



Anti-money laundering and  
counter-terrorist financing  
measures

# Burkina Faso

Mutual Evaluation Report

MAY 2019





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 May 2019 Plenary meeting.**

Citing reference:

*GIABA (2019), Anti-money laundering and counter-terrorist financing measures – Burkina Faso, Second Round Mutual Evaluation Report, GIABA, Dakar*

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## **List of Acronyms and Abbreviations**

ASCE-LC	The Superior Authority of State Control and Anti-Corruption
APBEF	Association of Professional Bankers and Financial Establishments
BCEAO	Central Bank of West African States
ML	Money Laundering
BRVM	Regional Stock Exchange
CAC	External Auditors
CB	Banking Commission
CB-UMOA	UMOA Banking Commission
CIMA	International Confederation of Insurance Markets
ECOWAS	Economic Community of West African States
CCGA	Consultative Commission of Administrative Freezing
CENTIF /FIU	Financial Intelligence Unit
CEFORE	Business Formality Centre
CFA	CFA Franc, currency issued by the BCEAO
CMU	UEMOA Ministerial Council
CRCA	Regional Insurance Supervisory Commission
CDM	UEMOA Council of Ministers
CREPMF	Regional Council for Public Savings and Capital Markets
DFS	Decentralized Financial Systems Supervisory and Monitoring Unit
CIPRES	Inter-African Conference on Social Welfare
CFT	Counter Financing of Terrorism
DGI	Directorate of Tax Revenue Service
DGD	General Directorate of Customs
DGEP	General Directorate of Economy and Planning
DGMG	General Directorate of Mines and Geology
DGCM	Directorate of Geology and Mining Cadastre
DGTCP	Directorate of Treasury and Public Accounts
DNA	National Insurance Headquarters
EME	Electronic Money Establishment
STR	Suspicious Transaction Report
CI	Credit Institution
MFI	Microfinance Institution
NRA	National Risk Assessment
EUR	Euro
CFAF	African Financial Community Franc
TF	Terrorism Financing
GIABA	Intergovernmental Action Group against Money Laundering in West Arica
FATF	Financial Action Task Force
INTERPOL	International Criminal Police Organization
AML	Anti-Money Laundering

AML/CFT	Anti-Money Laundering and Countering the Financing of Terrorism
NPO	Non-Profit Organization
MMC	Ministry of Mines and Excavation
MINEFID	Ministry of Finance and Development
MJDHPC	Ministry of Justice, Human Rights and Civic Promotion
OHADA	Organization for the Harmonization of Business Law in Africa
OPCVM	Collective Stock Exchange Investment Institution
ONI	Office of National Identity
FI	Financial Institution
PCB	Bank Accounting Blueprint
CEO	Chief Executive Officer
GDP	Gross Domestic Product
RCCM	Trade and Credit Register
IO	Immediate Outcome
SARL	Limited Liability Company
SA	Public Liability Company
DFS	Decentralized Financial System
SGCB	UMOA-BC General Secretariat
SGI	Management and Intermediation Company
SGP	Asset Management Company
MVTS	Money or Value Transfer Service (MVTs)
UMOA	West African Monetary Union
UEMOA	West African Economic and Monetary Union
UNODC	United Nations Office on Drugs and Crime
USD	United States Dollar
WACAP	West African Network of Central Authorities and Prosecutors

## MUTUAL EVALUATION REPORT

### *Preface*

1. This report summarizes the AML/CFT measures in Burkina Faso at the date of the on-site visit. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Burkina Faso's AML/CFT system, and recommends how the system could be strengthened.
2. This evaluation was based on the 2012 FATF Recommendations, and was prepared using the 2013 Methodology. The evaluation was based on information provided by Burkina Faso, and information obtained by the evaluation team during its on-site visit to Burkina Faso from 23 July to 7 August 2018
3. The evaluation was conducted by an Assessment Team comprising:
  - Mr. Mohamed Lamine Conte, Central Bank of The Republic of Guinea (Financial Sector Expert)
  - Ms. Astou Senghor, Ministry of Finance, Senegal (Financial Sector Expert)
  - Chief Police Commissioner Goua Koffi, High Authority for Good Governance, Cote d'Ivoire (Law Enforcement Expert)
  - Mr. Oumar Sogoba, Magistrate, Mali (Legal Expert)
  - Ms. Olayinka Akinyede, Legal Officer, GIABA Secretariat
  - Mr. Madicke Niang, Monitoring-Evaluation Officer, GIABA Secretariat
  - Mr. Alphousseyni Diamanka, Interpreter/Translator, GIABA Secretariat
  - Mr. Lofigue Karnon, Programme Officer, GIABA
4. The report was reviewed by Mr. Jean ANADE, FIU Togo, Mr. Cheikh Mouhamadou Bamba NIANG, FIU Senegal and by the FATF Secretariat.
5. Burkina Faso previously underwent its Mutual Evaluation in 2009, conducted by the World Bank according to the 2004 FATF Methodology. The Mutual Evaluation concluded that Burkina Faso was largely compliant with 5 Recommendations; partially compliant with 13 Recommendations; non-compliant with 30 Recommendations; and 1 Recommendation was rated non-applicable. The 2009 Mutual Evaluation has been published and is available at <http://www.giaba.org>
6. Following the adoption of the Burkina Faso MER in November 2009, the country was placed on the expedited regular follow-up process, which required Burkina Faso to report annually. In line with GIABA Mutual Evaluation Process and Procedure, Burkina exited the follow-up process in May 2017 to enable the country to prepare for the second mutual evaluation of its AML/CFT regime in July 2018.

## CHAPTER 1. ML/TF RISKS AND CONTEXT

1. Burkina Faso is a landlocked country in West Africa which gained independence on 5th August 1960 under the name of Upper Volta. Its current name, which was given to the country in August 1984, means “Land of upright people” and is derived from three of the nation’s languages. Burkina Faso shares borders with Mali in the north and west, Côte d’Ivoire in the south-west, Ghana, Togo and Benin in the south, and Niger in the East. The capital of Burkina Faso is Ouagadougou. The country covers an area of 274,200 km<sup>2</sup>. The population of Burkina is 20,244,080.<sup>1</sup> The World Bank estimate of the country’s Gross Domestic Product (GDP) for 2018 is \$14.192 billion. Burkina Faso is a member of the West African Economic and Monetary Union (UEMOA), which has eight member States sharing a common currency, the CFA franc. It is also a member of the Economic Community of West African States (ECOWAS) which has 15 members.

2. Burkina Faso is described as a semi-presidential Republic, where the President is the Head of State and the Prime Minister, the head of Government. The Constitution of Burkina Faso is the supreme law in the country and it provides for the establishment of the three arms of government. The primary function of the executive branch is the implementation of government policies. The executive branch is made up of the President, the Prime Minister and his Government. The President appoints the Prime Minister. The President is the guarantor of the constitution, national independence, the national territorial integrity, State continuity and respect for international agreements (Art. 36 of the Constitution).

3. Legislative power is vested in the National Assembly. The Burkinabè Parliament is unicameral. The Senate was instituted by a constitutional revision in 2012 but was abolished by another constitutional revision of 2015.

4. The judicial branch of government has the function of administration of justice, and the highest jurisdiction of the judicial order in Burkina Faso is the Supreme Court of Appeals (Cour de Cassation), followed by the Court of Auditors and the Constitutional Council (*Conseil Constitutionnel*). There are some courts of second instance which comprise the courts of appeal, as well as courts of first instance which comprise district courts, high courts, special courts (labor, courts, juvenile courts, commercial courts and administrative courts) and county and municipal courts. Burkina Faso’s legal system is based on civil law principles.

5. Under the Burkinabe legal system, international legally-binding instruments, including the United Nations Security Council Resolutions can be domesticated in its legal order through publication in a Gazette.

### ***ML/TF Risks and Scoping of Higher Risk Issues***

#### ***Overview of ML/TF Risks***

6. This section of the report presents a summary of the assessors’ understanding of the money laundering (ML) and terrorist financing (TF) risks in Burkina Faso. This understanding is based on information provided by Burkina Faso as well as open source information, and discussions held with competent authorities and the private sector during the on-site visit. The review of the ML/TF risk in Burkina Faso took into consideration the findings in the National

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<sup>1</sup> Projection of the National Institute for Statistics and Demography (INSD), 2018)

Risk Assessment (NRA) report, the outcomes of which were disseminated through a series of meetings with stakeholders held in June and July 2018, including: DFS and Insurance companies, NPOs, the private sector including the real estate, hotels, transport, rapid money transfer companies and foreign exchange bureaus, as well banks.

7. Burkina Faso ranks among the top half of the least corrupt countries according to the 2017 Transparency International Corruption Perception Index<sup>2</sup> and the country is generally perceived as a fairly safe country<sup>3</sup>. Although Burkina is not a regional financial centre, the country is a hub for trade and transit between the Sahelian countries (Niger and Mali) and the coastal countries (Côte d'Ivoire, Ghana, Togo and Benin). Like most countries, Burkina Faso is exposed to certain ML and TF risk. However, the country's large informal sector and the predominantly cash-based economy which limits traceability of transactions and fuels the shadow economy, compounds the risks posed by country's proximity to the Sahel where terrorist groups are able to operate across borders.

8. The NRA report indicated that the main sources of the proceeds of crime (POC) in Burkina Faso are tax and excise fraud, embezzlement of public funds, illicit drug trafficking, illicit foreign exchange, illicit enrichment, gold-related and wildlife crimes<sup>4</sup>. These offences are considered to have a high level of ML risk. With regard to tax fraud, the Burkinabe tax administration has a declaratory system whereby the taxpayer determines the tax liability and then pays the appropriate taxes. While the tax authorities reserve the right to verify the basis for the taxes declared, the time lag between the declaration and the verification facilitates fraud as Burkinabe and foreign taxpayers take advantage of this time lag to defraud the system. Burkina Faso has not indicated the amount of losses in tax revenue, however, the amount of tax adjustments is estimated at an average of FCFA 58,750,802,909 CFA (Euro 89,695,882) per year.

9. In recent years, there has been a boom in the gold mining industry in Burkina Faso. Between 2005 and 2015, losses in the sector due to corruption and mismanagement were estimated at one billion US dollars<sup>5</sup> though the government has recently implemented some controls. Statistics<sup>6</sup> also indicate that fraud, extortion and counterfeiting of currency are high proceeds generating offences. Burkina does not have an estimate of the overall value of criminal proceeds in the country.

10. The NRA noted that the porous nature of the country's borders, due to the absence of natural barriers and the low level of control at border checkpoints. Burkina Faso is a landlocked country in the heart of West Africa sharing borders with six countries. Thus, the porous borders will facilitate the cross-border movement of people, goods and funds and this can be conducive for smuggling and illicit trafficking in drugs and weapons. Also, due to its geographical location, Burkina Faso is a transit zone for drug trafficking and there has been seizures of cocaine and heroin heading for North America and Europe<sup>7</sup>. The NRA<sup>8</sup> (also noted that that illicit trafficking in arms and ammunition was on the increase.

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<sup>2</sup> Burkina Faso ranked 74<sup>th</sup> out of 180 in Transparency International's 2017 Corruption Perception Index

<sup>3</sup> Ranked 80<sup>th</sup> out of 163 countries and rated as having a "medium" state of peace by Societal Safety & Security, Global Peace Index 2018, Institute for Economics and Peace

<sup>4</sup> NRA pg. 14

<sup>5</sup> Report of Parliamentary Inquiry Committee on the Management of Mining Titles and the Social Responsibility of Mining Enterprises (Burkina Faso), 1<sup>st</sup> September 2016

<sup>6</sup> See Table 12 MJDHPC's 2016 Annual Statistics

<sup>7</sup> NRA page Pg. 1 and 13

<sup>8</sup> Pg. 14-15

11. With the exception of lawyers, notaries, chartered accountants and auditors who have a medium ML risk. Money laundering risks in the DNFBP sector in Burkina is generally high which is attributable to the lack of mechanisms to report suspicious transactions and implement compliance obligations. In addition, there is very limited knowledge of AML within the DNFBP sector.

12. Burkina Faso's financial sector is made up of credit institutions, insurance companies, microfinance institutions, management and investment companies (SGI), foreign exchange bureaus, e-money issuing companies (SEME), money transfer companies, and so on. The banking sector is the largest sector in terms of credits granted. The banking sector also acts as a lender of last resort for other sectors including transactions involving financial relations with the rest of the world and is therefore exposed to risks inherent through international financial linkages. The banking system in Burkina is fairly developed and is exposed to similar risks that affect other countries. The NRA<sup>9</sup> identified a significant number of vulnerabilities in the banking sector, including poor quality of general controls related to AML; the nature of operations and the non-compliance with regulations and noted that a high ML risk in the sector. Most of the vulnerabilities identified could be exploited by criminals seeking to conceal their proceeds of crime. The details of the ML/TF risks, including the assessment of effectiveness are presented in Chapter 2.

13. In the recent past, the country has experienced some political instability, including a major social upheaval which started in 2011 leading to an uprising in October 2014. From April 2015 to July 2018, 120 terrorist attacks were conducted throughout the country. These attacks were imputed to several groups such as: Ansaroul Islam group, the Al-Mourabitoune groups of Moktar Belmoktar (defectors of MUJAO) and the defectors of Katibat kalid Ibn Walid, the Islamic State group in the Grand Sahara, Sams Dine and Jamaat Nasr Al Islam Wal Muslimin. To curb this terrorist threat, Burkina Faso joined forces with four neighbouring countries in the Sahel (Mali, Mauritania, Niger and Chad) to establish the G5 Sahel, an institutional and operational coordination framework, with a joint military force. Although none of the investigation conducted so far have revealed that funds originated from Burkina Faso, the country's TF risk is rated as being moderately high<sup>10</sup>. Investigations conducted on the terrorist attacks revealed that banks, decentralized financial institutions and non-profit organizations (NPOs) were the main TF channels. Additionally, TF risks are associated with the radicalization of certain citizens, vulnerabilities within the NPO sector and foreign terrorist fighters.

### *ML/TF Risks and Scoping of higher-risk issues*

14. During the on-site visit, the assessment team gave increased focused to the higher risk issues listed below. In deciding on which areas to prioritise, the assessment team reviewed Burkina's NRA and the supporting documents including information from reliable third party sources (e.g. reports of other international organisations). The assessment team identified the following important risks and issues of significant concern that merited deeper attention, given their impact on Burkina's AML/CFT system.

- **Economic and financial crimes:** The extent to which Burkina prioritizes the investigation and prosecution of ML in cases involving tax and customs fraud, embezzlement of public funds, illicit drug trafficking, illicit foreign exchange, gold-

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<sup>9</sup> Page 47

<sup>10</sup> NRA, page129

related offences and wildlife crimes which are considered to be the most proceed-generating crimes<sup>11</sup>.

- **Cash-based economy:** Burkina Faso makes extensive use of cash as a means of payment. The estimated proportion of the population that had bank accounts as of 2017 was only 22.15%. The informal sector plays a major role in the functioning of the Burkinabe domestic economy because it facilitates the flow of money outside the conventional financial systems. Factors such as the significant role of the informal sector in the economy, the economic operators' strong preference for cash, the low level of use of banking service coupled with the vulnerabilities of the Decentralized Financial System (DFS) generally generate significant ML/TF risk.
- **DNFBP Sector:** The NRA indicated that most DNFBPs particularly real estate sector, transport sector, hotel-restaurants and gambling activities generally posed high risk due to their limited level of understanding and implementation of AML/CFT obligations and the lack of supervision and regulation of the sector<sup>12</sup>. In addition, gold-related offences fall within the high-risk category. Thus, requiring an assessment of the extent to which the risk posed by DNFBPs is understood and mitigated by the Burkinabe authorities; the extent to which gatekeepers, particularly lawyers, understand the risks posed by ML/TF and the extent to which the risks are mitigated.
- **Supervisory authorities of financial institutions and DNFBPs:** The supervisors' understanding of ML/TF risks in their respective sectors; the application of a risk-based approach for supervision, including an assessment of the supervisory framework for FIs and DNFBPs particularly supervision of banks, DFS, mobile phone financial services, e-money issuers as well as foreign exchange dealers; and an assessment of the existing sanction regime for non-compliance with AML/CFT requirements.
- **Risk-based approach and application of preventive measures in the financial sector:** The extent to which financial institutions identify, assess, understand and mitigate ML/TF risks, including risks related to customers, countries or geographical areas, products, services (mobile phone payments, prepaid cards and Internet payment services) and transactions or delivery channels; the application of customer due diligence (CDD) requirements, including measures relating to politically exposed person (PEPs) and beneficial ownership. The NRA noted gaps in the foreign exchange dealers' compliance function<sup>13</sup> and the high ML/TF risk posed by money or value transfer service (MVTs) providers<sup>14</sup>; the manner in which ML/TF risks are addressed in these sectors.
- **Transparency of legal persons:** According to the NRA,<sup>15</sup> availability and access to beneficial ownership information is insufficient, thus requiring an understanding of the system in place for registration, record keeping and access to beneficial ownership information, including timely access to information.
- **Prevention and response to cross-border money laundering:** Against the backdrop of porous borders and inadequate border controls in the region, the evaluation focused on the country's understanding and management of cross-border ML and TF risks, specifically cross-border movement of bearer negotiable instruments and cash in

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<sup>11</sup> NRA, page 14

<sup>12</sup> NRA, page 129

<sup>13</sup> NRA, page 110-111

<sup>14</sup> NRA, page 3

<sup>15</sup> NRA, Page 135

Burkina Faso, including cash smuggling, formal and informal money transfers, cash courier; and measures taken by authorities to mitigate such risks.

- **Foreign terrorist fighters:** Since 2015, Burkina has been subjected to repeated terrorist attacks that have claimed several lives. These attacks have been perpetrated by terrorist groups based in the Sahel. The NRA<sup>16</sup> indicates that funds for terrorist attacks are generally derived from sources outside the jurisdiction. The NRA also noted that foreign terrorist groups have been recruiting Burkinabe nationals; thus, requiring an evaluation of how the Burkinabe authorities manage the risks posed by Foreign Terrorist Fighters (FTFs) and other persons related to terrorist activities; and how the national intelligence community is tackling the risks posed by such recruitments.
- **The NPO sector:** The NRA indicated that the ML/TF risks posed to the NPO sector is high. The NRA also noted that the level of controls being carried out at the inception and during the life span of NPOs is limited, thus requiring an assessment of the extent to which the TF risks posed to NPOs are identified, assessed, understood, and the extent to which targeted mitigation measures have been applied by the authorities.
- **National Coordination and Cooperation:** How Burkina Faso manages and shares information at the national level, including intelligence especially at the operational level; the effectiveness of financial intelligence analyses, the extent to which enforcement and supervisory processes achieve the desired outcomes.

### **Materiality**

15. Burkina Faso is not a major international centre for financial services. The country is classified as a low-income<sup>17</sup> country with a large informal sector which accounts for 95.2% of employment in Burkina according to the 2015 National Survey of Employment and the Informal Sector. The economy remains significantly cash-based with a large informal sector and/or shadow economy. Only 53% of natural persons pay direct tax. The share of the informal economy to the country's GDP stood at over 30% in 2010 (INSD 2011). Financial services provided in Burkina Faso include savings, credit, insurance, local money transfers and international remittances. These services are offered by banks, decentralized financial systems, the postal network, insurance companies and mobile phone companies. The FinScope Report (2016) indicates that 39% of the population over the age of 15 is financially excluded from formal financial services. Burkina authorities have made efforts to promote financial inclusion by extending financial services through Microfinance Institutions (MFIs) or Decentralized Financial Systems (DFS).

16. Table one below indicates the various sectors in Burkina Faso. In 2017, Burkina Faso's mining sector and financial sector accounted for 8.47% and 2.34% of GDP, respectively (DGEP). The financial sector is dominated by the banking sub-sector which comprises 15 banks. All the banks, except four, are foreign banks well connected to the international financial system. The other sub-sectors such as the insurance and securities sectors are relatively smaller. The service sector which covers most DNFBNs constitutes approximately 42% of the GDP. Besides the non-financial business and professions designated by the FATF, Burkina Faso has designated travel agents, hotels, and restaurant in accordance with the UEMOA Uniform law. The inclusion of these businesses as reporting entities is due to the fact that these businesses are cash-intensive businesses and may be susceptible to money laundering or terrorist

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<sup>16</sup> NRA, Page 165

<sup>17</sup> [Ida.worldbank.org/results/burkina-faso](http://Ida.worldbank.org/results/burkina-faso)

financing. NPOs are also reporting entities under the law because of the potential ML/TF risk posed to these entities. Although, the banking system is the most developed sector in Burkina Faso, the level of financial inclusion remains quite low. A low level of financial inclusion means that most transactions will be conducted outside the financial system where regulation is virtually non-existent. Given that cash is the most used means of payment, there is a likelihood that money launderers and financiers of terrorism may exploit this weakness. Nevertheless, financial inclusion remains an objective pursued by Burkina Faso, which is part of the strategy of the Common Economic Union (UEMOA). Policies to increase the percentage of the country's banked population or at least encourage the move from a cash-based business model to an electronic payments system in order to offer them basic financial services are gradually paying off. These measures include the obligation to pay by check or bank transfer, any transaction of an amount greater than or equal to FCFA 100,000 (Euro 160) between private economic agents and public administrations. Added to this is the rapid development of microfinance institutions that have pushed the strict banking rate from 22.15% to an enlarged rate of 41%. In the same context, the boom in payment systems via mobile banking allows a large proportion of the population to make financial transactions by simply opening an account with a SIM card.

17. The most significant sub-sector within the DNFBP sector is the precious metal sub-sector. Burkina Faso is a major gold producer. In 2016, this sector generated revenue of 190 billion FCFA which represents 8.3% of the GDP<sup>18</sup> The mining sector has grown significantly in recent years and the exploitation by unlicensed artisanal miners<sup>19</sup> has become a concern. Although the government is implementing controls to ensure effective oversight of the sector, these measures are still inadequate, thereby increasing ML/TF risk.

18. NPOs play a vital role in providing humanitarian services and contribute to socio-economic development in Burkina Faso. There are 3885 NPOs registered in Burkina. These comprise domestic, international, secular, faith-based, and membership-based NPOs.

19. Burkina Faso has an open economy and the country is a member of the UEMOA and the ECOWAS. The principle of free movement of people, goods, services and funds impact on the remittance flows to and out of the country. There are both formal and informal remittance services. There is some evidence that a substantial number of remittances in the region are processed through informal channels, such as transport companies and Hawala systems<sup>20</sup>. In Burkina Faso, the informal remittance sector which generally includes about 30 firms, operating mostly within the transportation sector<sup>21</sup> provides local and international remittances services. Under the Burkinabe law, transporters are classified as reporting entities and subject to AML/CFT obligations (Law No.016-016). The country is making considerable efforts to channel remittances into the formal sector and has been promoting the use of non-cash means of payment and e-money, as well as the implementation of new payments products and services (NPPS).

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<sup>18</sup><https://burkina24.com/2017/06/29/burkina-le-secteur-minier-a-rapporte-189983-milliards-de-f-cfa-au-budget-de-letat-en-2016/>

<sup>19</sup> Burkina Faso has indicated that there are about 1000 gold and other minerals mines.

<sup>20</sup>[https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2015/04/2015\\_MMU\\_Mobile-money-crosses-borders\\_New-remittance-models-in-West-Africa.pdf](https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2015/04/2015_MMU_Mobile-money-crosses-borders_New-remittance-models-in-West-Africa.pdf) Mobile money crosses borders: New remittance models in West Africa Claire Scharwatt and Chris Williamson March 2015

<sup>21</sup>[http://siteresources.worldbank.org/EXTDECPROSPECTS/Resources/476882-1157133580628/RMA\\_Ch2.pdf](http://siteresources.worldbank.org/EXTDECPROSPECTS/Resources/476882-1157133580628/RMA_Ch2.pdf)

**Table 1. Structure, size and number of reporting entities in Burkina Faso**

Type of Institutions		Number		Number of Agencies	Total Balance sheet Turnover (in billions of XOF)
		S/Total	Total		
<b>FIs Core Principles</b>					
Banks	National Banks	4	15 (July 2018)		5.017,039 (March 2018)
	Foreign banks/foreign bank branches or subsidiaries	8			
	Sub-regional banks	3			
Securities)	(brokers, portfolio negotiators and managers	2			
Insurance	Life Insurance	16			74,96 (2017)
	Non-life Insurance/other Insurance companies				
	Insurance and re-insurance brokers General Agents	100			
<b>Other Financial Institutions</b>					
Microfinance Institutions			129		192,5 (2016)
Financial leasing companies			2		9,5 (2016)
Foreign exchange bureaus			98		35,9 (2016)
Rapid money transfer companies			747 (2017)		77,10 (2016)
Electronic money companies			2		2 414,72 (2016)
<b>DNFBPs</b>					
Casinos gaming establishments	Casinos	1			
	Lotteries and other games	3			
Legal professionals	Notaries	20			
	Court bailiffs	58			
	Lawyers	198			
Auditors/chartered and other accountants			141		
Real estate developer and agents	Real estate developer	219			
	Estate agents	-			
Mining sector / Dealers in precious metals	Industrial mining: Gold	11			
	Licensed alluvial gold mining	159			
	Gold buying centres	49			
<b>Other reporting entities</b>					
Transport operators			1439		121,5 (2016)
Hotels and restaurants			400		48,2 (2015)
NPOS	Association	3391			
	NGOs	301			

## *Structural Elements*

20. Burkina Faso has the necessary structural elements to sustain an effective AML/CFT system. Despite the increased number of terrorist attacks in recent times, the country is politically stable, with fairly stable institutions, Civil society and the media remain strong forces in defense of the democracy and the rule of law. The current government laid a foundation for the continued development of democratic institutions. The terrorist threat re-focused the country's efforts to comply with combat AML/CFT standards and resulted in the issuance of high-level AML/CFT commitment at the political level. Generally, the Burkinabe judiciary is capable and independent. However, the court has not secured any conviction in ML/TF cases.<sup>22</sup> The country has however, recently established and designated two specialized court divisions to handle economic and financial crime cases and those related to the acts of terrorism.

## *Background and Other Contextual Issues*

21. Burkina is a member of the UEMOA and CIMA, and in that capacity, has benefited from shared experiences within these organizations. These Community Institutions provide the supervisory and regulatory framework for FIs. The banking system is the most developed sector in Burkina Faso. However, the level of financial inclusion remains very low in Burkina. The NRA indicates that some of the main ML risks identified in the country relate to corruption and the size of the informal sector. According to Transparency International's 2017 ranking of African countries, Burkina Faso ranks 10th out of 50 least corrupt African countries and ranked 74th in the world with a score of 42 out of 100. This score is the same as that obtained in 2016. The government and many civil society organizations are engaged in the fight against corruption. The Supreme Authority for State Control and Anti-Corruption (ASCE-LC), the anti-corruption committee established at the several ministries and institutions and the National Anti-Corruption Network (REN-LAC) which was established by a coalition of 25 Burkinabe civil society organizations in 1997, have been engaged in the fight against corruption and are particularly focused on exposing corruption in the public and private sector.

### *(a) AML/CFT Strategy*

22. Burkina Faso adopted its first AML/CFT Strategy by Decree n°2014-025/PRES/PM/MEF/MATS/MJ of 3<sup>rd</sup> February 2014 and corresponding AML/CFT Action Plan for the period spanning 2014-2016. This Strategy was prepared with the support of GIABA. Burkina has conducted its National Risk Assessment, but is yet to develop a national strategy based on the NRA. However, following the National Risk Assessment, Burkina Faso has developed an action plan, which prioritises some activities for urgent attention. The aim is to ensure: (i) that FIs and DNFBPs have a good knowledge of AML / CFT obligations; (ii) the probity and independence of investigators of financial crimes;(iii) the effectiveness of supervisory procedures and practices; (iv) the effectiveness of the compliance function in FIs, (v) the establishment of a compliance function and the development and implementation of an internal AML / CFT program in DNFBPs and NPOs; (vi) the effectiveness and follow-up of suspicious transactions reporting; (vii) that capacity building and resources needed to conduct investigations, judicial proceedings and trials on financial crimes are provided to the relevant authority; and (viii) the integrity of staff of financial institutions.

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<sup>22</sup> In February 2014 and June 2018, the investigating judges heard and dismissed three money laundering cases

23. On the whole, the action plan highlights the key gaps identified in the NRA. The action plan indicates the funding agency, expected outcome and timeframe for the implementation of each activity, as well as duly assigned responsibilities among stakeholder institutions. The broad objectives of the action plan are as follows: (a) For the entire sector, provide training to all staff of reporting entities on AML/CFT obligations, and ML/TF indicators and new typologies, with focus on “Community or domestic legislations”, and the extant binding standards within the banking group, including providing the units in charge of compliance with adequate human and financial resources to enable them to efficiently execute their mandate, conduct a risk assessment within each specialized sector, pursuant to Article 11 of Act No.016 and enhance the independence of compliance officers in the financial system. (b) For reporting entities in the sector other than banks, insurance companies and DFS provided for under Article 44, establish an interconnection platform with other institutions (ONI, CEFORE, Guichet Unique (One-stop shop), and others) in order to secure independent sources of information and eventually detect suspicious activities. (c) For supervisory bodies, strengthen the capacities of officials in charge of supervising reporting entities on AML/CFT; adopt a supervisory plan and provide financial resources for the relevant structures to implement a provisional plan for the supervision of AML/CFT and impose administrative and/or criminal sanctions on reporting entities for failing to comply with their AML/CFT obligations.

24. Burkina will need to adopt a comprehensive strategy to achieve these objectives. The country is developing a National Counter-Terrorism Strategy which will incorporate TF issues. Burkina has no measures in place for combating the financing of proliferation of weapons of mass destruction (WMD).

***b) Legal and institutional framework***

25. Burkina’s legal AML/CFT framework is broadly defined in line with the UEMOA Uniform AML/CFT law which is referred to as Uniform Law. This Uniform Law is supported by the BCEAO instructions, the CIMA Rules, the CREPMF instructions and the OHADA Revised Uniform Acts. These texts are complemented by various national texts and legislations. The key institutions required for an effective AML/CFT system are in existence in Burkina. The country has an independent judiciary made up of the Auditors Court, Constitutional Court, State Counsel, Supreme Court, Court of cassation, Court of Appeal, High Courts comprising the Specialized Court on the repression of economic and financial offenses and organized crime and the Specialized Court on the repression of acts of terrorism, Magistrate Courts, departmental Courts (Area) Courts, District Court Labour Courts, Commercial Courts, Children’s Courts, Military Tribunal and a number of agencies and competent authorities responsible for the implementation of AML/CFT measures in the country. The institutions and agencies responsible for AML/CFT in Burkina Faso are indicated in Table 2 below.

**Table 2: Institutions and responsibilities**

<b>Institutions</b>	<b>Summary of AML/CFT responsibilities</b>
<b>I. INTERNATIONAL AND COMMUNITY INSTITUTION</b>	
<b>West African Economic and Monetary Union- (UEMOA)</b>	Developed Community policy standards: Directives on AML/CFT Regulation No. 09/2010/CM/UEMOA Regulation N° 14/2002/CM/UEMOA

<b>Central Bank of West African States - (BCEAO)</b>	Draft AML/CFT guidelines and Instructions for the Implementation of AML/CFT Directives or Laws in UEMOA Financial Institutions.
<b>UMOA Banking Commission (CBU)</b>	Issue administrative sanctions against reporting entities in the financial sector.  Supervise, monitor and enforce administrative and disciplinary sanctions on banks, financial institutions and decentralized financial systems.  Implement sanctions meted out by the Commission on reporting entities in the sector.
<b>Inter-African Conference of Insurance Markets- (CIMA)</b>	Draft the CIMA Regulation n ° 00004 of 4 October 2008 on the fight against money laundering and terrorist financing in the insurance sector.
<b>Regional Insurance Supervisory Commission- (CRCA of CIMA)</b>	Supervise and monitor the insurance and reinsurance sector: monitor and issue administrative and disciplinary sanctions.
<b>Regional Council for Public Savings and Capital Markets- (CREPMF)</b>	Develop instructions for the implementation of AML/CFT laws and regulations relating to securities and stocks: supervise, monitor and issue administrative and disciplinary sanctions.
<b>Organization for the Harmonization of Business Law (OHADA)</b>	Elaboration and adoption of business law.
<b>II. NATIONAL INSTITUTIONS</b>	
<b>Burkina Faso (Office of the President, National Assembly, Government)</b>	Adopt AML/CFT laws and regulation, domesticate Community Directives; Designate the Authority in charge of Asset Freezing in the fight against terrorism.
<b>Supreme State Control and Anti-Corruption Authority (ASCE-LC)</b>	Independent administrative authority in charge of preventing and combating corruption; as well as coordinating the consultation framework of State supervisory bodies of Government.
<b>IT and Rights Committee (CIL)</b>	Independent administrative authority, responsible for ensuring respect for personal data, particularly by informing all concerned of their rights and obligations and monitoring IT applications used in the processing of Personal Data.
<b>Office of the Prime Minister: National Commission on Proliferation of Small Arms Control (CNLPAL)</b>	Combating the proliferation and illicit circulation of small arms and light weapons (SALW) in Burkina Faso; Implement the national policy against SALW proliferation; Combat the illicit trafficking of SALW.
<b>High Authority for the Control of Imports of Weapons and their Use (HACIAU)</b>	Develop final destination (CDF) and end-use (CUF) certificates; Control Arms Imports (HACIAU).
<b>National Anti-Fraud Authority (ANLF)</b>	Organize and facilitate studies on fraud; Ensure the implementation of the anti-fraud strategy; Verify fraud cases updated during inspections; Continue settlement through bargaining or in court.

<b>Ministry of Finance (MINEFID):</b>	Implement policies defined by the State: supervision, develop supervisory and monitoring guidelines for a section of the banking and non-banking financial sector (Authorized foreign exchange dealers, postal financial services, gold importers and exporters): Licensing, monitoring, administrative and disciplinary sanctions.
<b>Financial Intelligence Unit (CENTIF)</b>	Receive, analyze and disseminate financial intelligence, as part of the fight against money laundering and terrorist financing, pursuant to Article 60 of Act No. 016-2016/AN of 3 <sup>rd</sup> May 2016.
<b>General Inspectorate of Finance (IGF)</b>	Monitor the financial, tax and accounting agencies of the State, local authorities and generally all structures that receive, hold or manage public funds.
<b>State Treasury and Public Accounting (DGTCP)</b>	Ensure the viability of the national financial system.
<b>Monetary and financial affairs Department (DAMOF)</b>	Organize and conduct financial supervision of public institutions, public companies and state funds; conduct supervision of banks and financial institutions; Monitor issues relating to money, credit and foreign exchange.
<b>Insurance Department (DA)</b>	Implement the provisions of the CIMA Code, develop and implement all other laws, regulations and administrative provisions on the insurance sector; Monitor cooperation organizations in the area of insurance.
<b>Decentralized Financial Systems (DSC/SFD) Supervision and Monitoring Department</b>	Monitor the implementation of regulations governing decentralized financial systems; Process applications for licenses to operate as a DFS; Provide institutional support to and monitor microfinance institutions; Collect, process and disseminate statistical information on the microfinance sector; Develop regulations applicable to national funding funds.
<b>Tax Department (DGI)</b> <b>Tax investigations and Research Department (DERF)</b> <b>Fiscal Control Department (DCF)</b>	Develop and implement the domestic, state land and property tax legislation;  Development of tax audit programs; Enhance actions to combat tax evasion; Implement the anti-fraud and tax evasion strategy within the DGI; Coordinate activities of the audit structures.
<b>Lands Department</b>	Coordinate and monitor the implementation of land regulations.

<b>Customs Department (DGD)</b>	Develop and implement customs legislation and collect duties and taxes relating thereto.
<b>Customs Legislation and Regulations Department (DLR)</b>	Implement international customs instruments ratified by Burkina Faso.
<b>Customs Investigations Department (DED)</b>	Develop and implement an annual anti-fraud plan; Monitor the movement of goods in transit nationwide; Investigation and sanction border control offences; Develop offences and frauds typology; Prosecute customs offences in court.
<b>Permanent Secretariat of the Extractive Industries Transparency Initiative (SP/EITI)</b>	Coordinate and monitor the implementation of the Extractive Industries Transparency Initiative in Burkina Faso.
<b>Technical Inspections Agencies (Customs, Treasury, Tax)</b>	Organize and execute service control missions; Carry out internal service controls; Implement anti-corruption strategies; Conduct organizational and functional audits of structures; Establish and monitor the risk management system.
<b>Ministry of Security (MSECU):</b>	Responsible for the protection of persons and property, safety of institutions, regard for rule of law and maintenance of peace and public order.
<b>National Counter-Narcotics Committee</b>	Application of government policy and international treaties on the fight against narcotics and psychotropic substances Preparation of decisions and proposal of action plans and effective control measures Coordination of sectoral measures and centralization of national and international information and other information on drugs Development of the treatment of drug addicts.
<b>Criminal Investigations Department</b>	Organize, coordinate and monitor criminal investigation activities; Combat serious crime and transnational crime; Contribute to enhancement of police cooperation in the area of criminal investigation; Supervise and provide continuous training of police personnel in criminal investigations.
<b>National Central Office – Interpol</b>	Coordinate ICPO-Interpol activities at National level Contribute to the fight against common crime at international level in collaboration with the Criminal Investigations Department.
<b>Regional Police Division</b>	Implement in police areas security directives issued by the Police Headquarters; Design and implement the strategy to fight insecurity in the region under the control of the Police Headquarters.

<b>Ministry of Defence (MDNAC): -National Gendarmerie Headquarters (EMGN)</b>	Responsible for the protection of persons and property, safety of institutions, regard for of law and maintenance of peace and public order; Operational Defense of the territory.
<b>Ministry of Justice (MJDHPC):</b>	Ensure the implementation and monitoring of Government's policy on justice, human rights and citizenship.
<b>Technical Inspection Services (ITS)</b>	Organize and execute service inspection missions; Implement anti-corruption strategies; Conduct organizational and functional audits of structures.
<b>General Directorate for Criminal Justice and the Seal (DGJPS)</b>	Development and monitoring of the implementation of the penal policy Implementation of international cooperation, conventions and standards in criminal matters.
<b>Department for Civil Commercial, Administrative and Social Justice Department (JCCAS)</b>	Ensures the design and monitoring of the organization, oversight and discipline of court officers subject to the specific regulation of certain professional services.
<b>Sectoral Studies and Statistics Department</b>	Centralize data, process them, produce sectoral statistics and disseminate them.
<b>The Specialized Courts</b>	Handle cases on economic and financial crimes and organized crime and those related to acts terrorism Ensure repression predicate, ML and TF offences.
<b>Ministry of Territorial Administration and Decentralization (MATD)</b>	Implement and monitor Government's policy on territorial administration and decentralization.
<b>Directorate General of Public Freedoms and Political Affairs Department (DGLPAP)</b>	Ensure a more effective exercise of civil liberties. Monitoring and control of NPOs, including on AML / CF.
<b>Department of Civil Society Organizations and Associations</b>	Receive applications for declaration of existence of national associations and issue relevant receipts. Receive applications for authorization to operate, renew the authorization of foreign associations and foundations and issue relevant document; Strengthen partnership between the State and civil society organizations; Strengthen the capacity of civil society organizations; Monitor civil society organizations.
<b>Political Affairs and Electoral Operations Department</b>	Ensure recognition and monitoring of political parties Provide funding for parties and political parties.
<b>Customary and Religious Affairs Department</b>	Receive and process records of religious associations Follow up on religious associations Promote interfaith dialogue.
<b>Ministry of Foreign Affairs and Regional Cooperation (MAEC)</b>	Ensures the implementation and monitoring of Burkina Faso's foreign policy as well as the government's policy on regional cooperation; Ensure coordination, negotiation, signing and monitoring the implementation of framework agreements for international cooperation; Prepare instruments of ratification of international treaties and agreements and their conservation.

### *c) Financial sector and DNFBPs*

26. This section provides general information on the size and make-up of the financial and DNFBP sectors in Burkina Faso. The level of importance of the sectors as well as the risk affecting these sectors vary and the assessment team considered their materiality and the risk faced in the different sectors. The country's financial sector is made up of credit institutions, insurance companies, microfinance institutions, asset management companies. (SGI), foreign exchange bureaus, electronic money companies (SME), money transfer companies and so on. As at end July 2018, the financial system in Burkina Faso comprised fifteen (15) banks and four (4) financial institutions including eight (8) subsidiaries and branches of international banks and four (3) sub-regional banks and four (4) national Banks.

27. **Banking Sector:** In terms of total assets, Burkina Faso's banking system ranks 4<sup>th</sup> after Cote d'Ivoire, Senegal and Mali among the UEMOA member States.<sup>23</sup> In terms of loans distributed and deposits and borrowings made in 2015, the country ranks ahead of Mali and comes just after Côte d'Ivoire and Senegal<sup>24</sup>. The bank revenue represents on average 23% of GDP<sup>25</sup>, reflecting a marked level of importance of the banking sector in the economy. The NRA indicated that the money laundering risk within the banking sector in Burkina Faso is high due to the sector's place in relation to the country's external financial resources the intensive use of the sector for business and the low quality of the general controls related to banks' AML amongst others.

28. **Insurance Sector:** In Burkina Faso, the turnover of the insurance sector amounted to FCFA 74.96 billion in 2017, distributed among 16 companies consisting of eight (8) life insurance companies and eight (8) other non-life insurance companies. The non-life insurance market represents 62% of the overall market turnover. These companies are supported in their activities by one hundred (100) intermediaries comprising twenty-two (22) brokers and seventy-eight (78) general insurance agents. The impact of the insurance sector on the economic and social development of Burkina Faso remains low. However, in recent years there has been steady growth in the insurance sector due to the expansion of the market and especially the exploration of new growth potentials. Thus, the penetration rate of the insurance sector, which is the share of revenue devoted to insurance, stood at 1.03% in 2017. The level of ML risk is medium in the insurance sector due to the overall insurance culture in the country and a fairly strict regulation on the conditions of access to the insurance market; and a moderately high vulnerability which is attributable to the weakness in the implementing legislation of the new law on AML / CFT.

29. **Microfinance:** BCEAO report of 2016 ranked the Burkinabe microfinance sector third in the UEMOA zone in terms of deposits, representing 18.4% of the total amount of deposits collected within the Union, behind Senegal and Cote d'Ivoire. The number of DFS compliant with Article 44 and registered in the UEMOA zone amounted to 119, with twenty-two (22) operating in Burkina. The ML risk in the DFS sector is moderately high because the sector is *characterized by a low level of organization and formalization of procedures resulting in a lack of implementation of required AML / CFT obligations*

30. **MVTS:** Money transfer companies enter into agreements with banks to engage in this activity. The regulation requires banks to monitor these entities for AML/CFT purposes. The money transfer sub-sector as at 31<sup>st</sup> December 2016, had 397 remittance bureaus in

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<sup>23</sup> BCEAO Annual Report 2016

<sup>24</sup> BCEAO Annual Report 2016

<sup>25</sup> BCEAO Annual Report 2016

Burkina. The remittance flows made by these bureaus are estimated at FCFA 77 billion for receipts in 2016. In 2014, 2015 and 2016, issuances in this sub-sector stood at FCFA 48 billion; FCFA 47 billion and FCFA 40.60 billion respectively. This decrease in volume during the three (3) years could be attributed to the difficulty in revamping socio-economic activity following the socio-political crisis the country experienced in recent past.

31. **DNFBPs:** The sector comprises casinos including internet casinos, real estate agents and real estate brokers, dealers in precious stones and precious metals, antiquities and works of art, lawyers, notaries and other independent legal professions, accountants, auditors, trust and company service providers. The lawyers provide different types of services to various clients, notably debt collection, company formation, purchase or sale of real estate, thus, making the lawyers vulnerable to money laundering activities. The *Chambre des Notaires*, a self-regulatory body, has procedural rules that govern the operation of the profession as well as principles and obligations of members who are subject to disciplinary action. Notaries, in the context of their activities, may formalize the purchase or transfer of property, the creation or incorporation of a company and other socio-economic entities, and the liquidation or transfer of such entities. Accountants assume the roles of statutory auditors and advisers. In addition to the texts that govern their profession, they have internal regulations that promote the fight against corruption and prevent complicity with criminals. Real estate professionals provide services to various clients in respect of the purchase of lands and houses. The NRA indicates that the level of ML risk is high in all sub-sectors of the DNFBPs, except lawyers, notaries and chartered accountants and auditors who have been assessed of having a medium risk. This is mainly due to weaknesses in the compliance function of the different sub-sectors and lack of control and supervision of DNFBPs.

#### ***d) Preventive measures***

32. In Burkina Faso, preventive measures are generally based on the provisions of Law No. 16-2016 of May 3, 2016, which is general in scope and applies to all entities subject to the AML /CFT law. Nevertheless, for some sectors, the regulatory or supervisory authorities have taken more specific measures to provide a precise framework for activities that are within their sectors.

33. In this context, the financial institutions that are supervised by BCEAO are in addition, governed, by Law No. 16-2016, Regulation 14/2002 / CM / UEMOA on the freezing of assets in respect of CFT. Also, a series of instructions were issued by the BCEAO with regard to the FIs, in particular, the Instruction n ° 01/2007 / RB of July 2nd, 2007, on AML. Instructions No. 007-09-2017 laying down the modalities for the application of AML / CFT measures; No. 008-09-2017, which sets the reporting threshold for cross-border physical transport of cash at the entry and exit of the territory; No. 009-09-2017, which sets the threshold for the payment of claims in cash and No. 010-09-2017, which stipulates a threshold amount for the declaration of cash transactions to the CENTIF.

34. In the electronic money sector, the terms and conditions of the activities of the issuers of electronic money are governed by the Instruction n ° 008-05-2015. Financial market participants are governed by Instruction N ° 35/2008 of 23 November 2009, while those in the insurance sector are subject to Regulation N ° 0004 / CIMA / PCMA / PCE / SG / 08 of 04 October 2008.

#### ***e) Overview of Legal Persons and Legal Arrangements***

35. The incorporation of the various types of legal persons in Burkina Faso is governed by the Uniform Act of the OHADA on the Rights of Commercial Companies. These legal entities may be profit organizations, commercial companies and Economic Interest Groupings (GIE) or Non-profit organizations (NPOs), including foundations, Non-profit Associations and NGOs. The public can access basic information on legal persons through the Trade and Real Estate Credit Registry (RCCM) as provided for under Articles 34 and 35 of the OHADA Uniform Act on General Commercial Law and through certain competent authorities. Reporting entities and third parties can access this information. However, despite computerization of records, access appears to be difficult due to IT constraints. Basic information on legal persons can also be obtained from the official gazette and legal notices. The revised Burkinabe Penal Code, adopted in March 2018 by Law No. 025-2018 / AN, took account of the offenses provided for in the OHADA Uniform Act on General Commercial Law by providing penalties for breaches of the OHADA Uniform law.

36. With regard to legal arrangements, Burkina Faso does not provide for the creation of trusts under its law. However, the AML / CFT Law 016/2016 requires reporting entities to obtain beneficial ownership information of trusts.

37. The company registry does not maintain information on beneficial owners of legal persons. Financial institutions are also required to obtain beneficial owner information of legal persons and arrangement when establishing a business relationship with a legal person or arrangement. However, the competent authorities and most reporting entities generally do not seek access to this information.

38. The National Risk Assessment (NRA) exercise did not identify the risks associated with the different types of legal persons in Burkina Faso.

39. The revised Burkinabé Penal Code, adopted in 31 March 2018 by Law No. 025-2018/AN incorporates types of offenses provided for under the OHADA Uniform Act on General Commercial Law and imposes appropriate sanctions for breaches of specific provisions of the Act.

40. In addition, there is a lack of information or data by the authorities on sanctions allegedly applied to legal persons or on specific cases of sanctions against reporting entities for failure to identify beneficial owners or to confirm the accuracy of beneficial owner information.

*f) Supervisory arrangements*

41. In Burkina Faso, AML/CFT supervision of financial institutions is the responsibility of the Community and National Authorities listed in Table 3 below. These authorities have sufficient powers to undertake both off-site and on-site inspections and supervise these institutions in order to facilitate AML/CFT compliance. Sanctions applicable in cases of non-compliance are provided for under the UEMOA Uniform AML/CFT law which is supplemented by specific sectoral regulations.

**Table 3: Licensing, Regulatory and Supervisory Authorities for FIs in Burkina Faso**

Type of Institutions	Licensing Authorities	Monitoring Authority	Supervisory Authority
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<b>Banks</b>	Minister of Finance - BCEAO and Banking Commission ( <i>CB- UMOA</i> )	Minister of Finance BCEAO CB-UMOA	Minister of Finance BCEAO CB-UMOA
<b>Securities</b> (brokers, portfolio agents and managers)	Minister of Finance CREPMF	Minister of Finance CREPMF	Minister of Finance CREPMF
<b>Insurance</b>	Minister of Finance - CRCA	Minister of Finance - CRCA	Minister of Finance - CRCA
<b>Other financial institutions</b>			
Microfinance Institutions	Minister of Finance - BCEAO	Minister of Finance BCEAO CB-UMOA	Minister of Finance BCEAO CB-UMOA
Foreign exchange bureaus	Minister of Finance - BCEAO	Minister of Finance - BCEAO	Minister of Finance - BCEAO
Rapid money transfer companies	Banks (Mandate)	-Banks -BCEAO Minister of Finance	Banks - BCEAO Minister of Finance
Electronic money companies	BCEAO	BCEAO	BCEAO
Pension and social security fund (not subject to AML / CFT)	Minister of Finance	Court of Auditors CIPRES	Minister of Finance ASCE-LC
Postal financial services	Minister of Finance	State Regulation Bodies	Minister of Finance ASCE-LC
<b>Public Deposit Fund</b>	Minister of Finance	State Regulation Bodies	Minister of Finance ASCE-LC

### *Credit Institutions*

42. Credit institutions are regulated by both the Uniform Act of the OHADA on the Rights of Commercial Companies and the Banking Regulation Act. These texts determine the rules governing their creation, functioning and dissolution. The monitoring of Credit Institutions' activities is the responsibility of the BCEAO, UMOA Banking Commission and MINEFID.

43. The UMOA Banking Commission is responsible for ensuring the soundness and security of the UMOA banking system particularly through inspection of accountable institutions and resolution of banking crises. Chaired by the Governor of the BCEAO, the UMOA Banking Commission comprises two (2) decision-making bodies: a supervisory college and a resolution college. The Supervisory College comprises a representative designated or appointed by each UMOA Member State, a representative of the State in charge of the convertibility of the common currency, and members appointed by the UMOA Council of Ministers on a proposal by the Governor of the Central Bank. The UMOA Banking Commission has its internal regulations and a code of ethics applicable to its members, which regulate conflicts of interest.

### *Decentralized Financial System*

44. The supervision of Microfinance Institutions is jointly carried out by the DFS Supervision and Monitoring Department (DSC/SFD)<sup>26</sup> of MINEFID, the BCEAO and the UMOA Banking Commission. Microfinance operations are governed by Law 023-2009/NA of 14 May 2009 establishing the regulation of Burkina Faso's DFS as well as the implementing text. According to the provisions of Article 44 of the law establishing the regulation of decentralized financial systems (DFS) and Directive n° 007-06-2010 of the Central Bank, " *the Central Bank and the Banking Commission shall, after informing the Minister, conduct two consecutive inspection exercises on any decentralized financial institution, whose level of activity reaches a threshold of Two billion FCFA of outstanding deposits or credits by the end of the year*".

### ***Insurance Sector***

45. The regulation of insurance and reinsurance activities is carried out by the supranational organization known as the Inter-African Conference of Insurance Markets (CIMA), established by a Treaty, through a Community Insurance Code, called the CIMA Code. As regards the supervision of the activities of the insurance sector, CIMA reports to the Regional Insurance Supervision Commission (CRCA) and the Ministry of Finance through the Insurance Department at the national level.

### ***Capital market***

46. There is a regional capital market for all UEMOA member States with two Divisions:
- A public Division established by the Regional Council for Public Savings and Capital Markets (CREPMF), representing the general interest in charge of guaranteeing the security and integrity of the market and acting as trainer for all the stakeholders;
  - A private Division established by the Regional Stock Exchange (BRVM) and the Central Depository/Settlement Bank (DC/BR) with a status of specialized financial institutions not subject to banking law and benefiting exclusively from a public service concession throughout the UEMOA zone.

47. The Headquarters of these divisions are based in Abidjan, but the BRVM has national branches in each Member State of the Union. The BRVM and the DC/BR constitute the private structures of the market and the other players are the Business operators (Management and Intermediation Companies (SGI), the Asset Management Companies (SGP), the Stock Investment Advisory (CIB), the Business Introducers (BI) and the Agents. Regulation and financial market supervision are the responsibility of the Regional Council for Public Savings and Capital Markets (CREPMF), which is a supranational organization.

### ***Authorized foreign exchange dealers***

48. Authorized foreign exchange dealers are monitored by Ministry of Finance and the BCEAO. Their activities are governed by Regulation No. 09/2010/CM/UEMOA of 1<sup>st</sup> October 2010, on the external financial relations of Member States of the Union.

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<sup>26</sup> See Article 44 of Order No. 05472 of the Minister of State, Minister of the Economy and Finance of 21<sup>st</sup> June 2010 on the organization of the Department for the Regulation and Supervision of Decentralized Financial Systems, published in the Official Gazette No. 6553 of 30<sup>th</sup> October, 2010.

### ***Public Deposit Fund***

49. The activities of the Public Deposit Fund (CDC) are governed by Law n° 024-2017 / NA of 9<sup>th</sup> May 2017 which establishes a public institution with a special status called *Caisse de Dépôts et Consignation du Burkina Faso*, under the authority of the Minister of Finance. The CDC's functions are to:

- Manage deposits and keep securities belonging to participating organizations and Funds or those who so request;
- Receive administrative and judicial records and guarantees; and
- Manage the services related to the funds or securities entrusted to it for management.

50. At the end of every financial year, the CDC's accounts are audited by the Court of Auditors, which may also carry out audit exercises during the year through the Verification and Audit Commission of the Public Companies' Accounts.

