimed at mitigating the ML/TF risks identified through five strategic areas, namely: improving the legal and institutional framework, strengthening capacities of the institutions in charge of AML/CFT, improving the implementation by reporting entities of their AML/CFT obligations, improving the supervision of reporting entities and strengthening domestic and international cooperation.
52. In the fight against corruption, it should be noted that the adoption of a new Penal Code which provides for and sanctions offences related to the practice of corruption, the creation of the High Authority against Corruption and Similar Offences (HAPLUCIA), the amendment of the Constitution with a view to strengthening good governance, the adoption of an organic law relating to asset declaration (organic law N° 2020-003 of 01/24/2020) and the ongoing drafting of the national anti-corruption strategy launched in February 2020.
53. Several initiatives have been taken in Togo to enable people who are excluded from the traditional financial system to find the appropriate means or channel of joining the mainstream of the financial sector. Accordingly, such priorities have been mainly directed towards the Decentralized Financial Systems (DFS), the banking sector and insurance sector with a view to contributing to the development of financial inclusion. These include the creation of:
- A State Secretariat responsible for financial inclusion and the informal sector;
 - The National Inclusive Finance Fund (FNFI), the mandate of which is to set up financial mechanisms to support financial inclusion efforts for the benefit of vulnerable groups;
 - The Directorate for the Promotion of Inclusive Finance (DPFI) which is responsible, among other things, for setting up a support framework for a national inclusive finance strategy with a view to reducing poverty and promoting Economic and Social

²³ https://mo.ibrahim.foundation/sites/default/files/2019-10/African_Governance%20Report_2019_FR.pdf

²⁴ NRA, p.58

²⁵ Article 1099 of the Penal Code

development;

- The Youth Economic Initiatives Support Fund (FAIEJ), which aims, among other things, to contribute significantly to solving the problems of financing income-generating projects and micro-projects initiated by young people;
- The National Agency for Promotion and Financing Guarantee (ANPGF) which aims to assist and supervise small and medium-scale enterprises as well as micro enterprises operating in the production of goods and services sectors with a view to promoting them and facilitating access to funding for their activities.

54. Other entities such as Société Togolaise des Postes, Atlantique Telecom Togo, Togo Cellular, BBOX, SOLEVA, DFIs, the banking sector and insurance sector have also implemented 17 financial inclusion products in Togo. All these initiatives are part of the Community framework, through the adoption of a regional financial inclusion policy and strategy in UEMOA by Decision No. 012/24/06/2016/CM/UMOA of the Union's Council of Ministers of 24th June, 2016.
55. On the issue of terrorism, Togo has integrated several sub-regional initiatives, particularly aimed at military and security operations including operations KOUNDJOUARE and KOUDANLGOU, the "Information Agreement Mechanism" set up within the framework of the Council Agreement, the adoption of the ECOWAS strategy against terrorism and its financing, the Accra initiative organizing joint and cross-border operations against terrorism. Togo has also established the Inter-ministerial Committee for the Prevention and Fight against Violent Extremism (CIPLEV), which has local branches in each district.

1.4.2. Legal and institutional framework

56. Togo applies the principle of the hierarchy of standards. Thus, supranational texts take precedence over domestic law, where they are compliant with the country's core principles (Treaties, conventions, directives, resolutions, regulations, However, conventions, community directives/uniform laws need to be domesticated into Togo's national legal system through a parliamentary process before entry into force. On the other hand, UN Resolutions and Community regulations are directly applicable. Very often, they require enforcement texts to specify the procedures and mechanisms for their appropriate implementation at domestic level. In terms of sanctions, the supranational instruments refer, where applicable, to the sanctions provided for by positive law although some of the directives (those issued by the BCEAO) include financial sanctions. Regarding their implementation scope, the UEMOA Regulations and BCEAO Directives apply to FIs in Togo. The CREPMF Directives apply to capital market participants. The Uniform Law n°004-2018 of 4th May 2018 forms the basis of the AML/CFT/FP legal system in Togo²⁶. Indeed, this law imposes a wide range of obligations on all reporting entities in the financial sector and DNFBPs in Togo with a view to their compliance on the FATF recommendations. It is complemented by the BCEAO Directives, the CIMA regulations, the CREPMF Directives, the revised OHADA Uniform Acts and various relevant domestic legislations.
57. Furthermore, in addition to the adoption of the Uniform AML/CFT law, the Togolese legal framework has been strengthened since the last mutual evaluation, with the adoption, including, of:
- Law No. 2018-026 of 7th December 2018 on cybercrime;
 - Law No. 2019-009 of 12th August 2019 relating to internal security;

²⁶ In accordance with Directive No. 02/CM/UEMOA, the UMOA Council of Ministers on July 2, 2015 adopted the Uniform ML/TF law to be domesticated into the internal legislations of Member States of the Union within six months of the signing of the Council's Decision.

- Decree No. 2018-123/PR of 3rd August 2018 designating the competent authority and defining the procedure for administrative freezing;
- Decree No. 2019-076/PR of 15th May 2019 establishing the responsibilities, organization and functioning of the Inter-ministerial Committee for the prevention and fight against violent extremism (CIPLEV);
- Decree No. 2019-022/PR of February 13, 2019 establishing the powers, organization and functioning of the National Cybersecurity Agency (ANCY);
- Inter-ministerial Order No. 001/MEF/MSPC/GDMJ/MDAC of January 15, 2020 establishing the composition, powers and organization of an operational unit to facilitate the exchange of information and data on AML/CFT;
- Decree dated August 3, 2018 establishing the National Committee for the Coordination of AML/CFT Activities, replacing the Inter-ministerial Committee (CIM-SA). Since it is yet to be operational, the CIM-SA continues to coordinate AML/CFT activities in Togo. However, this coordination does not include the financing of proliferation, as the Togolese legal framework does not provide for it.

58. The institutions and agencies in charge of AML/CFT in Togo are presented in Table 1.2 below.

Table 1. 1: Summary Table of Competent Authorities and their Relevant AML/CFT Mandates

COMPETENT AUTHORITIES	SUMMARY OF AML/CFT RESPONSIBILITIES
Office of the President of the Republic	<ul style="list-style-type: none"> - Ensures compliance with international AML/CFT Agreements and Treaties - Enacts AML/CFT laws - Adopts AML/CFT regulations
National Assembly	<ul style="list-style-type: none"> - Passes the laws ratifying international agreements and treaties on AML/CFT - Domesticates Community directives on AML/CFT - Passes AML/CFT laws
Ministry of Economy and Finance	<ul style="list-style-type: none"> - Implements State policy in economic matters, provides the government with projections of economic and financial developments, implements AML/CFT policies defined by the State: supervision, development of guidelines and inspection of the financial sector (Banks and Financial Institutions, authorized foreign exchange dealers, decentralized financial systems, financial market players); - Competent authority in cases of administrative freezing of assets, funds and other financial resources within the framework of AML/CFT (Article 1 Decree n°2018-123/PR of 03 August 2018 appointing the competent authority and defining the procedure in administrative freezing cases) - Through the General Directorate of the Treasury and Public Accounting (DGTCP), the MEF ensures the viability of the national financial system; monitors compliance with accounting standards and procedures; supervises the production of management accounts by public

	<p>accountants; monitors external finances and exchange regulations; fight against economic crime and money laundering (Art. 31 Decree no. 2017-112/PR outlining the responsibilities of the Minister and establishing the organization and functioning of the Ministry of Economy and Finance).</p> <ul style="list-style-type: none"> - The General Directorate of Economic Studies and Analysis oversees decentralized financial systems and promotes the monitoring and supervision of micro-finance institutions. - The National Insurance Department supervises and monitors the insurance and reinsurance market; ensures the application of the regulations on the insurance sector; makes proposals for the approval of insurance companies and intermediaries; controls and supervises insurance companies; - The Support and Monitoring Unit for Mutualist Institutions or Savings and Credit Cooperatives (CAS-IMEC) monitors the application of the regulations governing decentralized financial systems; examines applications for licensing to carry out activities as a DFS; provides institutional support and monitors micro-finance institutions.
Ministry of Justice	<ul style="list-style-type: none"> - Ensures the implementation and monitoring of government policy on justice, human rights and good citizenship
Ministry of Security and Civil Protection	<ul style="list-style-type: none"> - Ensures the protection of people and property; - Guarantees the security of institutions, respect for the law and the maintenance of peace and public order - Prevents and counters terrorism and violent extremism
Ministry of Foreign Affairs, African Integration and Togolese in the Diaspora	<ul style="list-style-type: none"> - Ensures the implementation of United Nations Security Council resolutions on AML/CFT
Ministry of Defence and Veterans Welfare	<ul style="list-style-type: none"> - Guarantees the security of institutions, respect for the law and the maintenance of peace and public order. - Guarantees the integrity of the territory against terrorist attacks
Ministry of Territorial Administration, Decentralization and Local Authorities	<ul style="list-style-type: none"> - Supervises and monitors Associations and NGOs - Issues licenses to Associations and NGOs
CONAC	<ul style="list-style-type: none"> - Coordinates the national response to ML/TF risks (Art 1 CONAC Decree); - Makes proposals for measures to be implemented in order to combat ML/TF; - Ensures the follow-up and implementation of the recommendations emanating from the NRA; - Contributes to the development of AML/CFT policies (Art. 2 of CONAC Decree)
High Authority for the Prevention and Fight	<ul style="list-style-type: none"> - Independent administrative authority, responsible for promoting and strengthening the prevention and fight

against Corruption and Assimilated Offences (HAPLUCIA)	<p>against corruption and similar offences in administrations, public establishments, private companies and non-state bodies;</p> <ul style="list-style-type: none"> - Periodically evaluates the legal instruments for the fight against corruption using indicators and statistics; - Defines, increases and disseminates best practices relating to the prevention and fight against corruption; - Cooperates with the competent judicial authorities in cases of corruption and similar offences (Art. 2 law creating HAPLUCIA)
Central Office for the Suppression of Illicit Drug Trafficking and Money Laundering (OCRTIDB)	<ul style="list-style-type: none"> - Sanctions all offences related to the use, possession, abuse and illicit trafficking of drugs, narcotics and psychotropic substances; - Combats the laundering of the proceeds of criminal activity (Art. 3 of Decree no. 2004-053/PR of 28 January 2004 establishing the OCRTIDB); - Establishes regular monitoring of the criminal justice chain for the repression of illicit drug trafficking and money laundering
National Cybersecurity Agency	<ul style="list-style-type: none"> - Contributes significantly to the definition and implementation of the cybersecurity policy and strategic orientations; - Provides assistance to State agencies in matters of national security and defence; - Sensitizes equipment users on preventing intrusions, securing and defending the information system; - Coordinates the response to computer attacks; - Performs other missions in the context of cybersecurity and the fight against cybercrime.
Financial Intelligence Unit of Togo (TOGO-FIU)	<ul style="list-style-type: none"> - Administrative authority placed under the supervision of the Minister of Finance. Its mandate is to process and transmit financial in AML/CFT (Art. 59 Uniform law) - Conducts or commissions periodic studies on the development of AML/CFT techniques used at national level - Prepares periodic reports on the progress of AML/CFT activities at national level (Art. 60 Uniform law)
Inter-ministerial Committee for the Prevention and Fight against Violent Extremism (CIPLEV)	<ul style="list-style-type: none"> - Strives to eradicate or reduce the spread of violent extremism by giving grassroots communities the tools and support they need to combat this scourge and - Strengthens cooperation and collaboration between the administration, defence and security forces for effective prevention and control.
National Anti-Drug Committee (CNAD)	<ul style="list-style-type: none"> - Coordinates sectoral measures and centralization of national and international information and other information on drugs; - Fights against drug abuse and trafficking
General Inspectorate of Finance (IGF)	<ul style="list-style-type: none"> - Carries out a general assignment of inspection, audit, study, advice and assessment in administrative, economic and financial matters; - Supervises all transactions carried out by the authorizing officers of public revenue and expenditure as well as State accountants;

	<ul style="list-style-type: none"> - Ensures the regularity and compliance of transactions and verifies the materiality of public expenditure, particularly the authenticity of the service provided. These checks are also intended to combat the embezzlement of public funds, corruption, tax evasion and other economic and financial crimes.
State General Inspectorate (IGE)	<ul style="list-style-type: none"> - Public finance administrative supervisory body; - Secures State assets and promotes good governance; - Acts as an instrument that enables the Head of State to exercise his legitimate supervisory power and ensure the smooth running of public affairs
Togolese Revenue Office (OTR)	<ul style="list-style-type: none"> - Public establishment of an administrative nature with legal personality and administrative and financial management autonomy. Its mandate in the context of AML/CFT is to combat tax and customs fraud by cooperating with foreign countries (Art.5 par. 6 of the 2012 law establishing the OTR). - As Commissioner of Customs and Indirect duties, prepares bills or regulations aimed at improving customs legislation (Art. 39 of Decree no. 2016-017/PR establishing the powers, organization and functioning of the Togolese Revenue Office) ; fight against corruption, customs fraud and other illicit trafficking; collaborates with the competent administrations in the surveillance of national borders and the protection of territorial integrity - The Tax Commissioner prepares bills or regulations aimed at improving tax legislation; coordinates and supervises the identification and registration of taxpayers; oversees the preparation and implementation of audit and tax control plans, based on risk analysis and the fight against fraud, tax evasion and corruption (Art. 37 of Decree no. 2016-017 /PR establishing the mandate, organization and functioning of the Togolese Revenue Office)
Police Headquarters	<ul style="list-style-type: none"> - Takes national security directives; designs and implements the strategy to combat insecurity at national level. - Thus: - The Criminal Investigations Department conducts investigations relating to all crimes and enhances police cooperation in criminal investigations - The INTERPOL National Central Bureau (BCN-INTERPOL) coordinates the activities of the International Criminal Police Organization-Interpol at national level; contributes to the fight against common crime at the international level in collaboration with the Criminal Investigations Department
Gendarmerie Headquarters	<ul style="list-style-type: none"> - Conducts investigations relating to all crimes and contributes to the strengthening of police cooperation in criminal investigation; - Conducts research and criminal investigations through the central criminal investigation and research division in order to establish the facts likely to reveal ML/TF; - Contributes to the fight against common crime in collaboration with the Criminal Investigations Department

National Gendarmerie Security and Intervention Group (GSIGN)	<ul style="list-style-type: none"> - Special unit of the National Gendarmerie. Its mandate is to: - fight against terrorism nationwide; - fight against organized crime (massive crimes)
Light Antiterrorist Intervention Group (GILAT)	<ul style="list-style-type: none"> - Fights against terrorism ; - Fights against violent forms of crime; - Restores order during upheavals.
National Intelligence Agency (ANR)	<ul style="list-style-type: none"> - Ensures the internal and external security of the State; - Monitors national or foreign persons or groups of persons suspected of carrying out any activity likely to undermine State security; - Searches for criminals and other wrongdoers reported by the international criminal police organization; - Collaborates in the fight against drug trafficking, fraud and smuggling, terrorism, high economic crime and all other crimes constituting a threat against the State or humanity
Judiciary	<ul style="list-style-type: none"> - Handles cases of economic and financial crime and organized crime as well as acts related to terrorism; - Ensures the repression of predicate offences, ML and TF (convictions and criminal prosecutions) - The Prosecutor implements the criminal policy of the government. He searches for and has someone search for the existence of offences (contraventions, misdemeanors and crimes) and decides on the follow-up to be made: dismissal without follow-up, direct citation, prosecution or alternative measures to prosecution. It drafts or orders the drafting of all memos necessary for the investigation and prosecution of offences against criminal law. To achieve this, it directs the activity of the criminal investigation officers and staff within the jurisdiction of his court. He receives complaints and reports and assesses the relevant follow-up to be made. Finally, it receives investigation reports from the FIU. - The investigating judge is in charge of the preliminary investigation into the facts likely to reveal ML/TF or any predicate offence to ML/TF - The sitting judge applies the law and gives ruling after having heard the different parties in dispute and their counsel.
SUPERVISORY AUTHORITIES	
BCEAO, Banking Commission	<ul style="list-style-type: none"> - Develop AML/CFT Guidelines and Directives for the implementation of AML/CFT laws within Financial Institutions; - Ensures, at all times, that all accountable institutions comply with the legal and regulatory provisions governing their activities; - Issues administrative sanctions against reporting entities in the financial sector; - Supervises, monitors banks, financial institutions, financial companies, wire money institutions and decentralized financial systems; - Ensures the organization and inspection of credit

	<p>institutions (Art 1 Convention governing the CBU);</p> <ul style="list-style-type: none"> - Ensures compliance by reporting institutions with their professional obligations arising from the legislation applicable to them.
CREPMF	<ul style="list-style-type: none"> - Enacts the requirements for access to the regional stock market; - Supervises the activity of all stakeholders, including market management structures and approved business stakeholders - Develops Directives for the implementation of laws and regulations relating to AML/CFT in matters of securities; - Ensures compliance by issuers of securities with the obligations to which they are subject in the area of public savings. - Sanctions financial market players in case of violation of the legislation in force
Inter-African Conference of Insurance Markets (CIMA)	<ul style="list-style-type: none"> - Drafts texts relating to AML/CFT, including CIMA Regulation No. 00004 of October 4, 2008 on AML/CFT in the insurance sector.
LONATO	<ul style="list-style-type: none"> - Supervisory authority for the gaming and casino sector
SELF-REGULATORY BODIES	
Bar Association	<ul style="list-style-type: none"> - Rules on registration on the roll, omission, re-registration and rank (Art 19-2 regulation relating to the harmonization of the rules governing the legal profession in the UEMOA zone); - Supervises the exercise of the legal profession; - Organizes training on AML/CFT for its members; - Imposes disciplinary sanctions in case of violation of the legislation in force.
National Chamber of Notaries	<ul style="list-style-type: none"> - Supervises and monitors the practice of the profession; - Organizes training on AML/CFT for its members; - Metes out or issues disciplinary sanctions (Art 94-2 law establishing the status of notaries)
National Chamber of Judicial Officers	<ul style="list-style-type: none"> - Supervises and monitors the exercise of the profession; - Organizes training on AML/CFT - Imposes disciplinary sanctions (art 68-2 law on the status of judicial officers)
National Chamber of Auctioneers	<ul style="list-style-type: none"> - Supervises and monitors the practice of the profession; - Issues disciplinary sanctions (Art 16 law n ° 2011-040 of December 30, 2011 on the organization of the auctioneer profession in Togo)
ONECCA	<ul style="list-style-type: none"> - Supervises and monitors the exercise of the professions of chartered accountants and chartered accountants; - Rule on applications for registration on the role of the Association (Art 46-6 Law n°2001-001 creating ONECCA); - Supervises the exercise of the legal profession; - organizes training on AML/CFT for the benefit of its members; - Metes out sanctions in case of violation of the legislation in force

1.4.3. Financial sector, DNFBPs and VASPs

59. This section indicates how the assessment team classified the financial sectors and DNFBPs taking into account their importance (see Table 1.2 below) based on their respective materiality and the ML/TF risks affecting them. The assessors used this categorization to inform their conclusions, weighting the positives and negatives in the implementation of the AML/CFT regime more heavily for sectors of very high importance than for sectors of low importance. This approach applies throughout the report, but particularly in Chapter 6 on IO. 3 and Chapter 5 on IO. 4.

Very heavy weighting

- a. **Banking sector:** In December 2019, 13 banks were operating in Togo. A fourteenth bank has been licensed but is yet to commence operations, with the 5 largest ones representing 70% of the market. This sub-sector recorded a total balance sheet of CFA francs 3,039.9 billion in 2019 (i.e. €4,634,297.6) representing a market share of 7.4% in the UEMOA zone, ahead of Niger and Guinea-Bissau. . Although regulated and more or less supervised in terms of AML/CFT, and providing more than 80% of the STRs sent to the FIU , the banking sector remains at high risk due to its size, its economic weight, but above all the cases of ML detected therein.
- b. **Authorized forex dealers:** Togo's financial sector has 29 authorized foreign exchange dealers. The NRA reveals that the forex activity presents a high ML/TF risk, even though the sector is not subject to adequate monitoring and supervision. This is coupled with the medium-high TF risk, which could be fueled by this activity in the Togolese context as described in the NRA.
- c. **Real estate sector:** The NRA identifies the real estate sector as presenting the highest level of ML risk, due including to the lack of legal framework for the real estate agency profession and the increased use of cash in financial transactions in this sector, hence the level of weighting given by the assessment team.

Heavy weighting

- a. **Micro-finance institutions:** In 2019, DFIs totaled 170 licensed units, including 23 DFIs falling under Article 44 of the law on DFIs. The total balance sheet of DFIs under Article 44 amounted to CFA francs 226 billion in 2019 (i.e. €34,453,778.9), representing 10.8% of the UEMOA market share and placing the country in fourth place²⁷. Despite their weight and importance in the Togolese financial sector, the NRA indicates that the DFIs are still not being monitored and their supervision is not risk-based.
- b. **Independent legal and accounting professions:** The independent legal professions (lawyers and notaries) and accountants play a significant role in the implementation of AML/CFT, given their ML/TF risks, which are considered as high in the NRA because of their various activities (purchase and sale of property, purchase of securities or other assets, capital management, management of accounts, including securities accounts, organization of contributions for the creation, operation or management of legal persons or legal arrangements, purchase and sale of business entities, external auditors, certification of financial statements, etc.) on behalf of their customers. Admittedly, the independent legal professions in Togo are governed by a code of ethics

²⁷G:\SG\EM\Efficacy\Literature review\Rapport_Annuel_CB_2018_BAT_Intranet.pdf

and other integrity and transparency control mechanisms, but they are not subject to any specific AML/CFT supervision. Their level of understanding of ML/TF risks is low. They provide few STRs and do not comply with their AML/CFT obligations.

Average weighting

- a. **Financial companies:** Also, 2 financial companies are active in Togo and rank first and fourth in the Union with a total balance sheet of CFA francs 13,635.7 billion (i.e. €20,787,490) and CFA francs 2,579.8 billion respectively. (i.e. €3,932,879.7). The risk level in this sector is linked to its weight and the lack of risk-based supervision.
- b. **Other FIs:** The financial market, the post office, the funds transfer services (21), as well as wire money (5) provide financial services and are not subject to adequate AML/CFT monitoring and supervision. In this regard, the assessment team notes that the number of wire money accounts opened reached 4.7 million in 2019 (i.e. €7,165,103.8). The value of the transactions carried out stood at 910 billion in 2019 (i.e. €1387286056.9) against the backdrop of medium-high TF risks exacerbated by other contextual factors.

Low weighting

- a. **Insurance sector:** The Togolese insurance market has 13 companies, including 0 life and capitalization insurance companies. The elements of threat in this sector relate including to the existence of predicate offences to ML/TF in the country and the predominant use of cash in transactions. The low weighting attributed to this sector is linked to the life insurance activity which is still marginal in Togo.
- b. **Other DNFBPs:** With regard to the other categories of DNFBPs (dealers in gems and precious metals, casinos/gaming halls), and virtual asset services providers, although they have no legal framework and are not subject to any appropriate supervision, the assessment team took into account their marginal activities in the Togolese economy, which apparently reduce the ML/TF risks to which they are exposed.

Table 1.2. : Structure of Financial Institutions in operation, DNFBPs and VASPs

Type of Institutions		Number		Total Balance Sheet (in billions of XOF)
		S/Total	Total	
Credit institutions	National banks	3	13	2,802.5 (i.e. 4272383)
	Sub-regional banks	5		
	International banks	5		
	Financial institutions	3	237.4 (i.e. €361,913.9)	
Financial companies	Financial holding companies	2		16215.5 (i.e. €24,720,370.3)
Stock exchange	Brokers, dealers and portfolio managers	12		Undetermined
Insurance	Life insurance	7	12	114.5 (173791879.6€)
	Non-life insurance companies/other insurance companies	5		64.6 (98482065.1€)
	Insurance and reinsurance brokers	53		Undetermined

	General agents	27	80	
Microfinance institutions		170		226.0 (DFI article 44) i.e. €98,482,065.14
Forex Bureaus		29		
Rapid Money Transfer Companies		21		Recognized in the total balance sheet of banks
Wire money institutions (banks)		5		Recognized in the Total balance sheet of banks
Virtual Asset Service Providers		0		
DNFBPs				
Casinos and gaming companies	Casinos		1	
	Lottery and other games of chance		2	Undetermined
Legal sector professionals	Notaries		80	Undetermined
	Lawyers		150	Undetermined
Auditors/Chartered Accountants/Accountants			102	Undetermined
Real estate developers and agents	Real estate agents		4	Undetermined
	Real estate agents		Undetermined	Undetermined
Dealers in gems and precious metals			Undetermined	Undetermined
County court bailiff			154	Undetermined

1.4.4. Preventive measures

60. The obligations applicable to reporting entities stem mainly from the Uniform AML/CFT Law No. 2018-004 of Togo of April 2018. They apply to the financial and DNFBP sectors, as defined by FATF. In addition, Togo also imposes AML/CFT obligations on the following actors: NPOs, hotels, auctioneers, sports agents and promoters of sports events, security companies, travel agencies, natural or legal persons negotiating for assets (for payments made or received in cash for an amount of at least CFA francs 5 million – Euros 7631), business intermediaries of financial institutions.
61. To mitigate financial exclusion, Togo has defined products to allow access to financial services of the most vulnerable segments due to their low income or due to the fact that the individuals concerned or their activities are not formalized enough to access mainstream financial services. The NRA report reveals that out of the financial inclusion products available in Togo, 15 are low risk and can be subject to simplified due diligence measures. However, the assessors found no implementation of simplified due diligence measures in Togo.

1.4.5. Legal persons and legal arrangements

62. There are several types of legal persons in Togo, including civil companies established from civil law and business companies governed by the OHADA Uniform Act on the law of Business Companies and Economic Interest Groupings (see Table 1.3). From the statistics provided by Togo, the Unipersonal Limited Liability Company (SARL) is apparently the most attractive form of company, representing 22% of legal persons established.

Table Error! No text of specified style in document.. : Overview of Types of Business Companies that can be Incorporated in Togo

Companies	Numbers	Characteristics
Public limited companies - SA	665	The SA is a company in which the shareholders are only liable for the company's debts up to the amount of their contributions and whose shareholders' entitlements are represented by the shares.
Sole Proprietorships – SA U	125	A one-man SA has the particularity of being managed with a single associated natural or legal person.
Limited Liability Companies - SARL	9626	SARLs are companies in which the partners are only liable for the social debts up to the amount of their contributions and the partners' entitlements are represented by shares. It can be established by a natural or legal person, or between two or more natural or legal persons.
Limited Liability Companies - SARLU	9987	It is referred to as a single-member LLC when the company is established by a natural or legal person.
Limited Liability Companies with Variable Capital - SARL CV	12	The limited liability company with variable capital is a SARL whose amount of share capital can be increased or decreased without formalities or advertising costs, provided it respects a minimum sum and a ceiling sum.
Simplified Joint Stock Companies - SAS	214	The SAS is a company set up by one or more partners and whose statutes freely provide for the organization and operation of the company subject to mandatory rules. The shareholders of the simplified joint-stock company are only liable for social debts up to the amount of their contributions and their entitlements are represented by shares.
Simplified sole joint-stock companies - SASU	65	When the SAS has only one person, this person is referred to as the "sole shareholder".
Simplified cooperative societies - SCOOP	16	The cooperative society is a group of people voluntarily brought together to satisfy their aspirations and economic, social and cultural needs by means of a company which is managed according to cooperative principles. The SCOOP could be managed in a simplified form or with the help of a board of directors.
Cooperative societies with Board of Directors	02	Same
Partnerships - SNC	02	The SNC is a company in which all the partners are traders and are liable indefinitely and jointly for the company's debts. The company is terminated by the death of a partner. However, the Articles of Association may provide that the company continues either between the surviving partners, or between the surviving partners and the heirs or successors of the deceased partner with or

		without the consent of the surviving partners.
Limited Partnerships - SCS	00	The SCS is a company in which one or more partners coexist indefinitely and jointly and severally liable for the company's debts called "limited partners", with one or more partners responsible for the company's debts within the limit of their contributions called "limited partners" or "limited partnership". », and whose capital is divided into shares.
Economic Interest Grouping - GIE	56	An economic interest grouping is one whose exclusive purpose is to implement, for a fixed period, all the appropriate means to facilitate or develop the economic activity of its members, to improve or increase the dividends of this activity. Its operations must relate essentially to the economic activity of its members and can only have an auxiliary character in relation to it. The economic interest grouping does not in itself give rise to the realization and sharing of profits. It can be incorporated without capital.
The Sole Proprietorship	68093	The sole proprietorship refers to the natural person trader who by nature secures business documents to practice his profession as opposed to the entrepreneur (an individual entrepreneur, who by simple declaration of activity, exercises a civil, business, artisanal or agricultural and who does not have the status of a trader).
Civil Companies	Undetermined	Civil companies include all companies that carry out a non-business activity, i.e. agricultural, liberal and intellectual or real estate. The profits of civil companies are directly taxed through the partners while those of business companies taxed at the company level. All partners are indefinitely liable for professional debts.

63. All these business companies must be registered with the RCCM, unlike the joint venture, which has neither assets nor capital nor registered office, and whose only interest lies in the fact that it is not known to third parties. Indeed, registration is the formality by which a natural or legal person declares its existence and its business activity by transcribing its information to the RCCM. This register receives including the registrations of business natural and legal persons, the declarations of activity of entrepreneurs and the registration of securities. It is kept by the registry of the Commercial Court which has jurisdiction in business matters. It aims to better inform the database and provide a clear mapping of legal persons in the country. It also facilitates access to company balance sheets, information on the managers and the activities of the structures, including their financial commitments through sureties, privileges and other legal decisions concerning them (bankruptcy, dissolution and sale). Togo is grappling with the challenges of availability, updated and comprehensive nature of information required on legal persons and beneficial owners.
64. The Togolese legal framework does not provide for the creation of legal arrangements. However, it requires reporting entities to collect basic information on the beneficial ownership of trusts.

1.4.6. Supervisory modality²⁸

65. Togo essentially has 5 AML/CFT supervisory authorities in the financial sector. They supervise all reporting entities required to comply with the provisions of the AML/CFT Law No. 2018-004 as well as the relevant Instructions and Directives. They are endowed with the requisite powers and a certain capacity to accomplish their mandates, and to mete out the appropriate sanctions in case of violations. The powers of supervisors are analyzed in more detail in R.27 and R.28. This involves both the review of fit and proper requirements and the AML/CFT-related supervisory missions. Specifically:
- The BCEAO, Banking Commission and Ministry of Finance supervise banks, financial institutions, large-scale decentralized financial systems (DFS), EMIs, and authorized forex dealers;
 - The MEF and department responsible for supervising and monitoring DFIs generally supervise small DFIs as follows;
 - The CREPMF supervises financial market operators;
 - The CIMA, through CRCA and the insurance department within the MEF, supervises insurance companies and brokers;
 - The LONATO is responsible for the supervision of gaming companies and casinos.
66. On the other hand, the supervisory prerogatives of the DNFBP self-regulatory authorities do not formally include the AML/CFT component. These include:
- ONECCA for Accountants and Chartered Accountants;
 - The Bar Association;
 - The National Chamber of Notaries;
 - The National Chamber of Bailiffs;
 - The National Chamber of Auctioneers.
67. Real estate agents, dealers in gems and precious metals, as well virtual asset service providers have no designated supervisory authority.

1.4.7. International Cooperation

68. International cooperation is an important subject in the context of AML/CFT in Togo, given the country's exposure to ML risks both from illicit flows generated abroad and at domestic level as underscored in the NRA report. In addition, ML threats such as fraud (including cybercrime), tax evasion, corruption, drug trafficking, human trafficking, migrants' smuggling, wildlife trafficking and gold smuggling each has a transnational character. Togo is also exposed to TF risks emanating from outside its borders due to the sub-regional security context marked by terrorism, but also in relation to the activities of some of these NPOs receiving funds from abroad.
69. The framework for international cooperation in Togo is based on multilateral and bilateral agreements, which enable the country to offer broad mutual legal assistance, exchange of financial intelligence through its FIU and other forms of cooperation, including with the law enforcement authorities. The Ministry of Justice is in charge of mutual legal assistance. It has within it a directorate called the

²⁸See table 1.2

Directorate of Criminal Affairs and Pardons which assumes the responsibilities of the central authority for mutual legal assistance. As such, it manages extradition and mutual legal assistance requests sent to Togo. This directorate receives requests and forwards them to the competent authorities for execution. The normal channel for receiving requests and transmitting responses is the diplomatic channel, but in order to facilitate cooperation and reduce delays, the central authority exchanges directly with its foreign counterparts through advanced copies or informal copies.

70. Apart from the FIU, the Togolese competent authorities have fairly little recourse to international cooperation in all areas related to AML/CFT and predicate offences.

CHAPTER 2. NATIONAL AML/CFT POLICIES AND COORDINATION

2.1 Key Findings and Recommended Actions

Key Findings

- a. Togo assessed its ML/TF risks through an inclusive NRA process concluded in December 2019. The tool and methodology used revealed a medium-high level of ML/TF risks at national level, based on sectoral assessments. However, the challenges encountered in collecting statistical data specific to ML/TF had a negative impact on the conclusions and findings obtained. Besides, the NRA does not take into account the risks of virtual asset service providers, maritime piracy and environmental crime.
- b. Generally, the Togolese authorities at domestic level have demonstrated a mixed understanding of ML/TF risks: the FIU and prosecutorial authorities have a fairly good understanding of such risks while the investigative authorities and supervisors have a poor understanding, particularly because they have failed to take ownership of the NRA findings.
- c. Togo developed a national AML/CFT policy and strategy document in February 2021 based on the findings of the NRA and its action plan. However, this document is yet to be adopted by the political authorities. In addition, the action plan of the national strategy does not provide for any specific measure or action on CFT.
- d. The Inter-ministerial Committee for the Monitoring of Anti-Money Laundering and Combating the Financing of Terrorism (CIMSA), created in 2009, is the body responsible for national coordination of AML/CFT activities. CIMSA relies mainly on CENTIF to carry out its activities, mainly the coordination of the NRA process, awareness-raising or training sessions for stakeholders on the NRA findings, the preparation of the national AML/CFT strategy document and the preparation of the mutual evaluation. However, the low level of effectiveness of the CIMSA in terms of cooperation and information exchange among stakeholders led the Togolese authorities to create in 2018 the National Coordination Committee (CONAC) and the operational unit for the facilitation of information and data exchange, which were set up to revitalise national coordination and cooperation as well as intelligence exchange. The expected operability through the appointment and capacity building of the members of these new bodies will strengthen coordination and cooperation and facilitate intelligence sharing among national AML/CFT stakeholders. However, the composition of CONAC does not include prosecutorial authorities (prosecutors and trial judges) or authorities in charge of personal data protection and privacy either. Furthermore, the national coordination mechanism does not include the LFP, as the Togolese legal framework does not adequately provide for such.
- e. The findings of the NRA are taken into account only in the activities organized by the FIU. Indeed, the ML/TF risks identified are yet to establish an impact on the objectives and activities of the competent authorities and self-regulatory bodies. The limited understanding of ML/TF threats and vulnerabilities by these authorities prevents the activities from being consistent with the identified risk profile. The supervision of FIs and DNFBPs does not include the identified ML/TF risks.
- f. The findings and action plan of the NRA were shared with the FIs and DNFBPs during a few

sensitization sessions organized by the FIU. This dissemination of the NRA's conclusions has been limited due to the lack of a formal mechanism designed to facilitate the dissemination and sharing of information on risks with stakeholders, particularly FIs and DNFBPs.

Recommended Actions

The Togolese authorities should:

- a. develop an operational mechanism for collecting and keeping comprehensive AML/CFT statistics, designed to improve the quality of its risk assessments and ensure the relevance of the findings obtained in relation to its risk profile and its context;
- b. update its NRA taking into account all the contextual factors in order to fine-tune the identification and understanding of all ML/TF risks (including risks related to maritime piracy, environment, virtual assets and their service providers and TF) and to determine the relevant ML/TF risk levels in relation to the country's effective risk profile, with a view to mitigating them;
- c. map out a mechanism that would enable the competent authorities take ownership of the conclusions of the NRA and improve their level of understanding of the risks identified;
- d. adopt the national AML/CFT policy and strategy document and map out an appropriate mechanism to monitor its implementation. They should also prioritize actions and resource allocation to high risk areas and sectors;
- e. specify the simplified due diligence measures provided for each financial inclusion product considered as low risk and apply enhanced measures to sectors identified as high ML risk (real estate, banking and forex dealers);
- f. ensure the competent authorities and self-regulatory bodies include in their objectives the ML/TF risks identified at both domestic and sectoral levels in order to conduct their activities in line with the levels of such risks;
- g. operationalize their coordination and cooperation mechanism by diligently swearing in the members of the CONAC and the Operational Unit in charge of facilitating information and data exchanges, and providing them with adequate resources. The Decree establishing the CONAC should incorporate the issue of PF and include all the relevant law enforcement authorities as well as the authorities responsible for the protection of personal data and respect for privacy;
- h. institutionalize a formal mechanism for the dissemination and sharing of the findings of the NRA with national stakeholders, particularly FIs and DNFBPs, in order to sensitize them on ML/TF risks.

71. The relevant Immediate Outcome reviewed and assessed in this chapter is IO.1. The relevant Recommendations for the assessment of effectiveness on this section are R.1, 2, 33 and 34, as well as some elements of R.15.

2.2 Immediate Outcome 1 (risk, policy and coordination)

2.2.1. Country's understanding of its ML/TF risks

72. Togo concluded its first national ML/TF risk assessment in December 2019. The NRA exercise was coordinated by the FIU through an inclusive process. Indeed, the Working Group set up for this purpose comprised the national AML/CFT stakeholders and actors in Togo, namely the law enforcement authorities, the supervisory and monitoring authorities, the public administration (tax, lands and financial authorities), financial institutions, DNFBPs and NPOs. The NRA Working Group was provided with adequate facilities and resources, and enjoyed the support of technical and financial partners (World Bank and GIABA) to accomplish its task.
73. The NRA process had to grapple with the unavailability or lack of comprehensive statistical data on AML/CFT at national level and in almost all sectors (NRA Report, page 17). These challenges encountered in the collection of statistical data or relevant information specific to ML/TF led the Working Group to opt for alternative sources including interviews and rough estimates of quantitative data on data collected over a long period (10 years). This situation could not guarantee the comprehensiveness and reliability of the information and data used in the conduct of the NRA, which had a negative impact on the relevance of the findings obtained without calling into question the consistent and reasonable nature of the NRA assessment process itself. With this, the ML/TF risks are considered as medium- high in Togo.
74. The ML threat is spread nationwide by several predicate offences of significant importance such as: fraud and breach of trust, cybercrime, human trafficking and migrants' smuggling, drug trafficking, tax fraud, customs fraud, trafficking in stolen goods, corruption, environmental crimes (NRA Report, page 23). Significant revenues from predicate offences committed in other jurisdictions, as well as proceeds of crimes committed in Togo, are invested both domestically and abroad. Without statistical data or any other information on the proceeds or income derived from the various offences analyzed, it is impossible to have a comprehensive and objective understanding of the real extent of such gains, income or illicit proceeds at stake, to be used to reliably assess Togo's internal and external ML threats. Furthermore, ML threats arising from maritime piracy, environmental crime, cross-border diamond and gold smuggling activities, smuggling of cigarettes and petroleum products have not been given significant attention in the analysis of the global threat. Similarly, the threats linked to the exploitation of the vulnerabilities of the FIs, particularly the banks and authorized forex dealers and those of the other non-financial sectors at high risk of ML/TF such as real estate, have not been taken on board in the analysis of the overall threat assessment.
75. With regard to ML vulnerabilities, several gaps and deficiencies of the AML/CFT regime have been outlined, including: dysfunction and low AML capacity of actors, ignorance of AML obligations by most of the FIs and almost all DNFBPs, failure to conduct AML-related supervision of financial and non-financial reporting entities, lack of regulation of the real estate sector which receives a large share of illicit domestic and foreign laundered income, the predominance of the informal sector in the economy and the widespread use of cash in all financial and economic transactions. Furthermore, the three most important sectors of the national economy (real estate, banking and forex) present a high vulnerability of ML and almost all of the other financial sectors and DNFBPs are at medium-high levels of vulnerability.
76. The overall threat of TF considered as medium was analyzed in the NRA mainly as emanating from the exploitation of the weak controls in highly developed cross-border physical transportation of cash in Lomé, the threat of exploitation of the seafront and seaport facilities in the country for economic activities related to TF, against the backdrop of trade transactions with Burkina Faso, Niger, Mali and

Nigeria affected by terrorism. It also takes into account the legitimate (business) and illicit (drug trafficking, counterfeit medicine trafficking, cigarette smuggling, trafficking in stolen goods (stolen vehicles), migrants' smuggling) conducted in Togo by certain communities of foreigners to finance terrorist organizations in their countries or regions of origin. The TF vulnerabilities considered as medium-high were mainly analyzed taking into account the porous borders which make it difficult to monitor goods and people at the borders, as well as the financing of Islamic faith-based NPO activities.

77. The NRA concludes that the level of TF risk is medium-high in Togo. Although this conclusion seems reasonable, it would be an added advantage for Togo to deepen and fine-tune its assessment of TF-related risks through the identification and understanding of the existing threats and vulnerabilities. This should further take on board the misuse of NPOs and activities that generate funds, goods, resources and services for TF purposes (regardless of their criminal origin or illicit sources). The specific assessment report on TF risks linked to NPOs concluded by Togo in February 2021 identifies faith-based NPOs as the most exposed to TF risks. However, it does not clearly highlight any classification of NPOs by risk level, which by their characteristics, their activities and their financing methods, are likely to be used for TF purposes in the country. Furthermore, the assessment team notes that the various ministries in charge of registering and monitoring the activities of NPOs encountered did not demonstrate a good understanding of the TF risks linked to NPOs, or even their knowledge of the TF vulnerabilities and threats identified in the sectoral risk assessment report.
78. It should be underscored that during the on-site visit, the Togolese authorities provided the assessment team with a sectoral ML/TF risk assessment report related to the use of legal persons. However, the discussions of the assessment team with the main actors involved in the creation and management of legal persons in Togo (the Commercial Court, Trade and Personal Property Credit Register, Business Formality Center, Chartered accountants, notaries, etc.) revealed that they were unaware of the existence of this sectoral assessment report, as well as its conclusions and recommendations.
79. Togo is one of the countries with a high rate of financial inclusion in UEMOA (72.3% in 2019 according to the BCEAO annual report on the status of financial inclusion in UEMOA). The country has undertaken several initiatives aimed at providing access to financial services for a large segment of the population, including the establishment of a National Fund for Inclusive Finance, the objective of which is to put in place financial mechanisms designed to support financial inclusion efforts for the benefit of vulnerable groups. The country also participates in the UEMOA regional financial inclusion strategy led by the BCEAO. The NRA facilitated the assessment of nineteen (19) financial inclusion products and services, fifteen (15) of which emerged as low risk. Consequently, based on the conclusions of the NRA, Togo is considering the implementation of simplified ML/TF due diligence measures for these 15 financial inclusion products. Nevertheless, the assessment team notes that the findings of the NRA which classify electronic money products and services as low risk of ML/TF do not take into account the threats and vulnerabilities of ML/TF linked to the use of several SIM cards by one and the same individual for his electronic money transactions. Indeed, the exchanges with the Electronic Money Issuers met during the on-site visit revealed that the same individual can be in possession of several SIM cards and can therefore have several electronic purses under anonymity. However, EMI regulations authorize the anonymous use of electronic money below the threshold of CFAF 200,000 (in monthly total) or €304.8. This regulatory provision, coupled with the possibility for an individual holding a multitude of electronic purses and the opening of electronic money to the outside (intra-UEMOA use), are all factors of both ML and TF vulnerability which the country did not include in its analyses.
80. The ML/TF risks linked to the use of new technologies, particularly the risks linked to virtual assets, have not been assessed. In a context where virtual assets service providers such as virtual currencies

and bitcoin are gaining momentum, this lack of assessment is a vulnerability that should be addressed.

81. Based on the findings of the NRA, at national level, the Togolese authorities generally demonstrate a mixed understanding of the ML/TF risks identified. The FIU and prosecutorial authorities have a fairly good understanding of such risks whereas, on the whole, the investigative authorities, the supervisory and monitoring authorities and self-regulatory bodies have a poor understanding, because of their failure to take ownership of the conclusions of the NRA. With regard to TF risks, despite the reasonable nature of the NRA's conclusions, it is imperative to underscore the urgent need for the Togolese authorities to improve their understanding of such risks through an in-depth assessment of all the internal and external TF vulnerabilities and threats.

2.2.2. National policies aimed at mitigating identified ML/TF risks

82. Based on the recommendations of the NRA, Togo developed in February 2021 a new national policy and strategy document accompanied by an action plan designed to better organize and strengthen AML/CFT. The policies and measures outlined in these documents are apparently relevant for mitigating the identified ML risks. On the other hand, no significant attention has been paid to CFT, apart from the provisions on reforms relating to the legal and regulatory framework of NPOs and their supervision. The assessment team particularly notes the failure of the competent Togolese State authorities to formally approve not only the NRA report, but also and particularly the national AML/CFT policy and strategy document and its action plan. This is all the more worrisome as these are the same competent authorities who are empowered to provide the resources necessary for the effective implementation of the AML/CFT actions and measures provided for in the said documents.
83. Like the national policy and strategy document, the assessment team also notes the consistency and relevance of most of the planned actions in the NRA to mitigate the identified ML risks. On the other hand, there are still no strategic areas in the action plan specifically devoted to CFT actions. Furthermore, apart from the popularization and sensitization actions of stakeholders on the findings of the NRA, no other relevant activity deemed a priority in this action plan has been implemented by Togo. Besides, the analysis of risk mitigating measures in the NRA and allocation of relevant resources reveal that Togo has not applied the risk-based approach in planning the actions of the various strategic areas. Indeed, the real estate, banking and manual forex sectors identified as high ML/TF risk sectors, as well as NPOs, some of which are deemed to be highly vulnerable to TF, have not been provided with adequate resources and priority measures to mitigate their risks.

2.2.3. Exemptions, enhanced and simplified measures

84. Togo has not opted for any exemption from AML/CFT standards or measures at the end of its NRA. However, the NRA recommends the application of simplified due diligence measures for about fifteen financial inclusion products. With no specification of the said simplified measures recommended for each of the products concerned, and of their implementation, the assessment team could not assess their relevance or their consistency with the risk levels identified. Besides, no exemption or enhanced measure has been taken in Togo based on any risk assessment even though the NRA has concluded that the real estate, banking and manual forex sectors are at high risk of ML in Togo.

2.2.4. Objectives and activities of competent authorities

85. Generally, the law enforcement authorities, supervisory and self-regulatory authorities have not yet acquired the reflex to incorporate into the definition of their activities, their mandates or their respective objectives, the ML/TF risks identified in the NRA both at national and sectoral levels. However, the new national AML/CFT strategy developed by the country includes in its objectives the

identified ML/TF threats and vulnerabilities and plans to have them updated.

Supervision

86. The supervisory and monitoring authorities of FIs and the supervisory or self-regulatory bodies of DNFBPs are yet to incorporate the findings of the NRA to define their objectives with a view to conducting more enhanced supervision of the areas or activities deemed to be high national risk. The UMOA Banking Commission has been timidly trying to implement this requirement since 2019 based on an AML/CFT questionnaire designed for FIs and a rating system for credit institutions. However, it has not demonstrated that it takes into account the relevant ML/TF risks inherent in the sectors, nor the risk profile of the FIs in the planning and implementation of its inspection missions. Generally, in addition to the recent nature of the risk-based approach for supervisors, the latter often lacks the skills and resources to accomplish this task (see IO.3).

Investigations and prosecutions

87. The policies and activities put in place are not appropriate in relation to the ML/TF risks identified. ML/TF investigations and prosecutions are prioritized in Togo's national policy and strategy document, but yet to be implemented in Togo. The ML investigations conducted by the LEA result from the follow-up to the FIU reports filed to the State Prosecutor's Office and parallel investigations. They have to do with over thirty cases related to fraud. The other threats identified in the NRA (breach of trust, tax and customs fraud, corruption, drug trafficking, human trafficking, etc.) are scarcely captured in the investigations and criminal proceedings. Nor are the LEAs adequately trained to carry out asset and financial investigations. They do not prioritize and conduct TF investigations proactively due particularly to inadequate staffing, limited material and financial resources (see IO. 7 and 9).

2.2.5. National coordination and cooperation

88. Between 2009 and 2018, the Inter-ministerial Committee in charge of Monitoring AML/CFT Activities (CISMA BC/FT) was the body responsible for coordinating the national AML/CFT policy in Togo. In this regard, CISMA launched the NRA and supervised the drafting of the report and its action plan in collaboration with the FIU.
89. In August 2018, in a bid to revamp cooperation among the various national actors, ensure the national coordination of AML/CFT activities and cope better with the new challenges in intelligence sharing, CISMA was replaced by CONAC. In 2020, Togo also set up an operational unit to facilitate the exchange of information and data on AML/CFT between the FIU and the structures responsible for investigating and prosecuting ML/TF and predicate offences. However, these new bodies are yet to be operational as their respective members have still not been appointed. Nevertheless, the CISMA continues to carry out its coordination activities despite the deficiencies identified in its functioning and which led to the creation of these bodies. Consequently, the assessment team could not assess the effectiveness of these new national coordinating bodies, as well as the means and resources allocated to their functioning.
90. The CONAC brings together the main national AML/CFT stakeholders representing the public and private sectors. However, its composition does not explicitly include representatives of law enforcement authorities, in particular prosecutors and/or judges in charge of AML/CFT issues. The assessment team also notes that CONAC has no authorities in charge of data protection and privacy measures to ensure compatibility with AML/CFT requirements. The Operational Unit's composition does not include the supervisory authorities and self-regulatory bodies to facilitate the sharing and

exchange of information and data with the latter.

91. Furthermore, the legal framework developed for cooperation and national coordination does not include the issue of countering the financing of proliferation in Togo.
92. Since there is no formal information exchange mechanism, the FIU is the main source of financial intelligence in Togo. It relies on its network of correspondents designated with the competent authorities and self-regulatory bodies, based on cooperation agreement protocols. It also uses its extended right of communication conferred on it by law, to obtain or provide information to the law enforcement authorities, the tax administration and OTR for cooperation purposes. However, the volume of information exchanged between the FIU and these various actors concerned seems relatively low, considering the statistics provided by the country (cf. IO.6 analysis).
93. The effectiveness of coordination and cooperation is substantially weakened due to the non-operationalization of CONAC. Similarly, the non-functionality of the operational unit is hampering the intensification of information and data exchanges, as well as the diversification of sources of financial intelligence other than the FIU. It should be recalled that the creation of these two bodies is as a result of the deficiencies diagnosed both in the composition of the CIM/SA and in its capacity to ensure active and dynamic coordination and cooperation among AML/CFT actors. These deficiencies in the coordination of AML/CFT activities in Togo are therefore still outstanding.

2.2.6. Raising private sector risk awareness

94. The NRA process was inclusive and also served as an awareness-raising framework for all actors involved, on the sectoral risks identified as well as the appropriate mitigating measures to be adopted. The workshop for the validation of the NRA general report was a golden opportunity for the dissemination of the NRA findings.
95. Considering the importance of the banks in the national economy and given the level of risk identified, the sectoral assessment report was sent to all the banks and BCEAO for comments and validation. Besides, meetings were organized with the bank compliance officers to present and discuss the findings of the sectoral risk assessment. Emphasis was also placed on appropriate mitigating measures to be implemented by this sector. Sensitization sessions were also organized for other players whose sectors have been identified as presenting high ML/TF risks, particularly the real estate sector, authorized foreign exchange dealers and DFIs, accounting and legal professionals and capital market players.
96. With no formal mechanism for sharing information on national risks, the FIU and CIMSA organized several popularization and sensitizations sessions for all stakeholders on the NRA conclusions and findings. The FIU has also made available to each competent authority, including law enforcement authorities, supervisory and monitoring authorities, self-regulatory bodies, all the sectoral information on the risks identified and the mitigating measures envisaged accordingly. However, despite these feedback and awareness-raising efforts, it generally seems these national players, particularly in high-risk sectors such as real estate and forex, are yet to take ownership of the NRA report.

General Conclusion on IO.1

97. Togo conducted its national ML/TF risk assessment with a major limitation relating to the unavailability of statistical data, which affected the relevance of the conclusions and findings obtained. Furthermore, the assessment did not take on board the risks associated with virtual assets and VASPs, maritime piracy and environmental crime. Although the country has conducted specific risk assessments related to NPOs and legal persons, the findings of these assessments have not been shared with the main relevant actors. Nevertheless, the FIU and prosecutorial authorities have a fairly good understanding of ML/TF risks while the level of understanding of the investigative authorities, supervisory and monitoring authorities and self-regulatory bodies is low.
98. Togo has developed a draft national AML/CFT policy and strategy document based on the findings of the national risk assessment and its action plan. However, this document is yet to be approved by the country's political authorities and does not include any specific measure or action to combat TF. Besides, the formal coordination and cooperation mechanism in force is still not operational and does not take on board the issue of PF.
99. **Togo is rated as having a low level of effectiveness on IO.1.**

CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

3.1. Key Findings and Recommended Actions

Key Findings

Immediate Outcome 6

- a. Togo's FIU continues to operate on the budget of the ministry in charge of finance (as it did when it had only management autonomy) instead of having its own budgetary allocation as an administrative authority. To this end, it needs an authorisation from its parent minister to disburse the funds allocated to its functioning when needed, which affects its financial autonomy, also impacting on its operational capacity.
- b. Protection of the confidentiality of the information exchanged with the FIU is limited because no Decree has been issued appointing its members and establishing the oath of office of the latter and correspondents within the state departments.
- c. The LEAs (DEF, SCRIC and OCTRIDB) have direct access to a wide range of information and financial intelligence from State and private departments, or through the FIU, which they use in investigations to establish evidence and locate the proceeds of crime related to ML/TF and predicate offences.
- d. The use of financial intelligence has sometimes led to the detection of ML but not TF cases, due to the LEAs' lack of appropriate expertise.
- e. The FIU's analyses have been used to disseminate information on ML and predicate offences to certain investigative authorities, the tax administration, supervision/monitoring authorities and foreign FIUs. The FIU's reports filed to the prosecution resulted in two (02) convictions for ML with fraud as the predicate offence. The FIU has not disseminated or filed any TF-related report.
- f. The FIU's capacity to analyze STRs/CTRs is limited due to inadequate staffing to deal with the exponential increase in STRs (more than half of the STRs received between 2016 and 2020 are still being processed).
- g. The FIU produces financial intelligence through STR/CTR analyses. It enriches its analyses with additional information provided by reporting entities, other competent authorities, RCCM databases, exchanges with its foreign counterparts and open sources.
- h. The FIU receives STRs mainly from banks and the Post Office, while the other reporting entities (DFS, DNFBPs, insurance companies, financial authorities and other FIs) file only a

few reports and irregularly. Only banks and DFIs file CTRs. The FIU also receives from the Customs services, reports on cross-border transportation of cash and BNIs, but it does not have data on cash seizures because the Togolese Customs does not make seizures for breach of regulatory provisions (exceeding the threshold, false or non-declarations).

- i. The FIU has produced three strategic reports distributed to the competent authorities and a typology study report on money laundering linked to cybercrime. These documents meet the operational needs of the competent authorities, but they are few in number when compared to the ML/TF risks identified in the country.
- j. Cooperation between the FIU and the other competent authorities is based on the designation of its correspondents within State departments. It has signed a few cooperation agreements with the other competent authorities (only one agreement with the OTR).

Immediate Outcome 7

- a. Togo's national policy and strategy document prioritizes ML investigations and prosecutions, but is yet to be implemented. The LEAs are not specialized in ML matters in Togo but they sometimes manage to detect potential cases of ML during their investigations. Besides, they are not adequately trained to carry out ML investigations effectively, hence the lack of systematic recourse to parallel financial investigations. They are also affected by corruption that hampers ML investigations.
- b. The major threats identified by the NRA (breach of trust, tax and customs fraud, corruption, drug trafficking, human trafficking and smuggling of migrants) and environmental crime are scarcely investigated and criminally prosecuted. The ML investigations conducted by the LEA mainly stem from the follow-up to the FIU reports filed to the State Prosecutor's Office as well as a few parallel investigations into about thirty ML cases exclusively linked to scam.
- c. The Togolese authorities have obtained convictions for self-laundering, third party laundering and autonomous laundering. These convictions exclusively relate to scam, which is the first ML threat identified in the NRA. The limited number of convictions in relation to the types of ML cases attests to the need for training of judicial officers.
- d. The Togolese judicial authorities have meted out four criminal sanctions on individuals for ML, including two suspended sentences, which calls into question their proportionate and dissuasive nature. Besides, there is no follow-up mechanism to ensure the sentences delivered are executed.
- e. The Togolese authorities apply alternative measures, including administrative fines, where the courts cannot convict for ML after prosecution has commenced. However, the effectiveness of these alternative administrative sanctions is hampered by challenges enforcing non-custodial sentences in the country.

- f. LEAs have access to a number of databases, but these are not interconnected. In addition, investigations are hampered by the low rate of banking, the excessive use of cash in transactions, the emergence of the use of virtual assets, mobile phone operators' failure to diligently provide geo-location data in response to requisitions, no or inaccurate address data provided when setting up legal entities, and the lack of information on beneficial ownership of legal entities.

Immediate Outcome 8

- a. Togo's national policy and strategy document prioritizes confiscation of proceeds and instrumentalities of crime as well as assets of equivalent value but is not being implemented.
- b. Togo has an adequate legal framework for the confiscation of criminal assets with the exception of a mechanism for the recovery and management of seized and confiscated assets other than precious metals and cash. However, the LEAs do not carry out sufficient screening and confiscation of assets linked to criminal activity committed abroad and cooperation with their foreign counterparts in order to identify assets linked to criminal activity committed in Togo.
- c. Cash and BNIs in an amount equivalent to the prescribed threshold are only declared at the Lomé airport checkpoint. In case of non/false declarations, no seizure and confiscation are made.
- d. With no statistical data on seizures and confiscations relating to the offences which constitute the main ML threats, it is impossible to establish the consistency between the results obtained and the ML/TF risks as well as the national AML/CFT policies and priorities.

Recommended Actions

Immediate Outcome 6

The Togolese authorities should

- a. allocate an autonomous budget to the FIU, as an administrative authority, to ensure the protection of its financial autonomy and operational capacity;
- b. adopt the Decree appointing the FIU members; and ensure that they take the oath of office, together with its correspondents within the State departments in order to guarantee the protection of the confidentiality of the information exchanged with the FIU;
- c. provide the FIU with more human resources to improve its analytical capacity to respond more adequately to the operational needs of the competent authorities; strengthen the capacities of LEAs through training on the use of financial intelligence in order to effectively investigate cases of ML/TF and associated predicate offences. They should sensitize the LEAs to systematically use financial intelligence obtained from the FIU;
- d. ensure the FIU lays emphasis on the search for TF-related information with the national

investigative authorities and its foreign counterparts in order to enhance its capacities and make TF-related disseminations;

- e. ensure the FIU collaborates with the regulatory/supervisory authorities to enhance awareness-raising sessions for FIs and DNFBPs on their STR obligations commensurate with the country's risk profile, as well as the Customs services on the systematic seizure of cash and BNIs in case of non/false declarations;
- f. ensure the FIU produces more strategic reports and typology studies on ML/TF threats;
- g. ensure the FIU diversifies and signs cooperation agreements with the other competent authorities and resorts more to other forms and mechanisms of cooperation.

Immediate Outcome 7

The Togolese authorities should:

- a. ensure the national policy and strategy document on the prioritization of ML investigations and prosecutions is implemented in line with the country's risk profile, have the LEAs specialize in ML detection and related investigations and prosecution, and build their capacities through training on special investigative techniques as well as parallel financial investigations, provide them with adequate human and financial resources; raise their awareness on the problem of corruption;
- b. organize awareness-raising and training sessions on international cooperation, including between ANR and LEAs, for State Prosecutors, to help investigating and trial courts secure a number of prosecutions and convictions of different types of ML cases consistent with the country risk level;
- c. ensure the sanctions meted out for ML are proportionate and dissuasive, by refraining from delivering suspended sentences. Competent authorities should put in place a monitoring mechanism to ensure the sentences handed down are executed;
- d. ensure that databases are interconnected and that they are accessible to LEAs. They should identify measures to minimise the hindrance of investigations due to the use of cash in transactions, the use of virtual assets, mobile phone operators' failure to diligently provide geolocation data in response to requisitions, the no or inaccurate address data provided when setting up legal persons and the lack of information on the beneficial ownership of legal persons.

Immediate Outcome 8

The Togolese authorities should:

- a. ensure the national policy and strategy document on the prioritization of confiscation is implemented to ensure that confiscation outcomes are consistent with AML/CFT risk assessments and national AML/CFT policies and priorities;
- b. strengthen the capacities of LEAs on seizures and confiscations, particularly through training on asset tracing domestically and abroad; exempt judicial police officers from the formality of obtaining the public prosecutor's approval when they make requisitions in the context of investigations, in order to speed up the process; develop and disseminate a guide on seizure and confiscation for LEAs; put in place a mechanism for the recovery and management of seized and confiscated assets;
- c. put in place measures to monitor the cross-border movement of cash and BNIs

equivalent to the prescribed threshold at all its borders and confiscate both cash and BNIs in case of non/false declaration;

- d. put in place a systematic mechanism for keeping statistics of seizures and confiscations related to predicate offences that can provide timely information on their consistency with the NRA risks as well as national priorities.

100. The relevant Immediate Outcomes reviewed and assessed in this chapter are the IOs. 6-8. The relevant Recommendations for effectiveness assessment under this section are R.1, R.3, R.4 and R.29-32 and elements of R.2, 8, 9, 15, 30, 31, 34, 37, 38, 39 and 40.

3.2. Immediate Outcome 6 (ML/TF related to financial intelligence)

3.2.1. Use of Financial Intelligence and Other Information

101. In Togo, several sources provide financial intelligence and information used in investigations of ML, predicate offences and TF. These include the FIU's databases, public and private administrations, as well as any other legal person vested with a public service function and likely to provide relevant information on AML/CFT. More specifically :

- FIs are the primary source of financial intelligence since they are custodians of all the information on their customers.
- The supervisory authorities of FIs and DNFBBs, including legal and accounting professionals, are also custodians of relevant information likely to be used in investigations.
- The RCCM and CFE database contain information on legal persons as well as their managers and beneficial owners that can be used for investigations.
- Other databases are also accessible and consulted during investigations, in this case, the databases of the customers of the major public service providers (CEET, TDE, TOGOCOM, MOOV, Canal Plus, etc.) and those of certain departments, namely: road transport department for vehicle registration; the registry for land registration; the OTR (Togolese Revenue Office which brings together Customs and Taxes in a single structure) for the financial statements and status of imports and exports of economic operators; the DGDN for identity card records, passports, visas and residence permits; the Police (INTERPOL for the I-24/7...), the gendarmerie and justice system for criminal identification records.

