



# Anti-money laundering and counter-terrorist financing measures

## **Mali**

### Mutual Evaluation Report

November 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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## Acronyms

WMD	Weapons of Mass Destruction
LEA	Law Enforcement Agency
APBEF	Professional Association of Banks and Financial Institutions
API-Mali	Agency for the Promotion of Investments
ML	Money Laundering
ML/TF	Money Laundering and Terrorist Financing
BCEAO	Central Bank of West African States
BCN	National Central Bureau
BIS	Specialized Investigation Brigade
BRVM	West African Capital Markets Integration Council
C	Compliant
CARPA	Legal Regulations for Lawyers
CB	Bank Commission
CCS/DFS	Financial Systems Control and Monitoring Cell for Decentralized Financial Systems
CDD	Customer Due Diligence
FIU	Financial Intelligence Unit
CIMA	Inter-African Conference of Insurance Markets
CNC-LBC/FT	National AML/CFT Coordinating Committee
CCP	Code of Criminal Procedure
CRCA	Regional Insurance Advisory Commission
CREPMF	Regional Council of Public Savings and Capital markets
FIU	Financial Intelligence Unit
DCA	Insurance Control Directorate
DGAT	Directorate General of Territorial Administration
STR	Suspicious Transaction Report
CTR	Cash Transaction Report
NRA	National Risk Assessment
EMI	Electronic Money Issuers
DNFPBs	Designated Non-Financial Businesses and Professions
EUR	Euro
FCFA	Franc of African Financial Communities
FICOB	Centralized Bank Account Files
TF	Terrorist Financing
PF	Proliferation Financing
FATF	Financial Action Task Force
EIG	Economic Interest Groupings
FIs	Financial Institutions
NBI	Negotiable Bearer Instrument
KYC	Know Your Customer
AML/CFT	Anti-money laundering and countering the financing of terrorism
LC	Largely Compliant
MAECI	Ministry of Foreign Affairs and International Cooperation

MOU	Memorandum of Understanding
MOJ	Ministry of Justice
N/A	Not Applicable
NC	Non-Compliant
NPO	Non-Profit Organization
SROs	Self-Regulatory Organizations
OCLEI	Central Office Against Illicit Enrichment
OCS	Central Office Against Narcotics
OECD	Organisation for Economic Co-operation and Development
OHADA	Organization for the Harmonization of Business Law in Africa
WCO	World Customs Organization
NGO	Non-Governmental Organisation
UN	United Nations
OPJ	Judicial Police
PC	Partially Compliant
PEP	Politically Exposed Person
PJS	Specialised Judicial Court
MEQ	Mutual Evaluation Questionnaire
R.	Recommendation
RCCM	Registrar General's Department
UNSCR	United Nations Security Council Resolution
MER	Mutual Evaluation Report
MVTS	Money or Value Transfer Services
IO	Immediate Outcome
SA	Anonymous Society
SARL	Private Company
SCS	Limited Joint Venture Company
TFS	Targeted Financial sanctions
DFI	Decentralized Financial Institutions
SGI	Securities management and brokerage companies
SIJ/GN	Criminal Investigation Department of the National Gendarmerie
SNEC-UMOA	UMOA Credit Rating System
UMOA	West African Monetary Union
UEMOA	West African Economic and Monetary Union
USD	American Dollar

## EXECUTIVE SUMMARY

1. This document provides a summary of the anti-money laundering (AML) and countering the financing of terrorism (CFT) measures in place in the Republic of Mali as at the date of the on-site visit (4 to 15 March 2019). It analyses the level of compliance with the Financial Action Task Force (FATF) 40 Recommendations and the level of effectiveness of Mali's AML/CFT regime. It also provides recommendations on how the regime could be strengthened.

### Key Findings

- Mali commenced its National ML/TF Risks Assessment in October 2018. The exercise was still in progress during the mutual evaluation on-site visit, nevertheless, an NRA draft report was available at that time. Competent authorities have a moderate understanding of the risks, particularly the TF risks faced by the country.
- The TF risk in Mali is significant. This has been linked to the presence of terrorist groups in the country and sub-region as well as the occurrence of terrorist attacks in the country.
- The 2013-2015 AML/CFT strategy has not yet been updated and limited policy and institutional measures have been implemented.
- The Inter-Ministerial Committee (IMC) is the mechanism for AML/CFT national coordination at the policy level. The IMC has held some meetings to develop AML/CFT policies. However, the committee does not include certain key stakeholders. As regards coordination at the national level, there is room for improvement as law enforcement officers at the operational level appear to work in silos. The intelligence coordination framework on Terrorism appears to be effective in sharing information and intelligence on terrorism, however, the work of this committee may be limited by the non-inclusion of the FIU in the committee to which could ensure that the TF component is fully integrated into its operation.
- Financial Institutions, including banks and large DFIs, have a good understanding of their AML/CFT obligations. They have put in place due diligence measures tailored to their risks and taken specific due diligence measures for high-risk situations, particularly with regard to PEPs. The banks provide training to their staff and file STRs with the FIU. The other sectors, including money transfer services and foreign exchange dealers, have limited knowledge of AML/CFT, resulting in weak implementation of preventive measures by the sector stakeholders, some of which face high ML/TF risks due to the lack of risk mitigation policies and a high number of cash transactions.
- The banking and financial regulatory authorities (BCEAO, Banking Commission and the Ministry of Finance), have some understanding of ML/TF risks, which is not the case with the other regulators (insurance and capital market). The supervisory authorities for insurance and capital market impose AML/CFT obligations on its reporting entities, but they have not yet put in place an appropriate methodology and supervisory tools to carry out any risk-based AML/CFT supervision. Off-site AML / CFT supervision within the banking sector and the DFIs are conducted regularly but

on-site visits are increasingly rare. Sanctions pertain only to prudential breaches and these are limited. There is a lack of capacity of some supervisory authorities and self-regulatory bodies to conduct AML/CFT supervision. Mali is yet to designate an AML/CFT oversight authority for the DNFBP sector.

- Mali has a Financial Intelligence Unit that analyses the STRs it receives from reporting entities and information it collects from competent authorities. However, the information analyzed by the FIU is mainly from banks as other reporting entities do not comply with their reporting obligations and filed limited STRs. The financial intelligence disseminated by the FIU to the investigative and prosecutorial authorities is useful although this has not resulted in a significant number of prosecutions for money laundering or terrorist financing. There is however, the need to provide additional financial and technical resources at the FIU.
- The country has established specialized courts that conduct investigations and try ML cases. Mali has also established specialized institutions that handle a number of associated predicate offences. These specialized institutions, however, tend to consider only the predicate offence. The number of parallel ML investigations conducted by investigative and prosecutorial authorities during the investigation of a proceeds generating predicate offences is quite low. Moreover, a number of investigative prosecutorial and judicial authorities within the specialized court have not been sufficiently trained to enable them effectively conduct ML investigation and prosecution.
- The Malian authorities have a fairly satisfactory legal framework for the freezing, seizure and confiscation of criminal assets, including instrumentalities used or intended to be used in money laundering and predicate offences. Mali makes moderate use of provisional measures. Mali's criminal control policy and AML/CFT strategy do not explicitly identify confiscations as a priority, and only a few criminal investigation officers and investigating magistrates have received training on financial investigation. As regards cash and bearer negotiable instruments in amounts exceeding the prescribed threshold, inquiries are not made to establish whether the amounts are linked to TF or ML. Furthermore, it appears that the implementation of confiscation of falsely declared or undeclared cross-border transaction of currency/BNI at the land borders is limited.
- Mali has not criminalized the financing of (i) an individual terrorist and a terrorist organization for any purpose or (ii) a foreign terrorist fighter. Mali faces significant TF risk emanating from home-grown locally funded terrorists on one hand and terrorists/terrorist groups that have allegiance with and receive support from international actors on the other. The Malian authorities have established a specialized court and a specialized brigade to handle terrorism and TF cases. Nevertheless, investigative prosecutorial and judicial authorities have not been sufficiently trained to effectively conduct TF investigations, and do not systematically include TF in terrorism investigations. Mali has a counter-terrorism strategy. The strategy does not cover TF. At the operational level, the intelligence coordination committee on counterterrorism shares the national intelligence picture regularly with key agencies although, the TF aspect is not fully integrated into the work of the committee.
- Mali has a legal framework for the implementation of targeted financial sanctions on TF and proliferation. The mechanism for the implementation of the United Nations Security

Council Resolution 1267 has recorded some delays while the mechanism for the implementation of the United Nations Security Council Resolution 1373 is not yet operational. Mali has no mechanism in place for targeted financial sanctions relating to the financing of proliferation. The requirements for the implementation of proliferation related TFS are generally misunderstood and the reporting entities are largely not supervised to ensure compliance with TFS on TF and PF. Mali has not conducted a comprehensive assessment of the NPO sector. There is no sustained awareness-raising campaign in the sector. There is no risk-based regulatory or supervisory mechanism in place, and the supervisory authorities of the NPO sector are under-resourced.

- Basic information on legal persons is contained in the Trade and Personal Property Credit Register (RCCM). This information is stored and archived manually. Due to the non-computerization of the registry and the RCCM, the information contained in the RCCM is not easily accessible to the public. Legal persons are subject to general obligations which could protect them from misuse for ML purposes. However, there are no sanctions to enforce compliance with these requirements and this raises issues with regard to the retention of adequate, accurate and up-to-date information. There is no obligation to keep beneficial ownership information in the RCCM and information on beneficial owners held by banks can only be accessed upon the consent of a state prosecutor. The authorities have not conducted an assessment of the legal persons operating in the country. Mali is gradually rolling-out of the OHADA software that will facilitate proper maintenance and timely access to basic information and identification of beneficial owners.
- The Republic of Mali has a satisfactory legal framework for mutual legal assistance and extradition and a central authority for international cooperation. Mali does not proactively seek judicial assistance. In addition, there is no comprehensive internal system of prioritization or case management to monitor the processing of requests for MLA, and extradition and there are delays in responding to MLAs. The FIU proactively requests for information from foreign counterparts. Other Malian Competent authorities regularly exchange information with foreign counterpart and use informal networks for this purpose.
- Generally, Mali does not generally maintain comprehensive statistics on AML/CFT matters

## **Risks and General Situation**

2. Mali faces significant TF risks from both home-grown terrorist and foreign actors. The main risk of TF is related to the existence of terrorism at the domestic level and the radicalization of citizens who benefit from support funds which generally transferred outside the regulated financial system. This makes the funds difficult to identify, due to the constraint of tracing transactions that take place outside the financial system. The cash-based economy, the low level of banking and the lack of a reliable identification system deepens this risk. The expansion of jihadist organizations across the Sahel, the limited state control in the north of the country, as well as weak state structures and porous borders have enabled terrorist groups to gain a foothold in the region.

3. Cash remains the preferred means of moving the financial resources of these terrorist groups. Apart from mailing cash, terrorists use non-regulated money transfer services. Other source of funds for terrorist activity includes fundraising (case of ZAKAT) and the use of some non-profit organizations (NPOs) to transfer resources intended for carrying out operations. From 2015, terrorist groups have ousted the state system and have been able to increase revenues by compelling locals to make payments in kind or in cash for certain public services, such as security as well as administration of justice and the imposition of taxes (Islamic fines, confiscations of property according to Sharia and right of crossing). As regards the criminal sources of financing, beyond the traditional criminal activities of hostage-taking with ransom, terrorist activities help to maintain the flow of trafficking in goods, drugs, weapons, migrants and the trafficking of human beings, which contributes to the financing of terrorist groups. This situation also creates collaboration between terrorists and traffickers and the correlation between TF and ML and associated predicates.