### ***DNFBPs***

51. There are no designated authorities to oversee the implementation of AML/CFT requirements by DNFBPs.

### ***International cooperation***

52. Burkina Faso is exposed to ML/TF risks emanating from beyond its borders. The country has suffered repeated terrorist attacks which were funded by foreign financiers. Furthermore, a significant number of major ML cases under investigation contain facts and evidence with foreign elements. The country has a comprehensive legal framework for international cooperation which is underpinned by a number of bilateral and multilateral agreements and treaties. Burkina Faso responds to requests for mutual legal assistance on the basis of the deadline set by the requesting State. The number of requests received by Burkina Faso is not too many and this manageable number enables the country to respond swiftly to the request. Burkina Faso also seeks legal assistance, although the number of requests made by Burkina Faso is low and not in keeping with its risk profile. Extradition requests received by Burkina Faso and those made by the country are also limited. The competent authorities such as the Police and the FIU also exchange information with counterparts and the country often leverages informal networks. There are, however, no guidelines on mutual legal assistance and no case management system on MLA.

## **CHAPTER 2. NATIONAL AML/CFT POLICIES AND COORDINATION**

### **Key Findings and Recommended Actions**

#### **Key Findings**

1. Burkina Faso assessed its ML/TF risks through a national ML/TF risk assessment. The report was disseminated in May 2018 to selected agencies. The NRA process was inclusive, as it involved all key stakeholders from the public and private sectors and civil society, which therefore guarantees a better understanding of ML/TF risks.
2. The overall level of understanding of ML / FT risks at the national level is satisfactory and a risk mitigation mechanism is planned through coordination within the National Intelligence Agency, the information coordination body in Burkina Faso
3. The institutional framework for national cooperation and coordination is in place. However, this mechanism is hampered by the limited level of coordination at the operational level.
4. The NRA identified fraud, theft, tax evasion, breach of trust, forgery as the more prevalent predicate offences of ML. At the sectoral level, the real estate, transportation, NPOs, hotels and restaurants, bank and Money Transfer Agencies (MTAs) are considered as high-risk sectors.
5. The weakness or even lack of AML/CFT-related controls and sanctions for reporting entities are the major vulnerabilities.
6. The TF risk level is considered as moderately high due firstly, to the presence of terrorist groups in the sub-region and secondly, to the occurrence of terrorist attacks which the country has endured in recent years. The FT channels identified in the ENR are banking, trade and NPOs.
7. Unlike DNFBPs, financial institutions, especially banking institutions, and their respective competent supervisory authorities, generally have a good understanding of the ML/TF risks they are facing. These risks are identified in the NRA.
8. A three-year national action plan has been developed to address the gaps identified in the NRA. This national action plan includes each activity's expected results and implementation schedule as well as the responsibilities duly assigned to each stakeholder institution. However, this plan does not feature sector plans or indicate any periodic updating and is not yet endorsed by the political authority.
9. Burkina is yet to develop a national AML/CFT strategy based on the risks identified in the NRA.

#### **Recommended Actions**

Burkina Faso should:

1. Ensure the NRA is disseminated to all relevant public and private sector stakeholders.
2. Accelerate the adoption and of the Plan of Action by the authorities and implementation by the sectors and incorporate the plan into a national strategy.

3. Develop sectoral action plans in order to fully address the risks identified, especially by sectors deemed to be exposed to high ML/TF risks.
4. Define a timeline for updating the NRA on a regular basis and improve the scope of future assessments that would more effectively capture the livestock trade sector and legal persons and arrangements.
5. Ensure that the competent supervisory authorities incorporate the risks identified in the NRA into their risk-based supervisory process by implementing enhanced or simplified measures.
6. Strengthen national coordination and cooperation on ML/TF issues by raising awareness among all relevant agencies and stakeholders on the risk of ML/TF, the role of each agency in the AML/CFT system and how to maximize efficient use of limited resources.
7. Take steps to improve the understanding of ML/TF risks in the non-bank FI and DNFBP sectors in order to enhance the overall understanding of the ML/TF risks facing the country. These measures could include increased awareness among reporting entities, their respective supervisory authorities and/or SRBs.

53. The relevant Immediate Outcome considered and assessed in this chapter is IO.1. The Recommendations relevant for the assessment of effectiveness under this section are R. 1-2 and 33 - 34.

### **Immediate Outcome 1 (Risk, Policy and Coordination)**

54. Burkina Faso conducted its first national ML/TF risk assessment from 1<sup>st</sup> July to 30<sup>th</sup> September 2017. The NRA process was coordinated by the Permanent Secretariat of the NRA and was fully inclusive, as it involved key stakeholders across the public and private sectors. The NRA assessed both ML and TF threats and vulnerabilities in Burkina Faso using the World Bank Tool and GIABA methodological guide. The sectors covered in the NRA include Banks, Insurance Companies, DF, Securities, other Financial Institutions (Foreign Exchange Bureaus, Cash or MVTS, Leasing and Factoring and EMEs), DNFBPs, NPOs and financial inclusion products. The assessment also covered threats and vulnerabilities at both national and sectoral levels, excluding financial inclusion. The NRA identified and assessed most of the major ML/TF risks faced by Burkina Faso. However, the evaluators noted that the NRA did not cover livestock trade sector was referred to by the National Gendarmerie as one of the sources of FT.

55. On the whole, the conclusions and findings of the NRA are generally reasonable, as they reflect most of the major risks facing Burkina Faso and supported by the specific information assessed.

#### ***Country's understanding of ML/TF risks***

56. Overall, Burkina Faso demonstrates a satisfactory understanding of the inherent ML/TF risks it is facing. The national risk assessment, conducted from July 1 to September 30, 2017, is a significant contribution to the understanding of these ML/TF risks. Certain financial

institutions (Banks and Insurance companies) were already conducting analysis of their ML and TF risks before the national assessment.

57. The sectors covered in the NRA include Banks, Insurance, DFS, Securities Markets, Other Financial Institutions (Foreign Exchange Bureaus, MVTS, Leasing and Factoring, EMEs), DNFBPs, NPOs and Financial Inclusion Products. The assessment also covered threats and vulnerabilities at both national and sectoral levels, excluding financial inclusion. However, the livestock trade sector, identified by the *Gendarmerie Nationale* as one of the TF channels, and legal persons and legal arrangements were not comprehensively taken into account in the NRA.

58. In assessing its ML/TF risks, Burkina Faso used a qualitative approach, through general entry variables, and a quantitative approach, through some field surveys. The information used includes Suspicious Transaction Reports (STRs), financial flows, data from investigative and prosecutorial authorities, knowledge and information provided by reporting entities and their respective competent authorities. The data analysis was conducted by technical groups from all sectors directly or indirectly involved in ML/TF. The technical groups were formed according to the areas of competence of each of the sectors.

59. The NRA report analyzed the ML/TF threats and vulnerabilities in the various sectors and noted that ML risks is high nationwide in Burkina Faso while TF risk is considered to be moderately high. The most prevalent predicate offences of ML are Fraud, theft, tax and customs fraud, breach of trust and forgery. The high-risk sectors include the Real Estate, Transportation, NPO, Hotels and Restaurants, Banking and Money Transfer Companies sectors while EMEs were identified medium-high.

60. The November 2009 MER and follow-up reports provided some basis for understanding the gaps in the ML/TF framework that led to the development of a national ML/TF strategy covering the period spanning 2014-2016. Despite some challenges faced while conducting the NRA, such as limited access to data and insufficient understanding of ML and TF issues in some sectors, Burkina Faso produced its NRA report in May 2018. According to several stakeholders met by the Assessors, the inclusive nature of the NRA process, with contributions from relevant stakeholders in the private and public and sectors (including intelligence services), led to a better understanding of ML/TF risks and the previous AML/CFT strategy by competent authorities. The country has indeed demonstrated a good understanding of the risk related to certain predicate offences, cross-border flows and channels most vulnerable to money laundering and terrorist financing. Terrorist financing channels have generally been identified. Terrorist cases and the estimation of their funding have been identified in the NRA. Sources of funding include legitimate sources (donations, NPOs) and criminal activities (ransoms, grants and aid from parent terrorist organizations).

61. However, the Assessors noted during the on-site visit that not all organizations and reporting entities appear to fully understand the ML/TF risks identified in the NRA. This is the case with FIs other than banks and insurance companies, and DNFBPs and their respective supervisory authorities. Specifically, the assessment team noted that the level of awareness and understanding of ML/TF risk by small DFS, foreign exchange dealers, MVTS, stock market operators are generally low compared to banks, whose Group subsidiaries had already conducted sector-specific risk assessments and therefore have a thorough knowledge of their ML/TF risks. As regards, other reporting entities, hoteliers do not have a thorough understanding of their ML /TF risks. Transporters have a low level of understanding of the ML/TF associated with their activity. Given the economic interest in this sector, particularly the frequent use of transporters as an informal remittance service, as well as the low level of

compliance within this sector, Burkina may need to focus on this sector when updating the risk assessment. In addition, the Assessors believe that Burkina Faso's understanding of the overall risks prevailing in the country could be further improved if the risks related to legal persons and arrangements and faith-based organizations are adequately identified and assessed. Similarly, the NRA could be improved by incorporating information on the geographical origin of investments, especially in the real estate sector.

### ***ML/TF Risks as Addressed by National Policies and Activities***

62. The NRA Report was produced in May 2018. Burkina Faso has not yet developed a national ML/TF Policy based on the findings of this NRA. Although an action plan had been developed covering a 3-year period, its implementation had not really started at the time of the on-site visit. The National Action Plan prioritizes and covers the key areas of deficiencies identified in the NRA although the country did not consider it necessary to develop sectoral action plans, especially for high and medium risk sectors.

63. However, the Assessors noted Burkina Faso's determination to deal with the ML/TF risks even before the completion of the NRA. For example, it has created specialized entities to fight corruption and other economic crimes, drug trafficking, terrorism, the proliferation of small arms and weapons of mass destruction. These national policy actions focus more on predicate offences than on ML/TF. An evaluation of the deficiencies of Burkina's AML / CFT system, carried out during the first mutual evaluation in 2009, led to the creation of three (3) specialized judicial centers, including one in charge of terrorism, to facilitate the investigation and prosecution of terrorist cases and its financing, with the support of the WB through the project "Don IDF AML / CFT", and a sanctions regime for breaches of the OHADA Uniform law. In addition, the National Intelligence Agency (ANR), the main body responsible for cases related to terrorist and terrorist financing activities, acts as a coordinating body and ensures that other competent authorities responsible for combating terrorism and terrorist financing against the TF, including the gendarmerie, the national police and the FIU exchange information and intelligence on terrorism and TF. As such, the competent authorities, through the ANR, understand the risk posed to them by the TF and have strengthened the cooperation between the FIU and the other agencies and services for detecting and combating the country's crime. In this respect, a national strategy on counter-terrorism, that has terrorist financing as one of its main areas of priority, has been drafted.

64. The risks in financial institutions, including subsidiaries of foreign groups and those within the UEMOA Zone, are generally addressed through regulation and the adoption of group procedures and rules through a risk-based approach. The Financial Sector AML/CFT Compliance Officers Association of Burkina Faso (ARCO-BF) strives to disseminate best practices among banks, insurance companies and DFS. With regard to authorized foreign exchange dealers and MTAs, the Association of Foreign Exchange Bureaus and MTAs informed the Assessors that the preponderance of unlicensed operators and the ease with which businesses, including some foreign exchange bureaus, are registered,<sup>27</sup> makes control of the sector difficult and increases its vulnerability to ML/TF.

65. With respect to the Supervisory authorities, a risk-based approach, which covers ML/TF risks, is being implemented by the General Secretariat of the UMOA Banking Commission. However, controls by supervisory authorities to ensure that FIs implement their AML/CTF requirements are weak in Burkina Faso. In regard, five on-site supervisions were

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<sup>27</sup> See new provisions of Doing Business

carried out in banks but almost none in other FIs. The NRA has identified this gap as one of the most serious vulnerabilities in this sector, which is addressed under the action plan.

66. In addition, given that Burkina Faso has identified the risks facing the DNFBPs as being high, actions need to be taken with regard to both DNFBPs and their supervisory bodies although, some of these measures have been included in the action plan.

67. The Assessors noted, during the on-site interviews, that terrorism in Burkina Faso is now increasingly considered as a domestic threat, in view of the people involved and the means used, even though perpetrators of the offence are not generally nationals. In addition, it is worth noting that from April 2015 to 30 July 2018, 120 foreign-funded terrorist attacks were recorded at the national level as a result of funds largely generated from abroad. Investigations of these attacks show that banks, MTAs and NPOs were the major channels used for moving funds for the terrorist attacks in Burkina Faso within that period. The National Operational Council for the Management of Terrorist Crisis in Burkina Faso, established by Decree No. 2017-0316/PRES/PM/MDNAC/MATD/MINEFID/MJDHPC/MCRP of 12 May 2017 coordinates and manages terrorist risks and crisis in Burkina Faso. On the whole, appropriate attention is given to terrorism and terrorist financing risks in view of Burkina Faso's geographical location and security situation in neighboring countries.

68. With regard to NPOs, a sector considered as exposed to high risks in the NRA, the authorities' actions to mitigate the risks appear to be weak, due to the fact that no information was provided concerning the assessment of the types of NPOs that are exposed to specific risks within the sector.

#### ***Exemptions and Application of Enhanced and Simplified Measures***

69. Burkina Faso's NRA has not yet made any impact on the legal and regulatory provisions relating to exemptions and application of enhanced and simplified measures for financial institutions and DNFBPs. This is due to the limited time between the adoption of the NRA report and the on-site visit. Although it was noted that the NRA report does not explicitly identify specific areas of exemption nor does it categorically indicate that exemptions are allowed in the implementation of the standards. In this regard, the Assessors recommend that FIs and DNFBPs and their respective Supervisory bodies address this in the sectoral action plans.

#### ***Objectives and Activities of Competent Authorities***

70. The NRA provided an opportunity for all the competent authorities, particularly the FIU, the prosecutorial and law enforcement authorities and the self-regulatory organizations, to conduct their activity with a view to reducing ML and TF risks.

71. The monitoring of effective implementation of due diligence measures and the requirement for reporting entities to submit STRs are all part of this process. The dynamic participation of self-regulatory bodies and the FIU's institutional correspondents, as well as the involvement of the authorities in the NRA, reinforces the constant quest for the ML/TF policies to be consistent with and relevant to the risks identified.

72. Thus, the activities of FI supervisory bodies in the area of regulation, particularly the monitoring of the effective implementation of due diligence measures, prudential arrangements and the obligation to submit STRs, are generally in line with existing national ML/TF objectives, as provided for in the extant ML/TF laws and regulations. However, the weakness

relating to on-site ML/TF inspection has been noted as one of the major vulnerabilities in this sector. With regard to DNFBPs, the supervisory bodies seem to have a very limited understanding of their ML/TF obligations.

73. The assessment team noted that the operational activities of the relevant criminal law enforcement authorities are already focused on the major risk areas identified in the NRA, including tax evasion and terrorism. This situation seems to reflect the national ML/TF objectives and the priorities of the competent authorities to combat economic and financial crimes and including terrorism and its financing. The law enforcement authorities and FIU share ML/TF-related information; the Directorate of the Judicial Police is the FIU's focal point within the Ministry of Security. However, the Assessors noted that this exchange of information originates more from the FIU to law enforcement authorities than the other way. The FIU also shares information with the criminal investigative and prosecutorial authorities. Between January 2014 and June 2018, 40 reports, based on 62 STRs, were disseminated to the Burkina Faso Prosecutor's Office. Of the Sixty-two cases, fifty-eight relate to ML and four relate to TF. The proceedings were still ongoing at the time of the on-site visit. However, the Assessors noted that these judicial authorities need more training and sensitization in order to better understand their AML/CTF issues. They also need to adapt their operational strategy to the outcome of the NRA in order to realign their activities with the full range of risks identified in the NRA.

74. The Consultative Committee on Administrative Freezing (CCGA), set up in 2013, whose functions, inter alia, is to propose domestic designation person and entities pursuant to UNSCR1373, has not been proactive. Although a search notice of 146 individuals suspected of involvement with terrorist activity has been issued by the Ministry of Security, however, actions to identify and freeze their assets and other property which should be initiated by the CCGA have not commenced.

### ***National Cooperation and Coordination***

75. The institutional framework for national policy development and coordination on ML/TF issues at both the policy and operational levels is in place. It is referred to as the CNCA LBC/FT and was established by the Inter-Ministerial Order of October 2014. It serves as a platform through which policymakers and competent authorities in Burkina Faso cooperate, coordinate at the national level and develop and implement ML/TF policies. The Committee comprises 13 public and private bodies. It convenes twice a year on a periodic basis. The activities that are undertaken by the CNCA- LBC/FT include the drafting of the 1<sup>st</sup> National ML/TF Strategy covering the period spanning 2014-2016, participation in the NRA activities, participation in the drafting of texts for the implementation of the Uniform AML/CFT Law, and in drafting the Committee's 2018 Work Programme. For now, the Committee has no budget of its own but funded through the FIU's budget.

76. However, some deficiencies were identified, particularly with regard to (i) the lack of representation of other important groups such as civil society, the real estate sector and the entity in charge of the proliferation of weapons of mass destruction, (ii) inadequate and/or weak national cooperation, (iv) weak coordination of ML/TF activities, (v) lack of operational budget, (vi) the low motivation of stakeholders. The Assessors also noted that cooperation regarding information exchange is very limited between the supervisory authorities of reporting entities, particularly FIs, and the FIU on one hand, and between the investigative and prosecutorial authorities, on the other. More specifically, the AML/CFT inspection reports on reporting entities are not submitted to these authorities. To achieve this, the BCEAO authorities

have underscored the need to have a codified framework for information sharing, particularly with the FIU, beyond the CNCA-LBC/FT framework.

77. In addition to the CNCA, Burkina Faso intends to strengthen AML/CFT cooperation and coordination mechanisms through the creation of a Special AML/CFT Intelligence Unit, with the Ministry of Justice as the focal point. This Unit will be in charge of defining a national anti-terrorism strategy and the Government's overall intelligence and security policy.

78. Operational cooperation and coordination exist between the competent criminal investigative and prosecutorial authorities on one hand, and between them and the FIU, on the other. In this regard, the Ouagadougou Prosecutor's Office informed the Assessors of seven (7) records of preliminary investigation on ML submitted by the investigative authorities. However, this cooperation must be improved because the ML/TF component is often not taken into account. Similarly, cooperation and coordination on the proliferation of weapons of mass destruction appear to be limited.

79. With respect to supervision issues, there is operational collaboration and coordination between the regulatory and supervisory authorities for FIs (banks, DFS, insurance companies, and Stock Markets) within the framework of the Financial Stability Committee. However, the ML/TF aspect is barely taken into account.

### ***The Private Sector's Understanding of Risks***

80. The NRA Report has not yet been disseminated to the general public. However, targeted dissemination across sectors facing the highest ML/TF risks was carried out between 6<sup>th</sup> June 2018 (for DFS, insurance companies, NPOs, DNFBPs, foreign exchange dealers and MTAs, hotels and transportation companies) and 5<sup>th</sup> July 2018 (for banks). The other reporting entities, including the mining sector, are yet to receive the report. Furthermore, an AML/CFT stakeholders' forum has been scheduled to brief all stakeholders on the findings of the NRA and sensitize them on AML/CFT issues.

81. However, despite this dissemination, the Assessors were not convinced that FIs other than banks, insurance companies, and their respective supervisory authorities have a comprehensive understanding of the ML/TF risks identified in the NRA. Majority of the DNFBPs do not have a comprehensive understanding of their ML/TF risk. Furthermore, some concerns were not taken into account in the NRA. For instance, actors from the hotels' sector raised a concern about the use of faith-based schools as guest lodgings in breach of all relevant regulations. This breach is considered by those actors as a potential method for harboring or providing support to terrorist. In addition, the Association of authorized foreign exchange dealers and MVTs raised the issue of existing accredited entities that could be used as conduits for ML/TF. Regarding notaries, they raised concerns about the registering of real estate transactions without prior notarization knowledge.

82. The industry associations in the financial sector, especially in the banking sector, have realized the importance of their input to AML/CFT efforts in Burkina Faso. They argue that they were actively involved in the NRA, but have apparently issued no guidelines to date for their members. In addition to the Association of AML/CFT Compliance Officers, a specialized commission has been established within the APBEF to deal particularly with AML/CTF issues within the Association. This commission is operational. The assessment team were not informed about any initiatives taken within the other professional associations in the insurance, DFS and DNFBP sectors.

83. Overall, the discussions held with the reporting entities, the NRA exercise, the dissemination of findings to some sectors and the subsequent outreach to key sectors have been useful in terms of providing the orientation for the understanding of the ML/TF risk faced by the country. An action plan has been developed to mitigate the risks identified in the ENR and a National Intelligence Agency which has been set up as a coordinating body on the fight against terrorism and terrorist activity shares intelligence including financial intelligence, with relevant competent authorities. However, the implementation of the action plan is yet to commence. Also, weak coordination at the operational level, particularly between the CENTIF and the supervisory authorities, remains a challenge for Burkina Faso.

84. **The level of effectiveness achieved by Burkina Faso for Immediate Outcome 1 is Low**

## CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

### *Key Findings and Recommended Actions*

#### **Key Findings**

##### **Immediate Outcome 6 (Financial Intelligence)**

1. Burkina Faso has a functional Financial Intelligence Unit (CENTIF) that receives, analyses and disseminates financial intelligence to the competent authorities, notably, the prosecution authorities. The suspicious transaction reports from reporting entities, in particular financial institutions and other additional information obtained, enable the FIU to generate financial information, the quality of which has improved in recent years. The information disseminated by the FIU contributes in a useful way to the investigations being carried out by the other competent authorities.
2. The majority of STRs received by the FIU are from banks (98.03%). The vast majority of STRs submitted to the FIU are from banks (97.49%). Most DNFBPs, as well as other non-bank financial institutions, rarely report suspicious transactions despite their large number. However, the number of suspicious transaction reports being filed by these sectors is growing steadily. The FIU in Burkina Faso has access to a wide range of information and can make requests to other competent authorities to obtain any useful financial information for handling cases from appropriate national sources. However, the responses to the FIU's requests are in fact delayed by the requested competent authorities.
3. The FIU does not yet have a tool for analysis and data mining. However, with the support of in-house expertise, the FIU has begun developing analytical tools which is in the last phase of development.
4. The resources of the FIU, especially financial resources, although-increasing, are not sufficient to allow it to accomplish its mandate (specifically its coordination function as well as training and other ancillary functions of the unit) adequately.
5. The FIU provides spontaneous information and reports to several competent authorities with a view to supporting them in respective investigations.
6. The FIU and other competent authorities actively engage in co-operation by way of exchange of financial information and other types of information. This is done through correspondents trained to respect confidentiality.
7. The Customs and Tax administrations do not respectively report cases of cash seizures and suspicion of tax evasion to the FIU in accordance with the provisions of Articles 79 and 111 of Law 16-2016.

##### **Immediate Outcome 7 (ML Investigation and Prosecution)**

1. Criminal investigation and prosecution services (AEPP) do not seem to prioritize investigations on ML. Similarly, there is no evidence that investigations focus on

the different types of money laundering activities, including self-laundering, third-party laundering, and laundering the proceeds of foreign predicate offenses.

2. Investigative services do not conduct systematic parallel investigations into ML when investigating an underlying predicate offense. The modest number of parallel investigations is in contrast with the high level of threats associated with the multiplicity of predicate offenses that can generate significant illicit revenues.
3. Criminal investigation and prosecution services have a low level of financial investigation expertise and lack resources to deal with money laundering cases.
4. Authorities recently established two specialized courts to handle economic and financial crime cases including investigation and prosecution of ML. However, operations are at a nascent stage.

#### **Immediate Outcome 8 (Confiscation)**

1. Burkina has a fairly comprehensive legal framework for provisional freezing, seizure and confiscation. This framework provides a legal basis for confiscation of property of corresponding value, instrumentalities of crime as well as sharing confiscated criminal proceeds with foreign counterparts.
2. Burkina prioritized confiscation of proceeds as a policy objective at a national level. However, the level of implementation of the policy objective on confiscation among the judicial authorities and LEAs cannot be fully established due to the absence of an ML/ TF convictions. Nevertheless, confiscation orders have been made in respect of associated predicate offenses.
3. The dearth of expertise among LEAs and investigative judges in the area of financial analysis and investigation impacts negatively on confiscation or seizures related to ML.
4. There were no confiscations relating to false or undeclared cross-border assets. The lack of confiscation is not consistent with the risk of illicit cash smuggling in the region.

#### **Recommended Actions**

##### **Immediate Outcome 6**

The FIU should:

1. Devise a mechanism to manage the response time for information requested from other competent authorities because indirect access to information impacts the investigative process.
2. Conduct awareness-raising for tax and custom administrations on the obligation to report seizures and suspicious activity in order to permit the FIU to have more pertinent information.

3. Intensify its efforts to raise awareness among the non-bank DNFBP and NPOs sectors that currently file very few suspicious transactions.
4. Acquire more sophisticated analytical tools for the purpose of conducting validation of data, data mining or other automated processing of STRs or additional information it receives.
5. Burkina Faso should provide additional training to all actors in charge of investigation and prosecution, including law enforcement agencies on how to use financial intelligence to advance their investigations.

#### **Immediate Outcome7**

1. The investigative and prosecution authorities should enhance the capacity of Judicial Police Officers (OPJ) and Magistrates on financial investigation, and in particular on ML investigations.
2. Burkina Faso should increase the human and financial resources of investigative and prosecution authorities in order to provide these institutions with adequate means to process financial intelligence and facilitate convictions for ML.
3. Investigative and prosecution authorities should routinely conduct parallel ML investigations alongside those conducted with respect to predicate offenses.
4. Specialized training on prosecution and investigation of ML including training on seeking mutual legal assistance should be provided to the magistrates in the specialized courts.
5. Burkina Faso should develop comprehensive statistics on the different types of money laundering offences investigated and prosecuted.

#### **Immediate Outcome 8**

1. Ensure that LEAs, the prosecutor and the investigating Judges are implementing the policy objective on confiscation, including confiscation of property of corresponding value and instrumentalities of crime.
2. LEAs and investigating judges and judges should be adequately resourced and trained to allow them to competently trace, freeze, seize and confiscate proceeds and instrumentalities of crime.
3. Develop guidelines on freezing, seizure and confiscation to ensure compliance with the national objective to focus on confiscation of proceeds of crime.
4. Customs and tax officers should receive training on the importance of confiscating all proceeds of crime as well as conducting financial investigations following seizures..
5. The country needs to establish procedures for effective implementation of the obligation to declare cross border currencies and bearer negotiable instruments, including reporting suspicious ML activity to the FIU and ensure enforcement through the application of effective, proportionate and dissuasive sanctions.

6. Competent authorities should receive training on pursuing confiscations or freezing proceeds located abroad and take steps to identify, trace, and confiscate proceeds of crime.

85. The relevant Immediate Outcomes considered and assessed in this chapter are IO.6-8. The Recommendations relevant for the assessment of effectiveness under this section are R.3, R.4 and R.29-32.

### *Immediate Outcome 6 (Financial Intelligence ML/TF)*

#### **Use of financial intelligence and other information**

86. The FIU receives financial information from reporting entities which it analyzes and where appropriate, disseminates to investigative and prosecution authorities. Financial intelligence and other relevant information used by investigative and prosecution authorities (AEPP) in their investigations are provided mainly the FIU and public administrations.

87. The FIU frequently utilizes its powers to access and obtain financial information and other relevant information by making requests for additional information (see Table 4 below) from the reporting entities, foreign Financial Intelligence Units and any public authority and/or supervisory authority.<sup>28</sup> Financial intelligence and other information disseminated by the FIU is used by the investigative and prosecution authorities (AEPP) in their investigations. In this context, it should be noted that the FIU has its own database, that it systematically consults in order to establish a link with an existing file, and which at the same time is enriched with the information contained in the STRs. This internal database is also enriched by the additional information provided to the FIU, including the information emanating from the requisitions made by the FIU and those relating to the systematic declaration by the NPO sector, in connection with cash donations exceeding the threshold of one (1) million FCFA.

**Table 4. Request addressed to reporting entities for additional information as of 30/06/2018**

Recipients	2014	2015	2016	2017	2018
<b>Banks including BCEAO</b>	79	67	73	54	71
<b>Notaries</b>	1	2	0	3	0
<b>National Lottery</b>	0	0	2	0	0
<b>Treasury (DGTCP, DGI and DGD)</b>	6	20	34	26	35
<b>TOTAL</b>	86	89	109	83	106

Source: Burkina Faso FIU

88. It should be noted however that the existing database is in Excel format and does not have complex functionalities for optimal exploitation. Efforts are being made to secure a more sophisticated analytical tool. The current database system needs to be improved and, in this respect, the FIU has, with the help of in-house expertise, begun developing analytical tools. The officials of the FIU assured the assessment team that the analytical tool currently being designed will, in the long term, enhance the IT system and increase the processing capabilities of the system to analyze the STRs received. The design will also allow for consultation, data

<sup>28</sup> Article 67- AMLCFT Law

mining and enhanced security of access. Nevertheless, so far, the tool available has assisted the FIU to perform its functions and enabled it to meet both domestic and international commitments.

89. At the national level, the FIU has wide powers which enable it to make information requests with deadlines from reporting entities, regardless of the medium in which such information is stored. The FIU also has powers to obtain all information needed to accomplish its mandate upon its own request, or on initiative of State Administrations, local authorities, public institutions and any other person with a public service mandate. Within this framework, the FIU can request for information from the databases of the following institutions: the police, the Interpol NCB, the BCEAO, FICOB, the land registry files, the NPOs, the justice files, the General Directorate of Taxes, the Register of Companies (CEFORE), and so on. Nevertheless, the FIU does not have direct access to these sources of information. It proceeds by means of a requisition which it sends to these authorities and which is followed-up, if necessary, by correspondents appointed within the competent authorities, who will ensure that the deadline for the request and confidentiality are respected. On some occasions, there have been delays in responding to the requests made by the FIU.

90. The FIU of Burkina Faso has been a member of the Egmont Group since 2013 and uses the "Egmont Secure Web" platform to solicit for, and obtain information from the network. The Unit also obtains information from other counterparts who are not members of the Egmont Group on the basis of a Memorandum of Understanding (MoU), while respecting reciprocity. As at December 2017, the FIU has signed twenty (20) MoU with its counterparts. As of June 30, 2018, the FIU had made one hundred and twenty-one (121) requests for information to these counterparts.

**Table 5: Financial Information and Other Information Collected from FIU Counterparts**

Sources	2013	2014	2015	2016	2017	2018	Total
<b>Intelligence Information received via Egmont Secure Web</b>	0	1	3	15	15	8	42
<b>Intelligence Information received from other FIUs on the basis of an MoU</b>	13	0	0	2	2	0	17

Source: Burkina Faso FIU

91. The Customs Administration maintains financial information when it uncovers cases relating to foreign exchange offenses, including cases of underlying ML offenses, such as commercial fraud and smuggling which is often transmitted to the FIU. As for illicit cross-border physical transport of cash and bearer negotiable instruments, the Customs seizes the property in question and request for confiscation or enters into a settlement with the perpetrator. Even though, the customs authority maintains this data, it does not conduct ML / TF investigations. At the time of the on-site visit, the Customs administration services indicated that they had not transmitted information to the FIU, despite the provision of Article 111 of Law 16-2016, which obliges the Customs to communicate information on cases of seizures of cash and bearer negotiable instruments to the FIU. This weakness does not allow the FIU to make use of this type of information particularly in the context of mutual administrative assistance, in accordance with the AML/CFT law. In some cases, the Customs transmits the transcript of these cases to the judicial authorities for further action. The judicial authorities did not provide the evaluation team with any information on ML/TF investigations related to those matters forwarded to them by the customs.

92. The tax administration has investigative units with powers to obtain financial intelligence and other information to establish tax offenses. The tax administration does not conduct investigations for ML / FT purposes, but tries to gather evidence that may establish breaches with the tax code and impose administrative fines and other tax adjustments in these cases. The tax revenue service does not share these information with the FIU.

93. In general, the AEPP accesses financial information held by financial institutions and other sources of relevant information on the basis of a warrant from the judge. In this context, police officers (police and gendarmes) have all the prerogatives to obtain financial information and other information in order to establish the commission of offenses.

94. Overall, financial information received from STRs as well as other information received by the FIU allows it to generate dossiers which presupposes the commission of predicate offenses, including terrorist financing and ML, such as to justify their transmission to the prosecutor of the competent prosecutors where appropriate, prosecution. In this context, the FIU sent forty (40) files (reports) to the prosecutor's office in the period between 2014 to June 2018, as indicated in the table below.

**Table 6: Reports transmitted to the Public Prosecutor’s Office from 2008 to July 2018**

<i>Year</i>	<i>Number of Cases</i>	<i>Nature of Offense</i>	<i>Amount pending (F CFA)</i>	<i>Seized</i>	<i>Procedure</i>	<i>Penal and Civil Penalty</i>
2014	11	Money Laundering Fraud Forgery and use of forged private bank documents Terrorist Financing	579,761,719	-	Pending  One case was tried and dismissed (24/02/2015)	-
2015	4	Money Laundering Terrorist Financing Complicity in ML/TF cases	431,997,967	-	One case tried and dismissed  Pending	-
2016	5	Money Laundering Forgery and use of forged writing in public writing Forgery and use of forged in private writing Fraud Fraud in the marketing of gold Tax fraud	3.183.727,988	-	Pending	-
2017	15	Money laundering and complicity in money laundering Forgery and use of forged writing in public writing Forgery and use of forged in private	80,186,906,241	-	Pending	-

		Computer/Technology based fraud Fraud attempt and complicity Gold marketing fraud fraud Destruction or subtraction of documents Usurpation of Roles Theft Customs Fraud Violation of foreign exchange Regulations R09				
2018 Apr.	5	Money laundering and complicity in money laundering -Involvement in forgery and the use of forged public documents and writings Forgery and the use of forged business documents and writings Involvement in Computer or technology-based fraud Abuse of Confidence Destruction or subtraction of documents. Tax Fraud Gold Marketing Fraud Illegal business practice	1,244,445,602	-189,432,557 -3 pieces of gold weighting -1 cash counting machine -1 central processing unit of a computer -1 laptop -0,57 g of gold	One case was tried and dismissed  Pending	
<b>Total</b>	40		81,377,655,475	189,432,557		

**Source:** Burkina Faso FIU

95. The information in the table above indicates that the prosecuting authority initiated legal proceedings on the basis of the dossiers sent by the FIU.

#### **STRs received and requested by competent authorities**

96. By virtue of Article 79 of the AML / CFT Law 016/2016, reporting entities are required to report suspicious transactions relating to “the amounts entered in their books or transactions relating to sums that they suspect or have reason to suspect are from money laundering or terrorist financing offence or an underlying offense including tax evasion”. STRs may also be filed in cases where the identity of the originator or beneficiary of the transaction is questionable.

**Table 7: STRs submitted to the FIU by Category of Financial and Administrative Institutions as of June 30, 2018**

	2013	2014	2015	2016	2017	2018	%
<b>Banks</b>	38	67	73	66	91	53	<b>97,49%</b>

<b>Financial Establishments</b>	0	0	0	0	0	0	<b>0,00%</b>
<b>Decentralised Financial Systems</b>	0	1	0	0	1	1	<b>0,75%</b>
<b>Financial Systems of the Post</b>	0	0	0	0	0	0	<b>0,00%</b>
<b>Foreign Exchange Offices</b>	0	0	0	0	0	0	<b>0,00%</b>
<b>Money and Value Transfer Companies</b>	0	0	0	0	0	0	<b>0,00%</b>
<b>Insurance Companies</b>	0	0	0	0	0	0	<b>0,00%</b>
<b>Electronic Money Institutions</b>	0	0	0	0	0	0	<b>0,00%</b>
<b>Financial Market Operators</b>	0	0	0	0	0	0	<b>0,00%</b>
<b>Customs</b>	1	0	0	3	0	0	<b>1,01%</b>
<b>Gambling Companies</b>	0	0	0	1	0	0	<b>0,25%</b>
<b>Others (DNFBPs and regulatory authorities)</b>	0	0	0	0	2	0	<b>0,50%</b>
<b>TOTAL</b>	<b>39</b>	<b>68</b>	<b>73</b>	<b>70</b>	<b>94</b>	<b>54</b>	<b>100,00%</b>

Source: Burkina Faso FIU

97. The FIU is supposed to receive declarations from reporting entities relating to cash transactions for amounts greater than or equal to FCFA 15 million.<sup>29</sup> In addition, the FIU is supposed to receive declarations relating to cash donations made to NPOs for amounts greater than or equal to one million FCFA<sup>30</sup> and information in relating to cases of seizures of cash and bearer negotiable instruments, by the customs services.<sup>31</sup> However, these types of declaration had not been made to the FIU at the time of the on-site visit. Nevertheless, the Customs authorities filed 3 cases to the FIU. More importantly, information on the database of the customs can be accessed by other competent authorities, including the FIU upon request. Similarly, the FIU and other competent authorities can access information held by the tax authority upon request. In terms of the types of STRs, received, the FIU received some STRs related to TF, one of which related to a wire transfer of funds to an NPO in Burkina from a Middle Eastern country. Part of the fund was transmitted to Niger and Mali. The funds were frozen and the matter has been referred to the prosecuting authorities.

98. On the basis of suspicious transaction reports and other information received, the FIU analyzes and disseminates financial intelligence to the competent authorities, notably the prosecution authorities. Suspicious transaction reports from reporting entities, in particular financial institutions and other additional information collected, enable the FIU to produce financial intelligence. The evaluation team noted a moderate increase in STRs received by FIU, although most DNFBPs and other non-bank financial institutions do not meet their suspicious transaction reporting obligations. The overwhelming majority of STRs (98.03%) are from banks, despite the fact that FIU has developed guidelines aimed at assisting other non-bank financial institutions to improve their level of compliance with the obligation to conduct customer due diligence and report suspicious transactions.

<sup>29</sup> Instruction No. 10-09-2017

<sup>30</sup> Article 43, law 16-2016

<sup>31</sup> Article 111 of Law 16-2016

## Operational needs supported by FIU analysis and dissemination

99. The FIU produces financial intelligence, following the processing and analysis that it performs on the basis of STRs and other information received. After completing the analysis, the financial intelligence is transmitted by the FIU to the territorially competent Chief Prosecutor in Faso who then appoints an investigating judge to initiate legal proceedings. From 2014 to 31 July 2018, the Public Prosecutor's Office received 39 dossiers on the basis of 62 STRs from the FIU. There has been no conviction for money laundering on any of the dossiers transmitted by the FIU. The courts tried and dismissed three (3) cases while thirty-seven (37) files are under investigation. Judicial authorities noted a significant improvement in the past four years in the quality of reports disseminated by the FIU to them. The prosecutors indicated that this financial intelligence provided by the FIU is useful in the prosecution of accused persons. However, the modest number of ML prosecutions raises the issue of the capacity of the competent authorities to deal efficiently with the financial intelligence disseminated by the FIU. According to the authorities, the slowness in the processing of the files is largely due to the lack of resources and the clogging of the investigating offices.

100. The FIU has provided spontaneous information and reports to several competent authorities with a view to supporting them in respective investigations. From 2014 to 2018 (June), the FIU provided spontaneous information to competent authorities in about fifty-seven (57) cases. An example is provided in the box below. As regards access to the information held by the FIU, relevant competent authorities can obtain information from the FIU on any question subject to investigation. In addition to spontaneous dissemination by the FIU, competent authorities frequently send request to the FIU to obtain information. The information provided generally facilitate the investigation of predicate offenses, including terrorist financing as shown on Table 8.

### Box 3.1 Example of spontaneous dissemination to support operational needs competent authorities

Two (2) persons were prosecuted for embezzlement of public funds one of them was released while the other accused person was convicted. Following a spontaneous dissemination by the FIU, the case was reopened and both accused persons are currently being tried for ML.

**Table 8: FIU support to the operational needs of other competent authorities (spontaneous dissemination and dissemination upon request)**

Institution	2014	2015	2016	2017	2018	Total
The Republic's Chief Prosecutor	11	8	7	31	5	62
National Intelligence Agency	-	-	-	4	2	6
Highest Regulatory Authority of the State and the Fight Against Corruption	-	-	-	3	1	4
Tax Directorate	-	-	2	3	18	23

<b>Directorate of the Public Treasury and Account</b>	-	1	-	1	4	<b>6</b>
<b>Directorate of Judicial Police</b>	-	-	-	1	2	<b>3</b>
<b>General Directorate of Customs</b>	-	-	2	1	2	<b>5</b>
<b>National Gendarmerie</b>	-	-	1	1	1	<b>3</b>
<b>General Directorate of Public Freedoms and Political Associations</b>	-	-	-	1	1	<b>2</b>
<b>BCEAO</b>	-	-	-	2	1	<b>3</b>
<b>Anti-Fraud Brigade (BNAF-OR)</b>	-	-	-	1	1	<b>2</b>
<b>Total</b>						<b>119</b>

Source: Burkina Faso FIU

101. In particular, the information provided by FIU was well appreciated by the various requesting institutions and agencies for its usefulness.

### Cooperation and exchange of information/financial intelligence

102. Overall, the FIU and the other competent authorities cooperate through exchange of information. These exchanges take place both spontaneously and on demand in both directions. Table 8 indicates the number of cases in which the FIU transmitted information to competent authorities. In turn, the FIU has requested for information from competent authorities and has obtained responses, as indicated in Table 9 below. This information exchange has added value to the analysis of the FIU on one hand and to the investigations conducted by the relevant competent authorities on the other hand. CENTIF protects its information by having a secure filing process. Information received from reporting entities and other natural or legal persons is codified, stored in a computer database created for this purpose prior to analysis and dissemination. To do this, the CENTIF has a STR treatment procedure manual, developed in 2014 which it follows. Measures in place to ensure confidentiality includes limited access to the information based on authorizations and limited access to the facilities of the FIU.

**Table 9: Requests for information from the FIU to the various competent authorities (2014 to 7 August, 2018)**

Year	2014	2015	2016	2017	2018
General Directorate of Tax	5	10	15	13	21
Directorate of the Judicial Police	16	13	29	29	25
General Directorate of the Public Treasury Account	1	8	8	9	10
General Directorate of Customs	0	2	11	4	4
Gendarmerie	0	3	9	10	1
Directorate General for Cooperation	0	0	2	4	1
<b>TOTAL</b>	<b>22</b>	<b>36</b>	<b>74</b>	<b>69</b>	<b>62</b>

Source: Burkina Faso FIU

103. As regards the confidentiality of the information exchanged, that FIU members and correspondents within administrations and agencies, take an oath before the Court of Appeal before taking office. The members, the correspondents as well as the staff of the FIU, are to respect the secrecy of the information, which must not be used for other purposes other than those envisaged by the law. The FIU staff are subject to the obligations of confidentiality and professional secrecy. The Burkina FIU noted that there has been no breach of confidentiality rules.

**104. Burkina Faso has achieved a moderate level of effectiveness for Immediate Outcome 6**

**Immediate Outcome 7 (Money Laundering Investigations and Prosecutions)**

***ML Identification and Investigation***

105. Burkina has an adequate legal framework for investigation and prosecution of ML. The AML/CFT law provides the necessary powers for investigation of ML. There are several LEAs and criminal justice agents that investigate crimes including predicate offences of ML in Burkina Faso. This includes the Police, the Gendarmerie, the investigative judges at the court and specialized bodies such as the Anti-corruption agency and (ASCE-LC), National Anti-Fraud Brigade (in respect of gold offences) (BNAF) and the National Anti- Fraud Authority (ANLF) and the Customs and Water and Forestry Services. There is nothing that precludes all law enforcement agencies in Burkina from pursuing the money laundering offence if identified in the course of investigating related predicate offences, however, money laundering is not often pursued. Nearly the all criminal justice officials focus on predicate offences. In the past, investigative agents did not systematically conduct parallel investigations of money laundering when investigating predicate offences. While some of the LEAs met by the assessors stated that they did not consider investigating ML when a predicate had been committed, others noted that tracing the proceeds of crime required considerable resources which was lacking, Thus, money laundering offences are typically investigated on the basis of the financial information provided by the FIU to the Prosecutor of Faso who can institute criminal proceedings against the perpetrators of the offenses by referral to the investigating Judge. Notwithstanding, some LEAs have recently received training on investigating money laundering cases and some of the LEAs have transmitted a few ML cases to the prosecuting authorities. The authorities cited a remarkable case where a police officer who recently received training conducted parallel ML investigation and forwarded the file to the Prosecutor to pursue ML charges. In the past, the police would have only considered and conducted investigation on the predicate offence however, financial investigation revealed what seemed to be a money laundering scheme. The facts of the case are indicated in the box below.

**Box 3.2 ML Investigation**

Context: A French citizen was the victim of cybercrime. Money was deposited in the account of a Burkina citizen (Citizen X). The police officer in charge of the case got in touch with the bank. The Burkina Citizen X had withdrawn the money. The officer put the knowledge he acquired from a recent training into practice and expanded his search and investigation to follow the money He received assistance from one of the experts who had provided the training. The search showed that Citizen X had a company in his mother's name and was carrying out transactions from several Bank accounts to the company. The case was sent to the prosecutor to institute ML proceedings The Prosecutor of Faso transmitted the case to the High Court of Ouagadougou and ordered the Criminal

Investigation Division of the Directorate of Judicial Police to open an investigation against X, who had succeeded in hacking the bank account of a French citizen and had withdrawn the sum of forty million nine hundred and sixty-four thousand, five hundred and fifteen (40,964,515) francs.

X was arrested. He testified that he provided his friend with his company's bank account number to allow him to carry out a sales transaction. He added that his role in this case was to receive the money in his bank account and then withdraw it to transmit to his friend for the sum of one (1) million francs. From investigations, it turned out that the respondent had set up a company with no head office. The said company had four (4) bank accounts with transaction movements estimated at more than eighty (80) million francs over a one-year period. He explained that the movements in his accounts were knowingly made in order to benefit from bank loans. Also, the investigation revealed that he made transactions in the bank account of his mother's company whose "total movement" amounted to three hundred and thirty-seven million seven hundred and seven hundred and fourteen (337.703.714) francs over a year.

Since X was unable to provide evidence of the lawful origin of the funds. The prosecutor of Faso, initiated a parallel investigation of money laundering. Requisitions to specialized services have made it possible to detect cases of tax fraud and forgery and use of forgery in public writing. Difficulties in the tracing property and assets (both tangible and intangible) did not allow authorities to establish with certainty, the assets of X and calculating his illegitimate income.

X was convicted for the predicate offence and assets were confiscated. Authorities tried to extend the investigation to established an ML scheme but there were challenges in identifying assets.

106. This case, although one of few, is a signal of an increasing trend among LEAs to conduct parallel investigations. From the facts of the case, it appears that there are some challenges related to conducting financial investigations and establishing standalone money laundering offence. Thus, there is the need to intensify efforts to build capacity given the high level of threats associated with the multiplicity of predicate offenses that can generate significant illicit revenues. Statistics provided by the country for the period between 2014 and 2018 (June) indicate that thirty-seven (37) of forty (40) cases under investigation are in the process of prosecution while three (3) cases have been dismissed (order of dismissal of the investigating judges). However, the authorities did not indicate the types of ML offences that were identified. It appears that some of the cases being investigated relate to self-laundering and standalone ML. It is unclear if any of the cases relate to third party laundering. Burkina Faso did not provide a breakdown of the types of money laundering offences being prosecuted.

### **Consistency of ML investigations and prosecutions with threats and risk profile, and national AML policies**

107. The NRA stated that the most common predicate offence of ML are breach of trust, embezzlement of public funds, scam, theft, receiving stolen goods, extortion, corruption, forgery, illicit trafficking of arms and ammunition, forestry and environmental crimes, tax fraud, currency counterfeiting, trafficking of fake currency, gold-related offences mining offences (marketing of gold) and illicit trafficking of explosives (mines and quarries). According to the statistics provided by the authorities, the most common proceeds generating offences are cases on scams/ theft/receiving stolen goods/ extortion however, tax and customs fraud generates the highest volume of illicit proceeds followed by scams/ theft/receiving stolen goods/ extortion and forgery. The table below (Table 10) provides a breakdown of all new cases filed in the public prosecutor's offices in all the tribunals of first instance (all High Courts in Burkina Faso) from 2013-2017. The table indicates that about 40% of the crimes reported are cases on scams(fraud)/ theft/receiving stolen goods/ extortion. The statistics provide by the

FIU in Table 6 provides a classification of the 39 cases that were forwarded to the investigative judge by the FIU. The figures show that majority (approximately 20%) of the cases relates to forgery. About 9 % relate to fiscal fraud, 9% relate to gold scam and another 14% relate to other types of fraud (making a total 32% for fraud cases) and 6% relate to terrorist Financing. Asides from fiscal offences, fraud/scam seem to be the most prevalent and proceeds generating offence. However, fiscal offences which generate the highest volume of proceeds are generally dealt with administratively. Nonetheless, on the basis of the new anti-money laundering law, the AEPPs should take account of the criminal aspect of this infringement by targeting the offense of laundering the proceeds of tax evasion.

**Table 10. Cases (predicate offences only) initiated in the Prosecutor’s office at all the high courts**

New Cases According to the Offence	2014	2015	2016	2017
<b>Crimes and offences against individuals</b>				
<i>Homicides and unintentional injuries</i>	501	343	39	651
<i>Aggravated robberies</i>	209	229	57	44
<i>Intentional homicides, poisoning, and assassination</i>	130	117	209*	240*
<b>Crimes and offences against property</b>				
<i>Robbery, stealing, extortion, scams</i>	4 351	3 817	3 475	3 057
<i>Breach of trust</i>	732	707	685	642
<b>Crimes and offences against the family and good morality</b>				
<i>Narcotics</i>	275	221	328	263
<i>Children Kidnap</i>	139	126	141	142
<i>Children Trafficking</i>	4	6	4	10
<b>Crimes and Offences against the State</b>				
<i>Forgery and Falsification of Records</i>	249	190	220	224
<i>Misappropriation of public property and money</i>	25	31	43	64
<i>Conspiracy</i>	96	23	25	59
<b>Offences relating to weapons and ammunition</b>	79	93	93	95
<b>Traffic Offences</b>	260	161	203	145
<b>Computer-related Offences</b>	-	-	4	3
<b>Terrorism</b>	-	-	5	16

Source: Extracted from the Ministry of Justice Statistics Directory

108. The types of ML cases currently being investigated by the investigating judges generally correlate with most of the prevalent proceed generating offences indicated in the country’s NRA. However, the ratio of ML investigations to investigations of predicate offences

is very low. In addition, only three (3) ML prosecutions have been concluded with no conviction recorded. The authorities cited a number of reasons why they do not often pursue ML when prosecuting the underlying offences these include a lack of specialization and a lack of jurisdiction. The authorities explained that the high court has jurisdiction to try offences punishable by imprisonment for not less than eleven (11) days and not more than five (5) years except in cases where the law provides otherwise. Since the ML offence is punishable by imprisonment of three to seven years and TF is punishable by imprisonment of at least ten years under Law No. 16-2016, the country had challenges in prosecuting ML/TF offences at the high court. The reform of the penal code (Law n ° 025-2018) which extends the jurisdiction of the court to try offences punishable by a term of up to ten years imprisonment has addressed these challenges. Overall, investigation and prosecution of ML activity Burkina is moderately in line with the country's risk profile.

### **Types of ML cases pursued**

109. Burkina Faso has prosecuted only three case of ML. There are currently no ML convictions. The charges in the three cases were on both the money laundering and the predicate offence. Both cases were dismissed because neither the money laundering offence nor the predicate offence could be established. The number of pending ML investigations is modest. Burkina did not provide any details on the types of money laundering being investigated. Statistics provided by the country indicated that out of a total of thirty-nine (39) cases being investigated, about half relate to underlying predicate offences that have cross border elements. This may suggest that the country pursues foreign predicates. About a quarter of these cases involve legal persons. Most of the investigations do not appear to involve complex cases. Although delays in prosecuting cases is a common occurrence in the region<sup>32</sup>, however, the fact that the three cases prosecuted since 2014 resulted in dismissal raises questions as to the capacity of the investigating judges and also adequacy of resources to accomplish their duties.

110. The anti-money laundering strategy was the subject of a penal orientation note of the Ministry of Justice and resulted in the creation of a specialized court responsible for economic and financial crime issues and the adoption of a new penal code in May 2018. The Prosecutor of Faso has indicated that all the financial information disseminated by the FIU, will be to the specialized courts. The authorities stated that the specialized courts will handle economic crimes including ML. The specialized courts staff for the TGI Ouaga. 1, which include two investigative judges, three deputies and three sitting judges have already been appointed and will undergo further training. The judges are supported by ten law enforcement officers from the police and Gendarmerie for investigative purposes. Other ML files will also be transferred to the specialized courts and authorities envisage that the ML cases will be dealt with more promptly. The specialized courts were not fully operational at the time of the onsite. However, the establishment of the courts will, when fully operational, underpin the prioritization of money laundering cases in the country. The establishment of the specialized Tribunal is a reflection of the will of the judicial authorities to highlight money laundering in the treatment of underlying offenses. As an example, the prosecution of the High court of Ouagadougou has received seven (07) files from certain investigation services which relate to predicate offenses but in which money laundering has been specifically targeted.

111. However, if appropriate responses are to be developed to prioritize money laundering, all investigative services and jurisdictions should be involved and sensitized as some

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<sup>32</sup> GIABA Report: Corruption - Money Laundering Nexus: An Analysis of Risks and Control Measures in West Africa 2010 Pg. 24

authorities highlighted the lack of adequate financial resources and training to deal effectively with money laundering cases. Similarly, although some cases are under investigation, there has been no conviction on ML and in the absence of a court judgment, assessors could not determine whether the different types of money laundering are prosecuted. Furthermore, as noted above, the files disseminated by the FIU and the investigation services to the Prosecutor of Faso do not expressly provide details on the types of cases of money laundering pursued (whether self-laundering, third-party laundering and self-laundering). Moreover, in the absence of a conviction, the types of ML offenses, even for those committed abroad, cannot be determined. In addition, no complex case involving sophisticated ML networks was presented to the assessors.