102. The FIU as a structure at the hub of the national AML/CFT regime, produces financial intelligence. It has its own database with reports and information received from national and international partners, which it systematically consults in order to establish any links between old and new casefiles. This database is frequently improved to enable it perform extraction and cross-checking tasks.

103. The FIU's expanded power of communication enables it to access, on request, a large quantum of financial intelligence and other relevant information contained in the departmental databases. This power of communication therefore allows it to request for additional information from reporting entities, any public and private administration and foreign FIUs. In this regard, from 2016 to 2020, the FIU issued 5,774 information requests to reporting entities, government and law enforcement authorities and received 4,808 responses. Responses to information requests issued by the FIU are estimated at 83% and within reasonable deadlines which are on average between forty eight (48) hours

and eight (08) days and sometimes much less, depending on the urgency. The presence of its correspondents within the departments helps to minimize delays thanks to their involvement in the diligent processing of information requests. Besides, the FIU has direct access to the Interpol database.

104. Most of the information requests are sent to FIs (5,297 requests), followed by State departments (458 requests) and DNFBPs (10 requests). The information requests addressed to DNFBPs are few because the processing of casefiles is based on a targeting logic, and the very profile of the casefiles does not often involve research within the DNFBPs.

Table 3.1: Information Requests from the FIU at National level from 2016 to 2020

	2016			2017			2018			2019			2020		
	D	R	T	D	R	T	D	R	T	D	R	T	D	R	T
Government	162	103	64%	141	69	48.9%	60	30	43.4%	75	53	70.6%	20	6	30%
DNFBPs	2	2	100%	3	0	0.001%	1	1	100%	1	0	0.01%	3	1	33.3%
IF	803	705	88%	1237	1043	84.3%	1067	833	78%	1477	1375	93%	713	587	82.3%
Total	967	810	84%	1381	1112	80.5%	1137	864	75.9%	1553	1428	91.9%	736	594	80.7%

Source: FIU D= request R= response T= entry rate

105. The Togo-FIU is a member of the Egmont Group and uses the secure platform “Egmont Secure Web” to request and obtain information. It also obtains information from its counterparts which are not members of the Egmont Group, based on the signing of a Memorandum of Understanding. In this regard, the FIU signed 19 Memoranda of Understanding with its foreign counterparts from 2010 to 2018. It also issued 31 information requests to foreign FIUs between 2018 and 2020, including 26 requests on ML cases and predicate offences and 05 others on TF. It also received 55 for information over the same period, 48 of which have already been processed and returned, representing a processing rate of approximately 87.28%. These information requests were received by the FIU via the Egmont Secure Web, based on the signed Memoranda of Understanding, but also from FIUs which are not members of the Egmont Group and with which it has no signed Memoranda of Understanding.

Table 3.2: The FIU’s Information Exchanges at International Level from 2016 to 2020

YEAR	ISSUED		RECEIVED	
	REQUEST	RESPONSE	REQUEST	RESPONSE
2016	34	20	21	17
2017	31	17	20	19
2018	22	8	8	8
2019	5	5	22	20
2020	4	2	25	20
Total	170	86	138	117

106. The investigative authorities, including the DEF, SCRIC, OCRTIDB and OTR have prerogatives

allowing them to access all information and financial intelligence produced by the FIU or any other State or private department as and when necessary. Their prerogatives are exercised in the form of requisitions or information requests to request and receive relevant information in the performance of their duties. In particular, they have access to sources of financial intelligence from the OTR (Customs and Tax).

107. Because of the lack of disaggregated statistics by the investigative authorities on the number of information requests related to ML, TF and predicate offences, it was impossible to assess the frequency of the use of financial intelligence and other information by all AML/CFT investigative authorities. The statistics received indicate that over the period spanning 2018 to 2020, the OCTRIDB issued 538 information requests to State and private departments and received 17. On the other hand, the OTR did not issue any information requests but received 24, including 22 from the FIU and 02 from OCTRIDB.
108. In a nutshell, the Togolese system allows the FIU and investigative authorities, to a large extent, to access the maximum quantum of information and use it in their investigations. The LEAs are satisfied with the responses to the information requests sent to the FIU. However, they encounter difficulties with certain departments, such as the lack of diligence of mobile telephone operators in providing them with information based on their requisitions, the impossibility for certain departments to provide the exact information requested for (address data of legal persons non-existent or inaccurate, lack of comprehensive information on beneficial ownership of legal persons, etc.).
109. The financial intelligence and other information produced by the FIU enabled it to make disseminations on ML and predicate offences to certain competent authorities as indicated below.
 - a. From 2016 to 2020, the FIU filed to the State Prosecutor about thirty reports resulting in 2 convictions for ML related to scam. There are still 32 casefiles under investigation.
 - b. From 2016 to 2020, the FIU disseminated financial intelligence to the Criminal Investigations Department (DCPJ), resulting in the dismantling of 2 cybercrime networks in 2019. In the process, 2 members of the 1st cybercrime network were arrested, while transacting in a local Togolese bank to recover the sum of approximately €701,280. This 1st network targeted FIs by penetrating into their computer systems. The 2nd cybercrime network, specializing in organized gang cyber scams, forgery and use of forgery as well as ML, robbed their victim the sum of €689,615 between 2010 and 2019. Some of the criminals have been sentenced and others have been acquitted by the judge. One of the casefiles is still pending.
 - c. From 2018 to 2020, the FIU filed 21 reports to the Tax administration, all of which were investigated. 5 of these reports even resulted in some audit exercise. They helped a motor-cycle importing company to recover about CFA francs 180,000,000 (i.e. €274,185).
 - d. The FIU filed reports to certain supervisory authorities. Indeed, a reminder to FIs that fail to submit STRs was sent to the BCEAO in 2019. Another report on a PONZI-type pyramid scam was also sent to the BCEAO and CREPMEF in 2020. The investigations opened following this report are still pending at the DCPJ.
 - e. From 2017 to 2019, the FIU filed 8 intelligence reports to foreign FIUs on predicate offences to ML, including particular acts of scam and threats on the Internet.
110. The FIU made no dissemination on TF. It received 21 TF-related STRs between 2018 and 2020, the analysis of which did not confirm any case of TF. It should be noted that in 2019, the FIU filed an

intelligence to the NPO supervisory authority at its request, information on a humanitarian and faith-based NPO suspected of TF. The outcome of this intelligence filed was not brought to the attention of the assessment team. Furthermore, the deficiency in the TF identification system based on the reports coupled with the lack of qualified human resources and appropriate equipment, considerably limit the scope of the FIU's dissemination.

111. These disseminations made by the FIU were used for investigations and warrants of arrests, tax adjustments and opening of ML investigations (Cf. analysis 3.2.3).

Box 3.1: Illustration on the usefulness of the FIU's Information and Financial Intelligence

The proactive mechanism implemented by the FIU discovered in time an attempted laundering of funds in 2019, in a case involving a network of criminals who had set up a mechanism to receive and launder through a bank account in Togo, funds that its members had defrauded from an insurance company. An STR was filed in time and the FIU blocked the withdrawal of said funds. The investigations conducted by the FIU revealed in 48 hours that the funds were proceeds of a scam and that the criminals were preparing to withdraw all of them in cash. The funds were eventually returned to the victim of the scam. Indeed, the sum of CFAF 459338480 or € 700257 was transferred to the account of the defrauded insurance company.

112. Furthermore, on the initiative of the FIU, legal proceedings were initiated and the courts succeeded in impounding the funds suspected of being proceeds of crime and which were in the process of being laundered. These were mainly amounts seized from accounts belonging to persons suspected of engaging in ML activities. Thus, between 2017 and 2019, more than CFAF 800 million (€1,221,374) involved in over ten casefiles were provisionally seized.

113. Apart from the FIU's disseminations, the investigative authorities sometimes use financial intelligence and other relevant information (for instance, information from mobile telephone companies, database on the identities of persons) during investigations into predicate offences that led to the detection of ML cases. They appreciate the financial intelligence produced by the FIU, but underscore their limited expertise to effectively carry out financial and asset investigations. Consequently, they find it difficult to conduct complex ML investigations in line with the country's risk profile. This also justifies the view that ML prosecutions and convictions in Togo are only related to scam (including cybercrime), thus excluding the other major ML threats identified in the NRA (cf. IO.7). The assessment team also noted that investigative authorities have not demonstrated the use of financial intelligence in TF investigations.

Box 3.2: Illustration on the use of financial intelligence in the investigation of predicate offences

SCRIC Case

In 2019, during an investigation opened for embezzlement of public funds in a large state-owned company, the SCRIC used financial intelligence collected from FIs and other relevant information at the lands registry and RCCM to identify the assets of those suspected of embezzling public funds. This approach effectively paid off as sums of money amounting to CFAF 100 million (€152,864) were identified in bank accounts belonging to the suspects, sums suspected of being proceeds of embezzlement. A few suspects were arrested, handed over to the courts and charged with

embezzlement of public funds, forgery and use of forgery and ML. The proceedings are in progress.

Togolese Revenue Office (OTR) Case

In 2018, the Tax Department of the Togo Revenue Authority used financial intelligence and other relevant information, including the use of whistle blowers, to achieve a tax adjustment that resulted in a large telephone company paying CFAF 6.5 billion in taxes (€9,901,131). To achieve this, the management consulted the bank accounts of the company in question as well as the certified file of the adjustments made by this company. It used the financial intelligence provided by the FIU to carry out checks leading to some tax adjustments. The lawsuit is still ongoing.

3.2.2. STRs received and requested for by the competent authorities

114. All the reporting entities subject to the Uniform AML/CFT Law No. 2018-004 are required to report to the FIU all AML/CFT-related suspicions including cash transactions of more than €22,867, cross-border transportation of cash and BNIs equivalent to the threshold of €7622.
115. The quality and number of STRs have improved following the sensitization of reporting entities by the FIU, particularly in the financial sector, on their reporting obligations. Obviously, some of the reporting entities have gradually acquired the reflex of filing reports in line with their obligations. The STRs relate to both ML and TF. Thus, from 2017 to 2020, the Togo-FIU received 878 STRs of which 686 received from banks, 181 from the Post Office, 06 from DFS, 03 from DNFBPs, 01 from insurance and 01 from financial authorities. Furthermore, the FIU stresses that the STRs provided by the reporting entities are more comprehensive and satisfactory considering the reasons for filing the reports and the description of the nature of the suspicious transactions. Consequently, requests for clarification and additional information are no longer systematic, although the reporting entities are prepared to respond quickly as and when necessary. This improvement in the quality of STRs concerns almost exclusively the financial sector, particularly banks.

Table 3.3. : STRs Received by the FIU from 2011 to 2019

Reporting Entity	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	Total
Government	4	3	2	1	0	1	0	1	0	0	12
Insurance	0	0	0	0	0	0	0	0	0	1	1
Bank	27	24	52	33	52	74	172	215	184	115	948
DNFBPs	0	0	0	0	0	0	0	2	1	0	3
DFIs	2	0	2	0	0	0	1	1	3	1	10
NGOs	0	0	1	0	0	0	0	0	0	0	1
Post Office	1	3	0	0	1	6	38	110	33	0	192
Total	34	30	57	34	53	81	211	329	221	117	1,167

116. The figures in Table 3.3 reveal that more than half of the STRs are filed by banks, followed by the Post Office. DFIs, DNFBPs, insurance companies and reporting entities of the Finance Department file few STRs. This situation reflects a poor understanding and inadequate implementation of their reporting obligations by these entities. This is not commensurate with the country's ML/TF risk profile, with a very high risk real estate sector, followed by the banking sector and forex dealers.
117. The FIU receives cash transaction reports and uses them to enrich the investigations with a view to establishing evidence of ML/TF (through its reports filed to the State Prosecutor's office and reports

filed to the law enforcement authorities) and to monitor people who repeatedly use cash transactions. CTRs also help establish the prevalence of cash use in the national economy. They come exclusively from banks and DFIs. Indeed, the FIU received 124,921 CTRs from 11 banks and 05 DFIs between 2018 and 2020. Other types of FIs and DNFBPs do not. Togo attributes this lack of reports to the restriction of the cash transaction threshold imposed by the regulations (in the case of insurance) and as well as by the low volume of activities of other reporting entities. Besides, Directive no. 009-09-2017 setting the threshold for the payment of any claim in cash or by BNIs, limits cash payment for transactions.

118. The FIU receives from the Customs administration all declarations on the physical cross-border transportation of cash and BNIs, on a monthly basis. The statistics for the last three years reveals 4,036 foreign currency reports, the equivalent of which is estimated at CFAF 353 billion (537,233,877€). These declarations relate both to those exceeding the threshold and to false/non-declarations. The FIU does not receive statistics on cash seizures because the Customs services do not carry out seizures in case of violation of regulatory provisions (see analysis of IO.8). It therefore has no financial intelligence relating to the physical cross-border transportation of cash and BNIs, which constitutes a lack for intelligence on ML/TF.
119. The reporting system implemented by the FIU is not fully automated. In December 2019, the FIU launched a proposed online reporting template covering CTRs and STRs initially received on paper. The purpose of this approach is to facilitate declaration for reporting entities, to secure their transmission and to automate their processing. In this regard, 5 banks have been designated for the pilot phase, and have installed in their computer systems the FIU software designed for this purpose. Thus, from January to August 2020, 64% of the reports received were made online. The FIU appreciates the online reporting for the fact that it improves the processing of STRs in terms of speed and effectiveness. It therefore intends to extend it to all informants.
120. The Customs, Police (OCTRIDB) and Gendarmerie present at the borders also receive declarations on the physical cross-border transportation of cash that they can use and/or share with the other competent authorities (see analysis of IO.8).
121. The FIU has a limited capacity to analyze all the STRs, CTRs and declarations of cross-border transportation of cash and BNIs that it receives. Indeed, only 160 STRs were analyzed out of the 1007 STRs received between 2007 and 2020, the remaining 847 STRs are being processed. To deal with this issue, the FIU has increased the number of analysts among its staff, but the challenge remains given the increase in the number of STRs filed in recent years.

3.2.3. Operational needs supported by the FIU's analysis and dissemination

122. The FIU produces financial intelligence based on the processing and analysis of STRs and CTRs as well as other information received. These reports are enriched by additional information provided by reporting entities, other competent authorities, foreign counterparts, open sources and RCCM databases. Where the analysis of the STRs corroborates the elements of suspicion with convincing indices, the FIU files the financial intelligence reports to the State Prosecutor. The latter immediately directs a Presiding Magistrate to initiate legal proceedings. In any case, the limited number of STRs processed and analyzed as well as the dissemination made by the FIU should be underscored, in relation to the number of STRs it receives. This is justified by the limited number of analysts (09) available at FIU as compared to the increase in the number of STRs the processing and analysis of which require more human resources and expertise. It should also be noted that the Togo-FIU still operates on the basis of an obsolete Decree issued under the repealed former Uniform Law, and which makes it an administrative agency placed under the supervision of the Minister of Finance and

endowed with managerial autonomy. To this end, it needs an authorisation from its parent minister to disburse the funds allocated to its functioning when needed, which affects its financial autonomy, also impacting on its operational capacity. Nevertheless, the 42 FIU reports filed to the State Prosecutor resulted in 2 convictions for ML related to scam, excluding the other major ML threats. The FIU has not filed any TF-related report.

123. The FIU has been spontaneously providing information and reports to several other competent authorities to support them in their respective investigations. These are the DCPJ, Tax administration, BCEAO and CREPMEF. The competent authorities recognize the relevance and usefulness of the information and financial intelligence disseminated by the FIU which have sometimes led to arrests, tax adjustments and the opening of ML investigations. The LEAs also noted a significant improvement in the quality of the reports filed by the FIU and underscored that this financial intelligence filed is useful in the proceedings initiated against the accused persons. They attribute the low number of adjudications and convictions for ML based on reports filed by the FIU, to the inadequacy of financial and material resources, as well as specialized human resources to ensure adequate, systematic and diligent legal follow-up to the case files. Furthermore, the late processing of the financial intelligence filed by the FIU to LEAs creates some difficulties in locating and identifying the suspects at the time of the prosecution, as the information turns out to be obsolete (change of addresses or even out of Togolese territory).

124. In addition to the development of a report on ML typologies linked to cybercrime, the FIU also produced three strategic reports addressed to the Minister of Economy and Finance (MEF) on the following issues:

- **Strategic report on cross-border transportation of cash and BNIs in Togo:** based on the statistics of declarations received by the FIU, it filed a report to the MEF in 2016 drawing his attention to the phenomenon and proposing mitigating measures. Thereafter, the MEF set up a working group made up of the FIU, the Customs and Excise Commission, the Economy Department and the BCEAO to reflect on the ways and means of restraining these currency outflows. The reflections of this group were taken up by a Commission extended to the financial sector and economic operators, chaired by the DG of the Treasury. The Commission issued its final report at by end 2019.
- **Strategic report on the gold trade sector in Togo:** following several reports from international organizations indicating dysfunction in the gold trade in Togo, the FIU conducted a study on the sector and filed a report to the MEF in 2018, proposing certain measures to e taken. Consequently, a working group was set up comprising the following members: Ministry of Mines, OTR (Customs and indirect duties Commission), General Directorate of Economic Studies and Analysis and BCEAO. This working group made proposals with a view to creating greater transparency in the export of gold from Togo.
- **Strategic report on a pyramid-type scam in Togo:** In 2020, the FIU drafted and filed a strategic report to the MEF, drawing his attention to some existing pyramid-type scams (PONZI chain).

125. In the light of the foregoing, the assessment team concludes that the reports and studies produced by the FIU meet the operational needs of the competent authorities, even though they are few in number when compared to the ML/TF risks identified in Togo.

3.2.4. Cooperation and exchange of financial information/intelligence

National Cooperation

126. The FIU and other competent authorities cooperate and exchange information spontaneously and on request in both directions. Within the framework of national cooperation, the FIU has set up a network of institutional correspondents within the main departments dealing with AML/CFT, which enables it to exchange information and financial intelligence. These exchanges are made through confidential letters personally addressed to the Head of the requisite structure with a copy to the correspondent, in both hard and electronic copies.

127. The FIU signed a memorandum of understanding with the OTR in 2014 to facilitate the exchange of information between the two structures. It has exchanged with several other national institutions with which it has no memorandum of understanding to clarify the terms of cooperation and protection of the confidentiality of information given or received (Court of Auditors, HAPLUCIA, EITI, IGE, ARMP), in 2017 and 2018. The FIU issued 184 information requests to the Government and LEAs from 2016 to 2020. It also received 27 requests from the State departments. The statistics in the table below present the information exchanges between FIU and the competent authorities within the framework of national cooperation.

Table 3. 4.: Summary of Information Exchanged between the FIU and Competent Authorities (2016 -2020)

Institutions	2016		2017		2018		2019		2020	
	D	R	D	R	D	R	D	R	D	R
ANR	2	2	6	6	3	3	3	3	7	5
DGDN	23	8	20	17	11	8	24	21	1	1
Criminal Investigations Department	1	0	0	0	1	0	1	1	0	0
Department of Economy	1	1	2	2	0	0	0	0	0	0
Lomé Court Registry	2	1	3	3	0	0	0	0	0	0
OCRTIDB	0	0	1	1	0	0	0	0	0	0
OTR	19	14	18	11	15	10	19	13	1	1
Total	48	26	50	40	30	21	47	38	9	7

*D= request *R= response

128. The analysis of the above statistics reveals that:

- Most of the FIU's information requests are addressed to the DGDN, OTR and ANR. Indeed, from 2016 to 2020, out of 184 information requests issued by the FIU to the Government, investigative and prosecutorial authorities, 79 requests were sent to the DGDN, 72 to OTR and 21 to ANR.
- There is almost no exchange of information between the FIU and the investigation and criminal prosecution authorities. Indeed, out of the 184 requests issued from 2016 to 2020, only 03 requests were addressed to the DCPJ, including one request in 2016, another in 2018 and a final one in 2019. There was no exchange of information in 2017 and 2020. The OCRTIDB received only one for information request in 2017. The Lomé Court Registry received 05 requests, including 2 in 2016 and 3 in 2017. Over the same period, the statistics do not reveal any exchange of information between the FIU, SCRIC and HAPLUCIA although corruption is identified in the NRA as one of the major ML threats in Togo.

Table 3.5. : Statistics on Information Requests Received by the FIU from 2016 to 2020

INSTITUTIONS	2016		2017		2018		2019		2020	
	D	R	D	R	D	R	D	R	D	R
ANR	2	2	6	6	3	3	3	3	7	5
Court of Lomé	0	0	0	0	0	0	1	0	1	0
OCRTIDB	0	0	0	0	1	0	0	0	0	0
OTR	0	0	0	0	0	0	0	0	1	1
MATDCL	0	0	0	0	0	0	1	1	0	0
Ministry of Foreign Affairs	0	0	0	0	0	0	0	0	1	1
Total	2	2	6	6	4	3	5	4	10	7

129. The analysis of the above statistics shows that apart from the ANR, the other competent authorities file few or almost no requests to the FIU. From 2016 to 2020 out of 27 information requests received by the FIU, 21 came from the ANR, 2 from the Court of Lomé, 1 from the OCRTIDB, 1 from the OTR, 1 from MATDCL and a last one from MAE. The FIU has not received any formal information requests from DEF, SCRIC and HAPLUCIA. The competent authorities indicate that the exchanges with the DEF and the HAPLUCIA were made in informal settings which did not require any request.
130. Apart from its bilateral information exchanges with the competent authorities, the FIU is also a member of CONAC and the Operational Unit for the Facilitation of AML/CFT Information and Data Exchanges, two coordination and information exchange structures instituted to deal with AML/CFT, but which are not operational. This situation limits the effectiveness of national cooperation between the FIU and the competent authorities, even though the CIM-SA, the Decree of which was repealed when CONAC was established, continues to operate informally (see analysis of IO.1).
131. Furthermore, it appears that the exchange of information and financial intelligence of competent authorities at national level often requires exchanges with their foreign counterparts, because of the types of ML/TF threats to which Togo is exposed. However, although the Togolese cooperation framework so permits, the assessment team noted that the competent authorities are not adequately using international cooperation to solicit financial intelligence or for criminal proceedings (cf. analyzes of the IO .7 and IO.2). The FIU largely exercises this prerogative (cf. table 3.2).
132. In summary, the cooperation between the FIU and the other institutional actors involved in the fight against ML/TF is inadequate, and even limited for most structures

Protecting the confidentiality of information exchanged/used

133. To secure the information it receives, the FIU has acquired a software called *Faisceaux* which is operational. This secure software, access to which is prioritized with access rights, enables the FIU to automatically process and store the information received and to effectively enrich its database.
134. As mentioned above, during its exchanges with the competent authorities, the FIU resorted to informal cooperation. The assessment team did not note any specific measures taken in these cases to protect the confidentiality of the information/exchanges. The assessment team particularly noted that no statutory member of the FIU was appointed based on a legal instrument in line with the AML/CFT Uniform Law 2018-004, nor did they take any oath. The institutional correspondents of the FIU within the state departments have not taken the oath either. Based on these findings, the assessment team cannot conclude that the confidentiality of information exchanged with the FIU is protected.

General Conclusion on IO.6

135. The FIU and the investigative authorities have access to the maximum quantum of information and intelligence to be used them within the framework of AML/CFT. Following the FIU's analyses, a number of reports were filed to the State Prosecutor's Office which resulted in convictions. Disseminations were also made to certain investigative authorities, the tax administration, supervision/monitoring authorities and foreign FIUs on ML and predicate offences. The FIU made no dissemination on TF.
136. Investigative authorities have sometimes used financial intelligence and other information the investigation of the predicate offences that led to the detection of ML cases. They lack the skills and do not use financial intelligence to detect cases of TF. The STRs received by the FIU mainly come from banks. DFIs, DNFBPs, insurance companies and financial authorities and other FIs (ith the exception of the Post Office) produce very little. CTRs come exclusively from banks and DFIs. Other types of FIs and DNFBPs do not file any. The FIU does not have data on cash seizures because the Customs services do not carry out seizures for violation of the regulatory provisions. The strategic reports (03) and typology studies produced by the FIU are relevant in relation to the issues addressed, but they are few when compared to the ML/TF risks identified. The FIU has signed a few cooperation agreements with other competent authorities (only one agreement with OTR).
137. The lack of human resources limits the FIU's analytical capacity. Besides, the protection of the confidentiality of the information exchanged is not guaranteed as there is no legal instrument for the appointment of the FIU's statutory members, and its members and institutional correspondents are not sworn in.
- 138. Togo is rated as having a low level of effectiveness on IO.6.**

3.3. Immediate Outcome 7 (ML investigations and prosecutions)

3.3.1. ML identification and investigations

139. Togo's national AML/CFT policy and strategy document prioritizes ML investigations and prosecutions, but this is not implemented due to its very recent development. In practice, Togo does not have a criminal policy where ML investigations are listed as a priority objective for the investigative and prosecutorial authorities. The lack of such a policy is not compensated by penal guidance memos or circulars directing the competent authorities to open parallel ML investigations. Besides, with the exception of the FIU, Togo has no specialized human resources for investigations, prosecution, legal proceedings and adjudication in ML cases. Indeed, the DCPJ, DCRI, OCRTIDB, SCRIC and Interpol NCOs have knowledge in both ML investigations and those relating to predicate offences generating resources or otherwise.
140. Law enforcement authorities lack the requisite training in special investigative techniques as well as parallel financial investigations to effectively conduct asset and financial ML investigations. By way of illustration, the OCRTIDB is the most operational investigative unit in terms of ML, yet only four (04) of its staff have received training on ML and seizures and confiscation while five (05) other staff were trained on TF in 2018 and 2019 respectively. This general lack of training within the fold

of investigative authorities hinders the systematic opening of parallel financial investigations even in cases where the predicate offence investigated has generated proceeds. In fact, they are essentially capable of conducting criminal investigations aimed at establishing the evidentiary elements of the predicate offence at the detriment of ML investigations. This deficiency hinders both ML investigations relating to FIU reports and parallel investigations. Furthermore, the assessment team notes that the few rare criminal investigation officers trained are often not retained in their positions long enough to be able to assess the impact of their training on ML investigations.

141. The LEAs have access to a number of databases, but these are not interconnected. In addition to this difficulty, investigations are hampered by the competent authorities' lack of access to existing interconnected databases, the low banking rate, the excessive use of cash in transactions, the emergence of use of virtual assets, the lack of diligence of mobile telephone operators in providing geolocation data following requisitions, the lack or inaccuracy of the addressing data provided during the creation of legal persons and the lack of beneficial ownership information on legal persons. The OCRTIDB, which is the best-trained operational judicial investigation unit of the investigation authorities (see previous paragraph), seriously lacks the financial resources to pay police informers, although their assistance is essential for the detection of the various types of illicit trafficking generating funds to be laundered. In addition, the OCRTIDB staff officiating at the Mixed Container Control Unit (UMCC) do not have the space and time to carry out inspections, which hampers the effective detection of trafficking.
142. Apart from the lack of training which severely limits the opening of ML investigations by the other LEAs (DCPJ, DCRI, SCRIC, BCN Interpol and ANR), the assessment team also notes the lack of telephone tapping and adequate financial resources to use infiltration and surveillance techniques. Nevertheless, it notes that the investigative authorities used the technique of infiltration during an investigation relating to drug trafficking, which is a major ML threat as identified by the NRA.

Box 3.3: Illustration of controlled delivery

Mrs. X and others case

On 24th July 2014, following information received regarding the expectation of a suitcase containing drugs belonging to a passenger on the Ethiopian airlines flight from Brazil, a mechanism was set up to arrest the traffickers waiting to receive the drugs in Lomé.

At 8 a.m. the same day, before the passenger's arrival, the couple of traffickers waiting for the drugs (Ms. X, Senegalese and Mr. Y, Nigerian) were identified within the airport premises. The same obtained for another suspect called K., a Togolese, intermediary who was supposed to collect the suitcase and hand it over to the couple at an agreed place in advance somewhere in the city.

Passenger M. arrived at Gnassingbé Eyadema International Airport in Lomé from Sao Paulo (Brazil). He found Mr. K. who collected the suitcase from him, took him to a taxi and boarded with him to reach the agreed venue for the delivery of the said suitcase containing the drugs to the couple of traffickers. The scene took place under the surveillance of the OCRTIDB officers.

The passenger M. and the intermediary K were arrested and asked to cooperate, but they hesitated to lead the officers to the meeting place where the other traffickers, named X and Y, were waiting. Sensing the danger, the latter decided to flee towards Benin, after several exchanges on the telephone making them believe that they would honour the appointment. They were arrested at 4:30 p.m. at the Togo-Benin border at Sanvée-Condji by the mechanism set up by the OCRTIDB.

The officers searched the suitcase and discovered two (02) boxes containing forty-eight (48) boxes

designed for maintenance product called "SILICONE ACETICO TRANSPARENTE". Concealed in these boxes were cocaine weighing nine point zero-eight (9.08) kilograms.

Source: OCRTIDB

143. The effectiveness of ML investigations also seems to be hampered by corruption, a major threat identified by the NRA, of officers in the criminal justice system, even though such actors are never investigated or prosecuted²⁹. Indeed, the 2019 index report on organized crime which overwhelms the actors of the criminal chain is corroborated by the HAPLUCIA study report which places the police, the gendarmerie and the justice system at the forefront of the corruption perception index in Togo. The HAPLUCIA argues that these judicial officers are engaged in subsistence petty corruption. The negative impact of corruption is further highlighted by the NRA in which the Togolese authorities stress that "social pressures, corruption, intimidation and abuse of power" hinder the course of ML investigations and the confiscation of assets. This implies that ML investigations are also seriously hampered by the pressures exerted on certain officers in the criminal justice system, particularly the criminal investigation officers.

144. The DCPJ and OCRTIDB are the two investigative units that enjoy the support of the ANR within the framework of their investigative missions. Investigative authorities may therefore call on the ANR to solicit its assistance in establishing evidence of an offence. However, even if the existence of a collaboration between the ANR and certain judicial police units is real for the detection of acts of ML, it should be noted that this framework is rarely used and ineffective considering the limited number of ML cases identified.

145. The investigative and prosecutorial authorities, particularly the OCRTIDB and BCN Interpol, receive information from their foreign counterparts resulting in ML investigations and prosecutions in Togo. The OCRTIDB recently received a tip off from Ghana resulting in the initiation of an ML investigation. Incidentally, they also provide information to their counterparts likely to trigger ML investigations, but the relevant statistics have not been provided.

Table 3.6: Number of ML-related Intelligence Received or Issued

Year	2018	2019	2020	Total
Intelligence received resulting in ML investigations	05	13	10	18
Intelligence provided that could trigger ML investigations	0	07	01	08

Source: FIU

146. Togo's investigative and prosecutorial authorities have known ML cases that have international ramifications, but they have not provided the relevant statistics in a comprehensive manner. At the Lomé High Court of First Instance, there are 11 judicial information files whose facts include foreign elements.

²⁹ National ML/TF Risk Assessment Report of Togo, December 2019, page 49

147. The FIU contributes to the detection of ML facts by providing financial intelligence to the police, gendarmerie and OTR for investigations. Upon receipt of the STRs, it carries out in-depth analyses captured in reports filed to the State Prosecutor for prosecution (see analysis IO.6).

Table 3.7: STRs that have contributed to ML Detection

Year	Number of Relevant SRTs	FIU Reports filed to Prosecutor
2016	10	10
2017	17	10
2018	22	7
2019	19	7
2020	41	8
Total	109	42

148. Among the reports filed by the FIU, some relate to follow-up actions on intelligence received from foreign authorities, including the Czech Republic and USA. More specifically, the FIU communicated eight (8) pieces of information and received twenty-two (22) from foreign authorities from 2017 to 2019, such that the relevant investigations were supposed to require international cooperation.

149. The OTR is mandated to carry out investigations in tax and customs matters and ML in cases where the facts are not sanctioned by administrative fines. It refers to the State Prosecutor's office all ML-related cases or files the relevant STRs to the FIU. However, the country has neither demonstrated nor provided statistics on ML cases filed to the prosecution by the OTR.

Table 3.8: ML cases detected by OTR

Year	2018	2019	2020	Total
STRs to FIU	0	4	0	4

Source: FIU

3.3.2. Consistency of ML investigations and prosecutions with threats, risk profile and national ML policies

ML Prosecutions

150. The prioritization of investigations and prosecutions is taken into account in the national AML/CFT policy and strategy document, although it is yet to be implemented in Togo. The ML investigations conducted are based on the FIU reports filed to the State Prosecutors and three (03) parallel investigations relating to fraud (including cybercrime) which is the first ML threat in Togo, excluding all other ML threats. ML convictions in Togo are also linked to this offence. Indeed, the investigative and prosecutorial authorities seem to be more concerned with investigations relating to predicate offences at the detriment of ML, because other prosecutions and convictions are recorded in Togo but they have nothing to do with the major ML threats identified (breach of trust, tax/customs evasion, corruption, drug trafficking, human trafficking and migrants' smuggling). This is also due to the lack of appropriate training and technical/financial resources for investigation units as mentioned

in the previous paragraphs.

151. The Togolese authorities indicate that other predicate offences relating to ML cases are committed abroad and require the support of the BCN Interpol in the investigations, but they have not provided any relevant statistics. The assessment team notes in particular that the investigative and prosecutorial authorities are not adequately using international cooperation for predicate offences committed abroad, with the exception of the FIU, due to their lack of training. (See IO.2 analysis).

Table 3.9: Investigations and Prosecutions Related to Major ML Threats

Predicate Offences	ML Cases under Investigation	ML Cases Adjudicated
Scam including online	27	4
Breach of trust	1	0
Tax and customs fraud	0	0
Corruption	0	0
Drug trafficking	0	0
Human trafficking and migrants' smuggling	0	0
Environmental crime	0	0
Other offences	3	0
Autonomous ML	4	
Total	35	04

Consistency with risk

- **Scam-based money laundering**

152. Scam (including cybercrime) is the primary ML threat in Togo. In this regard, this offence has been the subject of numerous investigations and prosecutions. Indeed, thirty-five (35) ML cases, essentially relating to scam, are currently being investigated at the Lomé High Court. The sums of money at stake in these cases amount to CFAF 12,374,838,665 (€18,865,319.93).

- **Drug trafficking-based money laundering**

153. Drug trafficking is identified as a major threat in the NRA, but there has been no ML prosecution in connection with this offence even though the OCRTIDB seized 236.664 kg of cocaine in 2018 and large quantities of cannabis of 5255 .997 kg, 4462.25 kg and 6317.553 kg in 2018, 2019 and 2020 respectively. In addition, 22 out of 25 OCRTIDB investigations relate to narcotics trafficking including illicit pharmaceuticals and drugs from 2018 to 2020.

- **Environmental crime-based money laundering**

154. The investigations conducted by the law enforcement authorities were also related to environmental crime, described as a high ML threat not only in various reports, but also in the NRA as well as the exchanges between the assessment team investigative authorities met in Togo. Indeed, the OCRTIDB and criminal investigation units attached to it (Airport Anti-trafficking Unit (CAAT) and the UMCC) carried out numerous seizures of specimens of protected species between 2013 and

2020. However, they are grappling with the challenge of manually searching containers, which is necessary in some cases, in addition to the lack of closer cooperation with environmental NGOs. Despite these challenges, their investigations have in certain cases resulted in the prosecution and conviction of people involved in the trafficking. On the other hand, no reference is made to any ML investigation related to environmental crime, even though crucial relevant cases have been investigated, prosecuted and convicted.

Table 3.10: Seizure of Specimens of Protected Species from 2019 to 2020

Nature of specimen of protected species	Amount				
	2013	2014	2018	2019	2020
Ivory		700,5 kg	0	0	16,60 kg
Pangolin		3, 815 tons	0	0	0
Pangolins scales		22,55 kg	37,40 kg	0	0
Live young crocodiles	0	0	03	0	0
Youyou parrots	0	0	31	0	0
Mammal horns (water bushbucks and bongos)	0	0	176	0	0
buffalo horns	0	0	8,40	04	0
Porcupine tails	0	0	0	06	0
Porcupine spines	0	0	0	06	0
Pieces of unidentified species' hide	0	0	0	09	0
Crocodile head	0	0	0	01	0
Sebae python's head	0	0	0	10	0
Scavenger carcasses	0	0	0	06	17
Scavenger heads	0	0	0	00	24
Carcasses of unidentified bird species	0	0	0	06	0
Crows heads	0	0	0	05	0
Turaco heads	0	0	0	04	0
Heads of unidentified bird species	0	0	0	02	0
Ivory	0	0	0	0	71,90 kg
Fresh water turtles' Heads	0	0	0	0	563
Fresh water turtles' shells	0	0	0	0	810
Ventral parts of freshwater turtle shells	0	0	0	0	1680
Monkey phalanx (vervet)	0	0	0	0	114
Monkey hair	0	0	0	0	0,20 kg

Box 3.4: Wildlife Crime Investigation Cases

1. Case against Mr. XC on the run

Statement of facts: on 16th July 2020, two (02) large segmented elephant tusks and carved ivory objects, altogether weighing forty-three point ten (43.10) kilograms were seized in Lomé by OCRTIDB officers in a sculpture workshop belonging to Mr. XC, an artist-sculptor of Ivorian nationality. Sculpture materials and various documents were also seized for the purposes of the ongoing investigation. The suspect, who was in the middle of a transaction on the elephant tusks he put up for sale, managed to escape arrest.

Investigation: Based on information regarding the sale of ivory by an individual, the OCRTIDB, in conjunction with a partner NGO working on the issue of biodiversity protection, organized a buyout. An apartment was rented in Lomé city and the appointment made for the transaction. At the opportune time, the trafficker hesitated to show up at the agreed venue and made fresh demands. He finally gave a new appointment in his workshop that the OCRTIDB had previously cautiously located in a district not far from the central Lomé market sector. The operatives were posted at the venue and during the operation, the trafficker who was already very cautious, fled leaving the purchaser, who was a disguised officer, the bag containing two severed tusks. A chase ensued, but the suspect managed to escape thanks to the configuration of the premises which he mastered better than the investigators.

The first elements of the investigation before the operation designated him as a certain O without further identification. A search of the workshop was conducted and several other carved ivory objects and some documents were found, but no identification of him. The investigations conducted with mobile telephone companies and the General Directorate of National Documentation have established that his name is XC, an Ivorian born on 28th February 1984 in Gagnoa. Other information revealed that he had already been detained in the Lomé civil prison for the same acts of illicit ivory trafficking, which clearly explains the caution with which he managed the failed transaction. Searches for his assets were unsuccessful, as no bank account was identified as belonging to him.

Legal actions: the named XC is still at large.

2. Case against Messrs. XA, YA and others on the run (ZS and XM)

Details of facts: on Tuesday 4th August 2020 around 4 p.m., on a tip-off, officers from the Security Unit of the Ministry of Security and Civil Protection went to the shop of the named YA located in the Agoè-Zongo district (northern suburb of Lomé). At this precise venue a transaction on a quantity of ivory was supposed to be carried out. During this transaction, the officers managed to lay hands on the named XA and YA found in possession of six (06) elephant tusks that they were preparing to sell.

Investigation: Sometime in July 2020, XM received from ZS, a compatriot residing in Ghana, a package of six (06) elephant tusks which he carefully kept at his home for three (03) weeks while looking for buyers. He contacted two of his friends, named ZS and XM who, in turn, provided the information to another member of the network, Mr. YA. The latter then found a buyer and the four (04) traffickers met on the evening of Tuesday, 4th August 2020 in the shop of Mr. YA in the Agoè-Zongo district to finalize the transaction. It was during this transaction that they were stormed by a team of officials from the Security Unit of the Ministry of Security and Civil Protection on a mission in the area and tipped-off, who eventually arrested the Messrs. XA and YA after a chase. The Messrs. ZS and XM manage to escape.

Legal action: At the end of the criminal investigation, the named XA and YA were arraigned before the State Prosecutor in Lomé on 7th August 2017 and then transferred the same day to the civil prison of Lomé.

Source: OCRITIDB

- **Gold smuggling-based money laundering**

155. Customs fraud investigations are not related to gold smuggling. However, from 2015 to 2018, smuggling of gold produced in Burkina Faso and Ghana was organized towards Togo upon payment of a tax of one thousand CFAF (1000) (€1.52) per Kg on declaration at the Togolese borders. This gold was then re-exported to the United Arab Emirates and Switzerland. The Togolese authorities met stated that based on injunctions from the World Bank, the International Monetary Fund and BCEAO, the receipt of gold import declarations at Togo's borders had been terminated with effect from September 2018. However, there is nothing to prove that this gold smuggling has ended, given the porosity of the Togolese borders and the lack of appropriate controls at the said borders. Besides, neither the OCTRIDB, nor any other Togolese investigative unit, has ever initiated any investigation into the laundering of the proceeds of this smuggling.
156. In the light of the foregoing, it should be underscored that ML criminal investigations and prosecutions are not entirely in line with Togo's risk profile, nor the country's policies and strategies, as they are only relate to scam (including the one committed abroad) although this offence is the major ML threat. Indeed, both the parallel investigations and the FIU reports that resulted in ML prosecutions relate to this same offence.

3.3.3. Types of ML cases prosecuted

157. The Togolese authorities obtained two (02) convictions for self-laundering through the predicate offence of simple scam and Internet fraud.

Box 3.5: Case of self-laundering

1. Predicate offence of scam

In the first case, the respondent is part of the network of fraudsters and it is his account that is used to collect and launder the defrauded funds. The funds are then presented as coming from its business activity.

2. Predicate offence of internet scam

In this second case, one of the suspects was part of a network of cyber crooks and was in charge of identifying people who would offer their services in order to receive and launder funds from the group's criminal activity.

158. One (01) conviction for autonomous money laundering was also delivered in relation to a predicate offence of Internet fraud.

Box 3.6: Autonomous Laundering Case

- **Predicate offence of Internet scam by unknown perpetrators**

The Togolese justice has secured one (01) conviction for autonomous money laundering. It was in a case where only one person was arrested. The investigations revealed that the suspect was a professional launderer. He was making his account available to various groups of internet scammers who needed it to receive and launder the proceeds of their scams. In fact, the suspect opened accounts in his personal name and in the name of a legal person that he established. He introduced himself as a businessman

dealing in second-hand clothing (his company was operating in the same domain: general trade, import-export, sale of second-hand clothing). He used this front business activity to receive and launder funds from the scam networks for a fee ranging from 20-40% of the total laundered funds. The members of the scam rings could not be identified and therefore charges could not be brought against them for the predicate offence. This did not prevent the money laundering professional from being sued independently.

159. Togo also handed down two (02) convictions for ML committed by a third party after the commission of the predicate offences of Internet fraud.

Box 3.7: Third-party Laundering Case

▪ Predicate offence of internet scam

In this case, a couple was convicted for providing services to various internet scam groups to enable them receive and launder funds from their scams. The two opened accounts in their names and in the names of the companies they established, made these accounts available to groups of scammers and used their business activities (sale of computer equipment) as a pretext to launder the funds on behalf of these criminal groups.

160. Furthermore, although the Togolese competent authorities claimed to have secured two convictions for self-laundering, one conviction for autonomous money laundering and two convictions by a third party, the assessment team was provided with only 4 ML-based verdicts on which it carried out its analyses. The convictions for ML relate to self-laundering, autonomous laundering and third party laundering and relate exclusively to the predicate offences of simple and Internet scam. The lack of convictions for predicate offences other than fraud attests to the fact that ML investigations are not conducted effectively due in particular to inadequate human and material resources. In addition, prosecutions and convictions are impacted by the challenges related to ML-related investigations in connection with offences committed abroad due to the competent authorities' inadequate use of international cooperation. However, the assessment team concludes that the prosecutions and convictions obtained in Togo are in line with the country's risk profile even though they are few in number considering the magnitude of the offence of scam and that they do not include the other major ML threats identified in the NRA.

3.3.4. Effective, proportionate and dissuasive nature of sanctions

161. Togo has an adequate legal framework to sanction ML offences. Indeed the five (04) convictions for ML secured in Togo delivered prison sentences of three (03) to seven (07) years. For the first two verdicts (RP No. 0985/16 and No. 1818/18), the sentences delivered are in line with the outline of the sentences provided for ML. The 2nd verdict (RP n°1818/18) also provides for a fine equal to three times the value of the assets or funds on which the ML operation was conducted. On the other hand, for the 1st verdict (RP n°0985/16), the fine is well below three times the value of the assets or funds involved in the ML offences. In the 3rd case (RP n°1575/19), the acts with which the defendants are charged were committed through an organized crime mechanism, and therefore a case of aggravated money laundering punishable by doubling the above-mentioned sanctions. However, the sentence was not doubled in this case. In addition, the assessment team noted that for the 1st and 3rd verdicts (PR n°0985/16, RP n° 1575/19), the sentences handed down were suspended in violation of the provisions of the Uniform AML/CFT Law No. 2018-004, thus impacting their proportionate and dissuasive nature. The competent authorities recognized this error which could be attributable to the lack of training of magistrates in ML matters and especially to the fact that these were the first ML trials with conviction in Togo. Similarly, no sanction has been meted out on the legal entities even though legal

persons were used in the commission of the acts that led to the conviction of the natural persons (see boxes 3.5 and 3.6). On the other hand, additional sentences of prohibition of stay were delivered within the framework of the verdict of ML obtained in Togo.

162. Furthermore, three (3) ML convictions were secured based on the new Penal Code which provides for milder sanctions than those provided for in the Uniform Law. This Togolese approach is contrary to the stipulations of the UMOA Treaty of 20th January 2007, which gives the Union the powers to legislate on ML. Indeed, the definition of the ML offence as well as the applicable sanctions provided for in the Togolese Penal Code should not be different from those provided for in the Uniform AML/CFT Law n° 2018-004.

163. It should be noted that due to the quantum of prison sentences and fines below the sanctions legally provided for, coupled with a suspended sentence which is not legally commensurate with prison sentences, as well as the lack of dual sanctioning for any aggravated money laundering case, it cannot be objectively concluded that the ML convictions secured in Togo are effective, dissuasive and proportionate.

Table 3.11. : Summary of Sanctions Imposed in the three Convictions

Ref/Case	Offence	Prison sentence	Fine	Confiscation
0985/16/PR	Scam and ML	-60 months imprisonment, with 12 months are suspended -60 months imprisonment	CFAF 5,000,000 (7,622.45 €) for the suspect present and CFAF 30,000,000 (45,734.7 €) for the others on the run	Forfeiture of funds seized from the account
1818/18/PR	ML	48 months in prison including 12 suspended	CFAF 224,342,781 (€342,008.36)	None.
1575/19/PR	Scam in organized gangs, violation of computer security and ML	72 months for the main accused persons including 12 suspended and 36 months for a secondary co-author including 12 months suspended	CFAF 100,000,000 francs for each of the main defendants, CFAF 50,000,000 (€76,224.5) for the secondary co-author	- Confiscation of CFAF 11,481,472 seized from the account - confiscation of a VENZA car
Verdict 690/20	Scam	-48 months in prison -84 months in prison	- CFAF 75,000,000 (114,329.26 €) ; - CFAF 150,000,000 (228,658.537 €)	None

Source: FIU

164. The execution of the sanctions imposed for ML falls within the jurisdiction of the Judicial Agent of the Treasury regarding financial verdicts and confiscations. It has delegated its prerogatives to the court registries. However, in practice, only prison sentences and confiscation (where assets may have been seized during investigations) are enforced, unlike fines. However, confiscations are not systematic in all ML cases. In this case, in two out of four cases tried, the investigative and prosecutorial authorities placed assets liable to confiscation in the hands of the courts. The effectiveness of the sanctions meted out are dependent on their execution on the assets of the convicted persons. This is attributed to the lack of an effective mechanism for the implementation of ML

convictions in Togo.

3.3.5. Use of alternative measures

165. The Togolese authorities implement alternative measures, including the imposition of administrative fines where the courts cannot convict for ML after proceedings have been initiated. This obtains where during the criminal legal proceedings, it is impossible to establish the facts of ML or other predicate offences, including tax offences.

Box 3.8: Case of Administrative Fine as Alternative in Conviction for ML

In 2009, a public limited company was set up in the country licensed to sell consumer products to the public. Failing to comply with the business for which the operating license was granted by the Ministry of Trade, the company and its agent embarked on financial activities for which the prior approval of the Minister of Finance is required. In 2010, the government decided to close the company in order to preserve public interests, which may be violated insofar as the financial activities in question are conducted on the model unraveled in the MADOFF case in the USA (the company was proposing savings or investment with a monthly interest rate of over 20%).

A complaint was filed and the company and its agent were prosecuted for illegally engaging in banking activities, tax evasion and laundering of funds derived from tax evasion. Following a verdict delivered at the High Court, the case was brought before the Lomé Court of Appeal, but it became difficult to obtain a conviction. A plea bargaining was then initiated between the Togolese State and the prosecuted suspects, which resulted in the signing of a conciliation report. Under the terms of this conciliation, all proceedings were dropped, but the company and its agent agreed to pay a total sum of CFA Francs 577,809,774 (i.e. €945,564.9) to extinguish the offences of tax evasion and laundering of the proceeds of tax evasion.

General Conclusion on IO.7

166. Togo obtained four (04) convictions for ML exclusively relating to the offence of fraud which is the most important threat identified in the NRA. The convictions relate to self-laundering, third party laundering and autonomous laundering. In two cases, the sentences handed down were suspended, calling into question their proportionate and dissuasive nature, even though there is no monitoring mechanism to ensure that the sentences handed down are executed. In cases where it is not possible to convict for ML, Togo applies the administrative fine.

167. ML investigations are a priority in Togo's AML/CFT policy and strategy document, yet to be implemented. The LEAs are not specialized in ML, but they nevertheless manage to detect a few cases of ML and obtain limited convictions for various types of ML cases. The other major threats identified in the NRA (breach of trust, tax and customs fraud, corruption, drug trafficking, in human trafficking, migrants smuggling and environmental crime) are scarcely captured in criminal investigations and prosecutions. Besides, investigations are hampered by the corruption of officers in the criminal justice system.

168. **Togo is rated as having a low level of effectiveness on IO.7.**

3.4. Immediate Outcome 8 (Confiscation)

3.4.1. Confiscation of proceeds, instrumentalities and assets of equivalent value as a policy target

169. Togo has a satisfactory legal framework for the seizure and confiscation of proceeds and instrumentalities of crime as well as assets of equivalent value. The prioritisation of seizure and confiscation is mentioned in Togo's national AML/CFT policy and strategy document, which is yet to be adopted by the government and implemented. However, seizures and confiscations are not considered as a priority in the domestic AML Policy due to the lack of a relevant criminal policy. This deficiency is not compensated by circulars or criminal guidance reports that would urge considering the confiscation of proceeds, instrumentalities of crime and assets of equivalent value as one of the fundamental objectives of the fight against ML in Togo. The prioritization of seizures and confiscation is mentioned in Togo's national AML/CFT policy and strategy document, which is yet to be adopted by the State authorities or implemented.
170. The LEAs, including the criminal investigation officers of the DCPJ, the DCRI, SCRI, BCN Interpol and OCRTIDB as well as the magistrates of the State Prosecutor's office and the investigating judges of the Lomé High Court, are not adequately trained to track the instrumentalities of crime, criminal assets or their equivalent value. Therefore, they do not pay any particular attention to it. Indeed, they have only attended a few training programs on seizures and confiscation, organized by national authorities and technical partners. Because of their awareness of the issue of confiscation through these training sessions, the magistrates in the prosecutor's office of the Lomé High Court stated that henceforth, criminal investigation officers would be allowed seize all instrumentalities and proceeds of crime once investigation has commenced.
171. Furthermore, the LEAs have the power to request reporting entities to provide them with information that would enable them to identify the instrumentalities of crime and criminal assets to be seized and eventually confiscated. In practice, this option is inadequately implemented considering the fact that investigations into the predicate offences are prioritized at the detriment ML offences.
172. Obviously, the lack of expertise for the identification and tracking of assets to be seized and confiscated is a handicap for the competent authorities. The latter indicate that even though there are no human resources explicitly dedicated to seizures and confiscations, there is a de facto organization of the investigative, prosecutorial and procedural agencies motivated enough to assign some staff to those functions as a priority.

Table 3.12: Provisional measures (Amounts in CFAF and Euros)

Entity	Seizure in 2018	Seizure in 2019	Seizure in 2020	Amount
Investing Judge	761 207 526 (1160453€)	1,394,282,525 (2125570€)	74 195 774 (113110.7€)	2,239,685,825 (3414379€)

Source: Lomé Court of First Instance

173. Apart from the inadequate training of the competent authorities on confiscation, efforts in the area of provisional seizures of instrumentalities of crime and criminal assets are seriously handicapped by the challenges of accessing information on assets belonging to suspects subjected to investigations and prosecutions, as well as by the unavailability of beneficial ownership information of legal persons. In addition, the CID officers sending requisitions to FIs and mobile telephone operators are required to

submit same for signature by the State Prosecutor, which often delays the seizure action. This procedure has no legal basis, just a practice imposed by the required structures.

174. The Togo-FIU, which receives STRs from AML/CFT reporting entities, is an authority that provides ML cases. Thus, the FIU has the power to block the execution of a financial transaction for forty-eight (48) hours if it intends to file an investigation report to the State Prosecutors. The advantage of this move is to prevent suspected funds from dissipating.

175. The Togolese authorities have secured convictions for predicate offences that are the major ML threats, including fraud, drug trafficking, corruption and environmental crime (Cf. analysis of IO.7), but they have not provided the relevant confiscation statistics. Consequently, the existence of additional confiscation sanctions has only been effectively proven in two (02) ML cases related to the offence of fraud (RP 0985/16 and RP 1575/19). In fact, the amounts confiscated are well below the proceeds of the offence. The limited number of confiscations for ML cases adjudicated is due to the lack of expertise to track down and provisionally seize assets earmarked for possible confiscation. In these circumstances, even the fines imposed may not being executed, especially as there is a defined period for the execution of criminal sentence in Togolese law.

Table 3.13: Confiscations (amounts in CFAF and Euros)

Year	2018	2019	2020	Total
Amounts confiscated for ML	0	2277 154 (3471.4€)	11,481,472 (€17,503.3) and a Toyota VENZA vehicle	13708 626 (20898.6€)

Source: Lomé High Court

176. The prison sentence and confiscation of certain assets placed under judicial surveillance are the court verdicts for ML and predicate offences that are executed in Togo. However, provisional seizures are not carried out in all cases. The fines imposed, certain confiscations made in favour of the State as well as the legal charges in criminal cases are not recovered. The non-implementation of certain sentencing rulings is not likely to demonstrate that the Togolese law enforcement system aims to deprive criminals of criminal assets. On the contrary, it could even encourage crime since once their prison sentences are served, criminals could continue to enjoy the proceeds of their crimes. This reinforces the idea that crime control is still a criminal policy target in Togo. This situation is attributed to the fact that Togo does not have an effective mechanism for the management and recovery of criminal assets.

177. In the light of the foregoing, the assessment team believes that the confiscation of proceeds, instrumentalities and assets of equivalent value is not a policy target in Togo.

3.4.2. Confiscation of proceeds of offences committed abroad and domestically, and proceeds located abroad

178. Investigative authorities have made very little use of international cooperation, during their investigations and prosecutions, in order to identify and seize assets linked to an offence committed abroad or domestically. In the rare cases where this cooperation is requested for, such requests have no link with the offence of Internet scam, which is however the major ML threat in Togo which also presents foreign elements. In any case, no statistics have been produced by the competent authorities to demonstrate cooperation with their counterparts in order to take measures to seize assets. Besides they have received such requests from their foreign counterparts, particularly targeting the seizure of

stolen vehicles, through the BCN Interpol.

179. Togo is yet to receive any repatriation of criminal assets from abroad, although it has returned stolen vehicles to foreign authorities. The vehicles seized by the BCN Interpol had not been subject to prior confiscation measures by the Togolese authorities. On the other hand, the competent authorities have already seized money to hand over to foreign victims. There was a case of Internet scam, where funds representing the proceeds of the offence were transferred from abroad to the accounts in a Togolese bank. The order turned out to be criminal. The funds were then returned to the victim's foreign bank. This measure, which is certainly not a confiscation, nevertheless has an equivalent effect.

3.4.3. Confiscation of falsely or undeclared cross-border cash/BNI transactions

180. The Togolese authorities have a mechanism for declaring cash and BNIs at the entry and exit points of the country's air borders, particularly at the Lomé airport. Indeed, this mechanism is not in place at the other borders, such as Kodjoviakopé in the very heart of Lomé where informal fund transfer operators are located on either side of the border and their services are used by passengers who are supposed to make the cash declarations. Furthermore, non/false declared cash and BNIs are not seized and/or confiscated in accordance with Law No. 2018-004 even though sanctions (between 5 and 10% of the undeclared amount) are sometimes applied to offenders. The declaration system put in place is done by means of software at the airport but done manually at the other borders. The assessment team noted the lack of seizure statistics, particularly at Lomé airport, despite the observation that businessmen regularly leave Togo for Asia and most often hold amounts that far exceed the authorized threshold of CFAF 5.000.000 or approximately €7,622.4.

181. As a practice adopted by the Togolese authorities, since no seizure is made for non/false declaration or false information, the identity of the offender is entered into a customized software. The said statistics would then be filed to the FIU at the end of each month for operational purposes. However, they were not provided to the assessment team. The Togolese authorities met acknowledge that these people have defaulted but they explain that this approach was adopted as a result of the difficulties encountered by Togolese businessmen who use the banking channel for their international trade transactions in China and Dubai.

182. Observations of non-declaration or false declarations are made both by the police, the gendarmerie and customs at the Togolese borders for travelers leaving or returning to the UEMOA zone. If the report is made by the police or the gendarmerie, the information is filed to customs through the legal department which applies the sanctions and files the report to the FIU to use the financial intelligence (cf. analysis IO.6). If the observation is made by the customs, it refers to its legal department to apply the sanctions before such information is filed to the FIU. In either case, the cash subject to non-declaration or false declaration shall not be seized even though it is not excluded that the origin may be fraudulent. However, the Togolese authorities have not produced any statistics relating to the application of sanctions to the defaulters in the declaration of cash and BNIs.

183. In practice, there is some degree of complementarity between the police, the gendarmerie and customs at the borders in monitoring the movement of cash and BNIs, even though they do not make seizures for non/false declarations. This attests to the existence of a mechanism for the exchange of information between the border police and the customs administration in the monitoring the physical transportation of cash and BNIs. The OCRTIDB, which is empowered to investigate trafficking cases, is also present at Togo's main borders and shares cash-related information with the OTR.

Table 3.14: Currency Declaration

Year	Total Outflows	Equivalent value of outflows (billions of CFAF)
2015	2096	224.4 (342095594.69€)
2016	2262	444.2 (677178534.5€)
2017	2014	217.3 (331271714.4€)
2018	2130	217.2 (331119265.4€)
2019	1796	128 (195134742€)
2020	110	7.8 (11891023€)

Source: FIU

184. The Togolese practice of allowing businessmen to import goods valued at over CFAF ten million (10,000,000) (or EUR 15,244) with no domiciliation of the transaction through a licensed banking intermediary, is a flagrant violation of the rules governing financial relations with foreign countries. The channel can be used for the laundering of the proceeds of tax fraud. It is also a vehicle for tax evasion or even fraudulent evasion of taxes and duties where illegally imported goods may not be declared or only partially declared. Thus, such transactions which should be part of the turnover can be subtracted from it. This finding may explain why there is so much proliferation in tax adjustments in Togo.

3.4.4. Consistency of confiscation results with ML/TF risks and national AML/CFT policies and priorities

185. The confiscations made in Togo do not make for consistency between the results obtained and the risks of ML/TF, as well as the national AML/CFT policies and strategies. Indeed, there are no statistical data on confiscations relating to the major threats identified in the NRA. There were only two (02) ML-related confiscations linked to fraud, excluding the other major threats. The execution of court rulings is only done with regard to the prison sentence and confiscation of certain seized assets.

General Conclusion on IO.8

186. Togo has an adequate legal framework for the confiscation of criminal assets, but no mechanism for the recovery and management of seized and confiscated assets, other than for precious metals and cash. The confiscation of proceeds and instrumentalities of crime as well as assets of equivalent value is a priority in Togo's national policy and strategy document, yet to be implemented. LEAs are not specialized in confiscation matters. They do not carry out sufficient screening and confiscation of assets related to criminal activity committed abroad and ensure cooperation with their foreign counterparts in order to identify assets related to criminal activity committed in Togo.
187. Cash and BNIs equivalent to the prescribed threshold are only declared at the Lomé airport checkpoint. In case of non/false declarations, seizure and confiscation of cash and BNIs are not carried out. Two confiscation verdicts were handed down in connection with ML convictions in Togo. Sentencing decisions for ML as well as predicate offences are only enforced with respect to the term of imprisonment and certain seized assets. Because there are no statistical data on seizures and confiscations relating to the offences which constitute the main ML threats, it is impossible to establish the consistency between the results obtained and the ML/TF risks as well as Togo's domestic AML/CFT policies and priorities.
188. **Togo is rated as having a low level of effectiveness on IO.8.**

Chapter 4. TERRORIST FINANCING AND PROLIFERATION FINANCING

4. 1. Key Findings and Recommended Actions

Key Findings

Immediate Outcome 9

- a. The Togolese legal framework criminalizes the TF offence consistent with the United Nations Convention for the Suppression of TF, but does not criminalize the financing of a terrorist individual or a terrorist organization for any purpose as well as the financing of foreign terrorist fighters' travel.
- b. SCRIC and DEF are competent to investigate economic and financial crimes, including TF. While the OCRTIDB has powers to combat drug trafficking and the laundering of drug proceeds, it also investigates other complex offences, including ML.
- c. Togo has no national counter-terrorism strategy that incorporates TF investigations. They do not prioritise and proactively TF conduct investigations due understaffing, limited interdepartmental coordination, lack of specialisation, material and financial resources and legal loopholes related to the incomplete criminalisation of TF.
- d. Investigating authorities are yet to detect any cases of TF in Togo. A few TF investigations incorporated into national counter-terrorism investigations [triggered by requests from foreign authorities] have been conducted but have not resulted in the detection of TF cases, which is not in line with Togo's risk profiles and NRA findings.
- e. With no conviction secured so far, it has not been possible to assess whether the sanctions provided for against natural and legal persons found guilty of TF offences are effective.
- f. Togo is yet to detect TF case, the implementation of penal, regulatory or other measures designed to disrupt TF activities where it is not possible to obtain a conviction for TF, could not be assessed.

Immediate Outcome 10

- a. Togo has a legal and institutional framework that allows it provides for the implementation of targeted financial sanctions related to terrorist financing issued under the relevant UNSC Resolutions, together with a requirement for reporting entities to receive prior notification of those sanctions. Besides, the Togolese legal framework does not provide for the protection bona fide third parties when the latter are implementing the necessary freezing measures for TFS related to TF.