4. The National Risk Assessment acknowledged that various proceeds generating crimes including fraud, drug and cigarette trafficking, migrants' smuggling and related offences, corruption, customs and tax offences constituted key ML threats within the country. Some sectors within the DNFBPs, specifically the real estate and precious mineral sector have been indicated as posing considerable risks of money laundering.

### **Overall Level of Effectiveness and Technical Compliance**

5. Mali's mutual evaluation was conducted in 2008. Since then, the country has improved its AML/CFT regime. Specifically, the country domesticated the Uniform AML/CFT Directive. This legislation strengthened the country's legal framework particularly as regards preventive measures, provisional freezing measures and targeted financial sanctions related to terrorism and proliferation. Mali also put in place measures to implement targeted financial sanctions in relation to TF. However, there is no mechanism to implement targeted financial sanctions in relation to PF. Moreover, the country improved institutional frameworks by creation of the specialised courts and agencies that deal with money laundering and terrorism financing cases. Some improvements are needed to further strengthen the capacity of the FIU, including by providing additional resources (technical and financial). Significant improvements are required as regards implementation of preventive measures among non-bank financial institutions and DNFBPs, enhancement of supervisory actions on a risk sensitive basis, conducting investigation of ML/TF cases, specifically conducting parallel investigations, application of provisional freezing and confiscation of illicit proceeds. Mali should also further strengthen the country's AML/CFT legal framework by ensuring that it collects and maintains comprehensive statistics that will assist the country in evaluating the effectiveness of its AML/CFT system. In addition, the country should strengthen international cooperation, particularly judicial assistance, conduct AML/CFT capacity building within the criminal justice system and harmonise and strengthen supervisory roles within the NPO sector.

*National AML/CFT policies and coordination (Chapter 2 - IO. 1; R. 1, R. 2, R. 33)*

6. Mali commenced its National ML/TF Risk Assessment in October 2018, under the coordination of the FIU which was appointed for this purpose by Decree No. 2018/0294-PRM of March 19, 2018. The NRA exercise was being finalized, at the time of the on-site visit. Nevertheless, a provisional NRA report was made available to the evaluation team. The NRA process was inclusive, in that it involved most stakeholders. The conclusions at that stage were broadly reasonable in that they reflect the main ML / FT risks facing the country.

7. The Malian authorities understand the significant TF risks that underlie the multiple terrorist attacks perpetrated by various terrorist group in the country. Competent authorities generally have a fairly good understanding of the ML/TF risks. At the sectoral level, the banking sector and the large DFIs and their competent supervisory authorities understand the ML/TF risks within the sector.

8. Mali had not put in place a risk mitigation policy identified by the NRA. In this regard, it should be recalled that the country had a national AML / CFT strategy, accompanied by an action plan, for the period 2013-2015, which had not been updated. However, Mali plans to revise its national strategy to address the newly identified risks and to develop an action plan to implement the recommendations of the NRA. Malian is yet to finalize and disseminate the results of the NRA. Following dissemination, the country must ensure that the all private sector operators have a good understanding of the risks in their respective sub-sectors and implement measures to mitigate these risks.

9. Notwithstanding the expiration of the AML/CFT strategy in 2015, Mali implemented certain measures to strengthen its AML/CFT system including the establishment of the specialized courts to handle ML and TF cases and the development and implementation of the National Policy on Terrorism and violent extremism.

10. In terms of coordination, Mali has an Inter-Ministerial Committee on Countering Money Laundering and Terrorist Financing established by Inter-Ministerial Order No. 2011/4971 / MJ-MEF-MSIPC of November 18, 2011. The effectiveness of this platform is limited by the absence of participants at the ministerial level and absence of some key stakeholders within its membership. Although there is cooperation and collaboration between the FIU and LEAs, there is an observed lack of collaboration among LEAs. The intelligence coordination framework in the area of counterterrorism was established in accordance with Decision No. 128 / MECI-SG of 25 September 2008. The committee meets regularly to share intelligence and exchange information on terrorism however, the TF aspect is not fully integrated into the work of the committee.

***Financial intelligence, money laundering and confiscation (Chapter 3 - IOs. 6-8; R. 3, R. 4, R. 29-32)***

11. Mali has a Financial Intelligence Unit that analyses the suspicious transaction reports it receives from reporting entities. It does the same with the information it collects from competent authorities, criminal prosecution authorities as well as those obtained in the framework of international cooperation. The information analysed by the FIU is, however, limited by the fact that reporting entities, other than banks, do not comply with their reporting obligations and have submitted only a few STRs.

12. The financial intelligence provided by the FIU to the investigative and prosecutorial authorities is useful. Although it resulted in some TF investigation and a conviction on terrorism, it has contributed to only a few money laundering prosecutions.

13. The FIU does not have sufficient resources (human, material, technical and financial) to enable it to perform all its functions particularly its role in respect of AML/CFT coordination and awareness-raising. At the operational level, processing of the suspicious transaction reports are carried out manually, without any IT tools and without any direct access to a database. This negatively impacts the quality of the analysis and lengthens the processing time of the files. The operationalization of the GESDOS software recently acquired by the FIU will contribute to improving the quality of the processing of files. The FIU is yet to analyse cash transaction reports obtained from reporting entities. Although the FIU has conducted, strategic analysis that identify trends and methods of ML/TF, it is yet to provide the State with strategic analysis that could influence the direction of its ML / TF policy.

14. As part of the processing of its files, the FIU maintains effective cooperation with other competent authorities and exchanges information with them, while respecting confidentiality. The FIU also facilitates cooperation between all AML / CFT stakeholders to define the AML / CFT national AML / CFT policies within the framework of the Inter-ministerial AML / CFT Committee.

15. Mali has put in place a legal framework for conducting investigations and prosecuting ML cases. The country has established specialized courts to conduct investigations and try ML case as well as specialised institutions to investigate and try predicate offences. These are the Central Office for the Fight Against Illicit Enrichment (OCLEI), the Central Office of Narcotics (OCS), the Judicial Investigation Brigade (BIJ), the Judicial Investigation Brigade of the National Gendarmerie (BIJGN), the Economic and Financial Judicial Division and the Specialized Judicial Division. ML offences are detected by the FIU and are investigated and prosecuted by the Specialized Judicial Court. However, despite the creation and operationalization of specialized institutions, the number of ML-related investigations remains low.

16. The number of parallel investigations conducted by investigative and prosecution authorities when investigating predicate offences is low. Article 610-1 of Decree 2013-016 of 21 May 2013 which amends the Code of Criminal Procedure, provides that prosecution of ML offences is to be instituted at the specialized Judicial Court. The misunderstanding of this legal provision seems to be at the origin of the small number of parallel investigations carried out by judicial police officers that are not part of the Specialized Judicial Court. This misunderstanding of the allocation of investigative and prosecutorial powers has a cascading effect on the number of parallel investigations, as well as prosecution and convictions on ML. Most LEAs reckoned that the Specialized Judicial Court had the sole responsibility of investigating ML. However, the Specialized Judicial Court's exclusive jurisdiction only relates to trial of ML and not the investigation.

17. Furthermore, criminal investigative and prosecutorial authorities have a limited level of financial investigative skills and need to enhance their capacity to handle various types of money

laundering activities and cases. Moreover, the characterization of ML offence as a felony triggers a dual process: investigation by the investigating judge at the preliminary stage, followed by indictment and trial at the Court of Assize. This lengthy process constitutes a barrier to timely prosecution and conclusion of ML cases. Only one conviction for ML was pronounced by the Malian courts despite the high number of predicate offences prosecuted in the country and the level of ML risk identified by the NRA. It appears that several potential ML cases are not investigated.

18. The legal framework on provisional measures and confiscation in Mali is essentially satisfactory. Various legal tools are applied in this regard including seizure, confiscation, fines and tax adjustments. The country is also improving the institutional framework through a draft law aimed at setting up an asset management agency to ensure that confiscated assets are properly managed. However, the confiscation of the proceeds of crime, the instruments of crime and property of equivalent value is not generally pursued as a policy objective.

19. The competent authorities do not systematically seize or confiscate illicit proceeds because only a minority of judicial police officers and magistrates have been trained to conduct financial investigations. Seizures for confiscation mainly concern the proceeds and instruments of the predicate offences. Non-conviction based confiscation is not possible in Mali, even in cases where the perpetrator is not available because of death. Malian authorities do not generally, identify trace and repatriate proceeds that have been moved to other countries.

20. In general, customs authorities seize and impose fines for non-disclosure or false disclosure of cross-border transportation of currency and bearer negotiable instruments. In these cases, confiscation is rare and so is investigation in relation to ML.

#### ***Terrorist Financing and Proliferation Financing (Chapter 4 - IOs. 9-11; R. 5-8)***

21. The Republic of Mali has a counter-terrorism strategy. The counter terrorism strategy does not integrate TF. However, TF is embedded in Mali's National Policy on Terrorism and Violent Extremism. At the operational level, it appears that the TF is not fully integrated and used to support terrorism investigations.

22. The low penetration rate of banks in Mali and the predominance of cash make it difficult or impossible to trace and seize funds or property intended or used for financing terrorism, terrorist acts or terrorist organizations. In addition, informal payment and transfer channels such as the HAWALA system compromise traceability of funds. This undermines the effectiveness of TF investigations. The authorities also have difficulty identifying those who finance terrorism because of inaccessibility to certain parts of the country. Nevertheless, investigations on TF have resulted in the seizure of the funds.

23. The Malian authorities have set up a specialized investigation unit and a specialized court to deal with issues of terrorism and its financing. However, the investigation and prosecution authorities need specialized training to effectively carry out TF investigations. Furthermore, the investigation and prosecution authorities do not, in practice, use special investigative techniques such as bank account monitoring, interception of electronic communications and similar tools.

24. All the judges of the specialized court and the majority of the investigators of the Specialized Intervention Brigade (BIS) have not received training in TF. At present, Mali, through the PJS, has initiated three (3) terrorist financing cases and has secured a conviction on terrorism in one of these cases. The limited number of prosecutions and convictions is not in line with the country's risk profile.

25. Mali has a legal framework for the implementation of targeted financial sanctions (TFS), although its implementation has weaknesses. The National Commission for Administrative Freeze which was established to implement TFS is not operational.

26. The Malian authorities do not communicate the list of designated persons to the reporting entities within the required time. Therefore, the implementation of TFS is not timely. Although, banks and certain non-bank financial institutions affiliated with international groups regularly monitor clients and transactions based on the UN's sanctions list and other relevant lists.

27. Mali has not designated any persons or entities on the basis of resolution 1373 despite the high risk of terrorism and its financing. The NRA assessed the NPO sector as having significant TF risks. Nevertheless, the Malian authorities have not conducted a comprehensive assessment to identify non-profit organizations that could be misused for terrorist financing. Whilst authorities have conducted some awareness-raising activities in the sector, these remain largely insufficient. Supervisory authorities have not adopted targeted risk-based supervision or monitoring of NPOs.

28. Mali has a legal basis for the implementation of targeted financial sanctions relating to the financing of proliferation pursuant to Article 100 of the AML/CFT Law. The implementing text on administrative freezing, Decree No. 2015-0230 of 02 April 2015, which establishes the powers of the National Commission to freeze funds and other financial resources of designees related only to terrorism and does not extend to proliferation financing. Moreover, reporting entities rarely receive the sanctions lists and competent authorities do not have a good understanding of the issues relating to financing the proliferation of weapons of mass destruction. Only banks and international non-bank financial institutions regularly monitor clients and transactions based on sanctions lists. The Banking Commission examines the application of the measures. As regards DNFBPs, these entities are not generally unaware of obligation related to TFS.