### ***Effectiveness, proportionality and dissuasiveness of sanctions***

112. The judicial authorities have not secured a money laundering conviction against a natural or legal person. The AML law prescribes criminal sanctions for natural and legal persons, whether perpetrators or accomplices of ML offence. Thus, natural persons may be sentenced to custodial sentences ranging from three (03) to seven (07) years, and fined with a sum equal to three times the value of the assets or funds to which they relate. In the case of legal persons, the fine is five times the funds to which the offence relates. The AML/CFT law also provides for aggravating circumstances and optional additional criminal penalties applicable to natural persons. But in the absence of a conviction for ML in Burkina Faso, the team of evaluators could not assess the effectiveness, proportionality and dissuasiveness of the nature of the sanctions provided by the AML law.

### ***Alternative measures of criminal justice***

113. The judicial authorities have not reported cases of implementation of alternative measures relating to confiscation, in the absence of criminal convictions. However, the investigating judges have made sequestration orders on certain funds and have seized funds and assets for the purpose of confiscation. Similarly, the judicial authorities have not provided cases of referral to other competent authorities, particularly tax authorities, to provide them with information when they may not have been able to prosecute.

114. Overall, the authorities of Burkina Faso give priority to investigations and prosecutions of ML, however, due to scarcity of resources and issues related to the capacity for financial investigation, the pace of these investigations are slow. The low number of ML investigations and prosecution does not correlate with the multiplicity of predicate offenses in the country and the country's risk profile. Also, in the absence of a ML conviction, the effective, proportionate and dissuasive nature of the sanctions provided for by the AML/CFT Act cannot be assessed.

115. **The level of effectiveness achieved by Burkina Faso for immediate outcome 7 is Low.**

### ***Immediate Outcome 8 (Confiscation)***

116. Burkina Faso's legal framework provides adequate basis for authorities to restrain and confiscate proceeds and instrumentalities of ML, TF and a number of predicate offences. Competent authorities can also confiscate property of corresponding value. The country can apply provisional measures and various legal tools, including seizure, forfeiture, fines and tax

penalties and competent authorities have the necessary powers to identify, seize and confiscate criminal assets.

### ***Confiscation of proceeds, instrumentalities and property of equivalent value as a policy objective***

117. Generally, the investigating judge may order seizures or confiscations. The various LEAs and agencies including the National Police, the Gendarmerie, the Anti-Corruption Agency, Customs and the FIU submit cases to the court to initiate criminal proceeding and for seizure where the alleged offences are thought to have generated illicit proceeds. The legal framework also provides for provisional measures. Burkina Faso courts can seize assets before the commencement of criminal proceedings if there is suspicion that assets are proceeds or instrumentality of crime. Essentially, Article 99 of the AML/CFT law provides for provisional measures which allows for the freezing of funds as a preventive and exceptional procedure pending the start of criminal proceedings or pending a possible request for formal mutual legal assistance from a foreign country. The blocking or freezing may subsequently be replaced by a seizure pursuant to the Code of Criminal Procedure. Also, the FIU may, on the basis of serious, consistent and reliable information in its possession, freeze funds for a period of 48 hours and submit the case to the courts for a sequestration or seizure order. The application of provisional measures is however, limited.

118. The Minister of Justice issued an orientation note in March 2017 requesting the Attorney General to focus on seizure and confiscation and the management of criminal cases in general and in particular those related to ML, FT and terrorism. However, it is unclear whether these objectives have been entrenched in the operations of the prosecution authorities. Seizure and confiscation of proceeds and instrumentalities of crime are clearly defined as priority for criminal prosecution authorities. Authorities actively engaged with competent national authorities on confiscation and readily responding to mutual legal assistance relating to confiscation of assets. However, it is unclear whether objectives of the Minister of Justice have been incorporated into the work of the LEAs and the other agencies responsible for investigation at the operational level. Although the prosecutors and investigating judges appear to understand the need to deprive the criminal of the proceeds of crime. In practice, LEAs and investigating judges are not well resourced to conduct financial investigations. There may be the need to provide specialized training to the investigative judges and support investigating judges by recruiting financial forensic experts within the criminal justice system. There is little to demonstrate that confiscation is a key priority at the operational level or that it is being actively pursued and monitored by the LEAs. Burkina has not developed a manual of procedure in line with the national objective on confiscation. Moreover, authorities do not frequently confiscate instrumentalities of crime and property of corresponding value. So far, there are no confiscations relating to ML given that there have been no convictions on ML. However, statistics indicates that some confiscations have been made in respect of predicate offences (see Table 11).

### **Confiscations of proceeds from foreign and domestic predicates, and proceeds located abroad**

119. The legal framework<sup>33</sup> allows the confiscation of proceeds of ML and TF located in Burkina Faso and abroad, as well as proceeds from domestic predicate offences. Burkina Faso

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<sup>33</sup> Law No. 04/2015 / CNT of 3 March 2015 on the prevention and repression of corruption in Burkina Faso Republic (see Articles 7, 83, 90, 105 and 106); Law No. 016-2016 / AN of May 3, 2016 on AML / CFT in Burkina Faso Republic (Cf. Articles 99, 122, 128 and 129).

has a range of tools at its disposal including criminal confiscation, non-conviction-based forfeiture (NCB) and execution of foreign Non-Conviction Based (NCB) confiscation orders, and the law also provides for sharing of confiscated assets. The volume of funds and assets confiscated between 2009 and 2016 is indicated in the table below. There is no estimated value of economic loss as a result of crime in Burkina Faso therefore the real impact of the provisional and confiscation measures taken in Burkina could not be easily determined.

**Table 11. Breakdown of underlying predicate offences from 2009 to 2016**

Offences	Number of cases	Amount in question (FCFA)	Equivalent in USD (585 FCFA)	Equivalent in Euro (1 Euro = 655FCFA)
Breach of Trust	2	46 148 545	78 886	70,455
Misappropriation of public funds	2	158 544 060	271 015	242,052
Fraud, theft, concealment and extortion	9	976 812 556	1 669 765	1,491,316
<b>Illicit Enrichment</b>	2	304 849 416	521 110	465,418
Forgery and falsification of documents	2	475 000 000	811 966	725,190
Sequestration	1	10 000 000	17 094	15,267
Tax and customs fraud	2	60 894 222 705	104 092 688	92,968,278
Illegal currency of traffic	1	334 902 004	572 482	511,300
Gold-related offence	2	286 593 195	489 903	437,546
<b>TOTAL</b>	<b>23</b>	<b>63 487 072 481</b>	<b>108 524 910</b>	<b>96,926,828</b>

Source: MJDHPC's 2016 Annual Statistics

120. Proceeds derived from a foreign predicate can be identified, traced and confiscated on the basis of an international commission rogatory and request for mutual legal assistance. Nevertheless, the authorities do not systematically pursue confiscation or freezing of proceeds located abroad or proceeds derived from a foreign predicate. The authorities do not have comprehensive data on the number of confiscation of proceeds from foreign predicates and proceeds located abroad. The AML/CFT law, Law No. 016-2016 / AN of May 3, 2016 provides for asset sharing when the requesting state wishes to do so. Burkina Faso provided an example of a case where authorities purposely decided to repatriate the totality of assets confiscated to the requesting state.

121. The country did not request for repatriation of any criminal proceeds over the period 2013-2017. This impacts Burkina Faso's ability to confiscate criminal assets as domestic proceeds of embezzlement, one of the major crimes in Burkina may be laundered abroad. In addition, statistics provided by the country indicated that out of a total of forty (40) cases of investigations about half are predicate offenses committed in Burkina Faso, while roughly half of the cases had cross border elements. As indicated in Table 6, the sums involved in these cases amount to eighty-five billion, one hundred and sixty ninety million, nine hundred and fifty-three thousand seven hundred and eighteen (85,169,953,718) FCFA (130,030,463 Euros). The authorities have seized sums indicated in Table 6. However, there has been no confiscation of sums of money or property in any of the ML cases. This situation is not only due to delay in the judicial process as there appear to be a dearth of expertise in financial investigations and handling of ML cases. Authorities have however seized the sum of one hundred and eighty-nine million four hundred and thirty-two thousand five hundred and fifty-seven (189,432,557) CFA francs (288,769 Euros) in respect of ML investigations transmitted by the FIU and two billion three hundred and seventeen million six hundred and forty-nine thousand nine hundred

and forty-nine (2,317,649,949) F CFA (3,533,002 Euros) under investigations led by the Judicial Police Officers and the prosecutor's office as well as of eight million two hundred and ninety thousand (8.290.000) FCFA (12,656 Euros) pursuant to TF investigations.

122. Although tax evasion is one of the most prevalent predicate offences in Burkina Faso, the tax authorities have opted to use administrative fines in cases of non-payment of taxes. The total sum of administrative fines imposed in the case of business tax was 21,519,585,302 F CFA (32,854,328 Euros) in 2015; 36,284,372,855 CFA (55,395,989 Euros) in 2016 and 26,899,142,025 F CFA (41,067,392 Euros) in 2017. It appears that this sum includes unpaid taxes. Burkina has seized instrumentalities used in the perpetration of crimes although the country did not provide statistics or information relating to such seizures.

123. Confiscated sums of money are placed in the deposit and consignment fund, and confiscated property are registered and managed by the Ministry of Justice (the Clerk of Courts). However, the authorities noted that they faced some challenges in managing some assets. The premises and legal instruments available to the Clerk of Courts is inadequate. A draft law to establish a National Agency for the Recovery and Management of Forfeited and Confiscated Assets (ANAGRASC) is in the process of being adopted. According to the authorities, the premises and legal instruments currently available to the authorities are completely unsuited to the new developments and only the National Agency for the Recovery and Management of Forfeited and Confiscated Assets (ANAGRASC) and its innovative texts could better meet the current philosophy to proactively accomplish seizure, confiscation and management of assets. The creation of this Agency will be part of the logical evolution to implement the texts aimed at fighting ML and TF in Burkina Faso, and will respond to an urgent need.

#### ***Confiscation of falsely declared or undeclared cross-border transaction of currency/BNI***

124. The monitoring of cross-border movement of cash is a crucial element in the AML/CFT system of Burkina Faso due to the prevalent use of cash in the country and the extensive and porous land borders proximate to the Sahel. The legal framework<sup>34</sup> on implementation of the circulation of FCFA within the UEMOA zone prescribes that no declaration is required for the physical transportation of currency issued by the BCEAO. However, Article 12 of Law N° 016-2016/AN imposes an obligation to declare cash and BNIs above a prescribed threshold when entering or leaving the UEMOA Zone. Article 1 of Instruction 008-09-2017 sets the threshold at five million (5,000,000) CFA francs (7,633 Euros). Also, competent authorities can stop or withhold for a period not exceeding seventy-two hours, all the cash or bearer negotiable instruments likely to be linked to money laundering or terrorist financing and can seize the whole amount of cash in case of non-declaration or false declaration. The national police services work in conjunction with the national customs services at the borders. As indicated in Table 12, between 2014 and 2018, Customs seized undeclared cash and BNI equivalent to the sum of 2 888 402 Euros. Table 13 indicates the sums seized on a yearly basis. After a seizure, the Customs allows the traveler to enter into a plea bargain. In which case, a fine which represents a fixed percentage of the entire sum is imposed. The amounts in Table 12 represent the entire sums seized. Burkina did not provide the amounts of fines imposed. It appears that none of these seizures related to ML.

#### **Table 12: Number of cases where undeclared currency was seized between 2014 and 2018.**

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<sup>34</sup> Article 22, 23, 24 and 27 of Chapter IV of Annex II of Regulation No. 09/2010 / CM / UEMOA of 1 October 2010

	2014	2015	2016	2017	June 2018	Amount involve (EUROS)
Entry	16	0	0	0		2 888 402
Exit	0	07	22	04	03	

**Table 13: Status of cross-border currency transportation without declaration between 2014 to 2018**

Year	Number of cases	Amount	Currency
2014	16	529 550	EURO
		26 700	DOLLARS
2015	07	107 260	EUROS
		107 000	DOLLARS
2016	22	1 698 845	EUROS
		128 562	DOLLARS
		7 560 000	DONG/ VIETNAM
		9 500	BAHT/THAILAND
		5 000 000	FRANCS.CFA/DESTINATION OUTSIDE UEMOA
2017	04	106 000	EUROS
		45 000	DOLLARS
		5 000	POUND STERLING
2018	03	100 000	EUROS
		50 000	DOLLARS
		11 000 000	FRANCS.CFA

SOURCE: Burkina Faso Customs (Airport Special Brigade)

125. Taking account of the porous borders and the extensive use of cash within the context of the free movement of person, goods and services within the Community, the total sum seized is modest. However, it appears that seizures are not followed up with investigation and the Customs do not focus on possible ML offences as there has been no confiscations. Furthermore, the Customs do not typically examine if the sums seized were intended for ML or other unlawful conduct. Given the significant ML risk from undeclared cash smuggling (as the movement of undeclared currency (“cash smuggling”) has been indicated as a challenge in the region<sup>35</sup>) Customs should routinely make a determination on whether the seized sum might be linked to ML or other predicate offences.

#### ***Consistency of confiscation results with ML/TF risks and national AML/CTF policies and priorities***

126. The NRA indicates that the most significant ML risk include tax and customs fraud, embezzlement of public funds and drug trafficking. The NRA also stated that the risk of terrorism and TF is high. The data on confiscation, to some extent, reflects the assessed ML /TF risks in the country given that confiscations largely relate to some of the predicate offences which pose the highest ML/TF high risk to Burkina. Burkina did not provide an estimation of the size of the illegal economy. However, the low volume of confiscation from 2009- 2016 can only be considered as a fraction of laundered proceeds in the country and to this extent, the confiscation statistics do not reflect the ML/TF risks.

127. As regards the TF risks, the authorities are implementing policies to address terrorism and TF risk posed to the country, including the measures to detect and seize funds related to TF. The amount of provisional seizures pending confiscation relating to terrorism and TF is not substantial. The NRA showed that there were a number of vulnerabilities as regards the effective implementation of seizures and confiscations. Although, the criminal justice system

<sup>35</sup> Typologies Report on Cash Transactions and Cash Couriers in West Africa: GIABA Working Group on Typologies (WGTYP) November 2007 Para 59&60

has a confiscation policy, the number of seizures and confiscations on money laundering and terrorist financing do not fully reflect the policies and priorities of the Burkina Faso authorities. The implementation of the NRA action plan and the project for the establishment of the National Agency for the Management and Recovery of Seized and Forfeited Assets (ANAGRASC) which is at an advanced stage, should provide the impetus to align confiscation results with ML/TF risk and implement national policies on confiscation.

**128. Burkina has achieved a low level of effectiveness for IO.8**

## CHAPTER 4. TERRORIST FINANCING AND PROLIFERATION FINANCING

### *Key Findings and Recommended Actions*

#### **Key Findings**

##### **Immediate Outcome 9 (TF Investigation and Prosecution)**

1. Burkina Faso has taken steps to improve national coordination by establishing a mechanism for exchange of information and intelligence among national competent authorities which incorporates the financial aspects of terrorist activities or suspected terrorists.
2. Burkina Faso has not criminalized the financing of an individual terrorist and a terrorist organization for any purpose. This deficiency in the country's legal framework impacts negatively on Burkina Faso's ability to prosecute TF cases.
3. Burkina has established a specialised court for terrorism and related offences. There are a large number of terrorism-related cases pending before the courts.
4. TF investigations have been conducted at the operational level and the FIU has disseminated intelligence to the judicial officers but there has been no prosecution (trial) or conviction for TF cases.

##### **Immediate Outcome 10 (TF preventive measures and targeted financial sanctions)**

1. Burkina Faso has a satisfactory law for targeted financial sanctions. The mechanism Burkina Faso utilizes to implement targeted financial sanctions pursuant to the relevant United Nations Security Council resolutions, including 1267 and successor resolutions is the CCGA. However, the CCGA not fully operational.
2. Despite the multifaceted terrorist threats arising from its proximity to certain countries as well as endogenous shifting threats, Burkina Faso has not comprehensively implemented United Nations Security Council Resolution 1373 and has not frozen assets pursuant to this resolution.
3. The NRA report noted the TF threats posed to medium-sized non-profit organizations, however, competent authorities have not carried out a comprehensive assessment of the sector or conducted comprehensive and sustained outreach to NPOs that are at risk within the sector.
4. Burkina Faso has passed a law to regulate the NPO sector. The law distinguishes between associations, NGOs and foundations in order to enhance monitoring. However, this monitoring and the implementation of certain regulatory obligations are not yet evident.

##### **Immediate Outcome 11 (PF targeted financial sanctions)**

1. Burkina Faso does not have a mechanism to implement targeted financial sanctions imposed by the United Nations Security Council to counter proliferation financing,

without delay. Specifically, the Decree No. 2012-1136 / PRES / PM / MEF of 31 December 2012 which establishes the CCGA to implement targeted financial sanctions has not incorporated implementation of targeted financial sanctions related to the financing of proliferation.

2. The obligations related to targeted financial sanctions on proliferation financing fall within the general AML/CFT legal framework. However, the obligations are poorly understood by reporting entities especially DNFBPs and medium and small FIs. Measures to implement TFS among DNFBPs are almost non-existent. Reporting entities are generally not monitored for compliance with these obligations.
3. Reporting entities have not identified or frozen any funds or other assets of individuals or entities designated in accordance with the United Nations Security resolutions relating to PF.
4. All actors (both within the private and public sectors) have limited knowledge of proliferation financing and consider the issue including the implementation of appropriate measures as a new discipline in which stakeholders still need to acquire expertise.

### **Recommended actions**

#### **Immediate Outcome 9**

##### **Burkina Faso should:**

1. Ensure that priority is given to terrorist financing and the CFT Strategy should be adapted to address the growing TF risks and trend in the country and the region.
2. Burkina Faso should amend its legal framework to criminalize the financing of an individual terrorist and a terrorist organization.
3. Ensure that the specialized judicial court is operational and adequately resourced.
4. Ensure that all actors responsible for terrorism and terrorism finance cases including investigative judges, prosecutors and sitting judges, receive training and sufficient investigative support to swiftly prosecute and convict terrorism financing cases.
5. Ensure that all investigative units responsible for terrorism, receive training in financial investigations and are encouraged to trace financial networks as part of their investigations.
6. Improve the capacity of reporting entities to identify TF indicators
7. Ensure adequacy of financial resources allocated to terrorist financing investigations and broader understanding on the financing of terrorism.
8. Enhance national cooperation in the fight against terrorist financing this may include establishing a platform for all key stakeholders particularly the FIU.

#### **Immediate Outcome 10**

**Burkina Faso should:**

1. Burkina Faso should refine its domestic implementation of individuals and entities listed pursuant to UNSCRs 1267, 1989, 2253 and UNSCR 1988 to include transmitting lists electronically, as well as developing a mechanism to freeze without delay.
2. Operationalize the CCGA to include ensuring that the commission has sufficient resources and training to implement freezing measures. The CCGA should also take steps to implement TFS when reasonable grounds for designation has been established.
3. Provide specialized training to the private sector to ensure that industry players, particularly medium and small credit institutions, non-bank financial institutions and DNFBPs, understand TF risks and their obligation to implement targeted financial sanctions related to terrorism and terrorist finance.
4. Establish a comprehensive framework for monitoring and supervision of financial institutions and DNFBPs for compliance with TFS requirements.
5. Conduct a comprehensive assessment of the NPO sector to identify the features and types of NPOs vulnerable to TF abuse.
6. Conduct sustained outreach to those NPOs that have been assessed as posing a high risk of being abused for TF purposes in order to prevent and combat terrorist financing abuse of NPOs and provide guidance to the sector.
7. Allocate more resource to the supervisor of the NPOs and the FIU in order to supervise or monitor the NPOs most at risk of being abused for TF.
8. Consider establishing more specific mechanisms for prompt information sharing among competent authorities in order to take preventive or investigative measures in cases where an NPO is used for illegitimate purposes.

**Immediate Outcome 11**

**Burkina Faso should:**

1. Amend Decree No. 2012-1136 / PRES / PM / MEF of 31 December 2012 relating the designation of Finance as the competent authority for administrative freezing and the Inter-Ministerial Order No. 2013/00266 / MEF / MATS / MDNAC / MAECR concerning the allocation, composition and functioning of CCGA to include the implementation of targeted financial sanctions relating to proliferation financing.
2. Ensure that adequate human, technical and financial resources are provided to the CCGA so that it can be fully established and operational.
3. Take measures to restrict the imports and exports of sensitive goods from Iran.
4. Ensure that supervisory and regulatory authorities specifically monitor the implementation of targeted financial sanctions by reporting entities, especially financial institutions.

5. Conduct awareness-raising programmes for competent authorities and reporting entities on countering the financing of proliferation of weapon of mass destruction.

129. The relevant Immediate Outcomes considered and assessed in this chapter are IO 9-11. The Recommendations relevant for the assessment of effectiveness under this section are R.5-8.

***Immediate Outcome 9 (TF investigation and prosecution)***

***Prosecution/conviction of types of TF activity consistent with the country's risk-profile***

130. Burkina faces threats related to foreign terrorist fighters and other non-national actors who are able to easily move in and out of the country due to the porosity of borders, in the Sahel and those related to homegrown terrorists who are able to raise funds either through criminal activity or from other sources outside the country. According to the country's NRA, the risk of terrorist financing in Burkina is moderately high because of a high vulnerability in the system. The threats posed by these actors together and their ability to recruit young marginalized youth in the northern parts of the country and the limited oversight of NPO sector portends a significant risk of TF. Furthermore, Burkina's legal framework is inadequate as the law does not cover the financing of an individual terrorist and a terrorist organization. This is a significant deficiency in the light of the considerable number of identified FTFs in Burkina.

131. The National Intelligence Agency (NIA) is the key agency responsible for Terrorism and Terrorist Financing Activity. Established in January 2016 after the terrorist attacks, the agency acts as a coordinating agency and ensures that other competent authorities tasked with combating TF including the gendarmerie, the national police and the FIU exchange information and intelligence on Terrorism and TF. The NIA ensures that law enforcement agencies do not work in silos. NIA has a good understanding of its terrorism and TF risks. Regular meetings organized by NIA comprising the NIA, other LEAs and the FIU are aimed at detecting and disrupting TF networks and preventing terrorism. These meetings have enhanced competent authorities understanding of their TF risks and have strengthened cooperation between the FIU and the other agencies and law enforcement agencies in the country. Although the types of risk in the country are fairly well understood, the country had not concluded any prosecutions or secured convictions on any type of TF at the time of the on-site visit. Thus, the determination of whether TF prosecution and conviction is consistent with the country's risk profile is not possible.

**TF identification and investigation**

132. Burkina Faso has been the target of terrorist attacks since 2015. The evaluation team noted the dynamism and constancy of the Burkinabe authorities in fighting this scourge. The authorities have received training from international experts, conducted joint investigations with several countries and have replicated best practice models in Burkina Faso. National authorities have a good understanding of the risk of terrorism in the country and a fairly good appreciation of the risk associated with terrorist financing. The authorities of Burkina Faso highlighted several terrorism and terrorist financing cases in its national risk assessment to illustrate the country's main terrorism and terrorist financing threats. The evaluation team was informed that the NIA is constantly monitoring possible terrorism or TF activity in Burkina. From 2015 to 22 March 2018, authorities arrested two hundred and fifty-six alleged terrorists

all of whom have been charged with offences including terrorism and terrorist financing. A total of 80 dockets have been opened in these cases.

133. Terrorist financing is identified through suspicious transaction reports made by reporting entities to the FIU. The investigation and prosecution services also detect transactions made in the informal sector relating to the financing of terrorism. Authorities also state that TF cases have been identified on the basis of information received within the framework of the national and international cooperation. Burkina has requested for information relating to TF from other countries in at least eight separate cases. The country has also requested for judicial assistance. The country noted that some of the investigations have led to the identification of specific roles played by those that financed the terrorist act.

134. Terrorist financing cases are identified and investigated in any of the four (4) legal channels outlined under Articles 17 and 18 of Order 68-7 on the Code of Criminal Procedure. These are (i) reports and complaints; (ii) preliminary inquiries; (iii) investigation on gross violations; (iv) national and international rogatory commissions. The AML/CFT law also permits the seizure of terrorist funds (Cf. article 60.3 of the Law n ° 016-2016 / AN of 03 / 05/2016) and sums have been seized. The intelligence agency plays a major role in identifying TF however, it appears that not much has been done at the level of the gendarmerie and investigating magistrates to provide the necessary proof to establish a TF offence.

135. At the time of the onsite, the FIU had disseminated five (5) spontaneous intelligence to the LEAs. The FIU had also requested for information on three (3) foreign accounts to enable the authorities to investigate TF. However, these low numbers raise doubts as to reporting entities' ability to adequately identify a potential TF activity.

### **TF investigation integrated with and supportive of national strategies**

136. The newly created National Intelligence Agency (NIA) is structured to facilitate a platform for the exchange of information between the intelligence services of competent authorities tasked with combating terrorism and TF, including the FIU. The NIA integrates the financial aspect of terrorism into its surveillance strategy in order to deprive terrorists of the means to conduct attacks. In this way, terrorist financing is integrated into the counter-terrorism strategy. Thus, at the operational level, the authorities responsible for the fight against terrorism have, within their strategy of monitoring, including monitoring at-risk groups, incorporated investigation on the financing aspect of terrorism to deprive these groups of their means. TF investigations are necessarily integrated into national counter-terrorism strategies and investigations and information on the financial links are maintained by the investigative services and the intelligence services. The NRA noted that Burkina did not currently have a specialised financial investigation unit but it intends to establish a unit for this purpose in the first quarter of 2019.

137. The assessors confirmed that the country was in the process of developing a document on its national counter-terrorism strategy and this document is expected to incorporate terrorist financing investigation, particularly conducting parallel investigations as a matter of course when conducting investigations on terrorism and its financing.

138. Although financial investigations are often carried out in the context of terrorism investigations at the operational level (by the LEAs). However, at the judicial level,

investigating magistrates are not proactive in conducting parallel investigations in terrorism cases. In most of the cases pending before the courts, the judges have only charged the accused with terrorist acts. Burkina recently established a specialized judicial Tribunal composed of Judicial Police Officers, investigating judges, and prosecutors to handle terrorism cases, including terrorist financing cases. These courts were not fully operational at the time of the on-site. In the context of terrorism investigations, the authorities of Burkina Faso give priority to cases related to the financing of terrorism. Although no terrorist financing conviction has yet been issued, a number of investigations and proceedings are ongoing. Only a synergy of national surveillance actions can help to meet this challenge, but national coordination is not totally efficient in Burkina Faso.

### **Effectiveness, proportionality and dissuasiveness of sanctions**

139. Burkina should accelerate the implementation of Law No. 025-2018, a new penal code that corrects ML / TF offenses with stiff penalties. This will offer the advantage of avoiding long criminal proceedings vastly involving, the Attorney General and the Prosecution Chamber. This new code removes even the very formal and encumbered Assize Courts. This penal code is applicable because it was already promulgated since June 22, 2018, by decree N° 2018-0503 of the President of Faso. At the time of the on-site, the court has not yet imposed a sanction for TF so the effectiveness of the sanction regime could not be assessed as the cases mentioned above have not been concluded.

### **Alternative measures used where TF conviction is not possible (e.g. disruption)**

140. In Burkina Faso, there are other penal and regulatory measures that may be used when it is not possible to obtain a terrorist financing conviction. These measures are aimed at disrupting terrorist activity. Thus, where a Terrorist Financing Officer referred to in the Prosecution Act is unsuccessful in indicting the accused person on TF charges, it is possible to convict defendants on other charges such as belonging to a terrorist group, support for terrorism or participating in a terrorist enterprise. In addition, the Penal Code of May 2018 (Articles 214-23, 316-3, 361-23) and Law No. 016 AML / CFT (Article 129) provide that in the event of a definitive conviction, for these types of offenses or crimes, there is a possibility of seizing and confiscating the property used in the commission of the incriminated facts. At the administrative level, the authorities could apply article 3 of Decree No. 2012-1136 / PRES / PM / MEF of 31 December 2012 on the appointment of the competent authority for administrative freezing under the Terrorist Financing Act which authorizes the CCGA to freeze the funds and other resources of terrorists as well as all those who finance terrorism and terrorist organizations. This freeze occurs without delay and without prior notification to the persons, entities or bodies concerned. However, as at the time of the onsite none of these measures had been used.

141. **The level of effectiveness achieved by Burkina Faso for immediate outcome 9 is low**

### ***Immediate Outcome 10 (TF preventive measures and financial sanctions)***

#### ***Implementation of targeted financial sanctions for TF without delay***

142. Burkina Faso faces multifaceted terrorist threats generated by its proximity to terrorism-prone countries as well as by endogenous shifting threats. According to the NRA report, the risks of terrorism and terrorist financing are high and moderately high respectively.

143. Decree No. 2012-1136 / PRES / PM / MEF of 31 December 2012 on the designation of the authority responsible for administrative freezing was passed. The Decree designates the Minister of Finance, acting on the advice of the CCGA, as the authority responsible for:

- (i) proposing names to the United Nations Security Council Committees for inclusion in the Al Qaeda and Taliban sanctions list in accordance with UNSCR 1267 and subsequent resolutions;
- (ii) drawing up, as appropriate, a list of persons or entities to be subject to administrative freezing measures pursuant to UNSCR 1373 (2001);
- (iii) freezing without delay, the funds and property of persons and entities involved in acts of terrorism;
- (iv) giving effect to another country's application for administrative freezing, without delay, where there are reasonable grounds for suspecting or believing that a natural or legal person is a terrorist, or is financing terrorism or a terrorist organization.

144. However, in practice, the implementation of UNSCR 1267 is not effective. The modalities for the transmission of new designations or changes to previous designations regularly give rise to delays and sometimes result in non-communication of the designations to various stakeholders, particularly the DNFBPs and NPOs who are reporting entities under Burkina Faso's law. This is mainly due to the absence of an effective supervisory/monitoring framework for DNFBPs and NPOs. The transmission of the notes verbales from the Chairman of the UN Security Council Committee which informs reporting entities and other AML/CFT stakeholders in Burkina Faso of new designations and/or changes to existing lists of designees are not done in a timely manner. In fact, the procedure for distribution of the lists under the 14/2002 regulation requires the UEMOA Council of Ministers to make biannual lists of persons, entities and organizations whose funds and assets must be frozen. These lists are then distributed by the BCEAO to banks and financial institutions. As regards the periods between the two sessions of the Council of Ministers, regulation 14/2002 empowers the President of the Council of Ministers, on the proposal of the Governor of the Central Bank, to modify or add to the list of persons, entities or bodies whose funds must be frozen, on the basis of the decisions of the Sanctions Committee. However, these measures must then be approved by the next Council of Ministers. These procedures do not permit TFS to be implemented with hours.

145. The country utilizes a manual approach for the transmission of lists of persons or entities designated by or under the authority of the United Nations Security Council under Chapter VII of the United Nations Charter. The manual approach of notification takes a long time, due to the use of the mail service by the different stakeholders involved in the process. This state of affairs strongly impedes the effectiveness of the freezing regime particularly the freezing of funds and other assets linked to terrorism and present within the territory of Burkina Faso at any given time.

146. Larger financial institutions, including subsidiaries of international groups, compensate for the major shortcoming related to the timely reception of sanction lists by subscribing to, or consulting the UN sites frequently. This alternative is not evident and rarely used by small and medium-sized FIs, DNFBPs and NPOs, due to a lack of technical, human and financial

resources and competent authorities' lack of awareness regarding the requirement for reporting entities to implement TFS sanctions as an integral part of their tasks.

147. Consequently, reporting entities do not implement targeted financial sanctions pursuant to the UNSCR 1267, within hours of a designation by the United Nation Security Council Sanctions Committee. Burkina Faso has not identified any fund or asset of designated persons or entities within its borders and has therefore not frozen any funds or asset pursuant to UNSCR1267.

148. The implementation of UNSCR 1373 (2001) in Burkina Faso has its legal basis in Article 100 of Law No. 016-2016/AN on AML/CFT, which replaced the 2009 TF law, and the decree implementing that article, Decree No. 2012-1136 / PRES / PM / MEF of 31 December 2012 on the designation of the authority responsible for administrative freezing. The decree designates the Minister of Finance, acting on the advice of the CCGA, as the authority responsible for:

- i. proposing a list of persons or entities to be subject to administrative freezing measures pursuant to UNSCR 1373 (2001);
- ii. freezing without delay, the funds and property of designated persons and entities;
- iii. giving effect to another country's application for administrative freezing without delay where there are reasonable grounds for suspecting or believing that a natural or legal person is a terrorist, or is financing terrorism or a terrorist organization.

149. Thus, with the setting up of the Advisory Commission on Administrative Freezing in 2012, Burkina Faso, can on its own initiative or at the request of another country designate persons and entities linked to terrorist activities or groups and freeze the funds or other assets of the designees without delay.

150. UNSCR 1373 (2001) has however not been fully implemented by the authorities of Burkina Faso. Ever since 2016, Burkina Faso has faced repeated terrorist attacks, within and outside its capital. The perpetrators of these attacks include foreign terrorists from neighboring countries as well as nationals. The country recognizes that some of its nationals have left the country for the purpose of training in areas of conflict (northern Mali, Libya), some of whom have returned to Mali. The best-known case is that of Ibrahim Malam Dicko, founder of the Ansarul Islam movement who was killed in 2017. His brother, Jafar Dicko is the new leader of the Ansaroul Islam movement in Burkina Faso. The assessment team were informed of the existence of a list of 25 suspected and wanted terrorists. Also, there was mention of another list of persons, some of whom are in prison. However, at the time of the on-site visit, none of these persons had been designated pursuant to UNSCR 1373 (2001).

151. The mechanism for the effective implementation of resolution 1373 (2001) by Burkina Faso could not be tested at the time of the on-site visit, because of the challenges related to operationalization of the Consultative Commission on Administrative Freezing (CCGA). The nascent collaboration between the various intelligence services of the different Law Enforcement Agencies, under the auspices of the National Intelligence Agency, has not resulted in designations pursuant to 1373 (2001) as the previously appointed members of the CCGA do not sit due to the demands of their primary assignment and the competent authority responsible for the appointment of committee members has not taken steps to appoint replacements. The CCGA is not carrying out its mandate, rather, the country is compiling a list

of suspected terrorists informally. Also, no freezing measures have been imposed in the case of these identified terrorists, thus defeating the purpose of TFS relating to TF.

152. The assessment team was not able to ascertain the designation process in Burkina Faso including what might or might not be reasonable grounds for the authorities in Burkina Faso to make designations. In the same vein, assessors could not evaluate the processes the country has in place as regards making requests for designations in third countries.

153. With regard to designations requested by a third State, the authorities indicated that they had not received a request from a third country pursuant to UNSCR 1373. As the Advisory Administrative Freezing Commission is not operational, the Authorities may not be able to respond to foreign requests to include persons and entities linked to terrorism and its financing, on Burkina Faso's national list, as prescribed by resolution 1373 (2001).

154. At the time of the on-site visit, Burkina Faso had not proposed a designation on the basis of UNSCR 1267 and successor Resolutions, or made designations based on UNSCR 1373.

155. The role of supervisory authorities in ensuring private sector compliance including compliance with the obligation to implement United Nations Security Council resolutions without delay, cannot be overstated. In Burkina Faso, AML/CFT supervision is conducted by:

- i. the BCEAO, the WAMU Banking Commission and the DGTCP of the Ministry of Finance in banks, financial institutions and the DFS<sup>36</sup>
- ii. the CREPMF for financial market operators;
- iii. the CIMA, the Regional Insurance Control Commission and the Insurance Department under the DGTCP in Insurance and Reinsurance Companies for the Insurance Sector.

156. With regard to DNFBPs, there is no competent authority designated to regulate the sector for AML/CFT purposes. The evaluation team was however, informed that a project to designate competent authorities that will monitor DNFBPs for compliance with AML/CFT obligations is being put in place.

157. As indicated in Chapter 6 (supervision) supervisors in the banking sector conduct risk-based supervision through desk audits and on-site inspections involving very little AML/CFT components. Similarly, in accordance with the provisions of the memoranda of understanding between banking supervisory authorities, the Banking Commission carries out certain joint AML/CFT missions with other regulators. Nevertheless, the documentation and the exchanges with the BCEAO could not allow the evaluators to assess the areas covered by the inspectors and the observations made particularly as regards compliance with the obligations to implement the UNSCRs without delay. The same observation was noted at the level of the insurance and financial markets sector; the assessors could not meet the community authorities in charge of the regulation and supervision of its sectors.

### **Targeted approach, outreach and oversight of at-risk non-profit organizations**

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<sup>36</sup>Order No. 05472 of the Minister of State, Minister of the Economy and Finance of 21 June 2010 on the Organization of the Directorate for the Regulation and Supervision of Decentralized Financial Systems, published in the Official Journal No. 6553 of 30 October 2010

158. Burkina Faso in 2017 passed a law covering the NPO sector<sup>37</sup>. The law differentiates associations, NGOs and Foundations in order to enhance monitoring. This new law allows competent authorities, in particular, tax authorities, to monitor how NPOs management the funds allocated to them in accordance with their bylaws. However, this monitoring and the implementation of certain regulatory obligations is not evident. The NRA report indicated that the level of terrorist financing threat posed to non-profit organizations is moderately low, however, the report also noted vulnerabilities including the lack of awareness of the AML/CFT obligations among NPOs, and the absence of awareness-raising program and outreach to the sector. As such, the evaluation team considers that there are *material risks of the NPO sector being abused for TF*. In 2014, Burkina Faso organized religious community Open-days in some cities across the country. One of the objectives was to raise the religious communities' awareness of new phenomena such as terrorism and its financing. Apart from this activity, no other awareness-raising activity has been conducted by the Burkinabe authorities within the last four years. This is clearly inadequate in view of the reported threat of terrorism in the country. Reference should be made to the consultative framework for the State and its agencies and NPOs, which is not enough to demonstrate the conduct of campaigns to raise NPOs' awareness of the risks facing them and their TF-related vulnerabilities. In addition, the intelligence services have initiated contact with certain religious NPOs which they consider to be more exposed to TF risks, with a view to raising awareness.

159. In consequence of this lack of awareness within the NPO sector, there may be situations where NPOs may be abused by terrorist financiers or be involved in activities that generate illicit flows. It appears that the supervisory body is not well resourced to conduct a comprehensive assessment of the sector as well as sustained outreach to the sector. Undoubtedly, there is a need to assess the NPO sector as a whole. However, following such an assessment, the country is expected to apply a targeted risk-based approach to supervision and monitoring. The Burkinabe authorities have not effectively implemented an approach that targets the high-risk NPOs. The supervisory authorities for the NPO sector nevertheless, indicated that certain sensitizations were conducted for associations that appeared to be more at risk when those associations approached them for fundraising authorizations. In contrast, the work of sensitization and training of the members of the self-regulatory body remains limited and weak, due to lack of resources.

160. The National Intelligence Agency has estimated that the threat of radicalization and terrorist financing through the use of NPOs is high, confirming the conclusions of the NRA on this point. In response, the intelligence services have indicated that they have initiated contact with certain religious NPOs that they think are more exposed to TF risks, with a view to raising awareness. However, with regard to the STRs transmitted by FIU, the misuse of NPOs for criminal purposes and the financing of terrorism remain low.

### **Deprivation of assets and instrumentalities**

161. At the time of the on-site visit, no funds had been frozen by Burkina Faso pursuant to UNSCRs 1267 (1999) and 1373 (2001). However, the statistics maintained by the FIU indicate that funds suspected of being linked to terrorism had been blocked thrice on the basis of the suspicions detected by the financial institutions. Also, the sum of eight million two hundred and ninety thousand francs (8,290,000) FCFA (12,656 Euros) relating to FT investigations has been seized. Furthermore, there are no forfeitures because convictions have not been secured.

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<sup>37</sup> Law No. 008-2017 / AN of 23/01/2017, on the legal regime applicable to Foundations in Burkina Faso.

162. The quantity of funds and assets frozen and confiscated is not consistent with the high level of risk of terrorism and its financing in the country and may suggest that the terrorist financing disruption mechanism is not as effective as it could be. This supposed inefficiency of the mechanism could be due to the lack of adequate resources and the weak capacity of AEPP to conduct investigations related to the financing of terrorism.

### **Coherence of measures with the overall risk of terrorist financing**

163. Since January 2016, Burkina Faso has faced repeated terrorist attacks on its territory. The country does not appropriately implement UNSCR 1267 and has never made use of the possibilities offered by UNSCR 1373 to deprive entities, organizations, or persons who are directly or indirectly linked to the lethal attacks that occurred within its territory of their assets. The authorities noted that the attacks were financed by elements outside the country, however, no request for third party designation has been made by Burkina. NPOs have very little awareness of AML/CFT issues, including their vulnerability to terrorism and its financing. It was observed that the NRA exercise provided a solid basis to appreciate the level of FT risk to which the NPO sector is exposed; the low level of monitoring and supervision of NPOs at risk as well as the lack of awareness-raising and guidance to the sub-sector of NPOs that are at risk of being abused for TF purposes. The NRA exercise had just been concluded prior to the onsite visit and the results were being disseminated to the authorities and to all the various stakeholders. The action plan developed at the end of the NRA is yet to be implemented. This state of affairs leads the assessment team to conclude that there is little consistency between the measures in place at the time of the on-site visit and the overall level of TF risk faced by Burkina Faso.

164. Burkina Faso does not implement TFS pursuant to UNSCRs 1267 and 1373 without delay. The variation between the measures taken by the country and the overall level of risk coupled with the non-application of the requisite tools to prevent the abuse of the NPO sector and to identify terrorists, terrorist organizations and terrorist support networks and deprive them of their funds, assets and other resources, is a major shortcoming in the country's AML/CFT system.

165. **Burkina Faso has achieved a low level of effectiveness for the immediate outcome 10.**

### ***Immediate Outcome 11 (PF financial sanctions)***

166. The Burkina Faso authorities indicated that the country does not have a commercial relationship with Iran and the Democratic People's Republic of Korea. The country has no coastline and is not a producer of dual-use goods or chemical and biological weapons. However, Burkina Faso has long porous borders.

### **Implementation of targeted financial sanctions related to proliferation financing without delay**

167. Burkina Faso has a legal basis to implement targeted financial sanctions in accordance with the United Nations Security Council resolutions on non-proliferation of weapons of mass destruction. This obligation is articulated under the Law N ° 016-2016 / AN on AML/CFT. Article 100 of Law 016 nevertheless, envisages the establishment of a mechanism to implement

targeted financial sanctions related to proliferation financing in accordance with the UN Security Council resolutions. The mechanism for the implementation of targeted financial sanctions is Decree No. 2012-1136 / PRES / PM / MEF of 31 December 2012 on designating the authority responsible for administrative freezing. This decree designates the Minister of Finance, acting on the advice of the CCGA, as the Competent Authority, but however limits the Minister's responsibility to the fight against terrorism and its financing. The Decree does not cover implementation of targeted financial sanctions related to the financing of proliferation.

168. Even though technically, the decree does not cover implementation of PF, the AML/CFT law prescribes implementation of PF thus, financial institutions have a legal basis to freeze targeted funds. Financial institutions' implementation of targeted financial sanctions related to proliferation is limited to screening, for those who have such tools, without the adoption of measures for monitoring transaction activities. (e.g. supply or sale of dual-use goods or provision of sensitive services). Competent authorities need to provide guidance to reporting entities on implementation TFS related to proliferation financing.

169. The assessment team noted that none of the reporting entities in Burkina Faso was provided with any form of guidance that will assist them to develop internal controls on screening for the purpose of implementing targeted financial sanctions related to proliferation financing. As with Immediate Outcome 10, there are no functional implementation mechanisms of targeted financial sanctions due to the lack of operationalization of the CCGA, the absence of follow-up, and effective monitoring of measures taken by the reporting entities. These constitute obstacles to the timely implementation of the TFS. The assessment team, therefore, concluded that the implementation of targeted financial sanctions for proliferation financing as prescribed under resolutions 1718 and 1737 is not timely as required by the FATF standards.

### **Identification of assets and funds held by designated persons/entities and prohibitions**

170. At the time of the on-site visit, Burkina Faso had not identified any funds or other assets of persons and entities designated by the United Nations Security Council. The implementation of these obligations by the banks, using the screening tool, had not resulted in any cases.

171. Burkina Faso has however, issued regulations to ban any product imported from North Korea, and the same applies to exports to the country. As for Iran, there is no provision restricting imports of products from the country.

### **FIs and DNFBPs' understanding of and compliance with obligations**

172. At the level of the Financial Institutions, although the obligations relating to targeted financial sanctions on the financing of proliferation are part of the general AML/CFT regulatory framework, they do not give rise to any particular monitoring. In the case of DNFBPs, these obligations are poorly understood and measures to implement them are almost non-existent. Indeed, the NRA report noted several weaknesses in the DNFBP sector, especially the general lack of awareness of AML/CFT obligation within the sector. The NRA also noted the lack of application of administrative and criminal sanctions for non-compliance with AML/CFT obligations and the lack of AML supervision in the sector. Overall, there is a lack of implementation of TFS by DNFBPs together with a lack of a mechanism for the implementation of TFS relating to PF as well as the absence of suspicious transaction reports

relating to the financing of the proliferation or involving a designated persons or entities designated in this regard.

173. All the actors met (within both the private and public sectors) by the team considered the matter of financing of proliferation, including the obligations to implement appropriate measures, as a fairly new area of discipline which required further study.

### **Competent authorities ensuring and monitoring compliance**

174. The authorities informed the assessors that the country put in place strict regulations for relevant economic operators (particularly the mining industries) in order to ensure adequate surveillance on the import, export, transport and use of sensitive goods. This monitoring is conducted inter alia by the National Commission on Combating the Proliferation of Small Arms (CNLPAL) created in 2006 by Decree No. 2006-174 / PRES / PM / MACDEF / SECU of March 29, 2006.

175. Although mechanisms for the exchange of information are in place, in practice there is little or no cooperation between customs and export control authorities and other competent authorities (other law enforcement agencies, the FIU, supervisory authorities) on issues related to countering the financing of proliferation. Furthermore, the supervisory authorities did not demonstrate that they have a concrete understanding of the obligations related to the TFS beyond requiring financial institutions to check the list of designated persons and entities against their records. The meeting with the BCEAO / Banking Commission allowed the assessors to conclude that the question of the financing of the proliferation of the WMD was treated in the same way that of the financing of the terrorism. The supervisors did not focus on compliance with obligations relating to Targeted Financial Sanctions during examinations.

176. The FIU generally conducts awareness-raising among actors from competent authorities concerned with the issue of proliferation financing as part of its annual program of activities and during certain sectoral meetings. However, the understanding of this obligation among reporting entities remains limited due to a lack of guidelines.

177. The inability to implement targeted financial sanctions related to the financing of proliferation of WMD is due to the lack of expertise both at the level of the competent authorities and reporting entities. In addition, the mechanism in place cannot adequately prevent individuals and entities involved in proliferation from raising, moving, and using funds or other assets to finance their proliferation activities.

178. **Burkina Faso has achieved a low level of effectiveness for the immediate outcome 11.**

## CHAPTER 5. PREVENTIVE MEASURES

### *Key findings and Recommended Actions*

#### **Key findings**

1. FIs, particularly banks and large-scale DFS have conducted risk assessments and have a good understanding of their risks. Banks are developing risk mappings and action plans that include risk mitigation policies. Similarly, large DFS equally understand their inherent risks and have put procedures in place to mitigate these risks. Based on this, they have updated and strengthened their internal AML/CFT programs.
2. The National Risk Assessment exercise assisted the other FIs to identify and better understand the ML/TF risks inherent in the sector. Medium and small DFS, generally do not have procedures in place to mitigate their risk.
3. The majority of DNFBPs, do not understand their peculiar ML/TF risks and do not have risk mapping.
4. In general, the application of EDD by non-bank financial institutions and DNFBPs is weak.
5. The insurance companies have internal compliance mechanisms. However, some have not conducted risk evaluation and risk mapping exercises. Furthermore, their information and identification system does not allow an effective tracking of customer transactions in relation to their profile, nor appropriate controls when transactions are unusual and complex, or when it concerns PEPs.
6. Banking institutions, DFS and large insurance companies have set up internal one-off and continuous training and information programs on AML / CFT issues. However, other reporting entities do not have training programs in place.
7. There is a weak implementation of AML/CFT measures in DNFBPs which is affecting the overall effectiveness of preventive measures in Burkina Faso given the high ML/TF inherent risks identified by the NRA in the DNFBPs.

#### **Recommended Action**

Burkina Faso should:

1. Disseminate the results of the NRA to all reporting entities and make them aware of the ML/TF risks to which they are exposed. The country should also help other categories of financial institutions, other than large banks and DFS, to implement their AML / CFT obligations, by strengthening their capacity through training and awareness.
2. Provide comprehensive guidance to DNFBPs on their obligation to establish internal AML/CFT compliance mechanisms and report suspicious transactions. Put in place effective compliance inspections including the imposition of administrative monetary penalties for non-compliance with these obligations.
3. Ensure the country has the requisite legal framework to compel financial institutions and DNFBPs to conduct risk mapping exercises including risk mitigation measures. These institutions should also be required to develop internal policies and procedures that take

account of their ML/TF risks and ensure that appropriate customer due diligence measures commensurate to their risk exposures are in place. Furthermore, Burkina should provide adequate guidance on these obligations.

4. Ensure that non-bank financial institutions, as well as DNFBNs, implement due diligence measures in their AML/CFT programs, including identification of the client and the beneficial owner.
5. Ensure that FIs and DNFBNs implement enhanced customer due diligence measures when dealing with PEPs and sectors indicated as having a high ML/TF risk in the NRA.
6. Ensure that non-bank financial institutions conduct AML/CFT training for staff.

179. The Immediate Outcome considered and assessed in this chapter is IO 4. The relevant Recommendations for the assessment of effectiveness under this section are R9-23.

#### ***Immediate Outcome 4 (Preventive Measures)***

180. As regards materiality in the context of Burkina, the banking sector is the most significant sector and implementation issues within the banking sector were weighted heavily. Over half of the banks in Burkina are large/foreign banks. These large banks have a good understanding of the AML/CFT requirements. However, the medium and smaller banks understand their AML/CFT obligations to a lesser extent. The picture is largely the same for other financial institutions. The rapid development of microfinance institutions and e-money payment systems has given the microfinance and electronic money companies a significant share of the financial assets. Given that the risk of TF is more related to the microfinance and electronic money payment systems, considerable weight was also placed on preventive measures in these sectors. With regards to the DNFBN sector, the most significant sub-sector within the DNFBN sector is the precious metal sub-sector. The prevalence of unlicensed artisanal miners within the sector poses additional TF risks, on this basis some weight was placed on this sector. Notably, Burkina Faso has strengthened its anti-money laundering and terrorist financing system through the transposition of Directive No. 02/2015/CM /UEMOA on the anti-money laundering and terrorist financing (AML / CFT) in the UEMOA member states by Law 016/AN/AML/CFT and the adoption of four (4) BCEAO Instructions.

#### **Understanding of ML / TF risks and relevant AML/CFT obligations by financial institutions and DNFBNs**

181. The financial institutions, particularly the banks and large DFS, have a good understanding of their ML/TF risks. In this regard, FIs have put in place procedures and tools which permit better identification and classification of clients according to the degree of risk. This is all the more remarkable in the case of banks belonging to international groups which typically apply more stringent standards than those operating at the Community level. International banks belonging to financial groups have adapted the group policy to address the peculiarities of the Burkina environment. The banks also assess the inherent ML/TF risks in their sectors and have a mapping of the risks related to their activities and their environment. The banks identified the predominance of cash particularly among commercial traders as a risk factor. Large scale Decentralized Financial Institutions (DFS) (those referred to in Article 44 of Law 023-2009 regulating DFS) equally understand the risks related to their sphere of

activity. TF risks are understood by a wider spectrum of financial institutions, including mobile money companies.

182. In the insurance sector, apart from an insurance company that is subsidiary of a large European group, most insurance companies and insurance brokers have not yet assessed their ML/TF risks, taking account of factors such as geographical location, customer profile, volume and the nature of the products. The operators within the sector identified the high use of cash and the limited prospect of verifying the IDs provided by the customer as the main ML/TF risks inherent in their activities. Most insurance companies reckoned that their ML/TF risks are generally low. According to them, the riskiest products are life insurance and retirement capitalization products, however, both involve small amounts. Money transfer companies enter into agreements with banks to engage in this activity. The regulation requires banks to monitor these entities for AML/CFT purposes. However, the money transfer companies interviewed had not conducted an assessment of their own risks. Also, the securities sector is characterized by staff with low level of knowledge about the AML/CFT requirements and ML/TF risks relating to certain products. The securities companies did not have a risk map.

183. In the case of DNFBPs, the lawyers, notaries and chartered accountants do not have a sufficient understanding of the inherent ML/TF risks in their sectors. The only casino operating in Ouagadougou is run by foreign nationals and hosts foreign players, mostly Europeans and Chinese. The managers of the business did not understand the ML/TF risks involved in such an activity. Also, an international holding company, operating gaming halls that house slot machines had not evaluated or understood its ML/TF risks. The operations team at the establishment informed the assessment team of the risk-free nature of this activity given the small stakes and cash payout. However, the business turnover that was communicated to the assessment team appeared quite high. It is worth noting that establishments for gambling and the national lottery are reporting entities under the UEMOA Uniform law on AML/CFT. Travel agencies and hoteliers are also reporting entities under the UEMOA law. However, the travel agencies did not participate in the National Risk Assessment (NRA) exercise; both sectors have not assessed their ML/TF risks. Also, according to the NRA, the risk of money laundering in the real estate sector is high, however, there is a limited understanding of this risk within the sector. The same obtains for NPOs, which have been identified as having a high risk of money laundering. Licensed individual foreign exchange operators have generally not assessed their risk.