- b. The notification of the lists of designation of persons and entities under TFS to reporting entities and other persons likely to hold assets and other resources belonging to persons and entities concerned is not done in a timely manner due to a fairly long circuit and the low level of digitalization of the said lists, thus compromising the implementation of TFS without delay. It does not cover all the reporting entities either.
- c. The lack of guidelines intended for reporting entities also compromises the implementation of TFS since almost all reporting entities are unaware of their relevant obligations.
- d. The CCGA responsible for assisting the competent authority in the implementation of administrative freezing orders is not functional and the country is yet to develop a national list under UNSCR 1373.
- e. Togo has not clearly defined the evidentiary criteria to justify designations on the sanctions lists, nor has it prescribed the required unfreezing and delisting mechanisms and procedures.
- f. Togo very recently assessed the NPO sector to identify the sub-categories most exposed to TF risk. However, this assessment was neither sufficiently inclusive nor popularized and no risk-based supervisory measures are applied to NPOs regardless of their category.
- g. The competent Togolese authorities have not proven their capacity to deprive individual terrorists, terrorist organizations and their financiers of assets or instrumentalities related to TF activities.
- h. The TF risk mitigating measures adopted by Togo are not commensurate with the country's risk profile highlighted in the NRA and NPO sectoral assessment reports.

Immediate Outcome 11

- a. The Togolese legal framework provides for the implementation of TFS related to PF. However, the administrative freezing regime does not clearly define any mechanism for the country to implement TFS related to PWMD without delay. Besides, the Togolese legal framework does not provide for the protection bona fide third parties when the latter are implementing the necessary freezing measures for TFS related to TF
- b. FIs and DNFBPs have not received any guidelines to help them better implement TFS related to proliferation. Generally, the reporting entities are not aware of their TFS obligations related to PF. Nevertheless, accountable commercial banks IT solutions to verify whether the States and entities subject to TFS related to PF are not part of their usual or occasional customers for them to take the appropriate measures.
- c. Togo has not demonstrated that competent authorities and reporting entities have the capacity to identify assets and funds held by persons and entities designated under TFS related to PF and those acting on their behalf and take appropriate measures to prevent them from operating or carrying out transactions, particularly financial, related to PF.
- d. The FI supervisory authorities did not provide any information on any inspections conducted to ensure the FIs adequately comply with their obligations in terms of

implementing TFS related to PF. The lack of monitoring and supervision authority for DNFBPs also hampers the monitoring of the implementation of TFS.

Recommended Actions

Immediate Outcome 9

The Togolese authorities should:

- a. Criminalize the financing of an individual terrorist or terrorist organization for any purpose, as well as the financing of foreign terrorist fighters' travel;
- b. Develop and adopt a national counter-terrorism strategy that incorporates TF investigations, and map out a strategy for identifying the various types of TF activities in line with the country's risk profile and train magistrates to facilitate prosecutions and obtain convictions (Ministries of Justice and Security);
- c. Strengthen the capacities of LEAs through training on the various types of TF activities and special investigative techniques. They should provide LEAs with adequate financial, material and human resources to carry out TF-related investigations;
- d. Encourage LEAs to prioritize the coordination of their activities and exchange of information for detection, research and evidence in their TF investigation to reach convictions;
- e. Set up an anti-terrorist strategy incorporating TF investigations. They should also strengthen the capacities of LEAs to identify TF cases, as well as information and intelligence, including with the FIU;
- f. Encourage LEAs to prioritize the detection, tracing and gathering of evidence in their TF-related investigations in order to secure convictions;
- g. Sensitize LEAs on the need to implement alternative measures where they cannot secure a conviction for TF.

Immediate Outcome 10

The Togolese authorities should:

- a. reduce the circuit for the notification of TFS decisions to reporting entities and other persons or entities concerned to provide the resources for them to be implemented them without delay. They should ensure the notification mechanism includes all reporting entities. They should particularly incorporate in the domestic legal framework the requirement to protect bona fide third parties that implement freezing obligations under TFS related to TF;
- b. develop guidelines for FIs and DNFBPs to help them effectively implement targeted financial sanctions related to TF and freezing orders issued by the competent

authority;

- c. operationalize the CCGA, which assists the Minister of Finance in his capacity as the competent authority in charge of administrative freezing, by providing the structure with adequate human, material and financial resources. They should therefore have a national list under UNSCR 1373, given its risk profile;
- d. review Decree 2018-123/PR on the legal framework for the implementation of TFS related to TF by clearly defining the criteria of evidence to justify designations and defining the requisite mechanisms and procedures for unfreezing and delisting;
- e. disseminate the findings of the NPO sectoral risk assessment and impose targeted and proportionate measures on NPOs considered vulnerable to abuse for terrorist financing purposes in accordance with a risk-based approach;
- f. consider the findings of the NRA and the assessment of the NPO sector to adopt measures to mitigate the TF risks facing the country and strengthen the capacities of competent authorities to deprive individual terrorists, terrorist organizations and their financiers of their assets or instrumentalities linked to TF.

Immediate Outcome 11

The Togolese authorities should:

- a. amend the legal framework (Uniform Law 2018-004 and Decree 2018-123/PR) on the administrative freezing regime to clearly define the mechanism for the immediate implementation of TFS related to PWMD. They should particularly incorporate in the domestic legal framework the requirement to protect bona fide third parties that implement freezing obligations under TFS related to PF;
- b. develop guidelines for FIs and DNFBPs to help them effectively implement targeted financial sanctions related to PF;
- c. ensure that the competent authorities organize training sessions to enhance the knowledge of reporting entities on their obligations in terms of TFS related to PF;
- d. strengthen the capacity of supervisory authorities (through sensitization and training sessions) and map out an effective mechanism designed to supervise and monitor the implementation of TFS related to PF for FIs and DNFBPs; and incorporate CFP as a component of off-site and on-site inspections.

189. The relevant Immediate Outcomes reviewed and rated in this chapter are IOs.9-11. The relevant Recommendations for the assessment of effectiveness on this chapter are R. 1, 4, 5-8, 30, 31 and 39, and some elements of R.2, 14, 15, 16, 32, 37, 38 and 40.

4.2. Immediate Outcome 9 (TF investigation and prosecution)

4.2.1. Consistency of prosecutions/convictions of types of TF activities with the country's risk profile

190. Law enforcement authorities have general jurisdiction and are empowered to investigate and prosecute all types of offences, including TF activities. However, no TF case has so far been prosecuted and convicted by the courts, which is not commensurate with Togo's risk profile, rated as medium-high. Nevertheless, the judicial authority has processed a request for mutual assistance relating to a national NGO suspected by the French authorities of being used for TF purposes. However, this mutual assistance did not result in the identification of TF.
191. Given Togo's context and risk profile, it is difficult to link the lack of prosecutions and convictions to the non-existence of actual TF cases. Indeed, the assessment of TF threat reveals that even though Togo does not harbor any terrorist organizations on its territory and has never experienced any terrorist attack, the pressure on its northern border is escalating due to the security situation in Burkina Faso. The threat at sub-regional level is real and the financial flows into and out of Togo are draining funds that could be intended for TF. There are several contributory factors to this situation, including the weight of the informal sector, the scale of transnational organized crime, the vulnerabilities of the mechanism designed to monitor money transfers through mobile telephone operators. Added to this are the unexplained large flows of money transfer services, the high use of cash often for criminal purposes, vulnerabilities in monitoring the physical cross-border transportation of cash and BNIs. All these result in uncontrolled illicit flows that facilitate the proliferation of various activities including those that could be related to TF. In addition, the vulnerabilities displayed by the NPO sector increase national vulnerability to TF. Indeed, Togo's NRA as well as the sectoral assessment report of February 2021 highlights faith-based NGOs as listed in the vulnerable category of the sector.
192. The aforementioned contextual and security factors encourage the existence of all types of TF activity even though there is no terrorist attack in the country. Terrorists can use Togo to raise, store, move or use funds or other terrorism-related assets destined for other countries. The information gathered from the competent authorities effectively reveals that the lack of TF-related prosecution and conviction is due to other factors, including the lack of specialized human resources, as well as material, technical and financial inadequacies. Besides, law enforcement authorities are grappling with challenges in implementing criminal measures, particularly special investigative techniques and mutual legal assistance. All of these constraints reduce their capacity to prioritize, investigate and prosecute the various types of TF activities.

4.2.2. TF identification and investigation

193. Togo has several units empowered to conduct TF investigations, including the SCRIC and DEF which investigate economic and financial crimes including TF. The OCRTIDB is mandated not only to combat illicit drug trafficking and the laundering of drug proceeds, but also to conduct investigations into other complex offences entrusted to it, including possible TF cases.
194. Investigative agencies can investigate TF cases on their own initiative, based on complaints or tip-offs, on the Directives from the State Prosecutor and by commission of enquiry from the investigating judge. They can also systematically identify TF during terrorism investigations. For instance, within the framework of combatting terrorism in the sub-region, Operation KOUNDALGOU I conducted with Ghana, Benin and Burkina Faso, in May 2018 resulted in the arrest in Togo of about forty suspects declared wanted in Burkina Faso for acts of terrorism. They were all handed over to the Burkinabe authorities, after the Togolese competent authorities had conducted investigations to detect any

possible case of TF. It turned out that the suspects had fled the military operations in their country to take refuge in Togo. No trace of TF linked to these arrests was discovered on Togolese territory.

195. Although the investigative agencies have all the prerogatives to identify and investigate TF, their capacities are limited in terms of financial investigations, which are fundamental to effectively detect TF. They also lack staff specialized in TF investigations, as well as material and financial resources. These limitations imply that the investigation agencies do not prioritize the quest for relevant financial intelligence and other information necessary for TF investigations. They are not proactive in their TF investigations. Furthermore, the incomprehensive criminalization of TF also limits the powers of investigators in this area (non-criminalization of the financing of a terrorist individual or a terrorist organization for any purpose as well as the financing of foreign terrorist fighters' travel). The fact that the law does not explicitly provide for the possibility of establishing the TF offence even where it has no link with one or more specific terrorist acts, as well as the possibility of establishing it even where there is no link between the funds and other assets used with one or more specific terrorist acts, are factors that reduce the powers of investigators. Thus, the investigation agencies have not yet identified any potential TF case or conducted any relevant investigations. They have also not submitted any TF-related request for investigations to their foreign counterparts. However, they have received some from their counterparts (4 TF requests).
196. The FIU is has the capacity to identify TF through the processing and analysis of STRs, CTRs and declarations of cross-border physical transportation of cash and BNIs. This TF identification system has deficiencies that prevent the FIU from accessing and fully using information relating to declarations. Indeed, DFIs, DNFBPs, insurance companies and financial authorities and other FIs (apart from the Post Office) produce few STRs. Apart from banks and DFIs, other types of FIs and DNFBPs do not file CTRs either). The FIU does not have comprehensive data on declarations of cross-border transportation of cash and BNIs, particularly on cash seizures because the customs services do not do so for violation of regulatory provisions. They are contented with registering travelers' currency declarations. From the explanations provided by the competent authorities, it appears Togo is implementing a policy of tolerance in terms of cross-border transportation of cash and BNIs for businessmen, despite the medium-high TF risk identified by the NRA (See IO.8 analysis).
197. Even beyond the weakness of the TF identification system based on declarations, the lack of qualified human resources and appropriate equipment substantially limit the FIU's capacity to identify potential TF cases. The FIU received 21 TF-related STRs between 2018 and 2020, the analyses of which did not confirm any TF case. Besides, cooperation between the FIU and the other competent authorities involved in the fight against TF is limited. Indeed, it is not systematically associated with the investigations conducted by the investigation agencies or the intelligence agencies on terrorism cases to enable it provide financial intelligence or other information for the purpose of detecting TF cases. For example, it was not associated with the KOUNDALGOU I operation. The TF identification system is therefore mainly based on the analysis of STRs. This is not well suited to respond effectively and efficiently to the TF risks in Togo.
198. As an intelligence agency, the ANR also plays a crucial role in identifying TF cases even though it is yet to identify one. The exchange of information between the ANR, FIU, other police intelligence agencies and the gendarmerie, investigative and prosecutorial authorities is not satisfactory. The formal coordination and cooperation framework among all these entities in terms of TF is not yet operational. The competent authorities in Togo have indicated that a proposal to merge the intelligence agencies is underway. Besides, the non-operationalization of CONAC and the Operational Unit facilitating the exchange of information and data on AML/CFT adversely affects both the dissemination of information and identification of TF cases.

199. In summary, given the country's context and TF risk level as well as the existence of activities potentially vulnerable to TF, Togo is yet to identify any TF case. This does not clearly demonstrate the effectiveness of the Togolese CFT system.

4.2.3. TF investigation incorporated and supporting national strategies

200. Togo has no national counter-terrorism strategy. There are therefore no TF investigations that incorporate or are used in support of any national counter-terrorism strategy. However, in practice and since 2019, TF investigations have been incorporated into national counter-terrorism investigations. In fact, after the assessment of the Togolese counter-terrorism and its financing regime by the UNSC Counter-Terrorism Executive Directorate, the investigative agencies have acquired the reflex of systematically incorporating TF investigations into terrorism investigations. Since Togo has not yet experienced any case of terrorism on its territory, national investigations into terrorism have been conducted within the framework of joint counter-terrorism operations with neighboring countries and have taken into account the TF component, such as the case of Operation KOUNDALGOU I mentioned above. These investigations have not resulted in the identification and designation of any individual terrorists, terrorist organizations or networks supporting terrorism.

4.2.4. Effective, proportionate and dissuasive nature of sanctions

201. The Togolese courts have not yet prosecuted and convicted anyone for TF. Consequently, it has not been possible to assess whether the sanctions provided for against natural and legal persons found guilty of TF offences are effective. Various sanctions are however provided for TF in the legal texts applicable in Togo which would be proportionate and dissuasive if meted out, except that they do not cover all TF activities (See. Rec.5 analysis).

4.2.5. Alternative measures taken where a conviction for TF is not possible (for example: disruption)

202. In Togo, criminal and regulatory measures may apply where it is not possible to obtain a conviction for TF. For example, where there is little or no evidence, the courts can deliver conviction for another TF-related offence for which the evidence is more tangible. However, there have been no TF investigations and prosecutions resulting in convictions in Togo. Given this state of affairs, it was impossible to assess the implementation of alternative measures to disrupt TF activities where it is not possible to secure a conviction.

General Conclusions on IO.9

203. The Togolese legal framework does not criminalize the financing of a terrorist individual or a terrorist organization for any purpose as well as the financing of foreign terrorist fighters travel. The SCRIC, DEF, OCRTIDB are empowered to conduct TF-related investigations. Despite their investigative and prosecutorial prerogatives, LEAs are not yet to identify any TF case. They are still grappling with several challenges: inadequate personnel specialized in TF investigations, lack of material, technical and financial resources. Besides, jurisdictions are yet to prosecute and convict for TF, which is not commensurate with the country's risk profile.

204. Togo has no national counter-terrorism strategy that incorporates TF investigations. With no conviction recorded so far, the effectiveness of sanctions against natural and legal persons as well as the implementation of criminal, regulatory or other measures to disrupt TF activities where it is

not possible to obtain a conviction, could not be assessed

205. **Togo is rated as having a low level of effectiveness on IO.9.**

4.3. Immediate Outcome 10 (Preventive measures and financial sanctions related to TF)

4.3.1. Implementation of targeted financial sanctions related to TF without delay

206. Togo is currently grappling with multifaceted terrorist threats as a result of its proximity to certain neighboring countries as well as domestic threats. According to the NRA report, the level of the global threat of terrorism and its financing is high and medium-high respectively.
207. The Togolese legal and institutional framework provides for the implementation of targeted financial sanctions (TFS) related to TF and issued under UNSCRs 1267, 1988/1989 and 1373. These include the Uniform AML/CFT Law 2018-004 and more specifically Decree 2018-123/PR of 3rd March 2018 designating and mapping out the procedure for administrative freezing. This Decree designates the Minister of Finance, acting on the proposal of the Consultative Committee for Administrative Freezing (CCGA), as the authority responsible for:
- Submitting names to the United Nations Security Council committees for inclusion on the Al Qaeda and Taliban sanctions list in line with Resolution 1267 and subsequent Resolutions.
 - Establishing, where appropriate, a list of persons or entities to be subject to administrative freezing measures under Security Council Resolution 1373 (2001);
 - Freezing without delay, of funds and assets belonging to persons and entities involved in acts of terrorism;
 - Giving effect without delay, to all request for administrative freezing filed by another country where there are reasonable grounds to suspect or believe that a natural or legal person is a terrorist, finances terrorism or a terrorist organization.
208. The mechanism provided for in Togo for the implementation of targeted financial sanctions related to TF under UN Security Council Resolutions 1267 and subsequent ones as well as their updates reveals that the lists of persons and entities targeted by the TFS are received through diplomatic channels. This mechanism is based on the legal obligation of competent authorities to give prior notice of the lists of sanctions to reporting entities, for the immediate implementation of TFS (Art. 100 of the Uniform AML/CFT Law 2018-004). In this regard, it is the Togolese permanent diplomatic representation to the United Nations that conveys the lists of TFS to the Ministry of Foreign Affairs within an average period of one week after their publication. They are then distributed to the competent ministerial department at national level, specifically the Minister of Finance, by the Ministry of Foreign Affairs also within an average period of one week. Upon receipt of the lists, the Ministry of Finance, in its capacity as the competent authority for administrative freezing, transmits them to the commercial banks as well as the BCEAO, also within an average period of one week. No other formal mechanism has been defined for the transmission of updated sanction lists to other reporting entities, including other FIs and DNFBPs. In all cases, the calculation of the successive deadlines thus described reveals that it would take at least three weeks after the publication of the sanction lists, for reporting entities to actually receive them and start implementing their relevant obligations. This mechanism does not provide for the immediate implementation of TFS related to TF not because of the protracted timelines, but also because it does not involve all reporting entities which may be holding assets and funds belonging to persons and entities targeted by TFS. Furthermore, the Togolese competent authorities

have not demonstrated the effective implementation of the above-mentioned TFS mechanism, especially since most of the reporting entities met mentioned to the assessment team that they had never received any sanctions lists from the competent authority in charge of administrative freezing.

209. Nevertheless, to access the sanction lists, some FIs belonging to large financial groups (banks, large-scale DFIs, insurance companies and certain money transfer companies) use IT solutions that already integrate the sanction lists and their updates to screen and detect persons or entities targeted by TFS. In this regard, a name match alert mechanism has already been established within a major bank in Togo, initially equipped with a reflex to issue an STR to the FIU instead of executing the obligation to freeze funds without delay. It later turned out that it was a matching error, but it clearly demonstrates to what extent the reporting entities are ignorant of their relevant obligations.
210. It should also be noted that the FIU has posted a link on its website to download the lists of all sanctioned persons and entities, accessible to reporting entities. Some reporting entities have been sensitized by the FIU on the need to regularly consult this link which ensures real-time updating of the sanctions lists. However, because of the lack of an alert system, it is not possible to confirm that whether reporting entities, particularly DNFBPs which do not receive any lists TFS related to TF from their competent authorities, are actually consulting this link.
211. The effectiveness of the mechanism designed to designate persons or entities to be included on the UN list under Security Council Resolution 1267 could not be assessed due to the fact that this obligation is yet to be implemented. Indeed, Togo has not yet submitted to the United Nations Security Council Committees any names for inclusion on the list of Al Qaeda and Taliban sanctions in line with Resolution 1267 and subsequent ones, in spite of the glaring risks of terrorism and its financing in the country.
212. Under United Nations Security Council Resolution 1373, the assessment team noted that the CCGA responsible for assisting the competent authority in the implementation of administrative freezing orders is yet to be operational and that no other mechanism has been developed to implement the provisions of the said Resolution. Thus, Togo currently has no national list under UNSCR 1373, despite its medium-high TF risk profile. Togo has not received any request from any third country for the registration of a terrorist person or entity or terrorism financier.
213. Furthermore, Regulation 14/2002 requires the UEMOA Council of Ministers to prepare half-yearly lists of persons, entities and organizations whose funds and assets must be frozen. The BCEAO is required to send this list to the FIs. Between the two sessions of the Council of Ministers, the regulation authorizes the Chairman of the Council, on the proposal of the Governor of the BCEAO, to amend or supplement the list of persons, entities or organizations whose funds must be frozen, based on the decisions of the Sanctions Committee. The proposal made by the Governor is approved by the Council of Ministers at its next meeting. Apparently, this procedure also makes no provision for an implementation of TFS without delay. Besides, the supervisory authorities do not effectively monitor the implementation of such TFS obligations by reporting entities.
214. In the light of the foregoing, it is obvious that the extant mechanisms in Togo do not provide for the immediate implementation of TFS related to TF. Besides, no competent authority has issued any guidelines to help reporting entities understand their obligations and implement them effectively. In addition, the assessment team noted that that AML/CFT reporting entities in Togo, all categories combined, do not understand their TFS obligations related to TF.

4.3.2. Targeted approach, sensitization and supervision of non-profit organizations at risk

215. In Togo, there are various categories of NPOs including associations governed by the 1901 Law, NGOs and other charitable associations (including foundations), all subject to registration formalities. The monitoring and supervision of the general functioning of most of these NPOs (including associations and NGOs) is the responsibility of the Ministry of Territorial Administration.
216. Togo finalized its assessment of the NPO sector in February 2021 to identify the sub-categories most exposed to TF risk. The assessment was not satisfactorily inclusive, as it did not involve most of the sector stakeholders met by the assessment team. Its findings indicate that the sub-category of faith-based non-profit organizations, particularly Islamic, is considered to be the most exposed to TF risks. Obviously, Togo has so many NPOs of this type, most of which have not been registered. This is attributable to the limited capacity and resources of the authorities in charge of their monitoring and supervision and the non-dissemination of the very findings of the assessment, which hinder the understanding of the risks identified by the sector stakeholders and their competent authorities.
217. Furthermore, it should be underscored that in practice no risk-based approach is being used in the supervision of the NPO sector for TF. However, regularly registered NPOs submit their annual activity reports, including financial reports, to the supervisory authorities. The latter do not conduct any on-site inspections to ensure the effective implementation of the actions contained in the said reports. Besides, there is no coordination between the national regulatory and/or supervisory authorities of the various NPOs. Their mandates and even prerogatives are not always clear.
218. The competent authorities have not demonstrated the existence of any formal or informal coordination, cooperation and investigation mechanism to monitor NPOs that may be involved in TF. However, Togo responded to a request for international cooperation filed by France in respect of a national NGO (cf. IO.9 analysis).
219. It should also be noted that the sector attended 7 sensitization sessions organized by the FIU between 2015 and 2018. The main themes addressed were the issues and risks of ML/TF to which the sector is exposed. In spite of these sessions, the NPOs still had no clear understanding of their TF risks, even though some of the apex NPO organizations participated in the NRA.
220. The action plans resulting from the NRA and the assessment of TF risks in the NPO sector provide for sensitization actions to enhance the actors' and supervisors' understanding of the risks and facilitate the implementation of a risk-based approach. However, they are yet to be implemented, particularly because of the recent nature of the assessment of TF risks in the NPO sector.

4.3.3. Confiscation of TF assets and instrumentalities

221. The Togolese legal and institutional system provides for deprivation of individual terrorists, terrorist organizations and terrorism financiers of their assets and instrumentalities, except for activities not targeted by the criminalization of TF (see IO.9 analysis). Indeed, this framework provides for the administrative freezing, seizure and confiscation likely to be effected in the context of investigations and prosecutions of terrorism and its financing. However, Togo's administrative freezing mechanism is not being implemented as the CCGA is yet to be operational. Besides, the competent authorities have not demonstrated their capacity to proactively conduct TF investigations that could lead to seizures and confiscation of funds and assets. Indeed, the LEAs lack the personnel, expertise and material resources to identify and locate assets and instrumentalities linked to terrorist activities with a view to their seizure and confiscation. The FIU analyzed 21 TF-related STRs which did not result in

any prosecution that could lead to seizures and confiscations of TF-related assets and instrumentalities.

222. Thus, Togo did not for once demonstrate to the assessment team that it has been implementing the mechanism for the freezing or confiscation of TF-related assets and instrumentalities.

4.3.4. Consistency of measures with the overall TF risk profile

223. Togo's NRA revealed a medium-high risk of TF in the country, despite the lack of terrorist attacks. This risk level is essentially attributed to Togo's immediate environment, which shares borders with countries in the grip of jihadist terrorism, in addition to the vulnerabilities of the Togolese legal and institutional system as well as numerous contextual factors (porosity of borders, scale of the informal sector and use of cash, etc.). However, it is clear that the measures taken by Togo are not commensurate with the overall TF risk profile indicated in the NRA. Indeed, Togo has the resources to combat TF but does not adequately use them, as mentioned below:

- The targeted financial sanctions framework has not been used to freeze the assets of entities, organizations or individuals on the UN Security Council Sanctions list under Resolution 1267 and subsequent ones. The mechanism for distributing these lists to reporting entities is not efficient;
- The Advisory Committee for the Administrative Freezing of Funds and other Financial Resources of Terrorists is not operational and has therefore not seized any assets and instrumentalities with a view to their confiscation. Besides, there is no existing national list of UNSCR 1373 nominees;
- NPOs are not adequately sensitized on the issue of TF, including the findings of the NRA and their recent sectoral assessment of TF risks. They are not subject to risk-based supervision by their supervisory authorities, who are also under-resourced.

224. Furthermore, the conclusions of the NRA confirmed by the NPO sectoral risk assessment, underscore the risk of financing jihadist groups established in the sub-region through the cross-border physical transportation of cash. However, the competent authorities have not yet taken any measures at the land and air borders to effectively monitor this cross-border physical transportation of cash. Besides, though it is yet to be adopted, the action plan of the national AML/CFT policy and strategy document does not provide for any CFT-related action.

General Conclusions on IO.10

225. Togo has a legislative and regulatory framework that provides for the implementation of TFS related to TF. This legal framework provides for the notification of the sanctions lists and other freezing orders to reporting entities, including FIs and DNFBCPs. However, the notification mechanism does not provide for the immediate implementation of TFS related to TF not only because of the protracted timelines, but also because it does not involve all the reporting entities which may be holding assets and funds belonging to persons and entities targeted by sanctions. The CCGA is not operational, hence the lack of a decision to freeze and confiscate assets and instrumentalities related to TF. This also explains why there is no mechanism to implement the obligations of UNSCR 1373. NPOs are not sufficiently sensitized on TF risks and are not subjected

to risk-based supervision. The measures taken by Togo are not commensurate with the country's overall medium-high TF risk level. All of these factors hinder the effective implementation of TFS related to TF in Togo.

226. **Togo is rated as having a low level of effectiveness on IO.10.**

4.4. Immediate Outcome 11 (Proliferation financing financial sanctions)

4.4.1. Implementation of targeted financial sanctions related to proliferation financing without delay

227. The Togolese legal framework provides for the implementation of TFS related to the financing of the proliferation of weapons of mass destruction (FPWMD) through the Uniform AML/CFT Law 2018-004. Indeed, it provides under Article 100 par. 4 that the competent authority shall order, by decision, the freezing without delay of all assets, funds and other financial resources of persons or entities designated by the United Nations Security Council, under the Resolutions relating to counter financing the proliferation of weapons of mass destruction. However, the enforcement text of this law, namely Decree 2018-123/PR designating the competent authority for administrative freezing, makes no mention of TFS related to PF. It only outlines the mechanisms for the implementation of UNSCRs 1267 and 1373 related to TF. Thus, there is no mechanism for the implementation of TFS related to FPWMD in Togo.

228. The lack of a practical mechanism for notifying reporting entities of the sanctions lists compromises the immediate implementation of TFS related to FPWMD in Togo. Besides, most of the FIs and DNFBPs told the assessment team that they had never received from the competent authority any list of sanctions relating to FPWMD, let alone an administrative freezing order. Nevertheless, with regard to TFS related to TF, FIs belonging to large financial groups use IT solutions that already integrate sanction lists and their updates to screen their databases and ensure their customers do not include persons and entities that are the subject TFS related to FPWMD.

229. There is no implementation of TFS related to FPWMD without delay in Togo, due to the lack of the relevant institutional mechanism.

4.4.2. Identification of assets and funds held by designated persons/entities and related prohibition measures

230. Togo has not demonstrated that the competent authorities (particularly LEAs), Customs, supervisory authorities and reporting entities have the capacity to identify all assets and funds held by persons and entities designated under the TFS related to FPWMD and those acting on their behalf; and to take the necessary measures to prevent them from operating or carrying out PF-related operations. The screening device used by the FIs belonging to large financial groups has not generated any positive case to test the country's capacity to identify and freeze assets and funds belonging to such persons and entities. The non-implementation of TFS related to FPWMD by other FIs and DNFBPs also hinders the identification of assets and funds held by designated persons and entities. This is particularly due to the lack of mechanism for notifying the reporting entities of the sanctions lists. Furthermore, investigative authorities are yet to identify any assets or funds belonging to sanctioned individuals and entities. It should be underscored that these authorities have not been sensitized on the issue of FPWMD, and also grappling with the technical capacities as well as inadequate financial and material

resources to conduct the relevant investigations for the purpose of identifying assets and funds.

231. Furthermore, Togo has not taken any measure to prohibit business transactions with North Korea as well as the importation of products from Iran, even though the country claims that it has not maintained any business or financial relations with those countries. In addition, Togo was challenged by a third country to clarify the involvement of vessels flying the Togolese flag in the transportation of luxury vehicles to the DPRK. The investigations conducted following this arrest revealed that a vessel flying the Togolese flag actually transported luxury vehicles to an intermediate location between Russia and the DPRK without knowing that the final destination of the vehicles was the DPRK. This example amply demonstrates the country's limitations in detecting embezzlement and other typologies to conceal PF facts. Indeed, given the dynamism of the Togolese flag and the port of Lomé, more effective maritime traffic control procedures incorporating the fight against PF should be instituted. It is clear from the investigations conducted by the services of the Togolese Ministry of Maritime Economy, Fisheries and Coastal Protection that the said vessel has indeed been flying the Togolese flag and effected the transportation in question by switching off its automatic identification system for eighteen (18) days during navigation, in violation of the regulations. An effective monitoring and supervision system would have enabled Togo to detect this irregular shipment. This violation of the relevant United Nations Security Council Resolutions against the DPRK was nevertheless sanctioned afterwards by removing the Togolese flag from the defaulting vessel.

232. In summary, it has been noted that the competent Togolese authorities and reporting entities subject to AML/CFT do not have the capacity to identify all assets and funds belonging to persons and entities sanctioned for PF. Togo does not formally prohibit business relations with Iran and DPRK and has not taken measures to prevent and detect the circumvention of the relevant sanctions of the UNSC Resolutions.

4.4.3. FIs' and DNFBPs' understanding and compliance with obligations

233. FIs, particularly banks, have been sensitized on the revision of FATF standards, which since 2012 have included the issue of combating the financing of proliferation. In this regard, they use the same AML/CFT regimes and procedures to implement their relevant obligations. However, there has been no sensitization of reporting entities specifically on PF and the implementation of TFS. Besides, the lack of guidelines, the poor understanding of their obligations for some FIs and almost all DNFBPs, greatly compromise the implementation of TFS related to FPWMD. In this regard, although no such case has ever occurred, some reporting entities indicated to the assessment team that they would send STRs to FIU in the event of any relevant alert, instead of immediately freezing funds of persons and entities under sanction. This reflects their limited understanding of the requisite TFS obligations.

4.4.4. Competent authorities in charge of ensuring and monitoring compliance

234. The UMOA Banking Commission which is the FIs supervisory authority, conducts on-site and off-site inspections to ensure the FIs fully meet all their obligations. Such inspections are not specific to AML/CFT/PF and are conducted at unsatisfactory periods. In this regard, the competent authorities have not demonstrated the conduct of even thematic inspection on the issue of proliferation. However, according to some banks, supervisory authorities have sometimes ensured that they have the software for screening sanctions lists related to PF and TF.

235. Furthermore, Togo has not provided any information on inspections conducted in this domain by the supervisory authorities of other FIs, including SGIs, forex dealers and insurance companies. Besides, the lack of monitoring and supervisory authority for DNFBPs hinders efforts to monitor the implementation of the obligations incumbent on them regarding TFS related to PF.

236. Generally, the supervisory authorities have not demonstrated that they have a good understanding of the obligations associated with TFS. And the non-implementation of TFS related to FPWMD is also attributable to the competent authorities' lack of expertise and resources to adequately conduct the requisite inspections.

General Conclusions on IO.11

237. The implementation of TFS related to FPWMD is based on the same legal framework as for TFS related to TF. However, the institutional mechanism does not take into account the implementation of TFS related to FPWMD without delay. Consequently, the reporting entities subject to AML/CFT do not have the capacity to identify assets and funds belonging to persons and entities sanctioned for PF; which also impacts the investigations conducted by the competent Togolese authorities. Furthermore, Togo does not formally prohibit business relations with Iran and the DPRK and has not taken any measures to prevent and detect the circumvention of UNSC sanctions. Many FIs and almost all DNFBDs are grappling with the challenges of the lack of guidelines and poor understanding of their obligations in TFS related to FPWMD. Their supervisory authorities do not have a good understanding of the PF issue, as well as the expertise and resources to monitor the implementation of the reporting entities' obligations in TFS related to FPWMD.

238. These deficiencies imply that Togo has not frozen any assets and funds held by persons and entities designated under the TFS related to FPWMD and those acting on their behalf.

239. **Togo is rated as having a low level of effectiveness on IO.11.**

Chapter 5. PREVENTIVE MEASURES

5.1. Key Findings and Recommended Actions

Key Findings

Financial Institutions

- a. For most of the FIs, the NRA serves as a first step in the general understanding of the ML/TF risks inherent in their respective sectors. Banks, through their membership of international or regional groups, have a fairly good understanding of the ML/TF risks inherent in their activities, products and services. The same obtains for large DFIs (see Article 44). These categories of FIs have conducted risk mapping and developed AML/CFT policies and procedures, unlike other banks, DFIs, capital market players, insurance companies and approved foreign exchange dealers. However, these prevention policies and procedures developed did not take into account ML/TF risks at both national and sectoral levels.
- b. Banks and large-scale DFIs in particular have demonstrated a good understanding of their legal and regulatory AML/CFT obligations, particularly through the implementation of internal AML/CFT programs. These and some insurance companies have appointed their compliance officers and FIU correspondents. Large banks and DFIs do implement customer due diligence measures and file STRs to the FIU. However, they did not demonstrate any effective implementation of due diligence measures based on ML/TF risks. Besides, the implementation of measures to identify beneficial ownership, with specific measures regarding PEPs and targeted financial sanctions, is not effective.
- c. The other FIs (small-scale DFIs, authorized forex dealers, MVTs, etc.) have a very limited understanding of their AML/CFT obligations. As a result, they have not put in place appropriate internal policies and procedures. Besides, they do not implement the requisite customer due diligence measures and practically file no STRs.
- d. Only banks and a few large-scale DFIs have conducted internal audits of their AML/CFT regime and submitted their reports to the supervisory authorities, particularly on risk management.
- e. No sanctions are meted out by banks, large-scale DFIs or other FIs on their staff for non-compliance with internal AML/CFT policies and procedures.

DNFBPs and VASPs

- a. The DNFBPs have not demonstrated a good understanding of ML/TF risks, at both national level and sectoral levels of their operations. No category of DNFBPs has

conducted any internal ML/TF risks assessment, or done any mapping of such risks.

- b. DNFBPs are unaware of their AML/CFT obligations and have no internal AML/CFT prevention program. The non-implementation of their AML/CFT obligations negatively impacts their level of effectiveness.
- c. The Togolese legal framework does not regulate VASPs. Besides, the country has not assessed the ML/TF risks related to virtual assets. The VASPs also have no internal ML/TF prevention program.

Recommended Actions

Financial Institutions

The competent authorities should:

- a. ensure that the ML/TF risks identified in the NRA are well understood by all stakeholders in the financial sector, including authorized foreign exchange dealers, capital market players, DFIs, insurance companies, EMIs and MVTS. They should also assess the ML/TF risks inherent in their activities, customers, products and geographical areas and put in place preventive measures proportionate to the level of the risk identified;
- b. further sensitize FIs on their legal and regulatory obligations in the implementation of CDD measures including not only beneficial ownership identification, but also enhanced due diligence measures with regard to PEPs and updating of national lists, as well as the implementation of targeted financial sanctions. They should provide guidance for all FIs to put in place systems for monitoring, screening transactions and profiling customers. They should also build the capacity of FIs to better detect and report suspicious transactions to the FIU and publish guidelines to this effect;
- c. ensure large-scale banks and DFIs implement their internal AML/CFT programs taking into account the risks identified and strengthen the implementation of their internal control systems and procedures;
- d. ensure DFIs (excluding Article 44), authorized foreign exchange dealers, capital market players and wire money distributors develop internal AML/CFT policies and procedures and appoint AML/CFT compliance officers. They should also ensure that insurance companies carry out periodic and independent reviews of the effectiveness of their AML/CFT regimes on a yearly basis;
- e. ensure all FIs also mete out sanctions on their staff for non-compliance with the AML/CFT legal and regulatory provisions.

DNFBPs and VASPs

The competent authorities should:

- a. train all categories of DNFBPs, in particular real estate agents and legal and accounting professions, on AML/CFT requirements and raise their awareness of AML/CFT risks at the national level, and in relation to their respective sectors of activity
- b. train and sensitise VASPs on AML/CFT obligations and AML/CFT risks and ensure that they

- have an internal ML/TF prevention program and implement all their AML/CFT obligations
- c. regulate and supervise virtual assets and activities/or operations of VASPs in AML/CFT. They should train and sensitize players in the sector on AML/CFT obligations and ML/TF risks.
- d. ensure DNFBPs and VASPs have an internal ML/TF prevention program and implement all their AML/CFT obligations.

240. The Immediate Outcome reviewed and assessed in this chapter is IO.4. The relevant Recommendations for the assessment of effectiveness on this section are R.9-23, and elements of R.1, 6, 15 and 29.

5.2. Immediate Outcome 4 (Preventive measures)

5.2.1. Understanding ML/TF risks and AML/CFT obligations

241. Regarding materiality and ML/TF risks in Togo (see Chapter 1), the implementation of preventive measures has been weighted as follows: very heavy weighting for the banking sector, authorized foreign exchange dealers and real estate sector; heavy weighting for DFIs, independent legal professions (lawyers and notaries) and accountants; medium weighting for financial companies and other FIs (capital market, money and value transfer services, electronic money institutions, post office); and light weighting for the insurance sector and other categories of DNFBPs. The conclusions of the assessors were based on the observations made following the interviews held with, among others, a sample of representatives of the various FIs and DNFBPs from the private sector, supervisory authorities and the FIU. They also took into consideration a set of documents (policies, procedures, risk mapping, letters, etc.) and qualitative and quantitative information such as training sessions organized, STRs filed, etc.

Financial Institutions

242. The FIs participated in the national ML/TF risk assessment process and were even the main actors. During this process, they were able to assess the risks inherent in their respective sectors. Furthermore, the FIU disseminated by mail the findings of the NRA during the last quarter of 2020 and the sectoral assessments in the first quarter of 2019 during meetings with the various national AML/CFT stakeholders, thereby providing an opportunity for those who did not participated in the NRA process to be conversant with the ML/TF risks identified. However, the FIs are yet to draw from the NRA to deepen their understanding of AML/CFT risks. Besides, during the exchanges, apart from banks and large-scale DFIs, the other FIs met could not identify the major threats and vulnerabilities linked to their respective sectors as identified in the NRA.

243. Banks belonging to international or regional groups and large-scale DFIs have a fairly good understanding of their risks. They have identified and assessed the ML/TF risks related not only to their sectors, but also to their customers, products, services and distribution channels as well as to their geographical areas. These risks are taken into account and materialized in their risk mapping. It should however be noted that the risks associated with electronic money products and services and rapid money transfer by sub-agents are apparently inadequately identified and under-evaluated in the NRA (low risk in the analysis of products financial inclusion) while all the major stakeholders met by the assessment team during the on-site visit indicated a high risk perception of these categories of FIs.

244. Banks and large-scale DFIs generally have a fairly good understanding of their AML/CFT obligations. They apply customer due diligence measures and establish their risk profile when entering into a business relationship. They have developed their risk mappings or have incorporated the ML/TF risk into them. They file their reports annually on risk management and the AML/CFT regime and provide training for their staff and managers on a regular basis. However, they demonstrated a limited understanding of their obligations relating to beneficial ownership identification, due diligence measures with regard to PEPs and those relating to the freezing of assets in the implementation of targeted financial sanctions.
245. Insurance companies, MVTs and authorized foreign exchange dealers and EMIs have a poor understanding of their risks and their AML/CFT obligations. They have not identified their risks, especially through risk mapping. Insurance companies, especially those belonging to regional groups, use the procedures and tools developed by the group but do not understand their legal and regulatory obligations. In addition, the risk assessment is only conducted when entering into a business relationship through their computerized know your customer (KYC) tool. Authorized foreign exchange dealers in particular, associate their risk with the massive use of cash and above all with the predominance of the informal sector. Electronic money issuance institutions (technical operators) they associate their major risk with the use of several numbers by one and the same person to carry out transactions, without being identified earlier, particularly where the amount does not exceed the threshold of CFAF 200,000 (€305.87).
246. The small-scale DFIs and capital market players met did not demonstrate a good understanding of ML/TF risks, nor knowledge of the obligations to which they are subjected. They do not seem to be concerned about AML/CFT. And according to the capital market stakeholders, these obligations are the sole responsibility of the banking institutions with which they carry out their financial transactions.

DNFBPs and VASPs

247. Independent legal professionals are exposed to ML/TF risks in transacting their business of buying and selling real property, securities or other assets, capital management, account management, including securities, organization of contributions for the creation, operation or management of legal persons or legal arrangements, purchase and sale of business entities, on behalf of their customers. In the Togolese context, the NRA has revealed that these professions are highly exposed to ML risks through corruption and their relationships with politically exposed persons. Considering these risk factors inherent in their activities and the excessive use of cash in financial and economic transactions in Togo, the assessment team considered the independent legal professions as very significant in the implementation of AML/CFT.
248. The independent accounting professions, through their activities in the economy, can be used by their customers for the purposes of laundering funds resulting from corruption, misuse of corporate assets, tax evasion or any other capital or income from illicit or criminal activities. Therefore, the assessment team considered the independent accounting professions as very significant in the implementation of AML/CFT.
249. Regarding the gaming sector and the other categories of DNFBPs, most of whose activities are conducted in the informal sector, the assessment team took into account the predominance of the informal economy and the excessive use of cash to rate their role as ranging from medium to low level of significance, depending on the category, in the implementation of AML/CFT.
250. Although certain categories of DNFBPs particularly notaries, lawyers and chartered accountants,

participated in the NRA, almost all demonstrated a very limited understanding of ML/TF risks both at national level and in their respective business sectors. With no formal mechanism for sharing the findings of the NRA, the sharing and sensitization sessions organized by the FIU for all categories of DNFBPs do not seem to have had a significant impact. Indeed, the DNFBPs met by the assessment team did not really demonstrate their understanding of the vulnerabilities and threats that expose their respective professions to ML/TF risks.

251. Furthermore, the vast majority of DNFBPs, unaware of their AML/CFT obligations, are therefore unable to understand and implement them. No DNFBP has an internal ML/TF prevention program as required by the provisions of the extant AML/CFT law in Togo.
252. The lack of formal regulations in the sector, particularly in terms of AML/CFT, does not facilitate the assessment of VASPs, nor transactions or operations related to VAs. The assessment team noted the development of financial technology and the scale of virtual currency platforms in the West African sub-region, with a definite impact on Togo. VASPs are therefore not to be neglected in the Togolese economic and financial system. However, Togo has not identified or assessed the ML/TF risks arising from transactions related to VAs and VASPs. The lack of formal regulations in the VASP sector in terms of AML/CFT implies that the players have no understanding of the ML/TF risks related to their activities, nor of their obligations.
253. It is obvious that the understanding of ML/TF risks and AML/CFT obligations is very mixed in the financial sector and weak in the DNFBP sector. This is particularly attributable to the failure of the stakeholders to take ownership of the NRA's findings, as well as the inadequacy of sensitization and training.

5.2.2. Implementation of risk mitigating measures

Financial Institutions

254. Banks and certain large-scale DFIs, which have a fairly good understanding of their risks, have taken a certain number of mitigating measures as required by the Uniform AML/CFT Law under Article 11. They have developed AML/CFT policies and internal control procedures. They have a compliance function, have appointed officers responsible for AML/CFT and put in place measures and tools such as mapping and incorporating the ML/TF risks identified for effective management and mitigation. These policies, procedures and controls are proportionate to the nature, size and volume of their activities and enable them to exercise due diligence with regard to customers and their transactions, keep their documents and records, generate alerts and file STRs, where necessary. Other large-scale DFIs stated that they are in the process of developing internal AML/CFT control policies and procedures and setting up profiling and screening tools with the support of a development partner. However, despite the existing documentation on the internal risk assessment (mapping) and internal controls (written procedures) implemented, the Assessment Team did not note any effective implementation by banks of preventive measures proportionate to the level of risk identified. Indeed banks and DFIs do not necessarily implement simplified due diligence measures to improve financial inclusion in particular where the customer or the transaction is low-risk or enhanced or additional due diligence measures (careful and regular review of transactions, obtaining additional information, etc.) where the risk is high. Indeed, the implementation of these provisions seems to respond to a concern for compliance with laws and regulations, rather than to a logic of management and prevention of ML/TF risks. Besides, they have not demonstrated any significant consideration of the NRA findings in their AML/CFT prevention program in order to reasonably strengthen controls, particularly on transactions with high-risk sectors such as foreign exchange dealers and real estate. Nor have they demonstrated that they have taken into account the ML/TF threat linked to:

- Geographical areas, for example, the high porosity of land borders, to strengthen controls in their agencies located in border areas;
- The identification of PEPs who are rarely mentioned in STRs;
- Transactions conducted with countries identified as being high-risk or under supervision by the FATF or appearing on a list of another jurisdiction;
- Products related to new technologies, etc.

255. Insurance companies and authorized foreign exchange dealers have not assessed their ML/TF risks internally and therefore do not implement the required preventive measures, based on the risk. However, the insurance companies met have appointed their compliance officers and developed tools for profiling and monitoring transactions. In particular, the insurance companies rate the customer risk when entering into a business relationship.

256. With regard to electronic money issuance institutions, customers are identified when purchasing their SIM cards. However, a problem arises with regard to beneficial ownership identification as certain customers may hold several SIMs obtained from the same operator and another. Besides, some sub-agents assign SIMs without first identifying the customer, whereas in the contracts that bind them to EMIs, they are supposed to comply with the AML/CFT clause. Certain transactions not exceeding a threshold of CFAF 200,000 CFA (€305.87) are not systematically identified. These elements highlight a high risk of ML/TF which is not mitigated for EMI operations. Indeed, with regard to constant due diligence in respect of business relationship, they do not take measures to ensure, based on the risks, that records, data or information obtained in the implementation of customer due diligence (CDD) measures are current and relevant.

257. Authorized foreign exchange dealers only collect a copy of an identity document (national identity card for residents and passport for non-residents) and possibly a travel document for sale of foreign exchange to their customers whom they consider to be occasional, as they are mainly travelers. According to the foreign exchange dealers met by the Assessment Team, customers at risk such as PEPs do not transact with them but rather go to service providers in the informal sector where they are neither subjected to any identification nor amount thresholds. Some authorized foreign exchange dealers have appointed their compliance officers. However, they do not implement risk-based due diligence measures.

258. MVTS have an integrated system with alerts on amounts or names that may appear suspicious. However, MVTS as well as capital market players have not identified the ML/TF risks inherent in their activities, products, geographical areas, etc. They have therefore not taken any mitigating measures for which they spread the liability to banks or DFIs with which they operate on contractual basis.

DNFBPs and VASPs

259. Since most DNFBPs are unaware of their AML/CFT obligations, no category has conducted any internal ML/CFT risk assessment, or developed a risk mapping in this area as required by the uniform AML/CFT law in vigor. Consequently, they do not implement proportionate measures to mitigate their risks. The same obtains for VASPs.

260. On the whole, the assessment team noted that most of the FIs and all DNFBPs as well as VASPs have not developed their internal ML/TF risk assessments designed to apply mitigating measures on them. The exchanges between the Assessment Team and national stakeholders met reveal that these standard requirements are only just beginning to become a target for FIs and some DNFBPs due to

their relatively recent nature and the lack of awareness or relevant training.

5.2.3. Implementation of due diligence measures and record keeping requirements

Financial Institutions

261. Unlike other FIs, banks and insurance companies which mainly belong to regional or international groups, the SPT as well as certain large-scale DFIs have implemented preventive programs including policies, procedures and internal controls, enabling them to meet their due diligence, reporting and record keeping obligations. They have due diligence tools (CDD, KYC, KYCC and KYE) which they use to better identify and classify customers according to the degree of risk, particularly when entering into a business relationship. They carry out verifications on customers' identification documents as soon as they enter into contact with the institution in order to ensure compliance with AML/CFT procedures. However, updating customer identification data, as and when necessary, does not appear to be a concern or common practice for FIs. Indeed, with regard to constant due diligence in respect of the business relationship, they do not take measures to ensure, based on the risks, that the records and data or information obtained in the identification of the customer (CDD) are up to date and relevant.
262. Most FIs have transaction profiling, screening and tracking software, which among other things enables them to track the consistency of customer transactions with their business and to link the people involved in the transactions with those on the sanctions lists integrated into their information systems. The FIs also have a list of accounts under surveillance, grouping together customers who have been the subject of an STR, PEPs and those presenting a high risk of ML/TF. Their monitoring and transaction screening systems trigger an alert, as and when necessary. However, within the context of constant due diligence of the business relationship, they do not carefully review the transactions executed throughout the duration of this relationship to ensure they are consistent with the knowledge that they have of their customers and the business activities and risk profile of those customers, including where applicable, the sources of their funds.
263. FIs, in their customer acceptance policy, provide for some categories of customers that are acceptable and those that are not (customer identification, risk categorization, risk acceptance, control, monitoring, STRs). For the execution of all transactions, the FI procedures require the identification of the principal, the beneficiary and also the intermediary bank. However, beneficial ownership identification is a major issue for all FIs. Although some banks have an identification form, they do not have the capacity to identify the beneficial owner of a business relationship or a transaction. They have not put in place any relevant mechanism to identify who ultimately controls a legal entity, through the analysis of the shareholding (capital distribution) and the powers of control (voting rights). Indeed, the establishment of a business relationship or execution of any transaction can be refused where customer due diligence measures have not been comprehensively implemented, particularly where the customer has not provided all the relevant information, data and documents for his identification and that of the beneficial owner where necessary: or has not provided information on the nature of his business as well as the ownership and control structure. This has led to the filing of some STRs to the FIU. However, the information made available to the assessment team does not clearly demonstrate whether such refusals to establish a business relationship or to execute a transaction are due to the impossibility of meeting the due diligence obligations in respect of a customer that is a natural person or a legal person, or even the reasons.

Table 5.1: STR Statistics following Transaction Refusals

Year	Total received	STRs following	Government	Banks	DFIs	Post Office
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		refusal				
2011	34	2	0	2	0	0
2012	30	0	0	0	0	0
2013	57	5	1	3	1	0
2014	34	3	0	3	0	0
2015	53	13	0	12	0	1
2016	81	18	0	18	0	0
2017	211	13	0	12	0	1
2018	329	54	0	54	0	0
2019	221	46	0	45	1	0
2020	165	34	0	34	0	0
Total	1215	188	1	183	2	2

264. Overall, FIs keep records relating to customer and beneficial ownership identification where applicable, as well as transactions for at least ten (10) years from the end of the relationship or execution of the transaction. Most banks have effective and appropriate record keeping systems. Some FIs have established computerized record management systems. Others use external service providers. However, for most FIs, transaction records are available in physical format. The assessment team notes, however, that the FIU has highlighted some of the challenges encountered in obtaining records relating to supporting documents for international transfers from FIs.

DNFBPs and VASPs

265. The regulatory texts organizing certain professions including notaries, lawyers, chartered accountants and bailiffs, require them to identify their customers and keep the documents and records relating to their business relationships. However, in terms of AML/CFT, no category of DNFBPs is implementing customer due diligence measures, and keeping relevant information in registers, due to their ignorance of AML/CFT obligations. The same obtains for VASPs.

266. Generally, FIs implement their due diligence obligations and customer due diligence obligations in AML/CFT which enables them to report their suspicions as and when necessary, and keep records relating to financial transactions and accounting documents. On the other hand, these obligations have not been implemented because DNFBPs and VASPs are not aware of their AML/CFT obligations.

5.2.4. Implementation of CDD measures

Financial Institutions

- **Politically Exposed Persons**

267. Banks, insurance companies and large-scale DFIs have implemented procedures for identifying PEPs, which are enhanced due diligence measures. Indeed, before establishing any business relationship with a PEP, these FIs require the prior authorization of the general management or an authorized senior authority. The FIs, for the most part, use business databases integrated into their information and management system to consult the lists of PEPs. Their system sends alerts when entering into a relationship with a customer identified as a PEP. With regard to domestic PEPs, the assessment team noted that some FIs do not have lists or could not explain their inclusion in their

database. Besides, they do not take into account family members of PEPs, nor persons closely related to them (which is not a requirement of the AML/CFT Law). They do not regularly and appropriately update the lists of PEPs either. The inclusion of a domestic PEP on the list depends on the officer's knowledge of current events and political appointments. Furthermore, the FIs met do not seem to be taking effective measures to identify assets or the origin of PEP funds. In this case, very few STRs relate to PEPs.

Table 5.2.: Statistics on STRs linked to PEPs

YEAR	TOTAL
2012	1
2013	4
2014	2
2015	4
2016	0
2017	3
2018	0
2019	2
2020	0
Total	16

- **Correspondent banking relationships**

268. In the context correspondent banking relationships, banks apply enhanced due diligence measures by gathering information on the AML/CFT regime, its level of compliance, the country of establishment, etc. based on the questionnaire annexed to Directive no. 007-09-2017. They also ensure that they do not establish correspondent relationships with shell banks. The establishment of such relations requires the prior authorization of the general management. The assessment team noted that one of the banks met during the on-site visit had already refused to establish a correspondent relationship with a bank located in a country that was on the FATF list of countries with strategies deficiencies and the EU.

- **New technologies**

269. In accordance with the laws and regulations in force, before launching a new product linked to new technologies, banks must assess the potential risks inherent in its use and implement specific measures aimed at mitigating them. Some banks have assessed the ML/TF risks inherent in new technology products, including the issuance of electronic money through their mappings. However, they have not implemented measures commensurate with the level of risk identified for them to be mitigated. The UEMOA financial inclusion policy and simplified due diligence measures envisaged for the financial inclusion products identified within the framework of the NRA are yet to be implemented.

- **Targeted financial sanctions**

270. The FIs met do not receive the lists of sanctions relating to United Nations Security Council Resolutions 1267, 1373 and 1530 from the Ministry of Finance. However, this is not a major obstacle for large banks and DFIs particularly, since they indicate that they use the link posted on the FIU website to consult these lists. Some banks belonging to regional or international groups have integrated

into their information and management systems all the UNSC sanction lists as well as those of the OFAC, the European Union and certain countries, and can receive alerts whenever there is a match during the screening process.

271. However, the FIs met did not demonstrate a good understanding of their obligations relating to targeted financial sanctions. Instead of freezing the funds without delay and informing the competent authority, they make plans to file STRs to the FIU.

Wire transfers

272. With regard to wire transfers, the FIs implement enhanced due diligence measures in order to identify the originators and beneficial owners. They require from the principal, his complete identity, his address, his activity, the reason for the transaction as well as information on the beneficial owner of the transaction. In particular, for shipments over 500,000 CFA francs (i.e. €911.7), they require the presentation of supporting documents stating the reason for the transaction. The implementation of such due diligence measures has enabled certain FIs to file STRs relating to wire transfers. The Assessment Team noted that 60% of STRs received by the FIU from 2009 to August 2020 concern wire transfers.

Table 5.3. : Classification of STRs by Type of Transaction

Year of reception	Total received	Wire transfers	Verifications	Cash withdrawals	Cash payments	Others
2009	8	1	0	3	0	4
2010	42	0	3	20	11	8
2011	34	4	5	2	2	21
2012	30	6	3	3	2	16
2013	57	10	14	7	9	17
2014	34	20	1	1	4	8
2015	53	14	4	10	8	17
2016	81	44	6	12	7	12
2017	211	162	3	19	1	26
2018	329	237	5	15	8	64
2019	221	167	3	18	9	24
August 2020	117	68	6	6	14	23
Total	1217	733	53	116	75	240

- **Higher risk countries identified by FATF**

273. Unlike other FIs, banks, SPT and large DFIs have screening software that allows them to check whether their customers or their transactions have any connection with the higher risk countries identified by the FATF. No financial transactions with Iran and North Korea were reported by any FI, nor were they subject to any STR in Togo.

DNFBPs and VASPs

274. With regard to DNFBPs and VASPs, none of them are implementing enhanced or specific measures with regard to (a) politically exposed persons, (b) new technologies, (c) wire transfer rules,

(d) targeted financial sanctions related to TF and (e) higher risk countries identified by FATF.

275. No category of DNFBPs demonstrated any knowledge and understanding of TFS. The DNFBPs therefore have no automated system that integrates information on sanctions issued under the UNSCRs or by the national authorities with a view to their implementation.
276. The implementation of due diligence measures within FIs presents challenges such as beneficial ownership identification, measures relating to PEPs and the implementation of TFS related to TF and PF. This is not done in the DNFBP and VASP sectors.

5.2.5. Compliance with reporting and whistle-blowing obligations

Financial Institutions

277. Apart from banks, the other FIs rarely file STRs to the FIU. The FIs filed 1,167 STRs from 2011 to 2020. Banks topped the list with 948 STRs, representing 81% of reporting activity, followed by the Postal Administration (192), Financial Authorities (12), DFIs (10), DNFBPs (03) and Insurance companies (01). However, out of the 13 banks in operation, 2 have never filed any report to the FIU and 4 others do so very rarely. In 2019, the FIU sent a letter to a few banks informing them of the follow-up action on their STRs. These feedbacks relate to STRs filed a few years earlier (between 2009 and 2018). Furthermore, the FIU had informed the BCEAO by mail in April 2019 of this issue of some banks' failure to file STRs. This situation highlights a lack of understanding and compliance with AML/CFT obligations by most FIs, with the exception of banks and a few large-scale DFIs. It also reflects a certain degree of deficiency in the supervision and monitoring of these institutions. According to one of the banks we met, this finding is also linked to the lack of feedback from staff to compliance officers on suspicious transactions and activities reported. In any case, given the level of ML/TF risks identified at both national and sectoral levels, the number of STRs seems to be very low.

Table 5.4: STRs received by the FIU

REPORTING ENTITY	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	Total
GOVT.	4	3	2	1	0	1	0	1	0	0	12
INSURANCE	0	0	0	0	0	0	0	0	0	1	1
BANKS	27	24	52	33	52	74	172	215	184	115	948
DNFBPs	0	0	0	0	0	0	0	2	1	0	3
DFIs	2	0	2	0	0	0	1	1	3	1	10
NGOs	0	0	1	0	0	0	0	0	0	0	1
POST OFFICE	1	3	0	0	1	6	38	110	33	0	192
Total	34	30	57	34	53	81	211	329	221	117	1,167

278. The FIs implement measures to prevent the disclosure of the making of a declaration, by applying supervision and confidentiality procedures on the communication of information relating to STRs. This information is only accessible to the personnel of the compliance services, the general management and the internal auditors, and is communicated only to the FIU. As for the archives on the DOS, they are kept in the compliance department under conditions guaranteeing their confidentiality. The online declaration process effective since 2019 at initiated by the FIU also strengthens the security of the reporting activity. Furthermore, no sanction has been meted out on any manager or member of staff for tipping off on an STR, as no case of this kind has ever occurred.

DNFBPs and VASPs

279. Due to ignorance, lack of training and awareness of their AML/CFT obligations, despite the guidelines established developed by FIU for them, DNFBPs do not comply with the reporting obligation on suspicion that funds are the proceeds of crime or intended to finance terrorism. Indeed, over a period of 10 years, the DNFBPs only filed 03 STRs between 2018 and 2019 (see Table 5.4.) The stakeholders met did not demonstrate any measure to prevent for tip off on STRs has ever been implemented. With regard to VASPs, the lack of a legal framework governing them prevents them to implement these requirements.
280. In spite of their compliance with their reporting obligation in relation to other obligations, the number of STRs provided by FIs is limited, considering the level of ML/TF risks identified at both national and sectoral levels. The overwhelming majority of STRs are made by banks, with the other FIs doing very little due to lack of awareness of this obligation and lack of training. However, measures are being put in place to regulate and ensure the confidentiality of STRs filed by FIs, as no tip off on reports has ever occurred. On the other hand, in the DNFBP sector, the STR obligation is virtually not complied with for similar reasons as FIs, in addition to their lack of knowledge of AML/CFT requirements. Besides, no measure is being implemented to guarantee the confidentiality of STRs within the DNFBPs. with regard to VASPs, none of these obligations applies to them as there is no existing legal framework for their sector.

5.2.6. Imminent internal controls and legal/regulatory requirements implemented

Financial Institutions

281. Apart from banks belonging to large-scale regional groups and certain large-scale DFIs, the quality of compliance systems within FIs ranges from low to average because they are not all based on a rigorous risk-based approach. The internal AML/CFT compliance programs applied within these categories of FIs do not fully take into account the ML/TF risks based on factors such as the volume and nature of the products provided, the basic profile of customers, the transnational nature of the transactions and geographical location of their branches. Similarly, the human and material resources dedicated to the compliance function are apparently inadequate for most of the FIs. Besides, in most FIs, this function is not separated from that of audit.
282. Banks, large-scale DFIs, insurance companies belonging to regional groups and SPT have appointed compliance officers in charge of AML/CFT in line with the relevant legal and regulatory requirements. Unlike other FIs, large banks and DFIs also conduct audits of their AML/CFT prevention program and submit to the supervisory authorities their half-yearly reports on the assessment of non-compliance risks in line with Circular no. CBU 05-2017/CB/C.
283. Furthermore, to date, no FI has meted out any disciplinary measures on its staff for violation of the compliance policy.

DNFBPs and VASPs

284. DNFBPs and VASPs do not implement internal controls and procedures to ensure compliance with the implementation of their AML/CFT obligations.
285. The internal system set up within certain FIs includes the compliance, audit and internal control functions. Apart from the fact that it does not include the identified ML/TF risks, the staff assigned to these functions within the FIs are inadequate. Besides, the findings of the internal control and audit exercises are yet to result in any sanctions in Togo. These functions are non-existent within the DNFBPs and VASPs.