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

29. Financial institutions and Designated Non-Financial Businesses and Professions are required by the AML / CFT Law 2016-008 to implement AML / CFT preventive measures and report suspicious transactions. Virtually all the banks, some insurance companies and the DFIs belonging to large groups have assessed their risks at the institutional level. EMEs have also assessed their risks. However, other financial institutions such as bureau de change, and DNFBPs have not performed institutional risk assessments.

30. Financial institutions, specifically banks, seem to understand their AML / CFT obligations and have put in place appropriate due diligence measures to deal with the risks to which they are exposed. They also take specific due diligence measures in high-risk situations, particularly with

regard to PEPs, as well as sanction screening for TF. These institutions have trained their staff and report STRs to the FIU. The insurance sector is characterized by limited knowledge of AML / CFT and implementation of preventive measures by the players in this sector, including small companies and most insurance brokers, is limited due to a lack of training and awareness-raising on AML / CFT. Other financial institutions, in particular, large DFIs, in contrast to small ones, have a good understanding of their AML / CFT obligations and have implemented due diligence measures, in line with the risks identified in their risk assessments. The identification of beneficial owners is a concern for most financial institutions. Significant deficiencies are noted in the understanding and implementation of AML / CFT measures in money transfer services and foreign exchange bureaus which were assessed as having high ML / FT risks owing to the scale of cash transactions and the absence of inherent risk prevention policies.

31. DNFBPs in Mali seems not to understand the risks to which they are exposed and do not implement the appropriate procedures to prevent risks. Also, this category of reporting entities did not file STRs with the FIU.

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

32. Measures to prevent criminals and their associates from participating in the ownership, control or management of financial institutions are generally sound. Appropriate checks on directors and officers are conducted both at market entry and while the financial institutions are in existence. In the DNFBP sector, licensing is undertaken by the respective regulatory authorities and / or by self-regulatory bodies (SROs). There are licensing requirement and background checks in the case of lawyers, accountants and notaries. This is not the case for the real estate and the precious stones and metals sectors. The challenges in the identification of beneficial ownership remains an obstacle to preventing criminals or their accomplices from owning a business or participating in the management of a business.

33. The supervisory authorities for the FIs have a good understanding of the risks of ML / FT within the banking sector (BCEAO, Banking Commission and Ministry of Finance). The risk-based supervision at the level of the banking sector is implemented through the implementation of a scoring system based on certain main criteria and complementary criteria. However, since AML / CFT is not taken as a criterion in its own right, the Banking Commission does not have a classification of banks according to the ML / FT risk profile and therefore does not perform its supervision on the basis of ML / FT risks. CREPMF and CIMA impose AML / CFT obligations respectively on the regulated entities (securities and insurance companies), but have not yet put in place a methodology and appropriate supervisory tools to carry out an AML / CFT risk-based supervision.

34. Off-site AML / CFT supervision within the banking sector and the DFIs are regular unlike on-site inspections, which are increasingly rare. Supervision is insufficient at the level of the other financial institutions. At the DNFBP level, there are no designated authorities for monitoring the implementation of AML / CFT obligations.

35. Inadequate training and inadequate financial resources remain an impediment to effective supervision of reporting entities. The legal framework for sanction is adequate. There is a range of

administrative, monetary and criminal penalties for breaching AML / CFT requirements. However, these sanctions, with the exception of injunctions, are used very rarely in practice.

***Transparency of legal persons and legal arrangements (Chapter 7 - IO. 5; R. 24-25)***

36. The establishment of legal persons in Mali falls under the jurisdiction of the Chief Registrar of the Commercial Court as well as the chief registrars of the ordinary courts, in localities where there is no commercial court. The information on the creation and types of legal persons is provided for in the OHADA Uniform Law. Basic information is maintained in the Trade and Personal Property Credit Register (RCCM). This register is kept manually. Due to the non-computerization of the registry and the RCCM, the information contained in the RCCM is not easily accessible to the public on request.

37. Mali has not conducted a comprehensive assessment of the ML / TF risk posed to legal persons established in the country. Staff at the RCCM, notaries and lawyers, who are typically involved in the incorporation of legal persons have a weak understanding of the ML/TF risk posed to these the legal entities.

38. Legal entities are governed in Mali by OHADA law and as such, they are subject to general obligations designed to protect them against misuse for ML purposes. These include the obligation relating to the registration of legal persons, updating the information contained in the RCCM following any changes and maintenance of records by the companies. However, Mali has not implemented a domestic sanctions regime as prescribed by the OHADA law.

39. There is no obligation to keep beneficial ownership information in the RCCM. In general, competent authorities (investigative and prosecutorial authorities, customs and tax authorities) can only access information on beneficial owners held by banks on the requisition of a judicial authority.

40. The manual and non-computerized processing of the RCCM poses problems relating to the retention of adequate, accurate and up-to-date information on legal persons and access to the information requested by the competent authorities. The gradual roll-out of the OHADA software acquired in 2017 by Mali will facilitate the retention of beneficial ownership information and allow quick access to all relevant authorities.

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

41. The Republic of Mali engages in international cooperation, including extradition, on the basis of AML/CFT Law No. 2016-008 and a number of multilateral and bilateral agreements. The central authority responsible for international cooperation is the Ministry of Foreign Affairs and International Cooperation. The National Directorate of Judicial Affairs and Seal (DNAJS) is responsible for processing mutual legal assistance files. There is no case management system for processing requests and prioritization of mutual legal assistance is simply based on the level of urgency indicated by the requesting party. The National Directorate of Judicial Affairs and Seal, is not sufficiently endowed with human resources.

42. The Malian police are engaged in international cooperation through the INTERPOL (International Criminal Police Organization) platform and on the basis of the Cooperation Agreement between ECOWAS and the Criminal Police of 19 December 2003. This agreement allowed the Malian police to respond to the request for surrender of suspects on the basis of arrest warrants or court decisions. The Central Office for Combating Illicit Enrichment (OCLEI), an independent authority responsible for preventing and investigating corruption, has concluded cooperation agreements with the counterpart authorities of Mauritius, France, Côte d'Ivoire, Guinea and Niger.

43. The FIU cooperates well internationally through the Egmont Secure Web and on the basis of bilateral agreements with countries. It has also concluded eleven (11) cooperation agreements with its counterparts. The UEMOA Banking Commission cooperates with foreign supervisory authorities in the framework of memoranda of understanding. Feedback provided by countries on cooperation with Mali indicated that engagements were satisfactory.

### **Priority Actions**

1. .Adopt the NRA report by a government decision and ensure its wide dissemination to public and private sector stakeholders in order to foster their common understanding of the AML / CFT risks to which Mali is exposed; put in place an inclusive coordination mechanism to develop an AML / CFT strategic plan with sectoral and country-specific action plans; ensure that the relevant supervisory authorities include in their sectoral assessments risks those risk identified in the NRA and implement a risk-based approach including sensitization / training of stakeholders to ensure that they understand their sectoral risks; Adopt an NRA update plan to ensure that its understanding is maintained while strengthening the methodology used.
2. Authorities should provide ongoing training for FIU staff in operational and strategic analysis to improve the quality of financial information provided to the competent authorities and conduct more strategic analysis, taking into account identified ML / TF risks in the country. The authorities should strengthen cooperation between CENTIF and other relevant agencies, including supervisory authorities and sensitization of tax and customs administrations on their STR obligations, as well as the declaration of seizures, to enable the FIU to have more relevant information.
3. The Malian authorities should ensure the continuous training of FIU staff on operational and strategic analysis to help improve the quality of financial intelligence provided to the competent authorities. The FIU should conduct more strategic analysis in line with identified ML/TF risks in the country and strengthen cooperation with supervisory authorities. Mali should provide the FIU with more human, material, technical and financial resources to enable it to accomplish its mandate.
4. Mali should build the capacity of investigative and judicial officers involved in investigation and prosecution of ML cases and proceeds generating predicates through training on the use of financial intelligence and on financial investigation to ensure that all agencies that handle proceeds generating offences conduct parallel financial investigations to identify potential ML cases. The authorities should incorporate the need to pursue confiscation of assets and

instrumentalities used or intended to be used to commit the offences into their AML/CFT strategy and conduct sensitization and training within the various investigation units.

5. Mali should criminalise the financing of an individual terrorist and a terrorist organization for any purpose, as well as the financing of a foreign terrorist fighter and strengthen the capacities of investigation and prosecution authorities, in particular by training and the allocation of sufficient human and material resources to these authorities to identify TF activity and conduct TF investigations effectively including conducting financial investigations as a matter of course when conducting investigations on terrorism and use of special investigative techniques.
6. Mali should improve its domestic implementation of TFS by ensuring timely dissemination of TF and PF sanction lists to all reporting entities and operationalize the National Commission on freezing by providing the commission with sufficient human and financial resources to implement freezing measures. The commission should also take steps to implement TFS when reasonable grounds for designation have been established. The Malian authorities should conduct a comprehensive assessment of the NPO sector in order to identify the characteristics and types of NPOs that may be misused by terrorists, and provide guidance and targeted outreaches and supervision to the sector. Mali should review Decree No. 2015-0230 of 02 April 2015 to include implementation of targeted financial sanctions relating to proliferation financing, conduct training and awareness-raising programmes, provide guidance on TFS related to PF to reporting entities and competent authorities and monitor and ensure that reporting entities are complying with the obligations to implement targeted financial sanctions related to proliferation.
7. Mali should appoint AML/CFT monitoring and supervisory authorities, with sufficient powers to conduct inspections and apply sanctions, for all DNFBPs beginning with the high-risk DNFBPs. The country should strengthen the capacities and resources of the supervisory / regulatory bodies within the country. Supervisory authorities for financial institution should develop risk-based AML / CFT supervisory models that take account of the NRA results, increase the frequency and coverage of on-site risk-based AML / CFT supervision, ensure implementation of the Uniform Law on AML / CFT through development of the new guidelines and apply dissuasive sanctions against institutions that do not comply with AML / CFT requirements, with a view to improving the overall level of compliance.
8. Mali should assess the ML / TF risk posed to legal persons established in the country and ensure that the basic and beneficial information kept in the registry is accurate, up-to-date and easily accessible. The authorities should ensure that there are proportionate and dissuasive sanctions applicable to breaches by legal persons.
9. The Malian authorities should strengthen the capacity of investigators and magistrates in the area of international cooperation to facilitate the use of mutual legal assistance, extradition, and other forms of cooperation to support the prosecution of ML /TF and predicate offences, including tracing, seizure and confiscation of illicit assets and exchange of beneficial ownership information. In addition, the country should develop a case management system and a manual of procedures which will provide guidance on prioritization, confidentiality and fix appropriate timelines for processing requests made by foreign counterparts.

10. Mali should maintain comprehensive statistics on AML/CFT matters to allow the country to review the effectiveness of its system to combat money laundering and terrorist financing particularly statistics on the number and volume of seizures and confiscations and on international cooperation.