### **Application of risk-mitigating measures**

184. **The banks:** The banks have set up an AML/CFT program within their institutions and have implemented mitigating measures to address their ML/TF risks. This includes internal training and awareness-raising programs on AML / CFT for their staff. Account opening for high-risk customers, including PEPs, are most often validated by the compliance department. Banks have ML / FT risk maps and categorize risks by the nature and type of activity. Most banks are equipped with various profiling tools that allow them to monitor the accounts and terminate business where appropriate. Some banks have acquired a database of PEPs that staff could consult whenever they come in contact with a client. Banks have, in a consistent manner, develop action plans that enable them to implement the recommended mitigation measures, following the identification and classification of risks. These measures are more prominent in foreign banks which are typically implementing AML/CFT policies and procedures at the group level.

185. **The DFS:** Large institutions within the DFS have also put in place risk mitigation procedures and in this respect, carry out a mapping of the risks inherent in their activities. Classification of customers is based on identified risks. Smaller institutions are largely inefficient and lack information systems to facilitate the tracking of suspicious transactions. The evaluation team's meeting with industry players revealed that the smaller institutions had not conducted risks evaluations and did not have any risk mappings related to their activities. Most transactions are in cash with the sector. The low level of reporting of suspicious transactions to the FIU (just one STR between 2009 and 2016) and the lack of staff training on AML/CFT issues make the risk at these institutions high.

186. **The Securities Sector:** In Burkina Faso, the Asset Management and Intermediation Companies met by the evaluation team have an adequate legal and regulatory framework and are aware of their AML/CFT obligations. Operators within the sector have internal compliance programs that are commensurate with the products being offered and the profile of their customer base. There is an internal control officer at the level of each SGI who also deals with compliance, however, there is no officer specifically dedicated to AML / CFT and there is no risk mapping in place in each SGI. As regards their procedures, SGIs do not receive funds. Funds are deposited by the clients in their bank accounts and transferred to the SGI. The risk in this respect is that SGI does not fulfil its customer due diligence obligations by identifying the customer and also by verifying the origin of the funds as they rely solely on the banks CDD for their operations.

187. **Insurance companies:** Insurance companies have internal compliance mechanisms. In fact, in accordance with the provision of the CIMA Code, insurance companies have appointed compliance officers and have also set up internal training programs, which are followed up by the company's audit arm to ensure its implementation. Although insurance companies are implementing AML / CFT obligations, insurance brokers have not undergone any AML / CFT training.

188. **Rapid money transfer companies,** in the framework of their activities, enter into service provider agreements with banks and DFS, who become accountable for the service providers' implementation of AML/CFT obligation, including CDD and filing STRs. The entities providing these services (WESTERN UNION, MONEYGRAM and etc.) put at the disposal of the banks and DFS, software that meets their requirements. These agreements are validated by the BCEAO. Some operators are directly licensed by the BCEAO. The money transfer companies did not appear to understand that being subject to AML/CFT Law 016/2016 / AN, created an obligation to implement AML / CFT requirements. However, most of the operators claimed to have received AML / CFT training from the FIU. A number of banks also provide training for service providers.

189. **The issuers of electronic money:** The mobile money platform is fairly secure, operations are subject to procedures, and product use requires user identification. The platform allows transactions to be easily tracked because each transaction is always linked to a specific mobile phone number and information about these transactions (sender's mobile phone number, recipient's mobile phone number, amount, and date) remains recorded. The EMIs have AML/CFT policy including a compliance officer and training programs on AML/CFT. Prior to the launching of any new product the descriptive document on the actors, the process and the inherent risks, including ML / FT risks are transmitted to the BCEAO. This allows BCEAO to assess the ML/FT risk of the new product.

190. **Licensed individual foreign exchange operator:** The licensed individual foreign exchange operators met by the evaluation team have a poor understanding of their AML/CFT obligations. The operators had not assessed the ML/TF risks inherent in their activities. In accordance with Regulation R09.10, they send quarterly activity reports to the Minister of Economy and Finance. According to the regulations in force, transactions relating to the purchase or sale of foreign currency must be recorded in a registration form in four (4) copies, one (1) for the customer, one (1) for the DAMOF, one (1) for the BCEAO and one (1) for the bureau de change. Currency sales are limited to two (2) million FCFA for residents and five hundred thousand (500,000) FCFA for non-residents. However, no provision is made to establish the origin of funds. The identification of clients is limited to the presentation of a piece of identification for residents and passports for non-residents. The checks carried out in the sector do not include the AML/CFT component. The checks are limited to the aspect of compliance with the provisions of the exchange regulations. Authorized manual traders did not file any STRs to the FIU as required by the AML/CFT Law. It was observed that currency exchange is also carried out through unregistered informal currency exchange offices that can be used for money laundering purposes.

### **DNFBPs**

191. The vast majority of DNFBPs do not implement their AML/CFT obligations as required by the AML/CFT law. In particular, entities and persons within the sector seldom conduct customer due diligence when carrying out transactions for their clients. For the most part, the sector is characterized by a lack of staff awareness on AML/CFT requirements, lack of compliance mechanisms and low suspicious transaction reporting. The preventive measures in place within the different sub-sectors are indicated below.

192. **Lawyers:** Record keeping is challenging but is tending towards digitization. Lawyers involved in legal practice are required to open a sub-account: (Autonomous Fund of Regulation of Lawyers (CARPA)) in a domestic bank. Each lawyer is obliged to utilize the account for all professional transactions. The lawyers met by the evaluation team, although sensitized by the FIU, have a weak understanding of the AML/CFT law and, typically do not implement their AML/CFT obligations.

193. **Notaries:** Members of the *Chambre des Notaires* have received training from the FIU, but this training has not filtered down to colleagues and collaborators. Internal record keeping is difficult in notary offices due to the fact that these are processed manually. As a measure of due diligence, the authentication of the documentations of a foreign director is done by the authentication of the originals in his country of origin. Importantly, in some cases, notaries are not involved in the negotiations between the buyer and the seller particularly the financial aspect of the real estate transaction and only assist the parties to formalize the agreement. Hence, they rely on the customer to inform them about sums involved in the transaction and as such may not have any information regarding the source of funds. This limited control over the transaction constitutes a risk. Moreover, the notaries indicated that in instances where there are doubts about the origin of the funds, the transactions were suspended without proceeding to file an STR to the FIU. Generally, the notaries do not implement the AML/CFT provisions as required. Only two STRs have been filed by notaries.

194. **Accountants:** The National Association of Expert and Chartered Accountants (ONECCA) of Burkina Faso indicated that in the application of the provision of the 016/2016 / AN law relating to the identification of legal persons, they carry out investigations,

particularly concerning those who control the legal persons and also on the morality of the promoter. However, if the promoters are not beneficial owners, it is very difficult to identify the beneficial owner. This situation constitutes an ML / TF risk. Expert and chartered accountants have little knowledge of AML / CFT issues. No professional in the sub-sector has filed a suspicious activity report to the FIU. The Quality Assurance Commission set up by ONECCA plans to select firms to monitor the quality assurance of the structures of their members, including their AML / CFT obligations.

195. **Real estate agents and developers:** The real estate sector is described by the NRA as one of the sectors with higher risks of money laundering. As regards means of payment, the use of cash is high in the sector. The sub-sector is characterized by the absence of compliance mechanisms in real estate companies and the lack of monitoring and reporting of suspicious activities. In addition, the lack of an in-house awareness-raising program and initial and ongoing staff training for real estate companies has resulted in a lack of awareness of AML / CFT obligations among staff. The evaluation team met officials from the Ministry of Urban Planning and Housing and the Single Window for Land Transactions (GUF). According to the authorities of the Ministry of Urban Planning and Housing, out of the two hundred (200) licensed real estate promoters, only a dozen are active and these only sell vacant parcels of land and do not typically develop the properties allocated to them. In this context, there may be outsourcing taking place, which is likely unregulated. There is a possibility that this transaction can be a channel for recycling illicit money. Furthermore, there is no measure that aims to identify the origin of funds and the identity of beneficial owners, including those who control the promoters.

196. **Casinos and other gambling:** Burkina Faso has only one casino and some gambling rooms. The sector is characterized by the lack of compliance mechanisms, the lack of an internal awareness and training program for staff, the lack of monitoring of suspicious activities, and the lack of knowledge about their AML / CFT obligations under the law. The Casino and other gambling room visited by the evaluation team do not run an effective system of customer identification; most customers are not registered on the registers and the identity documents of players are not kept. Cash is also used in all transactions. In addition, the company holding the operating license for the gambling rooms outsourced management of the gambling rooms to other people. This situation presents a risk, to the extent that the identification of new operators and their customers is not ensured. However, the Casino receives a regular visit from Police authorities which ensures the identity of the persons who are allowed to access the game room as playing is forbidden to nationals. This measure falls within the framework of security provisions but has no link with the AML / CFT measures.

197. **Mining, Precious Metals and Art Objects:** The mining sector, including semi-mechanized, artisanal and wild mines, is one of the sectors that are most vulnerable to money laundering and terrorist financing according to the NRA. Compliance mechanisms are virtually non-existent and operators are not yet aware of their AML/CFT obligations. However, the multi-national mines implement compliance standards, issued by their parent companies, located in jurisdictions applying AML / CFT standards. It was also noted that senior managers of large mines have good knowledge of AML/CFT requirements. The evaluation team met with officials from the Ministry of Mines and Quarries and those from the Chamber of Mines. In general, the sector is characterized by the absence of an AML / CFT system, the prevalent use of cash in transactions, the presence of wild sites that do not have operating licenses, the lack of control of production and distribution channels and the absence of AML/CFT measures especially in small scale mines.

## **Other reporting entities**

198. **NPOs:** According to the NRA, the NPOs have virtually no knowledge of AML/CFT issues. The suspicious transaction reporting mechanisms provided by the texts have not been put in place within the sub-sectors of NPOs. In addition, information on beneficial ownership is difficult to obtain especially for foreign NPOs. At the sector level, two laws were passed: the 064-2015 law of October 20, 2015, which requires associations to keep accounts and the 08-2017 law concerning the legal regime for foundations. According to the NPO authorities met by the evaluators, two major risks peculiar to the sector are the possibility that terrorists may use them as a channel to make transfers, and that illicit money can go through these NPOs. However, the preventive mechanism in place does not take into account these two (2) risks. The risks mentioned above may be partially mitigated through the implementation of Decree No. 2017-0015 / PRES / PM / MATDSI / MINEFID of 23/01/2017 which establishes a National Register of Non-Profit Organizations and requires members and managers as well as the origin and destination of the funds to be registered.

199. **Burkina Faso's National Lottery (LONAB):** The LONAB is a reporting entity pursuant to Article 5(9) of the law 016/2016 / AN on AML/CFT. The LONAB disseminates and sales lottery tickets. The agency has had a compliance department since May 2016 and AML/CFT compliance officers have been appointed. However, it does not implement the provisions of the 016/2016 / AN law. According to LONAB's authorities, the drafting and implementation of the AML / CFT system are included in the 2018 program of activities.

200. **Hotels, restaurants and travel agencies:** Hotel and restaurant staff and travel agencies are generally not aware of the provisions of 016/2016 /AN law and do not implement their AML/CFT obligations as required by the law, in particular customer due diligence measures. There is no AML / CFT compliance mechanism in this sector. Suspicious activities are thus not identified, monitored and reported to FIU. Staff have not been trained on their AML / CFT obligations. The travel agency industry did not participate in the NRA exercise.

201. **Land Transport:** According to the NRA, the land transport sector is one of the sectors vulnerable to ML / FT risks. Transport companies have not yet put in place a compliance mechanism or conducted training and sensitizing of their staff on AML / CFT obligations. The sector has not reported any suspicious transactions to the FIU.

202. Overall, implementation of the recommendations of NRA by all stakeholders should enable financial institutions and DNFBSs to further strengthen their AML / CFT systems by mitigating the ML/TF risks associated with their sectors.

### ***Application CDD and Record keeping requirements***

203. The implementation of enhanced or simplified CDD and record keeping requirements are uneven across and within sectors. In general, some reporting entities have in place specific measures for dealing with new customers based on the products and services that are of interests to these customers. The implementation of CDD measures is more noticeable in banks and large DFS. Financial institutions, including banks and insurance companies, in the course of their operations, implement customer due diligence measures through the establishment of a compliance department and the establishment of internal policies and procedures. However,

availability and accessibility of beneficial ownership information is a real concern for all sectors.

204. Banks have put in place CDD policies and procedures as well as monitoring and filtering systems for triggering an alert if necessary. Most banks have implemented software to establish a link between persons carrying out transactions and those on the sanctions lists. The identification elements of the persons on the lists are integrated into the information systems. Account opening procedures outline the required documents and information about the client, their activities, sources of income, partners, and so on. The banks have developed their ML/TF risk mapping and proceeded to classify the levels of risks (low, medium, high), according to the nature of the activities and the type of customers. CDD measures are also undertaken for sensitive sectors such as the gold sector, which is defined as sensitive and high-risk sector like other activities based on high use of cash. Banks perform annual account reviews based on the account type and its sensitivity, notably PEPs. One of the banks visited had even established a Risk Department since January 2018 and implements a risk-based management policy.

205. Large scale **DFS**, just like banks, have put in place customer due diligence measures; notably; at the account-opening stage. A business relationship or an operation can be refused when required documents are not provided or satisfactory. In other words, monitoring is enforced through a procedure of double approval of operations in order to minimize money laundering risks. This monitoring measure is however, not enforced in small-sized DFS.

206. **Insurance Companies:** By strictly respecting the conditions provided by the CIMA code while undertaking insurance operations, (article 11 of the CIMA code) particularly in terms of payment and collection of premiums, vigilance in the event of early policy termination and the use of STRs in the event of a presumption of an unlawful intention on the part of the customer. Insurance companies reserve the right to refuse or terminate any insurance contract that does not comply with due diligence requirements.

207. For record keeping purpose, financial institutions respect the 10-year period prescribed by the 16-2016 AN Law. Information in financial institutions is accessible by all competent authorities, regardless of the storage medium.

208. The majority of the **Most DNFBPs** (including, small mines, travel agencies and hotels, lawyers and notaries and real estate agents) had not carried out a risk assessment and did not implement due diligence measures to identify clients and beneficial owners, as required by the AML / CFT Law. Notaries keep records for an indefinite period, while lawyers have no express obligation, under the laws governing their practice, to keep certain documents, but they must keep their account records for ten (10) years. However, DNFBPs do not implement the required customer due diligence measures for their AML / CFT activities, including identification and verification of the client and the beneficial owner. Nevertheless, in 2017, a notary firm reported a suspicious transaction to the FIU.

209. **Money value transfer companies, transport companies, leasing and factoring establishments, electronic money issuers** met by the evaluation team are yet to implement an effective AML / CFT system that covers their entire operation network notably, their distribution agents and sub-agents. Till date, no suspicious transaction reports have been recorded by these companies. At the level of the parent institutions, there is an AML / CFT system and profiling tools, but this is not the case for the sub-distributors of the products.

### *Application of enhanced or specific measures*

210. FIs, particularly large banks and DFS, apply enhanced measures according to the risks related to the customer, the risks related to the products and services, and also if the customer is a PEP. Some banks refused to establish a transactional relationship with customers who were not approved or who lacked all the required documents. For non-bank FIs and DNFBPs, the implementation of due diligence measures remains weak due to the fact that a large majority of them do not have risk mapping and mitigation measures, where appropriate. Below is the general description of how accountable institutions are implementing EDD with respect to specific circumstances.

211. **Politically Exposed Persons:** Banks implement specific measures, using commercial databases, to detect and monitor Politically Exposed Persons (PEPs). They also set up internal procedures for their identification and approval of transactional relationship by the Chief Executive Officer. PEPs are also entered on the list of clients placed under enhanced surveillance so as to obtain an alert for each operation performed on their account from a defined threshold. These banks conduct annual reviews of PEP activities.

212. Some banks, in addition to having the list of national PEPs, also have the list of international PEPs. Generally, within the insurance sector, there are no official lists of PEPs.

213. One of the interviewed DFS has on its own initiative developed a more advanced system of identification of PEPs, which goes beyond the declaration system currently in force.

214. **Correspondent Banking:** Banks in the course of their business establish correspondence with other banks taking into account criteria such as their level of compliance, the quality and extent of the bank's network and the country of establishment. To this end, due diligence measures are put in place, including the approval by the authorized authority, the evaluation of the AML / CFT system put in place by the institution and the annual review of relations. Banks periodically exchange scorecards of their compliance level with other correspondent banks. In the context of peer-to-peer relations, banks define criteria such as the level of compliance, the quality and reputation and the country of establishment according to the FATF's Recommendations as well as the requirements of the 016-2016 law and BCEAO instructions.

215. **Targeted Financial Sanctions:** FIs disseminate and process the lists of sanctions, particularly those relating to United Nations Security Council Resolutions. They also take into account other lists, such as those of the OFAC, the European Union, national lists of certain countries. However, the implementation of a national list under UNSCR 1373 is not effective in Burkina Faso. The insurance companies and brokers in Burkina, with the exception of one company belonging to an international group, were not aware of United Nation's sanction lists.

216. **New technologies:** Article 37 of the AML/CFT law requires FIs to assess the risk related to new or emerging technologies and products. However, FIs have not demonstrated the implementation of enhanced due diligence measures on new technologies.

217. **Electronic transfers:** In terms of wire transfers, the financial institutions met have put in place measures to identify originators and beneficiaries. This is done by filtering the names

of originators and beneficiaries against the lists of persons and entities subject to financial sanctions. They check the adequacy of the message type with the transfer to be executed and also the completeness of the information that accompanies the transfer (correctly completing the required fields). They equally check the correspondence between the content of the message and the known profile of the client concerned. Based on their findings, they decide whether or not to authorize or refuse the transfer.

218. **The high-risk countries:** Banks integrate the list of high-risk countries into the software; these lists are taken into account when filtering transfers. FIs, including banks, regularly monitor FATF publications in this regard.

### *Reporting obligations and tipping-off*

219. The financial institutions met, implement their suspicious transaction reporting obligations. They set alert thresholds in conformity to internal procedures and rules common to their groups. DNFBPs, on the other hand, do not implement their obligations in this regard.

220. According to the NRA, the banks apply supervisory and confidentiality procedures in relation to the disclosure of information relating to STRs. This information is only accessible to the personnel of the Compliance Department, the General Management and the Internal Auditors and is only communicated to the FIU. The table below shows that banks have filed the highest number of Suspicious Transactions Reports (STRs) to FIU. Indeed, out of the 358 STRs sent to the FIU since its start in 2008, 352 are from banks, i.e. 98.3% of the STRs. Of these 352 STRs, 17 relate to transactions in the real estate sub-sector. In terms of frequency, cybercrime represents the greatest threat to the banking sector in Burkina Faso. In addition, it was noted that 1.4% of STRs are from the government, and only 0.3% are owned by DFS.

**Table 14: STRs forwarded to the FIU by category of financial institutions (2008 – 2018)**

	2014	2015	2016	2017	2018	%
Banks	67	73	66	91	53	<b>97.49</b>
Financial Establishment	0	0	0	0	<b>0</b>	<b>0</b>
Decentralised Financial Systems	1	0	0	1	1	<b>0.84</b>
Financial Systems of the Post Office	0	0	0	0	0	<b>0</b>
Bureaux de Changes		0	0	0	0	<b>0</b>
Companies of Money and Value Transfer	0	0	0	0	0	<b>0</b>
Insurance Companies	0	0	0	0	0	<b>0</b>
Electronic Money Establishments	0	0	0	0	0	<b>0</b>
Financial Market Operators	0	0	0	0	0	<b>0,</b>
Customs Administration	0	0	3	0	0	<b>0.84</b>
Gambling Gaming companies	0	0	1	0	0	<b>0.28</b>
Others (DNFBPs & monitoring authorities)	0	0	0	2	0	<b>0.50</b>
<b>TOTAL</b>	<b>68</b>	<b>73</b>	<b>70</b>	<b>94</b>	<b>54</b>	<b>100</b>

221. Insurance companies are yet to file an STR to the FIU. No DNFBP reported suspicious transactions in the period between 2008 to 2016 period. However, according to the NRA, a notary firm filed a suspicious transaction report on 25 August 2017.

222. The absence of suspicious transaction reports by DNFBPs can be explained by the lack of compliance mechanisms within the sector, the non-application of administrative and punitive sanctions for non-compliance with AML/CFT obligations and the absence of AML supervision by the appropriate self-regulatory authorities.

223. To prevent tipping-off, the information relating to the STR is only accessible to the staff of compliance units, to Executive Management, and Internal Auditors, and are only communicated to the FIU. Concerning STR archives, they are kept in the compliance department in conditions that guarantee their confidentiality:

### ***Internal Controls and legal/ regulatory requirements impending implementation***

224. There is variation in the quality of internal controls and industry practices across sectors. The organization of compliance system is clearly stated in Instruction n° 02-2007/RB of 02 July 2007. To ensure its adequacy with the new uniform law relative to AML/CFT in members states, the BCEAO adopted a new instruction n°007-09-2017 of 25/09/2017. The said instruction borders on the application and implementation modalities by financial institutions of the uniform law 016/2016 relative to AML/CTF in UEMOA member states.

225. On the basis of these instructions and provisions of Article 23 of the 016-2016/AN law of 03 May, 2016, relative to the fight against money laundering and terrorist financing, financial institutions have the obligation to put in place initial and ongoing training and information programs for staff members on AML/CTF issues. The implementation of Circular N° 04/2017/CB/ of 27 September 2017 on the organization of internal control systems in credit establishments of the UEMOA, permits them to accord an important role and place to compliance mechanisms in their internal provisions. The financial institutions met by the evaluation team, notably the banks, have developed internal policies and procedures that take account of their ML/TF risks.

226. Insurance companies have internal compliance mechanisms. In fact, in conformity with the provisions Regulation n° 4 of the CIMA on AML/CFT, each company has appointed a compliance officer and have put in place an internal training program which is monitored by the audit department of the company to ensure its implementation. Insurance companies implement their AML/CTF obligation, however, their information system does not allow them to effectively link clients' transactions to their profiles. In other words, Politically Exposed Persons are not yet effectively captured by their internal compliance mechanisms.

227. **DFS.** Compliance officers have been appointed in certain institutions but some weaknesses have been identified in the operationalization of internal compliance programs.

228. Within the DNFBP sector, only the accountants sub-sector has a functioning compliance mechanism, because of the fact that they apply international norms in their profession.

229. **Securities houses.** These have internal compliance programs that take account of the products and services offered as well as the profile of the customers. In every security firm,

there is an internal control officer that also ensures compliance but there is no officer specially dedicated to AML/CTF issues.

230. **Other Financial Institutions.** This category comprises of bureaux de change; money transfer companies; leasing and factoring, issuers of electronic money. Each sub-category has compliance mechanisms except the transport of value sub-sector: However, these compliance units do not have sufficient resources to fulfil their AML/CFT mandates.

231. Apart from the accountants, the majority of DNFBPs do not have internal compliance units and programs; neither do they have AML/CTF officers appointed specifically to implement the obligations defined by the texts in force.

232. **Burkina Faso has achieved a low level of effectiveness for Immediate Outcome 4.**

## CHAPTER 6. SUPERVISION

### *Key Findings and Recommended Actions*

#### ***Key Findings***

1. The regulatory measures in place to prevent criminals and their associates from participating in the ownership, control or management of financial institutions are generally sound. Supervisory authorities of FIs carry out appropriate checks on the Directors and Managers both at the stage of incorporation and throughout the life span of the financial institutions.
2. Burkina Faso does not yet have a designated AML/CFT oversight authority for DNFbps. Approval and authorisation procedures are undertaken by the respective supervisory authorities or self-regulating bodies. However, the AML/CFT component is generally not taken into account.
3. The banking sector regulatory authorities (DGLTCPD, BCEAO and the Banking Commission) and the insurance sector have a good understanding of their ML/TF obligations and the ML/TF risks in the sector, unlike the regulatory authorities of other financial institutions. Risk-based supervision is being implemented in the banking sector. However, the supervisory authority has no classification of the institutions subject to their ML/TF risk profile. CREPMEF and CIMA have not put in place a methodology and appropriate supervisory tools to carry out risk-based supervision.
4. Off-site AML/CFT inspections in the banking sector are conducted on a regular and permanent basis, while on-site inspections are virtually non-existent. Such inspections are inadequate in other financial institutions<sup>38</sup> and non-existent in DNFbps. Strengthening the human and financial resource capacities of supervisory bodies remains a major challenge for the adequate supervision of reporting entities.
5. The legal and regulatory frameworks governing ML/TF supervision are satisfactory and provide for a wide range of administrative, monetary and criminal sanctions for non-compliance with AML/CFT requirements. However, these sanctions, with the exception of injunctions, are rarely used in practice. These injunctions are not shared with the FIU or the Burkina Faso Prosecutor's Office, contrary to the provisions of Article 112 of the AML/CFT Act. As such, it is difficult to establish whether such injunctions are dissuasive, proportionate and effective.

#### ***Recommended actions***

1. Burkina Faso should designate the authorities in charge of monitoring the implementation of AML/CFT requirements by DNFbps, with sufficient powers to conduct inspections and apply sanctions. Furthermore, the role of the appropriate self-regulatory authorities of these entities should be enhanced.
2. Burkina Faso should ensure that all FI supervisory bodies have the same level of understanding of the AML/CFT framework by focusing on capacity building for the regulators of non-bank financial institutions.
3. Financial institutions' regulatory authorities should establish risk-based AML/CFT supervision, taking into account the findings of the NRA and their own assessment. With regard to credit institutions, in particular, the General Secretariat of the UMOA Banking

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<sup>38</sup> Particularly the MVTS, the approved foreign exchange operators, the Electronic Money Companies

Commission should incorporate the new provisions of the Uniform Law into the rating system and establish a classification of credit institutions according to their ML /TF risk profile.

4. Like the BCEAO<sup>39</sup>, the regulators of insurance companies and capital market operators should issue directives on the enforcement of the Uniform AML/CFT Law.
5. The FI regulatory authorities should increase the frequency of on-site inspections on the AML/CFT requirements of their respective reporting entities.
6. Supervisory authorities should undertake more capacity building activities for reporting entities regarding their AML/CFT obligations to compliment the efforts of the FIU.
7. Regulatory authorities should improve the meting out of sanctions on their reporting entities for failing to comply with the AML/CFT requirements provided for in the AML/CFT Act and in specific instruments in order to increase overall compliance with the AML/CTF regime. These sanctions must be brought to the attention of the Faso Prosecutor’s Office and the FIU in line with Article 112 of the Burkina Faso AML/CFT Act No. 016-2016 of 3<sup>RD</sup> May, 2016.
8. Adoption by respective supervisory authorities of credible & systematic risk-based AML/CFT inspection procedures, effective and dissuasive administrative penalties for non-compliance, and internal guidelines for supervisors to ensure administrative sanctions are fairly & equitably applied.

233. The relevant Immediate Outcome considered and assessed in this chapter is IO.3. The relevant Recommendations for assessing the effectiveness under this section are R26-28, and R34 and 35

### **Immediate Outcome 3 (Supervision)**

234. AML/CFT supervision in Burkina Faso is multi-faceted involving several sectoral authorities at Community levels as follows:

- The DGTCP of the Ministry of Finance (MINEFID), the BCEAO and the UMOA Banking Commission and DGTCP of the Ministry of Finance for banks, financial institutions and DFS<sup>40</sup> ;
- The CREPMF for capital market operators;
- The CIMA, Regional Insurance Supervision Commission and Insurance Department of the DGTCP for insurance and reinsurance companies.

235. The Laws establishing the Statutes of the Community Authorities and the Decrees establishing the Departments at national level confer on them wide-ranging powers to regulate and supervise their accountable institutions on AML/CFT-related issues. The BCEAO, Banking Commission and MINEFID have a perfect understanding of their AML/CFT

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<sup>39</sup> Instruction No. 007-09-2017 of 25 September 2017 on the application of the Uniform Law on the fight against money laundering and terrorist financing in UEMOA member States by financial institutions

<sup>40</sup> Order No. 05472 of the Minister of State, Minister of the Economy and Finance of 21 June 2010 on the organization of the Directorate for the Regulation and Supervision of Decentralized Financial Systems, published in the Official Gazette No. 6553 of 30 October 2010.

requirements. However, the level of understanding of the ML/TF risk by the CREPMF and CIMA is low.

236. A comprehensive monitoring framework for AML/CFT supervision has been developed in the credit institutions sector, contrary to other sectors. However, the banking sector's Supervisors are still grappling with the challenges of capacity building as well the human and financial resources allocated to AML/CFT issues.

237. With regard to DNFBPs, there is no designated competent authority to regulate the sector for AML/CFT purposes. The FIU informed the Assessors that a proposal for the designation of the competent AML/CFT authorities for DNFBPs is being formalized. The non-existence of sector supervisory authority has a negative impact on the monitoring of the implementation of AML/CFT measures by DNFBPs.

*Licensing, registration and controls preventing criminals and associates from owning or becoming beneficial owners of, or holding, a significant interest in or control of financial institutions or DNFBs*

### **Financial Institutions**

238. To carry out their operations in Burkina, financial institutions obtain a license or authorization which is issued by the regulatory, supervisory or monitoring authorities (MINEFID, BCEAO, UMOA Banking Commission, CREPMF and CIMA).

239. More specifically, the Banking Act<sup>41</sup> and Directive No. 017-04/2011 establishing the list of documents and information required for the granting of a license to operate as a credit institution, provide the framework for the registration and various authorizations concerning credit institutions. A set of documents and information are required for both legal and natural persons acting as shareholders, directors and managers<sup>42</sup> and regarding the origin of the funds. To have more control over certain groups of subsidiaries whose parent companies are based outside the UEMOA Zone, the Banking Commission sometimes request the incorporation of a parent company for its subsidiaries in any UEMOA Member State for the purpose of conducting a consolidated supervision over such entities. In addition, the UMOA Banking Commission, in accordance with the Memoranda of Understanding on cooperation and information sharing with a jurisdiction, requests for information on institutions or persons that have operated that jurisdiction.

240. For the **DFS**, Articles 7 and 8 of Act No. 023-2009/AN of 14<sup>th</sup> May 2009 outline the provisions applicable to their licensing and BCEAO Directive No. 005-06-2010 of 14<sup>th</sup> June 2010 defines the information required in the application for licensing of decentralized systems in UMOA member States subject to BCEAO supervision, in accordance with the provisions of Article 44 of the above-mentioned Law. The requirements for registration or licensing for the **issuance of electronic currencies** are governed by Directive No. 008-05-2015 of 21<sup>st</sup> May 2015. For the **insurance sector**, the CIMA Code and its enforceable regulations provide for a process for the licensing of companies and brokers, as well as their managers and directors. This process includes fit and proper test and a background check. In this regard, and pursuant to the provisions of Articles 20.1 and 315.2 et seq. of the CIMA Code, the granting of licenses

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<sup>41</sup> Articles 13, 14, 15, 18 & ors.

<sup>42</sup> Article 25 of the Banking Law

by MINEFID shall be subject to approval by the CRCA. The decisions and opinions of the CRCA are enforceable and may only be repealed by the CIMA Council of Ministers and within 2 months of their notification. With respect to **capital market stakeholders**<sup>43</sup>, the requirements for licensing and authorization are provided for under Article 21 of the Annex on the composition, operation and functions of the CREPMF and by the CREMPF Directive No. 4/97 issued on 29<sup>th</sup> November, 1997.

241. For credit institutions, insurance companies and capital market operators, the licensing process provides for specific due diligence to ensure that shareholders, both natural and legal persons, are sufficiently well informed. With regard to banks, shareholders with at least 5% of the voting rights or share capital are required to submit, for natural persons, a legally certified statement on the assets situation, the source of the funds used to subscribe to the capital of the future establishment and the legality of these funds in accordance with the AML/CFT legislation, and a legally certified statement on the legality of the funds, by any authorized representative of each legal entity.

242. The same requirements are provided for with regard to insurance companies and capital market operators for their shareholders holding at least 20% and 10% of the voting rights or share capital, respectively. Similarly, for capital market operators, the CREPMF, in its approval process, provides for the request for certain information from regional and foreign stock exchanges as well as from other members of the Financial Stability Committee concerning other reporting bodies.

243. For the accreditation of directors and managers, in addition to the documents relating to the competence and sound reputation criterion, applicants are required to provide a sound reputation clearance validated by the Burkina Faso Prosecutor's Office. This validation, unlike the current regulation and practice, is not usually accompanied by any investigation report. This situation is believed to be the outcome of a lengthy investigation procedure.

244. The licensing procedure, as described, clearly prevents criminals and their accomplices from owning or becoming shareholders, managers or directors of financial institutions. The process is also audited throughout the life span of the institution and its managers and directors, through both off-site and on-site inspections. However, most supervisory authorities did not mention cases of license refusals or withdrawals to the Assessors. The supervisory authority for bureaux de change provided statistics which indicated that 5 applications for licenses were rejected between 2016 and 2018; other supervisors stated that they have denied certain managers and directors the right to operate due to non-compliance with the requirements.

### **Designated Non-Financial Businesses and Professions (DNFBPs)**

245. At the time of the on-site visit, there was still no designated AML/CFT Supervisory authority for **DNFBPs**. However, under the rules of each group of stakeholders, although membership is voluntary, procedures for operating licensing or authorization are regulated, or even self-regulated. However, the AML/CFT component is not taken into account.

246. With regard to the Legal and Accounting Professionals (Lawyers, Notaries and Chartered Accountants), entry into the profession is governed by the Community Regulations. In these procedures, certain requirements are considered such as qualifications, skills and sound

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<sup>43</sup> BRVM, Central Depository / Settlement Bank, SGI, SGP, Business Providers

reputation of the various professionals involved in this sector, or even in the form of competitive selection for Notaries. The framework for membership accreditation is in accordance with the provisions of Act No. 0048-2005/AN of December 20, 2005 governing the establishment of the National Association of Chartered and Certified Accountants and regulating the professions of Chartered accountant, certified accountant and the exercise of the mandate of the statutory auditor. ONECCA<sup>44</sup> is the self-regulatory body of Chartered Accountants and Certified Accountants. The operating license is subject to examination by the *Commission Nationale du Tableau*, which includes a Government Commissioner appointed by Decree to ensure compliance with the rules and regulations. ONECCA did not submit to the Assessors any application rejected by the Commission.

247. The Bar Association is the self-regulatory body for **lawyers**, and the license to practice as a lawyer is provided for in Regulation No. 05/CM UEMOA of 25<sup>th</sup> September 2014 on the harmonization of the rules governing the profession of lawyers within the UEMOA region. CARPA<sup>45</sup> sub-accounts are opened for each member Chamber for the monitoring of the lawyers' profession. CARPA does not include the AML/CFT component in its operation. The Bar Association may also impose sanctions that may be repealed only by the Court of Appeal. The Bar Association informed the Assessors that no sanctions had been imposed on a lawyer in the last 4 years.

248. Notaries are monitored by the Burkina Faso Prosecutor's Office and self-regulated by the National Order of Notaries. However, the Burkina Faso Prosecutor's Office, during his inspection mission, deplored the lack of expertise and any form of assistance in this area. The National Order of Notaries has no power to supervise or mete out sanctions on its members on matters of AML/CFT.

249. Dealers in precious stones and precious metals are regulated and supervised by the Ministry of Mines and Quarries (MMC) pursuant to the provisions of Act No. 036-2015/CNT on the Mining Code of Burkina Faso, the Law No 028-2017/NA of 18 May 2017 on the organization of the marketing of gold and other precious substances in Burkina Faso and Decree No. 2017- 0036/PRES/PM/MEMC/MATDSI/MINEFID/MEEVCC/MCIA of 26<sup>th</sup> January 2017 establishing the management of mining permits and licenses. The nature of operating licenses in this sector is different for gold miners, which is a difficult sector to control, especially as it involves both artisanal gold miners and industrial companies. For gold miners, an identification card, developed in collaboration with the Ministry of Security, is issued. This card is used to allocate gold miners to well-defined sites. For industrial companies, exploration permits are issued. The delivery of this permit takes into account the companies' good reputation, tax clearances, technical and financial capacities as well as work and investment programmes. A quarterly report is produced by the General Mining Department. However, AML/CFT aspects are not taken into account in this report. The Chamber of Mines also noted the limited attractiveness of the Burkinabe mining sector<sup>46</sup> following the adoption of the mining law mentioned above and gradual increases in the tax burden for mining companies. This could leave considerable room for the informal sector, which could be a significant threat to the sector. The ITIE, for the purposes of good governance and transparency, analyses and monitors large investments in the extractive industries sector. According to ITIE Recommendations 2.5, extractive industries should publish information on beneficial ownership (beneficiaries) and disclose the identity of shareholders of companies

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<sup>44</sup> National Order of Chartered Accountants and Chartered Accountants (ONECCA).

<sup>45</sup> Autonomous of Financial Regulations

<sup>46</sup> See WCD document entitled: Memorandum Hearing with the President of Burkina on Monday April 24, 2017

operating or investing in the extractive sector by 1<sup>st</sup> January, 2020. This process should involve all MMC entities (DGMG, DGCM, and National Mining Commission) and the Ministry of Trade, Industry and Handicrafts (CEFORE, *Direction des Guichets Uniques du Commerce et de l'Investissement* (DGU-CI)) in charge of approving stakeholders to operate in the mining sector. A guide has been developed for this purpose by the ITIE Permanent Secretariat in order to inform stakeholders.

250. The license for **Real Estate Agents and Developers** is issued pursuant to the provisions of Act No. 057-2008/AN of 20<sup>th</sup> November 2008 promoting real estate in Burkina Faso and Decree No. 2009-223/PRES/PM/MIIU/MEF of 20 April 2009 on the requirements for the licensing and exercise of the real estate and/or land development activity. Thus, in accordance with the provisions of Articles 2 and 3 of the Decree, the license for the exercise of real estate and/or land activity is issued by the Minister of Urban Planning following examination by the National Approval Commission of a duly prepared application for this purpose. However, it was brought to the attention of the Assessors that the real estate development and sale is not limited to real estate agents and developers. Other natural and legal persons may do so while complying with the provisions relating to real estate constructions.

251. The regulatory and supervisory framework for **Casinos and Gaming Houses** is defined by Act No. 027-2008/AN of 8<sup>th</sup> May, 2008 regulating gambling in Burkina Faso, Decree No. 2014-347/PRES/PM/MEF/SECU of 12<sup>th</sup> May 2014, establishing the operating requirements for slot machine establishments in Burkina Faso, and all orders issued pursuant to this Decree. The operating license is issued by a Presidential Decree following an opinion of a Special Games Commission, chaired by a Judge. MINEFID is responsible for the licensing procedure in collaboration with MSECU, which carries out a background check on all partners, shareholders and members of the Management Committee. During this investigation, applicants are interviewed. The investigation report and the application submitted are forwarded to the Special Games Commission for its opinion. However, the AML/CFT components are not specifically provided for in the licensing process. This could be a significant vulnerability with regard to the AML/CFT system.

252. The activities of **NPOs** are governed by various instruments<sup>47</sup> in Burkina Faso. They are subject to two accreditation regimes: reporting and licensing. NPOs that are subject to licensing<sup>48</sup> are subject to an appropriate authorization and control regime. NGOs and Development Associations (NGOs/DAs) generally sign agreements for a privileged partnership with the State because of their membership and strong involvement in the implementation of Burkina Faso's development policies and strategies designed to improve the living conditions of the populace. The other NPOs<sup>49</sup> subject to the reporting regime are not manageable, given their number and geographical, economic and social diversity. They could represent a major ML/TF risk in Burkina Faso. Since the adoption of the Law No. 064 on freedom of association (Article 51), the conditions of authorization to practice NPOs takes

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<sup>47</sup> Decree n ° 2015-145 of February 04, 2015 fixing the modalities of intervention of the non-governmental organizations. It defines in particular the operational framework for monitoring the activities of these structures, in particular the exercise of controls on the origin or destination of their financial resources.

Decree No. 2017-0015/PRES/PM/MATDSI/MINEFID of 23/01/2017, establishing a national registry of Non-profit Organizations. Law No. 008-2017 / NA of 23 January 2017 on the legal regime applicable to foundations in Burkina Faso. This law specifies the conditions for the creation of foundations, the types of foundations, the rights and obligations of foundations, the organization and the applicable sanctions; Law No. 064-2015/CNT of 20/10/2015 on freedom of association.

<sup>48</sup> 302 at the time of the on-site visit.

<sup>49</sup> 4,317 at the time of the on-site visit.

account of some aspects relating to AML/CFT. In addition, Decree No. 2017-0015/PRES/PM/MATDS/MINEFID of 23<sup>rd</sup> January 2017 establishing a national register of NPOs in Burkina Faso was promulgated. This Decree establishes a national register for the registration, centralization and monitoring of NPOs. It also designates the authority responsible for maintaining and managing the register. However, it is yet to be operational in some aspects. Due to lack of supervisory agency for the NPOs, no action has been taken against unregistered NPOs.

### ***Supervisors' understanding and identification of ML/TF risks***

253. The banking sector regulatory authorities (the BCEAO, Banking Commission and Ministry of Finance) have an adequate and continuous level of understanding of the risks of ML/TF in the sector, which is not the case with the regulatory authorities of other financial institutions.

254. The internal control system established by the Banking Commission through Circular COB 003-2011/CB/C of 4<sup>th</sup> January 2011 defines a methodology for analyzing and monitoring all risks inherent in products, services, customers, distribution channels and geographical locations, including inherent ML/TF risks. This methodology includes a half-yearly statement based on a questionnaire developed for credit institutions and a report on their internal control system.

255. Similarly, the UMOA Banking Commission<sup>50</sup> has established a UMOA Credit Institution Rating System (UMOA-SNEC) which is a tool for rating financial institutions based on a set of ten (10) criteria, including seven (7) fundamental and three (3) complimentary. The fundamental criteria relate to shareholders' equity, corporate governance, information and reporting systems, internal control, financial structure, risk management and financial performance. They are used to position credit institutions on a risk scale. The three (3) additional criteria, relating to the environment, shareholding and development prospects, are used to refine the first rating based on the so-called fundamental criteria and establish a segmentation of risk levels. The SNEC-UMOA includes a list of one hundred (100) risk assessment sub-criteria, each broken down into ten (10) sub-criteria whose ratings are synthesized through a simple arithmetic average.

256. At the end of the various reports, including desk audits, on-site inspections and internal control reports, credit institutions are classified in accordance with their risk profile. This system ensures that the regulatory authorities of the banking system can properly monitor ML/TF risks. However, the Assessors were unable to meet with the Secretariat General of the Banking Commission and, therefore, did not have access to information on the classification of institutions according to their risk profile. In addition, permanent staff capacity building and the strengthening of human and financial resources continue to be a major challenge for the banking system's regulatory authorities to ensure increased supervision of their reporting bodies. Furthermore, the risk monitoring methodology should incorporate the provisions of the new Uniform Law on AML/CFT. Finally, the Financial Stability Committee should incorporate the monitoring of consolidated AML/CFT risks in the financial system into its supervisory framework.

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<sup>50</sup> Source: 2015 Annual Report of the CB / UEMOA

257. Insurance market regulators and capital market operators are yet to incorporate a risk-based approach into the supervisory regimes of their various reporting bodies. Offsite and on-site inspection methodologies incorporate more prudential risks than those related to AML/CFT. However, since October 2012, the CREPMF has been operating automated regional stock market monitoring software. This software is intended to ensure market integrity by detecting practices that could amount to stock market offences, visualize and analyze transactions carried out at the BRVM and ensure greater transparency of the capital market and better protection for investors.

258. For DNFBNs, since no AML/CFT regulatory and supervisory authority has been designated, a risk-based assessment has not been conducted. The NRA was an opportunity to identify the risks faced by DNFBNs. However, the challenges of effective management of ML/TF risks by DNFBN regulators will continue to be huge, considering the complexity, diversity and size of this sector.

***Risk-based supervision of compliance with AML/CFT requirement***

259. The banking sector supervisory authorities conduct risk-based supervision through off-site and on-site inspections. Although thematic AML/CFT inspections are few and far between or non-existent, some on-site inspections have AML/CFT components. Similarly, in accordance with the provisions of the Memoranda of Understanding among the banking sector supervisory authorities, the Banking Commission conducts certain joint AML/CFT missions with other regulators. The number and areas covered by these joint missions were not communicated to the assessors.

260. Assessors were unable to meet with the SG of the Banking Commission thus, it was impossible to access the inspection reports of one particular bank and assess the areas covered by the inspectors and their findings.

261. No AML/CFT-related inspection conducted by the supervisory authorities for the insurance sector and capital market operators was reported to the Assessors. The Assessors were unable to meet with the Community’s authorities in charge of these sectors.

**Table 15. Comparative statistics on prudential and AML/CFT supervision by FIs S=supervisory authorities**

	2015		2016			2017		June 2018
	/P <sup>51</sup>	S/AML <sup>52</sup>	C/P	S/AML	C/P	S/AML	C/P	S/AML
<b>Financial Institutions</b>								
<i>Banks</i>	13 <sup>53</sup>	0	0	0	4	0	0	5
<i>Insurance Companies</i> <sup>54</sup>	10	0	7	0	7	0	5	0

<sup>51</sup> Specific checks

<sup>52</sup> AML / CFT supervision

<sup>53</sup> Supervision missions, in collaboration with DGTCP and the Directorate General of Customs (DGD), of all authorized intermediaries

<sup>54</sup> These are general inspections that integrate the AML / CFT components. There were no specific AML / CFT examinations

<i>Market Operators</i>	0	0	0	0	0	0	0	0
<i>MFIs</i> <sup>55</sup>	28	0	25	0	29	0	13	0
<i>Foreign exchange bureaus</i>	1	0	0	0	0	0	0	0
<i>MVTS</i>	1	0	1	0	1	0	1	0
<b>Total FIs</b>	<b>53</b>	<b>0</b>	<b>33</b>	<b>0</b>	<b>41</b>	<b>0</b>	<b>19</b>	<b>5</b>
<b>DNFBPs</b>								
<i>Casinos and other lottery companies</i>	0	0	0	0	0	0	0	0
<i>Real Estate Developers/ Agents</i>	0	0	0	0	0	0	0	0
<i>NPOs</i>	0	0	0	0	0	0	0	130
<i>Dealers in gems and precious metals</i>	0	0	0	0	0	0	0	0
<i>Car dealers</i>	0	0	0	0	0	0	0	0
<i>Legal and accounting professionals</i>	0	0	0	0	0	0	0	0
<b>Total DNFBPs</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>130</b>

Source: MINEFID/FIU 2018

262. These statistics reveal that over the last four years:

- only 5 out of the 15 active Burkinabé banks were supervised on AML / CFT issues;
- there were no inspections (of FIs and DNFBPs) for AML/CFT-related issues. On the other hand, 130 NPOs were visited on AML/ CFT issues.

263. The very low level of supervision of FIs and the lack of supervision of DNFBPs constitute one of the major ML/TF vulnerabilities, which is also reflected in the NRA. This situation is unlikely to enable the authorities to understand how the reporting entities are implementing their AML/CFT requirements effectively.

#### ***Remedial actions and effectiveness, proportionate and dissuasive sanctions***

264. The very low level of supervision by the FI supervisory authorities did not make it possible to assess the degree of implementation of recommendations by reporting entities, based on the periodic analysis of the implementation of the action plans.

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<sup>55</sup> Microfinance Institutions

265. BCEAO previously applied sanctions against two banks respectively for opening a domestic foreign currency account for a resident without prior approval and for effecting a transfer on behalf of a resident company without a Foreign Exchange Authorization being issued by the DGTCP and for holding an account abroad for the same company. However, authorities never applied sanctions for breaches relating to AML/CFT requirements.

266. In the absence of AML/CFT-related sanctions, assessors could not assess their effectiveness, proportionality and dissuasiveness.

*Table 16. Supervision missions and/or sanctions against banks*

PERIODS	NUMBER OF SUPERVISION ON-SITE VISITS	TARGET OF THE ONSITE VISITS	SANCTIONS AFTER CHECKS
<b>Pursuant to Regulation No. 09/2010 / CM / UEMOA of October 1, 2010 relating to the external financial relations of UEMOA Member States</b>			
<b>2013</b>	<b>13</b>	Supervision, in collaboration with the DGTCP, the General Directorate of Customs (DGD) and the Directorate of Single Points of Commerce and Investment, covering all approved intermediaries as follows: <b>12 banks</b> and the <b>National Post Corporation (SONAPOST)</b> , on transactions executed in 2012 relating to compliance with the domiciliation procedures for exports and imports, the modalities involved in holding accounts in foreign currencies and the repayment of transfer commissions out of the WAMU zone.	Establishment of a non-interest-bearing deposit of 9.2 billion over 2 weeks  (one bank)
	<b>06</b>	Supervision of <b>rapid money transfers</b> outside the WAMU zone done by BCB, BSIC, BOA-Burkina-Faso, ORABANK, ECOBANK-Burkina and UBA sub-agents	
<b>2014 to 2017</b>	<b>Every year</b>	<b>Rapid money Transfer</b> in collaboration with the DGTCP	
<b>2016 and 2017</b>	<b>04</b>	<b>Banks</b> By the Banking Commission UMOA	
<b>On the Anti-Money Laundering and Terrorist Financing (AML / CFT) programme</b>			
<b>12 March to 13 April 2018</b>	<b>05</b>	<b>Banks</b> By the Banking Commission	

Source: BCEAO 2018

**Table 17. Nature of breach and sanctions imposed on supervised banks**

PERIOD	NUMBER OF BANKS	NATURE OF DEFAULT	SANCTION
<b>2013</b>	1	Opening of an internal account in foreign currency in the name of a resident without prior authorization	Establishment of a non-interest-bearing deposit of 9.2 billion over 2 weeks
<b>2015</b>	1	Execution of a transfer on behalf of a resident company without Authorization being issued by the	Establishment of a non-interest-bearing deposit

		DGTCP – the same company holding an account abroad;	of 10 billion over 2 weeks.
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Source: BCEAO 2018

**Table No 18. On-site supervision and/ or sanctions against Decentralised Financial Institutions (DFS) implemented jointly with DGTCP/MINEFID**

PERIOD	NUMBER OF VISITS	SANCTIONS AFTER INSPECTION
<b>2016</b>	<b>04</b>	Two (02) withdrawals of licenses
<b>2017</b>	<b>04</b>	Nine (09) withdrawals of licenses
<b>2018</b>	<b>02</b>	<ul style="list-style-type: none"> <li>- Eight (08) withdrawals of license</li> <li>- Resignation from office and suspension of a Director from any activity within a financial institution controlled by the Banking Commission</li> <li>- -Withdrawal of licenses of eighteen (18) DFS and liquidation in progress at the level of the DGTCP</li> <li>- -Hearing on three cases (03) DFS</li> <li>- - Provisional license of two (02) DFS</li> </ul>

Source: BCEAO 2018

**Table No 19. Onsite Supervision and/ or Sanctions against licensed foreign exchange operators**

PERIODS	NUMBER OF VISITS		SANCTIONS APRES CONTROLES
	Examination of records	On-site examination	
<b>2014</b>	All	0	After approval by the BCEAO, withdrawal by Order No. 20142012 / MEF / SG / DGTCP / DAMO / SERFI of 18 June 2014 of the Minister of the Economy and Finance, of twenty (20) licenses, due in particular the failure to comply with their reporting obligations to the DGTCP and the BCEAO.
<b>2015</b>	0	10	No sanctions
<b>2016</b>	0	0	
<b>2017</b>	0	0	
<b>2018</b>	0	0	

Source: BCEAO 2018 (supervision on-site visits pursuant to Regulation No. 09/2010 / CM / UEMOA of 1 October 2010 on the external financial relations of UEMOA member States).

### ***Impact of supervisory actions on compliance***

267. Due to the very low level of supervision, the impacts of banking supervisory authorities' actions on the degree of compliance of their respective reporting entities cannot be demonstrated. However, after some meetings organized with professional associations and reporting entities, training, information and awareness-raising activities, cooperation and exchanges with the FIU and other law enforcement authorities, governing bodies and directors of banks and financial institutions became aware of their central role in preventing ML/TF vulnerability in their respective entities. Burkina Faso provided information on the nature and type of training, and awareness-raising activities in the financial sector as indicated below.

**Table 20. Participation of BCEAO officials in AML/CFT training**

<b>DATE/PLACE/TRAINER</b>	<b>THEME</b>
<b>22 - 23 February 2016 Ouagadougou FIU</b>	Training on the AML / CFT Control Guide for Microfinance Institutions, Foreign Exchange Chartered Accountants and Insurance Brokers and the AML / CFT Obligations for Reporting Professionals (Microfinance Institutions), approved foreign exchange and insurance brokers).

Source : BCEAO 2018

268. With regard to insurance authorities and capital market operators, actions on their reporting entities are still very limited due to a lack of supervision.

269. As far as DNFBPs are concerned, since the supervisory authorities have not yet been designated, there can be no impact on their level of compliance.

### ***Promoting a clear understanding of AML/CFT obligations and ML/TF risks***

270. The sectoral enforcement directives on AML/CFT and internal control system ordered by the regulatory authorities of credit institutions, insurance companies and capital market operators have contributed to a good understanding by FIs, of their AML/CFT obligations. These specific instruments have enabled these institutions to develop their internal procedures. The NRA report is a document which, once implemented, should also allow FIs to increase their understanding of AML/CFT risks. However, in the light of developments in FATF standards and the new Uniform Law, these specific instruments should be adapted for non-bank FIs.

271. The information and awareness-raising activities conducted by the regulatory authorities have also enabled FIs to increase their understanding of their AML/CFT obligations. However, this understanding is higher among banks than other non-bank financial institutions and DNFBPs.

272. The FIU, in turn, conducted training and awareness-raising activities through training workshops, meetings and working sessions with reporting entities at the request of reporting entities, especially during the NRA exercise. Annual reports, periodic publications and the FIU website are also sources of information and awareness-raising for reporting entities. However, feedback from the FIU is not generally effective. Most of the financial institutions contacted complained about this deficiency. Since this feedback is also a means of promoting the understanding of reporting entities, the FIU should try to quickly resolve this deficiency. The

FIU should also step up its training and awareness-raising activities for DNFBPs and NPOs that have a low level of understanding of AML/CFT requirements.