General Conclusions on IO.4

286. Generally, large banks and DFIs have a good understanding of their AML/CFT obligations and risks. However, they do not take into account the risks identified in the NRA in their policies, procedures and management tools for more effective mitigation of such risks. The other DFIs, authorized foreign exchange dealers, MVTs, SPT, Insurance companies, EMIs and capital market players have not demonstrated a good understanding of the risks associated with their activities, products and services. As a result, they have not put in place any effective and relevant risk management and prevention systems. Besides, they have limited understanding of their AML/CFT legal obligations, particularly with regard to the implementation of customer due diligence measures (particularly PEPs) and beneficial ownership identification. Asset freezing within the context of implementing targeted financial sanctions is not executed without delay by either banks or other FIs. On the whole, the number of suspicious transaction reports filed by FIs is relatively very low, considering Togo's risk profile.

287. Preventive measures are not implemented in the DNFBP sector due to general ignorance of their AML/CFT obligations. Furthermore, the DNFBPs did not demonstrate a good understanding of ML/TF risks and did not carry out their internal assessments of the risks inherent in their respective sectors. VASPs are not regulated in Togo, particularly in terms of AML/CFT. Preventive measures and AML/CFT obligations are therefore not implemented in this sector. Besides, the ML/TF risks related to virtual assets and VASPs have not been assessed.

288. **Togo is rated as having a low level of effectiveness on IO.4.**

Chapter 6. SUPERVISION

6.1. Key Findings and Recommended Actions

Key Findings

Financial Institutions

- a. Togo has put in place an appropriate legal and regulatory mechanism for granting licenses to FIs and their managers. A set of supporting documents and information relating to the fit and proper status and competences of the directors and managers (criminal records, CVs, etc.), as well as the origin of the funds are requested for, examined and verified during the application process and throughout the life span of the FIs. However, the supervisory authorities have not put in place any effective beneficial ownership control mechanism that would enable them ascertain the identity and fit-and-proper status of the natural person ultimately holding and/or controlling FIs.
- b. A significant degree of illegal and informal foreign exchange transactions and collection of public savings through unauthorized actors has been observed in Togo. Although the Togolese authorities have closed and banned a number of identified entities, these decisions yet to produce any deterrent effects.
- c. Generally, the supervisory authorities of the FIs met did not demonstrate a good understanding of AML/CFT risks despite their participation in the NRA, which nevertheless constituted a first step in risk identification at national and sectoral levels. Apart from the NRA process, there has been no other sectoral risk identification exercise conducted by the various competent authorities.
- d. Although it has adopted a risk-based approach as well as a credit institution rating system, the CBU has not demonstrated that it takes into account the relevant ML/TF risks inherent in the sectors, nor the FIs' risk profiles in the programming and conduct of its inspection missions. Other supervisors are yet to adopt a risk-based approach. On-site inspections on the AML/CFT component, thematic or incorporated into a global supervision exercise, are very rare for the banking sector and DFIs, and even almost non-existent for other FIs.
- e. The supervisory authorities do not have adequate resources or capacity to reasonably discharge their obligations.
- f. Togo has not exhaustively meted out a range of administrative, disciplinary and pecuniary sanctions on reporting entities or their managers for violating the AML/CFT obligations. No legal or regulatory instrument provides for specific sanctions for violations of AML/CFT obligations. Besides, the sanctions (injunctions, reprimands

and warnings) meted out on certain FIs by the supervisory authorities are not proportionate, dissuasive and effective for the targeted deficiencies. Moreover, they were not issued for violations relating to AML/CFT despite the deficiencies observed in the implementation of the of the related obligations incumbent on the reporting entities.

- g. The Togo-FIU has organized several awareness-raising activities for reporting entities on their AML/CFT obligations. The supervisory authorities, including the BCEAO and CREPMF, have published Directives on the methods of implementing the AML/CFT law, specifying certain legal requirements. However, Togo has not published any guidelines to support and assist FIs in detecting and reporting suspicious transactions, in order to increase the number and improve the quality of STRs filed to the FIU.

DNFBPs and VASPs

- a. The Togolese legal system provides for procedures for the issuance of licenses for most of the DNFBPs which include fit-and-proper test, though unrelated to AML/CFT (independent legal and accounting professions, gaming halls and casinos). Real estate agents and dealers in gems and precious metals are not subject to any registration or licensing procedure to prevent their misuse by criminals and their accomplices.
- b. The supervisory authorities and self-regulatory bodies of DNFBPs do not have the necessary powers to carry out AML/CFT controls. These authorities are unaware of the AML/CFT requirements, and do not have the necessary skills and resources to ensure risk-based supervision. In addition, there is no supervisory authority for real estate agents and traders in gems and precious metals in Togo.
- c. VASPs are not subject to AML/CFT supervision as they have no legal framework to regulate their sector or supervisory/monitoring authority.

Recommended Actions

Financial Institutions

The Togolese authorities should:

- a. collaborate with the other UEMOA member countries and the GIABA Secretariat, to mobilize the Community supervisory authorities, particularly the Banking Commission and Regional Insurance Supervision Commission, in order to urge them to address the issue of AML/CFT as a vital component of their functions, particularly when developing supervision-based control strategies, plans and tools ;
- b. implement an effective mechanism for the identification and monitoring of the sound reputation of all beneficial owners of FIs;
- c. strengthen the measures for identifying unauthorized foreign exchange dealers, collection of public savings, rapid money transfer and distribution of electronic money by sub-agents and mete out proportionate and dissuasive sanctions on them. In particular, they should adopt the draft Uniform Law on prosecuting the violations of the UMOA regulations on external financial relations, which provides for sanctions for persons illegally engaged in such transactions.
- d. should ensure that the objectives, programs and mandates of the supervisory authorities

are consistent with the NRA's findings (risks identified in the NRA) and that they have conducted an analysis of all ML/TF risks inherent in their respective sectors, establishing the risk profiles of each FI and developing some risk mapping.

- e. determine the nature, frequency, intensity and direction of their controls based on the FIs' risk mapping and profile. They should also take on board the findings of the off-site inspections (for instance, the responses to the questionnaires sent to FIs on a regular or ad hoc basis), the specific or thematic inspection reports, the follow-up on the resolution of the deficiencies identified during previous inspection missions, etc.
- f. provide supervisory authorities with adequate financial, human and material resources and organize training for their staff to enable them effectively implement risk-based supervision in AML/CFT.
- g. ensure that supervisory authorities, including the BCEAO, provide in a regulatory text a range of disciplinary and dissuasive and proportionate disciplinary and financial sanctions that would specifically target breaches of AML/CFT obligations. These sanctions should be effectively applied against FIs and/or their managers by supervisory authorities in the event of non-compliance found in the course of their supervision in order to encourage FIs to take the necessary steps to comply with the required requirements. Supervisors should also adopt written internal procedures on the enforcement of disciplinary and financial sanctions as well as the follow-up of the implementation of corrective actions and recommendations issued following on-site/off-site inspections.
- h. publish guidelines for accountable FIs to help them implement their AML/CFT obligations, particularly to detect and report suspicious transactions.

DNFBPs and VASPs

The Togolese authorities should:

- a. provide each category of DNFBP with a designated supervisory or self-regulatory authority with broad sanctioning powers and adequate resources (human, material and financial) to effectively monitor and control the implementation of AML/CFT obligations by the profession in question
- b. regulate, supervise and control virtual assets and the activities/operations of VASPs by providing the sector with a supervisory and control authority bestowed with powers of sanction and adequate resources (human, material and financial) to carry out its AML/CFT monitoring and control tasks;
- c. enact a range of proportionate and dissuasive administrative sanctions for breaches of AML/CFT obligations through binding means (legislation or regulations) and ensure that they are enforced through clear procedures known to the designated supervisory or self-regulatory authorities in the event of non-compliance with AML/CFT obligations by DNFBPs and VASPs;
- d. ensure that DNFBP and VASP designated supervisory or self-regulatory authorities are trained and made aware of their obligations and the implementation of risk-based AML/CFT supervision.

289. The relevant Immediate Outcome examined and assessed in this chapter is IO.3³⁰. The relevant Recommendations for the assessment of effectiveness on this chapter are R.14, 15, 26-28, 34, 35 and elements of R.1 and 40.

6.2. Immediate Outcome 3 (Supervision)

Financial Institutions

290. Given the context, elements relating to materiality and exposure to ML/TF risks, the strengths and deficiencies relating to supervision in Togo have been weighted in the same way as for the implementation of preventive measures under Immediate Outcome 4, i.e.: very heavy weighting for banks, authorized foreign exchange dealers and the real estate sector; heavy weighting for MFIs and independent legal and accounting professions (lawyers, notaries and chartered accountants), medium weighting for financial companies and other FIs; and low weighting for virtual asset service providers and other DNFBPs (dealers in gems and precious metals and casinos/gaming halls).

291. The conclusions of Immediate Outcome 3 were based, among other things, on: interviews with the supervisory authorities met and the FIU, examples of supervision actions and statistics on the inspections conducted, minutes of meetings, working tools, inspection reports, published guidelines, quantitative and qualitative data provided on training and awareness-raising activities conducted.

6.2.1. Licensing, registration and monitoring to prevent criminals and their accomplices from entering the market

Financial Institutions

292. The practice of banking and financial institutions' operations is subject to prior licensing by the Minister of Finance, after the assent of the UMOA Banking Commission (CBU). The requirements for licensing and updating of the components of the licensing applications as defined by the regulations in force are designed to prevent criminals and their accomplices from becoming the beneficial owners or controlling these institutions. The components of the license application file enable the supervisory authorities to have a better knowledge of the natural and legal persons who own, control or manage the FIs (shareholders, directors and managers). The BCEAO obtains all documents deemed necessary for the review of the licensing files. It requires a list of all shareholders, indicating the level of shareholding of each, their nationality and address. It obtains all information on the caliber of the persons who provided the share capital and, where applicable, on that of their guarantors as well as their fit-and-proper status. These verifications are conducted pursuant to BCEAO Directive No. 017-04-2011 of 21st April 2011 establishing the list of documents and information constituting the file for approval as a UMOA credit institution. Certified copies of identity documents, copies of police clearance of less than 3 months, CVs of directors and managers are required. A notarized declaration on the financial situation, source and legal nature of the funds used to constitute the share capital for the major shareholders holding at least 5% of the voting rights or share capital is also required and examined.

293. To assess the financial capacity of individual shareholders, the BCEAO and CBU rely mainly on the analysis of this notarized declaration which presents details of all the current and fixed assets as well as the net bank assets of the shareholders. Appropriate verifications are conducted by the CBU and fit-and-proper tests are also conducted during the inspection of the application files in order to

ascertain the good character, integrity and sound reputation of all shareholders who are natural persons and managers. In case of doubt on the good character of those who control or manage the company as well as on the legality of the origin of the funds, the license is refused to the applicant. However, there are still outstanding challenges in identifying the beneficial owner where the shareholder is a legal person. The authorities have not been able to demonstrate how they ascertain the identity and sound reputation of the beneficial owner. Besides, no document has been provided to justify not only the analysis of the shareholding and the direct or indirect possession of the voting rights for the purposes of identifying the beneficial owner, but also the fit-and-proper test, especially where the shareholder is a legal entity.

294. Similarly, at the end of each semester, credit institutions forward the updated list of their officers and directors to the CBU. For any proposed amendment to the list, information on new managers and administrators is sent to the CBU to give a final assessment on their fit-and-proper status before assuming duty. Ownership changes are also communicated to the BCEAO and CBU for review and approval with respect to credit institutions and FIs under their supervision.
295. Where the application for licensing comes from a foreign entity subject to monitoring by a supervisory authority in its country of origin, the CBU requests for an opinion of non-objection from the said Authority. In fact, during the review of applications for licensing of subsidiaries of international groups, the BCEAO and CBU rely on the cooperation agreements signed with the supervisory authorities of foreign countries to conduct fit-and-proper test on foreign shareholders, directors and managers, with a view to receiving additional information. In 2019, the CBU approved an application for licensing submitted by a public limited company to engage in operations of financial institutions of a banking nature. In 2018, the CBU approved the withdrawal of license without liquidation of a bank, in the context of a merger by absorption operation³¹. Apart from this information contained in the CBU's 2018 and 2019 annual reports viewed online, supervisors have not provided any data on the number of applications received, processed, rejected and withdrawn for banks to attest to the effectiveness of the monitoring and verification mechanisms in place for the issuance of licenses.
296. For DFIs, authorized foreign exchange dealers and electronic money issuers, the BCEAO and/or CBU conduct a prior fit-and-proper test of all proprietors, managers and beneficial owners, in the processing of their applications for approval. The requisite set of documentation for application files is set by the specific texts governing these activities and providing for the production of information on the shareholders, directors and managers, including their identity and their criminal record. The procedure described above for banks and financial institutions is monitored by the BCEAO and CBU in order to prevent criminals and their accomplices from becoming beneficial owners or controlling these institutions.
297. Indeed, DFIs are licensed by order of the Minister of Finance, on the approval of the BCEAO. A first review of the file is conducted by the Support and Monitoring Unit for Mutualist Institutions or Savings and Credit Cooperatives (CASIMEC) of the Ministry of Finance, based on the criteria and requirements set by law. After the review, this unit forwards the file to the BCEAO for approval, and to the CBU in the case where the DFI is a financial body. The licensing application files include documents enabling CASIMEC and BCEAO to assess the good character and integrity of the shareholders, directors and managers of these institutions. In case of doubt on the good character of those who control or direct the company as well as on the legality of the origin of the funds, the application is rejected. The statistics below on DFIs reveal that this sector is invaded by several structures operating illegally and which increase in number from year to year despite the identification

³¹2018 and 2019 Annual Report of the UMOA Banking Commission

operations conducted by CAS-IMEC, which led to the closure of several DFIs. However, the reasons given are not specifically related to non-compliance with AML/CFT legal and regulatory provisions of or to predicate offences. No license has been refused or withdrawn for reasons related to the good repute of managers or shareholders. According to CAS-IMEC, the licenses were withdrawn for the following reasons: 6 structures had terminated operations and payment; 16 were merged into two DFIs; 1 structure presented no prospect of viability and 3 other structures failed to comply with certain provisions of the law governing them.

Table 6.1: Statistics on the Issuance, Rejection and Withdrawal of Licenses in the DFS sector under the Supervision of CASIMEC

Name	2018	2019	2020
Number of licensed DFIs	172	164	162
Number of illegal DFIs identified	166	174	169
Number of DFIs closed	4	52	4
Number of license applications rejected	5	8	5
Number of license withdrawals	14	8	4

298. Authorized foreign exchange dealers are licensed by the Minister of Finance after the approval of the BCEAO. The license application file includes documents (birth certificate or Articles of Association, RCCM, criminal record) enabling the BCEAO to assess the integrity of the applicants. The licensing procedure implemented by the BCEAO aims to avoid the use of the license for ML/TF purposes and particularly includes an interview with the applicant in order to ensure compliance of the planned use of license with the provisions in force. Refusals of licenses may be notified where there is doubt about the sound reputation of the managers or the non-compliant use planned for the requested licenses. The Ministry of Economy and Finance issued 27 licenses including 8 in 2018, 6 in 2019 and 13 in 2020 and withdrew 5 in 2018 for failure to commence operations.
299. Electronic money issuers (EMIs) are licensed by the BCEAO. EMIs can be banks, in partnership with technical telecommunications operators, or companies that have received approval for this purpose. The licensing procedure implemented by the BCEAO enables it to ensure the good character and sound reputation of the staff. For banks, engagement in these operations requires prior information from the BCEAO, which may issue reservations, particularly where there is doubt about the sound reputation of the bank's partner. The exchanges with the representatives of the BCEAO met during the on-site visit revealed that 3 applications for license to engage in electronic money operations were rejected over the last 5 years.
300. Money transfer operations can be conducted by banks and the Postal Administration. Furthermore, these operations can be conducted by DFIs licensed for this purpose as well as by sub-agents who have signed a partnership agreement with licensed service providers (banks, postal administration and authorized DFIs). Financial institutions may also may also engage in funds transfer operations, provided they have been licensed for this purpose. All of these players are subject to the prior issuance of license to engage in these operations, as outlined in the previous paragraphs.
301. Holding the positions of directors and managers within financial companies in Togo is subject to the requirements set by Circular n° 02-2017/CB/C. However, financial companies are not subject to any fit-and-proper test prior to the issuance of license to carry out their functions by the CBU. On the other hand, at the beginning of each semester, they must communicate to the CBU and National Directorate of the BCEAO, the list of their directors and managers containing the following information: full identity, nationality, position held, date of assumption of duty and the fit-and-proper

status of the shareholders, directors and managers are supposed to be verified by the CBU during the off-site and on-site inspections conducted. However, no inspection was reported on the three financial companies operating in Togo.

302. Capital market players are licensed by the Regional Council for Public Savings and Capital Markets (CREPMF), subject to the legal origin of the funds, in particular the fit-and-proper status of the shareholders, directors, managers and persons appointed to act as controllers.
303. For the insurance sector, the license issuing body is the Ministry of Finance through the National Directorate of Insurance of Togo (DNA) and on the approval of the Regional Insurance Supervision Commission (CRCA). This licensing process provides for specific due diligence to ensure sufficient knowledge of the shareholders who are natural and legal persons. Shareholders with at least 20% of the voting rights or share capital are required to provide the following information for natural persons: notarized declaration of financial situation; source of the funds used to subscribe to the capital of the future establishment and the lawful nature of these funds with regard to AML/CFT legislation; notarized declaration of an authorized representative of each legal person on the lawful origin of its funds. For the approval of managers and directors, in addition to the documents relating to the requirements of competence and sound reputation, candidates are required to provide a sound reputation form approved by the State Prosecutor. Besides, any sale transaction having the effect of conferring directly or indirectly, on a natural or legal person shareholder or on several legal person shareholders linked by relations of parent and subsidiary companies, either a shareholding equivalent to 20% of the share capital, or the majority of voting rights at the general meeting of a company must, prior to the commencement of its operations, obtain the relevant license from the Minister of Finance. The licensing framework thus described efficiently prevents criminals and their accomplices from owning insurance companies or becoming shareholders, managers or directors therein. The process must also be verified throughout the life span of the institution, its managers and directors using off-site and on-site inspections.

Table 6.2: Status of Stakeholders in the Insurance Sector

Name		Number
Insurance companies	12	Non-life companies
		05
Reinsurance companies	02	life companies with
		07
		Headquarters in Lomé
		01
		Branch
		01
Brokerage companies		33
General agents		24
Business agents		100
Technical Experts		27

304. With regard to the manual foreign change sector, the predominance of the informal sector reveals that there is almost a parallel market which is totally beyond the control of the Togolese authorities. And also considering the massive use of fiat money, this sector can be easily used by criminals to launder their money and/or finance terrorism. The Ministry of Finance withdrew 43 licenses from authorized manual change authorized foreign exchange dealers from 2010 to 2018, including: 5 in 2018, 2 in 2015, 12 in 2014, 2 in 2013, 11 in 2011 and 11 in 2010. No withdrawals were recorded in 2019 and 2020, even though the sector was still highly exposed, with no specific justification from the supervisory authorities.

305. Also, rapid money transfer operations carried out by sub-agents are apparently not targeted by robust entry control procedures, as the latter are left to credit institutions acting as authorized intermediaries or DFIs based on a contract signed by both parties, without consulting the competent supervisory authorities. The same applies to the distribution of electronic money by natural or legal persons operating as sub-distributors.
306. Furthermore, in April 2019, the Ministry of Finance conducted an impromptu on-site inspection mission to a company, with the aim of verifying the products and services offered as well as their legality. It was a company which collected public savings, managed securities accounts for the benefit of third parties and issued cryptocurrency through a participatory financing system (crowdfunding) without obtaining a license to carry out such operations. This company also provided investment advice and training on foreign currency trading and on various financial products without the prior authorization of the competent authorities. It was summoned by letter from the Minister of Finance in October 2019 to immediately terminate these financial and monetary operations and reimburse depositors without delay for the sums collected. Subsequently, on 17th October 2019, the Ministry of Finance issued a press release, directing these structures which “ collect funds from the public against equity or investment securities and promises of a return of up to 360% of the initial share ” in violation of the extant legislation to put an end to their operations and inviting the public to be vigilant.

DNFBPs and VASPs

307. The self-regulatory bodies of the independent legal and accounting professions (National Association of Chartered Accountants and Licensed Accountants, the National Bar Association, National Chamber of Notaries, National Chamber of Judicial Officers, Chamber of Auctioneers) are clearly identified by the texts governing them as bodies monitoring access to their respective professions. The procedures and controls for access to these various professions provided for by the texts in force take into account measures relating to professional qualifications (academic, professional internship and training, favorable internship report, etc.), morality (ethics and code of conduct demonstrated during the entry courses) and criminal records (police clearance) of aspirants to the profession. However, while these 'fit and proper' criteria may help prevent criminals from entering these professions, entry controls do not include AML-specific criteria. For example, entry into these professions does not require a firm commitment from aspirants to comply with their AML/CFT obligations or a good understanding of the ML/TF risks associated with the profession. The origin of the capital outlay and other resources, for example, are not audited to prevent financial criminals or their beneficiaries from gaining access to or controlling these professions for ML/TF purposes.
308. With regard to the gaming sector, the LONATO acts as the supervisory authority and issues licenses for stakeholders. However, regarding the independent legal and accounting professions, the AML/CFT dimension is not taken into account in the review of license applications. The items and documents required relate to the identification of staff, their criminal records and extracts from the RCCM.
309. The other categories of DNFBPs, including the real estate agents and dealers in gems and precious metals, have no legal framework, which explains these operations are carried out by a large number of informal actors with a very high risk of these sectors being taken over by financial criminals of all kinds. There is no control to access their respective professions.
310. The VASPs, which are bot governed by legislative or regulatory texts, have no licensing or approval body. There is therefore no control to prevent criminals and their accomplices from engaging in VASP operations.

6.2.2. Supervisors' understanding and identification of ML/TF risks

Financial Institutions

311. The NRA provided supervisors with an initial assessment of the ML/TF risks related to their respective sectors thanks to their participation in the assessment and to their discussions of the results after submission of the report. There are no other sectoral analysis reports that supervisors could rely on to obtain a good understanding of BC/FT risks. Nor do supervisors use existing typology reports to better understand some of the ML/TF risks faced by the sectors under their supervision and how they are being addressed.
312. With regard to the banking sector, the CBU has set the risk management framework in credit institutions and financial companies operating in the UEOMA through Circular No. 04-2017/CB/C of September 27, 2017, which came into force on July 02, 2018. This circular provides for the transmission, by April 30 at the latest, of an annual report on the overall risk management system for credit, operational, market, liquidity, interest rate and banking portfolio and other risks. With regard to operational risk management, the system takes into account the identification and evaluation of the risks inherent to the new products and activities. However, this report does not clearly highlight the ML/TF risks to which banks, financial institutions and financial companies are exposed so that the CBU can use them to establish a classification. The CBU and BCEAO have adopted a compliance-oriented, risk-based supervisory approach through a rating system for credit institutions known as SNEC-UEMOA. This tool is based on a set of fundamental criteria such as capital adequacy, corporate governance, information and reporting system, internal control, financial structure, risk management and financial performance. These criteria are used to position credit institutions on a risk scale. The SNEC-UEMOA is also based on three additional criteria relating to the environment, shareholding and development prospects, which are used to refine the first rating derived from the so-called fundamental criteria and establish a segmentation of risk classes. As a result, it is based on the assessment of 11 risk categories, including the one relating to AML/CFT.
313. Overall, BCEAO, the CBU, and the Ministry of Finance have not demonstrated a good understanding and satisfactory identification of the AML/CFT risks related to the country and the sectors under their control. While the results of the SNEC-UEMOA make it possible to define a risk profile and classify credit institutions according to their degree of exposure, this profile is not specific to AML/CFT. In 2020, according to the CBU, 04 credit institutions were classified as moderate risk, 06 as medium risk, 03 as high risk and 01 as very high risk. However, the supervisory authorities encountered by the assessment team did not demonstrate that national and sectoral ML/TF risks are adequately reflected in this rating and classification system. Besides, the assessment team did not receive a mapping risk of the institutions or any other evidentiary document to state and appreciate the risk profiles according to their ML/TF risks.
314. With respect to microfinance (non-Article 44 DFS), the financial market, and the insurance sector, the supervisors of CASIMEC, CREPMF, and CRCA-DNA have a limited understanding of ML/TF risks related to the country and their respective sectors, even if they participated in the NRA. These authorities have not conducted sectoral ML/TF risk assessments. In addition, they have not yet put in place a methodology or tools to be able to identify, rate and classify FIs, which would be a basis to put in place ML/TF risk profiles for FIs under their control and have a good understanding of their risks.

DNFBPs

315. The assessment team noted that the supervisory authorities or self-regulatory bodies of DNFBPs,

where they exist, have no understanding of ML/TF risks either at national level or within their respective operational sectors. They do not use any mechanism or procedure for the identification of ML/TF risks within the reporting entities under their supervision.

6.2.3. Risk-based supervision of AML/CFT compliance

316. The supervisory authorities ensure compliance by the FIs with their AML/CFT obligations during off-site and on-site inspections.
317. The planning and supervision of large banks, financial companies, EMIs and DFIs (under Article 44) by the CBU is supposed to be done within the framework of a risk-based approach but this is not still effective as mentioned above. Indeed, off-site inspections use the information contained in the annual AML/CFT reports, auditors' reports, internal audit reports, and reports on the assessment of non-compliance risks and reports on the overall risk management system. The findings resulting from the review of these reports and particularly from the use of the responses to the AML/CFT investigation questionnaire (administered periodically to all reporting entities of the Togolese banking system in order to collect additional information for regulatory reporting) are also supposed to feed the AML/CFT component of SNEC-UEMOA. The purpose of off-site inspection is to assess the nature, incidence and scope of the risks to which each institution is exposed. Indeed, off-site inspections highlight the signs of an institution's vulnerability, which would inform the appropriate decision to be taken. In this regard, they play a red flag and prevention role, and then guide on-site inspections to better target their investigations. According to the CBU, the on-site inspection is conducted based on a program developed in line with the calendar year and an approach based on the identified risks, which makes it possible to establish a list of accountable institutions considered as the most vulnerable. This list is prepared based on the vulnerabilities highlighted by the off-site inspection, the time lapse of the last inspection, the status of reporting entities in the face of the difficulties identified in monitoring the implementation of the recommendations and decisions of the CBU as well as the degree of institutions' exposure to the major risks in their respective operational sectors. On-site inspection missions assess the sincerity of the financial and accounting information communicated to the supervisory authorities, compliance with prudential regulations, the quality of management and prospects of accountable institutions, corporate governance, the effectiveness of internal and external controls as well as the AML/CFT regime, among others. These on-site inspection missions can be comprehensive with an AML/CFT component included. They can also be specific or thematic such as AML/CFT for example. However, neither the annual program nor any relevant explanatory documents were provided to the assessment team to confirm the scheduling of on-site inspection missions using an approach that adequately takes ML/TF risks into account. Nevertheless, the assessment team noted that the CBU conducted in March 2019 a global inspection mission on a large-scale DFS with an AML/CFT component. However, the inspection of the AML/CFT regime occupied a minute portion of the mission's time and was briefly addressed in a section devoted to "other regulatory provisions". The CBU also conducted on-site inspections including an AML/CFT component with 2 banks in 2019 and 3 other banks in 2020. Despite the guarantees of confidentiality given by the assessment team, the reports of these missions were not communicated by the CBU on the grounds that these strictly confidential documents could not be communicated to third parties. The CBU, in particular, underscored that the regulatory texts governing it establish the list of recipients of the reports of all inspections conducted at the institutions and consequently do not authorize it to provide such documents or extracts of the said reports to third parties.
318. The scheduling and conduct of on-site inspections of other DFIs by CAS-IMEC is based on the findings of the off-site inspections and the time lapse of the previous on-site inspection. They are not yet based on a risk-based approach. Obviously, CASIMEC conducted inspections including an AML/CFT component, totaling 8 in 2018, 9 in 2019 and 5 others in 2020. These inspections focused,

in particular, on the verification of: the existence of the AML/CFT regime, customer identification procedures, internal control procedures, prevention and detection of ML/TF, the conduct of periodic controls (internal audits of the AML/TF system where it exists).

319. The scheduling of inspections with authorized foreign exchange dealers by the BCEAO and Ministry of Finance is also done based on the findings of off-site inspections as well as the risks identified. However, these inspections were limited only to the examination of periodic reports relating to foreign exchange transactions conducted without taking into account aspects of AML/CFT in a sector that is nevertheless considered as high risk.

Table 6.3: Statistics on Overall On-site Inspections (General Inspection, “GI”), including an AML/CFT (GI/AML/CFT) or Thematic/specific (CS/AML/CFT) Component.

Sector	2018			2019			2020		
	GI	GI AML/CFT	GI AML/CFT	GI	GI AML/CFT	GI AML/CFT	GI	GI AML/CFT	GI AML/CFT
Banks	0	0	0	0	0	0	0	0	0
DFIs	8	8	0	10	10	0	5	5	0
Capital market operators	0	0	0	0	0	0	0	0	0
Authorized forex dealers	0	0	0	0	0	0	0	0	0
MVTS providers	0	0	0	0	0	0	0	0	0
Insurance companies	0	0	0	0	0	0	0	0	0
Others	0	0	0	0	1	0	0	0	0

DNFBPs and VASPs

320. The supervisory authorities or self-regulatory bodies of DNFBPs, where they do exist, are neither equipped nor empowered to implement risk-based supervision. Indeed, no evidence of the implementation of such an approach has been demonstrated by the supervisory authorities of DNFBPs. The VASPs, which are not governed by legislative or regulatory texts, are not subject to any supervision of compliance with AML/CFT requirements.

321. The supervisory authorities have not implemented any effective risk-based supervision that takes into account ML/TF risks identified at national or sectoral level and within FIs and DNFBPs where applicable. Although the CBU has adopted a risk-based approach based on a rating system, it is apparently limited to prudential aspects only. However, the Assessment Teams believes that had it been effectively implemented, this approach would have determined the frequency, scope and depth of the missions according to the FIs’ risks. Furthermore, apart from the on-site inspections conducted by the CBU and CASIMEC within the DFIs, and by the Ministry of Finance within an unlicensed company offering financial products and advice, no specific on-site inspection or one including an AML/CFT component has ever been conducted in other sectors in recent years. At least, the convincing elements (mission letters, reports, minutes, etc.) were not provided to the assessment team, which made it impossible to attest to their accomplishment. .

6.2.4. Effective, proportionate and dissuasive remedial actions and sanctions

322. Supervisory authorities have the disciplinary powers to mete out administrative and pecuniary

sanctions, as provided for in the texts governing their respective sectors, on reporting entities for non-compliance with AML/CFT legal and regulatory obligations due to lack of due diligence or deficiency in the organization of internal control procedures.

Financial Institutions

323. Once the CBU observes any violation of banking regulations and any other legislation applicable to credit institutions, financial companies, DFIs, EMIs or any other entity subject to its control, it informs the Minister of Finance. And without prejudice to the penal or other sanctions incurred, it metes out one or more disciplinary sanctions such as: warning, reprimand, suspension or ban of operations, suspension of the defaulting managers, permanent or temporary ban to direct, administer or manage the withdrawal of accreditation. In addition, the deficiencies identified by the authorities during their inspections are followed by warnings or injunctions with directives to take or implement, within a specified period, the necessary corrective measures or any appropriate precautionary measures. The CBU can also impose pecuniary sanctions. However, Togo has not published a range of administrative sanctions directly applicable for violations of the AML/CFT legal and regulatory provisions. Instead, the BCEAO issued Instructions that set out the modalities for enforcing the financial sanctions imposed by the CBU on credit institutions and SFDs by classifying regulatory violations according to their nature and degree of seriousness into three categories. AML/CFT violations and breaches are not included in any of these categories. Indeed, the CBU issued 02 reprimands against 02 credit institutions and 05 injunctions in 2018. In 2019, it issued 10 injunctions to credit institutions, SFDs and EMEs, placed 2 SFDs under close supervision. It issued a reprimand against an SFD and against the Board Chairman of a microfinance institution and a warning against another SFD³². However, these sanctions are not imposed for breaches of AML/CFT legal and regulatory provisions. The CBU generally imposes sanctions on FIs and/or their directors and officers, inter alia, for breaches of prudential standards, rules on the functioning of internal control, risk management, etc.

324. Following the on-site inspection conducted within a few DFIs, the CAS-IMEC had only proffered recommendations to resolve the AML/CFT deficiencies identified, without imposing binding measures or meting out sanctions even though they would have been justified insofar as these inspections revealed that several DFIs had not put in place any AML/CFT regime at all.

325. Within the capital market, the CREPMF has a range of pecuniary sanctions applicable to players and other participants in the regional capital market in case of regulatory violations. These violations are categorized according to their gravity based on a scale of predefined risks. Violations related to AML/CFT are classified into the 3rd category. These are deficiencies in the internal system defining the internal procedures for the prevention and detection of ML/TF, the implementation of an anti-money laundering mechanism and the information and training policy. The financial sanctions applicable for such violations can range from 101 CFA Francs million (€153,973.5) to CFA Francs 150 million (€228,673.5) depending on the type of participant in the regional capital market. However, so far, no sanction has been imposed on market operators.

DNFBPs and VASPs

326. Since DNFBPs and VASPs are not subject to supervision in Togo, there are no sanctions imposed on them for violation of AML/CFT obligations.

327. It can be deduced from the foregoing that Togo has a range of administrative, disciplinary and

³² CBU Annual Report 2018 and 2019

pecuniary sanctions provided for in case of violation of the legislation and regulation in force in general, especially for violations related to ethics, management and prudential rules. Indeed, these texts did not provide for sanctions which clearly target violations of AML/CFT obligations, with the exception of the pecuniary sanctions provided for by the CREPMF texts. Besides, the virtual lack of AML/CFT-related sanctions in Togo made it impossible to assess their effective, proportionate and dissuasive nature in the financial sector as well as DNFBPs and VASPs.

6.2.5. Impact of supervisory measures on compliance

Financial Institutions

328. The obligation to submit annual reports on the overall risk management system and on the internal AML /CFT system to the supervisory authorities aims not only to urge credit institutions, financial companies, DFIs, EMIs and players in the capital market to gradually improve the implementation of AML/CFT obligations, particularly customer due diligence, STRs and CTRs, but also to develop supervisory and risk management policies and procedures. A consideration of these reports results in the formulation of remedial measures where significant deficiencies are identified and communicated to the institutions concerned, through a follow-up letter. The implementation of the recommendations and resolution of the deficiencies identified are then monitored. This generally provides an opportunity for supervisory authorities to verify whether certain compliance deviations observed have been addressed satisfactorily and in a timely manner, or whether it is necessary to institute additional supervisory measures. The other FIs such as insurance companies, authorized foreign exchange dealers, EMIs, SPT, MVTS seem to be excluded from any AML/CFT supervision.
329. Despite the fact that the follow-up of the recommendations issued after inspection and/or following reminders and injunctions by the supervisory authorities, are designed to ensure that the FIs concerned rectify the violations to AML/CFT obligations identified, it is difficult to assess the progress made. Apparently no progress has been made. There is no close and specific follow-up process with FIs presenting significant deficiencies through, for example, regular dialogue with managers and directors with a view to resolving them. Besides, the deficiencies identified in the implementation of AML/CFT preventive measures, particularly those related to customer due diligence (see IO.4 analysis) and reporting obligations, reveal a low impact of supervisory measures on compliance.
330. The supervisory authorities could not demonstrate, particularly through evidence, any measurable improvement in the level of FIs' compliance AML/CFT, through their actions. Besides, the scarcity of on-site inspections and the virtual lack of sanctions meted out by the supervisory authorities, as and when necessary, resulted in the non-assessment of the impact of their measures on the FIs' level of compliance.

DNFBPs and VASPs

331. None of the DNFBPs and the VASPs has put in place internal compliance mechanisms, and the lack of AML /CFT monitoring and supervision is not likely to compel them to do so.

6.2.6. Providing a clear understanding of AML/CFT obligations and ML/TF risks

332. The BCEAO and CBU issue Directives and Circulars in order to define and specify the methods of implementing the texts governing FIs under their supervision. These texts are often sent by mail to FIs and also published on the BCEAO website. The CBU's annual activity report devotes an entire section to disclosing the institutional and regulatory framework of the financial sector.
333. The BCEAO published 4 Directives for the implementation of the Uniform AML/CFT law to FIs

In 2017. These Directives are more intended to complement the law rather than explaining and specifying it and clearly indicating the expectations of supervisory authorities. These Directives relate to the setting of thresholds for the declaration of cash transactions to the FIU; for the declaration of cross-border physical transportation of cash and BNIs; for the payment of any claim in cash or by BNI; but also on the modalities for the implementation of the AML/CFT law. Indeed, Directive No. 007-09-2017 was published by the BCEAO to specify the terms of implementing the AML/CFT Law by credit institutions, financial companies, DFIs, authorized foreign exchange dealers and EMIs. This text provides details on the implementation of internal ML/TF prevention procedures, information systems, the AML/TF structure, staff training and information program; communication of the identity of correspondents to the FIU; conduct of internal control and audit missions and the preparation and transmission to the supervisory authorities of the report on the implementation of the AML/CFT regime. However, this directive or any other document does not provide explanations or guidance to help FIs better detect, monitor and report unusual and suspicious activities or transactions to the FIU. Nevertheless, the BCEAO organizes a few thematic training sessions on AML/CFT for these reporting entities and periodic meetings with the managers of the FIs, including the general managers of the member banks of the APBEF. However, this training is insufficient and these periodic meetings with the APBEF barely address AML/CFT issues. On the other hand, the FIU regularly organizes exchange meetings and training and awareness-raising sessions on AML/CFT obligations as well as the ML/TF risks identified in the NRA, particularly with the compliance officers of the banks and financial institutions which are members of the Association of Compliance Officers of Banks and Financial Institutions (ARCOBEF).

334. Authorized foreign exchange dealers grouped into a professional association had a meeting with the Financial and Monetary Operations Department of the Ministry of Economy and Finance in August 2019 during which the list of grievances was sent to the authorities. However, neither the items on the agenda of this meeting nor the grievances filed had anything to do with AML/CFT. They rather concerned the difficulties relating to the lack of a rigorous and dynamic organization of the sector which exposes it to some challenges such as "the very strong, aggressive and unfair competition with the unlicensed", "the lack of the provisions on facilitating foreign exchange transactions between the populations of cross-border countries", etc.
335. In 2019, the CREPMF developed and published a new AML/CFT law enforcement directive for capital market players. Periodic training sessions on AML/CFT have been organized for these actors by the FIU, in collaboration with the Ministry of Finance.
336. With regard to insurance, the Regulation n°0004 /CIMA/PCMA/PCE/SG/08 defining the procedures applicable to insurance companies published in 2008, are outdated and out of tune with the Uniform Law and the FATF Recommendations. The NRA report and the information and awareness-raising actions organized by the FIU have nevertheless enabled insurance organizations to improve their understanding of AML/CFT risks and obligations.
337. Compared to the supervisory authorities, the FIU further contributes to the sensitization of reporting entities on ML/TF risks and the understanding of their obligations through its meeting discussions and training and awareness-raising activities, even though there is still room for improvement. The implementation of online reporting of suspicious transactions and cash transactions, though not yet widespread to all reporting entities, also constitutes an opportunity to improve compliance with reporting obligations.

Table 6.4: Training and Sensitization Activities organized by the Supervisory Authorities and/or FIU or others

No.	Date	Venue	Theme	Number	Target Group	Organizers
1	30th March, 2017	Lomé	Effective implementation of legal AML/CFT provisions in the insurance and reinsurance sector	42	Insurance and reinsurance companies and brokers insurance	FIU/CIMSALAB/FT
2	September 2, 2017	Lomé	Main AML/CFT obligations of insurance companies	21	Staff of the insurance company GTA/C2A IARDT	GTA/C2A IARDT
3	September 9, 2017	Lomé	Main AML/CFT obligations of financial institutions	23	FINAM-SA staff	FINAM-SA
4	November 30, 2017	Lomé	Role of DNFBBs in the effective implementation of the AML/CFT regime	35	DNFBPs	FIU/CIMSALAB/FT
5	May 21, 2018	Lomé	Training and sensitization of FIs on AML/CFT	48	Banks and financial institutions	FIU/CIMSA
6	August 09, 2018	Lomé	Sensitization of DNFBBs on the revised AML/CFT regime	46	DNFBPs	FIU/CIMSA
7	13 Feb 2019	Lomé	Sensitization on the entry into force of the Uniform AML/CFT Law n° 2018-004 of May 04, 2018	8	Compliance officer of capital market institutions	FIU
8	March 21, 2019	Lomé	Raising awareness on the status of sectoral risk assessments and on the appropriate measures to be implemented to mitigate the identified risks.	30	Capital market institutions, ACM, DFIs, cash couriers and supervisory authorities	FIU/CIMSA
9	May 22, 2019			19	Accountants, Chartered Accountants and	FIU

					Supervisory Authority	
10	May 24, 2019			30	Notaries and self-regulatory authority	FIU
11	May 31, 2019			8	Bailiffs and self-regulatory authority	FIU
12	09 June 2019			4	Auctioneers and self-regulatory authorities	FIU
13	Sep 12, 2019	Lomé	Sensitization on the status of sectoral risk assessments and the appropriate measures to be implemented to mitigate the identified risks.	8	Bank Compliance Officer	FIU
14	18 Sep 2019			50	Real estate agents, art dealers and supervisory authorities	FIU/CIMSA
15	09 and 10 Oct. 2019	Lomé	Training of ONECCA members on the Uniform AML/CFT law	19	ONECCA	ONECCA
16	Dec. 11 to 14, 2019	Lomé	Training on the use of the online reporting software	13	Bank Compliance Officer	FIU

DNFBPs and VASPs

338. Authorities or self-regulatory bodies, where they exist, are neither equipped nor empowered to promote among DNFBPs a good understanding of their AML/CFT obligations and ML/TF risks. Nevertheless, the FIU, in collaboration with the self-regulatory bodies, has developed guidelines on the general AML/CFT obligations for almost all DNFBPs (lawyers, notaries, accountants, court bailiffs, auctioneers, real estate agents, dealers in gems and precious metals). During the on-site visit, these guidelines, designed to facilitate the understanding and implementation of AML/CFT requirements, were unknown to the DNFBPs met, as they were not sufficiently disseminated. There are no guidelines in Togo for VASPs.

339. In the light of the foregoing analysis, the assessment team notes that the competent authorities have issued a limited number of guidelines in relation to the needs of reporting entities in the financial sector. Those concerning the DNFBPs have not been sufficiently popularized among reporting entities. Besides, some of the texts are quite brief and seem to supplement the uniform law instead of explaining it. Consequently, these guidelines do not help reporting entities understand their AML/CFT obligations.

General Conclusion on IO.3

340. FI supervisory authorities have not demonstrated a good understanding of the ML/TF risks inherent in their respective sectors. Although the CBU and BCEAO have at their disposal a set of methodology, techniques and tools enabling them to have a risk-based approach, they have not demonstrated the effective implementation of the risk-based approach and therefore the incorporation of the relevant ML/TF risks in the planning and conduct of on-site inspections in banks and financial institutions, DFIs targeted under Article 44 and financial companies. Other supervisory authorities such as CAS-IMEC, CREPMF, Ministry of Economy and Finance, CR-CIMA/DNA, do not have a good understanding of ML/TF risks either. They have not yet adopted any risk-based approach and do not have the tools or the requisite methodology to effectively supervise DFIs, capital market players, authorized foreign exchange dealers and insurance companies. On-site inspections on the AML/CFT component are grossly inadequate or even almost non-existent. And even when they are conducted and sanctions are imposed, the latter do not appear to be effective, proportionate or dissuasive. The supervisory authorities as a whole have not put in place any effective mechanism for identifying and assessing the sound reputation of beneficial owners to ensure criminals or their accomplices do not control and/or manage any FI.
341. Real estate agents and dealers in gems and precious metals do have no control or supervision authority. With regard to the other categories of DNFBPs, their supervisory authority or the self-regulatory body has a poor understanding of the risks and is unaware of the AML/CFT requirements in terms of risk-based supervision. Since VASP are not regulated in Togo, they have no supervisory authority and are not subject to AML/CFT supervision.
342. **Togo is rated as having a low level of effectiveness on IO.3.**

Chapter 7. LEGAL PERSONS AND LEGAL ARRANGEMENTS

7.1.1. Key Findings and Recommended Actions

Key Findings

- a. Togo assessed the risks of the various types of business companies established on its national territory in February 2021. However, the competent authorities have a poor understanding of the risks identified due to the non-dissemination of the findings of this assessment, including the action plan adopted which is yet to be implemented with a view to mitigating the identified risks.
- b. Information on the creation and types of legal persons, business companies, is accessible to the public through the CFE website and the RCCM of the Commercial Court. The formalities for the creation of legal persons, business companies, are also conducted at the CFE which is a one-stop shop, bringing together the RCCM, OTR and CNSS Administrations. The CFE pools all the data collected during the constitution of legal persons and throughout their functioning, for them to be updated. Togo does not recognise legal arrangements, and therefore there is no information on their creation.
- c. The basic information on legal persons contained in the RCCM and on the CFE website is accessible to the public without delay, including supervisory authorities, investigative authorities and the FIU. The RCCM administration updates the information within 24 hours of forwarding the relevant documents for amendment or additional elements by the social leaders. However, there is no monitoring mechanism to ensure the accuracy of information and its timely communication by the companies. There is no mechanism for collecting comprehensive beneficial ownership information at the RCCM even though the identification form has been developed. Law enforcement authorities can obtain beneficial ownership information from FIs and DNFBPs, but the latter is unreliable due to gaps in reporting entities' understanding of beneficial ownership identification requirements.
- d. During the creation of legal persons, the fit-and-proper test of the partners or shareholders is done by consulting the criminal record which only exists for natural persons. However, appropriate verifications on the criminal past are not conducted before issuing the criminal record. Only the banks identify the associates and/or shareholders, or even the beneficial owners of legal persons, in order to avoid their misuse. Besides, there is no measure aimed at preventing the misuse of bearer shares in private companies as there is no existing register for the conversion of bearer shares into nominee shares.
- e. Legal arrangements are not recognized in Togo, but their activities are not prohibited. Because they are not recognized, there is no mechanism for timely access to adequate basic information of legal arrangements and their beneficial owners that is accurate and

up-to-date.

- f. There has been no sanctions meted out on managers of legal persons for submitting inaccurate basic and beneficial ownership information, or for failure to submit such updated information without delay.

Recommended Actions

The Togolese authorities should:

- a. ensure that the competent authorities' understanding of the ML/TF risks linked to the various types of legal persons, through sensitization and training sessions on the findings of the sectoral assessment report of the ML/TF risks to which the business companies are exposed. They should continue to implement the mitigating measures of all the risks identified, as defined in the action plan of the sectoral risk assessment report;
- b. organize training for stakeholders (supervisory authorities, regulatory authorities, RCCM administration, CFE administration, investigative and prosecutorial authorities) and national stakeholders (FIs and DNFBPs) on beneficial ownership identification; map out an appropriate mechanism for their resolve identification and consider maintaining a register of beneficial ownership information at the RCCM;
- c. conduct verifications on the criminal antecedents of the managers as well as the shareholders and associates before issuing the criminal record during the creation of legal persons. They should take measures to prohibit or at least mitigate the misuse of bearer shares in private companies by requiring them to keep the register of conversion of bearer shares into registered shares;
- d. put in place a mechanism for collecting information on BOs in the RCCM, and provide the administration of the RCCM and the CFE with adequate human, technical and financial resources to ensure the accuracy and communication of information provided by the companies without delay;
- e. assess the magnitude of legal arrangement activities;
- f. provide for effective, proportionate and dissuasive sanctions against managers of legal persons for all violations of the obligations to collect basic and beneficial ownership information of legal persons as well as their updating. They are required to keep statistics on the number and type of sanctions meted out on managers of legal persons for any violation.

343. The relevant Immediate Outcome examined and assessed in this chapter is IO.5. The relevant recommendations for the assessment of effectiveness on this chapter are R.24-25, and elements of R.1, 10, 37 and 40.

7.2. Immediate Outcome 5 (Legal Persons and Arrangements)

7.2.1. *Public accessibility to information on the creation and types of legal persons as well as on legal arrangements*

344. There are several types of legal persons in Togo, including civil companies established from civil law and business companies and Economic Interest Groups (GIE) and cooperatives governed by the OHADA Uniform Act of 30th January 2014 (see Table 1.3). The business companies established from this Uniform Act, in addition to EIGs and cooperatives, are: public limited companies, limited partnerships, limited liability companies, simplified joint stock companies and variable capital companies.

345. Consistent with the provisions of the OHADA Uniform Act on Business Companies and EIG, information on the creation and types of legal persons is made available to the public by the Ministry of Trade through the website of the Business Formalities Centre (CFE) and administration of the Trade and Personal Property Credit Register (RCCM) of the Commercial Court. The Togo-CFE is a one-stop shop that officiates in the creation of business companies through the synergy of action between the OTR, the National Social Security Fund (CNSS) and the Registry of the Lomé Commercial Court which manages the RCCM. In the jurisdiction of jurisdictions not targeted by the territorial jurisdiction of the Commercial Court of Lomé, which extends to the territory of several civil jurisdictions, the administration of the RCCM is ensured by the registry of the competent civil court. As part of the process of creating legal persons, on the CFE portal (<https://www.cfetogo.tg>), two targeted searches can be made. The first is the historical search, in which you enter a company's name in the search device for the "company name" section to check whether a legal entity has already been established under this name. The second search provides access to legal announcements by indicating the name of the legal person and where a company already exists, the legal announcement will also be found. The legal texts in force in Togo do not provide for the establishment of legal arrangements such as trusts, nor has the country ratified the relevant Hague Convention (see paragraph 363 below).

7.2.2. *Identification, assessment and understanding of ML/TF risks and vulnerabilities of legal persons*

346. Togo's NRA does not provide information on the overall level of vulnerability of legal persons to ML/TF. However, the exchanges with the competent authorities during the on-site visit revealed that legal persons are vulnerable as they are used in the commission of offences such as tax and customs fraud (particularly false invoicing). This observation is corroborated by the sectoral assessment report of the ML/TF risks associated with the various types of business companies established in Togo, finalized in February 2021. This sectoral assessment report identified the respective levels of ML/TF risks for each type of business companies, as follows:

- SARLs and SAS are the two categories of companies that present a high level of ML/TF risks in Togo, due to the medium-high level of threats and vulnerabilities. LLCs operate in the same sectors of trade, services and industry as SAs and were involved in 1,556 tax adjustments for a total amount of more than 4,810,578,287 CFA francs (i.e. 63,739,815.7€). Obviously, LLCs operating in the service sector are involved in trafficking of drugs and protected species in Togo. They are also involved in 35.5% of STRs relating to legal persons. The SAS, on their part, were involved in 27 tax adjustments with a total amount of which is FCFA 9013538246 (i.e. 13741050.4€).
- SAs and sole proprietorships have a medium-high level of ML/TF risks compared to the medium-high level of threats and vulnerabilities. In particular, SAs operating in import-export

and services (which issue and receive international transfers) present a high risk. The sectoral risk assessment report also notes that 360 SA have been subject to tax adjustments, the total amount of which stands at about CFAF 81057002411 (123562503, 67€), while 2441 individual companies were targeted in tax adjustments involving an amount of CFAF 15220344797 (i.e. €23,203,266). The FIU's reports filed to the State Prosecutor also involved this category of companies.

- The cooperative societies, GIE, SNC and SCS each presents a low level of ML/TF risk in view of the medium-high level of the threat and a low vulnerability. Despite this low level of risk, cooperative companies and an economic interest group were involved in a tax adjustment for a total amount of CFAF 267628419 (i.e. €1926521.3).

347. Notwithstanding their various risk levels identified, all categories of business companies in Togo face vulnerabilities that exacerbate their respective levels of risk, namely: the reliability of basic information, beneficial ownership identification, liberalism in the sale of shares (if there is an option), bearer shares, etc.

348. Furthermore, the FIU reports attest to the misuse of legal persons in Togo, as they highlight several cases of ML involving legal persons as revealed by the STR statistics in Table 7.1. below.

Table 7.1: STR Statistics Involving Legal Persons from 2009 to August 2020

Year	Total STRs	Legal Person
2018	329	48
2019	221	27
2020	117	14
Total	667	116

Source: FIU

349. The assessment of ML/TF risks associated with the various types of business companies enables the competent authorities to apply a risk-based approach in efforts designed to criminalize all actions tending to use legal persons for abusive purposes. However, these competent authorities have limited knowledge of the vulnerabilities of business companies, due to the recent finalization of the sectoral assessment, the findings of which have not yet been disseminated. The assessment team also noted that the investigative and prosecutorial authorities met during the on-site visit do not carry out any particular supervision over the activities and operations of legal persons such as SARLs and SAs operating in the extractive industry identified as high risk. In addition, the action of the investigative and prosecutorial authorities is hampered by the unreliable nature of the basic information collected during the creation of business companies, failure to update the basic information contained in the RCCM and non-existence of beneficial ownership information. Indeed, the unreliability of information, especially street address data, is conducive to the creation of companies with a view to their misuse. Above all, the investigative authorities stress that the lack of beneficial ownership information is a challenge both for the identification of the assets and the presumed perpetrators of the offences.

350. The investigative and prosecutorial authorities mentioned a case of investigations relating to the misuse of legal persons. In this case, the companies REDEMARE, KARUS, CHRISTITEX were prosecuted for fraud through the Ponzi pyramid mechanism based on a public call for savings. In

addition, the police and gendarmerie services have dismantled several illicit trafficking operations involving business companies. It was discovered that a company made an import declaration for Soybean oil at the customs office instead of narcotics, and another company export declaration for redwood instead of protected species, while several legal persons were also involved in tax evasion. Investigations have also targeted legal persons involved in fuel smuggling. Previously, in 2014, the FIU had received two STRs which, when processed, revealed the misuse of a legal person.

351. The analysis of the sectoral assessment report of the ML/TF risks associated with business companies reveals that, generally, they present vulnerabilities which exacerbate the threats to which the sector is exposed. This is justified by the numerous tax adjustments and trafficking reported in the related statistics. On the other hand, the non-dissemination of the findings of this sectoral assessment made it impossible for the competent authorities to take ownership of the findings and improve their understanding of the risks associated with each category of companies.

7.2.3. Measures to prevent misuse of legal persons and arrangements

352. Legal persons in Togo comply with general obligations of transparency. The application of these measures provides basic protection against their misuse for ML/TF purposes. In particular, business companies must be registered with the RCCM to acquire legal personality. Basic information (name and company name, members of the management or administrative bodies) on the companies is publicly accessible. The registers are connected and access to information is via a single portal which gives access to information held by the competent authorities (RCCM, OTR and CFE). The implementation of the unique identifier helps to solve the problem of reliability of identities associated with legal persons. The full computerization of the RCCM is also a measure that would guarantee the reliability of information on legal persons. Companies must also keep a register of their shareholders/associates, but the lack of statistical data and inspection reports from the RCCM administration did not allow the assessment team to ensure this requirement was met. In addition, a natural person authorized to individually represent the company and domiciled in Togo must be registered with the RCCM.

353. The interconnection between the customs office and the tax office within the OTR, as well as between the OTR and the National Social Security Fund (CNSS) are also measures that limit the use of legal persons for fraudulent purposes. It makes for the pooling of information held by the various competent authorities. However, the Togolese competent authorities refer to the fact that the CFE verifies the authenticity of all documents required for the incorporation of companies, to justify the lack of due diligence at the court registry, OTR and CNSS with regard to supplementary verifications. Indeed some of the information is wrong and this could be challenge for investigative and prosecutorial authorities where their investigations are based on unreliable data, particularly with regard to beneficial ownership identification.

354. The FIs met stated that they take measures to avoid the misuse of legal persons by identifying the partners and/or shareholders, or even the beneficial owners. To achieve this, they carry out the mandatory identification of legal persons in the context of the business relationship, through a natural person, by administering know your customer (KYC) procedures. This enables them to often avoid the use of nominees, which can be detected through such procedures. Where the associate of the legal person is a minor, the parents are identified, who are certainly the beneficial owners. The FIs met also stated that they do not have trust customers even though some of their customers who are independent legal professionals, do.

355. Although the ML/TF sectoral risk assessment report associated with legal persons reveals that

some extractive industrial companies are used as shell companies to launder the proceeds of corruption and tax fraud, due diligence is not carried out to ensure the funds to be invested have no criminal origin.

356. The traceability of bearer shares poses some challenges for the Togolese authorities because in practice, the register relating to the said shares is not kept in the companies even though they inherently involve high ML/TF risks. Besides, the criminal record which should be used to better appreciate the morality of the partners, managers and administrators does not appear to be reliable because it is not issued after appropriate verifications in the register of criminal convictions due to the lack of a computerized and up-to-date database. The verifications on the criminal past of the applicant for police clearance, particularly bulletin n°3 are essentially done manually, and therefore it is not obvious that such tedious tasks are always required prior to document. Nevertheless, the finalization of the National Convictions File should guarantee the issuance of a reliable criminal record in Togo. In addition, there is no criminal record for legal persons in Togo, but a company can be made up of legal persons as shareholders or partners. A relevant bill is being prepared by the competent authorities.

357. At the end of the sectoral ML/TF risk assessment linked to business companies and considering the undermentioned vulnerabilities, the Togolese competent authorities have mapped out the following mitigating measures:

- Maintaining comprehensive statistics on the various forms of Companies by the CFE;
- Development and updating of the register of beneficial owners of all legal persons by the RCCM;
- Adoption by legislative or regulatory means of a text imposing obligations on creation and registration structures and on companies, based on their legal form, to maintain, update and communicate information on the beneficial owners of companies to the competent authorities;
- Strengthening the legal and institutional framework governing legal persons with a view to ensuring the adequacy between the legal form and the corporate purpose during the registration of companies as well as the prior acquisition of licenses required for the professions or regulated activities;
- Advocating for the effective implementation of EITI requirements;
- Taking measures to fight against cash transactions beyond the limit of CFAF 5,000,000 (i.e. €7,622.4) set by the AML/CFT law;
- Capacity building on AML/CFT for the CFE, RCCM and other structures involved in the creation of legal persons;
- Establishing a platform for the exchange of data and information between the FIU, CFE, RCCM and law enforcement authorities on the creation and functioning of legal persons.

358. The implementation of these mitigating measures is supposed to prevent the misuse of legal persons in Togo.

7.2.4. Timely access to adequate, accurate and up-to-date information on legal persons

359. The competent authorities have the means that enable them to request information on legal persons established in the country. Thus, the law enforcement authorities can contact the CFE through requisition and/or the notaries involved in the creation of the legal person in order to communicate basic information to them. The lack of access to information on the beneficial owners of legal persons by the competent authorities is linked to the fact that the information in the RCCM is not comprehensive. And this deficiency is not supplemented by managers' keeping of beneficial ownership registers of legal entities. Nevertheless, thanks to its interconnection with the RCCM and CFE, the Togolese Revenue Office has direct real-time access to information on legal persons held by these two administrations. The FIU also uses its prerogatives to request for and obtain all the information it needs. In this regard, it issued numerous requests for information to the CFE and RCCM

for the processing of its case files.

Table 7.2: Statistics on FIU Requests Issued to the CFE, RCCM and CCIT

Year	RCCM	CFE	CCIT
2017	3	41	4
2018	0	19	1
2019	0	17	0
Total	3	101	26

Source: FIU

360. Supervisory authorities also have access to all information on legal persons. The accessible information relates to the name, business purpose, managers and legal beneficiaries as well as the life span of the legal person, namely all the changes that have occurred since its creation through updates.

Table 7.3: Modified Entries in the RCCM

Year	RCCM
2018	414
2019	516
2020	289
Total	1219

Source: ML/TF risk assessment report associated with legal persons

361. Indeed, Togo is updating the basic information contained in the RCCM, excluding beneficial ownership information. However, the updating of this RCCM database by its administration depends on the communication of the information to be modified or added by the corporate officers of the companies. They are communicated after the holding of statutory meetings of decision-making bodies such as general assembly and boards of directors within the required one-month period. This implies that as long as the relevant reports are not communicated to the RCCM by the persons concerned, no amendment and additional information can be introduced. Furthermore, the RCCM administration at the Lomé Commercial Court has assigned seven (7) staff members to the updating of information, but is yet to designate the monitoring authorities to ensure the documents relating to the information to be amended and added are conveyed without delay. Besides, there is no control mechanism for the RCCM administration. However, the Togolese authorities claim that the accuracy of the information is verified through controls and verifications conducted by the RCCM administration at the time it is provided by the managers of legal persons.

362. The information available in a timely manner to the competent authorities is the one that does not concern personal data likely to be consulted online. Personal information can only be obtained by the competent authorities upon request, with responses provided on average within forty-eight (48) hours. Nevertheless, it is possible for the competent authorities to access it in certain cases upon presentation of a copy of the requisition to the RCCM administration while awaiting an official response.

7.2.5. Timely access to adequate, accurate and up-to-date basic information on legal arrangements and their beneficial owners

363. The legal texts in force in Togo do not provide for the creation of legal arrangements such as a trust and the country has not ratified the Hague Convention relating thereto. However, this does not

exclude the existence of trusts in Togo. Moreover, members of independent legal professions can act as a trust. In these circumstances, the AML/CFT law requires them, as trustees, to keep all information on their customers, particularly information on the beneficiaries of foreign trusts and parties to those trusts. FIs also acting in a fiduciary capacity are also required to obtain information about their customers when entering into a business relationship. However, those met during the on-site visit stated that they had no trusts in their portfolios and for one of them, its manual of procedures prohibits this type of business relationship. The DNFBPs also pointed out that they have no trust customers.

364. The assessment team noted that monitoring access to up-to-date information on trusts is still grappling with the challenge of recognizing their existence in the country. It also hampers requests from competent authorities for the provision of information on trusts.

7.2.6. Effective, proportionate and dissuasive nature of sanctions

365. The Togolese authorities met indicated that sanctions were meted out on all persons violating the transparency obligations of legal persons for the following reasons: failure to comply with RCCM formalities, failure to update basic and beneficial ownership information, failure to maintain the share register at the company's registered office. However, the lack of statistical data and relevant documents prevented the assessment team from assessing the effectiveness of the said sanctions. Besides, except for FIs and DNFBPs, there are no penal or administrative provisions that sanction such violations with regard to other types of legal persons. However, it is obvious that the sanction cannot exist without a legal text. The assessment team noted that FIs and DNFBPs have also never been subject to sanctions relating to the requirements of keeping basic and beneficial ownership information.

General Conclusion on IO.5

366. The basic information on legal persons contained in the RCCM and on the CFE website is accessible to the public without delay, including supervisory authorities, investigative authorities and FIU, but there is no monitoring mechanism to ensure the accuracy of the information and its timely communication by the companies. The RCCM of Togo only contains certain information on the beneficial owners of legal persons, as there is no existing mechanism for the collection of the said information. Togo has also assessed the ML/TF risks associated with the various types of business companies. However the competent authorities have not yet taken ownership of the findings of this assessment, together with the action plan for the mitigation of risks yet to be implemented. As a result, the competent authorities have a poor understanding of the identified risks. Togo applies fit-and-proper tests for associates or shareholders during the creation of companies by consulting criminal records for natural persons. There is no measure aimed at preventing the misuse of bearer shares in private companies, as there is no register for the conversion of bearer shares, but the banks identify the partners and/or shareholders. Besides, no sanctions have been meted out for submission of inaccurate basic and beneficial ownership information, or failure to submit such updated information without delay.