## Effectiveness & Technical Compliance Ratings

Level of effectiveness (High, Significant, Moderate, Low)

<b>IO.1- Risks, policies and coordination</b>	<b>IO.2 - International cooperation</b>	<b>IO.3 - Supervision</b>	<b>IO.4 - Preventive measures</b>	<b>IO.5 - Legal persons and legal arrangements</b>	<b>IO.6- Financial Intelligence</b>
Low	Moderate	Low	Low	Low	Low
<b>IO.7 - Investigations and prosecutions for money laundering</b>	<b>IO.8 - Confiscation</b>	<b>IO.9 - Investigations and prosecutions for terrorism financing</b>	<b>IO.10 - Preventive measures and financial sanctions for terrorism financing</b>	<b>IO.11 - Financial sanctions for proliferation financing</b>	
Low	Low	Low	Low	Low	

Level of technical compliance (C – Compliant, LC – Largely compliant, PC – Partially compliant, NC – Non-compliant)

<b>R.1 - Risk assessment and application of risk-based approach</b>	<b>R.2 - National cooperation and coordination</b>	<b>R.3 - Money laundering offence</b>	<b>R.4- Confiscation and provisional measures</b>	<b>R.5- Terrorist financing offence</b>	<b>R.6 - Targeted financial sanctions linked to terrorism and terrorism financing</b>
LC	PC	LC	LC	PC	PC
<b>R.7 - Targeted financial sanctions linked to proliferation</b>	<b>R.8 Non-profit Organization</b>	<b>R.9- Financial institutions professional secrecy laws</b>	<b>R.10- Customer due diligence</b>	<b>R.11-Record keeping</b>	<b>R.12 - Politically exposed persons</b>
PC	NC	C	LC	LC	LC
<b>R.13- Correspondent banking</b>	<b>R.14 - Money or value transfer services</b>	<b>R.15 - New technologies</b>	<b>R.16- Electronic transfers</b>	<b>R.17- Use of third parties</b>	<b>R.18 - Internal controls and foreign branches and subsidiaries</b>
LC	PC	C	PC	LC	LC

<b>R.19- Higher risk countries</b>	<b>R.20- Suspicious transaction reporting</b>	<b>R.21- Disclosure and confidentiality</b>	<b>R.22- Designated non-financial businesses and professions: customer due diligence</b>	<b>R.23- Designated non-financial businesses and professions: other measures</b>	<b>R.24-Transparency and beneficial ownership of legal persons</b>
<b>NC</b>	<b>PC</b>	<b>C</b>	<b>PC</b>	<b>PC</b>	<b>PC</b>
<b>R.25- Transparency and beneficial ownership of legal arrangements</b>	<b>R.26-Regulation and supervision of financial institutions</b>	<b>R.27- Powers of supervisory authorities</b>	<b>R.28- Regulation and supervision of designated non-financial businesses and professions</b>	<b>R.29- Financial intelligence unit</b>	<b>R.30-Responsibilities of criminal prosecutorial and investigative authorities</b>
<b>PC</b>	<b>PC</b>	<b>C</b>	<b>NC</b>	<b>LC</b>	<b>C</b>
<b>R.31 - Powers of criminal prosecutorial and investigative authorities</b>	<b>R.32 - Cash couriers</b>	<b>R.33- Statistics</b>	<b>R.34- Guidance and feedback</b>	<b>R.35- Sanctions</b>	<b>R.36 - International instruments</b>
<b>C</b>	<b>PC</b>	<b>PC</b>	<b>PC</b>	<b>LC</b>	<b>LC</b>
<b>R.37 - Mutual legal assistance</b>	<b>R.38 - Mutual legal assistance: freezing and confiscation</b>	<b>R.39- Extradition</b>	<b>R.40 - Other forms of international cooperation</b>		
<b>LC</b>	<b>PC</b>	<b>LC</b>	<b>LC</b>		

# MUTUAL EVALUATION REPORT

## Preface

1. This report summarizes the AML/CFT measures in Mali 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 Mali'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 Mali, and information obtained by the evaluation team during its on-site visit to Mali from **4 - 15 March 2019**.

3. The evaluation was conducted by an Assessment Team comprising:

- Mr. Mamadou Cire Balde, Inspector Central Bank of The Republic of Guinea (Financial Sector Expert)
- Mrs. Astou Senghor, Ministry of Finance, Senegal (Financial Sector Expert)
- Mr. Nahouo Romain Ouattara Magistrate CENTIF Cote d'Ivoire (Legal Expert)
- Mr. Komi Dodji Dayo Chief Commissioner of National Police, Togo (Law Enforcement Expert)
- Mr. Seydou Barro Deputy Prosecutor of Burkina Faso at the Grand Instance Court of Ouagadougou (Legal Expert)
- Mr. 'Buno Nduka, Director of programmes, GIABA Secretariat
- Ms. Olayinka Akinyede, Legal Officer, GIABA Secretariat
- Mr. Madicke Niang, Monitoring-Evaluation Officer, GIABA Secretariat
- Mr. Alphousseyni Diamanka, Interpreter/Translator, GIABA Secretariat

4. The report was reviewed by Mr. Falalou Nassirou Mahaman Sofu, Magistrate, Counselor at the Court of Appeal of Niamey, Ministry of Justice and Human Rights, Niger, Mr. Brice Kokou Allowanou Economic and Financial Brigade Directorate of Judicial Police, Benin and by the FATF Secretariat.

5. Mali previously underwent its first Mutual Evaluation in 2008, conducted by the World Bank according to the 2004 FATF Methodology. Mali was rated Largely Compliant (LC) on three (03) Recommendations, Partially Compliant (PC) on nine (09) Recommendations, Non-Compliant (NC) on thirty-seven (37) Recommendations and Not Applicable (NA) on one (01) Recommendation. The 2008 Mutual Evaluation has been published and is available at <http://www.giaba.org>

6. Following the adoption of the Mali MER in November 2008, the country was placed on the expedited regular follow-up process, which required Mali to report to the GIABA plenary annually. In line with GIABA Mutual Evaluation Process and Procedure, Mali exited the follow-up process in November 2017 to enable the country to prepare for the second mutual evaluation of its AML/CFT regime in 2019.

## **CHAPTER 1. MONEY LAUNDERING AND TERRORIST FINANCING (ML/TF) RISKS AND CONTEXT**

1. Mali is a landlocked country in sub-Saharan Africa that covers an expansive area of 1,241,238 km<sup>2</sup> and shares 7,420 km of borders with seven neighbouring countries: Algeria in the north, Niger and Burkina Faso in the east, Côte d'Ivoire, Guinea to the south, Mauritania, and Senegal to the west. Mali is the eighth-largest country in Africa. The population of Mali is 18 million comprising an unbalanced spatial distribution between North and Center on the one hand and the South on the other. About 90% of the population is concentrated in the south. Mali is characterized by a young population (almost half of the population is under the age of fifteen).

2. According to the NRA, Mali's GDP stands at US \$ 17.41 billion. Mali is a member of the Economic Community of West African States (ECOWAS) which has 15 members and the West African Economic and Monetary Union (UEMOA), which has eight member States sharing a common currency, the CFA franc.

3. The institutional and political framework of Mali takes the form of a semi-presidential representative democratic republic. Under Mali's constitution (1992), the president is the Chief of State and Commander-in-Chief of the Armed Forces. The executive branch is made up of the President, the Prime Minister and his Government. Legislative power is vested in both the government and the National Assembly. Mali's legal system is based on civil law principles.

4. The judicial branch of government comprises a Supreme Court which has both judicial and administrative powers, the Constitutional Court, the Courts of Appeal, Courts of Grand Instance, Courts of First Instance (which includes the Specialized Division on Economic and Financial Crime and the Specialized Division on Money Laundering and Terrorism), Courts of Commerce, Courts for Labor Disputes, Juvenile Court, and the High Court of Justice (a special court of state security).

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

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

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

6. Mali faces significant TF risks from both homegrown terrorist and foreign actors. Terrorist groups in Mali are linked to Al Qaeda in the Maghreb and Islamic State by allegiance. The expansion of jihadist organizations across the Sahel, the limited state control in the north of the country, as well as weak state structures and porous borders have enabled terrorist groups to gain a foothold in the region. The country has been subjected to numerous terrorist attacks perpetrated by jihadist groups based in the Sahel Strip which have claimed several lives. The perpetrators of these attacks belong to several groups such as Ansar Eddine, Islamic State in the Great Sahara

(EIGS), Al Qaeda in the Islamic Maghreb (AQIM), Al Mourabitoun, Movement for Unity and Jihad in West Africa (MUJAO) and Ansarul al Islam. The vast desert area covering more than 50% of the territory, the presence of a large mountain adjoining several external borders and the limited cross-border controls in these areas, constitutes some of the vulnerabilities that pose challenges and represents potential TF threats. For example, these vulnerabilities facilitate the movement of cash or funds meant for TF as well as goods or weapons to support terrorism across unpatrolled borders. The draft NRA report states that there is no reliable data to show that Mali is a transit country for funds to finance terrorist operations abroad. However, terrorist operations in the country are funded by both internal and external sources of funds. While most gold mines operations are located in the South-West region, outside the direct sphere of action of terrorist groups, there is increasing concern about potential security and TF risks from production sites falling under the control of terrorist groups.”<sup>1</sup>

7. The use of cash remains the preferred means of channelling the financial resources of these terrorist groups. Apart from the mailing of cash, terrorists use money transfer services (non-regulated) to move funds. One of the sources of funds for TF is fundraising (case of ZAKAT). “The NRA also found that some non-profit organizations could be highly vulnerable to misuse for TF purposes.”<sup>2</sup> Nevertheless, amounts seized by the authorities in the context of the various arrests were sent via couriers. From 2015, terrorist groups in the north have ousted the state system and have been able to increase revenues by compelling locals to make payments in kind or in cash for certain public services, such as security and the administration of justice. Monies have also been raised through the imposition of taxes (Islamic fines, confiscations of property according to Sharia, right of crossing). As regards the criminal sources of financing, beyond the traditional criminal activities of hostage-taking with ransom, terrorist activities help to maintain the flow of trafficking in goods, drugs, weapons, migrants and the trafficking of human beings, which contributes to the financing of terrorist groups. This situation also creates collaboration between terrorists and traffickers and the correlation between TF and ML and associated predicates.

8. In terms of its ML risks, Mali ranks 120<sup>th</sup> out of 180 countries according to the Transparency International Corruption Perception Index.<sup>3</sup> Apart from the high level of perceived corruption, trafficking in persons,<sup>4</sup> drug trafficking<sup>5</sup> and fraud<sup>6</sup> have been indicated as prevalent offences. The IMF Technical Assistance Report notes that principal sectors at risk of laundering of proceeds of large-scale corruption, appear to involve the real estate, banking, and gold sectors and companies.<sup>7</sup> The 2016 Anti-Money-Laundering Index published by the Basel Governance Institute (Basel AML India) on 27<sup>th</sup> July 2016, ranked Mali 10<sup>th</sup> out of 149 countries with a score of 7.86. This high score signifies considerable exposure to ML. The draft NRA did provide sufficient granularity on the ML risk faced by the country.<sup>8</sup> For example, the draft NRA did not

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<sup>1</sup> <https://mneguidelines.oecd.org/Assessment-of-the-supply-chains-of-gold-produced-in-Burkina-Faso-Mali-Niger.pdf>

<sup>2</sup> NRA draft report page 65

<sup>3</sup> 2018 Index

<sup>4</sup> <https://www.cia.gov/library/publications/the-world-factbook/geos/ml.html>

<sup>5</sup> Mutual Evaluation Report of Mali Pg 13 [https://www.giaba.org/media/f/252\\_MALI\\_word\\_MER\\_english\[1\].pdf](https://www.giaba.org/media/f/252_MALI_word_MER_english[1].pdf)

<sup>6</sup> The IMF Technical Assistance Report page 19 <https://www.imf.org/external/pubs/ft/scr/2015/cr15185.pdf>

<sup>7</sup> Ibid page13

<sup>8</sup> *The final report of the NRA however, indicates that the sectors most vulnerable to ML are the banking sector, followed by the precious metals and precious stones sector and the commercial corporations sector. In addition, the predominance of the informal economy within the real estate sector was highlighted. The offences that are considered as the highest proceeds generating*

indicate the offences considered to have the highest level of ML risk.<sup>9</sup> Although Mali is not a major regional financial centre, the country faces significant ML risk as a result of a number of factors such as the largely *ungoverned northern* region and its porous borders. As far back as 2013 “organized transnational criminal networks were operating throughout Mali and across the Sahel and these groups were involved in drug cartel operations, cross-border banditry, smuggling, human trafficking, kidnapping-for-ransoms and money-laundering.” The situation in the northern region has not improved and the NRA has indicated that there is a lack of an effective mechanism for controlling cross-border physical cash flow which further increases the ML risk. There is no overall estimate available of the value of criminal proceeds in Mali<sup>10</sup>. Significantly, Mali has an economy with an important informal sector which accounts for about 40 to 50 percent of the GDP and according to sources from the Taxes Department, 7 billion FCA escape taxation annually, involving 2 to 3 million actors. Gold production plays an important role in the country's economy, but also represent an important ML vulnerability in particular in relation to illicit trade, trafficking, corruption, and extortion, in the context of unlicensed artisanal production.<sup>11</sup>

## Scoping of Higher Risk Issues

9. During the on-site visit, the assessment team gave increased focus to the higher risk issues listed below. In deciding on which areas to prioritise, the assessment team reviewed Mali's draft NRA report 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 Mali's AML/CFT system.