273. Overall, the framework for AML/CFT supervision is still characterized by non-availability of information on ML/TF risk classification of financial institutions by supervisory authorities; very limited AML/CFT supervision; almost non-existent information on AML/CFT sanctions imposed on reporting entities and non-designation of AML/CFT supervisory agency for DNFBPs which the NRA identified as a high risk sector.

274. **The level of effectiveness achieved by Burkina Faso for Immediate Outcome 3 is Low.**

## Chapter 7. LEGAL PERSONS AND LEGAL ARRANGEMENT

### *Key findings and Recommended Action*

#### **Key findings**

1. The provisions of the OHADA define the framework for the creation of different types of legal persons in Burkina Faso. The public can access basic information on legal persons from the Commercial Court (TCO) and certain other competent authorities. However, this information is not easily accessible due to the weak computerization of the system and the fact that this information may not have been updated.
2. The national ML / TF risk assessment did not cover the identification and understanding of the ML/TF risks associated with the different types of legal persons in Burkina Faso.
3. As regards legal arrangements, the Burkinabé law does not provide for the creation of a trust in Burkina. However, although trust-like legal arrangements cannot be created under Burkina Faso law, foreign legal arrangements may operate in, or be administered from within Burkina Faso and measures to prevent their misuse and ensure their transparency are limited.
4. The AML/CFT AML / CFT Law 016/2016 requires reporting entities including TCSP and DNFPBs to collect beneficial ownership information on trusts, although in practice there is little understanding and information on these. Therefore, this information may not be available in case of investigations.
5. The company registry does not maintain information on beneficial owners of legal persons. Beneficial ownership information is collected and maintained by Financial Institutions however, Judicial Police Officers (OPJs) responsible for criminal investigations and prosecutions do not typically approach Financial Institutions for beneficial ownership information.

#### **Recommended actions**

Burkina Faso should:

1. Ensure that the basic information kept in the registry is more accurate and up-to-date, including by ensuring that legal persons are sanctioned for not updating basic information.
2. Conduct a comprehensive assessment of the ML/TF risks associated with all types of legal persons created in Burkina Faso, disseminate findings of the assessment to all stakeholders especially LEAs, supervisors and reporting entities and implement measures to mitigate the risks identified.
3. Ensure that lawyers and members of the independent legal profession are able to identify and maintain information on parties to a foreign trust.
4. Ensure comprehensive sanctions regime for non-compliance with information requirements and apply sanctions for breaches and maintain statistics on the sanctions applied to legal persons in the event of a breach of their AML / CFT obligations.
5. Consider establishing a central register of beneficial ownership of legal persons to ensure that the country has a range of measures available to collect information on the control and ownership structures of legal entities.
6. Establish measures to prevent misuse of foreign legal arrangements operating in, or administered from within, Burkina Faso and ensure that such legal arrangements are sufficiently transparent.

275. The relevant Immediate Outcome considered and assessed in this chapter is IO.5. The recommendations relevant for the assessment of effectiveness under this section are R24 & 25.

### ***Immediate Outcome 5 (Legal Persons and Arrangements)***

#### **Public availability of information on the creation and types of legal persons and arrangements**

276. The provisions of the OHADA Uniform Act on Commercial Companies and the Economic Interest Group, of 30 January 2014 define the framework for the creation of most types of legal persons in Burkina Faso. The following legal entities may be created for commercial purposes: commercial companies and Economic Interest Groupings (GIE), the Public Limited Company (SA), the Limited Partnership (SC), the Limited Liability Company (SARL) which may also be unipersonal (SURL), the simplified joint-stock company (SAS), the variable capital company, the civil society and the cooperative society. Other legal entities are non-profit organizations (NPOs) which comprise foundations, non-profit associations and NGOs.

277. The authorities have set up a one-stop-shop, the Enterprise Formalities Center (CEFORE) where the administrative formalities necessary for the creation, extension or takeover of companies, sole proprietorships or other legal persons can be undertaken. Information on the types of legal persons that may be established in Burkina Faso and the procedures for creating them are available at the CEFORE. Also, relevant information on the process for incorporating a company is also publicly available at the Trade and Real Estate Credit Register (RCCM) and the website of the CEFORE, and this information is accessible by the public.

#### **Identification, assessment and understanding of ML/TF risks and vulnerabilities of legal entities**

278. Burkina conducted a national ML/TF risk assessment (NRA) however, the national risk assessment did cover identification and understanding of the vulnerability of legal persons and the extent to which legal persons created in the country can be, or are being misused for ML/TF purposes. The NRA nevertheless, highlighted sectors with a high level of ML/TF vulnerability. These include the NPO sector, mining sector, transportation sector and real estate sector. A significant number of entities within these sectors are legal persons as such, there is the need to identify concrete risks and vulnerabilities posed by legal persons within the framework in which these sectors organized. The ML/TF vulnerabilities in these sectors are heightened by inadequate measures to determine beneficial ownership of legal persons. In addition, these sectors are mainly characterized by the absence of AML/CFT compliance mechanisms and limited AML/CFT supervision.

279. The authorities have not conducted a comprehensive formal assessment of the different types of legal person that includes examination of the relevant legal and regulatory framework in the particular context of Burkina Faso. The country has not carried out a review of cases where corporate vehicles were misused for criminal purposes to allow authorities identify typologies which indicate higher risk. The RCCM and other relevant bodies do not appear to appreciate the ML/TF risks associated with legal persons and arrangements and the FIU has

not examined how legal persons are abused for ML purposes. Furthermore, LEAs do not seem to have much experience about how legal persons have been misused for ML/TF purpose.

280. Overall, there is no system for ensuring that the vulnerabilities of domestic and foreign legal persons are adequately identified, assessed and understood.

### **Mitigating measures to prevent the misuse of legal persons and arrangements**

281. Burkina has some measures in place to prevent and mitigate the misuse of legal persons. The OHADA Uniform Law requires companies to maintain basic information including a register of shareholders. This information is held by the Register and is publicly available. Burkina has implemented measures that facilitate transparency in terms of the control and ownership structure of legal entities as indicated below.

- i. Reporting entities are required to obtain and maintain basic and beneficial ownership information when legal entities enter into a business relationship with them;
- ii. Registration is required for every type of legal person in Burkina Faso;
- iii. The creation of a legal entity requires registration with the RCCM, registration with the tax authorities and establishing a linkage or affiliation with social security.
- iv. Basic information is required when creating a legal person, this includes information on directors and shareholders. Specifically, the OHADA Uniform Law<sup>56</sup> requires that the articles of association should be established by a notarized deed or authenticated in the manner prescribed under domestic law. The article of association must contain basic information including information on (i) the identity of contributors of cash, and the amount of their contribution (ii) the identity of those that made contributions in kind or services and the nature and assessment of the contribution made by each of them and (iii) the identity of beneficiaries of special benefits and the nature thereof.
- v. the OHADA Uniform Law permits the use of bearer shares but requires that these must be dematerialized.

282. Although the information required by the OHADA Uniform Law is relatively extensive, there is no express obligation to obtain information on the beneficial owners. The CENFORE ensures that the information provided to it is complete and to some extent verifies the information. In particular, the involvement of the tax authority (through the granting of a unique tax identity number, IFU) and the social security in the company registration process improves transparency of the process and lower the risk of misuse of legal entities. Legal persons entering into a business relationship with financial institutions are required to provide basic and beneficial ownership information pursuant to the Uniform Law on AML/CFT. Some of the financial institutions noted that there were limited databases to verify the identity of beneficial owners and the financial institutions did not typically conduct independent verification on beneficial ownership.

283. Burkina has not conducted a comprehensive assessment of the ML/TF risks posed by the different types of legal persons, therefore implementing appropriate measures to mitigate the risk by these legal persons may be problematic. Nevertheless, certain apparent risks should be addressed. For instance, the OHADA Uniform Law is silent on the use of nominee

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<sup>56</sup> (Article 10)

shareholders and directors albeit, there are no mitigating measures to ensure that they are not misused for money laundering or terrorist financing purposes.

284. As regards trusts, although Burkina Faso's legal system does permit the creation of a trust under its law, there is no prohibition for trust activities to be conducted. In fact, the tax legislation and the Law n ° 016-2016 of May 3, 2016, on Anti-Money Laundering and the Combating the Financing of Terrorism requires relevant persons including lawyers and members of the *independent professions* acting as trustees to keep all information relating to their customers, this includes information relating to settlor and the beneficiary of foreign trusts and may include the trustee. The Act also requires FIs to obtain information on some of the parties to a trust when the client is a trustee. These provisions are aimed at improving transparency however, it did not appear that there were significant number of foreign trusts in the country and the effectiveness of these provisions could not be ascertained.

### **Timely access to adequate, accurate and current basic and beneficial ownership information on legal persons and arrangements**

285. Basic information is available to the public through the Trade and Real Estate Credit Register (RCCM). Also, the registration of the articles of association of the legal person is undertaken in the Registry of the Commercial Courts of Ouagadougou and Bobo- Dioulasso, and in CEFORE. Therefore, basic information on legal persons is held at the Commercial Courts and at CEFORE and the public can access information on companies created in Burkina Faso through the commercial register kept by the clerk of the Commercial Courts of Ouagadougou and Bobo-Dioulasso, through regional CEFORE and at the registry of the High Court (TGI) in the other localities. Basic information is accessible to the public, competent authorities (including police and gendarmerie services and judicial authorities) and financial institutions. With regard to associations, foundations and NGOs basic information can also be obtained from the official notice which the founders of legal entity are required to publish and at the Ministry of Public Liberties through the Directorate-General for Civil Liberties and Political Affairs (DGLPAP). There is also a register of civil societies, professions and trade, instituted by Decree No. 2016-163 / PRES / PM / MJDHPC / MINEFID of 08 April 2016, on the creation, organization and functioning of the register of civil societies, professions and trades, as well as national records with information on legal persons.

286. In the case where persons indicated in the register as shareholders are the beneficial owners, the authorities will be able to obtain beneficial ownership information provided the information is up to date. Although, basic information on legal persons can be accessed online, the authorities acknowledged that their system for searching basic and beneficial ownership information sometimes manual due to internet connectivity issues and in these instances access could be difficult. Moreover, the shortage of storage space for files at the registry has resulted in relocation of some of the files to another building and this may cause delays in accessing the files. Burkina recently enacted the law implementing the sanction regime prescribed under the OHADA Uniform law. The law provides for sanctions where basic information is not updated in accordance with the OHADA Uniform law. Implementation of the new law is as a nascent stage, therefore the system in place to ensure basic information is updated and accurate has not yet been tested. Financial institutions and DNFBPs are also required to identify beneficial owners when carrying out CDD measures. The Judicial Police Officers however, noted that financial institutions are typically invited to produce information on the basis of a court order and they seldom seek out beneficial ownership information directly from banks or other FIs and DNFBPs during an investigation. The LEAs did not appear to rely much on the beneficial

ownership information collected from CDD conducted by FIs and DNFBPs for ML investigations.

287. Burkinabe laws do not provide for the creation of a trust. However, trust activities can be conducted in the country. As noted above, members of the independent legal professions acting as trustee are required, by the tax legislation and the Law n ° 016-2016 of May 3, 2016 relating to anti-money laundering and the countering the financing of terrorism in Burkina Faso, to keep all information about their clients and information on beneficiaries to the trust including the beneficiaries of foreign trusts. FI are also required to obtain information on the parties to the trust when entering into business relationship with a trustee. There is a limited understanding of trusteeships by the competent authorities and most reporting entities, and it appears that they do not typically attempt to seek access to beneficial ownership information on trusts as trusts cannot be created under Burkina Faso's laws.

### **Effectiveness, proportionality and dissuasiveness of sanctions**

288. The revised Burkinabé Penal Code, adopted in March 2018 by Law No. 025-2018 has implemented measures relating to the penalties applicable to the offenses provided under the OHADA Uniform Act. Primarily enforcement action can be imposed in the event of a failure to register within the prescribed time limit in the case of a natural or legal person, the competent court may at the request of the Register of Trade and Real Estate Credit (RCCM) or any other applicant, make an order enjoining the interested party to proceed with its registration. The court may also order any natural or legal person registered with the RCCM to include additional information or amend information that was omitted during, or otherwise have the registration cancelled. Sanctions are also imposed on any person who fails to adhere to the provisions of the Act or has been fraudulent in the performance of any of the formalities prescribed by the Act. There are also sanctions for failure to update basic information at the RCCM. Although as regards basic and beneficial ownership information kept by reporting entities, sanctions for breaches of general record keeping requirements are provided for in Article 112 and 116 of the AML/CFT law. The authorities did not provide any information or statistics on the sanctions that have been imposed on legal persons or specific instances where sanctions have been imposed on reporting entities for failure to identify the beneficial owner or confirm the accuracy of the information.

289. **Overall, Burkina Faso's level of effectiveness for IO5 is low**

## CHAPTER 8. INTERNATIONAL CO-OPERATION

### *Key Findings and Recommended Action*

#### **Key findings**

1. Burkina Faso has a comprehensive legal framework for international cooperation, which is supported by a number of bilateral and multilateral agreements and treaties. The country provides a range of cooperation which includes MLA, extradition, intelligence/information exchange.
2. The numbers of incoming and outgoing MLA and extradition requests are low. The manageable numbers of incoming requests allow Burkina Faso to respond to the requests fairly promptly. The low number of outgoing request seems to indicate that Burkina Faso does not proactively seek international cooperation through MLA thus limiting the country's chances to pursue and investigate transnational criminals and their assets.
3. Burkina does not maintain comprehensive statistics on international cooperation.
4. Competent authorities have not fully demonstrated the effectiveness of the measures taken by them regarding freezing seizure confiscation and repatriation of assets based on a request by a foreign state.
5. The effectiveness of the international cooperation framework is weakened by the lack of a structured system for managing and tracking requests for international cooperation.

#### **Recommended Actions**

1. Competent authorities should make use of MLA more rigorously when conducting investigations on ML/TF or proceeds generating domestic predicates that are transnational in nature.
2. Judiciary authorities and the MAEC, should maintain comprehensive data on MLA and extradition requests. Similarly, LEAs and the commercial courts should respectively maintain statistics on information exchange and on requests relating to beneficial ownership information.
3. Conduct specialized training on ML/TF related international co-operation
4. Competent authorities should implement a case management system that monitors requests including requests made and received, actions taken, as well as the time taken to respond to the request to and incorporate a system of prioritizing requests taking into account the involvement of politically exposed persons in high-profile cases, the sum of assets involved; the seriousness of crime. This will facilitate follow-up actions on the request and aid compilation of statistics.

290. The relevant Immediate Outcome considered and assessed in this chapter is IO.2. The recommendations relevant for the assessment of effectiveness under this section are R.36 - 40.

#### ***Immediate Outcome 2 (International Cooperation)***

291. The ML/TF risks in Burkina have significant links to other jurisdictions. Burkina has been subject to repeated terrorist attacks in the last three years and the authorities have stated

that these attacks were financed by foreign elements. Statistics also indicate that a significant number of predicate offenses for money laundering investigations in Burkina have foreign elements, which makes mutual legal assistance indispensable.

### Providing constructive and timely MLA and extradition

#### MLA

292. Burkina has a fairly comprehensive legal framework for MLA. The country’s legal framework enables authorities to provide a broad range of assistance in relation to investigations, prosecutions, confiscations of ML and associated predicate offences including TF. Besides domestic legislations, Burkina is party to several bilateral and multilateral agreements that also form the basis for providing MLA to foreign countries. The *Ministry of Foreign Affairs and Regional Cooperation* (MAEC) is the competent authority for incoming and outgoing request for international cooperation. MAEC forwards the requests for MLA to the Director of Criminal Affairs and Seal, the focal person at the MOJ ministry who facilitates processing of the MLA by the Burkina courts. In this regard, most requests made by foreign countries follow diplomatic channels. Requests are often addressed to the prosecutor but are regularly processed in collaboration with the relevant national bodies. A request for assistance must include a detailed statement of any particular proceedings or request that the requesting State wants Burkina Faso to follow or execute (Article 139 (7) and (8) of Act No. 016-2016). The response to the request follows the same route.

293. The feedback received from requesting countries indicated that the cooperation was generally adequate. The requests were responded to within a reasonable timeframe and the quality of the responses were considered to be satisfactory. As indicated in the table below, 30 requests were processed between 2014 and 2018 with a significant increase in the number of requests within the last two years.

**Table 21. MLA requests received for ML /TF/ Predicate Offences**

	2014	2015	2016	2017	June 2018
<b>Total number of requests received</b>	2	2	6	9	11
<i>for ML offences</i>	0	1	0	0	1
<i>for Predicates</i>	2	1	6	9	10
<i>for TF offences</i>	0	0	0	0	0
<b>Total number of requests refused</b>	0	0	0	0	0

Source : MJDHPC

294. There are no cases of refusal of MLA and Burkina authorities stated that assistance has not been denied on the grounds of dual criminality. The authorities however indicated that there were challenges where countries make a request in a foreign language. However, those countries were requested to forward the request again in the appropriate language. Burkina Faso typically requests for further information from the requesting country where the information is inadequate. Responses to MLA requests are prioritized and processed on the basis of the deadline provided by the requesting state. Each request is processed by the investigating judge assigned to the case and is monitored by the Dean of the Investigating Judges. While some judicial authorities interviewed by the evaluation team indicated that the processing time for a request was two months, others did not provide a specific deadline for

processing a request. The authorities largely adhere to the timelines set by the requesting state. Admittedly, files can be fast-tracked if the request is made particularly where the request is from a country within the region. In these cases, the approach can be more informal and requests can be processed earlier where the requesting states makes this request informally. For example, there have been instances where the investigating Judge in the requesting state made a telephone call to a counterpart in Burkina to expedite the process. Burkina Faso has in the past, allowed foreign officials seeking MLA to enter its territory to facilitate the timely and constructive execution of requests. This is a factor for increased efficiency in the process. The number of MLA requests received is low. It will appear that Burkina Faso has sufficient human resources to handle the requests for judicial assistance.

295. As, regards confidentiality, Burkina Faso informed the assessors that requests are handled in a confidential manner. Indeed, Article 141 of Law No. 16 of 2016 provides that "the competent authority shall maintain the secrecy of the request for mutual legal assistance, its content and the documents produced as well as the facts of the case". In terms of handling, responses to MLA requests do not go through the normal channels of delivery. The response from the investigating magistrate is sent directly to the foreign ministry via a dedicated channel which is secured and ensures confidentiality. However, in some instances where responses need to be sent by emails the general emails are used. The authorities informed the assessors that the restructuring plan of the National Directorate of Criminal Affairs and Seal will establish the office for MLA as an exclusive service. The magistrate in the unit will be the focal point. This will likely lead to improved case management monitoring and prioritization and a higher level of confidentiality.

296. The legal framework allows Burkina to enforce a foreign judgment for confiscation as well as share assets confiscated with other countries. Although the country has repatriated funds to foreign counties, Burkina has opted not to share the repatriated assets. Thus, the country has not shared assets with any foreign country. Burkina did not provide a breakdown of the types of MLA requests processed by the country.

### *Extradition*

297. Extradition requests from foreign countries are processed through the Ministry of Justice. Extradition is handled by the Court of Appeal but authorized by the government on the basis of a decree of extradition. There are no written procedures for prioritizing or monitoring extradition requests. In practice, authorities can apply simplified extradition where the fugitive consents, but this only applies to non-citizens (Burkina does not extradite its citizens). Where extradition is refused on the basis of citizenship, the case is promptly referred to the competent national court so that the person concerned can be prosecuted for the offense for which the request was made. The authorities have refused extradition of its citizen in one case and have invited the requesting state to provide evidence to support the prosecution of the case. As indicated in the table below, Burkina Faso has granted extradition on some TF cases. It appears that no ML related requests were made.

**Table 22. Incoming Extradition requests**

	2014	2015	2016	2017	June 2018
<b>Total of incoming extradition requests</b>	0	1	0	2	2
<b>Extradition requests received on ML</b>	0	0	0	0	0
<b>Extradition requests granted on ML</b>	0	0	0	0	0
<b>Extradition requests received on TF</b>	0	1	0	2	1

<b>Extradition requests granted on TF</b>	0	1	0	2	1
<b>Total Extradition requests refused</b>	0	0	0	0	1

Source: MJDHPC

***Seeking timely legal assistance to pursue domestic ML, associated predicate and TF cases with transnational elements***

298. Outgoing requests for MLA are forwarded to the Director of Criminal Affairs and Seal by the investigating judges handling the case. A total number of 15 judges handle an average of 5 requests a year. The numbers of outgoing MLA and extradition requests are low. These low numbers of outgoing request **tend to suggest that Burkina Faso could be more proactive in seeking international cooperation through MLA** to investigate and disrupt transnational criminal networks that could be involved in domestic crimes such as drug trafficking, corruption, thus limiting the country’s chances to pursue criminal assets. This may be due to insufficient capacity of the relevant criminal justice staff to handle ML/TF cases as indicated in IO7 and IO9. Although it appears that the country is increasingly engaging in judicial cooperation.

299. A considerable number of the ML cases disseminated by the FIU to the courts relate to cross-border offences however, it appears that few requests for judicial assistance have been made in respect of those offences. Nevertheless, Burkina Faso has transmitted a modest number of requests for mutual assistance, including in respect of underlying offenses. However, Burkina has not provided a breakdown of these cases. Some of the cases on cooperation relate to execution of international arrest warrants and other summary applications however, all these cases were in 2017.

**Table 23. Outgoing MLA requests made for ML /TF/ Predicate Offences**

	2014	2015	2016	2017	June 2018
<b>Total number of requests sent</b>	0	1	1	11	3
<b>Total number of rejected applications</b>	0	0	0	0	0

Source: MJDHPC

300. Extradition requests are initiated by the judges in charge of the cases and transmitted through the Ministry of Justice and diplomatic channels. Burkina Faso is generally satisfied with the cooperation it receives, although the authorities have noted that some countries in the region have not responded to requests for assistance. Burkina Faso made a request to a neighbouring country for the extradition of a Burkina national involved in the terrorist attacks on the Gendarmerie station in the Samorogouan locality in 2015. The request for extradition has not yet been satisfied. The low numbers of extradition and MLA requests made by Burkina do not reflect the risk profile of the country, in relation to ML and in particular TF.

301. As indicated in the table below, between 2014 and the first quarter of 2017, the Ministry of Justice made four requests for extradition, some of which related to predicate offences. None of these requests related to ML or TF. Given the TF risk in Burkina Faso and NRA’s the suggestion that financiers of the terrorist attacks were neither nationals or residents of Burkina Faso, assessors surmised that the country should have made a larger number of extradition requests. The delays in handling TF cases as indicated under IO9 may have impacted on the number of request sought by the country.

**Table 24. Outgoing Extradition requests**

	2014	2015	2016	2017	2018
<b>All extradition requests made</b>	0	1	0	2	1
<b>Extradition requests on ML</b>	0	0	0	0	0
<b>Extradition requests on TF</b>	0	0	0	0	0
<b>Extradition requests refused</b>	0	0	0	0	0

Source : MJDHPC

**Table 25. Suspects and fugitives handed over to foreign police authorities**

	2014	2015	2016	2017
<b>Number of police to police handover</b>	07	03	06	05

Source : DGPN/DPJ 2018

***Seeking and providing other forms of international cooperation for AML/CTF purposes***

302. Burkina engages in some of informal cooperation with foreign counterparts. Burkina is a party to some multilateral and bilateral agreements and initiatives that support international cooperation between counterpart authorities and the country leverages international networks and platforms to enhance international cooperation. Burkina is a member country of the Egmont Group, WCO (Customs), ATAF (Taxes), INTERPOL (Police) and the WACAP network (Prosecutors). These provide a good basis for international cooperation for AML/CFT purposes in the field of law enforcement, financial intelligence, taxation, and customs.

***Law enforcement***

303. Cooperation between LEAs is mainly through the INTERPOL platform. Requests for information are also sent directly to the relevant agencies, including the Superior Authority of State Control, the Anti-Corruption Agency and the National Intelligence Agency although requests may also be made via the Ministry of Foreign Affairs and Regional Cooperation. Statistics on LEA cooperation is indicated in the Tables 26 and 27 below.

**Table 26. ML/TF information exchange through Interpol**

	2014	2015	2016	2017	2018
<b>Requests received – ML</b>	0	0	1	1	0
<b>Requests responded – ML</b>	0	0	1	1	0
<b>Requests received - on TF</b>	0	0	1	1	0
<b>Requests responded - TF</b>	0	0	1	1	0
<b>Requests made on ML</b>	0	0	2	1	0
<b>Requests made on TF</b>	0	0	0	1	0

Source : DGPN/DPJ/BCN-INTERPOL 2018

**Table 27. Statistics on Information Exchange  
The Superior Authority of State Control and Anti-Corruption**

	2014	2015	2016	2017
<b>Requests received from other Countries</b>	4	4	5	4
<b>Requests responded to by Burkina</b>	4	4	5	4
<b>Requests made by Burkina to other countries</b>	2	3	4	3

Source : ASCE-LC

304. Table 26 shows that in the past four years, only 2 of the requests received related to ML and another 2 for TF. Again, the low numbers do not appear to be consistent with the country’s TF risk. Nevertheless, LEAs in Burkina Faso co-operate with LEAs from neighboring countries on gold fraud cases. LEAs and security intelligence agencies cooperate with foreign partners on counter-terrorism and TF matters. Burkina Faso has conducted several joint criminal investigations with foreign counterparts especially on issues of Terrorism and TF. Some instances are provided in Box 8.1 below. However, feedback received from one foreign LEA indicated that there were some occasions in the past where requests by Burkina appeared to lack relevant background information. The country however, noted that more recent requests by Burkina have been of good quality.

**Box 8.1 Joint criminal investigation cases**

- Following the terrorist attacks of “Splendid hotel”, cafe “cappuccino” and restaurant “Aziz Istanbul”, in Burkina Faso, joint investigations were opened with other foreign investigative authorities. Burkinabe investigators participated alongside the foreign counterpart.
- As part of the attack on the restaurant "aziz istambul", at the request of another foreign government, a special security delegation participated alongside the Burkinabe investigators in carrying out these investigations.
- ASCE-LC conducted a joint investigation with Niger's High Authority on Anti-Corruption and Assimilated Offenses (HALCIA) in the matter of an oil fraud in February 2012.
- Burkina also participated in a joint criminal investigation with the High Authority for Good governance of Côte d'Ivoire as part of an audit of 2017 to 2018, the construction of the house of Burkina.

305. The statistics indicate that LEAs in Burkina have some impetus to pursue information internationally. Statistics on international cooperation are not being systematically maintained by the authorities and will not allow the authorities to monitor how effective international cooperation in Burkina is with the aim of making improvements.

306. Burkina utilizes informal networks like the Asset Recovery Network of West Africa (ARINWA) and WACAP for exchange of information. There are focal points for the network among the magistrates. Investigative judges and magistrates have utilized the network to obtain information from counterpart to facilitate speedy processing of cases.

*Customs and Tax*

307. Burkina is a member of the WCO and ATAF. The country provided statistics on information exchange in tax matters (Table 31). Given the risk posed by extensive and porous borders in Burkina, Customs should enhance cooperation with foreign counterparts to combat identified cross-border crime. Similarly, Burkina will benefit from increased engagement with the counterpart tax authorities given the high incidence of tax-related offences.

**Table 28. Exchange of information for tax purposes (Tax Administration)**

	2013	2014	2015	2016	2017
<b>Number of requests issued</b>	0	0	0	0	7
<b>Number of responses received</b>	0	0	0	0	5
<b>Number of requests received</b>	0	0	5	1	0
<b>Number of replies sent</b>	0	0	5	1	0

Source : MINEFID/DGI

## ***FIU to FIU***

308. Burkina is a member of the Egmont Group of FIUs therefore, FIU to FIU cooperation takes place through a shared platform (the Egmont Secure Web). Exchange of information also takes place at a bilateral level between the FIU and other counterparts based on agreements. The FIU has signed MoUs with twenty (20) counterpart FIUs. The Burkina FIU provides information to other FIUs both spontaneously or upon request. For instance, if prosecution authorities in Burkina Faso are of the opinion that the information that has been brought to their attention is not sufficient to open criminal proceedings there is a possibility to transmit the information to the FIU of the country that is potentially involved in the case. The authorities of the foreign country may only use the information provided as part of its investigation, unless it makes a formal request for mutual assistance. This practice has been growing for some years. The FIU also received requests from foreign FIUs. As indicated in the table below, between 2014 and 2018, Burkina made eighty-four (84) requests for information to foreign FIUs. The majority of such requests pertain to ML matters. The country received sixty-one (61) requests for information and other forms of assistance during the same period. As regards the nature of the requests, majority of the requests concerned to banking information.

**Table 29. Informational Exchange by the FIU- 2014 and 30 July 2018**

	<b>Total</b>	<b>TF</b>	<b>ML</b>	<b>Others</b>
<b>Outgoing request</b>	84	5	75	4
<b>Incoming request</b>	61	11	44	6

309. The FIU has adequate staff to deal with international requests. The requests appear to be well-prioritised by FIU. The FIU has a system to issue periodic reminders to foreign FIU concerning pending requests. In terms of responding to foreign requests, the FIU staff states that it normally disseminates the requested information without delay. However, one country indicated that they were yet to receive a response to a request made to the Burkina FIU<sup>57</sup>. Burkina Faso FIU receives and processes requests for additional information from counterparts. The FIU will provide feedback to requesting countries if it is requested. Feedback from the countries indicated that information provided to them by Burkina was beneficial for their analysis and investigations. Overall, the FIU appears to be cooperating satisfactorily with its foreign counterparts.

### *Supervisory information*

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<sup>57</sup>Burkina Faso indicated that the requesting country did not receive a reply sooner due to the large number of people (148) involved in the file as the assistance required careful consultation of the FIU database as well as other sources of information particularly as the FIU does not currently have adequate software for the processing of its files.

310. The Banking Commission regularly cooperates with foreign supervisory authorities on the basis of memoranda of understanding but did not provide statistics on information exchange. The Commission collaborates with Central Banks within and outside the sub-region particularly home country supervisors when supervising financial institutions in Burkina. There is exchange of information on AML/CFT-issues between home-host country supervisors. The banking commission also conducts joint on-site inspections with home country supervisors. Information Exchange also takes place through the supervisory college.

### **International exchange of basic and beneficial ownership information of legal persons and arrangements**

311. Basic information on legal persons is maintained in the Trade and Credit Registers at the Commercial Court (RCCM) and this can be accessed by the public. LEAs can access and share basic information on legal persons with foreign counterparts. There is no information on beneficial owners except those kept by financial institutions. Although, it is possible for LEAs to utilise different sources of information to identify beneficial owners of legal person, it is not likely that the information will be easily accessible. The Burkinabe authorities indicated that this type of request has been made by foreign jurisdictions but the authorities did not provide any statistics on exchange of beneficial ownership information. The Burkina judicial authorities have solicited and obtained from their foreign counterparts, responses to their requests for basic and on the beneficial ownership information of legal entities.

312. The Burkinabe authorities engage in international co-operation to some extent. As regards judicial cooperation, the requests received by the authorities are not many in number. Likewise, requests made by the Burkinabe authorities are few. Although this does not necessarily point to an ineffective system, it may mean that the country needs to be more proactive in seeking MLA. The small numbers of request on judicial assistance allows the country to manage and prioritize these cases. Information exchange at the FIU appear to be effective. However, more formal processes should be put in place for the purpose of case management, monitoring of requests and maintaining statistics.

313. **Burkina has achieved a moderate level of effectiveness for IO.2.**

## ANNEX ON TECHNICAL COMPLIANCE

This Annex provides a detailed analysis of Burkina Faso's level of compliance with the FATF 40 Recommendations. It does not include any descriptive text on the country's situation or risks, but focuses on the analysis of the technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report (MER).

Where both the FATF's requirements and domestic laws or regulations remain unchanged, this report refers to the analysis conducted as part of the previous 2009 mutual evaluation and available at the following address: [www.giaba.org](http://www.giaba.org)

### *Recommendation 1 - Risk Assessment and Implementation of a Risk-based Approach*

During Burkina Faso's first Mutual Evaluation, there was no requirement for a National Risk Assessment (NRA) on Money Laundering and Terrorism Financing (ML/TF) to be conducted, as provided for in Recommendation 1.

#### *Countries' Obligations and Decisions*

##### *Risk Assessment*

**Criterion 1.1** - Burkina Faso conducted its NRA over the period spanning June to October 2017. As at the time of writing this report, the NRA report was already available. It contains information on country-wide threats and vulnerabilities as well as threats and vulnerabilities facing the financial sector and Designated Non-Financial Businesses and Professions (DNFBPs), coupled with an assessment of the financial inclusion-related risks facing the country as well as its overall AML/CFT capacity. Furthermore, the NRA analysed the impact of the regional and international sources of the TF threat in Burkina Faso as well as the predicate offences to ML. The analysis of risks related to money laundering and terrorist financing nationwide was based on this information, as well as on information provided by other competent authorities, particularly the Judiciary, as well as the investigative and prosecutorial agencies. The NRA also examined ML vulnerabilities associated with the activities of reporting entities under the supervision of the financial institutions supervisory authorities and other monitoring bodies, and assessed the preventive measures implemented within Financial Institutions and Designated Non-Financial Businesses and Professions (DNFBPs). The NRA categorized the ML risks into four sectors, namely: higher risk, moderately high risk, moderate risk and moderately low risk sectors. The NRA appears to be of good quality. However, it highlighted the challenges encountered in obtaining data and validating information, including the lack of understanding of ML and TF issues in certain sectors.

**Criterion 1.2** - Paragraph 1 of Article 10 of the AML/CFT Act No 16-2016/AN (AML/CFT Act 016) on combating money laundering and terrorist financing in Burkina Faso provides for the designation of a competent authority responsible for the conduct of the NRA. Pursuant to this provision, Burkina Faso issued Order No. 2017-0049/MINEFID/FIU of 25<sup>th</sup> September 2017 establishing, within the FIU, a Permanent Secretariat responsible for conducting national ML and TF risk assessments. Under Article 2 of the aforementioned

Order, the Secretariat shall be established for the entire duration of the risk assessment exercise. The Secretariat shall be headed by a Coordinator and shall comprise nine (9) appointed members (see Article 4). Its powers and functions which are provided for in Article 3 include, inter alia, preparing the NRA's Terms of Reference and budget, making recommendations for the composition of the working groups as well as coordinating and supervising these groups.

**Criterion 1.3** - Under Article 10, Paragraph 1 of Act 16-2016, the designated competent authority "... shall take appropriate measures to identify, assess, understand and mitigate the risks of money laundering and terrorist financing in Burkina Faso and shall be updating such assessment".

**Criterion 1.4** - The Technical Group is in charge of conducting ML/TF risk analysis, which includes identifying a strategy for disseminating the NRA outcomes and participating in the final workshop for disseminating these outcomes and the related action plan (Article 10 of Order No. 2017/0384). Accordingly, Burkina Faso has established mechanisms to provide information on the NRA outcomes to all competent authorities, self-regulatory bodies, FIs and DNFBPs, through a stakeholder forum and other means. In this regard, a series of meetings were organized with relevant stakeholders (e.g. Decentralized Financial Institutions (DFS) and insurance companies, NPOs, real estate, hotels, transportation companies, rapid money transfer companies and foreign exchange bureaus and banks). In addition, reporting entities are required to disseminate the outcomes of their sectors' risk assessment to the competent authorities and self-regulatory bodies (Article 11, para 2 of the AML/CFT Act No. 016-2016/AN).

#### *Risk Mitigation*

**Criterion 1.5** - Burkina Faso has developed an action plan. There are provisions for the establishment of a National Authority responsible for formulating and implementing the AML/CFT policy and strategy, prioritizing actions and allocating resources using a risk-based approach (RBA), and ensuring that reporting entities conduct their own risk assessments and apply a RBA. However, the action plan was yet to be approved and a number of the proposed measures are yet to be implemented.

**Criterion 1.6 a and b** - Burkina Faso applies all the FATF Recommendations requiring FIs or DNFBPs to implement AML/CFT measures. Burkina has not applied any exemptions from the FATF Recommendations to its AML/CFT framework.

#### **Criterion 1.7-**

**a)** Act No. 16-2016 provides for the application of enhanced measures in the context of a cross-border correspondent banking relationship (Article 50). These are defined in Article 53. The Act also provides for enhanced measures in Articles 19 and 20 in high risks scenarios whether concerning a customer, product or transaction (Article 51). Implementing enhanced measures is also recommended with regard to Politically Exposed Persons (Art. 54). In accordance with the provisions of Article 11, Paragraph 3, FIs and DNFBPs are required to take measures to effectively mitigate and manage the risks identified at their level, at the national level and within the UEMOA region.

**b)** The provisions of Article 11 of the AML/CFT Act 016 require FIs and DNFBPs to "take measures to identify and assess their ML/TF risks", without, however, requiring them to include, in their assessments, the risks identified in the NRA. Thus, FIs and DNFBPs may

or may not incorporate the information provided in the NRA report into their risk assessments.

**Criterion 1.8** - Burkina Faso's AML/CFT Act 016 allows financial institutions and DNFBPs to take simplified measures to implement some of the FATF Recommendations where a low risk is identified<sup>58</sup>. These measures promote financial inclusion. However, whether these measures are consistent with the NRA is yet to be established.

**Criterion 1.9** - Supervisory bodies (including BCEAO, CIMA and CREPMF) require FIs to adopt a risk-based approach (Article 11 of AML/CFT Act 016). The requirements of Article 11 of AML/CFT Act 016 are also applicable to DNFBPs. In addition, risk assessments are expected to be updated and made available to the competent authorities and Self-Regulatory Bodies (SRBs) More specifically, these requirements are provided for within the banking sector, namely credit institutions and DFS (BCEAO Instruction No. 007-09-2017 for the implementation of the AML/CFT Act 016 by FIs; BCEAO Instruction No. 017-12-2010 and AML Circular No. 05-2017/CB/C on managing compliance with existing standards). The Monetary and Financial Affairs Department of the State Treasury and the Public Accounting Head Office ensure, through periodic inspection of banks and financial institutions, that a risk mapping exercise and an assessment of those risks are conducted. However, most DNFBPs, some of which have been identified as exposed to higher and high risks, are not subject to AML/CFT supervision and are therefore not subject to any control regarding their obligation as stipulated under Recommendation 1.

## **Obligations and Decisions for Financial Institutions and Designated Non-Financial Businesses and Professions**

### *Risk Assessment*

#### **Criterion 1.10** -

(a) Pursuant to the provisions of Article 11, Paragraph 1 of the AML/CFT Act 016, reporting entities must take necessary steps to identify and assess ML and TF risks to which they are exposed taking into account factors such as customers, countries or geographical areas, products, services, transactions or distribution channels. Also, under Paragraph 2, FIs and DNFBPs are required to document their risk assessments. In particular, there are specific provisions intended for credit institutions and DFS<sup>59</sup>. However, the provisions of CIMA Regulation No. 0004 of 4<sup>th</sup> October 2008 and those of the CREPMF Regulation No. 35/2008 should be amended to take account of the requirements of the AML/CFT Act 016 including those under criterion 1.10a. Guidelines for DNFBPs are yet to be developed.

(b) - Under the same provisions of Article 11, Paragraph 3 et seq. of the AML/CFT Act 016 reporting entities are required to have policies, procedures and controls to effectively mitigate and manage identified ML and TF risks. However, this provision does not expressly state that all relevant risk factors should be considered before determining the overall risk level and the type of appropriate measures to be applied in order to mitigate such risks.

(c) and (d) - Under the same provisions of Article 11, Paragraph 2 et seq., assessments must be kept up-to-date and made available to the competent authorities and SRBs.

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<sup>58</sup> See Articles 46 to 48 of the 016 AML/CFT Act

<sup>59</sup> See BCEAO Directive n°007-09-2017 on the implementation of the Uniform AML/CFT Law

## *Risk Mitigation*

**Criterion 1.11 a** - Under the provisions of Article 11, Paragraph 5 et seq. of the AML/CFT Act 016 FIs and DNFBPs must obtain the prior approval of senior management to establish their policies, procedures and control strategies.

**Criterion 1.11 b** - These policies, procedures and control strategies mentioned in (a) above are monitored and strengthened as required under Article 11 (Article 11, Paragraph 5) of the AML/CFT Act 016

**Criterion 1.11 c** - In order to manage and mitigate the higher risks identified, FIs and DNFBPs must implement enhanced measures to manage and mitigate such risks.<sup>60</sup>

**Criterion 1.12** - In cases where lower ML and TF risks have been identified, FIs and DNFBPs are allowed to adopt simplified measures in order to manage and mitigate such risks. However, they may only apply simplified measures where there is no suspicion of ML and TF<sup>61</sup>.

## **Weighting and Conclusion**

There are a number of shortcomings relating to the limited-dissemination of the NRA (Burkina Faso has not disseminated the findings to those sectors identified as low risk sectors in the NRA) and the non-adoption of the developed action plan. In addition, the requirements related to applying a RBA as well as the allocation of resources to mitigate or prevent such risks, are yet to be implemented. **Burkina Faso is largely compliant with Recommendation 1.**

## *Recommendation 2 - National Cooperation and Coordination*

In its first MER, Burkina Faso was rated Non-compliant with the Recommendation on National Co-operation and Co-ordination due to the lack of mechanisms for co-ordination and co-operation among competent authorities in the fight against money laundering and terrorist financing. Since the adoption of its MER on 4<sup>th</sup> November 2009, Burkina Faso has enacted a number of laws, including AML/CFT Act No 16-2016/AN on combating money laundering and terrorist financing.

**Criterion 2.1** - Authorities developed an action plan based on the risks identified and assessed in the 2018 NRA. However, Burkina Faso has not yet implemented any national AML/CFT policies based on the risks identified in its NRA report which will need to be reviewed on a regular basis. (Article 11, Paragraph 2 et seq.).

**Criterion 2.2** - The National Coordinating Committee (NCC) for AML/CFT activities established in 2014 by Order No. 2014-0356/MEF/MJ/MATS is the authority in charge of implementing and coordinating AML/CFT policies in Burkina Faso.

**Criterion 2.3** - The NCC, which is chaired by the President of the FIU, brings together more than 11 of the main organizations involved in AML/CFT, including the FIU, the

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<sup>(60)</sup> see articles 50 to 54 of AML/CFT

<sup>(61)</sup> See article 46 of AML/CFT

prosecutorial authorities and supervisory authorities. In addition, on the operational front, Article 75 of the AML/CFT Act 016 provides for the implementation of information exchange between and among the FIU, supervisory authorities, professional associations and representative national bodies. The reports are shared firstly, between the supervisory authorities and the FIU, and then between the FIU and some State Departments, such as ASCE-LC, the Police Headquarters, the National Gendarmerie, DGI, DGD, DGTCP, and so on. Finally, the National Intelligence Agency has a National Intelligence Orientation Plan with a strategic line that includes AML/CFT, predicate offences and other economic crimes.

**Criterion 2.4** - Considering that the purpose of Act 16-2016 is to prevent and suppress money laundering, terrorist financing and the proliferation of weapons of mass destruction, by determining measures to detect and deter these offences, the combined analysis of Articles 2, 74 and 75 clearly indicates that national cooperation and coordination mechanisms (see Criterion 2.3) cover money laundering terrorist financing and the proliferation of WMDs. However, Inter-ministerial Order No. 2014-0356/MEF/MJ/MATS, which established the National Coordination Committee and defined its powers and functions, does not mention any prerogative in relation to the fight against the proliferation of WMDs. Its powers are explicitly linked to ML and TF.

### **Weighting and conclusion**

National cooperation and coordination are provided for under Articles 74 and 75 of Act 16-2016 on developing policies and taking action to combat ML and TF. However, even though the policies and actions to be undertaken are extended to the fight against the proliferation of weapons of mass destruction (WMDs), by virtue of the purpose of the law (Art. 2), the body established to implement these measures has no function relating to the financing of proliferation (Art. 3 of the Inter-Ministerial Decree). **Burkina Faso is rated partially compliant on Recommendation 2**

### ***Recommendation 3 - Money Laundering Offence***

In its first MER, Burkina Faso was rated Partially compliant with the requirements of this Recommendation. The main deficiencies identified were that terrorism and its financing were not considered as predicate offences. The law did not specify whether the ML offence was a serious crime or misdemeanour, and it was unclear whether the offence was applicable to property directly derived from the proceeds of the predicate offence, or whether the offender could also be convicted for laundering illegal proceeds.

**Criterion 3.1** - Burkina has criminalized money laundering pursuant to Article 3, Paragraph 1 (b) and (c) of the Vienna Convention and Article 6, Paragraph 1 of the Palermo Convention (Articles 7 and 1 of the AML/CFT Act No 16-2016/AN on combating money laundering and terrorist financing in Burkina Faso).

**Criterion 3.2** - Burkina Faso uses a combined approach and defines predicate offences to ML by referring to all offences and to a list of categories of predicate offences under Act No 016-2016. The category of predicate offences under Article 1.16 includes tax offences<sup>62</sup>.

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<sup>62</sup> Criminal tax offences (related to direct and indirect taxes) (Articles 784 to 813 of Act No. 058-2017/AN of December 20, 2017 relating to the Tax Code of Burkina Faso);

**Criterion 3.3** - Burkina Faso has adopted the combined approach. The Law No. 16-2016/AN on AML / CFT lists the categories of predicate offenses for ML as recommended by the FATF and adds offences that fall within the category of serious offences under the national law.

**Criterion 3.4** - Burkina Faso does not limit the type of property that could be laundered. The AML/CFT Act 016 applies to property of any kind, whether tangible or intangible (Article 1.14).

**Criterion 3.5** - There is no provision which requires that when proving that property is the proceeds of crime, a person must be convicted of a predicate offence. (Articles 1 paragraph 45 and 7 of Act No. 016-2016/AN).

**Criterion 3.6** - The money laundering offence expressly covers the predicate offences committed in the territory of another Member State or of a third State which has allowed its author to obtain property or income (Articles 07 and 130 of AML/CFT Act 016).

**Criterion 3.7** - The ML offence covers self-laundering. Under Article 07 of Act 2016 states that *“there is money laundering, even if the act is committed by the offender who procured the property to be laundered”*

**Criterion 3.8** - Article 07 of the AML/CFT Act 016 stipulates that knowledge or intent, in the context of the above activities, may be inferred from objective factual circumstances.

**Criterion 3.9** - The criminal sanctions relating to natural persons are provided for in Articles 113 and 115 of the AML/CFT Act No. 016-2016/AN of 3<sup>rd</sup> May 2016. The range of sanctions imposed depends on the seriousness of the offence. The sanctions appear to be proportionate and dissuasive.

**Criterion 3.10** - Article 124 of Act No. 016-2016/AN provides for criminal sanctions against natural and legal persons. The text also provides for administrative sanctions. The range of sanctions provided under the law appears to be proportionate and dissuasive.

**Criterion 3.11** - The law lays down a range of offences that are incidental to the ML offence. These include attempt, assisting or inciting or counselling someone to, or facilitating the execution of such acts (Article 124 of Act No. 016-2016/AN).

### **Weighting and conclusion**

Burkina has a comprehensive framework on the criminalization of money laundering.

**Burkina Faso is rated compliant on Recommendation 3.**

### ***Recommendation 4 - Confiscation and Provisional Measures***

In its 1<sup>st</sup> MER, Burkina Faso was rated partially compliant with these requirements due to the fact that confiscation was not possible in terrorism matters because terrorism and its financing were not considered as predicate offences. In addition, the amounts seized and confiscated as a result of predicate offences and the offence of money laundering could not be established.

**Criterion 4.1** - Articles 117-9, 128 and 129 of Act No. 016-2016 outline measures for the confiscation of the proceeds of ML and TF, including income or other benefits derived from such crimes. There are legislative measures that allow Burkina Faso to confiscate assets listed under Criterion 4.1, including assets of corresponding value. However, the legal framework does not provide for the confiscation of instrumentalities used or intended to be used in the commission of all predicate offences, except in the case of drug-related offences, counterfeiting, corruption, information technology offences and offences related to the financial sector (financial crimes)<sup>63</sup>.

**Criterion 4.2** - The Police and Gendarmerie are generally empowered to identify, trace and assess property by conducting the necessary inquiries, research and investigations (Articles 74 and 96 of the Code of Criminal Procedures) and the investigating authorities may take any measure they deem appropriate to prevent any transaction or transfer or disposal of property already subject to confiscation or interim measures. Article 99 of Act 016-2016 on AML/CFT states that an investigating judge may, in accordance with the law, prescribe provisional measures that provide for, among other things and at the expense of the State, the seizure or confiscation of funds and assets linked to the offence of money laundering or terrorist financing under investigation and all elements likely to identify them, as well as for the freezing of all sums of money and financial transactions relating to such property. Other specific seizure measures are provided for in the Anti-Corruption Act No. 004-2015/CNT (Articles 63, 64, 83 and 104 to 109). In practice, investigative authorities and courts have the power to prevent actions that may compromise the country's ability to freeze, seize or recover assets subject to confiscation but have limited powers to annul actions already taken.

**Criterion 4.3** - The law in Burkina Faso provides for the protection of the rights of *bona fide* third parties. (Articles 128 and 129 of Act No. 016-2016).

**Criterion 4.4** - Burkina Faso has assigned the task of implementing mechanisms or procedures to manage and dispose of seized or confiscated assets to:

- Ministry of Justice (the Registries of Courts and Tribunals);
- Public Deposit Fund (*Caisse des Dépôts et Consignations*);
- Ministry of Finance (DGD, AJT).

A Bill for the establishment of a National Agency for the Management and Recovery of Seized and Confiscated Assets (ANAGRASC) dedicated to the recovery and management of criminal assets has been tabled for adoption. However, Burkina Faso does not seem to have established mechanisms or procedures to manage all seized or confiscated assets, particularly income-generating assets.

## **Weighting and conclusion**

The Legal framework only covers confiscation of instrumentalities used or intended to be used in the commission of some predicate offences. **Burkina Faso is rated largely compliant on R. 4**

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<sup>63</sup> Articles 371-17, 387-4, 387-5 and 387-6 of the New Act 025-2018 on the penal code

## *Recommendation 5 - Terrorism Financing Offence*

In its previous MER, Burkina Faso was rated non-compliant with these requirements as terrorism and terrorist financing were not criminalized in the country.

**Criterion 5.1** - The TF offence is criminalized under Section 8 of Act No. 016-2016/AN. It states that “terrorist financing refers to any act by a natural or legal person who, by any means, directly or indirectly, has deliberately provided or collected assets, funds and other financial resources with the intention of using them or knowing that they will be used, in full or in part, for the purposes of committing : (a) one or more terrorist acts; (b) one or more terrorist acts committed by a terrorist organization; (c) one or more terrorist acts committed by a terrorist or group of terrorists. The commission of one or more of such acts is an offence”. Article 8 of the AML/CFT Act 016 has criminalised TF on the basis of the United Nations Convention on the Suppression of Terrorist Financing.

**Criterion 5.2** - The TF offence only covers the financing of terrorist acts. It does not cover the financing of a terrorist organization or an individual terrorist. In addition, the provisions do not explicitly state that a TF offence shall be established even in the absence of any link to one or more specific terrorist acts.

**Criterion 5.2 bis** - The Act No. 084-2015/CNT of 17<sup>th</sup> December 2015, amending Act No. 060-2009/AN of 17<sup>th</sup> December 2009 criminalizing all acts of terrorism in Burkina Faso, specifically covers the financing of the travel of individuals leaving Burkina Faso for the purpose of committing, planning or preparing for or participating in terrorist acts, or for receiving or providing training in terrorism (Article 15 bis).

**Criterion 5.3** - In Burkina Faso, terrorist financing offences cover all funds and financial resources, whether from legitimate or illegitimate sources. Article 1.14 of Act No. 016-2016/AN covers assets of any kind. There are no restrictions in the legislation that would prevent TF offences from covering funds from legitimate or illegitimate sources.

**Criterion 5.4** - Article 8 of Act No. 016-2016/AN states that a TF offence is committed, whether the act has taken place or not, and whether or not the funds have been used to commit the act.

**Criterion 5.5** - Article 8 (5) of Act No. 016-2016/AN states that the intentional element and knowledge of the facts required to establish the proof of the offence can be inferred from objective factual circumstances.

**Criterion 5.6** - Pursuant to Article 119 of Act No. 016-2016/AN: “Natural persons found guilty of financing any terrorism offence shall be sentenced to at least ten years’ imprisonment and required to pay a fine equal to at least five times the value of the assets or funds on which the operations for the terrorist financing were carried out. Attempted terrorist financing shall be liable to the same penalties”. The sanctions are proportionate and dissuasive.

**Criterion 5.7** - Article 119-121 and 125 cover sanctions for natural and legal persons that commit terrorist financing.

**Criterion 5.8** - Burkina Faso has a range of ancillary TF offences under Article 8 of Act No. 016-2016/AN, including attempting, assisting, inducing or abetting someone to commit, or facilitate the execution of the offence. However, Article 8 of Act No. 016-2016/AN appears not to cover the act of contributing to the commission of an offence by a group of people acting with a common purpose.

**Criterion 5.9** - TF is designated as a predicate offence of money laundering.

**Criterion 5.10** - Article 4 of Act No. 016-2016/AN of 3<sup>rd</sup> May 2016 states that the offences of money laundering and terrorist financing may be applicable to any natural or legal person, and to any organization that could be liable to prosecution in Burkina Faso, regardless of where the act was committed.