367. Togo does not recognize trusts. However their activities are not prohibited. There is no defined mechanism to collect, centralize and make accessible basic and beneficial ownership information of trusts without delay.

368. Togo is rated as having a low level of effectiveness on IO.5.

Chapter 8. INTERNATIONAL COOPERATION

8.1.Key Findings and Recommended Actions

Key Findings

- a. Togo has an adequate legal and institutional framework through which it can provide the widest range of international cooperation.
- b. The lack of mechanisms for managing statistical data related to international cooperation and monitoring the execution of requests received, compromises the timely execution of requests for mutual assistance and therefore the effectiveness of the international cooperation provided by Togo.
- c. The human, material and financial resources allocated to the Central Authority and competent authorities for the execution of mutual assistance requests are inadequate, and compromise Togo's capacity to provide constructive international cooperation without delay.
- d. The number of requests issued by Togo within the framework of international cooperation has been low for predicate offences and nil for ML/TF acts in the last three years. This is attributable to the fact that the law enforcement authorities do not make sufficient use of international cooperation to investigate ML/TF crimes and associated predicate offences, despite the country's risk profile which exposes it to transnational organized crime.
- e. Nevertheless, Togo provides other forms of constructive international cooperation through the FIU with its counterparts and through the investigative authorities through Interpol and other regional police cooperation channels.
- f. With regard to supervisory authorities, despite the existence of a cooperation framework with their counterparts, Togo has not provided any information to assess the effective and efficient implementation of such cooperation.

Recommended Actions

The Togolese authorities should:

- a. develop a system designed to manage statistical data on international cooperation and monitor mutual assistance requests, including the prioritization of their execution, taking into account factors related to the nature of the offence in question and the persons involved;
- b. allocate adequate material and financial resources to the Central Authority and actors in

the criminal justice chain that would enable them provide constructive and timely international cooperation in AML/CFT and the fight against transnational organized crime;

- c. sensitize and train actors in the criminal justice chain, including customs and tax officials, to make optimal use of international cooperation in the investigation of ML/TF crimes and associated predicate offences of a transnational nature;
- d. make greater use of international cooperation in ML/TF investigations and transnational crime in general, in order to track, locate and confiscate the proceeds of crime consistent with the country's risk profile;
- e. Sensitize the supervisory and monitoring authorities on the need to implement the existing international cooperation framework with their foreign counterparts within the framework of their mandate and make the relevant statistics available.

369. The relevant Immediate Outcome examined and assessed in this chapter is IO.2. The relevant recommendations for the assessment of effectiveness on this chapter are R.36-40 and elements of R.9, 15, 24, 25 and 32.

8.2.Immediate Outcome 2 (International Cooperation)

370. Beyond the transnational nature of ML/TF, international cooperation is crucial in Togo's context given its position as a regional hub for business activities (airports and ports as well as serving neighboring continental countries). With a predominantly outward-looking economy, Togo's financial system is exposed to significant cross-border ML risks and, to a lesser extent, TF risks, with the establishment of jihadist groups in the Sahel. The Togolese authorities observed in their risk assessment that externally, cybercrime, human trafficking, migrants' smuggling, drug trafficking, tax evasion, customs fraud, trafficking in stolen goods, corruption, environmental crimes (trafficking of wildlife and fauna species) also represent threats.

8.2.1. *Providing constructive mutual legal assistance and extradition without delay*

- **Mutual Legal Assistance**

371. Mutual assistance and extradition requests are received in Togo by the Central Authority designated in 2017 to be in charge of mutual criminal assistance, namely the Directorate of Criminal Affairs and Pardons (DAPG) of the Ministry of Justice. It is therefore the DAPG that files such requests to the judicial authorities responsible for executing them. It also ensures follow-up. Requests for mutual legal assistance are conducted, in complete confidentiality, by means of investigations and other acts usually conducted by the LEA within the framework of legal proceedings. The persons targeted by the request are not notified unless this requires hearings and interrogations. After execution, the responses are sent to the DAPG which carries out the necessary formalities so that the responses are routed to the requesting countries. The normal channel for receiving requests and conveying responses is the diplomatic channel, but in order to facilitate cooperation and reduce delays, the DAPG exchanges directly with its foreign counterparts through advanced or informal copies. However, the processing time for mutual legal assistance requests is relatively long, as statistics reveal that mutual legal assistance requests submitted as far back as 2019 were still being processed by the competent authorities as at the time of the on-site visit in February 2021 (see Table 8.1). And although the competent authorities emphasize that the practice of issuing partial responses is customary in Togo to

provide a timely feedback to the requesting State while investigations are going on, only one case dating as far back as 2019 has been provided to justify the implementation of this approach (see case 2 box 8.1). The assessment team observes that the average time needed to process mutual legal assistance requests, based on the statistics provided by the country, is not enough to conclude that Togo provides mutual legal assistance without delay.

372. Togo has not demonstrated swift execution of the requests it receives, which highlights the fact that the country does not provide constructive mutual legal assistance with foreign countries. Indeed, the statistics for the last three years reveal a single case of assistance provided in 2017 by Togo at the request of France relating to a TF procedure involving an NPO. This request was executed by Togo within a reasonable period of two (2) months in accordance with the standards and to the satisfaction of the requesting country. The State Prosecutor's Office in Lomé, which had received the international letter of request, contacted the Dean of the investigating judges who called on the investigative authorities and FIU to obtain information on the activities of the NPO registered in Togo. .

Box 8.1: Examples of the use of International Cooperation for Investigations into Transnational Crime in Togo

Case 1: In 2013, following a seizure of cannabis in the United Kingdom in diplomatic parcels from the United States Embassy in Togo, an investigation was opened leading to the identification of five (5) traffickers, the arrest of three (3) of them and confiscation of some of their assets linked to criminal activity, including cars and houses. At the end, an international commission of enquiry was executed at the request of the British justice system with on-site assistance provided by investigators from the United Kingdom.

Case 2: In 2019, following an international commission of enquiry issued by the Venezuelan judiciary, an investigation was opened and still ongoing on certain stakeholders in the international cocaine trafficking between this country and some countries in the West African sub-region including , Togo and Côte d'Ivoire, where arrests were effected in connection with this case. The information already gathered revealed that only one of the identified suspects passed through Togo in 2017 at the airport bound for Casablanca in Morocco. These strings of information already gathered were filed to the requesting country as a partial response.

373. The low rate of execution of mutual legal assistance requests is attributable to the fact that international cooperation has not been defined in Togo's policy and strategy documents as being a priority with regard to the country's risk profile. This is coupled with the inadequate staffing of LEAs, lack of guidance/procedures/mechanisms for the swift execution of requests, failure to prioritize the processing of requests, as well as the low level of awareness and training of LEAs in the processing of formal requests. Indeed, few magistrates have already received training in international judicial cooperation. Besides, the DAPG, which is responsible for monitoring the execution of mutual assistance requests, lacks human, material and financial resources. At the time of the on-site visit, the DAPG had only one (1) Magistrate in the person of the Director and three (3) assistants.

- **Extradition**

374. Togo executes extradition requests based on a law of 10th March 1927, which determines the procedure and effects of the extradition of foreigners since there is no relevant treaty. However, Togo did not receive any between 2017 and 2020. Nevertheless, Togo proceeded, from 2018 to 2020, to forty-five (45) police-to-police handovers of offenders at the request of countries in the sub-region in the fight against organized crime. This simplified mechanism is provided for by the ECOWAS Criminal Police Cooperation Agreement of 2003, leading to the surrender of one ECOWAS national

declared wanted directly to the police of the requesting country with an opinion of the judicial authorities of the requested country. Le délai de remise de police à police, conformément à l'accord de la CEDEAO, se fait dans un délai de garde à vue qui est généralement de 48h. Ce même délai est requis pour recevoir les avis des autorités judiciaires du pays, au besoin.

Box 8.2: Example of Police-to-Police Surrender

On 20th November 2020, the BCN/Interpol Cotonou lodged a complaint with its Togolese counterpart against a fugitive Togolese national and located in Lomé, declared wanted for burglary and theft of high-value jewelry in Porto Novo.

The investigation opened by the Criminal Investigations Department resulted in the location and arrest of the accused in Tsévié, south of Lomé, on 25th November 2020. The individual pleaded guilty of burglary and organized gang theft and disclosed the identity of their receiver in Cotonou. In line with the ECOWAS Criminal Police Agreement of 2003, he was handed over to the Benin Police.

375. In the light of the foregoing, Togo obviously has a low rate of execution of mutual legal assistance due to the low priority given to this exercise, limited human, material and financial resources as well as the LEAs' lack of relevant expertise. The average processing time for mutual assistance requests seems protracted. Over the past three years, Togo has not received or executed any extradition request. The assessment team therefore concludes that Togo has not demonstrated that it provides any constructive mutual legal and extradition assistance without delay.

8.2.2. Seeking timely legal assistance to prosecute ML, related predicate offences and TF cases domestically with transnational elements

- **Mutual Legal Assistance**

376. Togo has filed very few request for mutual legal assistance from foreign countries and extradition. Indeed, during the reference period from 2017 to 2020, Togo sent thirty-eight (38) requests for mutual assistance to foreign countries in connection with predicate offences and none on ML/TF, including eleven (11) have been executed by the requested countries. The statistics in Table 8.1 show little use of international cooperation by Togolese judicial authorities to investigate, prosecute and judge ML/TF cases or even related to other forms of transnational crime. Given the Togo's context, a transit country for many predicate ML/TF offences (such as wildlife and narcotics, human trafficking), this inadequate use of international cooperation is not commensurate with its risk profile.

- **Extradition**

377. Togo sent an extradition request to Bulgaria, with no response due to the lack of details on the identity of the suspect who was the subject of the request. This further underscores the need for training of judicial authorities in this area. Indeed, the LEAs, during the investigations they conduct, are supposed to use international cooperation to elucidate cases of a transnational nature, by soliciting their foreign counterparts through the DAPG. However, they are not trained to conduct complex investigations relating to offences of a transnational nature, and have no practical guide for requesting international cooperation. These deficiencies and those identified for the Central Authority, namely inadequate staffing (1 magistrate and 3 assistants) and procedures/manuals as well as inadequate financial and material resources, compromise the effectiveness of international cooperation in Togo.

378. Furthermore, from 2018 to 2020, Togo requested and obtained a police to police surrender of seven (7) fugitive offenders within the framework of sub-regional cooperation in the fight against

transnational organized crime, based on the 2003 ECOWAS Criminal Police Cooperation Agreement (see 8.2.1 analysis).

Table 8.1: Statistics on Mutual Legal Assistance Requests (2017-2020)

NAME	REGIONAL	INTERNATIONAL	TOTAL
Requests issued	17	21	38
Responses received out of the 38	01	08	09
Requests received out of the 62	04	58	62
Responses sent	00	11	11

8.2.3. *Requests for and provision of other forms of international cooperation for AML/CFT purposes*

379. Togo's legal framework as well as bilateral and multilateral agreements with foreign counterparts enable the country to engage in formal and informal international cooperation. Togo is a signatory to the Criminal Police Cooperation Agreement between the ECOWAS countries and this cooperation is ensured by the national office of INTERPOL and other sub-regional organizations which bring together Criminal Investigation Officers. Togo is also a member of the WCO (World Customs Organization), West African Network of Central Authorities and Prosecutors (WACAP), Inter-Agency Asset Recovery Network for West Africa (ARINWA), RECEN-UEMOA, and FIU Forum of GIABA Member States. This provides an opportunity for Togo to ensure effective international cooperation in AML/CFT in the areas of law enforcement, financial intelligence and customs.

- **Law Enforcement Authorities**

380. The law enforcement authorities request for information from their foreign counterparts, in particular through the ICPO/Interpol through the National Central Bureau in Lomé. It was within this framework that the BCN/Interpol, from 2018 to 2020, issued to its foreign counterparts mainly at the regional level, and on behalf of the Togolese LEAs, six hundred and forty-nine (649) requests for operational information which were all related to predicate offences.

381. Apart from the formal cooperation frameworks, LEAs also use informal cooperation frameworks such as WACAP, ARINWA, RACPAO and RINLCAO. The requesting authorities communicate with the competent national authorities through the focal point of these cooperation platforms in the areas falling within their respective jurisdictions. However, there are no relevant statistics in Togo. The investigative authorities also participate in numerous joint operations at regional and international levels (for instance, the Operation KOUNDALGOU between Togo, Ghana and Burkina Faso, which led to the arrest in Togo of some forty suspects linked to terrorist acts in Burkina Faso). The West African Police Chiefs Committee (WAPCCO) is also a framework for cooperation and exchange of information directly among law enforcement authorities to request for information, arrests of suspects under international search warrants and requests for police surrender of persons declared wanted residing in other countries. In the context of the fight against terrorism and its financing, the Accra initiative is a very useful tool for the exchange of operational information among agencies in the various Member States. The same applies to the exchange of information within the framework of the *Conseil de l'Entente* (Benin, Burkina Faso, Cote d'Ivoire, Togo and Ghana) among the various security agencies, which is very active in the current context of combating terrorism and its financing.

Similarly, Togo did not provide any statistics to demonstrate their use during such exchange opportunities.

382. Furthermore, the Togolese competent authorities use the same channels as those through which they request their counterparts to provide them with various forms of international cooperation in the context of AML/CFT. In this regard, the LEA, including the police, national gendarmerie and Anti-corruption High Authority, provided information to their foreign counterparts on request and spontaneously. Generally, the response time is relatively short and stands at 72 hours on average for requests going through the BCN/Interpol channel. In this context, through the BCN/Interpol channel, the investigative authorities received from their counterparts, mainly in the sub-region, two thousand six hundred and forty-one (2,641) information requests from 2018 to 2020, including four (4) cases on ML/TF investigations which were responded to without delay.

- **FIU**

383. Since Togo-FIU is a member of the Egmont Group of FIUs, its cooperation with counterpart FIUs is largely done through the Group's secure platform (The Egmont Secure Web). The exchange of information also takes place at bilateral level between the FIU and other counterparts based on memoranda of understanding. Through this mechanism, the Togo-FIU cooperates effectively with FIUs that are not yet members of the Egmont Group. Its membership of RECEN-UEMOA and the Forum of FIUs of GIABA Member States also facilitates the exchange framework with its counterparts.

384. The Togo-FIU has issued numerous information requests to its foreign counterparts and uses the information obtained to strengthen the operational analysis of the financial intelligence received from reporting entities. As reflected in Table 8.2, between 2011 and 2020, the FIU issued 166 information requests to foreign FIUs. The majority of these requests concerned ML cases, as against a small number on TF. It received responses for an annual average rate of 56%. It also received twenty-two (22) spontaneous information sharing from these counterparts that impacted the processing of a STR. This information enriches the casefiles being processed or even leads to new ones. The information requested and obtained was essentially related to the identification of natural and legal persons involved in STRs and the traceability of suspicious financial flows. On the other hand, the statistics reveal a significant decline in requests issued and received by Togo since 2018. Togo could not explain this observation. The assessment team attributes the decline in requests issued sent by the FIU since 2018, to the low number STRs processed (see IO.6 analysis).

Table 8.2: Information Requests Issued from 2011 to June 2020

Year	Requests Issued		
	Requests	Responses	Entry Rate
2011	10	8	80%
2012	12	3	25%
2013	7	4	57%
2014	15	9	60%
2015	30	10	33%
2016	34	20	59%
2017	31	17	55%
2018	22	8	36%

2019	5	5	100%
2020	4	2	50%
Total	170	86	51%

385. The Togo-FIU also responds to requests from foreign FIUs. The requests received by the FIU relate to ML and TF cases. In processing these requests received, the FIU consults its databases and all other available information. It also requests information from all reporting entities and any competent authority in order to respond to its foreign counterparts. It was against this background that it provided its counterparts with the requested information by responding to forty-eight (48) requests out of the fifty-five (55) received from 2018 to 2020. The average response time is one week. The FIU has also provided information to other FIUs spontaneously on eight occasions whenever it deemed that said information could be useful, with a view to promoting proactive international cooperation. For instance, where the information produced cannot be used effectively for the conduct of criminal proceedings in Togo and this information could be better used in a foreign country, it is filed to the FIU of the country that can use it the better it. In filing such information, the FIU gives its consent for it to be used within the framework of investigations and legal proceedings. The FIU also provided information on three occasions to non-counterpart foreign competent authorities. This practice has been developing for several years and demonstrates the FIU's readiness to promote effective international cooperation.

Table 8.3: Information Requests received from 2011 to June 2020

Year	REQUESTS RECEIVED		
	Requests	Responses	Execution rate
2011	9	7	78%
2012	3	3	100%
2013	3	3	100%
2014	15	11	73%
2015	12	9	75%
2016	21	17	81%
2017	20	19	95%
2018	8	8	100%
2019	22	20	91%
2020	25	20	80%
Total	138	117	85%

- **Customs and Tax Authorities**

386. The Customs and Excise Commission uses the WCO channel for information requests in the context of combating customs fraud and other smuggling activities, as well as bilateral agreements. The customs office also participates in joint operations. The tax office also uses the channels of the Initiative for Transparency and Exchange of Information for tax purposes of the OECD as well as bilateral tax agreements to request for information in the context of combating fraud, tax evasion and for tax collection. However, they do not request for information from their foreign counterparts to combat customs fraud and other smuggling activities and tax evasion, or monitor the cross-border

physical transportation of cash or BNIs, which nevertheless constitute significant threats to the ML and/or TF vulnerabilities as identified by the NRA. The competent authorities have also not demonstrated that they have been approached by their foreign counterparts. This attests to a low level of use of international cooperation to combat smuggling, tax fraud and environmental crimes.

- **Supervisory Authorities**

387. The BCEAO/Banking Commission has signed agreements with some Central Banks within the framework of its supervisory activities. It is also a member of the Franc Zone's Anti-money Laundering Liaison Committee. Similarly, the CREPMF has signed agreements with other capital market supervisory authorities. It should be noted that there is no information on the cooperation provided by CIMA. On the other hand, none of these supervisory authorities has provided any statistical data or information demonstrating the effectiveness of cooperation.

388. Furthermore, the supervisory authorities did not provide any information attesting to the implementation of the cooperation frameworks with their foreign counterparts described in R.40, in terms of requests for relevant information received from them, to measure the country's level of effectiveness in this area in terms of the timeliness and usefulness of the information provided.

8.2.4. International Exchange of Basic and Beneficial Ownership Information of Legal Persons and Arrangements

389. The RCCM is required by the Commercial Court Registry to receive basic information on legal persons (Art. 16 of the AUSGIE and 34, 35, 46 of the AUDCG). Some information is also available at the CFE. This information relates to the company's name, legal form, address, registered office, capital, list of corporate officers and members of the Board of Directors, duration of the company among others, and is accessible to the competent authorities who can exchange same with their counterparts. However, only the FIU had to provide its counterparts with basic information on legal persons. However, it should be noted that this information is not always up-to-date and accurate (cf. IO.5 analysis).

390. On the other hand, the RCCM does not include adequate beneficial ownership information. There is no other mechanism outlining a collection process to ensure the availability of beneficial ownership information of legal persons and be in a position to share it with requesting countries within the framework of international cooperation. However, FIs and DNFBPs are required to collect beneficial ownership information when implementing their customer due diligence obligations before entering into business relations (Art.18 of AML/CFT Law n°2018 -004f) and provide such information to the competent authorities for the purposes of cooperation with their foreign counterparts. It can also be provided to the competent authorities for onward transmission to their counterparts by the CFE, as well as the Tax Administration. However, for FIs, DNFBPs and competent administrations, BO information is not always comprehensive, current and accurate.

391. Ultimately, Togo has a system for collecting and maintaining basic information which it sometimes exchanges with competent foreign authorities, through the FIU. On the other hand, since the country has no effective system for identifying and collecting beneficial ownership information of legal persons, it has not been able to offer any constructive cooperation in this area.

General Conclusions on IO.2

392. Togo has the opportunity to provide third countries with constructive and timely cooperation, through the implementation of relevant international legal instruments and multilateral and bilateral cooperation agreements. This cooperation opportunity involves the broadest mutual legal assistance and other forms of cooperation among FIUs and law enforcement authorities. However, the opportunity for Togo to provide mutual legal assistance, extradition and other forms of cooperation effectively is compromised by many challenges, including: inadequate human resources, material and financial resources of the Central Authority as well as the LEAs in mutual assistance, lack of procedures and mechanisms for managing and monitoring cooperation requests, LEAs' ignorance of the usefulness of such international cooperation in AML/CFT as well as their lack of training and the supervisory authorities' failure to use other forms of cooperation. This explains why the number of requests for international assistance issued, particularly those issued by Togo to deal with ML/TF cases and associated predicate offences is so low, and statistics in the other areas virtually non-existent.

393. **Togo is rated as having a low level of effectiveness on IO.2.**

Annex A. TECHNICAL COMPLIANCE

This section provides a detailed analysis of the level of compliance with the 40 FATF Recommendations in numerical order. It does not contain descriptive texts on the situation of the country or the risks, and is limited to the technical criteria defined for each recommendation. It should be read in conjunction with the Mutual Evaluation Report.

Where FATF requirements and national laws or regulations remain the same, the report refers to the analysis conducted as part of the previous mutual evaluation in 2010. This report is available at the following address: www.giaba.org.

Recommendation 1 - Assess risks and apply a risk -based approach

This is a new Recommendation that was not assessed in the 2010 Togo MER.

Country Obligations and Decisions

Criterion 1.1 - in December 2019, Togo conducted its first National ML/TF risk assessment, as required by its law (Art. 10 al.1 n°2018-004 of May 04, 2018 of AML/CFT Law). This process involved several national AML/CFT/P F stakeholders, both from the public and private sectors. The NRA has also been supplemented by specific assessments of the ML/TF risks associated with NPOs and legal persons. For the purposes of the NRA exercise, the Togolese authorities used the World Bank tool to assess the levels of ML/TF risks associated with each sector of activity and to aggregate them at national level, on the based on a combination of identified threats and vulnerabilities. Although the data collected within the framework of this assessment were entirely based on the perceptions and estimates of the stakeholders, due to lack of statistics and precise information on AML/CFT (NRA report, p. 17), it nevertheless provided a fundamental basis for the implementation of the risk-based approach. However, ML/TF risks specifically related to virtual asset service providers (VASPs) have not been identified or assessed, nor have risks related to maritime piracy despite the persistent threat in the Gulf of Guinea³³. The national ML/TF risk assessment process in Togo proved to be generally consistent and inclusive, in spite of the outstanding minor gaps on the comprehensiveness of the report, and consequently on the comprehensive understanding of all the ML/TF risks in the country.

Criterion 1.2 - The National Coordinating Committee (CONAC) is the authority responsible for coordinating the national response to ML/TF risks in Togo (Art. 1 of Decree n°2018-128/PR of 03 August 2018). Its role is to take appropriate measures to identify, assess, understand and mitigate ML/TF risks (Art. 2 of Decree no. 2018-128/PR of August 3, 2018). However, the members of CONAC are yet to be appointed, which hampers its operationalization and consequently, AML/CFT risk assessment coordination activities in Togo.

Criterion 1.3 - CONAC, by virtue of its powers, is supposed to coordinate the updating of the NRA (Art.

³³ According to MICA CENTER's 2021 annual report on the security of maritime areas, of the 2051 incidents recorded worldwide between 2016 and 2021, 620 were in the Gulf of Guinea, i.e. approximately 31% of all incidents.

2 al. 1 of Decree no. 2018-128/PR, Art. 10 al. 1 of AML/CFT Law No. 2018-004). However, no text or even the national AML/CFT strategy document specifies the timeline for this update or its regularity. The NRA conducted by Togo being very recent, no update has yet been made.

Criterion 1.4 - There is no formal mechanism for sharing the NRA findings with AML/CFT stakeholders in Togo (Law enforcement authorities, supervisory authorities, self-regulatory bodies, FIs and DNFBPs). Indeed, although CONAC is responsible for monitoring the implementation of the NRA findings, the Decree establishing it does not specify any dissemination mechanism with national stakeholders and actors. However, the FIU carried out an extensive dissemination of the NRA report and its action plan to all the stakeholders.

Risk Mitigation Measures

Criterion 1.5 - CONAC is responsible for taking appropriate measures to mitigate the ML/TF risks identified in Togo (Art. 10 par. 1 of AML/TF law n°2018-004, Art. 2 1 of Decree No. 2018-128/PR). However, there is no requirement to take the risk-based approach into account in the planning of measures and resource allocation. Besides, the national policy and strategy document comprising measures to mitigate the identified risks is yet to be formally adopted by the State authorities and make it legally binding. Furthermore, the NRA action plan does not prioritize sectors identified as of high ML/TF risk Togo (such as real estate, banks and foreign exchange dealers).

Criterion 1.6 a and b - Togo has not opted for any exemption from the implementation of the FATF Recommendations for FIs or DNFBPs.

Criterion 1.7

Criterion 1.7 a - FIs and DNFBPs must have policies, procedures, controls in place to effectively mitigate and manage ML/TF risks identified within the UEMOA zone, domestically and within them (Art. 11 paragraph 3 of AML/CFT Law No. 2018-004).

Criterion 1.7 b - No legal provision requires FIs or DNFBPs to incorporate the risks identified in the NRA into their internal risk assessments.

Criterion 1.8 - FIs and DNFBPs may take simplified measures to implement certain FATF Recommendations where the identified ML/TF risks are low (Art. 18, 46 to 49 of AML/CFT Law No. 2018- 004). On the other hand, there is no binding provision aimed at ensuring the consistency of the measures taken by FIs and DNFBPs with the conclusions of the NRA.

Criterion 1.9 - Supervisory and self-regulatory authorities are required to ensure that FIs and DNFBPs implement all their AML/CFT obligations, and in particular, those relating to Recommendation 1 of the FATF (Art.86 al. 1 of AML/CFT Law n°2018-004). Indeed, FIs and DNFBPs are required to submit to these authorities their internal ML/TF risk assessments, updated and documented, as well as the policies, procedures and controls they have developed to mitigate and effectively manage ML/TF risks (Art. 11 of AML/TF law no. 2018-004). They must also, at all times, be in a position to substantiate to the supervisory authorities the adequacy of the due diligence measures they have implemented in relation to the ML/TF risks associated with their business relationships (Art. .19 paragraph 3 of AML/CFT Law No. 2018-004). Similarly, the supervisory authorities of FIs may, where appropriate, in their respective areas of jurisdiction, specify the content and methods of implementing the ML/TF prevention programs (Art. 24 al. 2 of the 2018 AML/CFT Law -004). However, the fact that several DNFBPs (real estate agencies and art dealers, for example) do not have a supervisory authority or a formally designated self-regulatory body and that authorized foreign exchange dealers operating in the informal sector and without supervision,

result in the non-implementation of this criterion.

Obligations and decisions of FIs and DNFBPs

Criterion 1.10 a, b, c and d - FIs and DNFBPs are required to identify and assess their money laundering and terrorist financing risks (Art.11 par. 1, 2 and 3 of AML/CFT Law No. 2018-004):

Criterion 1.10 a - by documenting their assessments (Art.11 al. 2 of AML/CFT Law No. 2018-004);

Criterion 1.10 b – by considering risk factors such as customers, countries or geographical locations, products, services, transactions or distribution channels before determining their risk levels (Art. .11 al. 1 of AML/CFT Law No. 2018-004) and by establishing risk assessment and management systems as well as measures proportionate to their risks, nature and size (Art. 90 paragraphs 1 and 2 of AML/CFT Law No. 2018-004). However, the law does not explicitly provide that all relevant risk factors should be considered before determining the overall risk level;

Criterion 1.10 c- by updating such assessments (Art.11 al. 2 of AML/CFT Law No. 2018-004);

Criterion 1.10 d – by making such assessments available to competent authorities or self-regulatory bodies (Art.11 al. 2 and 3 of AML/CFT Law No. 2018-004). However, the mechanism for making these assessments available is not specified in the texts.

Criterion 1.11 a, b and c [Met]

Criterion 1.11 a - FIs and DNFBPs are required to have policies, procedures, control and mitigation strategies in place that are validated by their senior management (Art.11, al. 3 and 5 of AML/CFT Law No. 2018-004). Art.

Criterion 1.11 b - The policies, procedures, risk control and mitigation strategies thus put in place and approved by senior management of FIs and DNFBPs are also subject to monitoring and enhanced measures where necessary (Art.11, al. 5 of AML/CFT Law No. 2018-004).

Criterion 1.11 c - FIs and DNFBPs are required to implement enhanced measures to manage and mitigate the higher risks identified in their assessment (Art.11, 19, 22, 25, 51 to 54, 90, 91 of AML/CFT Law No. 2018-004).

Criterion 1.12 - FIs and DNFBPs are authorized to implement simplified due diligence measures to manage risks under the conditions specified by law, in particular where the ML/TF risks are low (Art. 46 to 49 of the AML/CFT Law n°2018-004). In addition, simplified measures are only authorized where there is no suspicion of ML or TF.

Weighting and conclusion

Togo has taken the necessary measures to identify and assess the ML/TF risks to which it is exposed, in accordance on its AML/CFT law. Although the dissemination of the findings of the NRA report to all stakeholders creates for the environment conducive to the implementation of the risk-based approach by FIs and DNFBPs, this is hampered by the lack of prioritization of high-risk areas and the consequent allocation of resources in the action plan developed. In addition, the NRA does not include any assessment of the risks specific to VASPs and maritime crime in the country's context. Togo's AML/CFT regime has moderate deficiency with regard to the requirements of this recommendation.

Recommendation.

Togo is rated Partially Compliant on Recommendation 1.

Recommendation 2 - National cooperation and coordination

Togo was rated Partially Compliant (PC) on Recommendation 2 (former Rec. 31) during its 2010 mutual evaluation. The deficiencies identified were mainly related to the lack of cooperation mechanism among law enforcement authorities and the inadequate operationalization of the Inter-ministerial Committee. The main novelty introduced by Recommendation 2 concerns the requirement for countries to have national AML/CFT policies that take into account the ML/TF risks identified, and regularly reviewed. It also requires cooperation and coordination among the competent authorities in order to ensure the AML/CFT requirements are compatible with data protection and privacy measures. In its efforts to meet these new requirements, Togo has established a National Committee for the Coordination of AML/CFT activities and an Operational Unit for the facilitation of exchanges of information and data on AML/CFT as means of revamping cooperation.

Criterion 2.1 - The consideration of ML/TF risks in the national AML/TF policy is still very recent in Togo. It stems from an action plan resulting from the national risk assessment validated in December 2019 and from a national policy and strategy document based on the said assessment conclusions drafted in 2021. None of these documents has been formally adopted by Togo's highest political authorities, although some degree of implementation has commenced, particularly for actions that do not require financial resources, such as stakeholder awareness sessions on the findings of the NRA. Due to the recent nature of the national policy and strategy document and the lack of its formal adoption, the assessors cannot conclude that AML/CFT policies are regularly reviewed in Togo.

Criterion 2.2 - CONAC is the authority in charge of coordinating national AML/CFT policies and NRA follow-up activities (Art. 2 of Decree n°2018-128/PR, Art.10 of AML/CFT Law No. 2018-004). It is a multidisciplinary committee comprising about twenty members representing AML/CFT stakeholders and drawn from the public and private sectors (At. 3 of Decree no. 2018-128/PR). However, more than two (02) years after its establishment to replace the Inter-ministerial Committee monitoring AML/CFT activities (CIMSAs), CONAC is yet to be operational, as its members are yet to be appointed and sworn in.

Criterion 2.3 - Law No. 2018-004 provide for cooperation between the FIU, law enforcement authorities, supervisory authorities, self-regulatory bodies and all other competent authorities in AML/CFT matters (Art. 74 and 75). Togo's cooperation and coordination mechanism is based on CONAC, the network of FIU correspondents with the relevant public administration services and the Operational Unit for the facilitation of exchanges of information and AML/CFT data established by the inter-ministerial Decree n°001/MEF/MSPC/GDMJ/MDAC of January 15, 2020 , and whose mission is to strengthen cooperation between FIU and the other structures in charge of investigations into ML/TF and predicate offences (Art. 3 of the Inter-ministerial Decree). However, the lack within CONAC of law enforcement authorities (prosecutors and judges) and the non-existence of supervisory and control authority for certain categories of DNFBPs (real estate sector, dealers in precious metals and coins) , in addition to the lack of operationalization of CONAC and the trade facilitation unit, constitute moderate deficiencies in the effective implementation of national cooperation and coordination in Togo.

Criterion 2.4 - In the field of combating the proliferation of weapons of mass destruction, there is no regulatory framework specifically devoted to national cooperation.

Criterion 2.5 - There is no cooperation and coordination between the competent authorities in charge of implementing AML/CFT requirements and those in charge of data protection and privacy measures private.

Weighting and conclusion

There is a national legal framework for cooperation and coordination in Togo. However, the main implementing agencies, namely CONAC and the Trade Facilitation Unit, are not yet operational. Their

respective compositions do not include all relevant AML/CFT/PF players either. Besides, this coordination framework does not involve policies to combat proliferation. In addition, there is no cooperation or coordination among competent authorities to ensure the AML/CFT requirements are compatible with data protection and privacy measures. Togo's AML/CFT/PF regime has moderate deficiencies with regard to the requirements of this recommendation.

Togo is rated Partially Compliant on Recommendation 2.

Recommendation 3 - Money laundering offence

In the previous MER, Togo was rated Largely Compliant on Recommendation 3 (former Rec.1 and 2). The main deficiency identified related to the difficulty of assessing the evidence and inferring the intentional element of the money laundering offence from objective factual circumstances. With the adoption of the Uniform AML/CFT Law No. 2018-004 of 4th May 2018, Togo is strengthening its legal framework to meet the requirements of the standards.

Criterion 3.1 - Togo has ratified and domesticated the Vienna and Palermo conventions which criminalize ML. Indeed, the legal provision criminalizes the conversion or transfer, acquisition, possession or use by any person of assets derived from a crime or an offence or from participation in a crime or an offence, or for the purpose of concealing or hiding the nature, origin, location, circulation or ownership of the assets (Art.7 of AML/CFT Law No. 2018-004).

Criterion 3.2 - The ML offence covers all serious offences considered as misdemeanors or crimes, including tax evasion (Art. 7 of AML/CFT Law No. 2018-004). In addition, it explicitly covers, and in the same order, the list of categories of offences designated by the FATF (Art. 1.16 of AML/CFT Law No. 2018-004).

Criterion 3.3 a, b and c - Togo has adopted a combination of methods.

Criterion 3.3 a. - It has explicitly determined offences predicate ML, but has also erected in its legal order, all the crimes and misdemeanors which constitute the most serious offences (Art.1.16 of law n°2018-004 of AML/CFT).

Criterion 3.3 b. - Offences considered as crimes are liable to five to fifty years imprisonment (Arts. 66 and 67 of law n°2015-10 on the penal code),

Criterion 3.3 c. - Offences considered as misdemeanors are punishable by a prison sentence of one to five years (Art. 73 and 74 of Law No. 2015-10-10 on the Penal Code).

Criterion 3.4 - The ML offence applies to property and assets of any kind regardless of value where they directly or indirectly represent the proceeds of crime (Art. 1 al.14 and 45 of AML/CFT Law No. 2018-004).

Criterion 3.5 - The Togolese legal system does not explicitly provide that perpetrators should be convicted of a predicate offence to prove that an asset is the proceeds of a criminal activity. It was against this backdrop that Togo prosecuted and convicted acts of ML while the predicate offence had not been prosecuted or adjudicated. Furthermore, Law No. 2007-016 of July 6, 2007 explicitly provided that prior conviction for any predicate offence was not the prerequisite to prosecute and convict for ML. However, Article 164 of Law No. 2018-004 only repeals the contrary previous provisions so that the provisions of the former AML Law stipulating that there is ML, even though the perpetrator of the crimes or offences was neither prosecuted nor convicted, continue to be in force due to the lack of contravention with the new law.

Criterion 3.6 - The ML offence is committed in Togo even if the predicate offences that generated the

assets to be laundered were committed in a third State when they would have constituted an offence in Togo if they had been committed there (Art. 7 al.3 of AML/CFT Law No. 2018-004).

Criterion 3.7 - The Togolese legal system provides for the self-laundering of the proceeds of the predicate offences by the perpetrator of the said offences (Art.7 al.2 of the AML/CFT law n°2018-004).

Criterion 3.8 - Proof of knowledge of the facts and of the intention of the ML offence can be inferred from the objective factual circumstances (Art. 7 al.4 of the AML/CFT Law n°2018-004).

Criterion 3.9 - Natural persons incur three (03) to seven (07) years prison sentences for ML, and a fine equal to three times the value of the property or funds on which the transactions were conducted. BC (Art. 113 of AML/CFT Law n°2018-004). In case of aggravating circumstances, these prison sentences are doubled (Art. 115 of AML/CFT Law No. 2018-004). Optional additional sanctions are also provided for (Art.117 of AML/CFT Law No. 2018-004). These sanctions which fall into the category provided for serious offences in the Togolese legal order, in particular crimes liable to five (05) to fifty (50) years imprisonment (Art. 66 and 67 of law n ° 2015- 10) and offences liable to 01 to 05 years of imprisonment, cannot be suspended (Art. 118 of law n°2018-004 on AML/CFT). Subject to the rights of bona fide parties, the asset which was used or which was intended to commit the offence, as well as the proceeds of the offence may be confiscated in favour of the State (Art. 128 of AML/CFT Law No. 2018-004). These sanctions appear to be proportionate and dissuasive.

Criterion 3.10 - Legal persons also incur sanctions for ML (Art.124 of AML/CFT Law No. 2018-004). Indeed, in addition to fines equivalent to five times those incurred by natural persons, legal persons may be placed under judicial surveillance; excluded from public contracts permanently or temporarily, closed permanently or for 05 years; and the verdict of their conviction disseminated in the media. The confiscation of assets used or intended to be used to commit the offence or the proceeds of the offence may also be ordered. Additional sanctions are also provided for. With regard to legal persons having the status of reporting entity, the supervisory authorities are empowered to mete out administrative sanctions on both of them and the natural persons representing. These sanctions are apparently proportionate and dissuasive.

Criterion 3.11- Participation, association with a view to committing, attempting to commit, aiding or inciting to commit or, advising, facilitating the commission of the money laundering offence is punished in the Togolese legal system (Art. 7, al. 1. d and Art. 114 of the AML/CFT Law n ° 2018-004).

Weighting and conclusion

The criminalization of ML and the related requirements are generally taken into account in the Togolese law. The Togolese AML/CFT/PF legal system has no gaps with regard to the requirements of this Recommendation.

Togo is rated Compliant on Recommendation 3.

Recommendation 4 - Confiscation and precautionary measures

Togo had been rated Partially Compliant (PC) on Recommendation 4 (former Rec.3) in its previous MER. This rating was justified by the lack of measures aimed at preventing or cancelling confiscation actions and texts relating to seizure without prior notification. These deficiencies are clearly mitigated by the current legal system.

Criterion 4.1 a, b, c and d

Criterion 4.1 a.- AML/CFT Law No. 2018-004 provides for the precautionary seizure for the confiscation

of property or funds resulting from an ML offence, including assets of equivalent value (Art. 99, 117 par. 9, 128 and 129).

Criterion 4.1 b - This precautionary measure also covers income and other benefits derived from products, goods that were used or were intended to commit ML offences (arts. 99 and 128 of law n°2018-004). In addition, the Penal Code and the Code of Criminal Procedure complete these provisions by the seizure of weapons, ammunition, explosives, as well as any instrument or dangerous object used or intended to be used with a view to committing the offence for the purposes of their confiscation (Art. 117 of law no. 2015-10 on the Penal Code, arts. 44 and 61 on the code of criminal procedure). Similar provisions are provided for customs offences (Art. 268, al. 2 of law no. 2018-007 on the customs code), forest offences (Art. 102 to 107 of law no. 2008_009 on the forest code), environmental offences (Art. 116, 139 and 142 of law no. 2008-005 on the environment code), drug trafficking (Art. 91 of Law no. 98-008 on drug control).

Criterion 4.1 c - In addition, AML/CFT Law No. 2018-004 allows the seizure for confiscation of assets that are the proceeds of crime, or used, intended or allocated to be used or intended to be used to finance or attempt to finance terrorism, including any movable or immovable property intended or used for the commission of the offence of financing terrorism (Art. 99, 122 al.10 and 129).

Criterion 4.1 d - Seizure with a view to confiscation of assets of equivalent value is also provided for by Law No. 2018-004 (arts. 128 and 129).

Criterion 4.2 a, b, c and d [Mostly Met]

Criterion 4.2 a - As part of flagrante and preliminary investigations, investigating judges and judicial police officers in Togo have the power to conduct research and investigations that allow them to track down, trace and assess property which are the instruments or proceeds of the offence (arts. 17, 44, 61, 64, 65 and 78 of the Code of Criminal Procedure).

Criterion 4.2 b - The investigating judge may prescribe precautionary measures which order in particular, at the expense of the State, the seizure or confiscation of funds and property in connection with the ML or TF offence, subject of the investigation, and all elements likely to identify them, as well as the freezing of sums of money and financial transactions (Art. 99 of AML/CFT Law No. 2018-004).

Criterion 4.2 c - The Togolese legal framework does not empower criminal investigation officers (CID), prosecutors and investigating judges to prevent or cancel actions that compromise the country's capacity to freeze, seize or recover property subject to of a confiscation order. However, the Minister of Finance may order for a renewable period of six (6) months the freezing of all or part of the funds and other assets belonging to individual terrorists, terrorist organizations or persons or entities suspected of financing or supporting terrorist organizations (Art. 2 of Decree no. 2018-123). Such prerogatives are limited to TF, they have nothing to do with ML or predicate offences.

Criterion 4.2 d - In addition, the CID officers can observe violations of criminal law, gather evidence and search for the perpetrators as long as information is not opened if necessary, exercise these powers under the auspices of the investigating judge (Art. 13, 14 and 15 of the Code of Criminal Procedure - CPP). The investigating judge can perform all the acts necessary for the manifestation of the truth (Art. 64 of the CPP). Similarly, the State Prosecutor may require the investigating judge to perform the same acts (Art. 65 CPP).

Criterion 4.3 - Seizures and confiscations are made in compliance with the rights of bona fide third party (101, 107, 128 and 129 of AML/CFT Law No. 2018-004). The accused, the plaintiff or any other person

who claims to have a right to an object placed in the hands of the justice system can claim its restitution from the investigating judge (Art. 79 of the CPP). Any person other than the defendant, the plaintiff or the civilly liable person who claims to have a right to the items placed in the hands of the justice system may also claim restitution from the Court informed of such prosecution (Art. 352 of the CPP).

Criterion 4.4 - Assets seized by the courts and tribunals in Togo are managed by the registries of the said courts (Art. 46, 78 of the CPP). When it comes to ingots, effects or securities whose conservation in kind is not necessary for the manifestation of the truth, the chief clerk of the jurisdiction may deposit them in the public treasury. The same applies to the deposit paid, for the benefit of the accused, in cash or by cheque certified in the hands of the chief clerk or treasury clerk (Art. 123 of the CPP). No other mechanism exists to manage and, where appropriate, dispose of assets other than frozen, seized or confiscated cash and precious metals.

Weighting and conclusion

Togo provides for the seizure with a view to confiscating the instrumentalities and proceeds of crime or their equivalent values in respect of the rights of bona fide third party. However, there are no measures aimed at not compromising the capacity of actors in the criminal justice chain to freeze, seize or recover assets, nor even a mechanism for managing seized and confiscated assets. The Togolese AML/TF/PF system has minor deficiencies with regard to the requirements of this recommendation.

Togo is rated Largely Compliant on Recommendation 4.

Recommendation 5 - Terrorist Financing Offence

In 2010, Togo was rated Partially Compliant with Special Recommendation II, the requirements of which are now reiterated in the evaluation criteria of Recommendation 5. The main factors that justified this rating essentially related to the difficulty of assessing the effectiveness of the system in force, the failure to domesticate the appendix to the Uniform CFT Law into Togo's domestic legal system, the non-criminalization of terrorist acts listed in the Annexes of the International Convention for the Suppression of Financing of Terrorism (Cf. REM of Togo, p.237). To curb these deficiencies and deal with contextual security factors, the country has made several legal, institutional and operational changes, in this case the adoption of Law No. 2018-004 on AML/FT.

Criterion 5.1- The Togolese legal framework criminalizes the TF offence as provided for under Article 2 of the United Nations Convention for the Suppression of TF (Art. 8 of AML Law No. 2018-004 /FT). This includes any act committed by a natural or legal person who, by any means whatsoever, directly or indirectly, has deliberately provided or collected property, funds and other financial resources with the intention of using them or knowing that they will be used, in whole or in part, for the commission of one or more terrorist acts, one or more terrorist acts by a terrorist organization, one or more terrorist acts by an individual terrorist or a group of terrorists. The commission of one or more of these acts also constitutes an offence. Under the terms of article 1 of the aforementioned law, a terrorist act concerns any act constituting an offence within the meaning of one of the international legal instruments listed in the Annex to the Community Directive (namely the international convention on International suppression and its Annexes).

Criterion 5.2 - The TF offence only targets the financing of terrorist acts in Togo. It does not take into account the financing of a terrorist individual or a terrorist organization for any purpose. Nor does it specify that the TF offence must be established even in the lack of a link to one or more specific terrorist acts.

Criterion 5.2 (bis) - TF offences do not cover the financing of travel by persons who travel to a State other

than their State of residence or nationality, for the purpose of committing, organizing or to prepare or participate in acts of terrorism or to provide or receive training in terrorism.

Criterion 5.3 - The TF offence applies to all property and other financial resources of legal or illegal origin, provided or gathered with the intention of having them used or knowing that they will be used in whole or in part for the commission of a terrorist act (Art. 8 al.1, Art. 1 points 14, 30 and 45 of the AML/CFT Law n°2018-004).

Criterion 5.4 a and b

Criterion 5.4 a. - The offence of TF is constituted whether or not the act took place, and whether or not the funds were used to commit or attempt to commit one or more terrorist acts (Art. 8 of Law no. °2018-004 of AML/CFT).

Criterion 5.4 b.- The offence of terrorist financing in Togo consists in the funds and property being linked to one or more specific terrorist acts (art. 8 of AML/CFT Law No. 2018-004).

Criterion 5.5 - The legal system allows that the intentional element and the knowledge of the facts required to establish proof of the TF offence can be deduced from objective factual circumstances (Art. 8 al. 2018-004 of AML/CFT).

Criterion 5.6 - Natural persons guilty of TF are punished with a prison sentence of at least ten years and a fine equal to at least five times the value of the property or funds to which the TF offences relate. TF. The same obtains for attempted TF (Art. 119 of AML/CFT Law No. 2018-004). These sanctions are doubled in the event of aggravating circumstances (Art.120 of AML/CFT Law No. 2018-004). No criminal sanction imposed for a TF offence can be suspended (Art.123 of AML/CFT Law No. 2018-004). Optional additional criminal sanctions are also provided for (Art. 122 of AML/CFT Law No. 2018-004). Funds and other financial resources related to the offence as well as any movable or immovable assets intended or having been used for the commission of the offence may be subject to compulsory confiscation for the benefit of the State (art 122, 129 of the AML/CFT Law No. 2018-004). These sanctions are proportionate and dissuasive.

Criterion 5.7- *Legal* persons guilty of TF are punished with a fine equal to five times that incurred by natural persons, without prejudice to the conviction of the latter as perpetrators or accomplices in the same acts. They may be subject to other additional sanctions. Some of these sanctions are not applicable to FIs that come under a supervisory authority with disciplinary powers. Indeed, the supervisory authority may take the appropriate sanctions in accordance with the legislative and regulatory texts applicable in the matter, when seized by the State Prosecutor of any proceedings brought against an FI (Art 125, 129 of the law AML/TF n°2018-004). The civil liability of legal persons may also be engaged. Waiver of civil action cannot stop or suspend the exercise of public action, subject to legal exceptions (art 2, 6 of the CPP). These sanctions are proportionate and dissuasive.

Criterion 5.8 a, b, c and d

Criterion 5.4 a. Attempting to commit a terrorist financing offence or aiding, inducing or assisting anyone to commit it, or facilitating its commission, constitutes also a terrorist financing offence (Art. 8 al 3 of AML/CFT Law No. 2018-004, Art. 46 of the Penal Code).

Criterion 5.8 b. The terrorist financing offence is committed when a natural or legal person participates as an accomplice (Art. 8 al 4 of the AML/CFT Law n°2018-004, Art. 47 -51 of the penal code).

Criterion 5.8 c. The terrorist financing offence is committed when anyone organizes or incites others to commit acts of terrorist financing (Art. 8 al 4 of the AML/CFT law n°2018-004, Art.52 of the penal code)

Criterion 5.8 d. The terrorist financing offence is committed if several persons act together and in concert. They are each liable to the sanctions for the offence committed. Neither of them can rely on the exceptions, excuses or immunities of the other (Art. 50 of the penal code).

5.9 - The TF offence is designated as predicate ML offence (Art.1 point 16 of AML/CFT Law No. 2018-004).

Criterion 5.10 - The TF offence is applicable to any natural or legal person, and to any organization liable to justice in Togo, regardless of the place where the act was committed (Art.4 of law n°2018 -004 of AML/CFT).

Weighting and conclusion

The criminalization of TF and the related requirements are generally taken into account by the Togolese legal system. On the other hand, the mechanism does not take into account the financing of an individual terrorist, a terrorist organization for any purpose or the financing of travel by foreign terrorist fighters. Moreover, the possibility of establishing the offence of TF even in the lack of a connection with one or more specific terrorist acts is not explicitly guaranteed by law or case law. The Togolese AML/CFT/PF regime has moderate deficiencies with regard to the requirements of this Recommendation

Togo is rated Partially Compliant on Recommendation 5.

Recommendation 6 - Targeted financial sanctions related to terrorism and its financing

In its previous assessment, Togo was rated as non-compliant with Special Recommendation III, the requirements of which are now included in the assessment criteria for Recommendation 6. The factors justifying this non-compliance mainly related to the lack of legal texts to determine the methods of freezing the funds of terrorists, in accordance with Resolution 1267 and 1373 of the United Nation Security Council (SC) and its subsequent resolutions, as well as the lack of an effective system for disseminating freezing measures to reporting entities of the financial and non-financial sectors and of mechanisms that require these liable people to implement the freezing measures (Cf. REM of Togo, pages 237 and 238). It must be said that Togo has strengthened its legal and institutional framework through the adoption of laws and regulations aimed at resolving the deficiencies relating to the implementation of targeted financial sanctions related to terrorism and its financing.

Identification designation

Criterion 6.1 a, b, c, d and e

Criterion 6.1 a. – The Minister of Finance of Togo is the authority responsible for appointing persons or entities to the 1267 and 1988 committees of the UNSC (Art.3 of the Decree 2018-123/PR of August 3, 2018 designating the competent authority and defining the procedure for administrative freezing).

Criterion 6.1 b. - An Advisory Commission on Administrative Freezing Measures (CCGA) has also been set up as part of the mechanism required to identify the targets of designations in accordance with UNSC Resolutions 1267 and 1988 (Inter-ministerial Order No. 02/MEF/MSPC/MJ/MATDCL/MAEIATE/MDAC of June 15, 2020 on the attribution, organization and functioning of the CCGA).

Criterion 6.1 c.-No standard of proof falling under "reasonable grounds" or "reasonable basis" has been defined by the legal provisions, as required, in the context of the designation procedures. The texts do not specify either whether or not the designations are subject to the existence of a legal procedure.

Criterion 6.1 d. – Although the Minister of Finance is responsible for the application of the procedures established by the UN Security Council in terms of designation (Art. 100, paragraph 3 of AML/CFT Law 2018-004), there is no express requirement for the competent authority to follow the procedures and models for listing established by the United Nations. Nor has the country provided the assessors with concrete cases capable of demonstrating that the Togolese authorities follow the registration models adopted by the competent committee (Committee 1267/1989 or Committee 1988).

Criterion 6.1 e. - The CCGA has the obligation to collect relevant information on the names of the persons proposed for appointment (Art. 3 of Inter-ministerial Decree n°02/MEF/MSPC/MJ/MATDCL/MAEIATE/MDAC of June 15, 2020). This information may include, among other things, aliases, different spellings of a name, date and place of birth, nationality, address, identity card or passport number or any other useful information (Art. 3, para. 2). The CCGA may also use any useful source of information to fully identify the proposed persons or entities (Art. 3, para. 3). However, the Togolese system does not provide, in this procedure, a detailed statement on the reasons for the designation. It is also not specified whether its status as a designating state may be made public when it is Togo which proposes names to the UN 1267/1989 Committee.

Criterion 6.2 a, b, c, d and e

Criterion 6.2 a. - It is the Minister of Finance who is empowered to propose the designation of natural persons or entities that meet the specific criteria for designation under UNSCR 1373, whether at the initiative of Togo or on the basis of a duly examined request from another country (Art. 1 of Decree no. 2018-123/PR).

Criterion 6.3 b.- The Consultation and Freezing Commission (CCGA) enshrines the mechanism established by the country to identify the targets of designations in accordance with the criteria established in UNSCR 1373. This Commission is authorized to study the designation requests made by other countries and, where appropriate, give effect to actions taken by them under their freezing mechanisms (Art. 2, order No. 002/MEF/MSPC/MJ/MATDCL/ MAE/MDAC). On the other hand, no procedure has been clearly defined for this purpose.

Criterion 6.2 c.– The Togolese legal framework for the implementation of targeted financial sanctions related to TF does not provide for the possibility to quickly determine that there are reasonable grounds to suspect that the person or entity proposed for designation meets the criteria for designation under UNSCR 1373.

Criterion 6.2 d.- The Togolese system does not describe the criteria of proof falling under "reasonable grounds" or "reasonable basis". It also does not specify whether or not designations are subject to the existence of legal proceedings.

Criterion 6.2 e.- There is no mechanism for collecting and communicating relevant information on identification, as well as specific information to support the order, where Togo requests another country to give effect to actions taken under the freezing mechanisms.

Criterion 6.3 a and b [Partly Met]

Criterion 6.3 a.- The powers to designate persons or entities for freezing measures under UNSCRs 1267,

1988 and 1373 are exclusively vested in the Minister of Finance of Togo, as previously described (Art. 1 of Decree n° 2018- 123/PR). The required procedures are implemented through the CCGA, which is responsible for collecting or requesting relevant information on the persons meeting the designation criteria under the provisions of the aforementioned Inter-ministerial Decree of June 15, 2020.

Criterion 6.3 b.- Togo has no mechanism allowing it to intervene ex parte against a person or entity that has been identified and whose designation, or proposal for designation, is being examined.

Criterion 6.4- Under UNSCRs 1267/1988 and 1373 and under the Community Regulation on the freezing of funds and other financial resources in the context of the fight against TF, the obligation to freeze them immediately and without delay property, funds and other financial resources of designated persons or entities is enshrined in the Togolese legal system, as is the immediate application of any addition to the UN lists (Art.100, al. 1, 2,3, 4 and Art. 101) of the AML/CFT Law 2018-004 and Art. 3 of Decree No. 2018-123/PR). Under the terms of the aforementioned articles, any decision taken by the competent Sanctions Committee, either on Togo's own initiative or at the request of another country, triggers Togo's obligation to freeze without delay. However, the circuit of communication of the decision to the competent authority mitigates the possibility of implementing the freezing order without delay. Indeed, the Minister of Foreign Affairs receives the list and its updates through the permanent diplomatic representation of Togo to the United Nations, which he files to the Minister of Economy and Finance who in turn distributes it to reporting entities for implementation. In practice, the freeze would occur several days after the decision. For UNSCR 1373, the law explicitly requires the competent authority, in this case the Minister of Finance "orders the freezing without delay (Art. 100, para. 3)", presumably after an advisory opinion from the CCGA, which is required to give its views "on all matters relating to the administrative freezing communicated by the Minister of Finance (Art. 2, of the above-mentioned Decree)". In practice, the freeze would occur several days after the decision. For UNSCR 1373, the law explicitly requires the competent authority, in this case the Minister in charge of finance, to notify without delay any freezing order issued (Art. 10 of Decree No. 2018-123/PR) to the persons and bodies defined in article 8 of the Uniform Law freezing order. By mistakenly referring to Article 8 and the total lack of freezing cases in Togo, the Togolese legal system does not provide assessors with the elements necessary to assess its freezing regime without delay under UNSCR 1373. Nevertheless, the Togo FIU has tried to mitigate this deficiency by creating on its website a direct link to the UN Security Council sanctions lists as soon as they are published, in order to make them accessible to AML/CFT reporting entities. The assessment team also notes that FIs belonging to major groups also have IT solutions that integrate the targeted financial sanctions lists, and update them regularly. This enables these reporting entities to screen their databases for possible customers on the UN sanctions lists.

Criterion 6.5 a, b, c, d and f

Criterion 6.5 a- Financial institutions and any other person or entity holding property, funds or other financial resources are required to freeze, without delay and without prior notification, the funds and other assets of designated persons and entities (Art. 100, para. 5 of AML/CFT Law No. 2018-004).

Criterion 6.5 b.- The nature and extent of funds to be frozen includes all funds or other assets owned or controlled by the designated person or entity; funds or other assets jointly owned or controlled, directly or indirectly by the designated person or entity; funds or other assets derived or generated from funds or other assets held or controlled directly or indirectly by the designated person or entity (Art. 100 law 2018-004 and Art. 7 Decree 2018-123/PR). On the other hand, the funds and other assets of persons and entities acting on behalf of designated persons or entities or under their direction are not provided for either by the Uniform Law or by the aforementioned Decree.

Criterion 6.5 c.- In addition, any natural or legal person legally subject to AML/CFT in Togo is strictly prohibited from remitting funds, resources and other services to persons or entities subject to freezing (Art. 15 of Decree 2018-123/PR), as well as any other natural or legal persons living on Togolese territory. However, the texts do not specify that this formal prohibition actually covers the provision of funds directly or indirectly, integrally or jointly, for the benefit of designated persons or entities; entities owned or controlled, directly or indirectly, by the designated persons or entities; and persons and entities acting on behalf of or at the direction of designated persons or entities. In addition, Law No. 2018-004 on AML/CFT actually refers to any natural or legal person living in the country (Art. 100 paragraphs 7 and 8).

Criterion 6.5 d.- The Minister of Finance notifies, without delay, his administrative freezing order to any other person likely to hold funds or other property belonging to the persons and entities targeted by the freezing measure and gazettes it, in a journal of legal notices and on government websites (Art. 10 of Decree no. 2018-123/PR). This regulatory provision, by mistake, refers to Article 8 of the AML/CFT Law 2018-004 relating to the definition of terrorist financing instead of Articles 5 and 6 of the same law which designates the FIs and DNFBPs subject and referred to for the notification of freezing orders. Furthermore, no guidelines have been developed to facilitate FIs and DNFBPs in the proper implementation of administrative freezing orders.

Criterion 6.5 e.- FIs and other reporting entities are required to notify without delay to the FIU the existence of funds belonging to persons or entities that finance terrorism, to terrorist organizations or to persons or entities that are associated (Art.100, al. 6 of the AML/CFT Law 2018-004). They must suspend any transfer order for the benefit of the persons concerned and inform the competent authority without delay (Art. 104 of the AML/CFT Law 2018-004). They are also required to inform the competent authority without delay of the implementation of the freezing orders notified to them (Art. 14 of Decree 2018-123/PR). However, there is no provision obliging these entities to report attempted transactions involving frozen funds.

Criterion 6.5 f.- No legislative or regulatory provision provides for the protection of bona fide third parties (competent authorities, FIs and DNFBPs) implementing their obligations in terms of TFSs related to FT.

Delisting, release and access to funds and other frozen assets

Criterion 6.6 a, b, c, d, e, f and g

Criterion 6.6 a.- The Minister of Finance is required to make public the procedures to be followed to obtain the removal from the sanction lists and the release of funds and other assets of persons and entities that do not or no longer meet the designation criteria (Art. .101 paragraph 2 of AML/CFT Law No. 2018-004). However, the regulatory framework on administrative freezing does not describe procedures for delisting requests. More specifically, under UNSCR 1267, there is no explicit procedure enabling any natural or legal person who no longer meets the designation criteria and whose funds and other financial resources have been frozen, to submit a delisting request to the competent United Nations Sanctions Committee.

Criterion 6.6 b.- The conditions for accessing frozen funds and resources are clearly defined, under UNSCR 1373 (art 12 of Decree 2018-123/PR mentioned above). On the other hand, there is no procedure for delisting a person or entity that does not or no longer meets the designation criteria.

Criterion 6.6 c.- The persons or entities subject to designation under UNSCR 1373 may appeal to the Minister of Finance against the administrative freezing order freezing order (Art. 11 of Decree 2018-123/PR). However, the procedures or mechanisms for having designation decisions reviewed by a court or other independent competent authority are not defined.

Criterion 6.6 d. - The Togolese mechanism does not provide for a procedure for requesting delisting from the United Nations sanctions lists to facilitate the examination by the 1988 Committee, nor for a mechanism for direct referral to the Focal Point established in accordance with UNSCR 1730.

Criterion 6.6 e. - There are also no procedures for informing the public of the possibility of applying to the Office of the UN Ombudsman for de-listing of Al-Qaida sanctions in accordance with UNSCR 1904, 1989 and 2083.

Criterion 6.6 f. - The Minister of Finance is required to ensure the publication of procedures for requesting the delisting of persons who do not meet the designation criteria (article 101.2 and 107 of AML/CFT law 2018-004). On the other hand, no procedure is defined, even less published, to allow persons bearing the same name as a designated person and whose assets and other resources are frozen as a result of this error, to request the unfreezing of said assets and resources.

Criterion 6.6 g. - There is also no procedure or guidelines for communicating to FIs and DNFBPs the decisions to delist from the sanctions lists and allowing them to take the necessary measures to make available the relevant assets and frozen resources.

Criterion 6.7 - The Minister of Finance may authorize access to funds and other property frozen under UNSCR 1373, considered necessary to meet basic needs, for the payment of certain extraordinary charges and service charges or extraordinary expenses in accordance with the procedures of UNSCR 1452 and any subsequent resolution (Art.12 of Decree 2018-123/PR). On the other hand, under Resolution 1267 referred to by the UNSCR, and its subsequent resolutions, no similar procedure has been defined.