- **Predominance of the informal economy:** Mali's economy is largely cash-based. The informal sector is a central part of economic activity in Mali and is estimated, by IMF staff, as reaching more than 40% of the country's GDP.<sup>12</sup> The estimated proportion of the population that had bank accounts as of 2017 was only 35 percent (35%).<sup>13</sup> In addition, Mali has a system of informal cooperatives, in the form of the tontine and these solidarity mechanisms have been in place for several decades.<sup>14</sup> The economic operators' strong preference for cash also facilitates the flow of money outside the conventional financial systems making detecting illicit financial activity or tracking proceeds of crime quite difficult and this typically signifies considerable ML/TF risks.

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*predicates include fraud (tax and customs), illicit trafficking (drugs, drugs and cigarettes) and offenses against public property. The final report also confirmed that the vast desert area covering a large part of Mali (51% of the territory) is conducive to numerous illicit transactions, where armed gangs, drug and arms traffickers operate and through which illegal migration and criminal armed groups transit- (page18-20 NRA report).*

<sup>9</sup> The NRA lists Illicit traffic in drugs, medicines, cigarettes; Fraud (tax, customs and banking); Trafficking in persons and similar practices; Kidnapping, illegal restraint and hostage-taking, Offences against public property; Theft Breach of trust, swindling; Falsification of documents, Terrorism; Terrorist financing; Arms trafficking; Counterfeit money; Illegal Forest Exploitation and Profit generating Environmental Crime.

<sup>10</sup> Report of the Secretary-General on the situation in Mali [S/2013/189]

[https://www.securitycouncilreport.org/atf/cf/%7B65BFCE9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_2013\\_189.pdf](https://www.securitycouncilreport.org/atf/cf/%7B65BFCE9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2013_189.pdf)

<sup>11</sup> Gold at the crossroads: Assessment of the supply chains of gold produced in Burkina Faso, Mali and Niger <https://mneguidelines.oecd.org/Assessment-of-the-supply-chains-of-gold-produced-in-Burkina-Faso-Mali-Niger.pdf>.

<sup>12</sup> The IMF Working Paper: <https://www.imf.org/~media/Files/Publications/WP/2017/wp17156.ashx>

<sup>13</sup> Global Findex Database, World Bank Group, 2017 <https://globalfindex.worldbank.org>

<sup>14</sup> Mutual Evaluation Report of Mali page 14 [https://www.giaba.org/media/f/252\\_MALI\\_word\\_MER\\_english\[1\].pdf](https://www.giaba.org/media/f/252_MALI_word_MER_english[1].pdf)

- ***Terrorism and Terrorist Financing:*** The nefarious aspect of terrorism in Mali particularly the operations of Jama'at Nusrat al-Islam walMuslimin (JNIM), an umbrella group which includes al-Murabitoun, Ansar al-Dine, and the Macina Liberation Front, pose significant threats of terrorism and its financing. These groups are indicated as having a stronghold in Northern Mali and have launched various terrorist attacks in the country. The assessment focused on the measures in place to detect and disrupt terrorist financing activity including through investigation, prosecution and implementation of other preventive measures to dismantle terrorism and its financing and consider the link between artisanal gold production in Kidal and Tessalit and financing JNIM<sup>15</sup>.
- ***NPOs:*** As indicated above, the threat of terrorism is high in Mali and the abuse of some NPOs for the purpose of terrorism has been indicated in typology studies from Mali and within the ECOWAS region<sup>16</sup>. The assessors sought to determine if Mali has conducted a comprehensive assessment of the sector to identify NPOs that are vulnerable to TF abuse; the extent to which the Malian authorities understand the TF risks associated with the NPOs; and consider the measures in place to mitigate the TF risk associated with the sector.
- ***Investigation of Money Laundering:*** The extent to which money laundering is pursued and parallel investigations are conducted when investigating proceeds generating predicate offences, focusing on the most prevalent predicate offences in Mali. The assessors focused on how the prosecution and judicial authorities handle predicate offences that have elements of money laundering.
- ***Supervision:*** Supervision of financial institutions for AML purpose appears to be limited. Given this shortcoming, an evaluation of the ML/TF vulnerabilities posed to the financial sector and supervisory authorities' understanding of the sector's exposure to ML/TF risks are important. The assessors focused on how the supervisors of financial institutions identify, assess and understand ML/TF risks in their respective sectors as well as the scope of AML/CFT monitoring and supervision and the existing sanction regime.
- ***Risk-Based Approach in the financial sector:*** The financial sector's level of compliance with customer due diligence (CDD) requirements, including implementation of beneficial ownership requirements and obligations pertaining to politically exposed persons were important areas of focus. So was the extent to which financial institutions identify, assess, understand and mitigate ML/TF risks, including risks related to customers, countries or geographic areas, products, services and transactions or delivery channels.
- ***DNFBP Sector:*** Some sectors within the DNFBPs, specifically the real estate and precious mineral sector have been indicated as posing considerable risks of money laundering. The assessment team sought to understand how the mining and precious metal sector is

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<sup>15</sup> <https://mneguidelines.oecd.org/Assessment-of-the-supply-chains-of-gold-produced-in-Burkina-Faso-Mali-Niger.pdf>

<sup>16</sup> FATF Report Terrorist Financing in West Africa (2013) <https://www.fatf-gafi.org/media/fatf/documents/reports/TF-in-West-Africa.pdf>

structured and examined the level of implementation of AML/CFT measures, including internal controls as well as supervision/monitoring and regulation of the sector. The assessors also considered the Malian authorities understand the ML/TF risks within these sectors and whether mitigating measures are in place. Given the high TF risk in Mali, focus was placed on high-risk DNFBP sub-sectors such as mining.

- **Cross border transportation of cash:** Mali's 4,500 mile-long land border is shared with seven autonomous countries. The country's borders, particularly in the northern region which has inadequate border controls, are porous and pose ML/TF risks. This necessitates a focus on the management of cross-border ML and TF risks and the way in which bearer negotiable instruments and cash movement across the border is monitored.
- **Transparency of legal ownership:** Due to the threat of corruption indicated above, focused was placed on the level of transparency of legal persons including the availability of, and access to beneficial ownership information as well as the system in place for registration, record keeping and updating basic and beneficial ownership information.

## Materiality

10. Mali's GDP stands at US \$ 17.41 billion. The country enjoyed strong economic GDP growth of 5% in 2018. Tax revenue stands at 16.1% of GDP.

11. Mali has an economy with a large informal sector and according to the Revenue Authority, the country's annual losses in tax revenue is estimated at 7 billion CFA francs, (\$ 12,000,000 approx.). The use of modern means of payment including electronic payments is growing strongly in Mali however, the economy is still predominantly cash-based.

12. Mali's financial sector is made up of banks, insurance companies and brokers, microfinance institutions, securities management and brokerage companies (SGI), financial leasing institutions, foreign exchange bureaus, electronic money issuers (EMIs) and money transfer companies. As at the end of July 2018, Mali had 17 financial institutions and 84 microfinance institutions (DFIs). The financial sector in Mali is dominated by the banking sector with 14 banks (comprising 489 branches) and a banking rate of 16.5%, in the 4<sup>th</sup> quarter of 2018. All the banks, with the exception of four (4), are owned by foreign groups and are well connected to the international financial system. The banking sector is dominated by foreign shareholders (63%), many from Africa.

13. The 14 banks have a total balance sheet of 4,713 billion CFA Francs (\$8.1 billion) and 1,586,998 bank accounts. As at the end of 2017, Mali had 12.7% of the banking market in the UMOA zone, behind Côte d'Ivoire with 31.2%, Senegal with 19.1%, and Burkina Faso with 14.7%.<sup>17</sup> Financial inclusion is a political goal of WAEMU authorities. In this regard, programs to facilitate access to financial services are encouraged. Its programs include the development of microfinance and mobile banking. These facilities have augmented the strict banking rate, bringing it from 6.9% to 13.8% and 44.7%. The insurance sector, despite its high demographic

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<sup>17</sup> The UMOA Banking Commission 2017 Annual Report

potential, is relatively underdeveloped compared to other CIMA zone countries. In 2015, insurance represented only 0.45% of the penetration rate.

14. There are several challenges to achieving better financial inclusion, including the potential for anonymous transactions as even small transfers could present a high-risk of TF. Mobile money products and transactions can involve anonymity i.e. remote deposits on a mobile money account by an unidentified person who does not want to use his/her account to make a transfer. This presents potential TF risks. The microfinance sector is also growing in importance and has recently been an important player in financing agriculture. It has also played a key role in providing financial services to underserved households, microenterprises, and farmers. The DFI sector is not exempt from risk given the limited application of CDD measures among the smaller DFIs within the sector. Thus, EMIs and DFI sectors have appreciable importance given the TF risks in Mali. There is also a high risk associated with international NPOs and companies that receive money from outside Mali.

15. Overall, within the financial sector, the ML/TF risk in the banking sector is most significant given the size of the sector. The other sectors are less important. As indicated above, EMIs and DFIs could be considered as moderately important sectors given the TF risk profile of Mali and the fact that small transfers could be used for TF purposes.

**Table 1.1: Structure, Size and Number of Reporting Entities in Mali**

Type of Institutions		Number		Total Balance sheet (in billions XOF)
		S/Total	Total	
Banks	National Banks	2	14 (July 2017)	4,713 (2018)
	Foreign Banks/Subsidiaries or Branches of Foreign Banks	3		
	Sub-regional banks	9		
Capital market	Brokers, Dealers and Portfolio Managers	1		
Insurance	Life insurance	3		
	Non-life insurance/other insurance companies	9		
	Insurance and Reinsurance Brokers, General agents	35		
Microfinance Institutions			84	136
Leasing and Mortgage Guarantee Institutions			3	
Foreign exchange bureaus				
Rapid money transfer companies				
Electronic money institutions				29.29
<b>DNFBPs</b>				
Casinos and gaming companies	Casinos		1	
	Lottery and other games of chance			
Legal sector professional	Notaries		35	
	Lawyers		326	
Auditors/Chartered and Licensed Accountants			111	
Real Estate Developers and Agents	Real estate agents			
	Real estate agents			
Mining sector/Dealers in precious metals	Industrial Mining   Gold		11	
	Authorized alluvial gold mining		158	
	Gold buying counters (dealers)			
<b>Other Reporting Entities</b>				
County court bailiff				
Transport	Transporters			
Hotels /restaurants				
NPOs	Associations and NGOs		1454	

16. Table 1.1 above shows the various sectors in Mali. Within the DNFBP sector, the mining sector is the most important. In terms of the contribution of mining companies in 2016, gold accounted for an average of 70% of export earnings and provided about CFAF 950 billion (\$1.6 billion), accounting for 25% of the country's tax revenue. In addition to the DNFBPs designated by FATF, travel agencies, hotels and transporters are reporting entities by virtue of the Law No. 2016-008 of 17 March 2016 relating to the Uniform Law on Anti-Money Laundering and Countering the Terrorist Financing (AML/CFT Law No. 2016-008).