### **Weighting and conclusion**

Burkina has not criminalized the financing of individual terrorists and terrorist organizations. Given Burkina Faso's risk profile and the contextual information on the country, including the lack of TF prosecution, more weight has been given to the deficiency under Criterion 5.2. **Burkina Faso is rated partially compliant on Recommendation 5.**

### ***Recommendation 6 - Targeted Financial Sanctions Related to Terrorism and Terrorist Financing***

In its first Mutual Evaluation Report, Burkina Faso was rated Non-compliant with these requirements. The mechanism put in place by Community Regulation No. 14/2002/CM/UEMOA (Regulation 14/2002) and other supplementing Decisions on assets freezing for the implementation of United Nations Security Council Resolution 1267 (et seq.) in UEMOA Member States including Burkina Faso, had significant deficiencies. Since the previous evaluation, Burkina Faso has adopted laws and regulations to strengthen its legal framework on targeted financial sanctions related to terrorism and its financing.

#### *Identification and Designation*

##### **Criteria 6.1-**

(a) By Decree No. 2012-1136/PRES/PM/MEF of 31<sup>st</sup> December 2012, the Consultative Commission on Administrative Freezing (CCGA) is responsible for proposing names of persons and entities that should be subject to freezing action to the Minister of Finance for his approval after which the Minister forwards the names to the relevant committee for designation

(b) Burkina has not proposed any designation. However, the mechanism in place for identifying targets for designation is the CCGA.

(c) The law does not set down the evidentiary standard of proof required to a make designation proposal. The decision to designate is not conditional upon the existence of a criminal proceeding.

(d) Article 100 (3) of the AML/CFT law provides that the competent authority shall ensure the application of the rules in force particularly those established by the United Nations Security Council.

(e) The CCGA is required to collect all information (Article 3 Decree No. 2012-1136) for the purpose of discharging its duty and may solicit information from relevant agencies. The AML/CFT Act requires the CCGA to apply procedures established by United Nations including those set out under this sub-criterion.

#### **Criterion 6.2 -**

(a) The Consultative Commission on Administrative Freezing (CCGA) is responsible for proposing names of persons and entities that should be subject to freezing action under UNSCR 1373, to the Minister of Finance (the competent authority) for designation.

(b) The decree lays down the mechanism for identification of targets. The CCGA is required to consider requests from other countries to freeze terrorist assets and issue a reasoned advisory on the merits of requests to designate and communicate its opinion to the Minister of Finance within 24 hrs. In the context of UNSCR 1373, the CCGA also examines the domestic requests for freezing actions communicated to the Minister of Finance by the Ministers of defence, security and foreign affairs and intelligence service (Art. 2, para. 4 of the Decree).

(c) The CCGA is required to make a determination within 24hrs in the case of a third country proposed designee. The legal basis for designation is not covered by the Decree.

(d) As noted above the decree does not stipulate the evidentiary standard for deciding whether or not to make a designation. Criminal proceedings are not required for designations.

(e) The legal framework does not address situations where Burkina Faso makes a to a foreign country to give effect to actions initiated under the freezing mechanisms.

#### **Criterion 6.3 -**

(a) The procedures in place in Burkina Faso allow the CCGA to collect all the information necessary for the proper identification of the natural and legal persons concerned by the freeze (Art. 3, Order No. 2013-00266; Art. 6 of Decree No. 2012-1136). The decree is silent on the legal basis for designation.

(b) Article 4 of Decree 2012-1136 stipulates that “administrative freezing must be carried out without delay and without prior notice to the persons or entities concerned.”

**Criterion 6.4 -** Burkina Faso has provided for the implementation, of targeted financial sanctions. Act No. 16-2016 states that: “...the competent authority shall, by decision, order the immediate freezing of the assets, funds and other financial resources of persons and entities...” (Art.100, para. 4). In addition, reporting entities are required to proceed immediately, without prior notification to holders, with freezing, as soon as they receive notification of the decision of the UN Security Council (Art. 100, para. 5). However, in practice, implementation in the context of the UEMOA regulations gives rise to delays (see discussion under IO10). Besides the supra-national process indicated above, Burkina has a national procedure to implement TFS. Under the national regime, the UN list is forwarded by the Ministry of Foreign Affairs to the Minister of Economy and Finance who forwards the list to the Treasury Department for dissemination to the reporting entities. Even though

the national process is much faster than the supranational, the national procedures still fall short as it may take up to two days to disseminate the list.

**Criterion 6.5** - Article 1 of the AML/CFT Act 016 defines freezing for the purposes of implementing targeted financial sanctions as: *“prohibiting the transfer, conversion, disposal or movement of all funds and other assets held or controlled by designated persons or entities as a result of any action taken by the United Nations Security Council or a competent authority or a court in accordance with the applicable Security Council Resolutions, and for the term of validity of the said measure.”*

(a) Burkina Faso’s AML/CFT system requires financial institutions and any person or entity holding assets, funds or other financial resources in the country to proceed with the freezing, without delay and without prior notice to the holder (Articles 100 (1) to (5)).

(b) The scope of funds to be frozen includes only all funds or other assets that are owned or controlled by the designated person or entity. Funds or other assets that are 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 owned or controlled directly or indirectly by the designated person or entity; and funds and other assets of persons and entities acting on behalf of or at the direction of designated persons or entities are not covered under the law.

(c) The law prohibits reporting entities from making funds and assets that are subject to a freezing order, available directly or indirectly to and for the benefit of designated natural and legal persons, entities or bodies. ((Articles 5 and 6 of the AML/CFT Act 016; Art. 100, Paras. 7 and 8 of Act 16-2016). Reporting entities are prohibited from providing or continuing to provide services to or for the benefit of designated persons or entities. Although, financial institutions and any other persons that hold the asset of designated persons are required to freeze the assets, the law only prohibits reporting institutions from making funds and assets available to the designee. Also, the law does not specify the scope of funds and assets subject to a freezing action.

(d) There are measures to communicate designations to the financial sector. Regulation 14/2002 requires BCEAO to distribute the lists of designated persons to banks and financial institutions. This mechanism does not cover DNFBCPs.

(e) Pursuant to Article 100, para. 5, financial institutions and other reporting entities shall, without delay, notify the FIU of the existence of funds belonging to persons or entities financing terrorism or proliferation, or to terrorist organizations or persons or entities associated with them. They shall also declare all frozen assets to the competent authority. The provision does not expressly include attempted transactions. However, notification of the existence of terrorist funds appears to cover assets frozen, actions taken as well as attempted transactions.

(f) Article 105 of the Burkina Faso AML/CFT Act 016 stipulates that the competent authority may authorize the payment or return of funds, financial instruments or other economic resources subject to a freezing order to a person not targeted by such an order (e.g. a third party) at their request, if that person holds a right acquired before the freezing order or where a court decision that has become final grants them such a right, following legal proceedings initiated prior to the issuance of the order.

*De-listing, unfreezing and access to frozen funds or other assets*

### **Criterion 6.6 -**

Burkina Faso has put in place procedures for de-listing (Article 10, Dec. 2012-1136). Upon receipt of such a request for de-listing, the Minister of Finance (the competent authority) has one month to respond. Where no decision is taken during this timeframe or where the decision is negative, the person may refer his/her case to the Administrative Court (Article 10, Paragraph 2, Decree 2012-1136). Furthermore, Act No. 16-2016 specifies the procedures for de-listing and unfreezing of funds (Art. 101 (2), Art. 107, AML/CFT Act 016).

(a) As regards UNSCR 1267, Burkina Faso has no explicit procedures that allow any natural or legal person who no longer meets the requirements for designation and whose funds and other financial resources have been frozen, to submit a de-listing request to the UN sanctions committee.

(b) As regards UNSCR 1373, Burkina Faso has procedures that allow any natural or legal person who no longer meets the requirements for designation and whose funds and other financial resources have been frozen to submit a de-listing request to the competent authority. A request for de-listing is addressed to the Minister of Finance, who forwards it to the CCGA which has one month to respond. Where no decision is taken during this timeframe or where it is negative, the person may refer his/her case to the Administrative Court.

(c) As indicated in Criterion 6.2 (b) above, there are procedures to allow a review of the designation decision before a competent authority and the Administrative Court.

(d) With regard to designations based on the 1988 and 1989 UNSCRs, Burkina Faso refers listed persons and entities to the appropriate procedure provided under UN Security Council Resolutions (Art. 107, para. 2 and Art. 10, Decree 2012-1136).

(e) The same applies to designations made on the basis of Al-Qaeda sanctions. The persons or entities concerned may also initiate de-listing procedures pursuant to Resolutions 1988, 1989 and 2083. Burkina Faso refers listed persons and entities to the appropriate procedure provided under UN Security Council Resolutions.

(f) There are publicly known procedures to unfreeze, upon verification, the funds or other assets of persons or entities with the same or similar name as designated persons or entities, who are inadvertently affected by a freezing mechanism. A person that considers that the freezing decision resulted from an error can lodge an appeal with the competent authority that ordered the freeze. (Article 107(1), AML/CFT Act 016).

(g) The competent authority is required to inform the public of any decision to freeze or unfreeze funds or other resources by publishing it in the Official Gazette or in a newspaper authorized to carry legal advertisements (Art. 101, para. 1, Act 16-2016). The said authority does not provide (unless specified) for a specific notification to FIs and DNFBPs, as is the case in the context of a freezing order (Art. 9, para. 1, Decree 2012-1136).

**Criterion 6.7 -** The AML/CFT Act, 016 (Article 103 (1-5), 105 and 106) provides for access to frozen funds and other assets and stipulates the requirements for such authorizations. Once an administrative order for the freezing of funds or other assets has

been issued, the Minister of Finance may authorize, on the terms he/she deems appropriate, the person or entity concerned, upon his/her request, to have a monthly sum of money, intended to cover, within the limits of the resources available, for a natural person, current expenses of the family home or, for a legal person, expenses to continue an activity that is compliant with public order requirements. The sum may also cover legal assistance or exceptional expenses. All costs shall be justified ahead of time (Article 11, Decree 2012-1136). Again, as regards, UNSCR 1267, any issue related to the resolution will be referred to the UN Security Council. (Art.107, para. 2 of the AML/CFT Act, 016).

### **Weighting and conclusion**

Burkina Faso has developed measures to implement targeted financial sanctions related to TF. However, there are some gaps which the country needs to address: (i) the legal basis for designation is not covered under the decree (ii), the scope of funds to be frozen does not include funds or other assets that are jointly owned or controlled, directly or indirectly by designated persons or entities, funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons and funds and other assets of persons and entities acting on behalf of or at the direction of designated persons (iii) only reporting entities are prohibited from providing or continuing to provide services to or for the benefit of designated persons or entities (iv) there are no measures to communicate designations to DNFBPs and (v) there are no detailed procedures to delist and unfreeze funds pursuant to designation made under 1267. **Burkina Faso is rated partly compliant on Recommendation 6.**

### ***Recommendation 7 - Targeted Financial Sanctions Related to Proliferation***

In the previous evaluation of Burkina Faso, targeted financial sanctions related to proliferation were not included in the Recommendations. They were added in 2012. The current AML/CFT regime addresses this issue.

**Criterion 7.1** - Burkina has the legal framework to implement targeted financial sanctions (TFS) pursuant to UNSCRs relating to countering the financing of the proliferation of weapons of mass destruction (Article 100, paragraph 4). However, in practice, implementation of Targeted Financial Sanction is yet to be incorporated in the text implementing the administrative freeze. Furthermore, the limitation relating to the implementation of TFS without delay indicated under c6.2 is also relevant here.

#### **Criterion 7.2 -**

(a) The Act requires the competent authority to order, by decision, the freezing, without delay, of the property, funds and other financial resources of the persons or entities designated by the United Nations Security Council, under the resolutions relating to the financing the proliferation of weapons of mass destruction. In addition, financial institutions and any other person or entity that hold property, funds or other financial assets, are required them without prior notification to the proprietors, upon notification of a decision by the Minister of Finance until decided otherwise by the United Nations Security Council or by another decision taken under the same procedure (Article 100, AML/CFT Act 016).

(b) The scope of funds to be frozen is limited. (see c6.5b).

(c) Financial institutions and any other person or entity that hold property, funds or other financial assets, shall without prior notification to the proprietors, freeze them upon notification of such decision until decided otherwise by the United Nations Security Council or by another decision taken under the same procedure (Article 100, AML/CFT Act 016).

(d) As regards communication to these sectors, see c.6.5 (d).

(e), The legal framework requiring financial institutions and DNFBPs to report any assets frozen or actions taken to competent authorities has been discussed in c 6.5(e) above.

(f) The competent authority may authorize the payment or return of funds, financial instruments or other economic resources subject to a freezing measure to a person not subject to such a measure who so requests, if the person is entitled to those funds, financial instruments or other economic resources and acquired a right to the assets prior to the freezing measure, or if a court decision which has become final, grants him such right, following judicial proceedings instituted before that measure was pronounced. (Article 105).

**Criterion 7.3** - Burkina Faso's AML/CFT system requires financial institutions and other reporting entities to inform the FIU of the existence of funds belonging to persons or entities, perpetrators of proliferation financing as well as persons or organizations associated with them. They are also required to disclose all frozen assets to the competent authority (Art. 100, para. 5 & 6). Non-compliance by financial institutions and other reporting entities with the provisions of Recommendation 7 will lead to administrative and disciplinary sanctions by the supervisory authority and the courts (Article 112 (1 & 2), (Article 125). However, DNFBPs and SRBs have no AML/CFT supervisory and monitoring authority, much less the imposition of sanctions.

**Criterion 7.4** -

(a)The competent authority is required to publish procedures to be followed for the de-listing of any natural or legal person on the list of targeted persons, entities or organizations, and where necessary, the release of their funds, (Article 101 (p2), AML/CFT Act 016). For designations under the responsibility of the UN Sanctions Committees, any objection to the freezing order must be in compliance with the appropriate procedure provided for by the UN Security Council Resolutions.

(b) Any natural or legal person whose funds and other financial resources have been frozen inadvertently, may appeal against that decision within one month, with effect from the date of publication in the Official Gazette or in a newspaper authorized to carry legal advertisements. The appeal shall be lodged with the competent authority which ordered the freezing, and it must be accompanied by all the elements that can demonstrate the error. (Article 107(1), AML/CFT Act 016).

(c) Access to funds or other assets, subject to a freezing action taken on the basis of Article 100 is permitted where the countries have determined that the exemption conditions set out by the international body are met. (Article 1103 and 105 AML/CFT law). The analysis under c.6.7 is applicable to the exemption requirements established by UNSCR 1718 and 1737.

(d) As regards mechanisms for communicating de-listings and unfreezing to the financial sector and the DNFBPs pursuant to UNSCR 1718 and successor resolutions the analysis of c.6.6 (g) applies.

**Criterion 7.5** - The AML/CFT Act, 016 provides for exemptions to honour existing contracts at the time of entry into force of the sanctions. Thus:

(a) Funds or other financial resources due under contracts, agreements or obligations concluded or arising prior to the entry into force of the decision to freeze funds shall be deducted from the frozen accounts. The proceeds of the aforementioned funds, instrumentalities and resources as well as the accrued interest shall be paid into these accounts (Article 102, AML/CFT Act 016).

(b) Funds or other financial resources due under contracts, agreements or obligations concluded or in existence prior to the entry into force of the funds freezing order shall be deducted from the frozen accounts (Article 102, AML/CFT Act 016). However, the law is silent on the requirements for such exemption set by Resolution 2231. The unfreezing conditions applicable are those deemed appropriate by the Minister of Finance (Art. 11 of Decree No. 2012-1136).

### **Weighting and conclusion**

Burkina Faso has a broad legal framework to implement TFS in relation to PF. However, the scope of funds to be frozen does not include funds or other assets that are jointly owned or controlled, directly or indirectly funds by designees or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons or entities, and funds and other assets of persons and entities acting on behalf of or at the direction of designated persons or entities are not covered, only reporting entities are prohibited from providing or continuing to provide services to or for the benefit of designated persons or entities, there are no measures to communicate designations to DNFBPs. Furthermore, the law is silent on the requirements set by Resolution 2231. It is important to note that the current mechanism for applying targeted financial sanctions targets only TF and not the PF. Burkina Faso should amend Decree No. 2012-1136 to include FP. **Burkina Faso is rated partly compliant on Recommendation 7**

### **Recommendation 8 - Non-Profit Organizations (NPOs)**

In the previous Mutual Evaluation Report, Burkina Faso was rated non-compliant with these requirements because of the authorities' inadequate capacity to monitor the number of NPOs, the lack of obligation to keep records of associations' financial transactions, and the lack of awareness-raising campaigns on the risk of terrorism. The Burkinabe authorities have adopted laws and regulations to strengthen the legal framework for Non-profit Organizations (NPOs). Article 3 of Act n° 064-2015/CNT of 20<sup>th</sup> October 2015 on freedom of association defines an association as *“any group of natural or legal persons, national or foreign, permanent, non-profit for the purpose of achieving common objectives, particularly in the cultural, sports, social, spiritual, religious, scientific or socio-economic spheres.”*

**Criterion 8.1** - (a) Burkina Faso has no specific measures that require the competent authorities to stratify Non-profit Organizations (NPOs) as stipulated by the FATF, in order to identify those that may present ML/TF risks based on their activities and characteristics; (b) In practice, Burkina Faso has examined the threats inherent in NPOs as part of its NRA.

The NRA report concluded that the TF threat through NPOs is moderate and that TF trend remains unchanged<sup>64</sup>; Burkina Faso has not comprehensively identified the nature of threats posed by terrorist entities to the NPOs which are at risk. **(c)** The Burkinabe authorities conducted a review laws and regulations relating to NPOs and have put in place stringent measures to regulate the organization, operation and activities of NPOs (Section III, Arts. 41 to 43, Act 16-2016; Law n ° 064-2015 / CNT of 20/10/2015, on freedom of association; Law No. 008-2017 / AN of 23/01/2017, on the legal regime applicable to Foundations in Burkina Faso; Decree n ° 2017-0015 / PRES / PM / MATDSI / MINEFID of 16/12/2015, setting up a national register of NPOs in Burkina Faso); **(d)** Overall, the NRA exercise covered the assessment of the NPO sector. It is supposed to be updated on a regular basis (Art. 10, AML/CFT Act 016).

#### **Criterion 8.2 -**

(a)The provisions of Acts 064-2015 and 008-2017 on associations and foundations respectively, provide an answer to this requirement. In addition, the mandatory measures provided for in Section III of the AML/CFT Act 016 are designed to promote accountability, integrity, and public confidence in the administration and management of NPOs, even though these measures apply to all NPOs.

(b) Burkina has organised open days in some cities to raise and deepen awareness among NPOs about the sector's vulnerability to TF abuse.

(c)This sub-criterion, which relates to the development of best practices by involving NPOs in order to respond to the risks posed by terrorist financing and vulnerabilities, has not been addressed by the country.

(d)The same obtains for c.8.2 (d).

**Criterion 8.3 -** Although the laws on associations and foundations establish the obligation to register, declare and authorize, conduct internal and external controls (see. c.8.1 (a) and Art. 49, 50 & 51, Act 064, Art. 40, 41, Act 008 and art. 2, 4 and 10 of Decree 2017-0015), Burkina Faso has not demonstrated that risk-based monitoring and control measures apply to NPOs which are exposed to TF risks.

**Criterion 8.4 -** Even though there are proportionate and dissuasive sanctions for violations committed by NPOs or persons acting on behalf of NPOs, as well as measures to monitor NPOs' compliance with the requirements of the AML/CFT Act 016, Burkina Faso has not demonstrated that the risk-based measures in criterion 8.3 are applied to NPOs.

**Criterion 8.5 -** **(a)** NPOs are reporting entities. The investigative authorities may obtain information on the activities of the NPOs concerned. The FIU may also obtain information from NPOs. **(b)** The powers of the prosecutorial authorities to obtain information are reviewed in R. 31 - the police and gendarmerie are empowered to obtain information directly or by court order or through the FIU. The relevant authorities have received training to build their investigative capacity to detect NPOs that are been abused for terrorist purposes. **(c)**The investigative authorities may have access to information on the administration and management of NPOs (including financial and programmatic information). Article 42 of Act 16-2016 requires NPOs to be prepared to produce, at any time, information on their

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<sup>64</sup> NRA Report of Burkina Faso, page 166

objectives and the ultimate purpose of their activities as well as on the identity of the person or persons managing and controlling the organization. The Article also requires NPOs to keep all records of their transactions for a period of 10 years and make them available to the authorities;(d) Where there is suspicion that an NPO is being used for illegal purposes, the FIU is empowered to conduct investigations and require the NPO to respond to any request for an investigation. Furthermore, the National Intelligence Agency (ANR) has extensive powers to take preventive measures or conduct investigations.

**Criterion 8.6** - There are no points of contact and procedures to facilitate prompt sharing of information or respond to international requests for information regarding NPOs suspected of TF or supporting it by any other means.

### ***Weighting and conclusion***

Burkina Faso has not yet identified the characteristics and types of NPOs which, because of their activities, are likely to be victims of TF abuse. There are no risk-based supervision/oversight measures and no competent authority has been designated to respond to international requests for information concerning an NPO suspected of TF or supporting it by any other means. In addition, Burkina Faso has not demonstrated that the relevant authorities are working with NPOs to develop best practices to deal with TF risk and that there are no measures to encourage NPOs to conduct transactions through regulated financial channels. Given the particular context of Burkina Faso, particularly factors relating to the high TF risk, increasing terrorist attacks, the potential of radicalization and the risk of recruitment of foreign terrorist fighters, which have been indicated in the NRA and by the authorities, a high level of compliance with this recommendation is essential.

**Burkina Faso is rated partially compliant on Recommendation 8**

### ***Recommendation 9 - Financial Institution Secrecy Laws***

Burkina Faso was rated largely compliant (LC) on the recommendation relating to professional secrecy during the first evaluation of its system in 2009. The deficiencies identified in that evaluation related to the absence of provisions guaranteeing that professional secrecy does not interfere with the exchange of intelligence among financial institutions when required. Burkina Faso enacted the Uniform AML/CFT Act N° 016 -2016/AN of 3<sup>rd</sup> Ma 2016, in order to resolve the deficiencies identified.

**Criterion 9** - Article 30 of Act No. 058-2008/AN on establishing the banking regulation in Burkina Faso states that persons involved in the governance, administration, management, control or operation of credit institutions, shall be bound by the obligation of professional secrecy, subject to the provisions of Article 53 which indicates in its last paragraph that professional secrecy is not enforceable by: the judicial authority acting in the context of criminal proceedings, the Banking Commission, and the Central Bank. Article 54 of the said Act also states that the provisions of Article 53 shall be applicable to decentralized financial systems at the National Post Corporation (SONAPOST) with regard to the operations of financial services and postal cheques. Measures relating to AML/CFT in Burkina Faso are also provided for in Article 93 of Act No. 016/-2016/AN, which states that when financial institutions receive electronic transfers with incomplete information on the sender, they shall take measures to obtain the missing information from the issuing institution or the beneficiary in order to complete and verify it. In case they cannot obtain such information, they shall suspend the transfer and shall inform the FIU accordingly. Article 93, also states that, for the

purpose of obtaining evidence of money laundering and terrorist financing and the location of the proceeds of crime, the investigating judge may order various actions, in accordance with the law, for a fixed period of time, without invoking the professional secrecy, particularly those provided for in paragraphs 1, 2, 3, 3, 4, 5 and 6. Article 96 of the same Act states that, notwithstanding any legislative or regulatory provisions to the contrary, professional secrecy may not be invoked by the persons referred to in Article 5 and 6 (reporting entities) as a basis for refusal to provide information to the supervisory authorities as well as to the FIU or to make the disclosures provided for by the law. The same applies to information required in the context of an investigation on offences of money laundering and terrorist financing ordered by the investigating judge or made under his/her supervision by State officials responsible for detecting and repressing such offences. Article 97 also states that no proceedings for breach of secrecy may be instituted against the persons referred to in Articles 5 and 6 or their acting or substantive managers, who, in good faith, have conveyed information or prepared suspicious transaction reports as provided for in Article 79 of this Act, under the conditions prescribed by the applicable laws and regulations, or where those persons have communicated information to the FIU, pursuant to Article 60. Article 75 also covers information exchange between the FIU and supervisory authorities and professional bodies. There are generally no barriers to information exchange between financial institutions in the context of Recommendations, 13, 16 and 17.

### **Weighting and conclusion**

Burkina Faso has met all the requirements under Recommendation 9. **Burkina Faso is rated compliant on Recommendation 9.**

### ***Customer due diligence and record keeping***

#### ***Recommendation 10 - Customer Due Diligence***

Under this Recommendation (5) now Recommendation 10, Burkina Faso was rated non-compliant (NC) in the first evaluation of its regime in 2009 due to the following deficiencies: very limited identification requirements, particularly with regard to beneficial ownership; lack of obligation to investigate the purpose and nature of the relationship; lack of constant due diligence; lack of obligation to conduct Customer Due Diligence on existing customers; limited implementation by the banking sector and lack of implementation by other financial institutions.

Following this evaluation, Burkina Faso took steps to resolve the deficiencies identified in its Mutual Evaluation Report (MER), with the issuance of the Inter-ministerial Decree No. 2014-0356/MEF/MJ/MATS of 2nd September 2014, on the establishment, mandate and functioning of the National Committee for the Coordination of Activities against Money Laundering and Terrorist Financing (CNCA-AML/CFT), and enacting the 004-2015/CNT Law of 3<sup>rd</sup> March 2015 on the prevention and repression of corruption in Burkina Faso and Act No. 016 - 2016/AN.

**Criterion 10.1** - Article 20 (2) of Act No. 016-2016/AN on AML/CFT prohibits the persons mentioned in Articles 5 and 6 (reporting entities) from opening anonymous accounts or accounts under fictitious names.

*When CDD is required*

**Criterion 10.2-** FIs are required to undertake CDD as follows:

(a) . Article 18 of the AML/CFT Act 016 takes covers customer due diligence requirements. The persons mentioned in Articles 5 and 6 of this Act shall identify customers and, where applicable, beneficial owners of the business relationship by all suitable means and shall verify the particulars of the identification documents presented by any appropriate means when establishing business relationship and verify these identification documents upon presentation. These requirements are also covered under Articles 19, 26 and 30 of the said Act. Provisions relating to procedures and domestic control are provided for in Article 25 of the said Act.

(b) These obligations are taken covered in Article 29 of the AML/CFT Act, 2016 which states that financial institutions are required to identify their occasional customers and, where applicable, the beneficial owners of the transaction and to verify their identity where the amount of the transaction or related transactions exceeds ten (10 million) CFA francs for persons other than the authorized foreign exchange dealers, or the legal representatives and directors of gaming operators. In the case of authorized foreign exchange dealers when the amount of the transaction or related transactions exceeds five (5 million) CFA francs, verification is required and for legal representatives and directors of gaming operations, when executing remote remittance or foreign exchange transactions or asset custody services, where the amount of the transaction or related transactions exceeds one million (1,000,000) CFA F verification is also required.

(c) These requirements are covered under Article 26 of Act No. 016-2016/AN, which states that financial institutions shall identify their customers and, where applicable, the identity and powers of the persons acting on their behalf, by means of independent and reliable documents, sources, data or information, especially during the performance of occasional transactions under the conditions set out in Article 29 of the same law. Identification shall also be carried out in the event of multiple transactions in cash, whether in domestic or foreign currency, where they exceed in total the authorized amount and are carried out by and on behalf of the same person within one day, or in an unusual frequency. Such multiple transactions shall then be considered as a single transaction by an occasional customer.

(d) Article 18 of AML/CFT Act 016 states that financial institutions shall identify their occasional customers and, where applicable, the beneficial owner of the business relationship, where there is suspicion that the transaction could be linked to money laundering and terrorist financing or (under the conditions provided for by the relevant regulations), where the transactions are of a certain nature or exceed a certain amount. Similar provisions are also made in Article 4 of Directive No. 01/2007/RB/2007 of 2<sup>nd</sup> July 2007 on the fight against money laundering within financial institutions.

(e) This requirement is not expressly addressed under Article 30 of AML/CFT Act 016.

*Required CDD measures for all customers*

**Criterion 10.3 -** Financial Institutions are required to identify the customer and, where applicable, the beneficial owner of the business relationship and verify the identity on presentation of any reliable written document by any appropriate means, before entering into any business relationship with, or assisting a customer in the preparation or execution

of any transaction (Article 18 AML/CFT Act 016). Financial institutions are required to identify their customers and, where necessary, identify the powers of persons acting on behalf of the latter, through independent source documents and reliable data (Articles 26 AML/CFT Act 016).

**Criterion 10.4** - Articles 26 and 28 (1) of the AML/CFT Act 016 state that financial institutions are required to identify their customers and, where appropriate, the identity and powers of those acting on their behalf, through independent, reliable documents, sources, data or information. The identification of a corporate entity, business unit or representative office involves obtaining and verifying information about the corporate name, the address of the head office, the identity and powers of the partners and social leaders mentioned in the relevant Uniform Act or their equivalents in foreign law, proof of its legal incorporation, namely the original copy, or even the authenticated duplicate or copy of any certificate from the Trade and Business Registry and mortgage loan dating back less than three months, attesting its legal status.

**Criterion 10.5** - Articles 18, 29 and 30 of the AML/CFT Act 016 provide that before entering into any business relationship with any customer or assisting him/her in the preparation or conduct of any transaction, the persons mentioned in Articles 5 and 6 of the Act (includes financial institutions ) must identify the customer and, where appropriate the beneficial owner of the business relationship by all suitable means and verify the identity on presentation of any written and reliable document. They are also required to identify the occasional customers and, where applicable, the beneficial owner of the transaction and verify the identity of the customer. Where it is uncertain whether the customer is acting on his/her own behalf, the financial institution shall try, by any means possible, to obtain information on the identity of the true customer. Article 12 of Directive 02/2015 provides a definition of the beneficial owner. However, it is important to note that the NRA report indicated that despite the legal requirement to collect and keep basic information on the beneficial ownership of incorporated legal entities as provided for in Articles 18, 19, 20, 21 and 22 of the AML/CFT Act No. 016, there is currently no information on beneficial ownership, including foreigners. As a result, it is often very difficult to trace the actual beneficial owners using the documents alone during investigations. Regulation 0004/CIMA/PCMA/PCE/SG/08 defines the procedures applicable by insurance organizations in CIMA Member States under the AML/CFT Act 016. The definition of beneficial ownership is in line with the FATF definition however, the requirement to identify the beneficial owner, “where applicable” is not in keeping with the standards.

**Criterion 10.6** - The requirements relating to understanding and obtaining information of the purpose and nature of the relationship are covered under Article 19 (1) of the AML/CFT The AML/CFT Act 016, which states that before entering into any business relationship with any customer, the persons mentioned in Articles 5 and 6 of this Act shall collect and analyze the strings of information among those on the list drawn up to this effect by the competent authority, which is needed to know their customers and the purpose and nature of the business relationship, in order to assess the risk of money laundering and terrorism financing.

**Criterion 10.7 (a)-(b)** - Ongoing due diligence to be conducted in terms of transaction monitoring and updating and reviewing records, are covered under Articles 19 and 20 of the AML/CFT Act, 2016. Article 20 of the Act states that the persons referred to in Articles 5 and 6 of this Directive must exercise ongoing due diligence on every business relationship and carefully examine the transactions carried out to ensure that they comply with what they

know their customers for, their business activities, their risk profile and, where necessary, the source of their funds. Article 19 states that throughout the duration of a business relationship, financial institutions shall collect, update and analyse the elements of information among those on a list drawn up to by the competent authority, which will help to enhance appropriate knowledge of their customer. The article further states that the collection and keeping of such information should be conducted in line with the objectives of the money laundering and terrorist financing risk assessment and appropriate surveillance of such a risk. Due diligence in this regard is also covered under Article 5 of the BCEAO Instruction No. 007-09/2017 of 25<sup>th</sup> September 2017.

*Specified CDD measures for legal persons and arrangements*

**Criterion 10.8** - Articles 19 and 20 and Article 28 of the AML/CFT Act 016 require financial institutions to know their customers and the nature of their activities. However, the list of information to be collected under this provision and has to be prepared by the supervisory authority (Article 19, 20 and 28 of the AML/CFT Act 016) is not yet available. There is no express requirement in law for financial institutions to understand the ownership and control structure of customers that are legal persons or legal arrangements.

**Criterion 10.9** - Article 28 of the AML/CFT Act 016 states that the identification of a legal person, branch or representative office entails obtaining and verifying information on the corporate name, the address of the registered office, the identity and powers of the partners and corporate officers mentioned in the relevant Uniform Act or their equivalents in foreign law, evidence of its legal incorporation, including the original or certified true copy or duplicate of any certificate from the Registrar General dating less than three (3) months back, attesting to its legal status. There is no provision on identifying and verifying the identity of legal arrangements.

**Criterion 10.10** - Paragraph 12 of Article 1 of the AML/CFT Act No. 016ML/TF defines the beneficial owner as the natural person or persons who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is conducted. This definition also includes persons who ultimately exercise effective control over a legal person or a legal arrangement as defined in paragraph 21 of that Article. Article 28 of the said Act states that the identification of a legal person, a branch or a representative office entails obtaining and verifying information on the corporate name, the address of the registered office, the identity and powers of the partners and corporate officers mentioned in the relevant Uniform Act or their equivalents in foreign law, evidence of its legal incorporation, including the original copy, or the duplicate or certified true copy of any certificate from the Registrar- General dating less than three months back, attesting to its legal status. Where verification of the identity cannot be done in the presence of the representative of the legal person, the financial institution shall implement, pursuant to the provisions of Article 40 of the Act, additional due diligence measures. However, these additional measures have not been defined. Moreover, the Act does not include a person who holds the position of senior managing official.

**Criterion 10.11** - The AML/CFT Act 016 does not expressly require the financial institution to identify and take reasonable measures to verify the identity of beneficial owners for customers that are legal arrangements as indicated under criterion 10.11 (a)-(b).

*CDD for beneficiaries of life insurance contracts*

**Criterion 10.12** - Article 39 of the AML/CFT Act 016 states that insurance companies, insurance agents and brokers engaged in life and non-life insurance activities are required to identify their customers and verify their identity in accordance with the provisions of Article 27 of the law, when the premium amounts reach a threshold amount or payments are made according to certain conditions. The threshold amount and the terms of payment of the premiums are set by the CIMA regulation. Article 13 of Regulation 004/CIMA/PCE/SG/08 of 4<sup>th</sup> October 2008 of the CIMA code specifies the thresholds.

**Criterion 10.13** - Burkina considers this criterion as being not applicable. Article 14 of Regulation No. 004/CIMA of 4<sup>th</sup> October 2008 on the detection of questionable and suspicious transactions as well as high-risk customers, states that the persons in contact with the customers, persons managing the files, and internal auditors must know how to detect questionable and suspicious transactions and high-risk customers. However, the law does not expressly require financial institutions to include the beneficiary of a life insurance as a relevant risk factor in determining whether enhanced CDD measures are applicable.

#### *Timing of Verification*

**Criterion 10.14** - Financial institutions are required to identify and verify the identity of the customer and beneficial owner before or during the establishment of a business relationship with a customer or when assisting the customer in preparing or carrying out any transaction and in the same vein *identify* occasional customers. As an exception to this rule, where the risk of ML/TF seems low, the verification of the customer's identity, and where necessary, the beneficial owner, should only be done during the establishment of the business relationship. (Articles 18, Act 016 on AML/CFT). The provisions do not permit verification after the establishment of the business relationship; as indicated under c10 (a) and (b)

**Criterion 10.15** - These requirements are covered under Article 18 (3) and Article 46 of the AML/CFT Act 016. By way of exemption from paragraph 1 of this Article, which requires verification to be conducted prior to entering into a business transaction, Article 18 states that where the risk of money laundering and terrorist financing appears to be low during the establishment of the business relationship, the verification of the customer's identity, and where necessary, the beneficial owner, can be carried out during the establishment of the business relationship.

#### *Existing customers*

**Criterion 10.16** - Reporting entities are required to exercise constant due diligence on every business relationship and carefully examine the transactions carried out to ensure that they comply with what they know their customers for, their business activities, their risk profile and, where necessary, the source of their funds. (Article 19 and 20).

#### *Risk-Based Approach*

**Criterion 10.17** - The provisions of Articles 32, 40, 50 and 51 of the AML/CFT Act 016 require the implementation of enhanced due diligence measures where the risks are higher.

**Criterion 10.18** - Financial institutions are permitted to apply simplified CDD measures where lower risks have been identified, based on an analysis of risks by the country or the financial institution. FIs are required to state their justifications for reaching such conclusions to the supervisory authority who shall ensure that the scope of the measures taken is commensurate with such risks.

### *Failure to satisfactorily complete CDD*

**Criterion 10.19** - Where a financial institution is unable to comply with CDD measure relating to the identification of the beneficial owner, the financial institution is required to terminate the business relationship. Article 30 (2) of the AML/CFT Act 016 states that “after verification, if there are still doubts as to the identity of the beneficial owner, the transaction shall be terminated, without prejudice to the obligation in Article 79 to report suspicious transaction to the Financial Intelligence Unit in the manner laid down under the conditions provided for under Article 81 of the Act”. These requirements are however, only applicable in the context of identification of the beneficial owner.

### *Customer due diligence and tipping-off*

**Criterion 10.20** - The last paragraph of Article 79, of Act No. 016-2016/AN states that where a transaction subject to a suspicious transaction report has already been conducted, either because it has been impossible to suspend its execution, or because its suspension could have hindered investigations on a suspected money laundering or terrorist financing transaction, or it appeared after its completion that it was subject to that disclosure, the reporting entity shall inform the FIU without delay.

### **Weighting and conclusion**

Burkina Faso has met a considerable number of the criteria under Recommendation 10. Articles 19 and 20 and Article 28 of the AML/CFT the AML/CFT Act 016 require financial institutions to know their customers and the nature of their activities. However, the list of information to be collected under this criterion, which is to be drawn up by the supervisory authority, (Articles 19, 20 and 28 of Law 016/LBC/FT) is not yet available. Furthermore, additional vigilance measures provided for in criterion 10.10 are not yet defined. The requirement to identify the beneficial owner, “where appropriate” is not in keeping with the standards. Furthermore, there is no express requirement in law for financial institutions to understand the nature of the ownership and control structure of customers that are legal persons or legal arrangements and there is no express provision that requires the financial institution to identify and take reasonable measures to verify the identity of beneficial owners for customers that are legal arrangements.

Finally, the legal framework in place does not expressly require financial institutions to include the beneficiary of a life insurance as a relevant risk factor in determining whether enhanced CDD measures are applicable. **Burkina Faso is rated Largely compliant on Recommendation 10.**

### ***Recommendation 11 - Record Keeping***

On this Recommendation, Burkina Faso was rated partially compliant (PC) during the first evaluation of its AML/CFT system in 2009 due to inadequate details on the nature and availability of documents to be kept. In addition, the contents of record keeping requirements were often not known by reporting entities (within a context of the lack of supervision for compliance with AML requirements).

The major amendments and developments recorded since the adoption of the first evaluation report are related to BCEAO Instruction 07/09- 2017 and the adoption of the AML/CFT Act No. 016-2016/AN of 3<sup>rd</sup> May 2016.

**Criterion 11.1** - Article 35 of the AML/CFT Act 016 states that, without prejudice to the provisions prescribing more stringent obligations, financial institutions shall keep, for a period of ten years from the closing of their accounts or the termination of their relationships with their usual or occasional customers, all records relating to their identity. They shall also keep the records relating to the transactions they have carried out, including account books and business correspondence, for 10 years after the execution of the transaction. Article 13 of Regulation No. 0004 CIMA/PCMA/PCE/SG8 and Directive 030-02/2009 outlining the procedures for preparing and keeping the financial statements of UEMOA's DFS and Directive 017-12/2010 on the organization of internal control within the DFS also take into account these requirements.

**Criterion 11.2** - Article 35 of the AML/CFT Act 016 states that without prejudice to the provisions prescribing more stringent obligations, financial institutions shall, keep for a period of ten years from the closing of their accounts or the termination of their relationships with their usual or occasional customers, all records relating to their identity. They shall also keep the records relating to the transactions they have carried out, including account books and business correspondence, for 10 years after the execution of the transaction. Provisions are also made by the Uniform Act of 24<sup>th</sup> March 2010 on the organization and harmonization of company accounting law which imposes a period of 10 years for the keeping of accounting records. Article 67 of the Bank Accounting Blueprint has also made provisions to this effect.

**Criterion 11.3** - The detailed transaction records required as indicated under criterion 11.1 and 11.2 above should be sufficient to permit reconstruction of individual transactions. However, there is no express provision requiring that the records relating to the transactions should be enough to allow the reconstitution of the transactions, which could be used to establish evidence in the event of criminal proceedings.

**Criteria 11.4** - The records relating to the identification requirements provided for in Articles 19, 26, 27, 28, 29, 30, 31, 32 of the AML/CFT Act 016 and which should be kept as mentioned in Article 35, are communicated, at their request, by the judicial authorities, to State officials responsible for detecting offences of money laundering and terrorist financing, acting within the framework of a court warrant, to the supervisory authorities and the FIU (Articles 36; 58 and 70 of the AML/CFT Act 016. Provisions are also made in Article 12 of Directive 017-12/2010 on establishing internal controls within DFS.

### **Weighting and conclusion**

There is no express provision that states that transaction records should be sufficient to permit reconstruction of individual transactions. **Burkina Faso is rated largely compliant on Recommendation 11.**

### ***Recommendation 12 - Politically Exposed Persons (PEPs)***

Under this Recommendation, Burkina Faso was rated as non-compliant (NC) in the previous evaluation of its AML/CFT system in 2009 due to lack of obligations on PEPs. The major amendments made to the relevant laws and regulations since the last evaluation concerns the adoption of the AML/CFT Act No. 016-2016/AN of 3<sup>rd</sup> May 2016.

**Criterion 12.1**- Burkina Faso does not distinguish between domestic and foreign PEPs. FIs are required to implement Recommendation 12 as indicated below:

(a) Article 22 of the law provides that the reporting entities referred to in Articles 5 and 6 of the AML/CFT Act 016 should have adequate risk management systems in place to determine whether the customer is a politically exposed person and, where appropriate, implement the specific measures referred to in Article 54 of that Act. Article 54 (1) requires financial institutions to implement suitable and appropriate risk-based procedures to determine whether the client or a beneficial owner of the client is a PEP. Directive 07-09-2017 relating to AML/CFT procedural requirements incorporates similar measures.

(b) Article 54 (2) states that without prejudice to the obligations provided for in Articles 18 to 20, 26 and 27 of Act, financial institutions shall take some specific measures when entering into business relations, or carrying out transactions with or on behalf of foreign Politically Exposed Persons and this includes obtaining permission from an appropriate level of the hierarchy before entering into a business relationship with such customers. In paragraph 2 it also requires financial institutions to obtain authorization from an appropriate level of the hierarchy before entering into a business relationship with such customers. Financial institutions are not required to consider a person as a politically exposed person until he has held a significant public office, for a period of at least one year.

(c) Article 54 (3) requires financial institutions to take appropriate measures, depending on the risk, to establish the source of the assets and the source of the funds involved in the business relationships or transaction.

(d) Article 54 (4) requires financial institutions to ensure enhanced continuous monitoring of the business relationships.

**Criterion 12.2 (a)** - Article 54 of the AML/CFT Act No. 016-2016/AN does not distinguish between domestic and international PEPs. The provision requires financial institutions, without prejudice to the requirements of Articles 18 to 20, 26 and 27 to take the specific measures hereunder when they enter into business relationships or when they carry out transactions with or on behalf of national PEPs or PEPs of international organizations within the meaning of Article 1 paragraph 44 of this Act. **(b)** - . The measures prescribed in criterion 12.1 (b) to (d) are provided for in Article 54 (2)-(4) of the AML/CFT Act 016.

**Criterion 12.3** - As indicated in Article 1 paragraph 44 of the AML/CFT Act 016, financial institutions are required to apply relevant requirements of criteria 12.1 and 12.2 to family members and closed associates of foreign PEPs but this requirement does not extend to domestic or international PEPs.

**Criterion 12.4** - Article 39 of the AML/CFT Act 016 requires insurance companies, insurance agents and brokers engaged in life and non-life insurance activities to identify their customers and verify their identity in accordance with the provisions of Article 27 of the Act, when premiums reach a threshold amount or premium payments are made under certain conditions. The threshold amount and the terms of premium payments are defined by a CIMA regulation. There is however, no express provision requiring that financial institutions should take reasonable measures to determine whether the beneficiaries or the beneficial owner of the beneficiary of a life insurance policy, are PEPs.

### **Weighting and conclusion.**

There is no express provision requiring that financial institutions should take reasonable measures to determine whether the beneficiaries or the beneficial owner of the beneficiary of a life insurance policy, are PEPs. Financial institutions are not required to consider a

person as a politically exposed person if he/she has not held a significant public office for a period of at least one year. **Burkina Faso is rated largely compliant on Recommendation 12.**

### *Recommendation 13 - Correspondent Banking*

Burkina Faso was rated non-compliant (NC) under these requirements when the country was last assessed in 2009 due to lack of correspondent banking obligations. Since the adoption of the MER, the major amendments made are related to BCEAO Instruction 07/09-2017 and to the adoption of Act No. 016-2016/AN of May 3, 2016 on AML/CFT.

#### **Criterion 13.1-**

(a) Article 38 of the AML/CFT Act 016 states that with respect to cross-border correspondent and other similar relationships, financial institutions are, in addition to normal customer due diligence measures, required to: identify and verify the identification of customer institutions with which they have correspondent banking relationships; collect information on the nature of the activities of the customer institution; assess the reputation of the customer institution and the degree of supervision it is subjected to, based on publicly available information; and assess the controls put in place by the institution to combat ML/TF. The authorized officials of financial institutions must have previously authorized the establishment of a relationship with the correspondent bank. These procedures are also provided for in Article 5 (2) of BCEAO Instruction 07-09-2017 and in the information collection pattern attached to Directive 07-09-2017.

(b) This measure is covered under Article 38 (4) of the AML/CFT ACT 016 and also under Article 5 (2), paragraph 6 of BCEAO Instruction 07-09-2017 and the outline for the collection of information annexed to Directive 07- 09- 2017.

(c) This due diligence is required by Article 38 of the AML/CFT Act 016: Authorized officials of financial institutions must have previously authorized the establishment of a relationship with a correspondent bank. This requirement is also covered under Article 5 (2) paragraph 6 of the BCEAO Instruction 07-09-2017 and the information collection pattern annexed to Directive 07-09-2017.

(d) Article 38 (1) requires financial institutions to identify and verify the identification of respondent institutions with which they have correspondent banking relationships. Article 5 (2) paragraph 6 of BCEAO Instruction 07-09-2017 and its appendix states that when establishing a correspondent relationship, each bank must ensure that its partner is a regularly constituted entity subject to AML/CFT supervision and regulation. However, there is no express requirement for the respondent and the correspondent bank to clearly understand the respective AML/CFT responsibilities of each institution.

**Criterion 13.2 -** (a) This sub-criterion is addressed under Article 53 (5) of the AML/CFT Act 016 which requires that: when financial institutions receive correspondent banks services which are directly used by independent third parties for the execution of transactions on their own account, they are to ensure that the contracting credit institution has verified the identity of customers with direct access to such correspondent accounts and has implemented due diligence measures in respect of such customers in line with those provided for in Articles 18 and 19 of the Act. (b) Article 53(4) permits the transmission of information upon the request of the reporting institution.

**Criterion 13.3** - Article 52 (2) of the AML/CFT Act 016 requires financial institutions to take appropriate measures to ensure that they do not establish or maintain any correspondent banking shell banks. Financial institutions are also required to take appropriate measures to ensure that they do not enter into or maintain a correspondent banking relationship with a correspondent bank that allows their account to be used by shell banks. The definition of a shell bank under the AML/CFT law is consistent with the FATF definition.

**Weighting and conclusion** There is no express requirement for the respondent and the correspondent bank to clearly understand the respective AML/CFT responsibilities of each institution. **Burkina Faso is rated largely compliant on Recommendation 13**

#### *Recommendation 14 - Money or Value Transfer Services (MVTS)*

Burkina Faso was rated non-compliant on this Recommendation due to lack of cross-border cash declaration or disclosure system under its AML/CFT system.

Since the last assessment in 2009, the major amendments made in order to resolve the deficiencies identified under these requirements concern BCEAO Instruction No. 013-11-2015 of November 10, 2015 on the procedures for the exercise of the rapid money transfer activity and the adoption of Act No. 016-2016/AN of May 3, 2016 relating to AML/CFT.

**Criterion 14.1** - These requirements are covered under Article 87 of the AML/CFT ACT 016. In accordance with the specific regulations in force, a person or entity may not engage in the professional activity of money or value transfer services and manual foreign exchange transactions unless they have obtained the approval of the competent authority. However, in practice, money or value transfer services are not directly approved or authorized by a competent authority. Persons or entities who wish to operate MVTS sign contracts with authorized intermediaries and DFS.

The competent authority will determine the minimum operating conditions; in particular with regard to the regular inspection of money or value transfer services and sanctions resulting from non-compliance with the provisions in force. These requirements are also covered under Regulation R09 2010 of October 1, 2010 governing external financial relationships and BCEAO Instruction 013-11-2015 relating to the rules for exercising the activity of rapid transfer of money as a sub-agent within the UEMOA region. Under this directive, natural or legal persons providing money transfer services are required to sign contracts with authorized intermediaries or the decentralized financial systems that give them the mandate to carry out the activity of rapid money transfer on their behalf and under their full responsibility. In this regard, the aforementioned transfer service providers do not have a license but are authorized as soon as they sign a contract with the authorized intermediaries. The lists of natural or legal persons conducting transfer operations or sub-agents are submitted annually by the banks and the DFS to the supervisory authorities, i.e. the BCEAO, the Banking Commission and the Minister of Finance. However, there are also informal networks that transfer money without a license.

**Criterion 14.2** - Natural or legal persons who provide money or value transfer services and that have an authorization are registered and identified. Article 7 (1) of Directive 013-11-2015 stipulates that the list of sub-agents held by each mandator shall be communicated annually to the BCEAO, Banking Commission and Ministry of Finance. The list of approved intermediaries held by the Banking Commission, shall be published. The list of authorized foreign exchange dealers is published by the Treasury. Authorized intermediaries are also

required to display the identity of their mandators within their premises. Article 6 (1) of Directive 013-1-2015 requires sub-agents to display, in a visible and legible manner in their premises, the logo of their mandators. However, there is no evidence that Burkina has taken action aimed at identifying natural or legal persons that carry out MVTS without a license or that the country is applying proportionate and dissuasive sanctions to those persons.

**Criterion 14.3** - BCEAO Instruction 013-11-2015 requires natural or legal persons providing money transfer services to sign contracts with authorized intermediaries or the decentralized financial systems that give them mandate to conduct rapid money transfer, on their behalf and under their full responsibility. For this purpose, the AML/CFT requirements applicable to authorized intermediaries and DFS are also applicable. Under Article 8 of the same guidelines, the authorized intermediaries and the DFS communicate the information relating to the transfer operations carried out by their sub-agents on a monthly basis. Article 87 (2) of the AML/CFT Act 016 stipulates that the competent authority shall determine the minimum operating conditions, especially with regard to the regular inspection of money or value transfer services and sanctions resulting from non-compliance with the provisions in force.

Pursuant to the provisions of Article 10 of the said Instruction, the UMOA Banking Commission, the BCEAO and the Ministry of Finance, within the ambit of their respective powers to supervise approved intermediaries and DFS, can monitor the sub-agents concerned to ensure compliance with the provisions governing the operation of rapid money transfer services. Natural or legal persons acting as sub-agents are required to subject themselves to the above-mentioned inspections and to provide, where appropriate, any information necessary for the proper conduct of the said inspections.

Offences detected shall be punished in accordance with the Banking Regulation Act, the Regulation of Decentralized Financial Systems Act, the Law on the Litigation of the Regulatory Offences of External Financial Relations of the UEMOA Member States and the Law on Combating Money Laundering and Countering the Financing of Terrorism Financing, without prejudice to any other legislative and regulatory provision in force in the Member State in which it is established.

**Criterion 14.4** - Money or value transfer services are not directly approved or authorized by a competent authority. They sign contracts with authorized intermediaries and DFS. There is also no obligation on agents of these services to be approved or authorized by a competent authority. However authorized intermediaries are required to maintain a current list of its sub-agents which is also submitted to the regulators.

**Criterion 14.5** - Authorized intermediaries such as banks and DFS are held liable for the sub-agents as well as the transactions they carry out and are bound by the same AML/CFT requirements. There is no obligation for remittance service providers using agents to integrate them into their AML/CFT programs and monitor compliance with these programs by these agents.

### **Weighting and conclusion**

Money value service providers should be supervised regularly and dissuasive sanctions should be imposed by the competent authorities on natural and legal persons who provide services for the transfer of funds of securities without license or registration. **Burkina Faso is rated partially compliant on Recommendation 14.**

## *Recommendation 15 - New Technologies*

Burkina Faso was rated non-compliant with the requirements of this Recommendation for the following reasons: incomplete and inadequate legal and regulatory framework and inadequate implementation. Directive No. 01/2007/RB was the only applicable regulatory framework to prevent the abuse of new technologies. The major amendments made to the laws and relevant regulations since the last evaluation in 2009 are as follows: Directive No. 08-05-2015 of 21<sup>st</sup> May 2015 relating to the terms and conditions for engagement in electronic money issuance operations and the AML/CFT Act 016.

**Criterion 15.1** - This provision is covered under Article 37 of Act 016/AML//CFT, which requires financial institutions to identify and assess the risks of money laundering or terrorist financing that may result from: the development of new products and new business practices, including new delivery systems; the use of new or emerging technologies in connection with new pre-existing products. Financial institutions are required to take appropriate measures to manage and mitigate risks. Article 13 of the CIMA Code regulates premiums collection and payment. The design and distribution of insurance products is the responsibility of insurance companies. The broker is required to identify and assess the risks of money laundering and terrorist financing that may arise from the development of new products and new business practices, including new delivery mechanisms, and the use of new or emerging technologies related to new pre-existing products.

### **Criterion 15.2** -

(a) These provisions are covered under Article 37 (2) of the AML/CFT Act 016 which requires financial institutions to identify and assess the risks of money laundering and terrorist financing that may result from the use of new or emerging technologies related to new pre-existing products. The risk assessment referred to in paragraph 1 of Article 37 must take place before the launch of new products or new business practices or before the use of new or emerging technologies. (b) Financial institutions are required to take appropriate measures to manage and mitigate risks that may arise in relation the development of new product, business practices or technologies (Article 37 (2) of the AML/CFT Act 016).