Weighting and conclusion

Togo has adopted regulatory texts for the immediate implementation of targeted financial sanctions in connection with terrorism and its financing. However, the communication channel of sanction list to competent authorities, namely, through diplomatic courier, make it quite impossible to implement freezing without delay... Furthermore, there are no defined criteria of proof to justify designations on the sanctions lists. Similarly, the specific procedures for requests for delisting and unfreezing of funds under UNSCR 1267/1999, for ex-parte intervention are not provided for. Also, no procedure has been defined to allow persons bearing the same name as a designated person and whose assets and other resources are frozen as a result of this homonymy, to request the unfreezing of said assets and resources. The Togolese system also does not provide for a procedure to inform the public of the possibility of informing the Office of the UN Ombudsman with a request for de-listing of Al-Qaida sanctions in accordance with UNSCRs 1904, 1989 and 2083. We also note the lack of guidelines for FIs and DNFBPs to ensure that they properly implement administrative freezing orders. Togo's AML/CFT/PF system has moderate deficiencies with regard to the requirements of this recommendation.

Togo is rated Partially Compliant on Recommendation 6.

Recommendation 7 - Targeted Financial Sanctions Related to Proliferation

This is a new Recommendation that was not assessed in the 2010 Togo MER.

Criterion 7.1 - Togo has a legal basis for the immediate implementation of targeted financial sanctions (TFS) related to proliferation financing (Art. 100 al.3 of law n° 2018-004 AML/CFT). However, the

implementation without delay is hampered by the lack of appropriate procedures because Decree No. 2018-123/PR on the implementation regime for TFS does not mention proliferation-related TFS anywhere. Furthermore, the assessment team also notes that FIs belonging to large groups also have IT solutions that integrate and regularly update targeted financial sanctions lists. This enables these reporting entities to screen their databases for possible customers on the targeted financial sanctions lists.

Criterion 7.2 a, b, c, d, e and f

Criterion 7.2 a.- Natural and legal persons in Togo are subject to the obligation to freeze, without delay and without prior notification, the funds and other assets relating to the targeted financial sanctions linked to proliferation (art. 100, al. 5 of Law No. 2018-004 on AML/CFT/FP).

Criterion 7.2 b.- The scope of funds to be frozen is limited (see analysis 6.5 b) .

Criterion 7.2 c.- Any natural or legal person legally subject to the AML/CFT in Togo is formally prohibited from providing funds, resources and other services to persons or entities subject to a freeze (Article 15 of Decree 2018-123/PR), as are all other natural or legal persons living in Togo. The Uniform Law specifies that this formal prohibition covers the provision of funds directly or indirectly (Art. 100, para. 7) are required.

Criterion 7.2 d.- The Minister of Finance, in his capacity as competent authority in matters of administrative freezing, notifies, without delay, the freezing order to the natural or legal persons likely to hold funds or other assets belonging to the persons and entities concerned by measurement. The freezing order is also published in the official gazette, in a journal of legal notices and on government websites for public information (Art. 10 of Decree no. 2018-123/PR). However, this regulatory provision, by mistake, targets Article 8 of the AML/CFT Law 2018-004 relating to the definition of terrorist financing instead of Articles 5 and 6 of the same law which designates FIs and DNFBPs subject and targeted for the notification of freezing orders. Furthermore, there are no guidelines aimed at assisting FIs and DNFBPs in the proper implementation of administrative freezing orders.

Criterion 7.2 e.- FIs and other reporting entities must notify FIU without delay of the freezing e of funds belonging to persons or entities, terrorist organizations or persons or entities associated with them who finance proliferation (Art. 100, paragraph 6 of AML/CFT Law No. 2018-004). All these entities are also required to suspend any transfer order for the benefit of the persons concerned and to inform the competent authority without delay (Art. 104 of AML/CFT Law No. 2018-004). However, there is no provision obliging these entities to report attempted transactions involving frozen funds.

Criterion 7.2 f.- No legislative or regulatory provision provides for the protection of bona fide third parties (competent authorities, FIs and DNFBPs) implementing in good faith their obligations in terms of TFS related to TF.

Criterion 7.3- Administrative and disciplinary sanctions are provided for against FIs and DNFBPs that derogate from their obligations as reporting entities (Art.121 of the AML/CFT Law 2018-004).Art.). The BCEAO and its supervisory bodies with disciplinary powers over FIs may act ex officio under the conditions provided for in the texts in force. There are also penal sanctions for acts of complicity linked to the acts of financing of proliferation of which the reporting entities are guilty (Art. 121). However, the Togolese system has not designated for DNFBP control and supervision authorities with the power to sanction to ensure that they properly implement their obligations, particularly with regard to administrative freezing. Furthermore, the implementation of control relevant measures by FIs is yet to be demonstrated.

Criterion 7.4 a, b, c and d

*Criterion 7.4 a.-*The Togolese system does not provide for a procedure for requesting delisting from the UN sanctions lists by listed persons and entities, to be addressed directly to the Focal Point established in accordance with UNSCR 1730. It does not provide either further informing individuals and entities of their rights to contact the Focal Point directly.

*Criterion 7.4 b.-*No procedure has been defined to allow assets and resources to be unfrozen in the event of a homonymy error, after verification.

Criterion 7.4 c.- There is no procedure for requesting access to frozen funds in accordance with the exemptions provided for under UNSCR 1718/2231.

Criterion 7.4 d.- No procedure is defined for communicating to FIs and DNFBPs the decisions to delist from the sanctions and release lists. Nor are there defined guidelines to enable them to take the necessary steps to make the frozen assets and resources available.

Criterion 7.5 a and b

*Criterion 7.5 a.-*The Togolese legislation provides for the addition to frozen accounts of interest due on these accounts in accordance with Resolutions 1718 or 2231 (Art. 102 of AML/CFT Law No. 2018-004). This requirement is not foreseen for other income or payments due under contracts concluded before the freezing order.

Criterion 7.1 b.- It is permitted to deduct from frozen accounts, funds and resources due, under contracts, agreements or obligations entered into or born prior to the entry into force of the freezing order (Art. 102 of AML/CFT Law No. 2018-004). However, the law is silent on the conditions of this derogation as described by UNSCRs 1737 and 2231. Similarly, there is no procedure to ensure that the competent authority is required to inform the Security Council of its intention to implement the planned relaxation measures, ten working days before the decision is taken.

Weighting and conclusion

The AML/CFT Law 2018-004 outlines the overall framework for the implementation of targeted financial sanctions related to proliferation financing. However, there is no appropriate mechanism in Togo for implementing targeted financial sanctions related to proliferation financing. Indeed, several specific procedures are missing for fulfilling the technical compliance criteria of this Recommendation. There are no control and supervisory authorities designated to ensure the effective implementation of the administrative freezing measures by DNFBPs. No procedure is defined to manage counterpart errors and to request the unfreezing of the assets and resources in question. There is no procedure for requesting access to funds frozen under UNSCR 1718/2231 in accordance with the criteria defined by these resolutions. The conditions for debiting from accounts frozen under contracts, agreements or obligations entered into or arising prior to the entry into force of the freezing order are not specified in accordance with the relevant provisions of UNSCR 1737 and 2231. Togo's AML/CFT/PF system has moderate deficiencies with regard to the requirements of this recommendation.

Togo is rated Partially Compliant on Recommendation 7.

Recommendation 8 - Non-profit Organizations (NPOs)

In 2010, Togo was rated non-compliant on recommendation 8 (formerly SR VIII) due to the deficiencies noted in the supervision and control of NPOs, the lack of an obligation to keep records of financial transactions and the lack of campaigns to raise awareness among players in the sector on the risk of TF.

The 2012 revision of the FATF standards introduces new requirements essentially aimed at implementing a risk-based approach to prevent the misuse of NPOs for TF purposes. In addition, Togo's AML/CFT Law 2018-004 adopted in 2018 contains provisions that strengthen the domestic system in relation to the requirements of the standards.

Adopting a risk-based approach

Criterion 8.1 a, b, c and d

Criterion 8.1 a.- Law No. 40-444 of July 1st, 1901 relating to the contract of association regulates the system of recognition of associations whose objective is not the sharing of profits, as well as their conditions of creation. It is supplemented by Decree No. 92-130/PMRT governing non-governmental organizations, excluding foundations (although considered as NPOs within the meaning of the FATF). On this basis, Togo conducted a specific assessment in February 2021 to identify the subsets of NPOs that would be particularly exposed to TF risks. Although the various sources of information collection are not explicitly indicated in the report resulting from this assessment, it nevertheless emerges that all the relevant structures in terms of the creation and supervision of NPOs, as well as the law enforcement agencies, were actively involved (see page 5 of the NPO sectoral assessment report).

Criterion 8.1 b.- Togo considers the NPO vulnerability to TF risk as medium-high, due to the threats, combined with the vulnerabilities of the sector (weak regulation, control and supervision of NPOs), the ease of forming an association, the confidence instilled in the public by these NPOs, the volume of cash transactions, with ethnic and faith-based weighting, among other things.

Criterion 8.1 c.- Togo has not taken relevant and specific proportionate measures, particularly with regard to faith-based NPOs, to deal with the risks identified due to the very recent nature of the assessment of the sector.

Criterion 8.1 d.- This recent nature of the assessment means that there is not yet a reassessment of new information relating to potential vulnerabilities of NPO to terrorist activities threats.

Ongoing awareness of issues relating to terrorist financing

Criterion 8.2 a, b, c and d

Criterion 8.2 a.- NPOs are required to provide information likely to strengthen public confidence in their management and operation (Art. 42 of AML/CFT law n°2018-004). This information relates in particular to the object and purpose of their activities, the identity of the person or persons who own, control or manage their activities, including managers, members of the board of directors and administrators. They also require the annual publication, in the official gazette or in a journal of legal announcements, of their financial statements.

Criterion 8.2 b.- Within the framework of national coordination, FIU is required to organize awareness and training campaigns for the benefit of NPOs on their AML/CFT obligations (arts. 74 and 75 of law no. °2018-004 of AML/CFT). To this end, it organized seven (07) awareness sessions for NPOs between 2015 and 2018. However, due to the recent nature of the conclusions of the sectoral assessment of NPOs, no awareness-raising sessions focused on identifying the vulnerabilities and threats of the sector to address TF risks were conducted for stakeholders or the community of donors.

Criterion 8.2 c.- It has not been established that the authorities are working with NPOs to help them better respond to the TF risks they are exposed to by category in Togo using best practices.

Criterion 8.2 d.- There have also been no specific awareness sessions aimed at encouraging NPOs to use regular financial channels to carry out their operations.

Sensitization or targeted control of NPOs based on risks

Criterion 8.3 - The Togolese regulatory system that governs the NPO sector has not instituted surveillance based on the TF risk (see analysis of criteria 8.1 and 8.2). Monitoring and control measures for NPOs are nevertheless provided for in Togo (Art. 42 and 43 of AML/CFT Law No. 2018-004). These include, in particular, the registration in a register held by the competent authority of information relating to the managers and directors of the NPO, the publication in the official gazette or in a newspaper of legal announcements of the financial statements.

Criterion 8.4 a and b

Criterion 8.4 a.- Togo has not designated authorities responsible for monitoring and controlling the implementation of AML/CFT obligations of NPOs with a risk-based approach.

Criterion 8.4 b.- AML/CFT Law No. 2018-004 provides for administrative and disciplinary sanctions that may be imposed by the supervisory authorities against NPOs in their capacity as reporting entities in the event of violation of their compliance obligations (Art. 112). However, in the lack of a designated authority for the supervision and control of NPOs, the sanctions provided for cannot be imposed.

Effective investigations and information gathering

Criterion 8.5 a, b, c and d

Criterion 8.5 a.- CONAC is the framework established in Togo to coordinate the national response to ML/TF risks which is not functioning (c...1.12 analysis). There is also the fact that no national cooperation and coordinating mechanism can be used to collect relevant information on the use of NPOs for TF purposes.

Criterion 8.5 b. - Togo also lacks sufficient investigative skills and capacity to review NPOs suspected of being exploited for TF purposes or by terrorist organizations or actively supporting activities or organizations terrorists.

Criterion 8.5 c.- NPOs are required to publish annually, in the official gazette or in a journal of legal announcements, their financial statements with a breakdown of their income and expenditure (Art. 42 al.2 of AML/CFT Law No. 2018-004). They are also required to keep records of their transactions for ten years and make them available to the authorities (Art.42 al.5). Investigation authorities, through requisitions, can obtain information on the finances and activities of NPOs. However, Togo has not instituted the mandatory registration of information on administration and management, including donations equivalent to 1,000,000 F.CFA (€1,521.3) in accordance with the law.

Criterion 8.5 d.- NPOs are subject to the obligation to report suspicious transactions on sums entered in their books or transactions relating to sums which they suspect or have good reason to suspect come from a ML/TF offence (Art.79 of AML/CFT Law n°2018-004). However, there is no other appropriate mechanism to inform the competent authorities of facts related to FT involving an NPO.

Effective capacity to respond to foreign requests relating to a suspicious NPO

Criterion 8.6 - Togo has not designated contact points, nor defined appropriate procedures to respond to international requests for information concerning any NPO suspected of financing terrorism or supporting it by any other Medium. FIU can exchange such information with its counterparts. However, the lack of appropriate contact points and procedures limits the scope of its capacity to provide relevant information to foreign inquiries about NPOs.

Weighting and conclusion

The Togolese system now enshrines the risk-based approach for the regulation and supervision of NPOs, to ensure that they are not used for TF purposes. However, this is not implemented, due to the recent nature of the sectoral assessment of NPOs in February 2021. The legal framework also does not define the procedure and the periodicity for reviewing new information and vulnerabilities identified in the NPOs sector. There is no control and supervision authority for NPOs that can apply the sanctions provided for by the AML/CFT law is not mandatory to maintain a register of all information related to their administration and management. These deficiencies are accentuated by the lack of a regulatory framework adapted to a risk-based approach. Indeed, the regulatory framework for NPOs is governed by a law of 1901 supplemented by a Decree of 1992. The Togolese AML/CFT/PF system has moderate deficiencies with regard to the requirements of this recommendation.

Togo is rated Partially Compliant on Recommendation 8.

PREVENTIVE MEASURES

Recommendation 9: Financial Institution Secrecy Laws

Togo had been rated largely compliant with the criteria of recommendation 9 (former Rec.4) in 2010. However, it had been noted that there were no specific provisions aimed at removing any obstacle to the exchange of information among FIs where it is required by the standards. The legal and regulatory provisions adopted by Togo since its last evaluation have resolved this deficiency.

Criterion 9.1- FIs cannot invoke professional secrecy to refuse to provide information to the supervisory authorities, the FIU as well as to the judicial authorities acting within the framework of AML/CFT or to make the declarations provided for by AML/CFT Law No. 2018-004(s. 96). More specifically, credit institutions may not oppose professional secrecy either to the UMOA Banking Commission, or to the BCEAO, or to the judicial authority acting in the context of criminal proceedings (art. 53 of the law no. 2018-004). The same applies to the decentralized financial systems (DFI) and the postal company with regard to the operations of its financial services and postal checks (art. 54 of the banking law, Art. 58 of the law n° 2011 -009 of May 12, 2011 regulating DFIs). In addition, in the context of the implementation of customer due diligence measures, professional secrecy cannot be invoked to refuse to communicate the identity of the beneficial owner when the customer is a DNFBP intervening as an intermediary (art. 30 of AML/CFT Law No. 2018-004). In addition, Directive No. 07-09-2017 (art. 7, paragraph 5, point 4) requires FIs through their internal structures in charge of AML/CFT to respond to regular or ad hoc requests from supervisory authorities, of FIU and partner institutions. Indeed, no legal or regulatory provision hinders the exchange of information between financial institutions, in particular when it is required by Recommendations 13, 16 or 17. Moreover AML/CFT law n°2018-004 provides information exchanges between the FIU and the supervisory authorities, the professional (art. 75 of AML/CFT law n°2018-004). It also provides for international cooperation in the exchange of information (article 78 of AML/CFT Law n° 2018-004).

Weighting and conclusion

With the adoption of AML/CFT Law No. 2018-004, professional secrecy is no longer an obstacle to access and exchange of information relating to information held by FIs in accordance with FATF requirements. Togo's AML/TF/PF system has no deficiencies with regard to the requirements of this recommendation.

Togo is rated Compliant on Recommendation 9.

Recommendation 10: Customer Due Diligence

In 2010, Togo was rated Non-Compliant on Recommendation 10 (former Rec. 5) due to the following deficiencies:

- General ignorance of customer identification obligations by reporting entities (except in the banking sector);
- Scope of AML due diligence measures not covering all financial activities identified by the FATF;
- No ban on holding anonymous accounts;
- Lack of obligation to verify identification data using reliable and independent sources;
- Obligations to identify the beneficial owner are too limited;
- No obligation to collect information on the purpose and intended nature of the business relationship;
- No obligation to carry out constant due diligence with regard to the business relationship;
- No obligation to take enhanced due diligence measures for high-risk customers;
- Overly broad simplified due diligence measures;
- Lack of precision on the moment of verification of the identity of the customer or beneficial owner;
- No obligation in case of non-compliance with customer due diligence obligations.

The adoption of AML/CFT Law No. 2018-004 enables Togo to significantly address these gaps.

Criterion 10.1- Law No. 2018-004 formally prohibits FIs from keeping anonymous accounts and accounts in fictitious names (Art. 20 par. 2).

Application of customer due diligence

Criterion 10.2 a, b, c, d and e

Criterion 10.2 a.- FIs are required to implement customer due diligence measures before entering into any business relationships (Art. 18, par. 1 of Law No. 2018-004).

Criterion 10.2 b.- They must identify their occasional customers, and where applicable, the beneficial owner of the business relationship where the transactions exceed a certain amount (Art. 18, par. 1 of Law No. 2018-004). Indeed, they must identify occasional customers and verify their identification, as well as those of the beneficial owner if necessary, when carrying out an operation or several related operations whose amount exceeds 5,000,000 CFA francs. (EUR 7,633.59) for approved money changers, 1,000,000 CFA francs (EUR 1,526.72) for legal representatives and managers responsible for gambling operators and 10,000,000 CFA francs (15,267.18 EUR) for the others (Art. 29, al.1, indents 1, 2 and 3 of Law No. 2018-004), although this threshold is above that set by the FATF Recommendations;

Criterion 10.2 c.- FIs must also implement customer due diligence measures when carrying out occasional transactions under the conditions set out in Article 29 of the AML/CFT Law (Art. 26 of Law No. 2018-

004). These occasional transactions include in particular those conducted in the form of wire transfers in the circumstances referred to in Recommendation 16 and its Interpretative Note. In addition, Article 33 of the AML/CFT Law provides that FIs carrying out wire transfers are required to obtain and verify, with respect to the originator, his full name, account number, address or in the lack of an address, his national identification number or the place and date of his birth, as well as, if necessary, the name of the financial institution of the originator with regard to wire transfers;

Criterion 10.2 d.- Due diligence measures must also be implemented by identifying the occasional customer and, where applicable, the beneficial owner of the business relationship where the FIs suspect that the transaction could participate in ML/TF (Art. 18, para. 2 of Law No. 2018-004). The customer must be identified, by means of independent and reliable documents, sources, data or information when there is a suspicion of ML or FT (Art. 26, para. 1, indents 7 and 8 of the Law 2018-004);

Criterion 10.2 e.- FIs are required to implement the requisite due diligence measures, particularly where there are suspicions as to the veracity or relevance of identification data of the customer previously obtained (Art. 26 of AML/CFT Law No. 2018-004, paragraph 1-indent 6).

CDD measures required for all customers

Criterion 10.3- FIs are required to identify the customer and, where applicable, the beneficial owner of the business relationship by appropriate means and must verify these identification elements on presentation of any reliable written document (Art. 18 of AML/CFT Law No. 2018-004). (

Financial institutions are required to identify their customers and, where applicable, the identity and powers of the persons acting on their behalf, using independent and reliable documents, sources, data or information (Article 26 of Law No. 2018-004). Indeed, the identification and verification measures are specified for natural person customers (Art 26 of Law No. 2018-004), for legal persons (art 28) as well as for occasional customers (Art 29). However, there are no legal and regulatory provisions with regard to customers who are “legal arrangements”.

Criterion 10.4 - FIs are required to identify their customers and, where applicable, verify the identity and powers of the persons acting for them, by means of documents, independent and reliable sources, data or information (Art. 26 al.1 of AML/CFT Law No. 2018-004). They must also obtain and identify the powers of the partners and corporate officers with regard to legal persons, branches or representative offices (Art. 28 of AML/CFT Law No. 2018-004).

Criterion 10.5 - FIs are required to identify the beneficial owner of a business relationship by appropriate means and to verify these identification elements on presentation of any reliable written document (Art. 18 of Law No. 2018-004). The same obtains for their occasional customers as well as, where applicable, the beneficial owner of the operation (Art. 29 of n°2018-004). The identification by any means of the beneficial owner or the beneficial owner or the principal is also required when the FI is not certain that the customer is acting on his own behalf (Art. 30 of law no. °2018-004 of AML/CFT). This provision relating to the identification of the beneficial owner does not meet the requirement of the standard, which requires that this identification be done independently of the already available information.

Criterion 10.6- FIs must collect and analyze the elements of information, among those appearing on the list developed by the competent authority, which are designed to promote appropriate knowledge of their customer as well as the subject and nature of the business relationship (Art. 19 of AML/CFT Law No. 2018-004).

Criterion 10.7 a and b

Criterion 10.7 a.- FIs must exercise constant due diligence regarding any business relationship and carefully examine the transactions conducted with a view to ensuring that they are consistent with what they know about their customers, their business activities, their risk profile and, where applicable, the source of their funds (Art. 19 and 20 of AML/CFT Law No. 2018-004).

Criterion 10.7 b.- They must also, throughout the duration of the business relationship, collect, update and analyze the elements of information that make it possible to promote appropriate knowledge of their customer. This information must be collected and stored in line with the objectives of ML/TF risk assessment and monitoring adapted to this risk (Art. 19, al. 2 of AML/TF Law No. 2018-004). This involves FIs reviewing existing items for their customers including those at higher risk.

Specific due diligence measures required for legal persons and legal arrangements

Criterion 10.8- The Togolese legal framework does not explicitly require FIs, including insurance companies, to understand the nature of the activity as well as the ownership and control structure of their customers who are legal persons or legal arrangements.

Criterion 10.9 a, b and c- The uniform Law provides for the identification of customers who are legal persons (Article 28 of the AML/CFT Law No. 2018-004) as indicated below:

Criterion 10.9 a.- Identification of a legal person requires for FIs, obtaining and verifying information on the corporate name, proof of its legal incorporation, namely the original, or even the shipment or a certified true copy of any deed or extract from the RCCM dated less than three (03) months, attesting in particular to its legal form (Art. 28 of AML/CFT Law No. 2018-004). No legal provision is made regarding the identification of customers of FIs that are legal arrangements.

Criterion 10.9 b.- FIs must obtain and verify, for customers who are legal entities, the identity and powers of the partners and corporate officers mentioned in the OHADA uniform act concerned or their equivalents in foreign law. No mention is made of the names of the relevant persons holding management positions. In addition, the law has not provided for the measures to identify and verify the customer through the powers governing and binding the legal arrangement as well as the names of the relevant persons occupying the functions of managing the legal arrangement.

Criterion 10.9 c.- They must also obtain and verify head office address information. There is no legal provision concerning the information relating to the address of one of the principal places of activity of the legal person customer when this is different from the head office. These measures have not been provided for legal arrangements either.

Criterion 10.10 a, b and c

Criterion 10.10 a.- AML/CFT Law No. 2018-004 (Art. 18) requires FIs to identify the beneficial owner of a business relationship, where applicable, by appropriate means and to verify these elements of identification upon presentation of any reliable written document. Indeed, the beneficial owner or beneficial owner is defined in Law No. 2018-004 as being, among other things, the person or persons who ultimately exercise effective control over a legal person or legal arrangement; the natural person or persons who hold, directly or indirectly, more than twenty-five percent of the company's capital or voting rights.

Criterion 10.10 b.- In addition, in case of doubt about the beneficial owner, FIs are required to find out by any means about the identity of the beneficial owner (Art. 30 of law n°2018-004 AML/CFT). And according to the definition of the BO in the AML/CFT law, the identification and verification of information are also required for the person or persons who exercise, by any other means, a power of

control over the management, administration bodies or management of the company or on the general meeting of its partners;

Criterion 10.10 c.- There is no provision obliging FIs to identify and take reasonable measures to verify the information on the identity of the natural person who occupies the position of principal manager when they have not been able to implement the measures mentioned in points a) and b) above.

Criterion 10.11 a and b- The law does not expressly require FIs to identify beneficial owners for their clients who are legal arrangements and to take reasonable steps to verify the identity of such persons by means of the information provided for in criteria 10.11 a and b. However, given that the definition of beneficial ownership includes persons who ultimately exercise effective control over a legal arrangement (art. 1, point 12 of AML/CFT Law No. 2018-004) and that FIs are required to identify them by appropriate means (art. 18), the criterion may be considered to be Partly Met.

Duty of due diligence for beneficiaries of life insurance contracts

Criterion 10.12 a, b and c- As FIs, insurance companies, agents and brokers engaged in life and non-life insurance activities are required to identify their customers and verify their identity (Article 39 of AML/CFT Law No. 2018-004). Regulation n°0004/CIMA/PCMA/PCE/SG/08 also requires insurance companies to systematically record the identities of co-contractors (subscriber, insured, principal, accepting beneficiary), before entering into a contractual relationship or assisting their customer in the preparation or execution of a transaction (Art. 8.1 of the CIMA Regulation). Once the beneficiaries of the contractual relationship are identified, they are required to apply the following measures:

Criterion 10.12 a.- For beneficiaries who are natural or legal persons or arrangements: insurance companies are required to identify the names of officers (president, directors, chief executive officers), information on who owns or controls the business, etc. (s.8.2 of the CIMA Regulations). Among other things, they must also request, examine and collect copies of the settlor's identity documents in the case of a trustee acting on behalf of a trust, and any other document necessary to identify the trust, trustee and beneficiaries.

Criterion 10.12 b. - for beneficiaries designated by characteristics or by category or by other means: when a transaction appears to be carried out on behalf of a third party, the insurance company must inquire as to the true identity of that third party (CIMA Regulation 8.4).

Criterion 10.12 c.- In both of the above cases, verification of the identity of the beneficiaries should be done before the payment of the benefit (Art. 8.4; 9; 12 of CIMA Regulation 04; Art. 68, para. 2 of the CIMA Code).

Criterion 10.13- There is no legal or regulatory obligation for FIs to consider the beneficiary of a life insurance contract as a relevant risk factor when determining whether enhanced due diligence measures are applicable.

Verification timing

Criterion 10.14 a, b and c- FIs must verify the identity of the customer, and of the beneficial owner if applicable, before the establishment and throughout the duration of a business relationship but also during the carrying out customer transactions, including occasional ones (Art. 18, al. 1 and Art. 19, al. 1 and 2, arts. 20 and 29 of the AML/CFT law no. Insurance companies must also know the identity of their contracting party before entering into a contractual relationship or assisting their customer in preparing or carrying out any transaction (Art.8 of Regulation No. 0004/CIMA). On the other hand, no provision

authorizes the FIs to be able to complete the checks after the establishment of the business relationship when this is reasonably possible, to avoid interrupting the normal course of business and even if the risks of ML/TF are effectively managed.

Criterion 10.15 - No legal or regulatory provision requires FIs to adopt risk management procedures relating to the establishment of a business relationship before verification.

Existing customers

Criterion 10.16 - FIs, when they have good reason to believe that the identity of their customer and the identification elements previously obtained are no longer accurate or relevant, they must again precede the identification of the customer (Art. 31 of law no. 2018-004). Although it is not explicit, this measure applies to all customers, including those in existence when the extant AML/CFT law was adopted. CIMA has not made any specific provision in this regard.

Risk-based approach

Criterion 10.17 - FIs are required to reinforce the intensity of constant due diligence measures on the business relationship and on all customer transactions (Art. 19 and 20 of law n°2018-004 AML/CFT), when the ML/CFT risk presented by a customer, a product or a transaction seems high. Indeed, they must carry out an enhanced examination of any particularly complex transaction or of an unusually high amount or which does not appear to have any economic justification or lawful purpose. In this case, they must also find out from the customer the origin of the funds and the destination of these sums as well as the purpose of the transaction and the identity of the person benefiting from it (Art. 51 of the AML/CFT Law No. 2018-004). To complete these provisions of the uniform AML/CFT law, regulation n°0004/CIMA has listed cases of doubtful/suspicious transactions and customers at risk which should hold the attention of the insurance sector (Art. 14).

Criterion 10.18 - FIs can reduce the customer due diligence obligation when the ML/TF risk is low (Art. 46 of law n°2018-004). They must then justify to the supervisory authority that the extent of the measures is appropriate to these risks. They are not subject to customer due diligence obligations provided that there are no suspicions of ML/TF, in cases where customers and products present a low risk of ML/TF. This also applies when the customer or, where applicable, the beneficial owner of the business relationship is, among others, an FI, established or having its registered office in a Member State or in a third State imposing equivalent AML obligations. /CFT (Art. 46, al.2, points 1 and 2 of AML/CFT Law No. 2018-004).

Inability to meet customer due diligence obligations

Criterion 10.19 a and b- The Togolese legal framework has not made provisions explicitly obliging FIs not to open an account, not to carry out a transaction, or not to establish the business relationship or to put an end to it, when they cannot implement the required customer due diligence measures. These provisions are provided only in the case of beneficial owners. They provide that in the event of doubt about the identity of the beneficial owner, FIs must terminate the operation and make a suspicious transaction report (Art. 30, al. 2 of law no. 2018- 004 of AML/CFT). In addition, for insurance, when an operation appears to be conducted on behalf of a third party and the information obtained does not make it possible to be certain of the identity of the persons for whose benefit the operation is conducted, the insurance company must submit a STR to FIU, regardless of its own capacity to refuse the operation (Art. 8.4 of regulation No. 0004/CIMA).

Customer Due Diligence

Criterion 10.20 - No legal or regulatory provision gives FIs the possibility of choosing not to perform customer due diligence when they reasonably believe that by fulfilling these obligations in the event of suspicion of ML/TF, they would alert the customer.

Weighting and conclusion

The adoption of AML/CFT Law No. 2018-004 has enabled Togo to meet the requirements of the standards on the duty of due diligence with regard to customers. On the other hand, the Togolese legal system does not provide for an obligation for FIs to take into account the beneficiary of a life insurance contract as a relevant risk factor. FIs also do not have the option of not performing customer due diligence obligations and then sending a STR when they reasonably believe that they would alert the customer by performing these obligations, in case of suspicion of ML or FT. There are also significant deficiencies regarding the identification of the beneficial owners of customers who are legal arrangements. And for customers that are legal persons, there is no provision that requires FIs to identify the natural person who occupies the position of principal officer when no natural person is identified as part of the implementation of points (a) or (b) of **Criterion 10.10** above. In addition, the Togolese legal framework has not made provisions explicitly obliging FIs not to open an account, not to carry out a transaction, or not to establish or terminate the business relationship, when they cannot implement the required customer due diligence measures. Togo's AML/CFT regime has moderate deficiencies with regard to the requirements of this recommendation.

Togo is rated Partially Compliant on Recommendation 10.

Recommendation 11: Record keeping

Togo was rated partially compliant with Recommendation 11 (former Rec. 10) in 2010 due to the lack of: (i) details on the nature and availability of documents to be kept by FIs and implementation of obligations prescribed in the sectors of microfinance, licensed money changers and money or value transmission services (ii). By adopting AML/CFT Law No. 2018-004, Togo has strengthened its legal system and significantly addressed the deficiencies identified.

Criterion 11.1- FIs are required to keep the records and documents relating to the operations they have conducted, for 10 years after the execution of the operation (Art. 35 of law n°2018-004 AML/CFT). The period required by the standards is at least 05 years.

Criterion 11.2 - FIs must keep for a period of 10 years from the closing of their accounts or the termination of their relations with their regular or occasional customers, the documents relating to their identity, as well as account books and business correspondence (Art. 35 of AML/CFT Law No. 2018-004). They must keep the results of the review of the implementation of enhanced due diligence measures under the same conditions (Art. 55 of AML/CFT Law No. 2018-004). In addition, a confidential written report containing all useful information on the terms of the operation and on the identity of the principal and, where applicable, of the economic actors involved, is also kept (Art. 32 of the law AML/TF n°2018-004). However, these provisions do not include keeping the records of any analysis conducted for at least five years from the end of the business relationship or the date of the occasional transaction.

Criterion 11.3 - FIs are required to draw up and keep a confidential written report containing all relevant information on the terms of the transaction as well as on the identity of the settlor and, where applicable, of the economic actors involved (Art. 32 of AML/CFT Law No. 2018-004). However, the legal provisions do not formally require that the transaction documents be sufficient to reconstruct individual transactions in order to provide evidence in the context of criminal prosecutions where necessary.

Criterion 11.4 - The records and documents compiled and kept by FIs as part of their customer due

diligence and identification obligations must be disclosed to ML/TF State officials, acting under a judicial warrant, to supervisory authorities as well as to The FIU upon request (Art. 36 of AML/CFT Law No. 2018-004). These documents and those relating to transactions carried out and referred to in Article 35 of the AML/CFT Law (see criterion 11.1) must be communicated to The FIU regardless of the medium used for their keeping, within the time limits it sets (art. 70 sub-para. 1 of AML/CFT Law No. 2018-004). However, there is no express requirement for FIs to make the transaction documents readily available to other competent national authorities, except for The FIU.

Weighting and conclusion

The deficiencies of the Togolese legal system in relation to the required requirements concern the lack of precision on the notion of the sufficiency of the documents which must make it possible to reconstitute the individual operations as well as the lack of obligation for all the FIs to keep the results of any analysis conducted for at least five years from the end of the business relationship or the date of the occasional transaction and to make rapidly available all the information obtained within the framework of the customer due diligence measures and the documents related to operations. Togo's AML/CFT regime has minor deficiencies with regard to the requirements of this recommendation.

Togo is rated Largely Compliant on Recommendation 11.

Recommendation 12: Politically Exposed Persons

In 2010, Togo was rated Non-Compliant with Recommendation 12 (former Rec. 6). This rating was justified by the lack of obligations relating to PEPs, but also a very partial implementation of AML/CFT measures against them. The strengthening of the Togolese legal system has made it possible to resolve certain aspects of these deficiencies.

Criterion 12.1 a, b, c and d

FIs must take the following specific measures provided for (Article 54 of AML/CFT Law No. 2018-004), when they enter into business relationships or carry out transactions with or on behalf of foreign PEPs such as They are defined by the Law (Art. 1, point 44 of AML/CFT Law No. 2018-004. However, this definition does not comply on the FATF insofar as it restricts, by the use of the expression “namely”, the designation of PEPs solely to the functions listed exhaustively in the said law. Therefore, these measures do not cover all foreign PEPs. This deficiency has an impact on all the measures provided below with regard to foreign PEPs.

Criterion 12.1 a.- They must implement suitable and adequate risk-based procedures, so as to be able to determine whether the customer or a beneficial owner of the customer is a PEP (Art. 54 al.1 point 1 of the law AML/TF n°2018-004). However, the flawed definition of PEPs limits the application of this measure only to foreign PEPs whose functions are mentioned in the law without giving FIs the possibility of identifying other natural persons likely to be part of foreign PEPs.

Criterion 12.1 b.- FIs are required to obtain authorization from an adequate level of the hierarchy before entering into a business relationship with such customers (Art. 54 al.1 point 2 of the AML/ FT). On the other hand, the authorization of the hierarchy to continue the business relationship if it is about an existing customer is not provided for by the Law. In addition, the gap identified in the definition of PEPs impacts this provision as well as the subsequent ones.

Criterion 12.10 c.- FIs are also required to take all appropriate measures, depending on the risk, to establish the origin of the assets and the origin of the funds involved in the business relationship or the transaction

(Art. 54 al.1 point 3 of AML/CFT Law No. 2018-004). However, this measure should not be implemented solely on a risk basis but should rather be implemented consistently for all customers and beneficial owners identified as PEPs.

Criterion 12.1 d.- FIs are required to ensure enhanced ongoing monitoring of the business relationship (Art. 54 al.1 point 4 of law no. 2018-004). The deficiencies identified in the definition of foreign PEPs provided for in the AML/CFT law also impact this measure.

Criterion 12.2 a and b-PEPs as defined by AML/CFT law n°2018-004 (Art.1, point 44) include both foreign, national and international organization PEPs. To this end, the legal provisions referred to in criterion 12.1 (b and d) are applicable both to national PEPs and to those exercising or having exercised an important function within or on behalf of an international organization. Indeed, AML/CFT law n°2018-004 stipulates that FIs must, when they enter into business relations or when they carry out transactions with or on behalf of national PEPs or PEPs of international organizations (Art. 54, paragraph 2):

Criterion 12.2 a.- Implement adequate and appropriate procedures, based on the risk, to be able to determine whether the customer or a beneficial owner of the customer is a PEP. However, the deficiencies cited in the analysis of criterion 12.1 have repercussions on this criterion;

Criterion 12.2 b.- Apply, in the event of higher-risk business relationships with such persons, the measures referred to in the first paragraph, point 2, 3 and 4 of Article 54 cited above, i.e. criteria 12.1 b) to d). The deficiencies identified in the analysis of **Criterion 12.1** also affect the application of this measure. The application of these measures only in the event of a higher risk does not comply on this **Criterion** either.

Criterion 12.3- The definition of national PEPs and those of international organizations excludes family members as well as people known to be closely associated with them, unlike foreign PEPs (Art. 1, point 44, indent 2 and 3 of AML/CFT Law No. 2018-004). As a result, the provisions relating to the risk management and specific due diligence system mentioned above do not apply to them.

Criterion 12.4- Although insurance companies, like other FIs, are required to apply due diligence measures specific to PEPs, they have no legal obligation to take into account the beneficiaries of a life insurance contract as a relevant risk factor (see analysis in C10.13). Nor are they subject to the obligation to take reasonable measures to determine whether the latter and/or, where applicable, the beneficial owners are PEPs. Enhanced measures are planned for high risks (see analysis C10.17). However, there is no express mention here of the business relationship with the holder of a life insurance contract, of the obligation to inform senior management before the payment of the capital, nor of the obligation to make a STR in this specific case.

Weighting and conclusion

The Togolese legal system has not improved much in relation to the requirements of the AML/CFT standards relating to PEPs. Indeed, the definition of PEPs contained in the AML/CFT Law n°2018-004 is not in line with that of the FATF insofar as it limits the notion of PEP to certain well-defined functions, impacting the implementation of the due diligence measures required of all PEPs. These due diligence measures are not applicable to family members of domestic PEPs and persons known to be closely associated with them. In addition, there is no provision requiring FIs to take reasonable steps to determine whether the beneficiaries of a life insurance policy or their beneficial owners are PEPs. Furthermore, insurers are also not required, where higher risks are identified, to inform senior management before payment of capital, to carry out an enhanced review of the business relationship with the contract holder and to consider doing a STR. Togo's AML/CFT system has moderate deficiencies with regard to the requirements of this recommendation.

Togo is rated Partially Compliant on Recommendation 12.

Recommendation 13: Correspondence banking

Togo was rated Non-Compliant with Recommendation 13 (former Rec.7) in 2010, due to the lack of obligations relating to correspondent banking. But with AML/CFT Law No. 2018-004, FIs are now required to take a number of measures relating to their correspondent banking relationships.

Criterion 13.1 a, b, c and d- With respect to cross-border correspondent banking and other similar relationships, FIs are required to observe both normal customer due diligence, but also implement specific measures (Art. 38 of AML/CFT Law No. 2018-004).

Criterion 13.1 a.- FIs should gather information about the nature of the customer institution's business, assess its reputation and the degree of scrutiny to which it is subject based on publicly available information. On the other hand, no mention is made explicitly as to whether the correspondent has been the subject of an investigation or measures by an ML/TF supervisory authority.

Criterion 13.1 b.- FIs are also required to assess the controls put in place by the customer institution to combat ML/TF.

Criterion 13.1 c.- FIs have prior approval of persons authorized to enter into a correspondent banking relationship.

Criterion 13.1 d.- No legal or regulatory provision requires FIs to clearly understand the respective AML/CFT responsibilities of each institution in the context of a correspondent banking relationship.

Criterion 13.2 a, b - When entering into an agreement to provide correspondent banking, FIs must:

Criterion 13.2 a. - Ensure that the co-contracting credit institution has verified the identity of customers with direct access to these correspondent accounts and has implemented the required due diligence measures for these customers (Art. 53, paragraph 1, point 5 of AML/CFT Law No. 2018-004);

Criterion 13.2 b.- Provide for modalities for filing information at the request of the reporting institution (Art. 53, al.1, point 4 of AML/CFT Law No. 2018-004).

Criterion 13.3- FIs must not establish or maintain a correspondent banking relationship with a credit institution or a company carrying out equivalent activities constituted in a State where this institution has no physical presence allowing the exercise of management and management activities, if he is not attached to a regulated institution or group. In addition, they must take appropriate measures to ensure that they do not establish or maintain any correspondent banking relationship with a person who himself maintains a correspondent banking relationship with a shell bank or company (Art. 52, paragraph 2 of AML/CFT Law No. 2018-004).

Weighting and conclusion

AML/CFT Law No. 2018-004 and Directive No. 007-09-2017 have enabled Togo to address its previous deficiencies in banking correspondence. It should nevertheless be noted that there is no obligation for FIs to know whether the correspondent has been the subject of an investigation or measures by a supervisory authority in terms of ML/TF, but also to clearly understand the respective responsibilities of each institution with regard to AML/CFT within the framework of a banking relationship. Togo's AML/CFT regime has minor deficiencies with regard to the requirements of this recommendation.

Togo is rated Largely Compliant on Recommendation 13.

Recommendation 14: Money or Value Transfer Services

Togo was rated Partially Compliant on recommendation 14 (formerly SR VI) in 2010. This rating was justified by the lack of a competent authority responsible for issuing a license to operate money or value transfer services (MVTS) and control mechanisms. Similarly, there was no provision requiring the MVTS to maintain an up-to-date list of its agents which is also accessible to the designated competent authority. To resolve these deficiencies, Togo has made changes to its legal framework by adopting Directive No. 013-11-2015 on the procedures for exercising the activity of rapid money transfer as a sub agent within UMOA, then law n°2018-004 relating to AML/CFT.

Criterion 14.1 - No natural or legal person may engage in the professional activity of MVTS if they have not obtained the license from the competent authority, in accordance with the specific regulations in force (Art. 87, 1 of AML/CFT Law No. 2018-004, Art. 2 of Regulation No. 09/2010/CM/UEMOA, Art. 3 of Directive No. 013-11-2015). Indeed, natural or legal persons who wish to carry out a MVTS activity sign a contract with approved intermediaries or DFS which give them a mandate to carry out the fast money transfer activity, on their behalf and under their full responsibility. (Art. 3 of Directive No. 013-11-2015).

Criterion 14.2 - The BCEAO, as the competent authority by delegation of powers from the Minister in charge of finance, sets the minimum operating conditions, in particular with regard to the regular inspection of MVTS as well as the sanctions resulting from non-compliance with the provisions in force (Art. 87, al. 2 of AML/CFT Law No. 2018-004). With regard to sub-agents, the BCEAO as well as the Ministry in charge of finance and the CB of UMOA within the framework of their respective attributions as regards the supervision of approved intermediaries and DFIs, can control them, to ensure compliance with the provisions governing the exercise of the rapid money transfer activity (Art. 10, al. 1 of Directive No. 013-11-2015). Violations noted are sanctioned in accordance with the law regulating banking (art 67), the law regulating DFS (71), the law on litigation for violations of the regulation of external financial relations of UEMOA member States as well as to the law relating to AML/CFT, without prejudice to any other legislative and regulatory provision in force in the Member State of establishment (Art. 10, al. 2 of Directive n°013-11-2015) . However, the sanctions provided for in the event of violation of the provisions of Regulation No. 09/2010/CM/UEMOA are not applicable insofar as Togo has not domesticated the Uniform Law on the litigation of violations of the regulation of relations external financial resources of UEMOA member States as well as its two enforcement Decrees. And no other law or regulatory text in force relating to violations of foreign exchange regulations has been made available in order to assess the range of sanctions that may be applicable as well as their proportionate and dissuasive nature.

Criterion 14.3 - As mentioned in the analysis of criterion 14.2, the BCEAO is responsible for the regular inspection of VFT services, as well as for imposing sanctions resulting from non-compliance with the provisions in force. Indeed, authorized intermediaries must report to the directorate in charge of external finance and to the BCEAO, for control purposes, of payments issued or received from abroad (Art. 14 of Regulation No. 09/2010/CM/ UEMOA). They are responsible for ensuring compliance with the requirements laid down by Regulation No. 09/2010/CM/UEMOA with regard to transactions conducted through them or placed under their control. In addition, the BCEAO, the Ministry in charge of finance and the Banking Commission are empowered to control the sub-agents to ensure compliance with the provisions governing the exercise of the rapid money transfer activity, including on AML/CFT compliance issues to which they are subject (Art. 5 of Directive No. 013-11-2015, see analysis of criterion 14.2).

Criterion 14.4 - Officers of MVT service providers are not required to be licensed or registered by a competent authority. Nevertheless, they are required to sign contracts with authorised intermediaries and

SFDs, which empower them to carry out rapid money transfers on their own behalf and under their full responsibility (art. 3 of Instruction No.013-11-2015). Approved intermediaries and SFDs must notify the Ministry of Finance, the CB and the BCEAO of the list of natural and legal persons authorised to act as sub-agent no later than thirty days from the end of each calendar year (art. 7 of Instruction No. 013-11-2015). Indeed, the provisions of instruction n°013-11-2015, articles 3 and 7, meet the criterion requirements related to registration.

Criterion 14.5 - LVTS providers that use sub-agents are not required to integrate them into the AML/CFT programs that they must develop and implement as FIs (Article 24 of AML/CFT Law No. 2018-004). And to the extent that subagents are not included in these prevention programs, SMVTS providers are therefore not required to monitor their compliance with said programs.

Weighting and conclusion

Togo has made significant progress in the legal framework for VFT services. However, the country has not adopted the uniform law on the litigation of violations of the regulations of external financial relations of UEMOA member States and its enforcement Decrees, which provide for the sanctions and measures to be taken in the event of violations of the regulations applicable to MVTS services. It should also be noted that no legal or regulatory provision requires MVTS service providers to include their agents in AML/CFT programs and to monitor compliance. Togo's AML/CFTP system has moderate deficiencies with regard to the requirements of this recommendation.

Togo is rated Partially Compliant on Recommendation 14.

Recommendation 15: New Technologies

In 2021, Togo was rated Non-Compliant (NC) on recommendation 15 (former Rec. 8). The deficiencies identified related to the partial coverage of the obligations to define policies designed to prevent the misuse of new technologies, and to the lack of an obligation to put in place risk management systems including specific and effective due diligence procedures applicable to customers. The main novelties introduced by Recommendation 15 lie in the definition of “virtual assets” and “virtual asset service providers”, as well as the conditions under which the AML/CFT requirements are applied to them. Without taking into account all the new requirements of the standards, the Togolese legal framework has improved with the adoption of the AML/CFT law n° 2018-004.

New technologies

Criterion 15.1- Togo must take appropriate measures to identify, assess, understand and mitigate the ML/TF risks to which it is exposed and must update this assessment (Art.10 of law n°2018-004 AML/CFT). As for the FIs, they are required to take appropriate measures to manage and mitigate the ML/TF risks that may arise from the launch of new products and new business practices, including new distribution mechanisms, the use of new technologies or emerging in connection with new products or pre-existing products (Art. 37 of AML/CFT Law No. 2018-004).

Criterion 15.2 a and b-

Criterion 15.2 a - FIs are required to assess ML/TF risks before launching or using products, practices and technologies. They are also required to take appropriate measures to manage and mitigate these risks (Art. 37 of AML/CFT Law No. 2018-004).

Criterion 15.2 b.-They are also required to take appropriate measures to manage and mitigate these risks

(Art. 37 para. 2 of AML/CFT Law No. 2018-004).

Virtual Assets and Virtual Asset Service Providers

Criterion 15.3 a, b and c

Criterion 15.3 a - Togo has not identified or assessed the ML/TF risks resulting from AV-related activities and VASP activities or operations (see Criterion 1.1).

Criterion 15.3 b - The risk-based approach is therefore not being implemented.

Criterion 15.3 c - Similarly, no provision requires VASPs to take appropriate measures to identify, assess, manage and mitigate their ML/TF risks, in accordance with criteria 1.10 and 1.11.

Criterion 15.4 a and b

Criterion 15.4 a - Togo has not taken any provision requiring the approval or registration of a VASP in the jurisdiction where it was established when it is a person legal entity, or in the jurisdiction where his establishment is located when he is a natural person. Art.

Criterion 15.4 b - No fit-and-proper control measure has been put in place to identify the beneficial owners holding a significant or controlling stake and a management position in a VASP. Therefore, legally, nothing prevents criminals or their associates from being the beneficial owners.

Criterion 15.5 - Togo has not put in place measures to identify natural or legal persons who carry out VASP activities without approval, and to apply appropriate sanctions to them.

Criterion 15.6 a and b [Not Met]

Criterion 15.6 a.- VASPs are not subject to specific regulation and risk-based monitoring or supervision by any supervisory authority.

Criterion 15.6 b.- Therefore, no supervisory authority is explicitly designated for VASPs to ensure that they comply with their AML/CFT obligations in Togo.

Criterion 15.7 - Competent and supervisory authorities have not developed guidelines, nor do they provide feedback in accordance with Recommendation 34 on the implementation of national AML/CFT measures, in particular to detect and report suspicious transactions.

Criterion 15.8 a and b

Criterion 15.8 a.- No range of penal, civil or administrative, proportionate and dissuasive sanctions is provided for in Togo regarding VASPs that do not comply with the legal and regulatory provisions relating to AML/CFT (cf. 35 analysis).

Criterion 15.8 b.- However, these sanctions are not applicable to VASPs, members of the administrative body and senior management (see analysis of criteria 15.3 to 7).

Criterion 15.9 a and b - *There is* no provision requiring VASPs to comply with the required preventive due diligence measures set out in R.10 to R.21.

Criterion 15.10 - The mechanisms for communicating designations as well as the reporting and monitoring obligations provided for by Law No. 2018-004 and Decree 2018-123/PR (see analysis of R.6 and R. 7) are applicable to VASPs. Indeed, the definition of funds, property and other financial resources to be frozen also includes financial assets and economic benefits of any kind, including therefore virtual assets (Art. 1, point 30 of AML/CFT Law No. 2018-004).

Criterion 15.11- Togo has taken steps to cooperate to the widest extent possible with other States, at the international level, for the purposes of exchanges of information, investigations and procedures concerning precautionary measures, as well as the confiscation of instruments and products linked to ML, predicate offences and FT (see analysis R.37 to R.40). These provisions allow the FIU, competent supervisory authorities, investigative and prosecutorial authorities and customs services to quickly exchange information. These exchanges made based on cooperation or reciprocity agreements, and mutual legal assistance, particularly in the area of AML/CFT, also concern VAs and VASPs. However, there are no specific legal provisions for the exchange of information relating to VAs and VASPs between supervisory authorities and their foreign counterparts.

Weighting and conclusion

Togo has not identified or assessed ML/TF risks arising from VA and VASP activities or operations, does not use a risk-based approach and has no provisions requiring VASPs to take appropriate measures to identify, assess, manage and mitigate their ML/TF risks. Indeed, VA-related activities and those of VASP are not yet regulated in Togo. In addition, the competent supervisory authority has not been designated. Nevertheless, VAs are targeted by measures to freeze the property, funds and other financial resources of persons or entities covered by UN Security Council Resolutions 1267 and 1373. The Togolese AML/CFT/PF system has major shortcomings with regard to the requirements of this recommendation.

Togo is rated Non Compliant on Recommendation 15.

Recommendation 16: Wire transfers

Togo had been rated Partially Compliant with recommendation 16 (formerly SRVII) during its previous assessment in 2010. This rating was justified by the explicit lack of an obligation to mention the originator's address on transfer messages and retain this information. There was also the lack of verification, for any intermediary or any FI, of the effective transmission in the transfer order of the information required. The lack of an obligation to adopt effective procedures based on a risk assessment also justified this rating. Provisions of AML/CFT Law No. 2018-004 substantially improve the legal framework for wire transfers in Togo.

Originator's financial institutions

Criterion 16.1 a and b - AML/CFT Law No. 2018-004 provides the required and accurate information for the originator and the beneficiary of the order, for all cross-border or national transfers and this whatever the amount (art 33).

Criterion 16.1 a.- FIs are required to obtain and verify originator information, i.e., full name, account number (when used to perform the transaction), address (or his national identification number, or the place and date of his birth), as well as the name of his FI if necessary (Art. 33, al.1 of the AML/CFT law n°2018-004). This information must be included in the message or payment form that accompanies the transfer. If there is no account number, a unique reference number must accompany the transfer (Art. 33, para. 3 of AML/CFT Law No. 2018-004).

Criterion 16.1 b.- They must also obtain the beneficiary's name and account number when it is used to carry out the transaction (Art. 33, al. 2 of AML/CFT Law No. 2018-004). All of this information must appear in the message or payment form that accompanies the transfer, including a unique reference number, if there is no account number (Art. 33, para. 3 of the AML/CFT Law No. 2018-004).

Criterion 16.2 - No provision in the law explicitly mentions cross-border wire transfers emanating from the same originator subject to batch transmission to beneficiaries. However, the information concerning the originator and the beneficiary mentioned in the analysis of criterion 16.1 above is required for all transfers made by FIs. As a result, the path of this information could be entirely reconstructed in the receiving country.

Criterion 16.3 a and b - Togo does not apply a threshold, the legal provisions mentioned above applying to all wire transfers.

Criterion 16.4 [Met] - FIs must verify the information on their ordering customers as mentioned above for the transfers they make. This verification is required in all cases, whether there is a suspicion of ML/TF or not.

Criterion 16.5- The information on the originator accompanying wire transfers is the same in Togo, whether they are national or cross-border transfers (see analysis of criterion 16.1). Funds transfers made using a credit or debit card or mobile phone are not affected, where the card or phone is used to pay for goods or services and where the card or telephone accompanies all transfers resulting from the transaction (Art. 33, al. 4 of AML/CFT Law No. 2018-004).

Criterion 16.6- FIs must include the required and accurate information on the originator and the beneficiary, in the message or the payment form that accompanies the transfer (cf. analysis criterion 16.1). And if there is no account number, a unique reference number must accompany the transfer (Art. 33, al. 3 of AML/CFT Law No. 2018-004). The information linked to the unique account/reference number, required within the framework of the customer's identification obligations, makes it possible to reconstruct the course of the transaction up to the originator/beneficiary. However, no legal or regulatory provision provides for a period of 3 working days to file the required information to the beneficiary's FI or to the competent authorities, at their request. On the other hand, the criminal prosecution authorities have the power to compel the immediate production of such information through their legal prerogatives (see analysis of criteria 31.1 and 31.3).

Criterion 16.7 - FIs must retain, without prejudice to provisions prescribing more stringent obligations, the records and documents relating to the operations they have conducted, including books of accounts and business correspondence, for a period of 10 years after their execution, in accordance with Recommendation 11 (Art. 35 of AML/CFT Law No. 2018-004). However, the deficiencies identified in the analysis of criteria 11.2, 11.3 and 11.4 impact the implementation of this provision in accordance on recommendation 11.

Criterion 16.8 - There is no legal obligation prohibiting the originator's FIs from executing wire transfers if they are not in compliance with the requirements set out in criteria 16.1 to 16.7. This provision is solely intended for the FIs of the instructing beneficiary who must refrain from executing a transfer when the information on the instructing party is not complete in accordance with the requirements of criteria 16.1 to 16.7 (Art. 34 of AML/CFT Law n°2018- 004 of).

Intermediary financial institutions

Criterion 16.9 - FIs making transfers must obtain and verify the required originator and beneficiary

information, as well as include it in the message or payment form that accompanies them (Art. 33, par. 3 of AML/CFT Law No. 2018-004). Although they are not explicitly mentioned, FIs acting as intermediaries are also concerned by this provision insofar as they execute transfers.

Criterion 16.10 - There is no requirement to retain for at least five (5) years information received from the Originator FI or other Intermediate FI where technical order prevent the transmission with the national transfer of the required information on the originator or beneficiary contained in the corresponding cross-border wire transfer. On the other hand, FIs are required to keep the documents relating to the operations they have conducted for a period of 10 years (see Rec.11 analysis).

Criterion 16.11 - FIs that receive wire transfers (including those acting as intermediaries) with incomplete originator information should make arrangements to obtain from the issuing or beneficiary institution the missing information for completion and verification (Art. 34 of AML/CFT Law No. 2018-004).

Criterion 16.12 - FIs have a legal obligation to take appropriate measures to identify and assess the ML/TF risks to which they are exposed (see analysis criterion 1.10). Consequently, they are required to have risk-based policies and procedures (see analysis criterion 1.11). In addition, where wire transfers do not include the required information on the originator, FIs must make arrangements to obtain it in order to complete and verify it, otherwise they must refrain from executing it and inform the FIU (Art. 34 of the AML/CFT law n°2018-004).

Beneficiary financial institutions

Criterion 16.13 - FIs are required to set up an information system allowing, in particular, the identification of suspicious or unusual transactions (Art. 6, point 6 of Directive n°07- 09-2017). However, there is no legal provision that explicitly requires them to take reasonable measures, which may include post-clearance monitoring or real-time monitoring where possible, to detect cross-border wire transfers for which the information required on the originator or the beneficiary.

Criterion 16.14 - FIs are not required to verify the identity of the beneficiary where this has not been done previously.

Criterion 16.15- As mentioned in the analysis of criterion 16.12 FIs must have policies and procedures based on ML/TF risks (Art. 34 of the AML/TF law n°2018-004). In addition, the beneficiary's FIs must adopt internal procedures which prescribe the steps to be taken and the rules to be observed in terms of monitoring and examining operations and unusual transactions, detecting and analyzing transactions likely to be the subject of an STR to the FIU (Art.5, al.2 of BCEAO directive 07-09-2017). However, the provisions to be made where wire transfers do not contain complete information on the beneficiary are not explicitly provided for by legal or regulatory provisions.

Operators of money or value transmission services

Criterion 16.16 - MVT service providers and their agents are subject to the obligations of the AML/CFT law in accordance with the requirements of recommendation 16 (cf. analysis Rec. 14). These are approved intermediaries defined as being credit institutions which justify an approval, as an intermediary, issued by the Minister of Finance as well as DFIs having obtained an authorization to exercise (art . 1st of directive no. 013-11-2015). As FIs, they are subject to the obligations of the AML/CFT law (Art.1-point 35.d, and 5 of the AML/CFT law n°2018-004). Consequently, all the provisions relating to wire transfers are applicable to them.

Criterion 16.17 a and b

Criterion 16.17 a.- Like FIs, MFT service providers must collect and store the required information on the principal, and if necessary submit a STR to FIU (Art. 34 of AML/CFT Law No. 2018-004).

Criterion 16.17 b.- There is no provision obliging MFT service providers to make a STR in all the countries concerned by the suspicious wire transfer.

Criterion 16.18 - FIs are required to suspend any transfer order for the benefit of a person, organization or entity subject to a freezing measure, and to inform, without deadline, the competent authority (Art. 104, paras. 1 and 3 of the AML/CFT Law No. 2018-004). Funds or financial instruments whose transfer or order has been suspended must be frozen, unless the competent authority authorizes their return to the customer (Art. 104, paras. 2 and 4 of law n°2018-004 of AML/CFT). The freezing mechanism required as part of the implementation of targeted financial sanctions related to terrorism and its financing is described in the analysis of criterion 6.5 (Art. 100 of the AML/CFT law n ° 2018-004).

Weighting and conclusion

Togo has met several criteria of this recommendation not only by passing Law No. 2018-004, but also by implementing BCEAO Directive No. 013-11-2015 on the procedures for exercising rapid transfer operations as a sub-agent within the UMOA. However, there is no legal obligation that prohibits the originator's FIs from executing wire transfers if they do not comply with the requirements set out in criteria 16.1 to 16.7. Besides, there is no provision obliging the originator's FIs to keep all information collected on the Originator and beneficiary in accordance with the requirements of criteria 11.2, 11.3 and 11.4; or to provide the beneficiary's FI or the competent authorities with the required information on the originator and beneficiary within 3 days. Furthermore, there is no legal obligation for FIs to take reasonable measures to detect cross-border wire transfers for which the required originator or beneficiary information is missing. And when executing transfers as intermediaries, and technical limitations prevent the transmission of the required originator or beneficiary information, FIs are not required to keep the information received from the originator's FI or another intermediary FI. Furthermore, regarding MVT service providers, there is no provision requiring them to make a suspicious transaction report in all the countries concerned by a suspicious wire transfer. Togo's AML/CFT system has moderate deficiencies with regard to the requirements of this recommendation.

Togo is rated Partially Compliant on Recommendation 16.

Recommendation 17: Use of Third Parties

In 2010, Togo was rated Non-Compliant on recommendation 17 (former Rec.9). The assessment had noted the lack of obligation for FIs using third parties to immediately obtain information relating to due diligence measures with regard to customers and to ensure third parties have the capacity to provide data relating to identification and due diligence as soon as possible. The system lacked measures to verify whether the third party that complies with the criteria can be established in countries that do not apply the FATF Recommendations. No details were provided either on the institution responsible for identification and verification in case of recourse to third parties. These deficiencies have been substantially resolved by the provisions of AML/CFT Law No. 2018-004.

Criterion 17.1 a, b and c

Criterion 17.1 a.- FIs may rely on third parties to perform customer due diligence in accordance with Recommendation 10. However, this does not remove their ultimate responsibility for fulfilling these obligations (art. 56 of AML/CFT Law No. 2018-004). Indeed, Article 58 of the AML/CFT Law provides that a third party applying the due diligence obligations provided for in Articles 18 and 19 of the law shall

provide financial institutions, without delay, with information relating to the identity of the client and, where applicable, the beneficial owner as well as information relating to the purpose and nature of the business relationship.

Criterion 17.1 b.- Third parties are required to provide financial institutions, without delay, with information relating to the identity of the client and, where applicable, the beneficial owner as well as information relating to the purpose and nature of the business relationship (art. 58, sub-para.1 of AML/CFT Law No. 2018-004). They must also send them, upon first request, copies of document to identify the customer and, where applicable, the beneficial owner, as well as any relevant documents for such due diligence (art. 58, sub-para.2 of AML/CFT Law No. 2018-004).

Criterion 17.1 c.- Third parties must be FIs or other persons subject to the AML/CFT such as external auditors/accountants, lawyers, notaries, bailiffs (s.(57 of AML/CFT Law No. 2018-004). Consequently, they are subject to the same customer due diligence, record-keeping and control or supervision obligations.

Criterion 17.2- The third party must be an FI or a reporting entity located or having its registered office in Togo or a person belonging to an equivalent category based on foreign law and located in another Member State of the country. UEMOA or in a third State imposing equivalent AML/CFT obligations (Art. 57 of Law No. 2018-004). The list of these countries must be decided by the Minister in charge of finance (Art. 46, al. 2 of law no. 2018-004). However, there is no obligation for Togo, when determining the countries in which third parties that comply with the conditions can be established, to take into account the available information on their risk level.