17. NPOs in Mali play a crucial role in addressing the needs of the most deprived populations. NPOs are nevertheless, designated as reporting entities under Malian law owing to certain vulnerabilities, including the predominant use of cash, lack of AML/CFT supervision and limited knowledge of AML/CFT obligations.

18. The level of financial inclusion is rather low in Mali (44.7%). This simply means a substantial amount of transactions are conducted outside the financial system and thus, generally poses ML/TF risks. However, within the UMOA zone, the policy on increasing the banking population rate, particularly the obligation to settle any transaction involving an amount greater than or equal to CFAF 100,000 (\$172) between the private economic operators and state departments by cheque or bank transfer, is being implemented. In addition, the breakthrough in microfinance and the increase in the number of payment systems via mobile telephone allow a large proportion of the population to make financial transactions simply by the opening of an account with the SIM card although as already mentioned, products within this sub-sector are not without their risk.

## **Structural elements**

19. Mali has some components of structural elements to maintain an effective AML/CFT system. Mali has several specialized institutions including specialized courts to handle economic and organized crimes, and in particular, ML and TF. Nevertheless, according to the World Bank's Worldwide Governance Indicators Report on political stability, government effectiveness and the rule of law, Mali falls below 30 percentile ranking among the 212 countries surveyed. The country entered into peace negotiations which resulted in the signing of an agreement of peace and reconciliation in mid-2015. However, due to increasing insecurity, violent attacks by terrorist and armed groups, as well as the emergence of new terrorist groups in Mali's central region, implementation of the agreement has remained challenging. Nonetheless, continued efforts are being made toward strengthening political stability in the country. The Malian judicial system is fairly independent. However, the judges face case backlogs. Mali has however, demonstrated high-level political commitment to implement AML/CFT measures consistent with international standards.

## **Background and other contextual elements**

20. Mali is a member of UEMOA and the Inter-African Conference of Insurance Markets (CIMA). These community institutions provide supervisory and regulatory oversight of FIs in the country. Mali's banking system is relatively developed. However, the level of financial inclusion remains fairly low. Cash transactions are still the predominant payment method in Mali and the size of the informal sector is quite significant. Remittances made between foreign countries and Mali, amounts to about CFAF 420 billion (\$707 million)<sup>18</sup>. These remittances are generally sent through informal channels, which add to the risks of ML/TF. According to the Transparency International Corruption Perception Index, Mali ranks 120<sup>th</sup> out of 180 countries and the NRA

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<sup>18</sup> Draft NRA page 9

notes that the impact of corruption remains dominant in Malian society. The *Bureau du vérificateur général* (BVG), in its 2017 report, estimated that Mali lost CFA70 billion (\$117 million) through fraud and bad management.<sup>19</sup> Mali has an anti-corruption strategy in place and the country has taken some steps aimed at combating corruption including amendments to the penal code to strengthen the anti-money laundering framework in 2016 and mandatory assets declaration for government officials.

21. Mali has a relatively open media and a significant number of active networks of civil society organizations, some of which work on corruption issues. The country is a member of the Extractive Industries Transparency Initiative (EITI), which brings civil society together with companies and government to monitor transparency around revenues generated in its mining sector.

### *AML/CFT Strategy*

22. Mali did not have an existing national AML/CFT strategy at the time of the on-site visit, the previous national strategy covered the period spanning 2012 to 2015. The country is anticipating the development of its new strategy after the finalization of its NRA. As a member of UEMOA, Mali has, since 2002, drawn its AML/CFT policy from UEMOA's supranational strategy to promote economic and financial stability and the protection of the integrity of the region's financial system. The main thrusts of this policy are prevention and repression through international cooperation.

23. Mali has a National Policy on the Prevention of Violent Extremism and Terrorism with an action plan covering the period (2018-2020). The policy has five pillars one of which is prevention. The goals under this pillar, include freezing of terrorist funds and assets, disruption the channels of TF and implementing measures to eliminate conditions conducive to terrorism, radicalization, violent extremism including, through awareness-raising.

24. The specific issue of terrorism financing is addressed in the National Policy for Combating Terrorism and Violent Extremism, which is integrated into the National Security Policy. At the sub-regional level (ECOWAS), the strategy on terrorism, including its financing, is provided for in the ECOWAS Political Declaration and Common Position against Terrorism and its Implementation.

### *Legal and Institutional framework*

25. The Uniform Law 2016-008 is the legal basis of the obligations of FIs and DNFBPs with regard to AML / CFT in Mali. Uniform laws and directives are community standards which must be transposed into the national legal arsenal of a Member State through a parliamentary process in order to enter into force. On the other hand, a community regulation is directly applicable and does not go through the transposition mechanism. In general, the standards issued by the WAMU (Uniform Laws) and the BCEAO (Instructions), as well as the WAEMU Directives and

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<sup>19</sup> <https://www.u4.no/publications/mali-overview-of-corruption-and-anti-corruption>

Regulations, are all binding and meet the enforceable means criteria of FATF standards. From the point of view of the hierarchy, the texts of the community, in principle, have supremacy over purely national texts. In terms of sanctions, these instruments refer, if necessary, to the sanctions provided for by substantive law. Some instructions include pecuniary sanctions. With regard to their scope, the regulations (of WAMU) and instructions (of BCEAO) apply to FIs in all Member States. The instructions of the CREPMF apply to the actors of the stock exchange. As for Uniform Law (UMOA), it applies to all reporting entities (FI and DNFBP). Mali's AML/CFT institutional framework is based mainly on community institutions and national institutions. Mali's AML/CFT legal framework is generally drawn from the UEMOA Uniform AML/CFT legislation and Directives issued by the BCEAO, the CIMA Rules, the Directives of the Regional Council of Public Savings and Capital markets (CREPMF) and Revised OHADA Uniform Acts. These texts are complemented by various domestic legislations and some implementing texts. The institutional framework for AML/CFT involves a range of authorities. The Inter-Ministerial Committee oversees implementation of the AML/CFT regime at the policy level and at the operational level, a broad range of competent authorities including specialized courts respond to ML/TF risks (including threats) faced by the country. The key institutions required for an effective AML/CFT system exists in Mali. The institutions and agencies responsible for AML/CFT in Mali are shown in Table 1.2 below.

**Table 1.2: Institutions and summary of AML/CFT responsibilities**

Competent Authorities	Summary of AML/CFT Responsibilities
<b>FIU(CENTIF)</b>	- Processing of information and transmission of information and intelligence relating to money laundering and terrorist financing and predicate offences to relevant authorities.
<b>Specialized Criminal Division (PJS) (Court)</b>	- Prosecution and investigation of offences relating to terrorism and transnational organized crime (money laundering and terrorist financing, drug, arms and ammunition trafficking, trafficking in persons and related practices) nationally.
<b>Economic and Financial Division (Court)</b>	- Prosecution and investigation of the economic offences provided for by the Penal Code and those defined by the Commercial Code, the Tax Code, the Customs Code, the Public Procurement Code and the Finance and Accounting Law.
<b>Central Office Against Illicit Enrichment (OCLEI)</b>	- Established for the Prevention, control and fight against Illicit Enrichment at the national, sub-regional, regional and

	international levels (and taking asset declarations).
<b>Central Office Against Narcotics (OCS)</b>	- Granted criminal investigation powers to combat illicit drug trafficking. Thus, responsible for implementing all the measures of prevention, control and suppression envisaged at the national, sub-regional, regional and international levels for an effective and coordinated fight against illicit trafficking in narcotics.
<b>National Administrative Freezing Commission</b>	Empowered to: <ul style="list-style-type: none"> <li>- Develop the national list of persons and entities or bodies subject to freezing measures or de-listing;</li> <li>- Review of requests for administrative freezing and release of funds and other financial resources, as well as requests for review by third countries;</li> <li>- Revise the national list annually and rectify errors found or reported;</li> <li>- Set up a database at national level;</li> <li>- Prepare half-yearly reports and annual report.</li> </ul>
<b>AML/CFT Inter-Ministerial Committee</b>	- Assist public authorities in the design and conduct of the national ML/TF policy; - Make proposals for strengthening national and international ML/TF cooperation; - Identify national laws and regulations that are not in line with internationally accepted principles and practices and develop action plans to resolve the deficiencies and dysfunctions; - Oversee and coordinate ML/TF assessment, self-evaluation and mutual evaluation exercise; - Maintain working relationships with AML/CFT structures.
<b>Ministry of Finance</b>	- Supervision, develop supervisory and monitoring guidelines for a section of the banking and non-banking financial sector.
<b>Ministry of Foreign Affairs and International Cooperation</b>	- Coordination for international cooperation

<p><b>National Early Warning and Response Mechanism</b></p>	<ul style="list-style-type: none"> <li>- Mandated to gather information and data on the threats to good governance, security and peace in Mali, to alert the government, to suggest appropriate responses to identified threats, to monitor and, where necessary, coordinate the implementation of the responses agreed by the government as well as those provided by international organizations.</li> </ul>
<p><b>National Coordinating Committee Against Human Trafficking and Related Practices</b></p>	<ul style="list-style-type: none"> <li>- Develop and implement the National Action Plan to Combat Human Trafficking and Related Practices;</li> <li>- Assist in the mobilization of resources necessary for the implementation of actions to fight against human trafficking and related practices;</li> <li>- Establish a data collection and processing system;</li> <li>- Develop annual anti-trafficking activities;</li> <li>- Develop national reports on the implementation of sub-regional action plans against human trafficking;</li> <li>- Promote partnership among various stakeholders in the fight against human trafficking.</li> </ul>
<p><b>Customs Authority</b></p>	<ul style="list-style-type: none"> <li>- Collection of revenue</li> <li>- Facilitation of legitimate trade</li> <li>- Compilation of foreign trade statistics</li> <li>- Protect of borders though (i) the control of pharmaceutical products and international trade in wild species, flora and fauna threatened with extinction; (ii) fighting against narcotics, counterfeits and fraudulent exploitation of works of art; and (iii) protection of cultural heritage and environmental protection</li> </ul>

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

26. This section provides general information on the size and composition of the financial and DNFBP sectors in Mali. The importance of these sectors and the risks affecting them vary and the assessment team examined their importance as well as the risk faced by the various sectors. Mali's financial sector comprises credit institutions, insurance companies, microfinance institutions,

securities and brokerage firm foreign exchange bureaus, electronic money issuers (EMI) and money transfer companies.

### **Banking sector**

27. Mali has 14 banks with a total balance sheet of 4,713 billion CFAF(\$8.1billion) as at the end of 2018. As at end 2017, Mali occupied 12.7% of the banking market in the UMOA zone, behind Côte d'Ivoire (31.2%), Senegal (19.1%) and Burkina Faso (14.7%). According to the BCEAO, the banking population rate, strictly speaking, stands at 6.9% (portion of the populace aged 15 years and above and having a bank account), while the extended rate to DFIs is 13.8% and to EMIs is 44.7% (segment of the population aged 15 years and above with access to financial services in line financial inclusion initiatives).

### **Securities sector**

28. Compared to the banking sector, the financial market is not well developed in Mali. The sector essentially deals with three main activities: fund-raising, portfolio management and securities brokerage. There are three main products associated with these activities: debt securities, bonds and shares. Fundraising remains the dominant activity that generates the most revenue, which is driven by the development of the public securities market. Mali has only one brokerage firm and 98% of the funds received by the firm for investment are derived from financial institutions.