### **Weighting and conclusion**

Burkina Faso meets all the criteria under Recommendation 15. **Burkina Faso is rated compliant on Recommendation 15**

## *Recommendation 16 - Wire Transfers*

Burkina Faso was rated non-compliant (NC) on this Recommendation due to a lack of wire transfer requirements. The major amendments made to the relevant laws and regulations since the last evaluation are as follows: Directive No. 13-11-2015 of 10<sup>th</sup> November 2015, and the AML/CFT Act 016.

### *Ordering financial institutions*

**Criterion 16.1** - The requirements of this criterion are covered under Article 33 of the AML/CFT Act 016 and it relates to any transfer (without threshold limitation). Paragraph 1 of this Article states that financial institutions making wire transfers are required to obtain and verify the full name, account number of the sender, where such an account is used to

carry out the transfer of funds, the sender's address or, in the absence of an address, a national identification number or the place and date of birth and, where necessary, the name of the sender's financial institution. Paragraph 2 states that the financial institution of the sender also requires the name of the beneficiary and their account number, when such an account is used to transfer funds. Paragraph 3 requires financial institutions to include the information referred to in paragraphs 1 and 2 above in the message and the payment form attached to the transfer document. If there is no account number, a unique reference number shall be attached to the transfer document.

**Criterion 16.2** - Article 33 (2) and (3) of the AML/CFT Act 016 state that the financial institution of the sender also requires the name of the beneficiary and their account number, when such an account is used to transfer funds. Financial institutions are required to include the originator information in the message and the payment form accompanying the transfer. If there is no account number, a unique reference number must accompany the transfer.

**Criterion 16.3** - [Not applicable] Burkina Faso does not apply a threshold. The measures provided for in Article 33 of the AML/CFT Act 016 apply to all wire transfers.

**Criterion 16.4** - Burkina Faso does not apply thresholds. The measures provided for in Article 33 of the AML/CFT Act 016 apply to all wire transfers. Even where financial institutions are not required to verify the accuracy of the information mentioned in criterion 16.3, Article 34 of the AML/CFT Act 016 states that where financial institutions receive wire transfers with incomplete information on the sender, they shall take measures to obtain the missing information from the issuing institution or beneficiary in order to complete and verify such information. If they fail to obtain this information, they shall withhold the execution of the transfer and inform the FIU.

**Criterion 16.5** - The provisions of Article 33 of the AML/CFT Act 016 apply to all transfers including domestic wire transfers. Articles 35 and 36 of the same Act state that, without prejudice to the provisions prescribing more stringent requirements, financial institutions shall keep, for a period of 10 years from the closing of their accounts or the termination of their relationships with their usual and occasional customers, records relating to their identity. They shall also keep records relating to the transactions they have carried out, including account books and business correspondence, for 10 years after the execution of the transaction. The records relating to the identification requirements provided for in Articles 19, 26 to 31 and 32 and their keeping mentioned in Article 35, shall be communicated at their request by the persons referred to in Articles 5 and 6 of this Act, to the judicial authorities, State agents responsible for detecting offences of money laundering and terrorist financing, acting within the framework of a court mandate, to the supervisory authorities as well as the FIU.

**Criterion 16.6** - Article 33 (3) of the AML/CFT Act 016 has taken the exclusive option of including the required information in the message attached to the transfer. The information referred to in paragraphs 1 and 2 of Article 33 of the AML/CFT Act 016 must appear in the message or the payment form attached to the transfer. In the absence of an account number, a unique reference number must be attached to the transfer document. However, the financial institution of the originator is not required to forward the information accompanying the transfer to the beneficiary's financial institution or to the prosecution authorities upon request from either the beneficiary's financial institution or the appropriate competent authorities within 03 working days of receiving the request.

**Criterion 16.7** - In accordance with Recommendation 11, this measure is taken in Act 016/ML/CFT. Article 35 stipulates that: without prejudice to the provisions prescribing more stringent requirements, financial institutions shall keep, for a period of ten years from the closing of their accounts or the termination of their relationships with their usual or occasional customers, the records relating to their identity. They shall also keep the records relating to the transactions they have carried out, including account books and business correspondences, for a period of ten years after the execution of the transaction.

**Criterion 16.8** - The provisions of Article 34 of the AML/CFT Act 016 require financial institutions that receive wire transfers with incomplete information about the sender, to make arrangements to obtain the missing information from the issuing institution or beneficiary in order to complete and verify such information. Should they fail to obtain this information, they shall withhold the execution of the transfer and inform the FIU.

#### *Intermediary Financial Institutions*

**Criterion 16.9** - These provisions are provided for in Article 33 (3) of the AML/CFT Act 016. The information referred to in paragraphs 1 and 2 of Article 33 of the AML/CFT Act 016 shall appear in the message or the payment form attached to the transfer document. If there is no account number, a unique reference number must be attached to the transfer document.

**Criterion 16.10** - In cases where some technical limitations prevent the required originator or beneficiary information accompanying a cross-border wire transfer from remaining with a related domestic wire transfer, no obligation is imposed on the intermediary financial institution to keep the information received from the ordering financial institution or other intermediary financial institution for at least five years.

**Criterion 16.11** - The provisions of Article 34 of the AML/CFT Act 016 require financial institutions that receive wire transfers with incomplete information about the sender, to take the necessary steps to obtain the missing information from the issuing financial institution or beneficiary in order to complete and verify it. In the case where the financial institution has not obtained this information, they are to refrain from executing the transfer and inform the FIU.

**Criterion 16.12** - Where financial institutions do not obtain the required originator information or required beneficiary information FIs are to refrain from executing the transfer and inform the FIU accordingly.

#### *Beneficiary financial institutions*

**Criterion 16.13** - There are no provisions requiring the beneficiary financial institution to take reasonable measures to identify cross-border wire transfers that lack required originator information or required beneficiary information.

**Criterion 16.14** - There are no specific provision requiring a beneficiary financial institution in the case of a cross-border wire transfers of USD/EUR 1000 or more, to verify the identity of the beneficiary that has not been previously identified, and maintain this information in accordance with Recommendation 11.

**Criterion 16.15** - These provisions are set forth in Article 34 of the AML/CFT Act 016. The provisions of Article 34 of the AML/CFT Act 016 require financial institutions that receive wire transfers with incomplete information about the sender to take the necessary

measures to obtain the missing information from the issuing financial institution or beneficiary in order to complete and verify it. If they do not obtain this information, they shall refrain from executing the transfer and should inform the FIU. Article 5 (2) of BCEAO Instruction 07-09-2017 specifies that the procedures to be put in place by the financial institutions should prescribe the due diligence to be performed and the rules to be complied with in terms of supervision, unusual transactions, detection and analysis of transactions that may be subject to a suspicious transaction report to the FIU.

#### *Money or value transfer service operators*

**Criterion 16.16** - Money and value transfer service operators are subject to Article 1 of the AML/CFT Act 016, (paragraph 35) and to Article 5 (paragraph 3) of the said Act. Also, sub-agents providing money and securities transfer services are required to comply with the obligations of Recommendation 16, as stipulated in Article 5 of the BCEAO Instruction No. 013-11-2015.

**Criterion 16.17** - The provisions of Article 34 of the AML/CFT Act 016 require financial institutions, including MVTs that receive wire transfers with incomplete information about the sender to take the necessary measures to obtain the missing information from the issuing institution or beneficiary, in order to supplement and verify it. If they are unable to obtain this information, they are to suspend the execution of the transfer and inform the FIU. However, the requirement to file a suspicious transaction report in all countries involved in suspicious electronic transfer, and make available to the Financial Intelligence Unit all information, is not explicitly stated in the regulation in force.

#### *Implementing targeted financial sanctions*

**Criterion 16.18** - Article 104 of the AML/CFT Act 016 requires financial institutions that receive an order from a customer, other than a financial institution to execute a transfer of funds out of Burkina Faso to a person, organization or entity subject to a freezing order, to suspend the execution of that order and without delay, inform, the competent authority. The funds or financial instruments shall be frozen, unless the competent authority authorizes restitution to the customer. Financial institutions that receive an order from abroad to transfer funds or financial instruments from a person, organization or entity subject to a freezing order for the benefit of a customer, other than a financial institution, shall suspend the execution of that order and inform the competent authority without delay. Funds or instruments for which the transfer order has been suspended shall be frozen unless the competent authority authorizes the transfer.

### **Weighting and conclusion**

Burkina Faso does not apply a threshold for electronic transfers. The provisions made for this purpose in the AML/CFT instruments apply to all transfers. The country has met a number of the criteria under this Recommendation. However, some gaps were identified. Specifically, the AML/CFT Act 016 does not require the beneficiary institution to verify the identity of the beneficiary where this has not been done previously and to keep this information in accordance with recommendation 11. In addition, where technical limitations prevent the required originator or beneficiary information accompanying a cross-border wire transfer from remaining with a related domestic wire transfer, no obligation is imposed on the intermediary financial institution to keep the information received from the ordering financial institution or other intermediary financial institution for at least five years. As regards the beneficiary's financial institution there is no provision requiring the

beneficiary's financial institution to monitor and identify cross-border wire transfers that lack required originator information or required beneficiary information. In addition, the requirement to file a suspicious transaction report in all countries involved in the suspicious wire transfer, and make all information on the transaction available to the Financial Intelligence Unit, is not expressly stated in the regulations in force. **Burkina Faso is rated largely compliant on Recommendation 16.**

### *Recommendation 17 - Reliance on Third Parties*

Burkina Faso was rated non-compliant with respect to these requirements of Recommendation due to lack of specific standards on transactions requiring the reliance of third parties despite the existence of these types of transactions, especially as financial institutions met in the banking sector in Burkina Faso had indicated that they rely on third parties to conduct part of their AML due diligence obligations, on the basis of a sub-delegation contract. The major amendments made to the relevant laws and regulations since the last evaluation in 2009 are as follows: Directive No. 003-04-2010 of April 30, 2010 and the adoption of the AML/CFT Act 016.

**Criterion 17.1** - Article 57 of the AML/CFT Act 016 obliges the third party that conducting the CDD to make available to the financial institution, information relating to the identity the client and, where applicable, the beneficial owner, as well as information relating to the purpose and nature of the business relationship. The third party is also required to send the financial institution a copy of the client identification documents and, where applicable, those of the beneficial owner, as well as any relevant documents to carry out these procedures. Article 57 of the AML/CFT requires financial institutions relying on third parties to ensure that the recipient third party is in a country that imposes equivalent AML/CFT obligation.

**Criterion 17.2** - Article 57 (1.1) of the AML/CFT Act 016 states that the third party must impose equivalent anti-money laundering and counter financing of terrorism obligations on the list provided for in paragraph 2 of Article 46 of this Act. The law does not explicitly state that countries relying on third parties should have regard to information available on the level of the country

**Criterion 17.3** - Article 89 of the AML/CFT Act 016 states that financial institutions that form part of a group shall implement group-wide policies and procedures, including data protection strategies and information sharing policies and procedures within the group for the purpose of combating money laundering and terrorist financing. These policies and procedures shall be implemented effectively at branch and subsidiary level, established in Member States and in third States. Article 91 of the AML/CFT Act 016 states that financial institutions shall apply measures at least equivalent to those provided for in Chapter 3, Cap II of the Act, with regard to customer due diligence and maintaining information in their branches located abroad. They shall ensure that equivalent measures are applied in their subsidiaries located abroad. Where the locally applicable law does not allow them to implement equivalent measures in their branches and subsidiaries abroad, the financial institutions shall inform the FIU and the oversight and control authority to which they belong. Although these measures do not specifically mention situations where financial institutions rely on third parties, it appears to be implicit.

### **Weighting and conclusion**

The measures taken by Burkina Faso in Act 016-2016/AN allow financial institutions to use third parties to carry out due diligence measures. Under Article 56, financial institutions are authorized to use third parties to carry out the obligations provided for in Articles 18 to 20 of Act 16-2016/AN on the fight against money laundering and terrorist financing in Burkina Faso. However, the CIMA code does not provide for third party business providers.

### **Burkina Faso is rated largely compliant on Recommendation 17**

#### ***Recommendation 18 - Internal Controls and Foreign Branches and Subsidiaries***

In the first evaluation, Burkina Faso was rated partially compliant with respect to the Recommendation on Internal Controls due to a deficient regulatory framework for the financial sector; the lack of a sectoral framework outside the banking system, especially in the microfinance sector; and also, for the lack of effective implementation of internal control obligations in the area of anti-money laundering. The major amendments made in order to address these deficiencies are as follows: adoption of the AML/CFT Act 016, BCEAO Instruction 07-09 2017.

**Criterion 18.1** Article 24 of Act 016-2016/AN stipulates that financial institutions must develop and implement harmonized programs for the prevention of money laundering and the terrorist financing, including setting up centralised information related to the identity of customers, managers, beneficial owners, beneficiaries and proxy holders, agents and on suspicious transactions.

- (a) Financial institutions are required to appoint compliance officers in the directorate responsible for implementing the anti-money laundering and anti-terrorist financing regime. Insurance firms and insurance brokerage businesses are required to have compliance officers
- (b) There is no obligation to implement screening procedures to ensure high standards when hiring employees
- (c) FIs are required to conduct ongoing training of staff to help them detect transactions and activities likely to be related to money laundering and the terrorist financing; Article 4 of BCEAO Instruction 07-09-2017 on the implementation, of the Uniform Act on Combating Money Laundering and Terrorist Financing in UEMOA Member States, by insurance firms states that reporting financial institutions shall have internal procedures to ensure compliance with the legal and regulatory provisions relating to the prevention of money laundering and terrorist financing. Firms and insurance brokerage businesses are required to implement AML/CFT programs, which take into account AML/CFT risks and the scale of commercial activities, including strengthening the capacity of brokers and insurance brokers' staff, through continuous training;
- (d) FIs are required to implement an internal control system to monitor compliance with, the observance and effectiveness of the measures adopted to implement the AML/CFT Act, 016 and the processing of suspicious transactions.
- (e) The Circular N ° 01-2017 / CB / C Relating to the Governance of Establishments of Credit and Financial Companies of the UMOA prescribes the constitution of an audit committee but there is no provision that expressly requires FIs to carry out an independent audit function to test the system.

The supervisory authorities may, within their respective areas of competence, specify the content and modalities for the implementation of programs to prevent money laundering and terrorist financing. Where necessary, they are to conduct onsite inspection to ensure that the programs are properly implemented.

#### **Criterion 18.2 -**

(a) The requirements of this criterion are covered under Article 89 of the AML/CFT Act 016 on data protection and information sharing, which requires financial institutions that are part of a group to implement group-wide policies and procedures, including data protection strategies and information sharing policies and procedures within the group for the purpose of combating money laundering and the terrorist financing. These policies and procedures should be implemented effectively at branch and subsidiary levels, established in member States and in third States. Article 91 of the said Act on the application of due diligence measures in branches and subsidiaries obliges financial institutions to implement those policies. Article 91 of the AML/CFT Act 016 states that financial institutions shall apply measures that are at least equivalent to those provided for in Chapter 3, Title II of this Act, with regard to customer due diligence and record keeping in their branches located abroad. Provisions are also made in Article 16 of UEMOA Banking Commission Circular No. 05-2017/CB relating to compliance management.

(b) The Act 016 on AML/CFT does not specifically detail the measures set down under this criterion.

(c) Financial groups are required to implement adequate data protection measures.

**Criterion 18.3 -** Act No. 016/AML/CFT has provisions to this effect in its Articles 89 (paras. 2 and 4) and 91. Where a financial institution has representative offices, branches and subsidiaries in third States in which the minimum requirements for the fight against money laundering and terrorist financing are less stringent than in the territory in which it is located, the said representative offices, branches and subsidiaries shall apply the obligations in force in its territory, including data protection, to the extent permitted by the laws and regulations of the third States in question (Article 89 (2)). Where the law of the third State does not permit the application of the measures required under paragraph (1) of the same Article, financial institutions shall take additional measures to deal effectively with the risk of money laundering or terrorist financing and inform the supervisory authorities of their State of origin. If these additional measures are insufficient, the competent authorities of the State of origin shall consider additional surveillance measures, including, where appropriate, requesting the financial group to cease its activities in the receiving State (Article 89, Paragraph 4). Financial institutions shall apply measures at least equivalent to those provided for in Chapter 3, Title II of the Act, with regard to customer due diligence and record keeping in their branches located abroad.

#### **Weighting and conclusion**

There is no express requirement for financial institutions to carry out independent audit functions to test the system or provide, at group-level compliance, audit, and/or AML/CFT functions, of customer, account, and transaction information from branches and subsidiaries when necessary for AML/CFT purposes. **Burkina Faso is rated largely compliant on Recommendation 18**

## *Recommendation 19 - Higher Risk Countries*

In the first evaluation, Burkina Faso was rated non-compliant with respect to this Recommendation. Neither the AML Uniform Act, nor National Act 026/2006 created obligations for financial institutions to pay particular attention to their business relationships and their transactions (especially with legal entities and financial institutions residing in countries that do not apply the FATF Recommendations.) This aspect was only partially and unclearly addressed in the annex to the Uniform Act. BCEAO Instruction No. 01/2007/RB only requires the financial institutions to which it applies to have a transaction analysis and customer profiling system to track and monitor movements and atypical financial transactions (Article 7) of the BCEAO. In Burkina Faso, there were no effective measures to inform financial institutions of the concerns raised by other countries' AML/CFT systems; and there was no obligation to examine, as far as possible, the context and purpose of transactions with no apparent economic or legitimate purpose. The changes that have taken place are related to the adoption of the AML/CFT Act 016.

**Criterion 19.1** - Article 50 of the AML/CFT Act 016 states that where a financial institution or an investment firm (other than a portfolio management company) has a cross-border correspondent banking relationship or a relationship for distribution of financial instruments with a financial institution located in a third State the financial institution established in Burkina Faso shall exercise over the foreign financial institution with which it maintains a relationship, enhanced due diligence measures in addition to the measures provided for in Articles 19 and 20 as defined in Article 53. Specifically, Article 51 of Act 016 states that when the risk of money laundering and terrorist financing presented by a client, a product or a transaction appears to be high, the persons referred to in Articles 5 and 6 shall intensify the measures provided for in Articles 19 and 20 of this Directive. These provisions do not specifically refer to a situation where the application of enhanced due diligence is called for by the FATF

**Criterion 19.2** - (a) There are no specific provisions that require the country to apply countermeasures proportionate to the risks: when called upon to do so by the FATF; (b) Article 51 of Act 016 however, requires financial institutions to apply enhanced measures where the risk related to a customer a product or a transaction is high.

**Criterion 19.3** - There is no provision that explicitly covers the requirement to have measures in place to ensure that financial institutions are advised of the concerns about weaknesses in other AML/CFT systems. It is unclear if the BCEAO or Banking Commission has such measures in place.

### **Weighting and conclusion**

There is no specific provision that requires the country to apply countermeasures proportionate to the risks: when called upon to do so by the FATF. There is no provision that explicitly covers the requirement to have measures that advice FIs on the weaknesses in other AML/CFT systems. **Burkina Faso is rated partially compliant on Recommendation 19.**

## *Recommendation 20 - Reporting of Suspicious Transactions*

Burkina Faso was rated non-compliant (NC) on this Recommendation due to inaccurate reporting requirements that were largely ignored by reporting entities; inadequate

implementation; weaknesses relating to criminalisation of predicate offences. The major amendments made to the relevant laws and regulations since the previous assessment are as follows: the AML/CFT Act 016.

**Criterion 20.1** - Article 79 (1) of the AML/CFT Act 016 states that the persons referred to in Articles 5 and 6 are required to report to the FIU, under the conditions laid down by the Act and in accordance with the reporting model set by Order of the Minister of Finance, the sums they suspect or have good reasons to suspect that certain sums are derived money laundering offence or is related to terrorist financing. The guidelines for the AML/CFT obligations of the non-bank financial sectors and a supervision guide were developed and the actors trained to use them. Article 11 of Instruction 01/2007/RB on the fight against money laundering in UEMOA Member States provides that financial institutions shall report suspicious transactions in accordance with the provisions of the AML/CFT Act 016. Also, Regulation No. 004/CIMA requires insurance companies to report suspicions to the FIU.

**Criterion 20.2** - The AML/CFT law does not specifically mention attempted transactions. However, in the insurance sector, Regulation No 004 / CIMA requires insurance companies to report suspicious transactions to CENTIF (Articles 12, 14 and 15).

#### **Weighting and conclusion**

The AML/CFT law does not specifically mention attempted transactions. **Burkina Faso is rated largely compliant on Recommendation 20.**

#### ***Recommendation 21 – Tipping-off and confidentiality***

Burkina Faso was rated Non-compliant on this Recommendation in the first evaluation in 2009 due to extremely limited safeguard on the confidentiality of information provided to the FIU. As regards the changes since the adoption of the first MER. Burkina Faso has enacted Act 016- 2016/AN of May 3, 2016 on AML/CFT.

**Criterion 21.1**- This provision is covered under paragraph 1, Article 83 of the AML/CFT Act 016 which states that the persons or officers and employees of the persons referred to in Articles 5 and 6 who, bona fide, have shared information or made any report, in accordance with the provisions of this act, shall be exempt from all sanctions for breach of professional secrecy. No civil, criminal, or professional sanction may be imposed against the persons or directors, and employees of the persons referred to in Articles 5 and 6 of the Act, having acted under the same conditions as those provided for in paragraph 1 of Article 85, even if the court decisions rendered on the basis of the did not lead to any conviction.

**Criterion 21.2** - Article 82 of the AML/CFT Act 016 stipulates that it is prohibited, under penalty of the sanctions provided for by the provisions of the law, for persons referred to in Articles 5 and 6 to inform the owner of the sums or the author of one of the transactions leading to a suspicious transaction report or third parties, other than the supervisory authorities, professional bodies and national representative bodies, of the existence and content of a report made to the FIU and to provide information on the follow-up made on the said report. These provisions do not inhibit measures for information sharing stipulated under Recommendation 18.

#### **Weighting and conclusion**

Burkina Faso meets the criteria under Recommendation 21. **Burkina Faso is rated compliant on Recommendation 21.**

*Recommendation 22 - Designated Non-Financial Businesses and Professions (DNFBPs): Customer Due Diligence*

In the first mutual evaluation conducted in 2009 Burkina Faso was rated non-compliant on with the requirements of this Recommendation for the following reasons: lack of provisions relating to politically exposed persons; trust and company service providers were not obliged to conduct; lack of information on the advisory tasks of Chartered Accountants; non-dissemination of the 2006 law to regulated professionals; the threshold for identifying casino customers was below the threshold recommended by the FATF; prudential requirements were not imposed on casinos as legal persons; lack of a threshold for dealers in precious metals; lack of regulation of real estate agents outside the law on real estate development.

Since the adoption of its mutual evaluation report and in order to resolve these deficiencies, Burkina Faso has taken the following measures: within the gaming sector, Decree No. 2010-829/PRES/MEF/SECU/MATD/MTSS of December 31, 2010 laying down the conditions for operating casinos in Burkina Faso; Decree 2010-822/PRES/PM/MEF/MATS of December 31, 2010 on the conditions for the organization and control of the gaming sector granted to the Burkinabe National Lottery; Decree 2014-347/PRES/PM/MEF/MATS of May 12, 2014 on slot machine establishments' operating conditions in Burkina Faso. For the mining sector, the promulgation of Act No. 036-2015/CNT of June 26, 2015 on the mining code of Burkina Faso and Act No. 028-2017/AN organizing the marketing of gold and other precious substances in Burkina Faso; Order No. 2009-017/MCE/MEF/MCPEA of November 18, 2009, on conditions of approval and specifications for the purchase, sale and exportation of gold in Burkina Faso; the establishment of the National Agency for the Supervision of Artisanal and Semi-mechanized Mining Operations (ANEEMAS) by Decree No. 2015-1420-PRES-TRANS/PM/MEF/MME.

**Criterion 22.1** - DNFBPs are required to comply with the CDD requirements set out in Recommendation 10 in the following situations:

(a) Article 29 of the AML/CFT Act 016 states that the persons referred to in Articles 5 and 6 of the Act are required to identify their occasional customer and, where appropriate, the beneficial owner and verify their identity when the amount of the transaction or related operations exceeds one million (1,000,000) CFA francs for legal representatives and directors responsible for gaming operators. Article 44 (2) of this Act states that casinos and gaming establishments are required to confirm the identity of gamblers who buy, bring or exchange gambling chips for an amount exceeding the provisions of the third indent of Article 29 (1) of the Act, by presentation of a valid original official document with a photograph, of which a copy is taken. The FATF standards require beneficial owners to be identified in all circumstances.

(b) Article 45 of the AML/CFT Act 016 states that persons who carry out, regulate or advise on real estate transactions are required to identify the parties, that is to say, both the seller and the buyer pursuant to Article 27 and 28 of this Act, when they are involved in the purchase or sale of real estate.

(c) Articles 18, 19, 20 of 016 /AML/CFT requires the persons referred to in Articles 5 and 6 of this Act to identify the customer, the occasional customer and, where applicable, the beneficial owner through appropriate means before entering into a business relationship with a customer or assisting in the preparation or execution of a transaction, or during a business relationship. The list of accountable persons in Article 5 includes dealers in precious stones.

(d) Articles 18, 19, 20 of the AML/CFT Act 016 requires the persons referred to in Articles 5 and 6 of the said Act (includes lawyers, notaries, other legal professional and accountants) to identify the customer, occasional customer and, where applicable, the beneficial owner of the business relationship through suitable means before entering into a business relationship with a customer or assisting in the preparation or completion of a transaction, or during the business relationship.. As regards legal arrangements, the regulations do not provide for the creation of trusts under Burkinabe law. However, members of the independent legal professions acting as trustees are required, by Article 1, bullet points 12, 21 and 24 of Act No. 016-2016 on AML/CFT- to keep all information relating to their clients, including information relating to the settlors and beneficiaries of foreign trusts.

(e) Article 6 (1) (b) Trust and company service providers are required to carry out CDD when they prepare for or carry out transactions listed in under criterion 21.2 (e) (Article 5(17) and Article 6 (2) (b))

**Criterion 22.2** - Article 44 of the AML/CFT Act 016 requires casinos and gaming establishments to keep documents for a period of ten years. According to the OHADA Uniform Act on Commercial Companies, companies are required to keep documents for a period of 10 years; notaries are required to keep minutes without time limit (Article 65 of Order 92-52 of October 21, 1992). There are no provisions requiring real estate agents, dealers in precious stones or other persons subject to reporting obligation to maintain records for five years.

**Criterion 22.3** - Articles 22 and 54 of the AML/CFT Act 016 require DNFBPs to exercise enhanced due diligence on PEPs. Article 54 of the Act stipulates that the persons referred to in Articles 5 and 6 of the Act are required to have adequate risk management systems to determine whether the customer is a politically exposed person and implement, where appropriate, the specific measures referred to in Article 54 of that Act. Although, the AML/CFT law requires DNFBPs to comply with the CDD requirements set out in Recommendation 10, the deficiencies identified under R10 concerning obtaining beneficial ownership information is relevant here.

**Criterion 22.4** - The AML/CFT Act 016 does not require DNFBPs to observe the due diligence requirements for new technologies. It should be noted that Burkina Faso has not yet developed guidelines for this sector.

**Criterion 22.5** - The AML/CFT Act 016 does not require DNFBPs to observe provisions on reliance on third-party obligations set out in Recommendation 17. It should be noted that Burkina Faso has not yet developed guidelines for the DNFBP Sector.

### **Weighting and conclusion**

Burkina Faso has met some of the Recommendation 22 criteria, but deficiencies have been noted, particularly in the case of lawyers who, in the course of their activities, keep track of their accounts for 10 years, but do not have any obligation to keep the documents. As regards

the requirements of criterion 22.1, the AML/CFT Act 016 does not oblige DNFBPs to observe the rules of due diligence relating to new technologies. Burkina Faso has not yet developed the guidelines for the DNFBP sector. In respect of compliance with reliance on third party requirements set in Recommendation 17, the AML/CFT Act 016 does not require DNFBPs to comply with reliance on third party requirements set out in Recommendation 17. **Burkina Faso is rated partially compliant on Recommendation 22.**

### *Recommendation 23 - DNFBPs: Other Measures*

Burkina Faso was rated non-compliant on Recommendation 16 in the previous evaluation which is now Recommendation 23 for the following reasons: DNFBP's lack of obligation to pay particular attention to their business relationships and their transactions with natural and legal persons residing in countries that do not apply or insufficiently apply the FATF Recommendations; there was no obligation for DNFBPs to establish internal AML/CFT programs. Since the adoption of this mutual evaluation report, Burkina Faso has strengthened its AML/CFT system by enacting the 016-2014/AN Act of May 3, 2016 on AML/CFT.

**Criterion 23.1** - DNFBPs are required to comply with the reporting requirements set out in Recommendation 20 as indicated below.

(a) Article 79 (1), states that the persons referred to in Article 5 and 6 are required to declare to the FIU, under the conditions laid down by this law and according to a model of declaration set by Order of the Minister of Finance, the sums they suspect or have good reasons to suspect originated from an offence of money laundering or terrorist financing. Lawyers are required to comply with a certain number of ethical principles and the rules of professional conduct.

(b) Article 79 of the AML/CFT Act 016 Act requires the persons referred to in Articles 5 and 6 (includes dealers in precious metals or stones) to make declarations of any suspicious transaction to the FIU.

(c) Independent professionals including Trust and Company service providers are listed as DNFBPs and therefore reporting entities under Article 1, paragraph 24 and all reporting entities are obliged to report suspicious transactions pursuant to Article 15 of Act 016 on AML/CFT.

**Criterion 23.2** - The last paragraph of Article 25 requires DNFBPs to implement internal control procedures and measures consistent with their status, functions and level of activity which should generally cover internal controls requirements set out in R.18. However, the deficiencies indicated under R18 are relevant here.

**Criterion 23.3** - The deficiencies identified in Recommendation 19 are pertinent under this criterion. There is no specific provision that requires the country to apply countermeasures proportionate to the risks: when called upon to do so by the FATF. There is no requirement for supervisors to inform DNFBPs about weaknesses in other countries AML/CFT system.

**Criterion 23.4** - Article 82 of AML/CFT Act 016 states that under penalty of sanctions provided for by the provisions of this Act, the persons referred to in Articles 5 and 6 (includes all DNFBPs) are prohibited from informing the owner of the sums or the author of a transaction which generates a suspicious transaction report or to third parties, other than supervisory authorities, professional bodies and national representative bodies, of the

existence and content of a suspicious transaction report to the FIU and to provide information on the follow-up to this report. The provisions of Articles 83 and 84 of the said Act protect any person when they declare their suspicions in good faith.

### **Weighting and conclusion**

Burkina Faso has met some of the criteria under Recommendation 23. However, DNFBPs are not subject to obligations regarding internal controls as stipulated in R18. **Burkina Faso is rated largely compliant on Recommendation 23**

## ***Recommendation 24 - Transparency and Beneficial Ownership of Legal Persons***

In its first MER, Burkina Faso was rated non-compliant under these requirements. The 1<sup>st</sup> MER noted that the information which the OHADA legislation requires countries to include in the register could not be used to identify beneficial owners. In addition, data on the implementation of the OHADA Act was incomplete and the extent of the informal activity prevented access to relevant and up-to-date information on all economic operators. Burkina Faso adopted a new Penal Code; Law n0025-2018 / AN of May 31, 2018, which set down sanctions for breaches of the Uniform Act on General Commercial Law.

**Criterion 24.1** - The mechanisms set out in criterion 1 exist and are defined within the framework of the Organization for the Harmonization of Business Law in Africa (OHADA) of which Burkina Faso is a member. (a)The different types, forms and basic features of legal persons are indicated in the Act. (b)As regards to the procedures for the creation of legal persons, the Burkina Business Chamber (MEBF) drew up, the Practical Guide for the Drafting of Legal Incorporation Documents in September 2016. There is also a mechanism describing the processes for obtaining and recording basic information at the National Administrative Registry (RCCM). This information is made available to the public. There are no mechanisms to identify or describe the process for obtaining beneficial ownership information.

**Criterion 24.2** - Burkina Faso has not assessed the ML/TF risks associated with all types of legal persons established in the country.

**Criterion 24.3** - At the Ministry of Justice, and more specifically within the Commercial Court and the High Court, there is a register where basic information is recorded. The information includes the company name, proof of incorporation, legal form and status, the address of the registered office, basic regulating powers, and a list of directors The CEFORE gives an excerpt from the register to companies upon their incorporation. This information is then published online in the Office of the Registrar (RCCM).

**Criterion 24.4** - Companies are required to maintain their RCCM document and their statutes and rules of procedure. These documents (statutes and rules of procedure) contain information on voting rights. This information is kept at the CEFORE and the Commercial Court and High Court. In 2015, the MINEFID set up a digital platform called DOCU Base. This platform includes company data from the 1960s to the present day. It is used to keep the data permanently.

**Criterion 24.5** - There is a verification process to ensure that basic information is accurate and a mechanism in place to ensure that this information updated in a timely manner.

**Criterion 24.6** - Records contained in the RCCM relate to basic information. Beneficial ownership information is not entered into the RCCM. Article 18 of the AML/CFT Act

requires financial institutions and reporting entities to collect information on beneficial ownership when conducting CDD. Although existing information (basic information and information held by FIs) may be used to obtain useful information on the beneficial owner.

**Criterion 24.7** - The general obligation for FIs and DNFBPs to exercise due diligence and maintain records, data and CDD information pursuant to Article 19, paragraph 2 of Act No. 016- 2016/AN applies here.

**Criterion 24.8** - There are no definite mechanisms in place to ensure that companies cooperate with competent authorities to the fullest extent possible in determining the basic or beneficial owner.

**Criteria 24.9** - Article 217 of the OHADA Uniform Act on commercial companies and economic interest groupings requires a liquidator be appointed to conduct the process of liquidation and keep the liquidation records. This law does not specify the number of years during which the liquidator shall keep this register. Article 35 of Act No. 016-2016/AN requires FIs and DNFBPs to keep records and information about the CDD measures for 10 years from the end of the business relationship.

**Criterion 24.10** - The powers conferred on the judicial authorities in the Code of Criminal Procedure governed by Order 68-7 of February 21, 1968 as amended by Act No. 040-2017/AN amending Order 68-7 of February 21, 1968 establishing a code of criminal procedure, allows the competent authorities to obtain access to the basic and beneficial ownership information held by the relevant parties (see Article 40 for the Prosecutor and Articles 78 and 91 for the investigating magistrate). In addition, tax authorities have broad powers to obtain information on businesses even through banks.

**Criterion 24.11** - In accordance with the OHADA Uniform Act, bearer shares may be issued by companies. Article of 744-1 of the OHADA law requires bearer shares to be dematerialized.

**Criterion 24.12** - Nominee shareholders and managers are not expressly prescribed by the OHADA Uniform Act. It is unclear if this precludes the use of nominee directors. There is no mechanism ensuring nominee shareholding is not misused.

**Criterion 24.13** - There are sanctions for failure to updated basic information. The obligation for financial institutions and DNFBPs to identify beneficial owners is provided for in Article 19, paragraph 2 of Act No. 016-2016/AN and the penalty for violation of this provision is provided for in Article 112 of the same law. Although customers are generally required to provide or update information on beneficial ownership held in FIs, no sanctions are applicable for not updating this information.

**Criterion 24.14** - Burkina Faso has, in its legal arsenal, international agreements on judicial cooperation. Articles 130 et seq. of Act No. 016-2016/AN also provides a basis for international cooperation. Basic information on legal persons is held by the RCCM, and available to the public on request. There is a possibility of accessing beneficial ownership information at financial institutions

**Criterion 24.15** - There is no evidence that competent authorities monitor the quality of assistance it receives from other countries in response to requests for basic and beneficial ownership. Burkina has not provided any information on the quality of assistance received from other countries to locate beneficial owners residing abroad.

### **Weighting and conclusion**

Burkina Faso has not assessed ML/TF risks associated with all types of legal persons. There are no provisions to monitor the assistance provided on beneficial ownership created in the country, there are no sanctions to deal with failure to provide beneficial ownership information, in respect of nominee shareholding and directors, there is no mechanism to ensure that legal persons are not abused for money laundering. **Burkina is rated partially compliant on Recommendation. 24**

### *Recommendation 25 - Transparency and Beneficial Ownership of Legal Arrangements*

In the previous MER, these requirements were deemed inapplicable under the Burkina Faso AML/ CFT regime.

#### **Criterion 25.1 -**

- (a) Not Applicable
- (b) Not Applicable
- (c) Professional Trustees are required to collect CDD information, which includes information on the identity of some of the parties to the trust (Article 1.1 and Article 5 of Act 016-2016/AN). Also, the deficiency discussed in R10 regarding customers who are legal arrangements is relevant under this criterion.

**Criterion 25.2 -** The CDD information collected by professional trustees which includes information on the identity of the settlor, (but which does not extend to all trust parties) must be updated (Article 1.1 and Article 5 of Act 016-2016/AN).

**Criterion 25.3 -** Trustees have no legal obligation to disclose their status to reporting entities, even though the reporting entities are required to identify any person acting on behalf of a customer, in accordance with the CDD requirements.

**Criterion 25.4 -** There are no explicit provisions in Burkina's laws or regulations that would prevent disclosure of information regarding legal arrangements.

**Criterion 25.5 -** As indicated under criterion 24.10 prosecutors and investigative magistrates have powers to obtain access to information held by reporting entities including financial institutions and DNFbps (Act No. 040-2017/AN amending Order 68-7 of February 21, 1968) establishing a Code of Criminal Procedure, meet these requirements.

**Criterion 25.6 -** [Largely met] Burkina Faso has, in its legal arsenal, international agreements on judicial cooperation Articles 130 et seq. of Act No. 016-2016/AN also provides a basis for international cooperation. However, the deficiencies under criteria 25.1 and 25.2 are relevant under this criterion.

**Criterion 25.7 -** Regulated entities acting as professional trustees are required to comply with the customer due diligence requirements and sanctions for non-compliance are fully applicable. They are however, not obliged to obtain information on all parties to the trust.

**Criterion 25.8 -** There is no text providing information about this criterion.

#### **Weighting and conclusion**

Professional trust providers' obligation to obtain information does not extend to the parties to the trust who are neither the customers nor the beneficial owners of the customer. This

limitation impacts on several other criteria. **Burkina Faso is rated partially compliant on Recommendation 25.**

### *Recommendation 26 - Regulation and Control of Financial Institutions*

Burkina Faso was rated non-compliant on the Recommendation relating to the regulation and supervision of financial institutions in its first MER adopted in November 2009. The deficiencies identified related to the fact that the rules concerning fit-and-proper criteria of DFS managers were not clearly established, that there were no specific procedures for checking the lawful origin of the capital contributed at the time of incorporation of banks or other financial institutions such as DFS, wealth management companies or management and intermediation or insurance companies, and there were no procedures designed to verify beneficial ownership. Since the adoption of this MER, Burkina Faso has enacted the AML/CFT Act, and adopted Regulation No. 09/2010/CM/UEMOA and Act No. 023-2009/AN of May 14, 2009. It should be noted that the new Recommendation 26 reinforces the principle of monitoring and supervision using the risk-based approach.

**Criterion 26.1** - Under Burkina Faso's laws and regulations, financial institutions have several authorities in charge of the regulation and supervision of financial institutions, as defined by the FATF Recommendations. Article 5 of AML/CFT Act No. 016 enumerates Financial Institutions that are subject to AML/CFT requirements (see Table 3). Also, the specific texts identify the competent authority or authorities in charge of regulation and/or supervision, for each of the Financial Institutions. Thus, Act No. 058-2008/AN of November 20, 2008 on banking regulation known as the Banking Act, especially Article 59 of this Act, and the Convention establishing the UEMOA Banking Commission define the separation of powers between the regulatory and control bodies of the banking sector and the conditions of their interventions. The regulation and supervision of banks and financial institutions of a banking nature are thus divided between the BCEAO, the UEMOA Banking Commission and the Ministry of Finance (Directorate of Monetary and Financial Affairs - DAMOF). Notwithstanding the provisions of Article 54 of the Banking Act, the Postal Financial Services and the Deposit and Consignment Office are subject, as public entities, to the regulation and control of the Court of Auditors. Article 16 of the CIMA Treaty confers on the Regional Commission for Insurance Control (CRCA) and the Ministry of Finance (Directorate of Insurance - DA) the powers to regulate and supervise the Insurance and Reinsurance Companies, and Insurance and Reinsurance Brokers. The Ministry of Finance (Directorate of Supervision and Control of DFS), the BCEAO and the UEMOA Banking Commission for DFS, under Articles 43 and 44 of Act No. 023-2009/AN of May 14, 2009, the Regional Council of Public Savings and Capital Markets (CREPMF) supervise the regional capital market. The Ministry of Finance (DAMOF) and the BCEAO supervise the Authorized Foreign Exchange Dealers. The general and AML/CFT monitoring and supervision of these institutions is conducted through off-site and on-site inspection.

#### *Market Entry*

**Criterion 26.2** - Article 13 of the Banking Act, Articles 7, 8 and et seq. of DFS Act, and the CIMA Code and their implementing instruments respectively state that all financial institutions covered under these instruments<sup>65</sup> and that are subject to the fundamental principles shall obtain a license or an authorization before conducting their activities. The

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<sup>65</sup> Banks and financial institutions, DFS, Insurance and financial market operators

minimum requirements are provided by Instruction No. 008-05-2015 of May 21, 2015 relating to the requirements for the issuance of electronic money, Instruction No. 005-06-2010 of June 4, 2010 on DFS, Instructions No. 05 and 06 of Regulation No. 09/2010/CM/UEMOA of October 1, 2010 relating to the requirements for the exercise of the foreign exchange transactions and Instruction No. 13-11-2015 of November 10, 2015 on the exercise of rapid money transfer activity, define the requirements for licensing or authorizing financial institutions. Thus, it should be noted that with effect from January 1, 1999, all credit institutions headquartered in any UEMOA Member State, can provide free banking or financial services throughout the Union or freely get established in accordance with the modalities defined by any Instruction issued by the Governor of the BCEAO. The requirements for licenses or authorizations as provided for do not allow the establishment or continuation of the activities of shell banks. Furthermore, under the provisions of Article 52 of the AML/CFT Act, financial institutions are prohibited from entering into or maintaining any correspondent banking relationships with shell banks. Finally, in accordance with the provisions of Article 87 of the AML/CFT Act, natural or legal persons, other than banks, who wish to provide money or value transfer services, as a major or subsidiary activity, on their own behalf or in their capacity as a representative, shall first obtain the operating license from the Competent Authority (Minister of Finance), in accordance with the requirements provided for by the specific regulations in force.

**Criteria 26.3** - The provisions of Article 86 of the AML/CFT Act require FI supervisory authorities to take the necessary measures to define the appropriate criteria for the possession, control or direct or indirect participation in the management or operation of a FI. The specific instruments specifically relating to banking institutions and other financial institutions of a banking nature, to DFS and insurance companies, have minimum requirements for the licensing and authorization of financial institutions. These are requirements for information on the shareholders and managers of these institutions, including those provided for in the provisions of the Banking Act and in Articles 29 and 30 of Act No. 023-2009/AN regulating DFS. For banks and financial institutions, these requirements are stipulated by Instruction No. 017-04-2011 establishing the list of documents and information for a credit institution license application, and for DFS, Instruction No. 005-06-2010 of June 14, 2010 determines the constitutive elements of the application for approval in UEMOA Member States. In addition, UEMOA Commission Circular 002-2011/CB/C specifies the conditions for the performance of the functions of managers and officers of UEMOA credit institutions. For Managers and Directors, the issue of licenses to practice is subject to the production of criminal records following fit-and-proper checks. These instruments are likely to prevent criminals or their accomplices from holding or becoming beneficiaries of any financial institution or from controlling it or occupying a management position therein.

#### *Risk-based approach to monitoring and supervision*

#### **Criterion 26.4** -

(a) The new prudential regime put in place by the UEMOA Banking Commission includes Consolidated Supervision. It is implemented for banks and financial institutions through Decision No. 014/24/06 /CB/UEMOA dated June 24, 2016. This decision is in line with Principle 12 of the Fundamental Principles. Although AML/CFT is not specifically targeted, it is included in practice. The same consolidation framework is provided for insurance companies. However, there is nothing to indicate the establishment of any monitoring based on ML/TF risks, even though the current regulatory reforms incorporate this aspect.

(b) Other financial institutions not subject to the fundamental principles are subject to AML/CFT monitoring or supervision. But there is nothing to indicate that such supervision is risk-based.

**Criterion 26.5** - Reporting entities are required to conduct, document, update and make their ML/TF risk assessments available to supervisory authorities and SRBs (Art. 11, para. 2). However, the assessment team was not informed of any risk assessment of reporting entities by the supervisory authorities in order to determine their risk profile and apply supervision/control based on the risk of ML/TF. Burkina Faso's NRA Report highlighted the risks of ML/TF in the financial sector, which should be taken into account by supervisory authorities in determining supervision frequency and intensity.

**Criterion 26.6** - The assessment team did not receive any information relating to the assessment of the ML/TF risk profile of reporting entities carried out by the FI supervisory authorities., The action plan that was drawn up after the NRA is yet to be implemented, but should provide for the regular evaluation of the ML/TF risk profile by institution and financial group or as soon as a major event occurs in the management or operations of the institution or financial group.

### **Weighting and conclusion**

The regulation and supervision of financial institutions is enshrined in the general AML/CFT instruments and in the specific instruments of the financial institutions. Each financial institution or group of institutions is accountable to a specific authority and is subject to specific approval or authorization conditions. Besides, although the reforms of the current UEMOA BC regulatory framework incorporate the risk-based approach in general and ML/TF in particular, this practice is not yet in force. The same applies to the supervisory authorities of the other FIs. **Burkina Faso is rated partially compliant on Recommendation 26.**

### ***Recommendation 27 - Powers of Supervisory Authorities***

Burkina Faso was rated non-compliant on the Recommendation relating to the powers of supervisory authorities in its first MER, due to the fact that the AML supervision exercised by the UEMOA Banking Commission in banks and financial institutions were inadequate and did not appear to comply with international norms and standards in this area, that the monitoring of MFIs was deficient and did not relate to compliance with AML standards, and that the supervision of insurance companies uncovered several deficiencies and was not focused on AML. Since the adoption of its MER in 2009, Burkina Faso has put in place instruments to resolve the deficiencies identified. In this regard, the instruments relating to the AML/CFT Act, the Banking Act, the CIMA Regulation and the DFS Act give the powers to conduct offsite and on-site inspections and imposed sanctions.

**Criterion 27.1-** The BCEAO, the UEMOA Banking Commission, the Ministry of Finance, the Regional Insurance Control Commission (CRCA) and the Regional Council for Public Savings and Capital Markets (CREPMF) have the powers, under Article 86 of the AML/CFT Act and the specific Laws and Instructions governing<sup>66</sup> them, to monitor and ensure compliance with the AML/CFT requirements of the reporting entities accountable to

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<sup>66</sup>Instruction No. 008-05-2015 of May 21, 2015 on the conditions for issuing electronic money, Instruction No. 005-06-2010 of June 14, 2010 on DFS, Instructions No. 05 and 06 of Regulation 09/2010/CM/UEMOA on the requirements for conducting manual foreign exchange operations, Instruction No. 13-11-2015 of November 10, 2015 on conducting rapid money transfer operations

them. Off-site inspections are carried out on the basis reports which the reporting entities submit to their supervisory authorities.

**Criterion 27.2** - The above-mentioned authorities also have a wide range of powers as defined by the Specific Laws and Directives for conducting on-site inspections of the reporting entities accountable to them. These inspections may be conducted either during a general inspection mission or during AML/CFT thematic missions.

**Criterion 27.3** - Supervisory authorities have the powers, as defined by the specified laws and instructions, to access information held by financial institutions, to request for the production of documents for investigations ((art.96 of the AML/CFT Act) and off-site inspections of the accounts and activities of reporting entities<sup>67</sup>.

**Criterion 27.4** - Competent supervisory authorities can impose sanctions for non-compliance with the AML/CFT provisions (Article 112 of the AML/CFT Act). The Banking Commission can impose disciplinary sanctions for breach of banking regulations or any other legislation applicable to *credit institutions*, including those relating to AML/CFT (Article 66 of the Banking Act). It may also impose pecuniary sanctions (Article 77 of the Banking Act). The *DFS* supervisory authorities are provided with a range of sanctions) for non-compliance with AML/CFT measures (Article 14 of Instruction 007-09-2017). Similarly, the Regional Insurance Supervisory Commission (CRCA) can impose sanctions on *insurance companies* for non-compliance with AML/CFT requirements, using the types of sanctions provided for in the CIMA Code (Article 112 of the AML/CFT).

### **Weighting and conclusion**

**Burkina Faso is rated compliant on Recommendation 27.**

### ***Recommendation 28 - Regulation and Control of Designated Non-Financial Businesses and Professions***

Burkina Faso was rated non-compliant on the Recommendation relating to the regulation and control of DNFBPs, due to the law not providing for the role of control or monitoring authorities, a lack of control over casinos and a lack of control over real estate agents. Since the adoption of its MER in 2009, Burkina Faso has enacted legislation, decrees and implementing orders to resolve the deficiencies identified.

#### *Casinos*

**Criterion 28.1(a)** - In Burkina Faso “games of chance”, including casinos, are regulated by Act No. 027-2008/AN of May 8, 2008. Article 5 of this law states that the requirements for licensing are specified by a decree of the Council of Ministers. Thus, Articles 4 to 8 of Decree No. 2010-829/PRES/PM/MEF/SECU/MATD/MTSS of 31<sup>st</sup> December 2010 stipulate the requirements for the licensing of casinos.**(b)** The provisions of Article 5 of the above Decree specify that the Managing Director and Technical Director of a gaming establishment shall each provide an application for their approval; this application shall be complemented by an investigation report on their fit-and-proper status prepared by the relevant services of the National Police. However, there is no specific provision for legislative and regulatory measures that prevent criminals or their accomplices from holding or becoming beneficial owners of a significant portion of shareholding in or control of a

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<sup>67</sup> See Article 58 of the DFS Act, Article 53 of the Banking Act

casino (c) The Ministry of Finance is the authority responsible for the technical monitoring and accounting of gaming establishments. This monitoring is carried out through off-site inspections, reports communicated by the establishments, and on-site inspections. The Ministry of Security is responsible for the general supervision of the gaming sector. However, there is no mention of any authority explicitly designated to monitor casinos' compliance with AML/CFT requirements.

*Designated Non-financial Businesses and Professions other than Casinos*

**Criterion 28.2** - No authority or SRBs has yet been designated to supervise DNFBPs and ensure their compliance with AML/CFT requirements. However, the FIU reports that it has drafted a regulatory text designating the authorities in charge of supervision and regulation in the area of AML/CFT

**Criterion 28.3** - Burkina Faso has made little effort to ensure that other categories of DNFBPs are subject to monitoring for compliance with their AML/CFT obligations.

**Criterion 28.4** - No Competent Authority or SRB has yet been designated.

*All Designated Non-financial Businesses and Professions*

**Criterion 28.5** - Burkina Faso has not provided any indication that supervision of DNFBPs is conducted using a risk-based approach. However, the outcomes of the NRA provided information on the risks inherent in ML/TF activities within various DNFBPs and should thus make it possible to establish the frequency and extent of controls on the implementation of AML/CFT requirements by DNFBPs using a risk-based approach.

**Weighting and conclusion**

The legislative texts prescribe requirements for the approval of licenses and technical and accounting supervision of casinos. But no indication is given by Burkina Faso regarding the designation of the competent supervisory authorities for DNFBPs in respect of AML/CFT.

**Burkina Faso is rated non-compliant on Recommendation 28.**

*Recommendation 29 - Financial Intelligence Units (FIUs)*

At its last evaluation, Burkina Faso was rated Partially compliant with the requirements of this recommendation. The main deficiencies for this rating related to: the lack of an operational FIU, the fact that the remit of the FIU did not include countering the financing of terrorism; and the fact that the confidentiality of additional information requested by the FIU was not assured. Burkina Faso has implemented legal, institutional and operational changes to strengthen the FIU framework.

**Criterion 29.1** - Article 59 of the AML/CFT Act establishes the “*Financial Intelligence Unit or FIU*, an administrative authority with financial autonomy and powers to take independent decisions on issues falling within its authority. The FIU receives processes and analysis information on suspicious transaction reports collected (Article 67 AML/CFT Act).

**Criterion 29.2 - (a)**The FIU is responsible for receiving Suspicious Transaction Reports (STRs) (Art. 59) from financial intermediaries, other reporting entities and any other natural or legal person designated by the competent authority. It also receives any other useful information necessary for the accomplishment of its mission, especially those communicated by the supervisory authorities as well as criminal investigation officers, which it processes, where necessary, as in the case of a suspicious transaction report.

(b)The FIU also receives, cash transactions of an amount above the applicable designated threshold set by a BCEAO Instruction, from financial institutions and designated Non-Financial Businesses and Professions, whether as a single transaction or in the form of several transactions that appear related (Art. 15, AML Act). Financial institutions report information on cash transfer transactions carried out using cash or electronic money to the FIU. (Art. 17 (7)). The threshold for reporting is set at fifteen million (15,000,000) CFA F (Art. 1, BCEAO Instruction No. 10). The FIU also receives information which may be related to money laundering or terrorist financing and which could be treated as suspicious transaction reports from supervisory authorities and professional bodies. (Art. 2).

**Criteria 29.3 - (a)**The FIU may request disclosure from reporting entities as well as from any natural or legal person, of any information held by them and which may be used to support the suspicious transaction reports (Art. 60, para. 2, 3<sup>rd</sup>). **(b)** As part of its analytical activities resulting from an STR, the FIU shall, where appropriate, request additional information from the informant, other reporting entities, foreign FIUs and any public and supervisory authority (Art. 67 (1), AML Act). In this regard, the FIU has direct or indirect access to several sources of internal and external information that are likely to contain the information sought.