Criterion 17.3 a, b and c- The use by an FI of a third party belonging to the same financial group is not provided for by the legislation in force in Togo. Therefore, this **Criterion** is not applicable.

Weighting and conclusion

FIs may use third parties to implement due diligence measures with regard to their customers while ensuring the requirements in this area. However, no legal provision requires Togo, when determining the countries in which third parties may be established, to take into account the information available on their level of risk. Togo's AML/CFT regime has minor deficiencies with regard to the requirements of this recommendation.

Togo is rated Largely Compliant on Recommendation 17.

Recommendation 18: Internal Controls and Foreign Branches and Subsidiaries

Togo had been rated Partially Compliant with recommendation 18 (former Rec. 15 and 22). This rating resulted from the lack of independence and resources of the internal control system, the lack of continuous training programs and appropriate procedures when hiring employees (outside the banking sector) and obligations AML/CFT with regard to branches and subsidiaries abroad. The follow-up reports (FURs of the 2010 Mutual Evaluation highlighted the efforts made by Togo in the area of continuing AML/CFT training for FIs (cf. 10th FUR, Annex 3 .c, Summary table of AML/CFT training for FIs, page 51). From a legal standpoint, AML/CFT Law No. 2018-004 and BCEAO Directive No. 007-09-2017 have helped to resolve the deficiencies identified in the previous MER.

Criterion 18.1 a, b, c and d

Criterion 18.1 a.- FIs must have a compliance officer, at management level, responsible for applying the AML/CFT regime and also have an internal control system to verify compliance, observance and

effectiveness of the measures adopted as well as the continuous training of staff (Art. 24, indents 2, 3 and 4 of AML/CFT Law no. 2018-004).

Criterion 18.1 b.- With regard to the recruitment of their staff, FIs must take into account, depending on the level of responsibilities to be performed, the risks with regard to the fight against ML/TF (Art. 25 point 5 of law no. °2018-004 of AML/CFT). However, there are no details on the selection procedures which must guarantee the recruitment of employees according to demanding criteria.

Criterion 18.1 c.- FI staff must be trained and sensitized according to a program adapted to legal and regulatory requirements in order to help them detect unusual transactions, recognize ML/TF attempts, keep abreast of developments on ML/TF techniques, trends and methods, etc. (Art.9, al.1 and 2 of directive no. 007-09-2017).

Criterion 18.1 d.- These programs must be periodically reviewed by internal audit to ensure their effectiveness, at least once a year. The audit takes into account the evolution of the activity, the nature, the volume and the complexity of the FI's transactions, but also of the legal and regulatory environment (Art. 4 and 10 of Directive n °007-09-2017 of the BCEAO).

Criterion 18.2 a, b and c

Criterion 18.2 a.- Financial companies and parent credit institutions are required to establish harmonized compliance rules for all their subsidiaries included in their scope of prudential consolidation (Art. 16 of Circular 05-2017/CB of BC). As previously analyzed in criteria 17.3 and 18.1, FIs belonging to a group must have policies and procedures for sharing the information required for the purposes of customer due diligence and ML/TF risk management (Art. 89 and 90 of AML/CFT Law No. 2018-004).

Criterion 18.2 b.- The Togolese legal framework does not provide, within the group, for the sharing of information for AML/CFT purposes between compliance and audit functions.

Criterion 18.2 c.- Confidentiality guarantees are taken into account by the data protection policies within the group (Art. 89 and 90 of the AML/CFT law n°2018-004).

Criterion 18.3- Representative offices, branches and subsidiaries established in a third country where the minimum AML/CFT obligations are less stringent, must apply the obligations in force in the country hosting the parent FI, in the insofar as the legislative and regulatory provisions of the third States in question allow it (Art. 89 of the AML/CFT law no. 2018-004). Failing this, FIs must take additional measures to effectively deal with ML/TF risks and inform the supervisory authorities of their home State (Art.89, al.3 of AML Law No. 2018-004 /FT).

Weighting and conclusion

The Togolese legal framework requires FIs and their representative offices, branches and subsidiaries to implement harmonized ML/TF prevention programs, as well as adequate internal control policies and procedures. However, there is no exchange of information on customers, accounts and transactions between branches/subsidiaries and the compliance, audit and/or AML/CFT functions at group level, when are necessary for AML/CFT purposes. The Togolese AML/TFP regime has minor deficiencies with regard to the requirements of this recommendation.

Togo is rated Largely Compliant on Recommendation 18.

Recommendation 19: Countries at higher risk

Togo was rated Non Compliant with recommendation 19 (formerly R21) during its assessment in 2010 due to the lack of effective mechanisms to inform FIs of the concerns about deficiencies in the AML/CFT regimes of other countries and implement appropriate countermeasures for countries that persistently fail to implement or inadequately implement the FATF Recommendations. There was also no obligation for FIs to examine the context and purpose of those transactions that had no apparent economic or lawful purpose and to record the results in writing. By adopting Uniform AML/CFT Law No. 2018-004, Togo has taken steps to strengthen due diligence measures taking into account the high risk of ML/CFT inherent in a country.

Criterion 19.1- No provision explicitly provides for the obligation to apply enhanced due diligence measures to the countries for which the FATF calls for doing so.

Criterion 19.2 - Togo has taken provisions obliging FIs to apply enhanced and/or additional due diligence measures depending on the ML/TF risk linked to the business relationship, the country, the transaction or the product, independently of any appeal by the FATF (Art. 50 and 51 of AML/CFT Law No. 2018-004). However, there is no legal obligation to apply countermeasures proportionate to the risks when the FATF calls to do so.

Criterion 19.3- There are no provisions in Togo that explicitly provide for the implementation of measures enabling FIs to be informed of concerns raised by the deficiencies in the AML/CFT regimes of other country.

Weighting and conclusion

The Togolese legal system provides for the strengthening of due diligence measures with regard to customers established in a country representing a higher risk. On the other hand, FIs do not are required to apply due diligence measures and countermeasures proportionate to the risks when the FATF calls for them to do so. There are also no measures to inform FIs of concerns about deficiencies in other countries' AML/CFT regimes. The Togolese AML/TFP system has major deficiencies with regard to the requirements of this recommendation.

Togo is rated Non-Compliant on Recommendation 19.

Recommendation 20: Suspicious Transaction Reporting

In 2021, Togo was rated Partially Compliant on Recommendation 20 (former Rec.13 and SR IV). Indeed, the STR obligation was limited to ML/TF (thus not covering predicate offences), attempted ML/TF transactions were not reported and the implementation of the STR obligation was not effective. The provisions of AML/CFT Law No. 2018-004 essentially resolve these deficiencies, but also take into account the developments in the standards.

Criterion 20.1- FIs are required to report to the FIU, all sums recorded in their books or transactions involving amounts which they suspect or have good reason to suspect that they are derived from an ML/TF offence and tax evasion (Art. 79, paras. 1 and 2 of AML/CFT law no. 2018-004). Since the ML covers a list of predicate offences (Art.1, al. 16 and 33 of law n°2018-004), this STR obligation also extends to the proceeds of criminal activities. Any information likely to invalidate, confirm or modify the information contained in the STR is filed to the FIU, without delay (Art. 79, al. 5 of the AML/CFT law n ° 2018-004). However, the STR obligation to the FIU does not extend to all funds related to TF insofar as its definition does not include the financing of terrorist organizations and individual terrorists even if it has no link with

one or more specific terrorist acts as well as the financing of terrorist fighters' travel.

Criterion 20.2- There is no legal obligation for FIs to report attempted suspicious transactions.

Weighting and conclusion

The legal framework establishes the principle of STRs for FIs. On the other hand, they are not required to report attempted suspicious transactions. There are moderate deficiencies in the Togolese AML/TFP system with regard to the requirements of this recommendation.

Togo is rated Partially Compliant on Recommendation 20.

Recommendation 21: Disclosure and Confidentiality

In its previous assessment, Togo was rated Largely Compliant with recommendation 21 (former Rec.14). Nevertheless, it was noted that the requirement of confidentiality for the directors and employees of financial institutions was limited to the STRs communicated to the FIU. This deficiency was resolved by AML/CFT Law No. 2018-004.

Criterion 21.1 - No proceedings for violation of professional secrecy may be brought against FIs or their managers, agents or employees who, in good faith, have filed information or made suspicious transaction reports (Art. 97 of AML/CFT Law No. 2018-004). Indeed, no action for civil or criminal liability can be brought against them, and no professional sanction can be meted out on them when they report of ML/TF suspicions to the FIU in good faith. And this, even if the court decisions rendered based on these reports have not given rise to any conviction and that the proof of the criminal nature of the facts that triggered the STR is not reported or if these facts have been granted amnesty or resulted in a decision of null and void or acquittal (Art. 83 of AML/CFT Law No. 2018-004).

Criterion 21.2 - The suspicious transaction report is confidential. As a result, FIs and their managers and employees are prohibited, under penalty of sanction, from tipping off the owner of the sums or perpetrator of one of the transactions prompting an STR or to third parties, the existence and content of a report filed to the FIU and to provide any information on the action taken on the said report (Art. 82, al. 1 and 2 of AML/CFT Law n°2018-004 of). This prohibition does not concern the sharing of information with supervisory authorities, professional orders and national representative bodies. Furthermore, the managers and officials of the FIs can reveal to the judicial authority or criminal investigation officers acting on delegation that the information has been filed to the FIU.

Weighting and conclusion

Togo has taken the necessary measures to protect FIs, their managers and employees against any criminal or civil liability for violating any rule governing the disclosure of information relating to suspicious transaction reports filed in good faith to the FIU. Legal provisions have also been made to prohibit FIs, their managers and employees from disclosing the fact that an STR or information relating thereto has been filed to the FIU, without prejudice to the exchange of information required by the standards. Togo's AML/TFP regime has no deficiencies with regard to the requirements of this recommendation.

Togo is rated Compliant on Recommendation 21.

Recommendation 22 - Designated Non-Financial Businesses and Professions: customer due diligence

Recommendation 22 (former Rec. 12) was rated Non-Compliant for Togo in 2010. The main deficiencies noted were related to the lack of popularization of AML/CFT laws for the benefit of DNFBPs and the lack of compliance of certain professional categories. The AML/CFT Law No. 2018-004 broadens the scope of DNFBPs to several professional categories and strengthens customer due diligence measures.

Criterion 22.1 a, b, c, d and e- DNFBPs are required to comply with the CDD measures set out in Recommendation 10 (see analysis of Rec. 10). These measures apply under the following conditions:

Criterion 22.1 a.- For casinos, when the amount of the transaction or related transactions exceeds one million CFA francs, equivalent to €526, (Art. 18 to 22 and Art. 44 al. 1 point 2 of AML/CFT Law No. 2018-004). More specifically, casinos are required to record in registers to be kept for 10 years, the transactions of all customers as well as any transfer of funds conducted between casinos and gaming circles so as to be able to trace the transactions conducted by their customers and establish links (Art. 44 al. 1 points 3 and 4 of AML/CFT Law No. 2018-004). In addition, they must prevent tokens issued by a subsidiary from being redeemed in another subsidiary, including abroad, where the institution has subsidiaries (Art. 44 al. 2 of law no. 2018- 004 of AML/CFT). However, the deficiencies identified under Recommendation 10 also apply to casinos.

Criterion 22.1 b.- Real estate agents or all persons who carry out, control or advise on real estate transactions are required to identify the parties, when they intervene in transactions for the purchase or sale of real estate (Art. 45 of AML/CFT Law No. 2018-004). These identification obligations relate to both natural and legal persons (Art. 27 and 28 of AML/CFT Law No. 2018-004). However, the deficiencies identified under Recommendation 10 also apply to real estate agents.

Criterion 22.1 c.- Persons habitually engaged in trade or arranging the sale of precious stones and metals, (Art. 1, para. 24 d of AML/CFT Law no. 2018-004), must comply with the customer due diligence obligations outlined above (Art. 27 and 28 of AML/CFT Law No. 2018-004). These obligations apply, including for occasional customers, where the amount of the transaction or related transactions exceeds ten million CFA francs equivalent to €15258 (Art. 29 al. 1 indent 1 of AML/CFT Law n°2018- 004 of). However, the deficiencies identified under Recommendation 10 also apply to dealers in precious stones and metals.

Criterion 22.1 d.- The independent legal and accounting professions are required to comply with the customer due diligence obligations described above (Art. 6 al. 1 points 1 and 2 of law n°2018-004). In particular, independent legal professionals are subject to it when they participate, in the name of their customer or on behalf of the latter, in any financial or real estate transaction or act in a trust capacity or when they assist their customer in the preparation or execution of transactions specified by law (Art. 6 al. 2 of law no. 2018-004). However, the deficiencies identified under Recommendation 10 also apply to independent legal professions.

Criterion 22.1 e.- Service providers to companies and trusts (trusts) are also required to comply with the same obligations (Art. 1, al. 24 f of law no. 2018-004) when providing the services on a business basis to third parties the services specified by law. However, the deficiencies identified under Recommendation 10 also apply to trusts and company service providers in Togo.

Criterion 22.2- DNFBPs are required to collect, update and analyze throughout the duration of the business relationship, the elements of information that make it possible to promote appropriate knowledge of their customer. The collection and storage of this information must be conducted in line with the objectives of ML/TF risk assessment and monitoring adapted to this risk (Art. 19 al. 2 of AML/CFT Law n°2018-004).

They are also required to communicate to the judicial authorities, the State agents responsible for the detection of ML/TF offences, acting within the framework of a judicial mandate, the supervisory authorities as well as the FIU, on their request, the records and documents relating to customer identification obligations and kept, with effect from the termination of the relationship with their regular or occasional customers (Art. 36 of AML/CFT Law No. 2018-004). However, the preservation period of the required records and documents is not specified for DNFBPs except for bailiffs who are required to keep the said documents for 10 years (Art. 18 of Law 2011-043).

Criterion 22.3- DNFBPs are required to have an adequate risk management system in place to determine whether their customer is a politically exposed person (Art. 22 of AML/CFT Law No. 2018-004). And if this is the case, they must implement the specific measures that correspond to the obligations relating to PPE set out in Recommendation 12. Togo to the requirements of this **Criterion** (see analysis of criteria 12.3 and 12.4).

Criterion 22.4- The Togolese legal framework does not require DNFBPs to comply with the requirements related to new technologies set out in Recommendation 15.

Criterion 22.5- The Togolese legal framework does not provide for an obligation to use established third parties for DNFBPs in implementing the requirements of Recommendation 17.

Weighting and conclusion

DNFBPs are subject to customer due diligence measures. However, Togolese legislation does not provide for the retention period of the documents and documents required for certain DNFBPs. Similarly, there is no obligation to assess ML/TF risks before the launch of new products, services, distribution channels or the use of new technologies. The legal framework also does not provide for recourse to third parties for DNFBPs, pursuant to the requirements of Recommendation 17. The Togolese AML/CFT system has moderate deficiencies with regard to the requirements of this recommendation.

Togo is rated Partially Compliant on Recommendation 22.

Recommendation 23 - Designated Non-Financial Businesses and Professions: other measures

In 2010, Togo was rated Non-Compliant on recommendation 23 (former Rec. 16). The MER noted the lack of obligation for DNFBPs to put in place an internal control system and AML/CFT programs; to pay particular attention to their business relations and their transactions with natural and legal persons residing in countries which do not apply or insufficiently apply the FATF Recommendations. It also highlighted the inadequacy of the regulations and the lack of implementation of the prescribed obligations. The provisions of AML/CFT Law No. 2018-004 strengthen the legal framework applicable to DNFBPs.

Criterion 23.1- The STR obligation to FIU is binding on all DNFBPs under the conditions specified by AML/CFT Law No. 2018-004 (see analysis Rec.20). Indeed, lawyers, notaries, other independent legal professions and accountants are subject to it when they carry out financial transactions for their customers (cf. analysis of c. 22.1, Art.). Trust and company service providers are also required to do so when they provide services for their customers specified by AML/CFT Law No. 2018-004 (see analysis of c. 22.1, Art.). The same obtains for traders in metals and precious stones, specifically for transactions or operations in cash from the threshold of 15 million FCFA (€22,887.5), whether it is a single operation or several transactions that appear to be linked (Art. 1 of BCEAO Directive No. 010-09-2017). However, this obligation has deficiencies as identified in the analysis of Recommendation 20.

Criterion 23.2- DNFBPs are required to comply with established internal control requirements. Indeed, they must have policies, procedures and controls required to effectively mitigate and manage their ML/TF

risks in accordance on Recommendation 18 (Art.11 al. 3, 4 and 5 of AML/CFT Law No. 2018 -004). However, no legislative or regulatory measure imposes a continuous training program for DNFBP staff and managers.

Criterion 23.3- DNFBPs are required to identify and assess the ML/TF risks to which they are exposed, taking into account countries or geographical areas, products, services , transactions or distribution channels(Art. 11 al. 1 of AML/CFT Law No. 2018-004). On the other hand, there is no specific reference to countries presenting a high risk in accordance on Recommendation 19. Furthermore, Togo has not put in place measures to inform DNFBPs of deficiencies of other countries' in their AML/CFT regimes.

Criterion 23.4 - Like FIs, DNFBPs are required to respect the confidentiality of STRs made to FIU under the conditions set by law (see analysis Rec. 21, Art. 82 of law no. 2018-004 of AML/CFT).

Weighting and conclusion

Togo has taken appropriate measures to subject DNFBPs to suspicious transaction reporting and internal control requirements. However, the lack of measures relating to the obligation to report attempted suspicious transactions, the fact that the STRs do not cover all acts of FT, the lack of a binding measure imposing a continuous training program for staff and managers of DNFBPs, as well as the lack of a provision obliging DNFBPs to apply countermeasures to high-risk countries at the request of the FATF, constitute moderate deficiencies in the Togolese legal system.

Togo is rated Partially Compliant on Recommendation 23.

Recommendation 24 - Transparency and Beneficial Ownership of Persons

In its previous REM, Togo was rated Non-Compliant on recommendation 24 (former Rec. 33). The deficiencies justifying this rating were related to the problem of maintaining and managing the RCCM, the lack of beneficial ownership identification, the non-computerization of the RCCM and non-existence of a national records that could provide information to the OHADA regional records. Furthermore, the criteria of this Recommendation now include the obligation to assess the ML/TF risks associated with all categories of legal persons, the communication to the competent authorities of basic information and information beneficial ownership identification and the sharing of such information by national authorities with their foreign counterparts. Some of these requirements are taken into account by the provisions of the AML/CFT Law No. 2018-004.

Criterion 24.1- The OHADA uniform act relating to the law of business companies and economic interest groupings (AUSGIE) of 30 January 2014 enshrines the mechanisms that identify the various types of business companies. General provisions regulate the constitution of these companies (public limited companies, limited liability companies, simple and individual limited partnerships, GIE), as well as the forms and characteristics (Art. 6, 10, 11 and 13 of the AUSGIE). The procedures for creating business companies in Togo are indicated in the AUSGIE. Basic information on these legal persons is collected and kept at the court registry for publicity purposes. This basic information relating to the company is accessible to the public at the Commercial Court registry. It can also be consulted on the website of the Business Formalities Centre (Centre de Formalités des Entreprises (Art. 256-2 AUSGIE). The same obtains for cooperative societies governed by the OHADA Uniform Act of December 15, 2010. On the other hand, there is no mechanism to identify and outline the methods for collecting beneficial ownership information.

Criterion 24.2- Togo has assessed the ML/TF risks associated with the various categories of business companies established in the country. The risks associated with these forms of company are high due to the medium-high level of threats and high vulnerability capacity. Togo has adopted measures to mitigate ML/TF risks associated with both business companies following the specific risk assessment undertaken.

Basic information

Criterion 24.3- The Trade and Personal Property Credit Register (RCCM) established by the AUDCG is kept by the registry of the Commercial Court to receive basic information on legal persons (Art. 16 of the AUSGIE and 34, 35, 46 of the AUDCG). This information relates to the company name, legal form, address, registered office, capital, list of corporate officers and members of the board of directors, duration of the company, auditors, etc. They are publicly accessible in the RCCM within the registry of the Commercial Court and can be consulted on the website of the CFE (Art. 256 of the AUSGIE).

Criterion 24.4- Basic information on legal persons, including the names of the partners or shareholders as well as the nature of the shares or shares and their distribution, the voting rights, are contained in the articles of association of the company and kept at the RCCM (Art. 46, 47 of the AUDCG). All deliberations relating to the company are also recorded in the minutes kept at its head office (Art. 134 to 136 of the AUSGIE). A register of nominee bonds issued by the company is kept at the registered office of each public limited company (Art. 746-1 of AUSGIE)

Criterion 24.5- The RCCM receives requests for Modifying, additional and secondary mention of basic information on legal persons (Art. 35, par. 4 of the AUDCG). Business companies are required to mention any modification therein when their situations so require (Art. 52 of the AUDCG). The AUSGIE also provides that in the event of modification of the articles of association and transformation of the company (Art. 263 and 264 of the AUSGIE), the relevant information must be registered in the RCCM. However, there is no mechanism to ensure the accuracy of the information entered and its timely updates.

Beneficial ownership information

Criterion 24.6 a, b and c

Criterion 24.6 a.- The RCCM does not include beneficial ownership information.

Criterion 24.6 b.- FIs and DNFBPs are required to collect information on beneficial owners when observing their customer due diligence obligations before entering into business relations (Art.18 of law n°2018 -004 of AML/CFT).

Criterion 24.6 c.- While the competent authorities may obtain this information from FIs and DNFBPs, it remains fragmented as it does not cover the beneficial ownership information of non-client legal persons of these reporting entities.

Criterion 24.7- FIs and DNFBPs are required to update information on their customers, including that relating to beneficial owners, throughout the business relationship (Art. 19 of law n°2018- 004 of AML/CFT). As mentioned previously, this information remains fragmented. In general, other legal persons only collect and update basic information, and not that relating to beneficial owners. Moreover, the very mechanism for updating the information contained in the register of companies has not been explained (Art. 280 of the Finance Act).

Criterion 24.8 a, b and c

Criterion 24.8 a.-Togolese legislation requires legal persons and DNFBPs to cooperate with the competent authorities in order to identify the beneficial owners. Indeed, the partners and the main managers of the companies are jointly and severally liable with the companies for the communication of information on the beneficial owners to the tax authorities (Art. 280 of the Law on the Manual of Tax Procedures Art.) This information is accessible to law enforcement authorities.

Criterion 24.8 b- With regard to FIs and DNFBPs, they are required to communicate the basic information and that on the beneficial owners to the competent authorities (Art. 36 of the AML/CFT law n°2018-004). However, there is no obligation for DNFBPs to keep their customers' identification papers and documents as well as those relating to operations conducted for the independent legal professions, with the exception of bailiffs required them to keep the said documents for 10 years (Art. 18 of law 2011-043Art.).

*Criterion 24.c-*No other mechanism has been identified by the country.

Criterion 24.9- The AUSGIE does not explicitly provide for the obligation of retention of documents by the liquidator. Only the FIs are required to keep for ten (10) years the documents and identification documents and the transactions of their customers (Art. 35 of the AML/CFT Law n°2018-004). DNFBPs that were in business relationship with the dissolved legal person are not required to keep the documents for five (05) years.

Other requirements

Criterion 24.10- The powers granted to judicial police officers, including the investigating judge, guarantee timely access to basic information and on the beneficial owner to the parties concerned (see analysis Rec. 31). This is the power to require the communication of information by the law enforcement authorities (arts. 49, 50 and 131 of the CPP, arts. 36 and 93 of the AML/CFT law n ° 2018-004).

Criterion 24.11 a, b, c, d and e - AUSGIE does not explicitly prohibit the issuance of bearer shares. Transferable securities, whatever their form, must be registered in a securities account in the name of their owner and each company is required to have a registered or bearer securities register (Art. 744 al.1). When the bearer security is issued on the capital market, the owner must convert it into a registered security (Art.746). These measures fully cover the requirements of this criterion.

Criterion 24.12 a, b and c - There is no legal or regulatory provision in force in Togo which ensures that nominee shares and appointed directors are not misused for ML/TF purposes.

Criterion 24.13- Law No. 2015-10 on the Penal Code in Togo does not provide for any sanctions relating to any violations of the obligations to collect basic information on legal persons and beneficial owners, as well as their updating. However, Law No. 0043/2018 on AML/CFT require reporting institutions to carry out CDD, including beneficial ownership identification of their customers (see R .10 and R.22, criterion 22.1 d.). Failure to comply with these obligations entails sanctions (Art. 116 of the AML/CFT Law). See R.35.

Criterion 24.14- The provisions of AML/CFT Law No. 2018-004 relating to international cooperation allow Togolese authorities to exchange basic and beneficial ownership information with their foreign counterparts (Art. 76, 78 and 130 to 138).

Criterion 24.15- There is no legal obligation or mechanism in Togo to monitor the quality of the assistance it receives from other countries in response to requests for basic and beneficial owners information or requests for assistance in locating beneficial owners residing abroad.

Weighting and conclusion

The Togolese legal system enshrines the general principle of transparency of legal persons and beneficial owners, but has many deficiencies. Indeed, Togo has assessed the ML/TF risks relating to the types of business companies established in the country. However, it does not have a mechanism to update RCCM information without delay. It also lacks a mechanism for updating the beneficial ownership information

collected and maintained in the company's registry. There is no legal or regulatory text to ensure that nominee shares and named directors are not misused. There is no express ban on bearer shares, nor any sanctions for failing to meet the requirements of Recommendation 24. Nor are there any provisions obliging the country to monitor the quality of assistance it receives from other countries in response to requests for basic and beneficial ownership information or requests for assistance in locating beneficial owners residing abroad. Togo's AML/CFTP regime has moderate deficiencies with regard to the requirements of this recommendation.

Togo is rated Partially Compliant on Recommendation 24.

Recommendation 25 - Transparency and beneficial owners of legal arrangements

The requirements of recommendation 25 (former Rec.3) were considered inapplicable to Togo's AML/CFT regime in 2010. The updated criteria of the standard now apply since, although the Togolese legal framework does not provide for the creation of trusts, there is no prohibition for foreign trusts to operate or be administered in the country. Similarly, members of independent legal professions are empowered to provide trust-related services.

Criterion 25.1 a, b, c

Criterion 25.1 a. - Not applicable.

Criterion 25.1 b. - Not applicable.

Criterion 25.1 c.- There are no trusts in Togo but independent legal professionals are treated as trustees (Art.1.27 of AML/CFT Law No. 2018-004). They are required to observe due diligence with regard to their customers, in particular, the identification of the customer, of the beneficial owner of the business relationship, as well as the updating of the information collected. On the other hand, there is no obligation to keep their customers' identification papers and documents as well as those relating to operations conducted for the independent legal professions, with the exception of bailiffs who are required to keep the documents for 10 years (Art. 18 of law 2011-043).

Criterion 25.2 - Independent legal professionals who intervene in the context of trusts are subject to the obligation to collect and update information relating to their customers (arts. 19 and 20 of AML/CFT Law n°2018- 004). There is no specified duration for the keeping of information to be accessed it without delay, except for bailiffs (see analysis of criterion 25.1).

Criterion 25.3 - No legal or regulatory provision requires trusts to declare their status to FIs and DNFBPs, even if these reporting entities may receive this information through the implementation of AML/CFT preventive measures.

Criterion 25.4- There is no legal or regulatory provision in force in Togo which prevents trusts or any other legal arrangement from providing any required information (beneficial owners and assets held or managed) to the competent authorities.

Criterion 25.5- The powers given to criminal investigation officers, including the investigating judge, guarantee timely access to beneficial ownership information, the residence of the trustee and any assets held by the FI or DNFBP in a business relationship or executing any transaction on behalf of a trustee (see analysis C.24.10).

Criterion 25.6 a, b and c- The legal provisions relating to international cooperation allow the Togolese

authorities to exchange information on trusts and other legal arrangements in accordance with the requirements of Recommendations 37 and 40 (Art. 76, 78, 130 and 138 of Law No. 2018-004). These provisions include:

Criterion 25.6 a.- facilitating access by foreign competent authorities to information in company registers and the exchange of information on shareholders, through the provision of originals or certified copies of relevant files and documents, including bank statements, accounting documents and records showing the company's transactions or its business activities (Art. 138, para. 7);

Criterion 25.6 b.- exchanging nationally available information on trusts or other legal arrangements (Art. 74);

Criterion 25.6 c.- obtaining beneficial ownership information on behalf of foreign counterparts (Arts. 76 and 78).

Criterion 25.7- There is no legal or regulatory provision in force in Togo which provides that trusts are legally liable for any violation of their obligations, or that they are subject to proportionate and dissuasive sanctions, of a criminal, civil or administrative nature, applicable in case of non-compliance with their obligations.

Criterion 25.8- Proportionate and dissuasive sanctions, of a criminal, civil or administrative nature, are applicable to FIs and DNFBPs in the event of non-compliance with their obligation to make available to the competent authorities, without delay, any information relevant, including on trusts (see analysis of criteria 27.4, 28.4 and 35.1-2).

Weighting and conclusion

DNFBPs acting as professional trustees are required to observe specific AML/CFT due diligence and due diligence measures. On the other hand, no period has been stipulated for record keeping. Trustees are also not required to declare their status to FIs and DNFBPs. Togo's AML/CFTP regime has moderate deficiencies with regard to the requirements of this recommendation.

Togo is rated Partially Compliant on Recommendation 25.

Recommendation 26: Regulation and supervision of financial institutions

Togo was rated Partially Compliant with recommendation 26 (former Rec. 23) in 2010. The MER noted the lack of a mechanism to prevent the takeover of FIs by criminals, except for banks and insurance companies. The scope of CDD measures did not cover all financial activities identified by the FATF. The activity of sub-agents of MVT services was not subject to the granting of approval. It was also noted a lack of prudential regulations applicable to AML/CFT outside banks, and of effective implementation of the prescribed obligations. It should be noted that with the revision of the standards, the FATF now attaches significant importance to the risk-based approach in the monitoring and supervision of FIs. The Togolese legal system generally takes into account the required requirements, with the adoption of Law No. 2018-004 relating to AML/CFT, Directive No. 007-06-2010 of June 14, 2010 relating to the methods of control and sanctions for decentralized financial systems, Directive No. 008-05-2015 of May 21, 2015 governing the conditions and procedures for carrying out the activities of wire money issuers in UMOA Member States, Directive No. 013-11-2015 of November 15, 2015 relating to the procedures for exercising the activity of rapid money transfer as a sub-agent within the UMOA and Directive No. 007-09-2017 on the procedures for the implementation of the Uniform AML/CFT Law by FIs.

Criterion 26.1- FIs are subject to regulation, supervision or control by various national and community institutions (Art. 1 and at. 86 of AML/CFT Law No. 2018-004). Indeed, the BCEAO is responsible for the regulation of the banking and financial system, in particular the regulation of external financial relations and AML/CFT in the UEMOA member States (Art. 17 and 34 of the UMOA treaty and Art. 43 of the BCEAO statutes). The Banking Commission (CB) is responsible for monitoring the credit institutions defined by banking law (Art. 1 of the Convention governing the CB of UMOA, Art. 2 of the appendix to the convention governing the CB of UMOA, Article 59 of Law No. 2019-019 on banking regulations). The Minister of Finance carries out or has conducted the control of DFIs (Art. 43 of law no. 2011-009). The BCEAO and the CB also proceed, after informing the Minister, with the control of any DFI whose level of activities reaches a threshold determined by a directive of the BCEAO (Art. 44 of the law n° 2011-009 on DFS regulations). They can also control the sub-agents of approved intermediaries and DFIs, to ensure compliance with the provisions governing the exercise of the rapid money transfer activity (Art. 10 of Directive No. 013-11 -2015), as well as establishments issuing wire money (Art. 36 and 37 of Directive No. 008-05-2015). The same obtains for any other body involved in manual foreign exchange (Art. 4 of Annex 1 of Regulation No. 09/2010/CM/UEMOA on the external financial relations of UEMOA Member States).

The Regional Insurance Supervisory Commission is the regulatory body of CIMA (Art. 16 of the Treaty establishing an integrated organization of the insurance industry in African States, Art. 309 of the CIMA Insurance Code). In addition, the National Insurance Department, in particular, ensures the general supervision of the insurance market (Art. 1 of annex II of the CIMA Treaty).

The Regional Council for Public Savings and Capital markets (CREPMF) is responsible, on the one hand, for organizing and controlling public calls for savings and, on the other hand, for authorizing and controlling participants in the regional capital market (Art. 1 of the Agreement establishing the CREPMF).

As regards the *Société des Postes du Togo*, it is supervised by the directorate in charge of external finances of the Ministry of Finance, the BCEAO and the CB for its financial activities (Art. 53 of the banking law, Art. 4 of Annex 1 of Regulation No. 09/2010/CM/UEMOA).

Market entry

Criterion 26.2- FIs cannot carry out their respective activities without being approved or authorized by their supervisory or supervisory authorities. This requirement is provided for in the legal texts regulating each activity, namely: Article 13 of Law No. 2009-09 regulating banking, Articles 7, 8 and 9 of Law No. 2011-009 regulating DFS , article 315.1.a and 315.2 al. 1 of the CIMA Insurance Code, Articles 3 and 8, al. 1, 3 and 4 of Directive No. 008-05-2015, governing the terms and conditions for the exercise of the activities of wire money issuers, Article 87 al.1 of AML/CFT Law No. securities, Directive No. 13-11-2015 of November 10, 2015 relating to the rapid money transfer exercise, Article 2 of Directive No. 06/07/2011/RFE relating to the requirements for engaging in the authorized foreign exchange business, Decree no. 96-22 of 28 February 1996 on financial services. However, no legal or regulatory provision explicitly prohibits the establishment of shell banks and the prosecution of their activities in Togo. The measures taken relate in particular to the prohibition of establishing or maintaining a correspondent banking relationship with a shell bank (see analysis of criterion 13.3).

Criterion 26.3 -

Supervisory authorities are required to take the necessary steps to define the appropriate criteria for ownership, control or direct or indirect participation in the direction, management or operation of an FI in accordance with the regulations (Art. 86 of AML/CFT Law No. 2018-004). These provisions are included

in the various laws and regulations governing FIs and their activities. Overall, they are intended to prevent criminals or their accomplices from holding a significant or controlling interest in an FI, or from holding a management position in it. However, these texts have deficiencies as they did not provide relevant, clear and precise provisions for the identification of the beneficial owners of FIs.

Indeed, the law n°2009-019 of 07/09/2009 relating to banking regulations provides that any person convicted in particular for offences under common law, for forgery and use of forgery, for theft, for fraud, for embezzlement of public funds, for violation of exchange regulations, for violation of legislation against ML/TF, may not, among other things, direct, administer or manage a credit institution or one of its branches or take a stake in the capital of a credit institution (Art. 26). Circular No. 02-2017/cb/c of the UMOA sets the conditions for the exercise of the functions of administrators and managers within credit institutions and financial companies. And directive no. 017-04-2011 establishes the list of documents and information making up the file for approval as a credit institution, including in its appendix 1 on the main shareholders, administrators, managers and directors. For example, for shareholders holding at least 5% of voting rights or capital, extracts from the criminal record or any other equivalent document dated less than three (3) months; the notarized declaration on the financial situation, the source of the funds used to subscribe to the capital of the future establishment and the legality; etc.

With regard to DFIs, of law no. 2011-009 on DFIs refers to directive no. 005-06-2010 of June 14, 2010 which determines the components of the approval of DFIs in the UMOA (Art 8). Among the documents and information requested, there are the names, addresses, professions and curriculum vitae of the members of the administrative and management or supervisory bodies, with an extract from their criminal record or a certificate of reputable character issued by the competent authorities less than three (3) months old;

For wire money issuers, directive no. 008-05-2015 sets the conditions for granting approval to EMIs and the authorization to carry out wire money issuance activities for DFIs.

For manual exchange approved, Directive No. 06/07/2011/RFE of July 13, 2011 indicates the documents and information to be provided for natural and legal persons which include, among other things, an extract from the criminal record of court proceedings of corporate officers dating back less than 3 months (art2).

For the actors of the capital market, it is the General Regulations relating to the organization, operation and control of the regional capital market of the UMOA which lays down the legal bases of the conditions and procedures of approval (article 32).

With regard to insurance, the CIMA Insurance Code provides indicates the documents and information that must accompany the application for approval. Article 506 of the CIMA insurance code also provides conditions of good repute for general agents and insurance brokers (Art. 328-3 et 328-4).

Risk-based approach to monitoring and surveillance

Criterion 26.4 a and b

Criterion 26.4 a.- Supervision on a consolidated basis is instituted by Decision No. 014/24/06/CB/UMOA dated June 24, 2016 for parent credit institutions of FIs. This decision responds to Principle 12 “Supervision on a consolidated basis” of the Core Principles for Effective Banking Supervision. Indeed, the Banking commission (CB) is required to conduct or to have directed the conduct particularly by the BCEAO, off-site and on-site inspections, on a corporate or consolidated basis, with the institutions accountable to the law in order to ensure compliance with the provisions applicable to them (Art. 21, paragraph 1 of the Annex to the Convention governing the BC as amended by Decision No. 010 of 09/29/2017/CM/UMOA). It defines the frequency and scope of the control and assessment of a subject

institution, particularly taking into account its risk profile (Art. 21, al. 2 of the Annex to the Convention governing the CB). However, nothing indicates here that the ML/TF risk is specifically taken into account.

Criterion 26.4 b - The other FIs are subject to their own regulations (see **Criterion 26.1**) but there is no provision requiring that their control or supervision be conducted according to the ML/TF risk.

Criterion 26.5 a, b and c

Criterion 26.5 a- The CBU defines the frequency and scope of the control and assessment of a subject institution, taking into account in particular its size, its structure, its risk profile, the nature and complexity of its activities as well as its systemic importance (Art. 21, para. 2 of the appendix to the agreement governing the UMOA banking commission). No similar requirement is foreseen for the other categories of FI not supervised by the CBU.

Criterion 26.5 b- And even for those by the CBU-controlled FIs, it does not appear explicitly that inspections should be determined based on the ML/TF risk-based approach as required by the standards.

Criterion 26.6 - No regulatory provision requires the supervisory authority to review the assessment of the ML/TF risk profile of an FI or a financial group on a regular basis and as soon as Important events or developments in the management and operations of the FI or financial group.

Weighting and conclusion

Togo has strengthened the regulation and control of FIs by adopting and implementing several texts relating to the financial sector in general, and to AML/CFT. These texts specify and define in particular the authorities in charge of the regulation and monitoring of the various FIs according to their activity. On the other hand, the identification of the beneficial owners of FIs, the risk-based approach to ML/TF are not yet fully integrated and taken into account in the supervision or control of FIs. Togo's AML/CFT/FP regime has moderate deficiencies with regard to the requirements of this recommendation.

Togo is rated Partially Compliant on Recommendation 26.

Recommendation 27: Powers of supervisory Authorities

In 2021, Togo was rated Partially Compliant on recommendation 27 (former Rec. 29). This rating was justified by the low consideration of the AML/CFT component in the FI monitoring system, infrequent controls and not allowing not cover all FIs within a reasonable time frame. Controls in the microfinance sector were limited to large-scale DFIs. Authorized foreign exchange dealers and MVT services were not inspected. There was also a lack of knowledge of the nature and extent of the inspections conducted at the Togolese Post Office and Funds Deposit Division. The legislative and regulatory texts which give powers to the supervisory authorities are specified in the analysis of criterion 26.1.

Criterion 27.1- The BCEAO, the CBU, the Ministry of Finance, the CRCA and the CREPMF have the powers required to control and ensure compliance with AML/CFT requirements of FIs in Togo (see analysis of **Criterion 26.1**). Documentary checks are conducted through statutory declarations and other reports that reporting entities send to their supervisory authorities.

Criterion 27.2- Designated supervisory authorities have powers defined by the legal framework as specified in **Criterion 26.1** to carry out on-site checks and on-site inspections. These inspections are conducted during general inspection missions or thematic AML/CFT missions according to a schedule earlier established by the supervisory authorities or on an unannounced basis.

Criterion 27.3- The designated supervisory authorities can access the information held by the FIs to ensure their compliance and require the production of any required document (Art. 92 and 96 of the AML law n°2018-004 /FT).

Criterion 27.4- Designated supervisory authorities may impose sanctions in the event of violation of AML/CFT obligations (Art. 112 of AML/CFT Law No. 2018-004). Indeed, the CBU can impose disciplinary sanctions in case of violation of banking regulations or any other legislation applicable to credit institutions, including in terms of AML/CFT (Art. 66 of the banking law). It can also impose financial sanctions (Art. 77 of law no. 2009-009). A wide range of sanctions is also provided for DFS (Art. 71 to 81 of the law on DFS, Art. 14 of Directive 007-09-2017). The CRCA can also mete out sanctions on insurance companies for non-compliance with AML/CFT requirements (Art.112 of the AML/CFT Law 2018-004).

Weighting and conclusion

Togo has taken a set of legislative and regulatory provisions aimed at strengthening the powers of the supervisory authorities. Indeed, they are authorized to ensure the effective implementation by the FIs of their AML/CFT obligations, to access all required information/documents held by the FIs, and to apply to the FIs the sanctions provided for in the event of violation of AML/CFT/FP obligations. Togo's AML/TFP system has no deficiencies with regard to the requirements of this recommendation.

Togo is rated Compliant on Recommendation 27.

Recommendation 28 - Regulation and Supervision of DNFBPs

Recommendation 28 (former Rec. 24) was rated Non-Compliant (NC) for Togo in 2010. The main deficiencies noted were related to the insufficiency, or even the total lack of control of DNFBPs and the lack of effectiveness sanctions provided. Certain provisions of Law No. 2018-004 on AML/CFT strengthen the regulation and control of DNFBPs.

Criterion 28.1 a, b and c

Criterion 28.1 a.- No one may exercise an activity as a designated non-financial business and profession without prior registration by the competent regulatory or supervisory authority (Art. 88 of AML/CFT Law No. 2018-004). Similarly, the terms of concession to third parties for the organization and operation of lotteries and games of chance by LONATO make the operation of gambling, chance and casino games subject to obtaining the approval of the general management (Art. 2, 3, 4 of the Inter-ministerial Decree n°004/MEFP/MATD/MS/MDPRDAC/CA of September 07, 2006).

Criterion 28.1 b.- Supervisory authorities are required to take the necessary steps to define the appropriate criteria for direct or indirect ownership, control or participation in the direction, management or operation of a DNFBP (Art. 86 paragraph 2-1 of AML/CFT Law No. 2018-004). Coupled with the provisions set out in criterion 28.1 a, this legislative measure aims to prevent to a certain extent that criminals or their accomplices can hold or become the beneficial owners of a significant participation or control of a casino, hold a position of direction or to be the operator. However, the lack of a clear definition of these criteria defined by supervisory authorities made it impossible for the assessors to evaluate the extent to which the country fully complies with the requirements of this criterion.

Criterion 28.1 c.- Supervisory authorities are also required to regulate and monitor the implementation of AML/CFT obligations by DNFBPs, including through on-site inspections (Art. 86 par. 1 and 2 point 2 of

Law No. 2018-004). However, LONATO, which acts as the supervisory authority for casinos, does not have the mandate or powers necessary to control casinos in terms of AML/TF.

Non-financial businesses and professions other than casinos

Criterion 28.2- Supervisory authorities or self-regulatory bodies are required to monitor and ensure compliance with the implementation of AML/CFT obligations by DNFBPs (Art. 86 para. 1 of the AML/CFT Law No. 2018-004). However, several categories of DNFBPs such as the real estate sector, dealers in precious metals do not have a designated supervisory authority or self-regulatory body. As for the other categories of DNFBPs, in particular casinos and independent legal professions, their supervisory authorities or self-regulatory bodies do not have the necessary attributions or powers in terms of monitoring the implementation of AML/CFT obligations.

Criterion 28.3- Supervisory authorities or self-regulatory bodies are required to subject DNFBPs to controls ensuring that they comply with their AML/CFT obligations. The deficiencies noted in criterion 28.2 also affect compliance with this criterion (see analysis of criterion 28.2).

Criterion 28.4 a, b and c

Criterion 28.4 a.- Supervisory authorities or designated self-regulatory bodies have compliance control powers (Art. 86(1) of AML/CFT Law No. 2018-004). However, some types of DNFBPs including the real estate sector dealers in precious metals do not have a designated supervisory authority or self-regulatory body. As for the other categories of DNFBPs, their supervisory authorities or self-regulatory bodies do not have the necessary mandate or powers to monitor the implementation of AML/CFT obligations.

Criterion 28.4 b.- No one may exercise an activity as a designated non-financial business and profession without prior registration by the competent regulatory or supervisory authority (Art. 88 of AML/CFT Law No. 2018-004). In addition, supervisory authorities or designated self-regulatory bodies are required to take the necessary steps to define the appropriate criteria for ownership, control or direct or indirect participation in the direction, management or operation of a DNFBP (Art. 86 al. 2-1 of AML/CFT Law No. 2018-004). These two provisions together are intended to prevent criminals or their accomplices from holding or becoming the beneficial owners of a significant interest or control of a casino, from occupying a position of management or from being the operator thereof. However, the lack of a clear definition of the criteria does not make it possible to establish their link with AML/CFT. However, several categories of DNFBPs including the real estate sector, arts sellers and dealers in precious metals have no designated supervisory authority or self-regulatory body.

Criterion 28.4 c.- Supervisory authorities or designated self-regulatory bodies may mete out administrative sanctions on DNFBPs that do not comply with their AML/CFT obligations, and where necessary, notify the FIU as well as the State Prosecutor accordingly (Art. 112 of AML/CFT Law 2018-004). However, the ranges of AML/CFT administrative sanctions are not defined and specified according to a grid based on the degree of seriousness of the violation noted. They are contained in the legislative or regulatory texts organizing each category of DNFBPs. Besides, some categories of SRBs are not subjected to any form of monitoring.

All designated financial businesses and professions

Criterion 28.5 a and b

Criterion 28.5 a.- No legislative or regulatory provision provides for the application of the risk-based approach in the supervision, monitoring and control of DNFBPs in Togo. Furthermore, no category of

DNFBPs has been subject to AML/CFT inspection in Togo.

Criterion 28.5 b.- No category of DNFBP has been inspected for AML/CFT in Togo.

Weighting and conclusion

The Togolese legal system has given the supervisory authorities or designated self-regulatory bodies powers of sanction and requires them to ensure DNFBPs comply with the implementation of their AML/CFT obligations. However, no DNFBP has yet been subject to AML/CFT inspection or supervision. Besides, some types of DNFBPs such as the real estate sector and dealers in precious metals, are not regulated and therefore have no designated supervisory authority or self-regulatory body. The Togolese AML/CFT regime presents moderate deficiencies with respect to the requirements of this recommendation.

Togo is rated Partially Compliant on Recommendation 28.

Recommendation 29: Financial Intelligence Units (FIUs)

Togo was rated Partially Compliant on recommendation 26, the requirements of which are now reiterated in the assessment criteria of Recommendation 29 under the FATF mutual evaluation methodology updated in 2013. The factors justifying this rating related to the lack of operational autonomy of the FIU for budgetary reasons, the non-dissemination of the STR template to all reporting entities, the non-existence of a secure and reliable computer network, the slowness in processing responses to requests for financial intelligence and administrative information of FIU, the lack of effectiveness of direct or indirect access by the FIU to financial and administrative information without delay, the lack of an in-depth study of typologies of ML and TF in the reports published by the FIU (Cf. MER of Togo, p. 233-234). In addition, since its last evaluation, Togo has made several legal, institutional and operational changes with the aim of strengthening the legal framework applicable to the FIU, in this case, the adoption of AML/CFT Law No. 2018 -004 of 04 May 2018.

Criterion 29.1- The National Financial intelligence Processing Unit (FIU) of Togo was established in 2008 by Decree No. 2008-037/PR of March 28, 2008. It has been operational since 2009 and has the prerogatives required by the standards (see REM 2010, page. 12). It is the national structure responsible for receiving and analyzing STRs and all ML-related information, associated predicate offences and TF. It disseminates the outcomes of its analyses in line with the relevant provisions (Art. 59, 60, 67 of AML/CFT Law No. 2018-004).

Criterion 29.2 a and b

Criterion 29.2 a.- FIU receives from FIs and DNFBPs, STRs as well as cash transaction declarations - CTR- (Art. 15, Art. 79 of AML/CFT Law No. 2018-004) in accordance with obligations contained in recommendations 20 and 23.

Criterion 29.2 b.- The threshold set for CTRs is 15 million FCFA, approximately € 22887,5 (Art. 1 of BCEAO Directive No. 10-09-2017). This threshold is applicable whether it is a single transaction or several transactions that appear to be linked (Art. 15 of AML/CFT Law No. 2018-004). FIU also receives from supervisory authorities and professional orders, information likely to be related to ML/TF of which they become aware during exercise of their mandate. In this case, the FIU processes this information as in STR matters (art 75 al.2 of law n°2018-004 on AML/CFT). The customs services are also required to report to the FIU, within eight days, any seizure of cash and bearer negotiable instruments made on the grounds of non-declaration, false declaration or incomplete declaration or whether there is suspicion of ML/TF (Art. 111 of the AML/CFT Law n°2018-004).

Criterion 29.3 a and b

Criterion 29.3 a.- The FIU may request the communication, by the reporting entities as well as by any natural or legal person, of the information held by them and likely to Enrich the STRs (Art. 60 al. 3 of the law n° 2018-004 AML/CFT).

Criterion 29.3 b.- The FIU has access to information communicated by the judicial police authorities as well as the supervisory authorities (Art. 60 al.3 of the AML/CFT law n°2018-004). In its STR analysis functions, FIU may make requests for additional information from the declarant, other reporting entities, foreign Financial Intelligence Units as well as any public and/or control authority. (Art. 67 par. 1 of AML/CFT Law No. 2018-004. FIU receives, on the initiative of State administrations, local authorities, public establishments and any other person invested with a public service mission, all the information necessary for the accomplishment of its mission or obtains it from them on request. The judicial authority, financial jurisdictions and criminal investigation officers may file to the FIU any information for the same purposes (Article 70 of AML/CFT Law No. 2018-004).

Criterion 29.4 a and b

Criterion 29.4 a.- The FIU carries out operational analysis through the collection, analysis, enrichment and exploitation of all the information specific to establishing the origin or destination of the sums or the nature of the operations having been the subject of statement or information received. It has a computer system controlled by the *Faisceaux* software. When its analyses highlight facts likely to relate to the laundering of the proceeds of a criminal activity or FT, it sends its report to the State Prosecutor (Art. 60 al. 1, 2, 3, Art. 67 of the AML/CFT law n°2018-004).

Criterion 29.4 b.- The FIU also has the prerogative to conduct strategic analyzes (Art. 60 al. 4, 5 and 6 of the AML/CFT law n°2018-004). It has produced several strategic notes addressed to the Minister of Finance, in particular a note on the exponential circulation of currencies, on the gold trading sector, on pyramid-type scams (PONZI chain).

Criterion 29.5- The FIU is authorized to communicate spontaneously and on request the information it holds to the customs administration, to the tax authorities, to the treasury, to the judicial police and intelligence services, provided that they are in relation to facts likely to be the subject of a suspicious transaction report (Art. 66 of AML/CFT Law No. 2018-004). It may also file to the State services responsible for preparing and implementing a measure to freeze or prohibit the movement or transfer of funds, financial instruments and economic resources, information relating to the exercise of their mission. The information is filed by confidential mail addressed personally to the first person in charge of the structure with a copy to the correspondent, by computer extraction or wire medium. This appears clearly in the Memoranda of understanding between the FIU and certain administrations (Cf. art 2 of the memorandum of understanding between FIU and OTR³⁴ of 26 August 2015). When the investigations highlight facts likely to fall under ML or FT, the FIU seizes the State Prosecutor (Art.67 al.2 of the AML/TF law n°2018-004).

Criterion 29.6 a, b and c

Criterion 29.6 a.- The Togolese legal framework provides for the security and confidentiality of information held by FIU (Art. 65 of AML/CFT law n°2018-004). Thus, the processing, storage and access to information received or provided and their protection by FIU are done through a secure computer system

³⁴Togolese Revenue Office, body bringing together the Tax and Customs services

controlled by the software Faisceaux.

Criterion 29.6 b.- The FIU members as well as their correspondents take an oath before the Court of Appeal before assuming taking up duties (Art. 65 of law n°2018-004 paragraph 1). Paragraph 2 of the same Article requires them to respect the confidentiality of the information received. However, the members of the FIU and their correspondents within the public administrations have not taken the oath. Their acts of appointment are also not in conformity on the aforementioned law. In these circumstances, even if no case of violation has been brought to its attention, the assessment team finds limited the capacity of FIU to fully guarantee the confidentiality of information.

Criterion 29.6 c.- The FIU premises are secured by a police guard. The computer system is protected by authorization levels and its access from the outside is protected by firewalls.

Criterion 29.7 a, b, c and d

Criterion 29.7 a.- The FIU shall be an administrative authority under the supervision of the Minister of Finance, with financial autonomy and the power to decide autonomously on matters within its competence (art. 59 of AML/CFT Law No. 2018-004). However, the evaluation team notes that the FIU of Togo continues to operate on the budget of the ministry in charge of finance (as when it had only management autonomy under Decree 2008-037/PR dated 28 March 2008 taken under the former uniform law 2007-016 of 6 July 2007 of AML/CFT) instead of having its own budget allocation as administrative authority. This means that it needs prior authorization of its parent minister to disburse funds for its activities. The evaluation team considers that this is likely to weaken the FIU's financial autonomy, impacting its operational capacity. In addition, the absence of an appropriate legal act appointing The FIU members, as well as the absence of an oath for the FIU members and institutional correspondents, are likely to hinder the guarantee of the confidentiality of the information exchanged/used by the FIU.

Criterion 29.7 b.- It is empowered to collaborate and exchange information with national AML/CFT stakeholders (Art. 75 of AML/CFT Law No. 2018-004). It can also cooperate with the FIUs of UEMOA countries without prior agreement, and with foreign FIUs subject to reciprocity and if certain conditions are met (Art. 76 of the AML/CFT law n°2018-004) . Indeed, this possibility of cooperating with foreign FIUs is subject to compliance with the obligation of reciprocal confidentiality at least and protection of the information communicated (Art. 78 of the AML/CFT law n ° 2018-004). The requirement for the FIU's to notify the Finance Minister prior to concluding cooperation agreements as provided for in the Uniform AML/CFT Law is but an administrative formality that does not imply any prior opinion or authorisation from the Minister that could constitute an hindrance (art. 78).

Criterion 29.7 c. Not applicable.

Criterion 29.7 d.- The resources of FIU come from the State budget as well as contributions granted by UEMOA Institutions and development partners (Article 73 of Law No. 2018-Member State).

Criterion 29.8 - Togo has been a member of the Egmont Group since July 2013.

Weighting and conclusion

The FIU has broad prerogatives and powers required by the standards. The confidentiality of information and respect for professional secrecy imposed on members of the FIU and its correspondents are not guaranteed. the FIU still operates on the budget of the ministry in charge of finance instead of having its dedicated budget allocation in its capacity as administrative authority, which impacts its financial and operational autonomy. In addition, the absence of an appropriate legal act appointing The FIU members,

as well as the absence of an oath for the FIU members and institutional correspondents, are likely to hinder the guarantee of the confidentiality of the information exchanged/used by the FIU. Togo's AML/CFT regime has minor deficiencies with regard to the requirements of this recommendation.

Togo is rated Partly Compliant on Recommendation 29.

Recommendation 30: Responsibilities of law enforcement and investigating authorities

Togo had been rated Partially Compliant with the former Recommendation 27, the requirements of which are now included in the evaluation criteria of Recommendation 30. This rating was justified by the lack of specialization of the Magistrates of the Public Ministry in the area of AML/CFT, the lack of express provisions of the law prescribing the fact of postponing the arrest of persons or seizures, or not to carry out such arrests and seizures in criminal investigation matters relating to AML/CFT (See Togo MER 2010 of Togo, p.234). The evolution of the legal system has made it possible to reduce the deficiencies relating to investigations, including arrests and seizures (AML/CFT Law No. 2018-004, Law No. 2018-026 on cybersecurity and the fight against cybercrime, law n°2016-001 on the general tax code, law n°2018-007 on the national customs code).

Criterion 30.1- The State Prosecutor and his substitutes represent the Department of Public Prosecution which exercises public action and requires the enforcement of the law (Arts. 22 and 31 of the CCP). The CID and the designated law enforcement authority develop all the instruments necessary for the investigation and prosecution of offences under criminal law, including ML, the associated predicate offences and TF (Art. 5 and 34 of the CCP). All criminal investigation activities conducted by criminal investigation officers and staff and by Public officers and staff to whom certain criminal investigation functions are assigned by law, are conducted under its direction (Arts. 11 and 21 of the CCP). The State Prosecutor is therefore the prosecuting authority who makes every effort to ensure that all offences committed are investigated. Thus, in terms of economic and financial crimes, including ML, associated predicate offences and TF, it ensures that all cases referred to it by the investigative structures that have the relevant mandates are satisfactorily investigated under national AML/CFT policies. These are the economic and financial division (DEF) at the Central Directorate of Criminal Investigations Department (DCPJ), the Central Service for Criminal Research and Investigations (SCRIC) of the national gendarmerie, the Central Office for the Repression of Illicit Trafficking in Drugs and Money Laundering (OCRTIDB), the Directorate of Intelligence and Fight Against Fraud (DRLCF), Tax Control Directorate (DCF) and the Togolese Revenue Office (OTR) which brings together the customs and tax administrations. All these structures conduct financial investigations within the framework of national AML/CFT policies.

Criterion 30.2- Investigators who have the power of OPJ, including those of the DEF, the SCRIC, the OCRTIDB and carrying out the acts of investigation relating to the predicate offences under the directives of the State Prosecutor, may, on the initiative or on the directive of the Prosecutor, conduct financial ML/TF investigations in parallel with the said investigations (Arts. 15 and 21 of the Code of Criminal Procedure). The investigating judge may ex officio or at the request of the State Prosecutor conduct the same financial ML/TF investigations in parallel with the criminal investigations into the predicate offences (Arts. 64 and 65 of the CCP). Customs and tax administrations (Art. 1098 et seq. of the General Tax Code, Art. 21 of the CPP) can carry out financial investigations on their own initiative or seize, for the purposes of prosecution, the State Prosecutor with the report of the findings of the customs and tax offences (Art. 21 of the CPP, Art. 268 and 289 of the Customs Code, Art. 1098 and following of the General Tax Code). Based on these reports, the Prosecutor can expedite or cause to be expedited parallel financial investigations by ML/TF (art 33, 34 of the CPP). The same applies when the State Prosecutor is informed by the water and forest administration with the reports of the finding of offences against forest resources (Art. 99, 100, 108 of law 2008-09 of the Forest Code).

Criterion 30.3- The investigating judge may prescribe precautionary measures ordering the seizure or confiscation of funds and assets linked to the ML/TF offence under investigation. These measures also extend to all elements likely to identify the offence as well as the freezing of sums of money and financial transactions relating to the said assets (Art. 99 of AML/CFT Law n ° 2018-004). The CID officers also have the power to seize assets subject or likely to be subject to confiscation, or suspected of being the proceeds of crime.

Criterion 30. 4- The FIU, General Directorate of the Public Treasury, OTR are not law enforcement authorities per se, but conduct financial investigations to gather evidence of predicate offences. The FIU conducts the financial investigation by analyzing and enriching the information it receives. It carries out or asks the judicial police officers of the police or the gendarmerie to carry out an investigation into the social, economic and financial environment or a heritage investigation with a view to tracing the assets in order to provide proof of the offence committed by a questioned (Art.60 al.1, 2 and 3 of the AML/CFT law n°2018-004). During its investigations, the FIU may order the freezing of disputed funds for forty-eight (48) hours, but may not extend this period, nor operate a seizure without the intervention of the investigating judge (Art. 68 of the AML/CFT Law No. 2018-004). The OTR conducts financial investigations to provide evidence of customs and tax offences (Art.354 to 362 of law n°2018-007 on the national customs code, Art. 1085 to 1114 of Law n°2016-001 on Tax Code).

Criterion 30.5- The High Authority for the Prevention and Fight against Corruption and Assimilated Offences (HAPLUCIA) of Togo does not have the power to conduct ML/TF investigations based on the **Criterion** of corruption or in relation to it.

Weighting and Conclusion

Togo's AML/CFT legal and institutional system has no deficiencies with regard to the requirements of this recommendation.

Togo is rated Compliant on Recommendation 30.

Recommendation 31: powers of criminal prosecution and investigating authorities

Togo had been rated Largely Compliant with recommendation 28, the requirements of which are now included in the evaluation criteria of Recommendation 31. The main deficiency noted to justify this rating was the failure to implement the obligations relating to this Recommendation, due to limited human, material and technical resources (See. MER 2010, p.234). It should be noted that the evolution of the legal arsenal, in particular by the adoption of the AML/CFT law n ° 2018-004, has made it possible to extend the prerogatives of the criminal prosecution authorities and the authorities in charge of investigations in matters investigation of ML/TF and predicate offences.

Criterion 31.1 a, b, c and d

The competent authorities, in particular the State Prosecutor, OPJs of the DEF, SCRIC, OCRTIDB and the investigating judge have the power to access all the documents and information necessary to be used within the framework of the investigations, prosecutions and actions relating thereto. They have the power to apply coercive measures:

Criterion 31.1 a.- For the production of documents or information held by FIs, DNFBPs or other natural or legal persons (Art. 96 of AML/CFT law n°2018-004, art 136 of law n°098 -008 of March 18, 1998 on drug control).

Criterion 31.1 b.- for carrying out or having conducted the search of persons and premises (Art. 108 to 110 and 127 of law n°2018-004, Art. 42 and 47 of law 2018-007, art 136 of the law n°098-008).

Criterion 31.1 c.- For the collection of testimonies (Art. 95 of the AML/CFT law n°2018-004, Art. 17, 51 and 81 of the CPP).

Criterion 31.1 d.- For the seizure of evidence of any offence, may seize and obtain evidence of the offence (Art. 111 of AML/CFT Law No. 2018-004, Art. 44 and 45 of the CPP, Art. 125 of law n°098-008 on drug control, art 224 of law n° 2018-25 relating to the book of tax procedures).

Criterion 31.2 a, b, c and d - The investigating judge may order:

Criterion 31.2 a.- Undercover operations (Art.94 of AML/CFT Law No. 2018-004);

Criterion 31.2 b.- Surveillance or interception of communications, audio or video recording or photography of acts and actions or conversations, interception and seizure of mail (Art.93 of the law n°2018-004 of AML/CFT and Art.133 of Law n°098-008 on drug control).

Criterion 31.2 c.- Access to computer systems, networks and servers.

Criterion 31.2 d.-The controlled delivery (Art.93 and 94 of the law n°2018-004 and Art. 130, 131,132 and 134 of the law n°098-008).