### **Insurance sector**

29. In Mali, the insurance sector represented only 0.45% of penetration rate in 2015, despite a high demographic potential. The insurance sector in Mali is relatively underdeveloped compared to other countries in the CIMA zone. Furthermore, the life insurance business is performing less than the property and casualty business. Overall, Mali has 12 life and non-life insurers, and 35 insurance brokers.

### **Microfinance/DFIs**

30. The Microfinance sector in Mali is growing in importance. As at the end of June 2018, the authorized DFIs in Mali comprised 18 mutual networks with 247 affiliated base funds, 18 mutual funds not affiliated with a network, 36 associations and 13 public companies, making a total of 85 DFIs. The Draft NRA identified significant risks in the sector, including the use of DFI services by companies and NGOs that receive money from outside the country and the authorization of remote transactions by DFIs. The ML/TF risk is compounded by a low level of formalization and a lack of implementation of required AML / CFT obligations.

### **Money and Value Transfer Services (MVTs)**

31. On the basis of the regulations that govern them, these services sign service delivery agreements with authorised the banks and DFIs, which are exclusively authorized by the BCEAO to carry out rapid transfer transactions. MVTs are technical operators that allow banks and DFIs

to access their technical platforms to make transfers. The banks and authorized DFIs sign contracts with sub-agents and agents who, carry out this rapid transfer service on their behalf and under their supervision. Sub-agents are subject to the AML/CTF provisions.

## **DNFBPs**

32. The DNFBP sector comprises lawyers, notaries and other independent legal professions, accountants, auditors, trust and company service providers, dealers in precious stones and precious metals, real estate agents and casinos, and real estate brokers. The lawyers have a self-regulatory body, that has procedural rules that govern the operation of the profession. Notaries are required to formalize the purchase or transfer of property, assist client to incorporate companies and conduct other socio-economic entities. Accountants assume the roles of statutory auditors and advisers. Accountants have regulation that governs the practice of the profession. Real estate professionals generally face ML risk as this sector is one of the many vehicles used by criminals to launder money. Most of the DNFBPs in Mali generally have no AML/CFT measures in place. Majority of the managers and staff of these businesses and professions are unfamiliar with their AML/CFT obligations. Consequently, proceeds of crimes can easily be laundered through transactions involving real estate, sales of works of art and precious metal, particularly as these transactions are often cash-based. Thus, the DNFBP sector is highly vulnerable to ML and TF because of the weaknesses in the compliance function within the different sub-sectors and lack of control and supervision of DNFBPs. Apart from the FATF designated DNFBPs, Mali has designated travel agencies, hotels and transporters as reporting entities due to the risks they may pose in terms of ML/TF. The analysis of data and information provided by the country and the assessment of some of the DNFBPs sectors also indicate that the sector is quite vulnerable to money laundering and terrorist financing. The draft NRA report noted that DNFBPs and NPOs (also reporting entities under the AML/CFT law), lack awareness of AML/CFT obligations; are not monitored for AML/CFT purposes; engage predominantly in cash transactions and generally operate within the informal economy. All these factors translate to significant ML/TF risks.

### *Preventive measures*

33. In Mali, preventive AML/CFT measures are generally based on the provisions of the Law No.16-2016 which is general in scope and applies to all AML/CFT reporting entities. However, for some sectors, the regulatory or supervisory authorities have taken more specific measures to provide a precise framework for the AML/CFT activities that fall within their purview.

34. Within this framework, the financial institutions that are supervised by BCEAO are in addition to Law No.16-2016, governed, by Regulation 14/2002/CM/UEMOA on the freezing of funds and other financial resources in the fight against the financing of the terrorism. Also, a series of Directives have also been developed by the BCEAO on FIs, including Directives No. 01/2007/RB of 2<sup>nd</sup> July 2007, on the fight against money laundering within financial institutions; No. 007-09-2017 mapping out the modalities for the enforcement of AML/CFT measures; No. 008-09-2017, setting the declaration threshold for cross-border physical transportation of cash, both at entry and exit points; No. 009-09-2017, setting the threshold for the payment of claims in cash and No. 010-09-2017, setting the threshold amount for the submission of cash transaction reports to the FIU.

35. In the e-money sector, the conditions and procedures for operating as electronic money issuers are governed by Directive No. 008-05-2015. Capital market stakeholders are governed by Directive No. 35/2008 of 23<sup>rd</sup> November 2009, while those in the insurance industry are governed by Regulation No. 0004/CIMA/PCMA/PCE/SG/08 of 4<sup>th</sup> October 2008 on preventive measures.

### *Legal persons and legal arrangements*

36. Legal entities in Mali are mainly governed by the OHADA Uniform Act relating to General Commercial Law (AUSCGIE). Table 1.3 shows the categories and number of legal persons in Mali according to the classification under the OHADA law.

**Table 1.3: Legal persons (as categorized under the OHADA Uniform Act)**

Statistics by legal forms of companies created (2014 to March 2019)						
Legal form	2014	2015	2016	2017	2018	March 19
Other Legal Forms (of business)					2	1
Representative Office		2	2	0		0
Cooperative					1	0
Public Company with an administrative nature	3	0	0	0	1	0
Economic Interest Group (GIE)	150	77	96	201	115	60
Limited Liability Company (SARL)	1582	1389	2216	2645	2819	928
Limited Liability Company (one-member) (SARLU)	86	151	124	171	160	24
Anonymous Society (SA)	85	84	71	91	86	29
Anonymous Society (SA) (one-member)	0	0	0	1		0
Real estate company	1	4	4	9	5	1
Professional civil society	1	0	1	2	2	1
Limited Joint Venture Company (SCS)	1	0		0	3	0
Simplified Joint Stock Company	6	31	23	31	39	30
Simplified Stock Company (one-member)	0	3	11	12	13	3
Branch of Foreign Companies	0	0		4		0
Simplified Joint Stock Company by one-member		1	1	0	1	0
Simplified Stock Company Branch	0	1	2	1	2	0
Branch Office (SA)	4	12	9	6	7	1
Branch Office (SARL)	5	23	18	26	20	7
Branch Civil Society Real Estate	0	0	1	1		0
<b>Annual Total</b>	<b>1924</b>	<b>1778</b>	<b>2579</b>	<b>3201</b>	<b>3276</b>	<b>1085</b>

37. Basic information on legal persons is available in the Trade and Personal Property Register (RCCM). These records are kept manually at a physical location. Due to the non-computerization of the court registry and the RCCM, the information contained in the RCCM is not easily accessible to the public and can only be accessed by the public for a fee. There is no obligation to keep beneficial ownership information at the RCCM. Generally, competent authorities

(investigative authorities) can only access beneficial ownership information held by banks upon the consent of the state prosecutor.

38. As regards legal arrangements, Malian law does not allow the creation of trusteeships. The AML / CFT law nevertheless, requires reporting entities to obtain basic and beneficial ownership information of trusts.

39. The actors responsible for the incorporation of legal persons and the maintaining company registers, particularly staff of the registries, notaries and lawyers, have limited understanding of the ML risk posed by the misuse of corporate structures. The OHADA Uniform Act on General Commercial Law subjects legal persons to some general obligations designed to protect them against misuse. These include record-keeping obligations, the obligation to register companies, updating the information contained in the RCCM and monitoring changes that may occur through the existence of the legal entity. However, there are no corresponding sanctions where legal entities fail to comply with these obligations.

40. The manual and non-computerized processing of the RCCM pose challenges regarding accuracy and accessibility of the information particularly in the cases where requests are made by competent authorities. The gradual roll-out of the OHADA software acquired in 2017 by Mali will facilitate the retention of beneficial ownership information and allow quick access to all relevant authorities.

*Institutional arrangements for monitoring and supervision*

41. Mali has several Supervisory Authorities for Financial Institutions. These are Ministry of Finance (MEF), BCEAO and the UMOA Banking Commission (BC) for Banks and some non-bank financial Institutions, CIMA for Insurance Companies and CREPMF for stock market operators. Specifically:

- BCEAO, the Banking Commission and Ministry of Finance supervise the banks, large decentralized financial institutions (DFIs) EMIs, and Foreign Exchange Dealers.
- The MEF and DFI Supervision and Monitoring Department (CCS/DFS) supervise DFIs in general and small-scale DFIs in particular.
- CREPMF supervises Capital market operators.
- CIMA, through the CRCA and the Insurance Department within the Ministry of Finance, supervises insurance companies and brokers.

**Table 1.4: Licensing, Regulatory and Supervisory Authorities for FIs in Mali**

Type of Institutions	Licensing Authorities	Monitoring Authority	Supervisory Authority
<b>Banks</b>	Minister of Finance	Minister of Finance BCEAO CB-UMOA	Minister of Finance BCEAO CB-UMOA

Type of Institutions	Licensing Authorities	Monitoring Authority	Supervisory Authority
	- BCEAO and Banking Commission (CB-UMOA)		
<b>Securities</b> (Brokers, Dealers and Portfolio 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	Minister of Finance	Minister of Finance
Postal financial services	Minister of Finance	Minister of Finance	Minister of Finance
<b>Public Deposit Fund</b>	Minister of Finance	Minister of Finance	Minister of Finance

## Banking sector

42. In accordance with the provisions of the appendix to the convention governing the UMOA Banking Commission, the BC conducts on-site and off-site inspections of banks and some non-bank financial institutions to ensure compliance with the relevant obligations. The BC is responsible for ensuring the soundness of the UMOA banking system, particularly through these inspections. The BC is chaired by the Governor of the BCEAO.

## Microfinance sector (*Decentralized Financial System*)

43. The supervision of Microfinance Institutions is jointly carried out by the CCS/DFS of the Ministry of Finance, the BCEAO and the UMOA Banking Commission. Microfinance operations are governed by the Uniform Law regulating the Decentralized Financial Systems (DFIs) and its enforcement decree as well as the directives issued by the BCEAO. According to the provisions of Article 44 of the Law on the Regulation of Decentralized Financial Systems (DFIs) and Directive No. 007-06-2010 of the Central Bank, "the Central Bank and the Banking Commission shall, after informing the Minister, inspect any decentralized financial system whose level of activity attains a threshold of two (2) billion CFAF of outstanding deposits or credits after two consecutive years."

## Authorized Foreign Exchange Dealers

44. The BCEAO and/or the Ministry of Finance conducts periodic checks to ensure compliance by the authorized structures with the provisions governing the exercise of the foreign exchange business. The activities of Foreign Exchange Dealers are governed by Regulation No. 09/2010/CM/UEMOA of 1<sup>st</sup> October 2010, on the external financial relations of the Member States of the Union.

### **Electronic Money Issuers Sector**

45. The conditions and procedures for the activities of electronic money issuers are under the supervision of the BCEAO and the Banking Commission.

### **Stock Market**

46. The Regional Savings and Credit Council is authorized to supervise the regional stock market.

### **Insurance Sector**

47. Article 16 of the CIMA Code states that “The Regional Insurance Supervisory Commission (CRCA), hereinafter referred to as the Commission, is the regulatory body of the Conference. It is in charge of supervising the companies, it ensures the general supervision and contributes to the organization of the national insurance markets.” Furthermore, Article 15 of the CRCA Statutes confers on it, the powers to impose disciplinary sanctions ranging from warnings to withdrawal of licence, suspension or compulsory resignation of officers, depending on the seriousness of the offence, in the event of an infringement of the insurance regulations.

### ***DNFBPs***

48. DNFBPs have self-regulating bodies and competent authorities that supervise them, nevertheless, these supervisors do not have oversight powers with respect to compliance with AML/CFT legislation.