**Criterion 29.4 - (a)** Under Article 60, paragraph 2, the FIU is responsible for, inter alia, collecting, analysing enriching and utilizing any information necessary to establish the origin or destination of the funds or nature of the transactions that have led to the submission of a report or information. When the FIU receives an STR, it first conducts some tactical analysis. This tactical analysis specifically consists of comparing the data received or additional information from the original reporting entities and other entities with the data held by the FIU or to which it has access, namely, sources in the public sector, State department sources and other FIUs. On this basis, the FIU conducts an operational analysis using tactical information to formulate various assumptions about the possible activities of the suspect to produce operational information. Operational analysis therefore transforms the information received by the FIU into operational information that can be filed to police agencies or the Prosecutor's Office. **(b)**The law does not expressly require the FIU to carry out strategic analyses. However, the FIU's powers and functions include the task of "conducting or commissioning periodic studies on the development of techniques used for the purpose of money laundering and terrorist financing in the country and "participating in analysing measures to be implemented to counter illegal financial circuits, money laundering and terrorist financing" (Art. 60, paragraphs 5 and 6). The analysis described in c29.4(a)(b) above is entrusted to the FIU's Analysis Department (Art.22, FIU Order) in close collaboration with the Investigations Department (Art. 20).

**Criterion 29.5 -** Pursuant to Article 67, par.2 of the AML/CFT Act, where investigations reveal facts that could highlight facts that may reveal laundering of the proceeds of any criminal activity or terrorist financing, the FIU refers the matter to the Prosecutor. Similarly, the FIU may, and subject to certain conditions, disclose information (on fraud or attempted tax evasion) that it holds, spontaneously or upon request to the Customs, Revenue, Treasury administration and Criminal Investigations Department (Art.66 al.2), specialized intelligence services, as well as State departments in charge of preparing and implementing freezing orders.

**Criterion 29.6 -**

- (a) There are rules in place governing the security and confidentiality of information Information received from reporting entities and other natural or legal persons (is kept in a database, processed and analysed before being disseminated. Due to its sensitive nature and in order to guarantee its confidentiality, this information must be secured through an IT device. The provisions of the AML/CFT Act prescribe certain obligations which the FIU and its staff must observe.
- (b) Pursuant to Article 65, the FIU members and those designated as correspondents are required to take an oath before the competent authority prior to assuming office and are bound to protect the secrecy of the information collected and adhere to, the obligations of confidentiality and respect of professional secrecy. These obligations are reinforced by a code of ethics.
- (c) Furthermore, the premises of the Unit are secured by armed security guards. Finally, the FIU also has a manual of procedures for processing STRs that was developed in 2014. This manual covers procedures for processing, storing, protecting, consulting, analysing and disseminating data and limited access to information.

**Criterion 29.7 - (a)** The FIU has financial autonomy and independent decision-making power over matters falling within its jurisdiction (Art. 59, AML/CFT Act 2016) and enhances its independence and operational autonomy, culminating in the execution of its mandate outlined in c.29.5. **(b)**The FIU collaborates with the national authorities referred to in c.29.5 under certain conditions and has concluded twenty (20) cooperation agreements to promote the exchange of information with FIU counterparts. It has also become a member of the Egmont Group since 2013. **(c)** Not Applicable to Burkina Faso. **(d)** Under Article 73 of the AML/CFT Act, the FIU's resources are derived from the State's budget as well as the support provided by UEMOA institutions and development partners.

**Criterion 29.8 - [Not Applicable]**

### **Weighting and conclusion**

**Burkina Faso is rated as compliant with respect to Recommendation 29**

## ***Recommendation 30 - Responsibilities of Law Enforcement and Investigative Authorities***

In its first MER, Burkina Faso was rated Partially compliant with these requirements due to inadequacies in the detection and analysis of individual assets, the fact that investigations and prosecutions were not sufficiently focused on the financial aspects; lack of specialization in the area of money laundering and terrorist financing at the District Prosecutor's Office and within the police services as well as a passive attitude and lack of initiative to acquire expertise in this area.

**Criterion 30.1 -** There are agencies specializing in Anti-corruption and fraud. There is no specialized body for the enforcement of criminal law for money laundering. Investigations of financial crimes are generally conducted by the economic and financial brigades of the police and the economic units of the gendarmerie. TF investigations are conducted by the

police gendarmerie and the intelligence agency. Burkina Faso has recently created specialized courts to deal with cases of economic crimes (Act No. 005-2017/AN of 19/01/017) and terrorism (Act No. 006-2017/AN of 19/01/2017). There are designated law enforcement officers that have responsibility for ensuring that money laundering, associated predicate offences and terrorist financing offences are properly investigated.

**Criterion 30.2** - [ Met] Criminal Investigation Officers are required to investigate any ML/TF related offences. This requirement stems from the Code of Criminal Procedure (Arts. 1, 12 to 75) as well as specific texts on drug controls, anti-corruption, etc., which requires the police, the gendarmerie and specialized courts to open a criminal investigation where there is a reason to believe that a crime has been committed. This allows investigators from conducting parallel financial investigations.

**Criterion 30.3** - The Criminal Investigation officers are in charge of identifying, detecting and initiating seizure proceedings within the earliest possible time for assets that are or may be subject to confiscation, or likely to be the proceeds of a crime. The investigating judges are additionally responsible for initiating the freezing procedures. Also, the Forest Code (Act No. 003-2011/AN of April 5, 2011 on the Forest Code in Burkina Faso) and the Environmental Code (Act No. 006 2013/AN of April 2, 2013 on the Environmental Code) in Burkina Faso mention the possibility of sworn officials undertaking the procedures for seizing or confiscating assets resulting from fraudulent operations (an option also provided for under Articles 22 to 27 of the Code of Criminal Procedures).

**Criterion 30.4** - FIU members and officers of the State Treasury are not prosecutorial authorities, but are in charge of conducting financial investigations on predicate offences. The analysis and enhancement of the information submitted to the FIU form part of the financial investigation. The FIU may also conduct or have criminal investigation officers conduct an administrative investigation into the socio-economic environment or an assets investigation in order to trace the assets of a suspect (Article 60, 1, 2 and 3 of the AML/CFT Act). In this and some other context, the FIU may order the freezing of the disputed funds for forty-eight (48) hours, but may not extend this period or make a seizure without the intervention of the judge. The Penal Code, the Forest Code and the Environmental Code and Customs code empower sworn officials to collect evidence for the prosecution of predicate offences.

**Criterion 30.5** - The combined interpretation of Articles 56 and 57 of Act No. 082-2015 / CNT of 4<sup>th</sup> November 2015 establishing the Supreme State Control and Anti-Corruption Authority, Articles 52 to 75 of Act No. 004-2015/CNT of 3<sup>rd</sup> March 2015 on the prevention and repression of corruption in Burkina Faso, as well as those in the Criminal Procedure Code on crimes and preliminary investigations grants officers of the authority the same powers as the judicial police therefore, the officers of the Anti- Corruption Authority have powers to trace and initiate assets freezing and seizure ,investigate and conduct investigations in the public and private sectors and civil society, collect, analyse and disseminate to prosecutorial authorities any information relating to the detection and repression of acts of corruption and related offences committed by any public or private person; and to recover all funds owing to the State and its affiliates in all proceedings related to corruption and associated offences.

### **Weighting and conclusion**

**Burkina Faso is rated compliant on Recommendation 30.**

### ***Recommendation 31 - Powers of Criminal Prosecutorial and Investigative Authorities***

In the first MER, Burkina Faso was rated partially compliant with these requirements due to the non-criminalization of terrorist financing.

**Criterion 31.1** - The competent authorities in Burkina Faso generally have the power to access documents and information needed for criminal prosecution. In particular, the authorities have the power to apply the following coercive measures under the Law:

- (a) Article 47 of Organic Act No. 02-2015/CNT: in the execution of their mandates, the members of the ASCE-LC may collect any evidence, information, or useful document from banks and financial institutions; they may also obtain any information and subpoena anyone they consider would be of necessary assistance
- (b) Article 74 of Act No. 040-2017 of 03/07/2017 amending Order 68-7 of 21<sup>st</sup> February 1968 establishing the Code of Criminal Procedure provides that search warrants and seizures may be carried out.
- (c) Article 93 of Act No. 016-2016/NA of 3<sup>rd</sup> May 2016 stipulates that the investigating judge may, for the purposes of obtaining evidence of money laundering and terrorist financing, and the location of the proceeds of crime, order the tracking of bank accounts; access to IT systems, seizure of original documents, private documents, banking, financial and business documents; surveillance or interruption of communications; audio or video recording of acts and actions or conversations; and interception and seizure of mail.

**Criterion 31.2** - Article 93 of Act No. 016-2016/AN of 3<sup>rd</sup> May 2016, Burkina Faso states that for the purpose of obtaining evidence of money laundering, terrorist financing and related predicate offences, the investigating judge may, without being subject to professional secrecy, order various actions, including placing under surveillance or intercepting communications; intercepting and seizing mail, controlling delivery, accessing computer systems, networks and servers used or likely to be used by persons against whom there are serious indications of involvement in the offences provided above. The Burkina Faso Code of Criminal Procedures has also incorporated some relevant provisions.

**Criteria 31.3** - Financial institutions regularly respond to inquiries about the accounts of natural or legal persons sent to them by investigators in the course of information gathering. These requests may be in the form of court summons or a simple request for information.

**Criterion 31.4** - As part of its relationships with the FIU, investigators may, in the course of their investigations, request for, information held by the FIU (pursuant to Article 66 of Act No. 016 ML/TF). This Article stipulates that "the disclosure of information held by the FIU is prohibited and may only be used for purposes for which they were provided. Notwithstanding, if the information relates to the facts that may be the subject of a suspicious report, the FIU is authorized to communicate information it holds to the Customs, tax, treasury and criminal investigation services."

#### **Weighting and conclusion**

## **Burkina Faso is rated compliant on Recommendation 31.**

### ***Recommendation 32 - Cash Couriers***

In its 1st MER, the Burkina Faso was rated non-compliant with these requirements. The technical deficiency was the lack of a system of declaration or communication on cross-border movements of physical cash in the framework of AML/CFT.

**Criterion 32.1** - Any individual entering or leaving Burkina Faso is required to complete a declaration of cash and BNIs in an amount or value equal to greater than the BCEAO threshold set at CFAF 5 million (Article 12 of Act 16-2016). Individuals coming from / leaving to a UEMOA country are not required to declare or communicate the cash or BNIs in their possession (Article 12). The export abroad, by post or by any other means, of payment instruments (incl. travellers' checks, cashier's checks, foreign bank notes and domestic or foreign securities), is subject to prior authorization by the Department of External Finance (Article 29 Regulation No. 09/2010/CM/UEMOA). Sending and receiving banknotes issued by the BCEAO between any other resident natural or legal person, other than the BCEAO, and its banking or commercial correspondents located outside the UEMOA Member States is prohibited (art. 29, para. 2 of R09/2010).

**Criteria 32.2** - All persons making physical cross-border transportation of currency or BNIs, which are of a value equal to or greater than CFA F 5 million (approximately 7635 Euros), are required to submit a truthful written declaration to the designated competent authorities ((Article 12 of Act16-2016)

**Criteria 32.3** - [Not applicable] the Burkinabe system provides for the written declaration regime.

**Criteria 32.4** - Customs may, where necessary (e.g. in case of false declaration), require the traveller to obtain additional information on the origin and destination of the cash or BNIs when the threshold is equal to or greater CFAF 5,000,000 (approximately 7635 euros )or in case of suspicions related to ML/TF (Art 12 para. 2, AML/CFT Act). This suspicion may be based on non-declaration or false declaration.

**Criterion 32.5** - The declaration obligation is deemed to be met only if the information provided is correct and complete (Art. 12 para. 4). In the event of false declaration, cash and bearer instruments that may be related to money laundering or terrorist financing are withheld or blocked for a period not exceeding 72 hours. In addition, the respondent may be sentenced to 10 years' imprisonment and a fine equal to five times the value of the assets or funds (Art. 119, AML/CFT Act 016.). The sanctions appear to be proportionate and dissuasive.

Similarly, in the event of non-declaration or misrepresentation, the Customs service shall seize the full amount of the undeclared cash (Art. 12, 5 and 6) in accordance with the FIU (Art.111, AML/CFT Act).

**Criterion 32.6** - (a) (b) In the event of non-declaration, false or incomplete declaration, or where there is suspicion of ML/TF, the customs administration shall seize all the cash found and prepare a report. The seized cash and a copy of the seizure report are sent directly to the treasury, the Public Deposit Fund or the organization in lieu thereof. Customs is required to submit the transaction file to the FIU within eight calendar days (Art.111, AML/CFT Act).

**Criterion 32.7** - There is some coordination between the different immigration police services of Customs and other administrations including the exchange of information on movements of cash or bearer instruments. The coordination mechanism is not clearly described in its operational aspect.

**Criterion 32.8** -

(a) Customs may block or withhold, for a period not exceeding 72 hours, any cash or bearer instruments that may be linked to ML/TF (Article 12 (5)).

(b) Customs may also seize the entire amount of undeclared cash in the event of non-declaration or false declaration (Art 12 al 6).

**Criterion 32.9** - The international instruments to which Burkina Faso has subscribed provide for enhanced cooperation and assistance, including in the area of mutual legal assistance, extradition, freezing and confiscation and all other forms of cooperation. Article 138-155, of the AML/CFT Act provides for such cooperation and assistance.

(a) (b)&(c) The Customs and FIU databases shall keep declarations for amounts above the prescribed threshold or in the event of misrepresentation or false declaration or suspicion of ML/TF for a period of ten (10) years. This information can therefore be disclosed within the context of international cooperation and assistance.

**Criterion 32.10** - The data collected by the customs administration, which is in charge of the cash declaration system and BNIs, are shared with the FIU for investigation purposes, where necessary (Art. 111). Non-resident travellers may freely import franc zone banknotes or means of payment denominated in foreign currency. However, Article 1 of Instruction 008-09-2017 establishes an obligation to declare or disclose cash or bearer instruments for amounts equal to or greater than five million (5,000,000) CFA francs (approximately 7635 euros). While the principle is the free movement of capital, the law nevertheless provides, through the declaration or disclosure requirement, for traceability of cash or bearer instruments where the threshold is higher than or equal to five million (5,000,000) CFA francs.

**Criterion 32.11** - Under Art 12 pars. 4, 5 and 6, cash or bearer instruments may be seized in their entirety in the event of non-declaration or misrepresentation. Similarly, where cash or bearer instruments are likely to be linked to money laundering or terrorist financing, they may be held by the competent authority for a period not exceeding 72 hours. In addition, the suspect may be sentenced to 10 years' imprisonment and a fined an amount equal to five times the value of the assets or funds. Finally, the Judge may order the confiscation of the funds or other financial resources in favour of the State Treasury (Articles 128 and 129, AML/CFT Act). The sanctions appear to be proportionate and dissuasive.

**Weighting and conclusion**

The system for reporting cash and BNIs worth CFAF 5 million or more applies only to persons entering or leaving the UEMOA zone are but is not mandatory for those moving between the 8-member states of the Union. The mechanism for coordination of different immigration police services of Customs and other administrations is not clearly described.

**Burkina Faso is rated partially compliant on Recommendation 32.**

### *Recommendation 33 - Statistics*

In the previous evaluation, Burkina Faso was rated non-compliant on issues relating to AML/CFT statistics. The current system has improved in recent years.

**Criterion 33.1** - The Sectoral Studies and Statistics Headquarters (DGESS) of the Ministry of Justice produces the Ministry's annual statistical trend chart. The objective is to brief the population on actions taken by courts and prisons. The statistical trend chart highlights the activities conducted by the courts and prisons department and provides some data on the organization and functioning of the Central Judicial Administration (Chancery).

Specifically:

**Criterion 33.1- (a)** Burkina Faso maintains statistics on STRs. The statistics date as far back as 2009, the year of the FIU's inception. The figures provided include the number of STRs received and their distribution to the various agencies, including reports filed to the prosecutor.

**Criterion 33.1n- (b)** Burkina Faso provided statistics on the reports filed by the FIU to the Prosecutor for investigation. These statistics do not include ML investigations generated from other sources. Burkina Faso did not provide comprehensive statistics on TF investigations, although the authorities have indicated the number of indictments relating to terrorism and terrorist financing cases. The authorities indicated that there were no convictions for ML and TF offences.

**Criterion 33.1 - (c)** Burkina Faso provided statistics on seizure and confiscation. The various competent authorities keep information on seized and confiscated assets, but it seems this is generally not systematically collated.

**Criterion 33.1- (d)** Statistics on mutual legal assistance and extradition and cooperation between the FIU and its counterparts seem to be well kept. Burkina Faso provided statistics on cooperation between LEAs.

#### **Weighting and conclusion**

On the whole, Burkina Faso's statistics on AML/CFT are fairly comprehensive. **Burkina Faso is rated largely compliant on Recommendation 33.**

### *Recommendation 34 - Guidelines and Feedback*

Burkina Faso was rated Non-compliant on the Recommendation relating to guidelines and feedback, due to lack of guidelines, other than a BCEAO Instruction with limited detail. Since the adoption of its MER in 2009, Burkina Faso has enacted texts and developed guidelines to resolve some of the deficiencies identified.

**Criterion 34.1-** Each competent authority is required to issue Instructions, guidelines or Recommendations to enable FIs and DNFBPs comply with AML/CFT obligations (Article 86.3 of the AML/CFT Act). The competent authorities of FIs have issued Directives, regulations, Instructions<sup>68</sup> and guidelines to guide their reporting entities in the implementation of their AML/CFT requirements. These authorities provide feedback to their reporting entities through the outcomes of the on-site and off-site inspection reports

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<sup>68</sup> BCEAO Instruction No. 07-09-2017 of September 25, 2017

and annual activity reports. Also, the guidelines for the non-banking financial sectors and a monitoring and supervision guide accessible to the supervisory authorities of these sectors have been developed. However, the guidelines for the DNFBP sector have not yet been developed and due to the absence of a designated competent authority for the DNFBP sector. Additionally, there has been no feedback at this level. It is unclear whether self-regulatory bodies provide feedback in relation to R.34.

### **Weighting and conclusion**

The AML/CFT Act 016 provides (see Article 86) that the competent authorities for FIs and DNFBPs shall adopt guidelines. Although the guidelines are common practice for the FIs' supervisory authorities, this is not the case for DNFBPs due to the general absence of the supervisory and self-regulatory bodies. **Burkina Faso is rated partially compliant on Recommendation 34 relating to guidelines and feedback.**

### **Recommendation 35 - Sanctions**

Burkina Faso was rated partially compliant on the Recommendation relating to sanctions. The deficiencies identified were related to the fact that the nature and scope of the sanctions applicable to the DFS were not clearly defined and that there was a conflict of interest within the UEMOA BC due to the fact that there were representatives of the BCEAO and member States within it, who, incidentally, were also shareholders in some of the banks.

Since the adoption of its MER in 2009, Burkina Faso has enacted texts and developed guidelines to resolve some of the deficiencies identified.

**Criterion 35.1** - Articles 112 to 117 of the AML/CFT Act provide for administrative, disciplinary and criminal sanctions applicable to natural and legal persons who do not comply with AML/CFT requirements. More specifically, the provisions of Article 66 et seq., of the Law on Banking Regulations provide for the application of sanctions for breach of banking regulations or any other legislation applicable to credit institutions. The same obtains under Article 14 of Instruction No. 007-09-2017 establishing the modalities for implementation of the Uniform AML/CFT Act 016 by FIs. In addition, the Penal Code<sup>69</sup> provides for penalties for all offenses within the meaning of the AML / CFT Law. However, the dissuasive and proportionate nature of these sanctions has not yet been demonstrated.

**Criterion 35.2** - Sanctions are applicable to FIs and DNFBPs, but also to the officers and staff of such institutions (Articles 112 to 117). In addition, the specific instruments relating to banking regulations<sup>(70)</sup> and the CIMA Code provide for sanctions applicable to managers and directors. However, DNFBPS that do not have AML/CFT supervisory authorities could impose sanctions in the event of non-compliance with the due diligence obligations.

### **Weighting and conclusion**

The AML/CFT Act and the specific instruments pertaining to FIs in particular, include sanctions applicable to FIs and DNFBPs as well as to their Managers and Directors. However, DNFBPS do not have AML/CFT supervisory authorities that could impose sanctions in the event of non-compliance with the due diligence obligations

### **Burkina Faso is largely compliant with Recommendation 35**

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<sup>69</sup> Sections 316-1 to 316-4, 331-1 to 336-19, 342-6, 357-2 to 362-4, 371-1 to 373-14, 511-1 to 511 -28, 533-19 to 533-52, 611-1 to 615-4, 622-2 & 622-3

<sup>70</sup> Article 26 of the Banking Regulation Act

## *Recommendation 36 - International Instruments*

In its first MER, Burkina Faso was rated largely compliant with the previous Recommendation 34, due to not having fully implemented the provisions of the Vienna and Palermo Conventions.

**Criterion 36.1** - Burkina Faso is a party to:

- The Vienna Convention (ratified on June 2, 1992);
  - The Palermo Convention (ratified on May 15, 2002);
  - The Merida Convention (ratified on October 10, 2006);
- The Convention for the Suppression of the Financing of Terrorism (ratified on October 1, 2003)

**Criterion 36.2** - These instruments have been fully incorporated into Burkinabe positive law through the following laws: the Drug Code (1999), the Grand Theft Act (2009), the AML Act (2006), the CFT Act (2009), Anti-corruption Law 004 2015 and the AML/CFT Act (2016).

*Weighting and Conclusion* – **Burkina Faso is compliant with Recommendation 36.**

## *Recommendation 37 - Mutual Legal Assistance*

In its first Mutual Evaluation, Burkina Faso was rated largely compliant with the previous Recommendation 36. The deficiencies related to the lack of overall statistics.

**Criterion 37.1** - Burkina Faso can provide MLA in ML, TF and predicate offences on the basis of Article 138 of AML/CFT Act No. 016-2016/AN). It can also provide MLA on the basis of bilateral and multilateral agreements Burkina Faso is a party to several multilateral conventions that also serve as a basis for providing MLA with foreign countries.

**Criterion 37.2** - Burkina Faso does not have a formal or institutionalised central authority dealing with the transmission of execution of requests<sup>71</sup>. There is however, a mechanism in place. Within the Ministry of Justice, Human Rights and Civic Promotion, the Director of Criminal Affairs and Justice acts as the designated focal point and facilitates the processing of received MLA requests. It appears that there are no measures for the timely prioritization and execution of MLA requests. A request for assistance must include a detailed statement of any particular proceedings or request that the requesting State wants Burkina Faso to follow or execute (Article 139(7) and (8) of Act No. 016-2016); and an indication of the period during which the requesting State wishes to receive the response. Specific judicial cooperation platforms have designated focal points to facilitate communication between the requesting authority and the requested authority. These include, for example, focal points for the Sahel Judicial Cooperation Platform (June 2010) for the fight against the threat of terrorism covering Burkina Faso, Mali, Mauritania and Niger and the West African Network of Central Authorities and Prosecutors (WACAP) in the Sahel. However, no formal case management system has been put in place to monitor the progress on requests.

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<sup>71</sup> Decree No. 2019-0060 / PRES / PM / MAEC of 29 January 2019 on the organization of the Ministry of Foreign Affairs and Cooperation, created the Directorate General of Political and Strategic Affairs has establish the MAEC as the competent authority responsible for international cooperation

**Criterion 37.3** - Article 140 No. 016-2016 establishes the grounds for refusing a request for mutual legal assistance. There are no unreasonable restrictive conditions for refusing MLA. Article 140 states that even professional secrecy cannot be invoked to refuse to execute the request.

**Criterion 37.4** -

- (a) refusal of a request on the grounds that the request concerns tax matters is not one of the reasons for refusal as mentioned in Act 016-2016.
- (b) A request for MLA cannot be refused on the grounds of professional secrecy or confidentiality. (Article 140 of Act 016-2016). Similarly, Article 47 of Act No. 082-2015/CNT states that: in the performance of their functions, the members of ASCE-LC may, with due respect for civil liberties: collect any testimony, information or useful document. The custodians of the documents cannot invoke professional secrecy (with the exception of the judicial secrecy). In addition, a request for any information from banks and financial institutions cannot be opposed by invoking banking secrecy. Members of the ASCE-LC have the power to request for assistance from any person they may consider necessary (Article 48).

**Criterion 37.5** - Article 141 of Law 016/2016 requires the competent authority to respect the secrecy of the request for MLA, including the secrecy of legal proceedings, the contents of the request, the documents produced and the fact of MLA. “Where it is impossible to execute the request without disclosure to other parties, the competent authority shall inform the requesting State”. However, the law does not indicate the circumstance under which it will be impossible to execute the request without disclosure to other parties.

**Criterion 37.6** - There is no legal provision in the Act 016-2016 on dual criminality. Burkina Faso implicitly adopts a broad approach to MLA. In practice, the country does not need dual criminality to provide MLA where requests do not involve coercive actions and the principle of dual criminality which is implicit in Burkina Faso’s domestic law does not typically lead to the refusal of MLA.

**Criterion 37.7** - Under the national law dual criminality is required for MLA. However, since the entry into force of the UEMOA Uniform Law Act, (No. 016-2016/AN) the country has adopted a broad approach to MLA and does not require dual criminality to provide MLA. Therefore, the principle of double criminality does not potentially lead to a refusal of mutual legal assistance (Article 140 of the AML/CFT Act). Nevertheless, the dual criminality requirement remains implicit in the country’s domestic law and there is no provision within the law that states that dual criminality will be considered satisfied so long as both countries criminalise the conduct underlying the offence whether or not they place the offence in the same category of offence.

**Criterion 37.8** - (a) The investigative and prosecutorial authorities have the authority to order the production, search and seizure of any evidence in accordance with Burkinabe legislation (Article 142, AML/CFT Act, article 55, 74, 96, Criminal Procedure Code; articles 677-12 and 677-13 of Law 040-2017). (b) Articles 99 and 142 of AML/CFT Act No. 016, Act No. 040/2017/AN of 29<sup>th</sup> June 2017 amending Order No. 68-7 of 21<sup>st</sup> February 1968, establishing a code of criminal procedure, provides that the investigating judge may use special investigative techniques in response to a request for mutual legal assistance. It may substitute the measures in the legislation for those requested to achieve the same result.

**Weighting and Conclusion**

Some deficiencies were identified in the analysis of this recommendation. It appears that Burkina Faso has not put in place any process for prioritizing and expeditiously executing requests for mutual legal assistance to ensure effective management of requests. There is no express provision that requires Burkina Faso not to make dual criminality a condition for rendering assistance where a request does not involve coercive actions. **Burkina Faso is rated largely compliant on Recommendation 37.**

### *Recommendation 38 - Mutual Legal Assistance: Freezing and Confiscation*

In its first MER, Burkina Faso was Partially compliant on this Recommendation due to doubts about the possibility of executing confiscation orders for proceeds and instrumentalities based on the predicate offences that are not criminalized in Burkina Faso; a lack of legal basis for executing rogatory commissions on seizures and corresponding confiscations, a lack of provisions on sharing confiscated assets with other countries and the lack of mechanism to coordinate seizures and confiscations.

**Criterion 38.1-** On the basis of Articles 99, 128 and 129 of the AML/CFT Act and Articles 105 and 106 of the Anti-Corruption Act, Burkina Faso has the power to take diligent action in response to requests from foreign countries to identify, freeze, seize or confiscate (a)laundered assets (b)proceeds of crime (c) instrumentalities used in ML/TF-related cases (d) instrumentalities intended to be used in ML/TF-related case (e) property of corresponding value

**Criterion 38.2 -** Burkina Faso's law provides for possible confiscation even where the offender cannot be identified, is deceased or absent, or cannot be prosecuted in Burkina Faso for other reasons (Articles 105 and 106 of Act 004-2015/CNT for corruption; Article 148 of Act 016-2016 for ML/TF). Confiscation of assets can be ordered even in the absence of a criminal conviction because of the termination of the prosecution or for any other reason whatsoever. It may be inferred that this extends to circumstances where the offender dies, fees, is absent or unknown.

**Criterion 38.3 - (a)** There are no measures that specifically address coordinating seizure and confiscation actions with other countries. However, there exist similar mechanisms. For example, the Judicial Cooperation Platforms of the Sahel countries (June 2010) and the Joint African and Malagasy Organization (OCAM). **(b)** Pending the establishment of the National Agency for the Management and Recovery of Seized and Confiscated Assets, seized, frozen or confiscated assets are currently managed mainly by court registries.

**Criterion 38.4 -** Requesting States are entitled to benefit from assets confiscated in Burkina Faso provided an agreement has been concluded with the requesting State (Article 151 of the AML/FT Act).

#### **Weighting and Conclusion**

The identified gaps relate to the absence of express arrangements for coordinating seizure and confiscation actions with other countries. **Burkina Faso is largely compliant with Recommendation 38**

### *Recommendation 39 - Extradition*

In its previous mutual evaluation report, Burkina Faso was rated partially compliant with the requirements of this Recommendation due to a lack of statistics.

### **Criterion 39.1 -**

(a) Burkina Faso can execute extradition requests on an ad hoc basis. The law explicitly states that ML/TF is an offence that may lead to extradition (Article 156 of 016 AML/CFT). Article 157 provides that a request for extradition must be directly addressed to the appropriate Prosecutor of the Requested State<sup>72</sup>, with a copy sent to the Minister of Justice for information. Burkina Faso has also signed bilateral and multilateral extradition treaties with a total of 20 countries.

(b) The law does not specify the prioritization, management and follow-up of extradition requests and does not set deadlines for processing such requests.

(c) Burkina Faso does not impose unreasonable or unduly restrictive conditions on the execution of extradition requests.

**Criterion 39.2 -** Burkina Faso does not extradite its nationals (Article 3 of the AOF Act of March 10, 1927)". Burkina Faso has adopted the principle of "extradite or prosecute". In the event of refusal of extradition, the case shall be referred to the competent national courts without delay so that the suspect can be prosecuted for the offence for which the request was made (Articles 161 of the AML/CFT Act 016).

**Criterion 39.3 -** Dual criminality is required in Burkina Faso for extradition.: Article 156 of Act No. 016 on AML/CFT states that there is no derogation from the ordinary law of extradition, in particular those relating to dual criminality. Moreover, the law does not explicitly stipulate that the requirement of dual criminality is met where both the requesting and requested country penalize the conduct underlying the offence whether or not both countries classify the offence in the same category or use the same terminology to describe the offence.

**Criterion 39.4 -** There are legal provisions for simplified procedures (Article 157). The Burkinabe domestic law authorizes the extradition of any person who consents to be extradited. There is a framework for provisional arrests between appropriate authorities within the ECOWAS region and handover of persons on the basis of warrants of arrests or judgments.

### **Weighting and Conclusion**

Criteria 39.3 presents some gaps which Burkina Faso needs to address. Specifically, the law does not specify the prioritization, management and follow-up of extradition requests and there are no clear processes in place. The law does not explicitly state that the requirement of dual criminality is met where both the requesting and requested country penalize the conduct underlying the offence whether or not both countries classifies the offence in the same category or use the same terminology to describe the offence.

**Burkina Faso is largely compliant with Recommendation 39.**

### ***Recommendation 40 - Other Forms of International Cooperation***

Burkina Faso was rated partially compliant for these requirements in its previous MER, mainly due to the lack of ML/TF information exchange with foreign LEAs counterparts,

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<sup>72</sup> The requested State here means any UEMOA Member State.

inexistent FIU to FIU cooperation on AML/CFT matters, as well as a limited cooperation on AML/CFT in the securities and insurance sectors.

### *General Principles*

**Criterion 40.1** - Competent authorities (police,<sup>73</sup> FIU,<sup>74</sup> Customs and supervisory authorities<sup>75</sup>) have the necessary legal basis for providing a range of international cooperation in relation to money laundering, associated predicate offences and terrorist financing. Burkina Faso has entered into cooperation agreements with several countries on judicial, financial and security matters. Information is exchanged both spontaneously and upon request. However, Burkina Faso has no established mechanism for monitoring the promptness of the range of international cooperation it provides to other countries.

### **Criterion 40.2** -

(a) Competent authorities have legal basis for cooperation, including through bilateral and multilateral agreements. Burkina Faso has identified thirty-eight (38) agreements that deal directly or indirectly with the issue of money laundering and terrorist financing. To date, the Burkina Faso FIU has signed twenty (20) bilateral agreements with its foreign counterparts. The INTERPOL Central Offices cooperate with other NCBs in member countries. In Burkina Faso, this cooperation is done through official channels, i.e. diplomatic, judicial administrative and informal, in collaboration with all relevant national bodies.

(b) There is nothing under Burkina Faso's law that prevents competent authorities in the country from using the most efficient means to co-operate.

(c) The channels, circuits or mechanisms are clear and secure, transmissions being made through the diplomatic, judicial and administrative channels. Examples include the EGMONT SECURE WEB channel for exchanges between FIUs, the I24/7 channel for exchanges between INTERPOL NCBs, and the SYDONIA WORLD channel between Customs services. The financial sector authorities have the Cooperation and Information Exchange Agreement between the UMOA Banking Commission and the Regional Council of Public Savings and Capital Markets (CREPMF); the Cooperation and Information Exchange Agreements between the UEMOA BC and certain regulatory and supervisory authorities, particularly the French Banking Commission of September 19, 2000.

(d) There are generally safeguards for protecting the information received.

(e) Burkina Faso does not appear to have any clear process for prioritizing specific requests for enforcement.

**Criterion 40.3** - The FIU can cooperate with its foreign counterparts (Article 78 of the AML/CFT Act). Other competent authorities can exchange information following the signing of agreements, based on reciprocity or through international organization networks such as WACAP. Burkina Faso is a member of Interpol and shares information at the international level; the BCEAO also shares information with other supervisory authorities,

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<sup>73</sup> Articles in the Code of Criminal Procedures relating to special, preliminary and investigations as well as the execution of commissions of inquiry at both domestic and international levels; using the BCN/INTERPOL Network.

<sup>74</sup> Act 16-2016, Articles 60, 74 and 78.

<sup>75</sup> Art 60 of Title IV of the CB Convention.

based on certain agreements. Burkina Faso is a member of the Customs cooperation organizations: International Mutual Assistance Agreement (IMAA); and for taxes. The World Forum on Transparency and Information Exchange for Tax Purposes are platforms for information exchange. Authorities indicate that there is nothing that impedes a timely negotiation of an MOU with a foreign counterpart.

**Criterion 40.4** - The FIU can provide feedback in a timely manner to its foreign counterparts on the use of the information provided and the result of the analysis carried out in accordance with the 19<sup>th</sup> Egmont Principle. However, none of the requested authorities asked for feedback on the use and usefulness of the information obtained. Burkina Faso has not provided any information to demonstrate that the other authorities have such measures in place.

**Criterion 40.5** - There are generally no unreasonable or unduly restrictive conditions for information exchange and assistance.

**Criterion 40.6** - Competent authorities (Supervisory authorities and FIU have put in place controls and safeguards to ensure that the information exchanged is used only for the purposes intended and by the authorities for which such information was sought or provided, unless prior authorization is granted by the requested authority. Article 78(2) of Act 16-2016 which relates to the FIU, states that the processing of the information communicated shall guarantee an adequate level of protection of privacy and the fundamental rights and freedoms of individuals, in accordance with the regulations in force.

**Criterion 40.7** - The information exchanged between competent authorities is protected. It is kept confidential and forwarded to the applicant through diplomatic, judicial and/or administrative channels. It is only processed by competent and authorized bodies. Information is exchanged through the secure INTERPOL NCBs, and the SYDONIA WORLD channel for Customs services. The FIU shares information with its counterparts only if it is subject to equivalent confidentiality obligations (art. 78-1 AML/CFT). The Banking Commission may disseminate information to counterpart supervisory authorities provided these authorities are themselves bound by professional secrecy. (Art 60 of Title IV of the CB Convention). It is unclear whether there is a requirement for INTERPOL and the Customs services to refuse to give information where the requesting competent authority cannot protect that information.

**Criterion 40.8** - Burkinabe competent authorities are able to conduct inquiries on behalf of foreign counterparts, and exchange all information that would be obtainable by them domestically if such inquiries were being carried out domestically. Investigations and information sharing on AML/CFT are handled by the FIU, and Judicial Police Officers. Burkina Faso cited the AML/CFT Act, the Anti-Corruption Law 004, the drug control law and a series of conventions and agreements, but did not indicate any specific provisions to support this option.

#### *Information exchange between FIUs*

**Criterion 40.9** - The FIU has a legal basis for sharing information with a foreign counterpart (Article 78 of the AML/CFT Act). The FIU can also share information in accordance with the Egmont Group principles, and on the basis of memoranda of understanding, regardless of the nature of the requesting FIU.

**Criterion 40.10** - The Burkina FIU can provide feedback spontaneously and upon request, to its counterparts on the use of the information provided, as well as on the outcome of the analysis conducted (Article 78 AML/CFT Act and through the Egmont Group).

**Criterion 40.11-**

(a) The FIU can share all information that can be accessed or obtained directly or indirectly by the FIU; particularly with regard to R.29; and

(b) any other information that it has the power to obtain, directly or indirectly, at the national level, subject to the principles of reciprocity (Articles 75 and 79 of Act No. 016 AML/CFT authorize).

*Exchange of information among financial sector supervisory authorities*

**Criterion 40.12** - Financial supervisors including the securities and insurance sector can rely on the broad provision of Article 86 (8) of the AML/CFT Act that allows them to share information with their foreign counterparts. Specifically, the Banking Commission can disseminate information concerning *credit institutions* subject to the UEMOA banking regulations, to supervisory authorities of similar institutions in other countries, subject to reciprocity and provided these authorities are themselves bound by professional secrecy. (Art 60 of Title IV of the CB Convention), Sept 2017. The Banking Commission may enter into cooperation agreements with supervisory authorities on supervision and resolution (Article 59 CB Convention). For the *insurance sector*, the CRCA may disseminate information concerning, specifically, the activity of insurance and reinsurance companies and bodies with the authorities responsible for the supervision of similar institutions in non-member countries, subject to reciprocity and provided these Authorities are themselves bound by the professional secrecy (Art. 17, CRCA's Functions).

**Criterion 40.13** - Financial sector supervisory authorities including the bank, securities and insurance sectors, may rely on the broad provision of Article 86 (8) of the AML/CFT Act to share information domestically available to them, including information held by financial institutions, in a manner proportionate to their respective needs.

**Criterion 40.14** - Financial supervisors can exchange any information including

(a) regulatory information; (b) prudential information;(c) AML/CFT information, with counterparts.

**Criterion 40.15** - The BCEAO has powers to conduct enquires on behalf of overseas regulators and seek information on behalf of its foreign counterparts. The BCEAO specified that such an action is undertaken on the basis of a Memorandum of Understanding. although there appears to be no specific regulatory provision in this regard

**Criterion 40.16** - It appears that there is no explicit provision restricting the use of mutually exchanged information to what is provided for in the Memorandum of Understanding. However, the BCEAO stated that the reciprocal confidentiality clauses, mutually accepted by both authorities, determine the dissemination of exchanged information.

*Exchange of information among criminal prosecutorial authorities*

**Criterion 40.17** - LEAs (including the police and the anti-corruption agency) share information on ML, related offences and TF with foreign counterparts on a regular basis for

intelligence or investigative purposes. This can be done through platforms such as WACAP, and INTERPOL.

**Criterion 40.18** - The police authorities can use their powers (including investigative powers) to conduct inquiries and obtain information on behalf of their foreign counterparts as outlined Article 142 of the AML/CFT Act 016.

**Criterion 40.19** - LEAs can establish a joint investigation team to cooperate in investigations (Article 142). A bilateral or multilateral arrangement is not required to enable joint investigations under the AML/CFT law. The different agencies including the police, the gendarmerie and intelligence agencies have conducted joint investigation.

*Information sharing among non-counterpart authorities*

**Criterion 40.20** - Burkina Faso may exchange information indirectly with competent non-counterpart authorities through the FIU on the basis of Article 75 and 78 of the AML/CFT law. There appears to be no express obligation for the competent authority requesting indirect information to clearly state the purpose of the request, and on behalf of which entity the request is being made.

**Weighting and Conclusion**

All relevant agencies have the powers and abilities to provide a wide range of international assistance. Some limitations were however noted in the analysis of this Recommendation. Burkina Faso has no clear mechanism for prioritizing and managing mutual assistance requests; in some instances there is no obligation that information shared by competent authorities is exclusively used for the purposes for which it was requested and by the authorities for which it was requested or provided; there is no express provision requiring competent authorities to refuse to provide information in case the requesting competent authority cannot effectively protect such information. There is no explicit provision restricting the use of mutually exchanged information between financial supervisors and there is no express provision for competent authorities, besides the FIU, to provide feedback to foreign counterparts. **Burkina Faso is rated largely compliant on Recommendation 40.**

*Annex A*

***Table summarizing compliance with the FATF Recommendations***

<b>Compliance with FATF Recommendations</b>		
<b>Recommendation</b>	<b>Rating</b>	<b>Factor(s) Underlying the Rating</b>
1. Assessing risks and applying a risk-based approach	LC	<ul style="list-style-type: none"> <li>• Not all reporting entities are required to identify and assess the ML and TF risks to which they are exposed</li> <li>• Legal provisions on simplified measures is not pegged to proven low risk</li> <li>• The absence of a risk-based approach to allocating resources and implementing measures to prevent or mitigate ML/TF</li> <li>• A lack of measures to address and mitigate higher risks identified in the NRA</li> </ul>
2. National cooperation and coordination	PC	<ul style="list-style-type: none"> <li>• Co-operation and coordination mechanisms to combat the financing of proliferation of weapons of mass destruction is absent.</li> <li>• National AML/CFT policies that are informed by the risks identified, are yet to be developed</li> </ul>
3. Money laundering offense	C	<ul style="list-style-type: none"> <li>• The Recommendation is fully met</li> </ul>
4. Confiscation and provisional measures	LC	<ul style="list-style-type: none"> <li>• Legal framework only covers confiscation of instrumentalities used or intended to be used in the commission of some predicate offences</li> </ul>
5. Terrorist financing offense	PC	<ul style="list-style-type: none"> <li>• Burkina has not criminalized the financing of individual terrorists, terrorist organizations</li> </ul>

## Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) Underlying the Rating
6. Targeted financial sanctions related to terrorism and TF	LC	<ul style="list-style-type: none"> <li>• The Advisory Committee responsible for implementing Targeted financial sanctions is not functional</li> <li>• No guidance has been provided to DNFBPs, that may be holding targeted funds</li> <li>• The legal basis for designation is not covered under the Decree</li> <li>• The scope of funds to be frozen is limited</li> <li>• Only reporting entities (and not all persons) are prohibited from providing or continuing to provide services to or for the benefit of designated persons</li> <li>• There are no measures to communicate designations to DNFBPs</li> <li>• The freeze measures provided do not target the funds and other property of persons and entities acting on behalf or on the instruction of designated persons or entities</li> <li>• Procedures to delist and unfreeze funds pursuant to designations made under 1267 has not been sufficiently delineated</li> </ul>
7. Targeted financial sanctions related to proliferation	LC	<ul style="list-style-type: none"> <li>• There are no provisions relating to the conditions on the exemption set by Resolution 2231</li> <li>• The scope of funds to be frozen is limited.</li> <li>• The mechanism in place for applying targeted financial sanctions targets only the FT and not the FP.</li> </ul>

## Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) Underlying the Rating
8. Non-profit organizations	PC	<ul style="list-style-type: none"> <li>• There has been no comprehensive assessment of the features and types of NPOs likely to be at risk of terrorist financing abuse and the nature of threats posed by terrorist entities to these NPOs.</li> <li>• There are no mechanisms in place to conduct periodic reviews of the sector.</li> <li>• There is an absence of risk based supervisory/monitoring measures and</li> <li>• There are no appropriate points of contact designated to respond to international requests for information on NPOs suspected of TF or other forms of terrorist support.</li> <li>• Burkina has not demonstrated that it is working with NPOs to develop best practices to address terrorist financing risk</li> <li>• There are no measures to encourage NPOs to conduct transactions via regulated financial channels</li> </ul>
9. Financial institution secrecy laws	C	<ul style="list-style-type: none"> <li>• The Recommendation is fully met</li> </ul>
10. Customer due diligence	LC	<ul style="list-style-type: none"> <li>• Burkina has not drawn up the list of the types of information reporting entities require to understand the nature of the customer's business</li> <li>• The law does not expressly require financial institutions to include the beneficiary of under a life insurance policy as a relevant risk factor in determining whether enhanced CDD measures are applicable</li> </ul>
11. Record keeping	LC	<ul style="list-style-type: none"> <li>• There is no express provision that states that transaction records should be sufficient to permit reconstruction of individual transactions</li> </ul>
12. Politically exposed persons	LC	<ul style="list-style-type: none"> <li>• There is no express provision requiring that financial institutions should take reasonable measures to determine whether the beneficiaries or the beneficial owner of the beneficiary of a life insurance policy, are PEPs.</li> </ul>

### Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) Underlying the Rating
13. Correspondent banking	LC	<ul style="list-style-type: none"> <li>• There is no express requirement for the respondent and the correspondent bank to clearly understand the respective AML/CFT responsibilities of each institution.</li> </ul>
14. Money or value transfer services	PC	<ul style="list-style-type: none"> <li>• Absence of dissuasive sanctions for natural and legal persons who provide money or value transfer services without being authorized or registered.</li> <li>• Agents for MVTS providers are not required to be licensed or registered by a competent authority</li> <li>• MVTS providers that use agents are not required to include them in their AML/CFT programmes or monitor them for compliance</li> </ul>
15. New technologies	C	<ul style="list-style-type: none"> <li>• The Recommendation is fully met</li> </ul>
16. Wire transfers	LC	<ul style="list-style-type: none"> <li>• There is no requirement for intermediary financial institutions to keep records for at least five years where technical limitations prevent the required originator or beneficiary information accompanying a cross-border wire transfer from remaining with a related domestic wire transfer</li> <li>• There is no requirement for beneficiary financial institutions to take reasonable measures to identify cross-border wire transfers that lack required originator information or required beneficiary information</li> <li>• MVTS providers that control both the ordering and the beneficiary side of a wire transfer are not required to file an STR in any country affected by a suspicious wire transfer.</li> </ul>
17. Reliance on third parties	LC	<ul style="list-style-type: none"> <li>• The lack of the requirement under the CIMA code that a financial institution relying on a third-party to conduct CDD should ultimately be responsible for the CDD measures.</li> </ul>

## Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) Underlying the Rating
18. Internal controls and foreign branches and subsidiaries	LC	<ul style="list-style-type: none"> <li>• There is no requirement for financial institutions to have screening procedures to ensure high standards when hiring employees</li> <li>• There is no requirement for financial institutions to carry out an independent audit function to test the system</li> <li>• There are no requirements to provide, at group-level compliance, audit, and/or AML/CFT functions, of customer, account, and transaction information from branches and subsidiaries when necessary for AML/CFT purposes.</li> </ul>
19. Higher-risk countries	PC	<ul style="list-style-type: none"> <li>• There is no specific provisions that require the country to apply countermeasures proportionate to the risks: when called upon to do so by the FATF</li> <li>• There is no provision that explicitly covers the requirement to have measures that advice FIs on the weaknesses in other AML/CFT systems.</li> </ul>
20. Reporting of suspicious transactions	LC	<ul style="list-style-type: none"> <li>• The AML/CFT law does not specifically mention attempted transactions.</li> </ul>
21. Tipping-off and confidentiality	C	<ul style="list-style-type: none"> <li>• The Recommendation is fully met</li> </ul>
22. DNFBPs: Customer due diligence	PC	<ul style="list-style-type: none"> <li>• There is no requirement for lawyers and notaries to maintain all relevant records on transactions for at least five years following completion of the transaction.</li> <li>• DNFBPs are not required to comply with the new technologies' requirements set out in Recommendation 15.</li> <li>• DNFBPs are not required to comply with reliance on third party requirements set out in Recommendation 17</li> </ul>
23. DNFBPs: Other measures	LC	<ul style="list-style-type: none"> <li>• There are no internal control requirements for DNFBPs</li> </ul>

## Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) Underlying the Rating
24. Transparency and beneficial ownership of legal persons	PC	<ul style="list-style-type: none"> <li>• Burkina Faso has not assessed the ML/TF risks associated with all types of legal persons</li> <li>• There is no express provision requiring legal person that have nominee shares or nominee directors to implement mechanisms to ensure they are not misused</li> <li>• There are no specific provisions requiring companies to maintain or provide competent authorities with beneficial ownership information</li> <li>• There is no requirement to ensure beneficial ownership information is accurate and as up-to-date as possible</li> <li>• Legal persons are not obliged to cooperate with competent authorities to the fullest extent possible in determining the beneficial owners of companies.</li> <li>• There are no statistics on the number of requests made for information on beneficial ownership</li> <li>• There are no mechanisms to monitor the quality of assistance received in relation to request for basic and beneficial ownership information from other countries</li> </ul>
25. Transparency and beneficial ownership of legal arrangements	PC	<ul style="list-style-type: none"> <li>• There is no legal obligation on trustees to disclose their status to reporting entities</li> <li>• There are no explicit provisions requiring that trustees should provide competent authorities with any information relating to the trust and provide FI and DNFBPs with information on the beneficial ownership and the assets of the trust when forming a business relationship or carrying out an occasional transaction above the threshold entering a business relationship.</li> </ul>

## Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) Underlying the Rating
		<ul style="list-style-type: none"> <li>• There is no liability and therefore, sanctions for failure to perform the above requirements under Recommendation 25</li> <li>• Professional trust providers' obligation to obtain information does not extend to the parties to the trust who are neither the customers nor the beneficial owners of the customer. This limitation impacts on several other criteria</li> </ul>
26. Regulation and supervision of financial institutions	PC	<ul style="list-style-type: none"> <li>• There is no express provision requiring ML/TF risk in a sector to be considered for the purpose of regulation and supervision or monitoring</li> <li>• There is no requirement that the frequency and intensity of on-site and off-site AML/CFT supervision should be determined on the basis of the ML/TF risks</li> <li>• There is no provision requiring the supervisor to review the assessment of the ML/TF risk profile of a financial institution periodically, as well as when there are major events or developments in the management and operations of the financial institution or group.</li> </ul>
27. Powers of supervisors	C	<ul style="list-style-type: none"> <li>• The Recommendation is fully met</li> </ul>
28. Regulation and supervision of DNFBPs	NC	<ul style="list-style-type: none"> <li>• There is no specific provision for legislative and regulatory measures that prevent criminals or their accomplices from holding or becoming beneficial owners of a significant share in or control of a casino.</li> <li>• There is no mention of any authority explicitly designated to monitor the compliance of Casinos with AML/CFT and other categories of DNFBPs are not subject to monitoring to ensure compliance with their AML/CFT obligations.</li> </ul>

## Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) Underlying the Rating
		<ul style="list-style-type: none"> <li>• There is no authority or SRB that has been designated to monitor and ensure the DNFBPs' compliance with AML/CFT requirements</li> <li>• Supervision of DNFBPs is not performed on a risk-sensitive basis</li> </ul>
29. Financial intelligence units	C	<ul style="list-style-type: none"> <li>• The Recommendation is fully met</li> </ul>
30. Responsibilities of law enforcement and investigative authorities	C	<ul style="list-style-type: none"> <li>• The Recommendation is fully met</li> </ul>
31. Powers of law enforcement and investigative authorities	C	<ul style="list-style-type: none"> <li>• The Recommendation is fully met</li> </ul>
32. Cash couriers	PC	<ul style="list-style-type: none"> <li>• The mechanism for coordination is not clearly described</li> <li>• The system of declaration applies to the persons entering or leaving the territory of the UEMOA but not to persons travelling within the 8 countries of the Union</li> </ul>
33. Statistics	LC	<ul style="list-style-type: none"> <li>• Some statistics on AML/CFT are not collated systematically</li> </ul>
34. Guidance and feedback	PC	<ul style="list-style-type: none"> <li>• Lack of guidance for DNFBPs</li> </ul>
35. Sanctions	LC	<ul style="list-style-type: none"> <li>• DNFBPS that do not have AML/CFT supervisory authorities could impose sanctions in the event of non-compliance with the due diligence obligations.</li> </ul>
36. International Instruments	C	<ul style="list-style-type: none"> <li>• The Recommendation is fully met</li> </ul>
37. Mutual legal assistance	LC	<ul style="list-style-type: none"> <li>• There is no clear process for prioritization and timely execution of requests for mutual legal assistance to ensure effective management of requests.</li> <li>• There is no express provision that requires Burkina Faso not to make dual criminality a</li> </ul>

## Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) Underlying the Rating
		<p>condition for rendering assistance where a request does not involve coercive actions</p> <ul style="list-style-type: none"> <li>• There is no requirement that dual criminality should be deemed to be satisfied if both requesting and requested country criminalise the underlying conduct.</li> </ul>
38. Mutual legal: assistance freezing and confiscation	LC	<ul style="list-style-type: none"> <li>• There are no express arrangements for coordinating seizure and confiscation actions with other countries.</li> </ul>
39. Extradition	LC	<ul style="list-style-type: none"> <li>• The law does not specify the prioritization, management and follow-up of extradition requests and there are no clear processes</li> <li>• The law does not explicitly stipulate that the requirement of dual criminality is met where both the requesting and requested country penalize the conduct underlying the offence whether or not both countries classifies the offence in the same category or use the same terminology to describe the offence.</li> </ul>
40. Other forms of international cooperation	LC	<ul style="list-style-type: none"> <li>• There is no mechanism for prioritization and management of requests</li> <li>• The lack of controls and safeguards to ensure that information exchanged by competent authorities is used only for the purpose for, and by the authorities, for which the information was sought or provided</li> <li>• There is no express provision that requires competent authorities to refuse to provide information if the requesting competent authority cannot protect the information effectively,</li> <li>• There is no express provision for competent authorities to provide feedback to foreign counterparts</li> </ul>