Criterion 31.3 a and b

Criterion 31.3 a.-To determine without delay whether natural or legal persons hold or control accounts, the investigating judge has the power, though cannot waive the bank secrecy, to request FIs for information on the accounts of natural or legal person (Arts. 36 and 93 of AML/CFT Law No. 2018-004). He forwards the request to them through court requisitions or simple requests for information. The OPJs are also entitled to request for this information from the FIs for the same purposes (Art. 49 of the CPP).

Criterion 31.3 b.-The judicial authority, as well as the investigators can identify assets without prior notification to the owner by simple request for information or by judicial requisition in accordance with the above-mentioned legal provisions.

Criterion 31.4 - When conducting investigations, the competent authorities, including the customs, tax and treasury administrations as well as the criminal investigation services may request the FIU for all the relevant information provided the latter is related to facts likely to be the subject of an STR (Art. 66 of the AML/CFT law n ° 2018-004).

Weighting and conclusion

Investigation and prosecution authorities have the necessary powers to implement the requirements of FATF Recommendation 31. Togo's AML/TFP regime has no deficiencies with regard to the requirements of this recommendation.

Togo is rated Compliant on Recommendation 31.

Recommendation 32: Cash Couriers

Togo was rated Non-Compliant on Special Recommendation IX, the requirements of which are now

included in the evaluation criteria of Recommendation 32. Numerous deficiencies (Cf. MER of Togo, p.240) justified this rating in 2010. In this case, the lack of rigor of the system of declaration of cash and negotiable instruments was pointed out. There was no systematic communication from customs to FIU of the information available on the physical transport of cash and negotiable securities. Customs services did not communicate information on the physical transport of precious metals and stones to their counterparts in transit and destination countries. Also noted were the lack of an automated information management system, lack of direct access to the CEN communication network of the World Customs Organization (WCO), and inadequate awareness of customs officers and dealers in precious metals and stones with regard to AML/CFT. Togo has not remedied all the deficiencies identified. However the provisions of AML/CFT Law No. 2018-004 and Law No. 2018-007 on the Customs Code strengthen customs control measures in particularly at the borders.

Criterion 32.1- Togo has a declaration system for the cross-border transport of cash and bearer negotiable instruments (BNIS) applicable only to third parties entering or leaving UEMOA territory (Art. 12 al.1 of AML/CFT No. 2018-004). People living in or coming from a UEMOA member country are not required to make declarations. This system does not comply with the standard which requires a declaration or communication for all physical cross-border transportation of cash and bearer negotiable instruments. The threshold set by the BCEAO for this declaration is of a value equal to or greater than 5,000,000 FCFA, approximately € 7629 (Art. 1 of Directive n°008-09-2017 of the BCEAO). In addition, the export abroad, by post or by any other means, of payment instruments (traveler's cheques, bank cheques, foreign banknotes, national or foreign transferable securities) is subject to the prior approval of the External Finance Directorate. The sending and receiving of banknotes issued by the BCEAO between any other resident natural or legal person, other than the BCEAO and its banking or business correspondents located outside the UEMOA member States, is prohibited (Art. 29 of Regulation No. 09/2010/CM/UEMOA on external financial relations).

Criterion 32.2 a, b and c- Any person carrying out physical cross-border transportation of cash or bearer negotiable instruments of a value equal to or greater than 5 million CFA francs (approximately € 7629) is required to make a written statement in good faith (filling out a form) to the designated competent authorities (Art. 12 al.1 of AML/CFT n°2018-004, Art.1 of BCEAO Directive n°008-09-2017).

Criterion 32.3 - These requirements are not applicable in Togo because the legal system provides for a declarative system (see analysis of criterion 32.2).

Criterion 32.4- In the event a false declaration or non-declaration is discovered, the customs services may require the cash or BNI carrier to provide additional information on their origin and destination (Art. 12 al.2 of AML/CFT No. 2018-004).

Criterion 32.5 – All false declarations are liable to punishment. Cash and bearer instruments likely to be linked to money laundering or terrorist financing are retained or blocked for a period not exceeding 72 hours (Art. 12, al. 4 and 5 of AML/CFT law n°2018- 004). The customs services seize the full amount of undeclared cash and draw up a report (Art. 111, al. 1 of AML/CFT Law No. 2018-004). The Customs Code provides for fines of 76 to 152 Euros or 50,000 to 100,000 CFA francs for any violation of customs law and also fines of between two or three times the amount of duties and taxes evaded or compromised (Art. 355 to 356 of Law No. 2018-007 of June 25, 2018). These sanctions are proportionate and dissuasive.

Criterion 32.6- Seizures of cash by Customs in the event of non-declarations, false declarations, incomplete declarations, suspicions of money laundering or terrorist financing are the subject of a seizure report which is sent at the same time as the cash seized at the Treasury, the Consolidated Revenue Fund (*Caisse des Dépôts et Consignations*) or the body in lieu thereof. Customs also sends the transaction file

to FIU within eight (8) calendar days for all useful purposes (Art. 111 of AML/CFT Law No. 2018-004).

Criterion 32.7- The legal framework provides for coordination between customs, immigration police services and other administrations (Art. 74 of AML/CFT Law No. 2018-004). The Togolese system allows cooperation between the competent services at the borders. Thus, the customs and immigration services can indiscriminately observe violations of the regulations relating to the physical cross-border transportation of cash or BNIs. If the violation is noted by the police services, the report is filed to the customs services, which after application of the sanction, file it to the FIU. However, there is no formal coordination mechanism among the various police services, immigration, customs and other administrations within which these stakeholders coordinate this activity and which can facilitate collaboration among them.

Criterion 32.8 a and b

Criterion 32.8 a.- The customs administration is able to block or withhold, for a period not exceeding seventy-two hours (72h), the cash or BNIs likely to be linked to the ML/TF to enable it to establish any evidence (Art. 12 al.5 of AML/CFT Law No. 2018-004). In this case, a receipt is issued to the person concerned.

Criterion 32.8 b.- Customs can also seize the full amount of cash found in the event of false declarations (Art. 12 al.6 and Art.111 al.1 of AML/CFT Law No. 2018-004). In this case, it also draws up a report.

Criterion 32.9 a, b and c- The international legal instruments to which Togo has subscribed allow it to perform acts of cooperation and offer assistance in accordance with recommendations 36 to 40 relating to mutual legal assistance, extradition, freezing and confiscation as well as all other forms of cooperation required in the area of AML/CFT. The requirement for this is compliance with certain conditions such as reciprocity, respect for state sovereignty, security and public order (Art. 138 to 155 of AML/CFT law n°2018-004). To facilitate such cooperation, the customs administration keeps cash or BNI declaration statistics as well as reports of seizures made in case of:

Criterion 32.9 a.- declaration of amounts in excess of the prescribed threshold;

Criterion 32.9 b.- non-declaration, false declaration or under-declaration;

Criterion 32.9 c.- Suspicion of ML/FT.

The deadline to keep this information is for 10 years.

Criterion 32.10- Data on cash and BNI declarations collected by the customs administration are shared with FIU (Art. 111 of AML/CFT Law n°2018-004 which can use them to carry out investigations or for other useful purposes. This sharing of information can be done by confidential mail, by computer extraction or wire medium (Art. 2 of the Memorandum of Understanding between FIU and OTR of August 26, 2015). The importation by non-resident travelers of Franc Zone banknotes or means of payment denominated in foreign currencies is free. The obligation to declare cash or BNI mentioned in **Criterion 32.2** only concerns their traceability for AML/CFT purposes.

Criterion 32.11- Cash or BNI may be entered in full in case of non-declaration or false declaration. Where they are likely to be linked to ML/TF, they may be held by the customs administration for a period not exceeding 72 hours (Art. 12 al.5 of AML/CFT law n°2018-004). The respondent may be sentenced to a term of imprisonment of three (03) to seven (07) years and a fine equal to three times the value of the property or funds on which the ML operations have been conducted. In case of TF, the term of

imprisonment is ten (10) years with a fine equal to five times the value of the property or funds. The judge can also pronounce the confiscation for the benefit of the Public Treasury of the property, funds or other financial resources (art 128 and 129 of AML/CFT law n° 2018-004, 2018). Cash or BNIS related to ML/TF or predicate offences transferred abroad may be confiscated (art 148 to 151 of AML/CFT Law n°2018-004). These sanctions are proportionate and dissuasive.

Weighting and conclusion

The adoption of AML/CFT Law No. 2018-004 of May 4, 2018 has enabled Togo to resolve several deficiencies relating to the cross-border physical transport of cash and BNIs. On the other hand, declarations are only compulsory for third parties entering or leaving UEMOA territory and not for people traveling between countries of the Union. Togo's AML/CFTP system has moderate deficiencies with regard to the requirements of this recommendation.

Togo is rated Partially Compliant on Recommendation 32.

Recommendation 33 – Statistics

Recommendation 33 (former Rec. 32) had been rated Non-Compliant for Togo. The 2010 MER noted the lack of statistics on prosecutions and convictions for ML/TF, as well as a freezing mechanism and the training of reporting entities (particularly, magistrates). The legal framework does not improve on these deficiencies.

Criterion 33.1 a, b, c and d- The FIU is required to prepare periodic reports (at least once per quarter) and an annual report, which analyze the evolution of AML/CFT activities, and the evaluation of the statements collected (Art. 60 al. 5 of the AML/CFT Law 2018-004).

Criterion 33.1 a- On this basis, the FIU regularly keeps statistics on the STRs received and disseminated. The statistics provided by the country in this area appear exhaustive and complete.

Criterion 33.1 b - There is no legislative or regulatory measure, or any operational mechanism put in place for the periodic and regular collection, centralization and secure storage of statistics relating to investigations, prosecutions and convictions

Criterion 33.1 c.- Law enforcement agencies do not keep comprehensive statistics on frozen, seized or confiscated assets on AML/CFT related matters. These data are available at the level of these entities.

Criterion 33.1 d.- The central authority responsible for cooperation in the ministry of justice does not keep consistent and comprehensive statistics on mutual legal assistance and extradition. However, it is possible to get fragmented statistics on international police cooperation at the BCN INTERPOL, and at the FIU on cooperation they have with their counterparts.

Weighting and conclusion

In addition to the regular keeping of statistics on STRs received and disseminated by the FIU, Togo does not have comprehensive statistics on investigations, prosecutions and convictions, frozen, seized and confiscated property as well as mutual legal assistance and extradition in AML/CFT. Togo's AML/CFTP regime has moderate deficiencies with regard to the requirements of this recommendation.

Togo is rated Partially Compliant on Recommendation 33.

Recommendation 34 - Guidance and Feedback

In 2021, Togo was rated Non Compliant on recommendation 34 (former Rec. 25). The main deficiency identified was the lack of AML/CFT guidelines. Since then, Togo has developed guidelines for FIs and DNFBPs.

Criterion 34.1- Competent authorities, supervisory authorities and self-regulatory bodies are required to issue Directives, guidelines or recommendations to help FIs and DNFBPs comply with their AML/CFT obligations (Art. 86 paragraphs 2 and 3 of the AML/CFT Law 2018-004). To this end, the FIU, in collaboration with self-regulatory bodies, has developed guidelines for almost all DNFBPs (lawyers, notaries, accountants, bailiffs, auctioneers, real estate agents, travel agencies, dealers in precious metals and stones. On the other hand, apart from the Directives or regulations on the procedures for applying the AML/CFT law taken by the supervisory authorities of the banking, SGI and insurance sectors, no guideline has been issued to the location of FIs. In this case, high-risk FIs such as money changers, have not received any specific guidance. In addition, the FIU provides FIs and DNFBPs with feedback on the ML/TF mechanisms at its disposal to help them better detect and report suspicious transactions (Art. 92 of AML/CFT Law 2018-004). It carries out and publishes periodic studies on developments in the techniques used for ML/TF purposes, as well as periodic reports evaluating the declarations collected.

Weighting and conclusion

Unlike the vast majority of DNFBPs, the country has not issued guidelines for FIs, which nevertheless occupy a prominent place in Togo's AML/CFT regime. Indeed, although Directives or regulations have been adopted by certain FI authorities (Banking, SGI and Insurance), these are essentially only intended to specify how the AML/CFT law is to be applied. Togo's AML/CFT regime has moderate deficiencies with regard to the requirements of this recommendation.

Togo is rated Partially Compliant on Recommendation 34.

Recommendation 35 – Sanctions

In 2021, Togo was rated Partially Compliant on Recommendation 35 (former Rec. 17). This rating was justified by the lack of effective implementation of the prescribed obligations and the difficulty of assessing the effective, proportionate and dissuasive nature of the sanctions. AML/CFT Law No. 2018-004 strengthens the legal system with now a provision for ranges of administrative, civil and criminal sanctions in the area of AML/CFT.

Criterion 35.1- Uniform Law No. 2018-004 of AML/CFT provides for criminal sanctions for nearly all breaches of AML/CFT obligations imposed on persons and officers or servants of natural or legal persons subject to AML/CFT, with except the obligations contained in recommendations 6, 8, 17 and 19 (art. 116 and 121). Thus, fines of 50,000 to 750,000 CFA francs (€76.2 to €1,143) apply for unintentional breaches of AML obligations, and 100,000 to 1,500,000 CFA francs (€152.5 to €2287.6) for breaches related to CFT obligations (art. 121, sub. par. 2). Imprisonment also applies for certain intentional acts or breaches that violate the obligations contained in recommendations 20 and 21 (reporting, disclosure and confidentiality obligations). And in this case, when the breaches are related to the ML, a prison sentence of 06 months to 02 years and a fine of 100,000 to 1,500,000 CFA francs (152.5€to 2287.6 €) or one of the two penalties only applies to persons and managers or employees of reporting natural or legal persons (art. 116 sub. para.1). And when these breaches are related to the FT, the penalty of imprisonment from 12 months to 04 years with a fine of 200,000 to 3,000,000 CFA francs (€305 to €4575) or one of the two penalties only (art. 121, al. 1) Applies. Criminal sanctions are also imposed on legal persons, including FIs and DNFBPs (Art. 124 and 125). This is five times the fines incurred by natural persons for both the ML and TF. The assessment team is of the opinion that these criminal sanctions are proportionate and

dissuasive, except for unintentional breaches of due diligence, where the sanctions are not proportionate to the breaches and therefore do not appear to be dissuasive.

The Togolese legal framework does not adequately include proportionate and dissuasive administrative sanction ranges directly related to breaches of AML/CFT obligations to enable supervisory authorities to take effective sanctions to ensure that FIs and DNFBPs comply with their obligations. However, the CREPMF has taken a range of pecuniary sanctions applicable to players in the regional financial market of the UEMOA and which, among other breaches of the obligations provided for in the General Regulation and the texts adopted for its application, target: failure to file the report on the implementation of the entire AML/CFT system, the lack of internal system defining the internal procedures for prevention and detection of ML/CFT, failure to implement an anti-money laundering mechanism and information and training policy (Decision N °CM/SJ/001/03/2016 of 24/03/2016). However, these pecuniary sanction do not fully address breaches of all AML/CFT obligations. As for the Banking Commission, based on the sanctions regime contained in the general provisions applicable to breaches of prudential measures, it imposes sanctions for breaches of AML/CFT obligations. However, in the absence of a scale to determine what type of administrative sanctions apply for a given breach of AML/CFT obligations, it was not possible for the assessment team to assess the proportionality and dissuasiveness of the sanctions to be incurred.

Criterion 35.2 - The imposition of sanctions for breach of AML/CFT obligations referred to in recommendations 6 and 8 to 23 specified in criterion 35.1 apply not only to FIs and DNFBPs, but also to the administrative body and senior management members in the event that they breach their AML/CFT obligations (Art. 112 to 125 of AML/CFT Law No. 2018-004; see analysis of criteria 27.4 and 28.4).

Weighting and conclusion

The Togolese legal system provides for the supervisory authorities to impose administrative or disciplinary sanctions on FIs, DNFBPs as well as their managers if they fail to comply with AML/CFT obligations. Nevertheless, the legislation in force does not define ranges of sanctions in relation to breaches of AML/CFT obligations, nor the modalities or procedures for imposing sanctions in the event of non-compliance. The absence of criminal sanctions for breaches of the obligations referred to in recommendations 6, 8, 17 and 19, as well as the fact that criminal sanctions for unintentional breaches of due diligence obligations are not proportionate and dissuasive, and the absence of ranges of administrative sanctions specific to each AML/CFT obligation, constitute moderate shortcomings in the implementation of preventive measures in Togo.

Togo is rated Partially Compliant on Recommendation 35.

Recommendation 36 - International Instruments

Togo was rated Partially Compliant with this Recommendation (former Rec. 35 and SR I) in 2010. Apart from the addition of the Mérida Convention to this recommendation, the criteria remain identical despite the revision of the FATF standards of 2012. The rating obtained by Togo was justified by the lack of criminalization of certain categories of predicate ML offences that could hinder the required mutual legal assistance (terrorism, migrant smuggling, human trafficking, insider trading and cybercrime). The legislative and regulatory provisions also did not make it possible to determine, in the interests of justice, the most appropriate place of referral for the prosecution of persons involved in cases subject to prosecution in several countries. There was no legal mechanism for expediting mutual legal assistance requests. Togo has been able to address some of these gaps by criminalizing terrorism, cybercrime, migrants' smuggling and human trafficking.

Criterion 36.1- Togo is a Party to the Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (ratified on 1 August 1990), the Palermo Convention of the United Nations against Transnational Organized Crime (ratified on 2nd July 2004), the Mérida Convention against Corruption (ratified on July 6, 2005) and the International Convention for the Suppression of the Financing of Terrorism (by accession on February 26, 2002).

Criterion 36.2- Togo has implemented, to a large extent, the Vienna, Mérida and Palermo conventions and for the suppression of the financing of terrorism through the adoption of the following legislative texts:

- Law No. 98-008 of March 18, 1998 on drug control;
- Law No. 2015-006 of July 28, 2015 creating the High Authority for the Prevention and Fight against Corruption and Assimilated Offences;
- Law No. 2015-010 of November 24, 2015 on the new Penal Code (articles 317 and following for human trafficking and migrants' smuggling; Articles 716 to 756 for terrorism);
- Law No. 2018-004 of May 4, 2018 on the fight against ML/TF;
- Law n°2018-026 of December 07, 2018 against Cybercrime.

Togo has also issued enforcement Decrees for the above-mentioned laws to strengthen its institutional framework in accordance with the requirements of the relevant international Conventions, relating to the establishment, organization and functioning of OCRTID and HALUPCIA.

Insider trading is criminalized by the Togolese Penal Code, but it does not take into account stock market insider trading, the criminalization of which falls within the exclusive jurisdiction of the Community authorities, in line with the UMOA treaty. Togo also lacks a legal mechanism and appropriate procedures for the protection of witnesses and whistleblowers in accordance with the provisions of the Merida Convention. Similarly, Togo has not fully criminalized TF (see analysis C.5.2, C.5.2 bis and C.5.4).

Weighting and conclusion

Togo is a Party to the Vienna, Palermo, Mérida and FT Suppression Conventions, and has implemented, to a large extent, the relevant provisions they require to establish mutual legal assistance. Most of the categories of offences targeted by these legal instruments have been reflected in Togo's penal code. The required institutional framework has been put in place and is functioning. However, Togo has not criminalized insider trading, nor taken appropriate measures to ensure the protection of witnesses and whistleblowers in accordance with the provisions of the Mérida Convention. The Togolese AML/CFT/PF regime has minor deficiencies with regard to the requirements of this recommendation.

Togo is rated Largely Compliant on Recommendation 36.

Recommendation 37 - Mutual Legal Assistance

In 2021, Togo was rated Partially Compliant on Recommendation 37 (former Rec.36 and SR.V), due to the requirement of dual criminality for mutual legal assistance and the lack of legal provisions determining that the legal assistance is granted under less intrusive and non-binding measures. The provisions of Law No. 2018-004 on AML/CFT provide a more appropriate framework for mutual legal assistance.

Criterion 37.1- The legal framework details, in seven points, the acts of mutual assistance likely to be taken by the competent authorities, including investigations (searches and seizures, hearings of witnesses), prosecutions, and related procedures such as the submission of court documents and other relevant documents (Art. 138 of al. 2 of law no. 2018-004). This legal framework, combined with the bilateral and multilateral agreements signed by Togo, makes it possible to provide mutual legal assistance as quickly and as broadly as possible.

Criterion 37.2- The Department of Criminal Affairs and Pardons of the Ministry of Justice is the central authority responsible for implementing the formal mechanism for the transmission, receipt and effective execution of mutual legal assistance requests (Note verbale n°0845/MPT-ONU/fld/2017 of July 24, 2017). On the other hand, the country has not put in place clear procedures for the establishment of priorities and the diligent execution of requests for mutual assistance received, and a system for monitoring their processing.

Criterion 37.3- Togo does not attach unreasonable or unduly restrictive conditions to the execution of a mutual assistance request. Mutual assistance in AML/CFT matters is also mandatory, with the only condition of reciprocity when the request comes from a country outside the UEMOA zone (Art. 38 of AML/CFT Law 2018-004)

Criterion 37.4 a and b

Criterion 37.4 a- Tax considerations do not constitute grounds for refusal to execute a mutual assistance request in Togo (Art. 140 of AML/CFT Law No. 2018-004).

Criterion 37.4 b- Professional secrecy is only enforceable when the information concerned was obtained in circumstances targeted by legal professional secrecy or privilege.

Criterion 37.5- Under the relevant legal provisions, the competent authority maintains the secrecy of the mutual assistance request, its content and the documents produced. And when it is impossible to execute the request for mutual assistance without lifting the secrecy on the content, the competent authority informs the requesting country which decides whether or not to maintain its request for mutual assistance (Art. 141 of AML/CFT Law No. 2018-004).

Criterion 37.6- Togolese legislation does not allow mutual legal assistance in the lack of dual criminality and does not derogate from this principle when the request does not involve coercive actions (cf. Togo MER of 2010, p. 206, par. 941).

Criterion 37.7- When dual criminality is required, the terminology to designate the offence is irrelevant as long as the constituent elements of the criminal or misdemeanor act overlap in accordance with the rules of common law.

Criterion 37.8 a and b

Criterion 37.8 a- The competent authorities have the powers required to require the production, search and seizure of information, documents or evidence, and to take witness statements as necessary responses to a request for mutual legal assistance (Art. 93, 94, 95, 138 and 147 of AML/CFT Law No. 2018-004). They also use these investigative techniques when this is in accordance with the internal system, in response to a direct request sent by foreign law enforcement authorities to their national counterparts (Art. 138).

Criterion 37.8 b- A wide range of other investigative techniques and powers provided for by Law No. 2018-004 (arts. 93 and 94) and the Code of Criminal Procedure may be used by the law enforcement authorities for the execution of mutual legal assistance requests.

Weighting and conclusion

The legal and institutional system of Togo allows the country to provide the widest possible range of mutual legal assistance. On the other hand, the country has not put in place clear procedures for the

establishment of priorities and the diligent execution of requests for mutual assistance received, as well as a system for monitoring the processing of requests for mutual assistance. Further, there is no express provision to clarify that dual criminality, where required, does not apply where the request does not involve coercive actions. The Togolese AML/CFT/PF regime has minor deficiencies with regard to the requirements of this recommendation.

Togo is rated Largely Compliant on Recommendation 37.

Recommendation 38 - Mutual Legal Assistance: Freezing and Confiscation

Togo had been rated Partially Compliant with Recommendation 38 in 2010. This rating was justified by the lack of a law and mechanisms allowing it to respond to requests for mutual legal assistance concerning the identification of assets laundered or resulting from TF. There was no legal mechanism to coordinate seizures and confiscation with other countries, nor any legal means to consider the sharing of seized assets with the requesting country. No timeline was set for the processing of mutual legal assistance requests, particularly when they relate to TF. Some of the deficiencies identified have been resolved by the provisions of the AML/CFT Law No. 2018-004.

Criterion 38.1a, b, c, d and e- Competent authorities are empowered to take expeditious action in response to requests from foreign countries to identify, freeze, seize and confiscate, including through investigations (searches, collection of evidences and statements, etc.), precautionary seizures, freezing measures and acts of criminal prosecution (Art. 93, 94, 95, 138 and 147 of law n°2018-004 on the AML/CFT). These procedures apply to: laundered assets; proceeds from ML, predicate offences and TF; instruments used; instruments intended for use in connection with these offences; or assets of equivalent value for TF.

Criterion 38.2- In accordance with its general principles of domestic law, Togo is not in a position to provide assistance in the context of requests for cooperation based on non-conviction based confiscation. There is also no legal or regulatory provision that allows the country to offer such cooperation in all cases, including when the request comes in circumstances where the perpetrator of the offence is deceased, on the run, absent or unknown.

Criterion 38.3- The State benefits from assets confiscated on its territory at the request of foreign authorities, unless an agreement concluded with the requesting State decides otherwise (Art. 151 of the AML/CFT Law 2018-004). However, no agreement has been concluded so far by Togo, either to coordinate seizure and confiscation actions with other States, or to manage or dispose of seized, frozen or confiscated property. However, Togo participates in regional exchange platforms that provide for these coordination mechanisms, such as the Inter-agency Asset Recovery Network for West Africa (ARINWA), Network of Central Authorities and West African Prosecutors against Organized Crime (WACAP) and African and Malagasy Common Organization (OCAM).

Criterion 38.4- Foreign countries have the possibility of sharing with Togo the assets confiscated on its territory, in particular when the confiscation results from coordinated actions (Art. 151 of the AML/CFT law 2018-004).

Weighting and conclusion

The Togolese legal and institutional system gives broad powers to the competent authorities to take appropriate actions diligently, in response to requests from foreign countries, to locate, identify and bring into the hands of justice the proceeds of the commission of an offence, for confiscation. However, there is no provision to offer such cooperation when the request is based on forfeiture proceedings without prior conviction in circumstances where the offender is deceased, absconding, absent or unknown. In addition,

Togo has not yet concluded any agreement with other States to coordinate seizure, freezing and confiscation actions, or to dispose of confiscated assets. Togo's AML/CFT regime has minor deficiencies with regard to the requirements of this recommendation.

Togo is rated Largely Compliant on Recommendation 38.

Recommendation 39 - Extradition

Togo was rated Partially Compliant with recommendation 39 in 2010. This was justified by the lack of criminalization of human trafficking, migrant smuggling, terrorism, insider trading and cybercrime. There was no obligation to extradite in the lack of dual criminality and an indicative time limit for processing extradition requests. Togo has taken steps to fill some of these gaps with the adoption of AML/CFT Law No. 2018-004 and Law 2015-010 of 24th November, 2015.

Criterion 39.1 a, b, and c

Criterion 39.1 a- The legal framework provides for the conditions required for the execution of this extradition, in particular when the extradition request concerns persons prosecuted for ML/TF or definitively sentenced by the courts of the requesting country, without necessarily taking into account the sentence delivered (Art.156 of the AML/CFT Law 2018-004).

Criterion 39.1 b.- On the other hand, the country does not have a case management system and clear procedures for the diligent execution of extradition requests, including a prioritization system.

Criterion 39.1 c.- The country does not attach unreasonable or unduly restrictive conditions to the execution of any extradition request.

Criterion 39.2 a and b

Criterion 39.2 a. [Not applicable]- In accordance with its constitutional provisions, Togo does not extradite its nationals (Art. 24 of the Constitution).

Criterion 39.2 b.- In the case where the country refuses to extradite a national for reasons solely related to nationality, the legal mechanism requires it to submit the case without delay to the Togolese courts so that prosecution for the offences mentioned in the request can be initiated (Art. 161 of AML/CFT Law 2018-004).

Criterion 39.3- Dual criminality is a condition for the execution of an extradition request. However, it is not necessary for the requesting country to classify the offence in the same category or use the same terminology to designate the offence as long as the acts constituting the offence overlap (Art. 156 of the 2018 law -004 of AML/CFT).

Criterion 39.4- To simplify extradition procedures, the request is sent directly to the Attorney General with copy to the Minister of Justice, when the person subject to the request has committed one of the offences provided for by law (Art. 157 of AML/CFT Law No. 2018-004). A request for provisional arrest may be sent either through the diplomatic channel, or directly by post or telegraph, or by the ICPO/Interpol, or by any other means leaving a written record or permitted by the state legislation in force, with a view to extradition (Art. 159 of AML/CFT Law No. 2018-004). Furthermore, Togo is a signatory to the 2003 ECOWAS Criminal Police Cooperation Agreement which provides for the simple surrender from police to police of an offender who is on the run and located in the territory of one of the member countries,

particularly where the offender in question is a national of the requesting country or of one of the ECOWAS countries (Article 11.1 and 11.2 of the ECOWAS Cooperation Agreement).

Weighting and conclusion

Togo may execute without undue delay extradition requests received from foreign countries concerning persons convicted of ML/TF or associated predicate offences. However, Togo lacks a case management system and clear procedures for the diligent execution of extradition requests, including a prioritization system. The Togolese AML/CFTP regime has minor deficiencies with regard to the requirements of this recommendation.

Togo is rated Largely Compliant on Recommendation 39.

Recommendation 40 - Other Forms of International Cooperation

Togo was rated Partially Compliant on recommendation 40 due to the lack of precision on the possibility for the FIU to exercise its investigative powers at the request of a third party FIU that is not a member of UEMOA. Judicial authorities were not empowered to carry out the simplest investigations within the framework of mutual legal assistance without a request from a foreign country. There was no implementation of AML/CFT cooperation mechanisms. The current provisions of AML/CFT Law No. 2018-004 improve the legal and institutional framework for international AML/CFT cooperation and resolve some of the previously identified deficiencies.

General principles

Criterion 40.1- The competent authorities, namely the FIU, the investigative authorities (National Police and Gendarmerie), customs and supervisory authorities have the possibility of providing the widest possible international cooperation within the framework of ML, associated predicate offences and TF. Togo is a member of the ICPO/Interpol, World Customs Organization (WCO) and has concluded cooperation agreements with several countries in judicial and financial matters as well as in police matters. This cooperation makes for a spontaneous exchange or on request, subject to reciprocity.

Criterion 40.2 a, b, c, d and e

Criterion 40.2 a- International cooperation is implemented in application of the provisions of the AML/CFT Law No. 2018-004 and;

Criterion 40.2 b.-Through formal mechanisms of cooperation agreements signed between national actors and their foreign counterparts (Art. 76 to 78). As such, the Togo-FIU has signed 20 bilateral cooperation agreements with its foreign counterparts. Togo is also a member of ICPO/Interpol and WCO.

Criterion 40.2 c.- Secure and clear channels and circuits are used by competent authorities to cooperate effectively. To this end, the EGMONT SECURE WEB network is used for exchanges between FIU members of the EGMONT group (including the FIU of Togo). The investigation authorities (National Police and Gendarmerie) use the secure I-24/7 network for exchanges among the INTERPOL National Central Offices. The Customs authorities use the secure ASYCUDA WORLD network to exchange and communicate with their foreign counterparts. As for the supervisory authorities, particularly in the financial sector, they cooperate through the mechanisms provided for in the cooperation and information exchange agreement between the UMOA CB and the CREPMF, as well as through the cooperation and information exchange agreements between the UMOA CB and certain regulatory and banking supervisory authorities, particularly the French Banking Commission (Convention of September 19, 2000).

Criterion 40.2 d.- However, Togo does not have clear procedures in place to prioritize the diligent execution of cooperation requests.

Criterion 40.2 e.- Procedures for the protection of information received as part of this cooperation are provided for (Art. 65, 66, 78, 82 of AML/CFT Law No. 2018-004). These are essentially confidentiality requirements, conditions of access and disclosure of information, protection of privacy and fundamental freedoms. In the Memoranda of understanding between the FIU of Togo and the other FIUs, confidentiality and protection of the information received are also required. The same rules are prescribed by the statutes of the ICPO/Interpol and the WCO.

Criterion 40.3- The Togo--FIU can negotiate and sign bilateral or multilateral agreements or arrangements with its foreign counterparts (Art. 78 of AML/CFT Law No. 2018-004). Investigation authorities, customs and supervisory authorities have the same option with their foreign counterparts, with whom they can quite often exchange without signing an agreement, respectively through the statutes of the ICPO/Interpol and the WCO, as well as the practices of private sector supervisors based on reciprocity.

Criterion 40.4-The Togolese legal system does not provide for a mechanism for feedback of information on request, from the requesting competent authorities to the requested competent authorities as to the use and usefulness of the information received. However, there is nothing to prevent this feedback from being provided to the required competent authorities who request it. In addition, the FIU of Togo can provide feedback to its foreign counterparts on the use of the information communicated and the results of the analyses conducted in accordance with the 19th principle of the EGMONT GROUP.

Criterion 40.5 a, b, c and d- The grounds for refusing mutual assistance in Togo do not attach unreasonable or unduly restrictive conditions to the exchange of information or mutual assistance (Art.140, paragraph 1 of the AML/CFT Law 2018-004).

Criterion 40.5 a.- Togo may not refuse a cooperation request on the sole grounds that the offence for which the request is made is considered to relate also to tax matters (Art. 140 above).

Criterion 40.5 b.- No request for mutual assistance may be refused on grounds of confidentiality or professional secrecy (Art. 140, para. 2).

Criterion 40.5 c.- Mutual assistance may be refused only when the facts to which it relates are the subject of criminal proceedings or have already been the subject of a final court decision in the country (Art. 140, para. 3). Similarly, information may not be provided by the competent authorities in cases where criminal proceedings have been initiated in Togo (Art. 78 al.2 of AML/CFT Law No. 2018-004).

Criterion 40.5 d.- A request for mutual assistance from a foreign authority shall be refused only if that authority does not have the relevant jurisdiction (Article 140 of Law No. 2018-004 AML/CFT), regardless of the nature or status of the requesting authority (civil, administrative, judicial, etc.).

Criterion 40.6- Measures are taken, in particular by the FIU and the control and supervisory authorities to ensure that the information exchanged with their foreign counterparts is only used by the authorities for which it was requested and for the purposes for which it was provided, unless prior approval has been granted by the requested competent authority (Art. 65, 66, 78.2, 82, 141 of AML/CFT Law No. 2018-004). Although the law enforcement authorities use secure channels to exchange (cf. C. 40.1), nothing indicates that they are required to take the same measures as the FIU and the monitoring and supervisory authorities on the use of information received from their counterparts.

Criterion 40.7- Togo guarantees the protection of privacy and personal data received from domestic or foreign sources, through the provisions of Law No. 2019-014 of October 29, 2019 on the protection of personal data (Art. 51 and 52).

Furthermore, the FIU is required to refuse to provide information if the requesting competent authority is unable to ensure the protection of said information (Art. 78, al. 1 of AML/CFT Law No. 2018-004). The *Commission Bancaire* may also disseminate information to counterpart supervisory authorities provided that the latter are themselves bound by professional secrecy (Art. 60 of Title IV of the BC Convention).

Law enforcement authorities use secure exchange channels, but they are not required to refuse to provide information where the requesting competent authority cannot protect this information.

Criterion 40.8- FIU has the powers required to formulate requests on behalf of a foreign counterpart and to exchange with their foreign counterparts all the information that could be obtained internally (Art. 70, 76 and 78 and 138 of AML/CFT Law No. 2018-004). Judicial police officers may also, at the request of their counterparts, use their investigative powers to solicit the required information and communicate it to them.

Exchanges of information between FIUs

Criterion 40.9- Togo's FIU can cooperate appropriately on cases of ML, associated predicate offences and FT (Art. 76 to 78 of AML/CFT Law No. 2018-004). This cooperation allows the exchange of information with all the counterpart FIUs whatever their nature. The law specifies the scope of this cooperation as well as the procedures for protecting the information exchanged, and the potential grounds for refusal of cooperation (article 78 al. 1 and 2).

Criterion 40.10- The Togolese AML/CFT legal system does not explicitly provide for feedback from FIU to its counterparts regarding the use of the information it has received from them and the result of the analysis conducted based on said information. However, the FIU of Togo can provide feedback to its foreign counterparts on the use of the information communicated and the results of the analyses conducted in accordance with the 19th principle of the EGMONT GROUP. In practice, Togo has not demonstrated the provision of any feedback by the FIU.

Criterion 40.11 a and b- Based on the provisions contained in Articles 75 and 79 of Law No. 2018-004 on AML/CFT:

Criterion 40.11 a.- the FIU can exchange all information that can be accessed or obtained directly or indirectly by it;

Criterion 40.11 b- the FIU can exchange any other information that it has the power to obtain, directly or indirectly, at the national level, subject to the principles of reciprocity.

Exchanges of information between financial sector supervisors

Criterion 40.12- The supervisory authorities of FIs are required to provide rapid and effective cooperation with bodies that perform similar functions in UEMOA countries or other third States, including through the exchange of information relating to inspection for AML/CFT purposes or relevant thereto (Art. 86 point 8 and 89 al. 3 of AML/CFT Law No. 2018-004). The CB of the UMOA may enter into cooperation agreements with any competent authority in matters of supervision and resolution (Art. 42 al. 2 of the Annex to the Convention governing the CBU).

In addition, for the insurance sector, the CRCA may disseminate information specifically concerning the activity of insurance and reinsurance companies and organizations to the authorities responsible for the supervision of similar institutions in third countries, subject to reciprocity and provided these authorities are themselves bound by professional secrecy (Art. 17 of the CIMA Code).

Criterion 40.13- The financial sector supervisory authorities may share with their counterparts the information available to them at the national level, in particular that held by the FIs, to the extent of their respective needs (Art. 86 point 8 of AML/CFT Law No. 2018-004).

Criterion 40.14 a, b and c- Financial sector supervisory authorities can provide rapid and effective cooperation to bodies that perform similar functions in other UEMOA Member States or other third countries, including understood by the exchange of information in particular a) regulatory information; b) prudential information; c) information relating to AML/CFT. (Art. 86 of AML/CFT Law No. 2018-004 and art 60 of Title IV of the BC Convention), namely:

- a. Regulatory information;
- b. Prudential information;
- c. AML/CFT information.

Criterion 40.15- Financial sector supervisors have the required legal powers to seek information on behalf of their foreign counterparts. However, no regulatory text or agreement details the mechanisms for implementing this form of cooperation, in particular the possibility for the requesting competent authority to seek the required information itself, even though the Convention governing the CBU, which is limited to banking FIs, provides for this possibility.

Criterion 40.16- No legislative or regulatory provision provides for the obligation for the supervisory authorities to ensure the prior authorization of their counterparts before using the information obtained from them for supervisory purposes or other purposes unless legally required to do so. However, the Convention establishing the UEMOA Banking Commission authorizes the CBU to communicate information subject to confidentiality and reciprocity (Art. 60). The BCEAO specifies that the reciprocal confidentiality clauses mutually agreed by two authorities determine the nature of the dissemination of the information exchanged.

Exchange of information between law enforcement authorities

Criterion 40.17- Law enforcement authorities are empowered to exchange information to which they have access at the national level with their foreign counterparts for intelligence or investigative purposes in the context of ML/TF cases or associated predicate offences, including for the purpose of identifying and tracing proceeds and instrumentalities of crime (arts. 138 and 149 of AML/CFT Law No. 2018-004). In this regard, they can conduct all acts of investigation (collection of evidences, searches, hearings, seizures) and exchange the information obtained with their counterparts. These exchanges can take place through the ICPO/Interpol or through the Inter-Agency Asset Recovery Network for West Africa (ARINWA) and the Network of Central Authorities and Prosecutors of West Africa against Organized Crime (WACAP).

Criterion 40.18- Criminal investigation and prosecution authorities (LEA) may use their investigative powers and related techniques to obtain information on behalf of their foreign counterparts (arts. 138 and 142 of Law no. °2018-004 of AML/CFT). To this end, they can collect testimonies, interview people, search and make seizures in order to obtain information on behalf of their counterparts. Furthermore, the usage restrictions likely to be imposed by the LEA are taken into account in the statutes of the ICDO/Interpol. The ICPO/Interpol Secretariat has a casefile processing unit which examines the information received from Member States to ensure that it is protected and that all restrictions regarding its usage imposed by the LEAs from the country providing the said information are respected prior to any dissemination.

Criterion 40.19- Law enforcement authorities may establish joint investigation teams to conduct investigations in a cooperative manner and, where necessary, establish bilateral or multilateral agreements to authorize such joint investigations (Art. 142, paragraph 3 of AML/CFT Law No. 2018-004). To this end, the ECOWAS Criminal Police Cooperation Agreement of 2003 provides for the establishment of joint investigation teams on forms of transnational organized crime (Art. 8 of Chapter 3). The ICPO/Interpol can provide to the police of its member countries a support investigation unit on an ad hoc basis to investigate jointly and on an ad hoc basis the same forms of crime.

Exchanges of information between other peer authorities

Criterion 40.20- Togo has the possibility of exchanging information indirectly with non-counterpart competent authorities through the intermediary of FIU. Indeed, AML/CFT Law 2018-004 deals with the exchange of information between FIU and certain national AML/CFT actors (Art.75), and also allows the indirect transmission of such information to the authorities of a requesting country (Art.78). However, no obligation is explicitly imposed on the competent

authority requesting information indirectly to clearly indicate the purpose of the request or the entity on whose behalf the request is made.

Weighting and conclusion

The FIU, investigation authorities, customs administration and supervisory authorities have the possibility of granting the widest possible international cooperation in ML/TF and similar offences in accordance with the requirements of the standards. The FIU can provide this information feedback based on the exchange principles of the EGMONT Group. Similarly, no legal instrument requires the supervisory authorities to obtain the prior approval of their counterparts before using the information obtained from them for supervisory or other purposes unless it is legally required to do so. Togo has not put in place any clear procedures to prioritize the execution of cooperation request without delay. The Togolese AML/CFTPF regime has minor deficiencies with regard to the requirements of this recommendation.

Togo is rated Largely Compliant on Recommendation 40.

Technical Compliance Summary – Key Deficiencies

Table in Appendix A. Compliance with FATF Recommendations

Recommendations	Rating	Factor(s) predicate the rating
1. Risk assessment and application of a risk-based approach	[PC]	<p>The lack of formal adoption of the NRA report at the highest level by the competent authorities does not make it possible to ensure a substantial allocation of resources to support the implementation of the action plan in coherence with the risks identified.</p> <p>The lack of assessment of risks specific to VASPs, PF and maritime crime with regard to the country's context, should put into perspective the overall understanding of these risks by the Togolese authorities;</p>
2. National cooperation and coordination	[PC]	<p>The main bodies in charge of leading the national coordination framework, namely CONAC and the trade facilitation unit, are not yet operational. Their respective compositions do not include all relevant AML/CFTP players either. Moreover, this coordination framework does not involve policies to combat proliferation.</p>
3. Money laundering offences	[VS]	<p>The criminalization of ML and the related requirements are fully taken into account by the Togolese legal system.</p>
4. Confiscation and provisional measures	[LC]	<p>However, there are no measures aimed at not compromising the capacity of actors in the criminal justice chain to freeze, seize or recover property, or even a mechanism for managing seized and confiscated assets.</p>
5. Terrorist Financing Offence	[PC]	<p>The scheme does not take into account the financing of an individual terrorist or a terrorist organization for any purpose and the financing of foreign terrorist fighters' travel.</p> <p>The possibility of establishing the TF offence even if there no link with one or more specific terrorist acts is not explicitly guaranteed by law or case law.</p>
6. Targeted Financial Sanctions Related to Terrorism and Terrorist Financing	[PC]	<p>The deadline for notification of the sanctions lists to reporting entities and other natural or legal persons likely to hold the funds and resources of designated persons and entities is relatively long, approximately two weeks after the publication of the lists.</p> <p>There are no set criteria of evidence defined to justify designations on the sanctions lists.</p> <p>Specific procedures for requests for de-listing and unfreezing of funds under UNSCR 1267/1999, ex-parte intervention are not provided for.</p> <p>No procedure is defined to allow persons bearing the same name as a designated person and whose assets and other resources are frozen as a result of this similarity, to request the unfreezing of the said assets and resources.</p> <p>The Togolese system also does not provide for a procedure to inform the public of the possibility of informing the Office of the UN Ombudsman with a request for de-listing from the Al-Qaida sanctions list in accordance with UNSCRs 1904, 1989 and 2083.</p> <p>The legislation also does not specify whether appointments are subject to the existence of a legal process. We also note the lack of guidelines for FIs and</p>

Recommendations	Rating	Factor(s) predicate the rating
		DNFBPs to ensure that they properly implement administrative freezing orders.
7. Targeted Financial Sanctions Related to Proliferation	[PC]	<p>There is no appropriate mechanism in Togo for the implementation of targeted financial sanctions linked to the financing of proliferation;</p> <p>There are no monitoring and supervisory authorities designated to ensure the effective implementation of the administrative freezing measures by the DNFBPs;</p> <p>No procedure is defined to manage similarity errors and to request the unfreezing of the assets and resources in question.</p>
8. Non-profit Organizations	[PC]	<p>The consecration of the risk-based approach in the NPO sector is recent in Togo. Consequently, risk-based inspections and monitoring are not yet effective;</p> <p>The legal framework also does not define the procedure and timelines for reviewing new information and vulnerabilities identified in the NPO sector;</p> <p>Risk-based supervision and monitoring are not effective also due to the lack of designation of a control and supervision authority for NPOs in the area of AML/CFT that can apply the sanctions provided for by law, nor of a register mandatory registration of information related to their administration and management.</p>
9. Financial Institution Secrecy Laws	[VS]	With the adoption of AML/CFT Law No. 2018-004, professional secrecy is no longer an obstacle to access and exchange of information relating to information held by FIs in accordance with FATF requirements.
10. Customer Due Diligence	[PC]	<p>The Togolese legal framework does not require FIs to take into account the beneficiary of a life insurance contract as a relevant risk factor;</p> <p>FIs also have no option to implementing customer due diligence obligations where they reasonably believe that they would alert the customer by implementing such obligations, in the event of a suspicion of ML or TF;</p> <p>The issue of identifying the beneficial owners of legal arrangements is not targeted by the law.</p> <p>And for customers that are legal persons, there is no provision that requires FIs to identify the relevant natural person who occupies the position of senior officer where no natural person is identified in the implementation of points (a) or (b) of Criterion 10.10 above.</p> <p>The Togolese legal framework has not made provisions explicitly obliging FIs not to open an account, not to carry out a transaction, or not to establish or terminate the business relationship, when they fail to implement the required customer due diligence measures.</p>
11. Record keeping	[LC]	The lack of precision on the notion of adequacy of the documents to possibly reconstruct individual transactions as well as the lack of obligation for all FIs to keep the outcomes of any analysis conducted for at least five years from the end of the business relationship or the date of the occasional transaction and to quickly make available all the information obtained within the framework of the customer due diligence measures and the documents relating to the transactions.

Recommendations	Rating	Factor(s) predicate the rating
12. Politically Exposed Persons	[PC]	<p>The definition of PEPs contained in the Law is not in line with that of the FATF as it limits the notion of PEP to certain well-defined functions, impacting the implementation of due diligence measures required of all PEPs.</p> <p>Required due diligence measures are not applicable to family members of domestic PEPs and persons known to be closely associated with them.</p> <p>There is no provision requiring FIs to take reasonable steps to determine whether the beneficiaries of a life insurance policy or their beneficial owners are PEPs.</p> <p>Furthermore, insurers are also not required, where higher risks are identified, to inform senior management before payment of funds, to carry out an enhanced review of the business relationship with the contract holder and to consider filing an STR.</p>
13. Correspondent Banking	[LC]	<p>No obligation for FIs to know whether the correspondent has been the subject of any investigation or measures by an ML/TF supervisory authority, but also to clearly understand the respective responsibilities of each institution in terms of AML/CFT in the context of a banking relationship.</p>
14. Money or Value Transfer Services	[PC]	<p>The country has not adopted the uniform law on the litigation of violations of the regulations of external financial relations of UEMOA member States and its enforcement Decrees. In the lack of other relevant texts, the assessors are not in a position to assess the proportionate and dissuasive nature of the sanctions applicable in the event of infringements and violations of the regulations applicable to MVT services;</p> <p>The agents of MVT service providers are not subject to the obligation of approval or registration by a competent authority;</p> <p>SMVT providers who use sub-agents are not required to include them in the AML/CFT programs for which they are responsible as FIs. They are also not obligated to ensure the implementation of such programs by their sub-agents.</p>
15. New Technologies	[NC]	<p>AV-related activities and VASP activities or operations are not yet regulated in Togo. The competent supervisory authority has also not yet been designated.</p>
16. Wire Transfers	[PC]	<p>There is no provision that requires FIs to make available to the beneficiary's FI or to the competent authorities the required information on the originator and beneficiary within 3 days;</p> <p>There is no legal obligation that prohibits the originator's FIs from executing wire transfers if they do not comply with the requirements set out in criteria 16.1 to 16.7.</p> <p>There is no provision obliging the Originator's FIs to keep all information collected on the Originator and beneficiary in accordance with the requirements on criteria 11.2, 11.3 and 11.4</p> <p>There is no legal obligation for FIs to take reasonable steps to detect cross-border wire transfers that lack required originator or beneficiary information;</p> <p>There is no provision obliging MFT service providers to make a suspicious transaction report in all the countries concerned by a suspicious wire transfer.</p>
17. Reliance on Third	[LC]	<p>No legal provision requires Togo, when determining the countries in which</p>

Recommendations	Rating	Factor(s) predicate the rating
Party		third parties may be established, to take into account the information available on their risk level;
18. Internal Controls, Foreign Branches and Subsidiaries	[LC]	There is no exchange of information relating to customers, accounts and transactions between the branches/subsidiaries and the compliance, audit and/or AML/CFT functions at group level, when they are necessary for AML/CFT purposes.
19. Higher-risk Countries	[NC]	FIs do not are required to apply due diligence measures and countermeasures proportionate to the risks when the FATF calls to do so; There are also no measures to inform FIs of concerns about deficiencies in other countries' AML/CFT regimes.
20. Suspicious Transaction Reporting	[PC]	The legal framework establishes the principle of STRs for FIs. On the other hand, they are not required to report attempted suspicious transactions.
21. Awareness-raising and confidentiality	[VS]	Togo has taken all the necessary measures to meet the requirements of this Recommendation.
22. Designated Non-Financial Businesses and Professions: customer due diligence	[PC]	The Togolese legislation does not provide for record keeping as required for certain DNFBPs; There is no obligation to assess ML/TF risks before the launch of new products, services, distribution channels or the use of new technologies; The legal framework also does not provide for recourse to third parties for DNFBPs, in application of the requirements of Recommendation 17.
23. Designated Non-Financial Businesses and Professions: other measures	[PC]	Lack of measures relating to the obligation to report attempted suspicious transactions, The fact that STRs do not cover all acts of TF, The lack of a binding measure imposing a continuous training program for the staff and managers of DNFBPs, Lack of provision obliging DNFBPs to apply countermeasures to high-risk countries at the request of FATF.
24. Transparency and Beneficial ownership of Legal Persons	[PC]	The country does not have a mechanism to update RCCM information without delay. It also does not have mechanisms for updating the information on the beneficial owners of legal persons collected and kept in the company register; No legal or regulatory text ensures that nominee shares and designated directors are not misused; There is no express ban on bearer shares, nor sanctions for failing to meet the requirements of Recommendation 24; Nor are there any provisions obliging the country to monitor the quality of the assistance it receives from other countries in response to requests for basic and beneficial ownership information or requests for assistance in locating beneficial owners residing abroad.
25. Transparency and Beneficial Ownership of Legal Arrangements	[PC]	No retention period for documents is incumbent on DNFBPs who act as professional trustees in Togo; Trustees are also not required to declare their status to FIs and DNFBPs.
26. Regulation and Supervision of Financial Institutions	[PC]	Although the country has strengthened the regulation and control of FIs through the adoption and implementation of several texts relating to the financial sector in general, and to AML/CFT in particular, identification of the beneficial owners of FIs, risk-based approach for monitoring and

Recommendations	Rating	Factor(s) predicate the rating
		supervision of FIs is not yet a reality in Togo.
27. Powers of Supervisors	[VS]	Togo has taken all the necessary measures to meet the requirements of this Recommendation.
28. Regulation and supervision of Designated Non-Financial Businesses and Professions	[PC]	No DNFBP has yet been subject to AML/CFT inspection or supervision; Several categories of DNFBPs including the real estate sector, dealers in precious metals are not regulated and therefore do not have a designated supervisory authority or self-regulatory body
29. Financial Intelligence Units (FIUs)	[PC]	Although the FIU has broad prerogatives and powers required by the standards, the confidentiality of information and respect of professional secrecy which are imposed on the FIU members and on its correspondents are not guaranteed; The FIU still functions based on an outdated Decree, which affects its operational and financial autonomy.
30. Responsibilities of Law Enforcement authorities	[VS]	Togo has taken all the necessary measures to meet the requirements of this Recommendation.
31. Powers of Law Enforcement authorities	[VS]	Togo has taken all the necessary measures to meet the requirements of this Recommendation.
32. Cash Couriers	[PC]	In Togo, cash and BNI declarations are only compulsory for third parties entering or leaving UEMOA territory and not for people traveling between countries of the Union.
33. Statistics	[PC]	In addition to the regular keeping of statistics on STRs received and disseminated by the FIU, Togo does not have comprehensive statistics on investigations, prosecutions and convictions, assets frozen, seized and confiscated and on mutual legal assistance in AML/CFT.
34. Guidance and Feedbacks	[PC]	Unlike the vast majority of DNFBPs, the country has not issued any guidelines for FIs, which nevertheless occupy a prominent place in Togo's AML/CFT regime. Although Directives or regulations have been adopted by certain FI authorities (Banks, SGIs and Insurance companies), these are not intended to help them better understand their obligations.
35. Sanctions	[PC]	The administrative sanctions provided for in the regulatory texts governing FIs and DNFBPs do not provide for sanctions that specifically target violations of AML/CFT obligations.
36. International instruments	[LC]	Togo has not criminalized insider trading, nor taken appropriate measures to ensure the protection of witnesses and whistleblowers.
37. Mutual Legal Assistance	[LC]	The Togolese legal and institutional system allows it to provide the widest possible range of mutual legal assistance. The country has also not put in place specific procedures for the establishment of priorities and the diligent execution of mutual assistance requests received, as well as an adequate monitoring system for the processing of mutual assistance requests; There is also no express provision to clarify that dual criminality, where required, does not apply where the request does not involve coercive actions.

Recommendations	Rating	Factor(s) predicate the rating
38. Mutual Legal Assistance: freezing and confiscation	[LC]	Togo has taken all the necessary measures to meet the requirements of this Recommendation.
39. Extradition	[LC]	Togo lacks a case management system and clear procedures for the diligent execution of extradition requests, including a prioritization system; There is no simplified extradition procedure when the person who is the subject of the request waives the formal extradition procedure himself.
40. Other Forms of International Cooperation	[LC]	No legal provision provides for the obligation for the supervisory authorities to obtain the authorization of their counterparts before using the information obtained from them for supervisory or other purposes, unless it is legally required to do so.

Glossary of Acronyms³⁵

ABR	Risk-Based Approach
LEA	Law enforcement authorities
ANR	National Intelligence Agency
APBEF	Association of Banking and Financial Institutions Professionals
ARCOBEF	Association of Compliance Officers of Banks and Financial Institutions
ARINWA	Inter-Agency Network for Asset Recovery in West Africa
ARMP	Public Procurement Regulatory Authority
AUDCGGIE	OHADA Uniform Act on General Business Law and Economic Interest Groupings
AUDSCG	OHADA Uniform Act on Business Companies and GIE
VA	Virtual Assets
AfDB	African development bank
ML/TF	Money Laundering / Terrorist Financing
BCEAO	Central Bank of West African States
NCB-INTERPOL	National Central Bureau-INTERPOL
BIAT	International Bank for Africa in Togo
EBID	ECOWAS Bank for Investment and Trade
BOAD	West African Development Bank
BPEC	Popular Bank for Savings and Credit
BRS	Regional Solidarity Bank
BRVM	Regional Stock Exchange
BSIC	Sahelo-Saharan Bank for Investment and Trade
BTCI	Togolese Bank for Trade and Industry
BTP	Togolese Development Bank
BTP	Buildings and Public Works
C	Compliant
CAAT	Airport Anti-Trafficking Unit
CASIMEC	Support and Monitoring Unit for Mutual Savings and Credit Institutions
CB/CBU	Banking Commission / UMOA Banking Commission
UBC	UEMOA Banking Commission
CC	Court of Audit
CCGA	Advisory Commission on the Freezing of Assets
ECOWAS	Economic Community of West African States
CEN	Customs Enforcement Network / Customs Network against Fraud
FIU	National Financial intelligence Processing Unit
CFE	Business Formalities Centre
CGI	Tax Code
CIMSA	Inter-ministerial Committee for Monitoring AML/CFTP Actions
CIPLEV	Inter-ministerial Committee for the Prevention and Fight against Violent Extremism
NC	National Correspondent

³⁵

Acronyms already defined in the FATF 40 Recommendations are not included in this glossary.

CNAD	National Anti-Drug Committee
CNSS	National Social Security Commission
CONAC	National AML/CFTP Coordination Committee
CP/PPP	Penal Code / Code of Criminal Procedure
CRCA	Regional Insurance Control Commission
FRC	Financial Intelligence Unit
CS	Supreme Court
UNSC	United Nations Security Council
TC	Technical Compliance
CTO	Transnational Organized Crime
CFO	Financial Affairs Department
DCF	Tax Control Department
DCPJ	Central Directorate of the Judicial Police
DCPR	Central Depository of the Settlement Bank
DCRI	Central Directorate of Internal Intelligence
DEF	Department of Financial Investigations
DGCTP	Directorate General of Accounting and Public Treasury
DGDN	Directorate General of National Documentation
DNA	National Insurance Department
BACK	Declaration of Suspicious Transactions
PRSP	Poverty Reduction Strategy Paper
CTR	Declaration of Cash Transactions
SDR	Special Drawing Right
EICF	Fixed Capital Investment Company
EME	Wire Money Issuer
NRA	National Risk Assessment
DNFBPs	Designated Non-Financial Businesses and Professions
ETI	ECOBANK Transnational Incorporated
FCFA	CFA Franc
GFCF	Gross Fixed Capital Formation
FNC	National Convictions File
FONGTO	Federation of NGOs of Togo
FPWMD	Financing the Proliferation of Weapons of Mass Destruction
FATF	Financial Action Task Force
GIABA	Intergovernmental Action Group against Money Laundering in West Africa
GILAT	Anti-Terrorist Light Intervention Group
GSIGN	National Gendarmerie Security and Intervention Group
GTD	Global Terrorism Data
GTI	Global Terrorism Index
HAPLUCIA	High Authority against Corruption and Assimilated Offences
P&C	Fire, Accident, Risk, Miscellaneous
IDF	General Inspectorate of Finance

IGE	General State Inspectorate
BNI	Bearer Negotiable Instruments
EITI	Extractive Industries Transparency Initiative
KYC/CDD	Know Your Customer / Customer Due Diligence Measures
AML/CFT	Fight against Money Laundering / Financing of Terrorism
AML/TFP	Anti-Money Laundering/Financing of Terrorism and Proliferation
CL	Largely Compliant
LONATO	Togolese National Lottery
CPF	Counter Proliferation Financing
MATDCL	Ministry of Territorial Administration, Decentralization and Territorial Development
MEF	Ministry of Economy and Finance
MSPC	Ministry of Security and Civil Protection
N / A	Not applicable
CN	Improper
NPO	Non-profit Organization
OCAM	Common African and Malagasy Organization
OECD	Organization for Economic Cooperation and Development
OCTRIB	Central Office for the Repression of Illicit Drug Trafficking and Money Laundering
OHADA	Organization for the Harmonization of Business Law in Africa
ICPO-Interpol	International Criminal Police Organization
WCO	World Customs Organization
ONECCA	National Association of Chartered Accountants and Chartered Accountants
NGO	Non-Governmental Organization
UN	United Nations
UNODC	United Nations Office on Drugs and Crime
UCITS	Undertaking for Collective Investment in Transferable Securities
OPJ	Criminal Investigation Police officer
PWMD	Proliferation of Weapons of Mass Destruction
PC	Partially Compliant
PC	Partially Compliant
PCB	Bank Accounting Blueprint
GDP	Gross domestic product
PNAAD	National Anti-Drug Action Plan
PND	National Development Plan
UNDP	United Nations Development Program
PEP	Politically Exposed Persons
VASP	Virtual Asset Service Provider
TFP	Technical and Financial Partner
RCCM	Trade and Personal Property Credit Register
MER	Mutual Evaluation Report
IO	Immediate Outcome
DPRK	Democratic People's Republic of Korea

RS	Companies Registry
HER	Anonymous society
SARL	Limited Liability Company
SAS	Simplified joint stock company
SCRIC	Central Service for Research and Criminal Investigations
SCS	Limited partnership
TFS	Targeted Financial Sanctions
DFS	Decentralized Financial System
SGI	Management and Intermediation Companies
GSP	Wealth Management Company
SIAB	Inter-African Banking Corporation
SIGFIP	Integrated Public Finance Management System
CNS	Partnership
SNEC	Credit Institution Rating System
SNPT	New Phosphates Society of Togo
START	National Consortium for the Study of Terrorism and Responses to Terrorism
SMVTS	Funds and Values Transfer Service
TS	Thematic/Specific
UEMOA	West African Economic and Monetary Union
UMCC	Mixed Container Control Union
UMOA	West African Monetary Union
UONGTO	Union of NGOs of Togo
UTB	Togolese Union of Banks
GV	Global Verification
AG/AML/TF	Global Verification including an AML/CFT Component
WACAP	Network of West African Central Authorities and Prosecutors against Organized Crime

ACRONYMS	DEFINITION
GV	global verification
AG/AML/TF	comprehensive verification including an AML/CFT component
TS	Thematic/specific
IGE	General State Inspectorate
IDF	General Inspectorate of Finance
AML/CFT	Anti- Money Laundering and Counter Financing of Terrorism
CL	Largely Compliant
LONATO	Togolese National Lottery
MEF	Ministry of Economy and Finance
MSPC	Ministry of Security and Civil Protection
N / A	Not applicable
	Improper
CN	
NPO	Non-profit Organization
OCTRIB	Central Office for the Repression of Illicit Drug Trafficking and Money Laundering
OHADA	Organization for the Harmonization of Business Law in Africa
ICPO	International Criminal Police Organization - Interpol
ONECCA	National Association of Chartered and Licensed Accountants
NGO	Non-Governmental Organization
UN	United Nations
UNODC	United Nations Office on Drugs and Crime
WCO	World Customs Organization
OPJ	Criminal Investigation Police officer
UCITS	Undertaking for Collective Investment in Transferable Securities
computer	Partially Compliant
GDP	Gross domestic product
PNAAD	National Anti-Drug Action Plan
TFP	Technical and Financial Partner
Recommendation	Recommendation
RCCM	Trade and Personal Property Credit Register
RS	Companies Registry
SGI	Management and Intermediation Company
GSP	Wealth Management Company
DFS	Decentralized Financial System
SIAB	Inter-African Banking Corporation
SIGFIP	Integrated Public Finance Management System
SNPT	New Phosphates Society of Togo
UEMOA	West African Economic and Monetary Union
UMOA	West African Monetary Union
UONGTO	Union of NGOs of Togo
UTB	Togolese Union of Banks

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