### ***International cooperation***

49. The Republic of Mali is exposed to ML/TF risks from outside its borders. Terrorist groups formed in Mali by nationals receive funding from external sources. In addition, ML threats such as drug trafficking, illicit arms trafficking, and migrants smuggling have transnational elements. This makes international cooperation important in the context of the country. Mali has a comprehensive legal framework for international cooperation, underpinned by a number of bilateral and multilateral agreements and treaties. Mali engages in judicial cooperation. The central authority for incoming and outgoing MLA and extradition requests is the: Ministry of Foreign Affairs and International Cooperation. Even though the number of mutual legal assistance requests received by Mali is not many, these requests are often not promptly answered, thus suggesting the need to strengthen relevant competent authorities’ institutional capacity. The Malian authorities rarely seek mutual legal assistance although cooperation between FIUs and police to police cooperation appear to used more frequently. Competent authorities such as the OCLEI and

Customs are also empowered to exchange information with foreign counterparts. Malian authorities employ informal networks for the exchange of information.

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

### Key Findings and Recommended Actions

#### Key Findings

1. Mali's National ML/TF risks assessment was still in progress at the time of the mutual evaluation on-site visit. The conclusions of the draft NRA report provided to the assessment team appear to reasonably reflect the main ML/TF risks. However, shortcomings in the scope of the exercise, the consistency of the methodology used and availability of statistics have been identified. The draft NRA report identified fraud, drug and cigarette trafficking, migrant smuggling and related offences, corruption, customs and tax offences as key factors of high level of threat. At the sectoral level, the alternative money transfer system; foreign exchange dealers; electronic money; hotel industry; real estate; legal and accounting professionals; casinos and extractive sectors are identified as high-risk entities.
2. The Malian authorities apprehend the TF risks underpinning the multiple terrorist attacks carried out in the country. The TF risk level is considered as high due, on one hand, to the presence of terrorist groups in the country and sub-region, and the occurrence of terrorist attacks, which the country has been enduring in recent years, on the other.
3. The level of understanding of ML/TF in Mali is moderate and inconsistent across all sectors. LEAs and banking sector supervisors have a fair knowledge of ML/TF risks while customs, self-regulated bodies and tax authorities displayed a very limited understanding of risks. Risks assessments have yet to be incorporated into competent authorities' operations.
4. The 2013-2015 AML/CFT strategy has not yet been updated, but targeted, albeit limited, policy and institutional measures have been implemented.
5. Mali has an Inter-Ministerial Committee on AML/CFT which was established in November, 2011. Mali also has an Anti-Terrorism Coordination Committee. The scope of the actors involved in each of these committees is not wide enough and as such the operation and effectiveness of these coordination bodies is somewhat limited. Large FIs, especially banks including their respective competent supervisory authorities, have a good understanding of the ML/TF risks they are facing as opposed to DNFBPs and NPOs.
6. While the authorities intend to disseminate the results of the NRA to obliged entities, no concrete dissemination plan has been developed as part of the NRA Action Plan.
7. Mali has an institutional framework for the development of national policies and the coordination of ML/TF issues. The Inter-Ministerial Committee (IMC) against money laundering and terrorist financing was established for this purpose. However, limited operationalization, inadequate engagement at the policymaking level and non-inclusion of some important stakeholders in the IMC has minimized its effectiveness.

#### Recommended Actions

Mali should:

1. Ensure widespread dissemination of the NRA to all private and public stakeholders in order to facilitate the implementation of the recommendations and improve the understanding of risks. Conduct, as necessary, targeted awareness-raising activities for the highest risk sectors.
2. Set up an adequate coordination mechanism for developing the action plan (national strategic AML/CFT), including sectoral action plans to fully address the risks identified, particularly within sectors deemed to be exposed to high ML/TF risk and ensure that all governmental stakeholders understand the risks and have a common understanding on the risks and the next steps. Thereafter, adopt the NRA and its action plan through an official decision and begin implementation of actions through a risk-based approach to ensure better allocation of national resources.
3. Enhance national coordination and cooperation on AML/CFT issues by (i) sensitizing all the relevant organizations and stakeholders on each organization's role within the AML/CFT system and facilitate engagement among them (ii) ensuring high-level representation at the Inter-Ministerial Committee on AML/CFT of all relevant stakeholders and (iii) strengthening the mandate of the Committee. In addition, the Anti-Terrorism Coordination Committee should ensure that TF is well integrated within its operation.
4. Mali should ensure the competent supervisory authorities include the risks identified in the NRA into risk-tailored CDD/KYC requirements which are designed to allow simplified measures where appropriate, in order to promote financial inclusion & contribute to reducing the informal, cash-based economy. Respective supervisors should ensure that the compliance monitoring process is grounded on risk-based principles.
5. Maintain comprehensive statistics on all AML/CFT matters particularly statistics relating to investigations and prosecutions in order to allow the authorities to measure the effectiveness and efficiency of their AML/CFT systems and also allocate resources appropriately.
6. Conduct a study to improve the understanding of the distribution channels of artisanal gold and other means of funding TF in the Kidal and Tessalit region.

50. 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.

### **Immediate Outcome 1 (risk, policy and coordination)**

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

51. The country commenced its ML/TF national risks assessment on 17<sup>th</sup> October 2018. The NRA was inclusive as it involved the national AML/CFT stakeholders from the public and private sectors and enabled stakeholders to identify the money laundering and financing of terrorism threats and vulnerabilities at the national level. Once completed, Mali plans to develop an action plan for the implementation of the recommendations that will result from the NRA. The NRA process was coordinated by the FIU. The NRA utilized the World Bank's risk assessment tool and

covered sectors including banks, insurance companies, securities companies, other financial institutions, DNFBPs and NPOs. In addition to these sectors, the assessment also covered financial inclusion products, and the ML/TF threat and vulnerability at national level. The initial conclusions of the NRA are generally reasonable as they reflect the major ML/TF risks that the country faces.

52. In order to assess its risks, Mali used both a quantitative and qualitative approach, which eventually provided an overall view of the risks. The National Risk Assessment was conducted by collecting data from various sources (including ministerial departments, the Financial Intelligence Unit, private sector institutions, and so on); administering questionnaires; conducting interviews with stakeholders in the public or private sector and by consulting public documents or open sources, namely; studies conducted by relevant sectoral teams that are directly or indirectly involved in AML/CFT issues. The information appeared to be fairly comprehensive.

53. The launching of this first National Risks Assessment constitutes a step forward in a shared identification and understanding of ML/TF risks for most national stakeholders. However, the NRA findings remain limited because of the following challenges in the approach adopted for the assessment<sup>20</sup>:

- The lack of any consistent policy or strategy for collection, management and dissemination of statistical data;
- The reluctance to communicate some information deemed sensitive;
- The novelty and scope of the risk assessment exercise across the nation;

54. These challenges led the working groups to resort to extrapolations or estimations in order to reach realistic conclusions. Nevertheless, the assessment largely reflects the major risks in Mali.

55. The level of understanding of ML/TF risks in Mali is moderate even though this understanding is not consistent across all sectors. Despite the absence of national or sectorial risk assessments, the assessors have found that competent authorities generally have a moderate understanding of the ML/TF risks the country faces. The LEAs, particularly the gendarmerie, have a good understanding of their TF risk. Most of the supervisors have a fair knowledge of ML / TF risks in Mali. The self-regulating bodies have a very limited understanding of the country's ML/TF risk. The customs and tax authority also has a limited understanding of the ML/TF risk. Given the fact that porous borders on one hand and tax offences on the other have been identified as posing ML/TF vulnerabilities and ML threats respectively, the limited understanding of these authorities raises some concerns. At the sectoral level, the banking sector and the large DFIs and their competent supervisory authorities understand the ML/TF risks within the sector. Many stakeholders from the financial sector claimed to have conducted their specific risk assessment and established risk mitigation measures before the NRA was conducted. In fact, the exchange among the stakeholders concerned highlighted that all the banks and almost all the insurance companies, half of the DFIs belonging to large firms including the only Leasing and Factoring firm authorized by the Central Bank of West African States (BCEAO) undertook institutional-level risks assessments. However, the majority of local DFIs and insurance companies are yet to conduct institutional risk assessments despite the fact that such requirement derives from a directive issued

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<sup>20</sup> Cf. Draft NRA report

by the BCEAO. Similarly, the DNFBPs have not conducted any assessment of their risks at the institutional level and some stakeholders such as lawyers, notaries, the real estate sector and NPOs are not wholly aware of their vulnerability to ML/TF risks.

56. The NRA identified some predicate offences, including fraud, drug and cigarette trafficking, migrants' smuggling and related offences, corruption, customs and tax offences as some of the most common money laundering offences.

57. The high-risk sectors identified are the alternative money transfer service; foreign exchange dealers; electronic money; hotel industry; real estate; legal and accounting professions; casino and mining.<sup>21</sup>

58. Some of the ML vulnerabilities include the lack of an existing AML/CFT strategy, the large size of the informal sector, prevalence of cash-based financial transactions, lack of beneficial ownership information on legal entities, lack of supervisory authority for Designated Non-Financial Businesses and Professions (DNFBPs), very limited effectiveness of the assets confiscation mechanism marked by lack of authority responsible for recovery and administration of seized, frozen or confiscated assets, the very low number of administrative and civil sanctions applied for non-compliance with AML/CFT requirements.

59. The ML threat as indicated in the draft NRA largely mirrors the threats faced by Mali and identifies significant vulnerabilities in the country's AML/CFT system. However, the draft does not reflect how these two aspects interact to develop the ML risk. Mali did not indicate which threats are considered as the highest ML threats or the most critical vulnerabilities and how these interact to permit a thorough understanding of the ML risks faced by the country.

60. The Malian authorities indicated that the terrorist threat in Mali attained an unprecedented level during the socio-political crisis in 2012. Thus, from the period spanning January 2015 to September 2018, 752 terrorist incidents were recorded across the territory. The authorities ascribe Mali's vulnerability to TF risks to the presence of several terrorist groups in its territory, some of which are affiliated to Al-Qaida and AQMI and existence of religious fundamentalist movements could further pose TF threats. The major TF vulnerabilities as identified by the NRA relate to the cash-based economy, the country's porous borders, inadequate equipment for monitoring migration flows and weak detection of illicit trafficking as a whole.

61. The LEAs and intelligence agencies also had an understanding of the TF risk emanating from the lack of state administration in the northern regions of Kidal and Tessalit which has given free rein to the terrorist groups, including the JNIM, that assure the control and the protection of the locals and their goods. The authorities noted that these groups, in addition to collecting ransoms, manage artisanal mines that are exploited by Malians, Chadians and Nigerians and have installed whoever they choose to collect the taxes and duties resulting from the exploitation of the different mines. This state of affairs has resulted in a limited understanding of the distribution channels of artisanal gold and other means of funding TF in the Kidal and Tessalit region.

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<sup>21</sup> Draft NRA report page 117

62. Overall, TF risks were reasonably identified and understood. Mali identified the risk posed by the groups operating in Mali including their financial activities, the channels, sources, movement and use of funds intended for terrorism. This was complimented by the understanding demonstrated by the intelligence agents and the LEAs involved in counter terrorism. The identification of the terrorist financing sources ensured the identification of sectors that could be misused to obtain funds to finance terrorist activities. The country also understands cross-border TF risk it faces.

### *National policies to address identified ML/TF risks*

63. Although some ML/TF threats and vulnerabilities have been identified by the authorities through the other assessments conducted in the country including mutual evaluation findings and technical assistance, there were many uncertainties pertaining to the degree of threats and vulnerabilities the country is facing. The AML/CFT assessment conducted in 2018 assessed vulnerabilities in the system and on this basis, certain measures were implemented to address these vulnerabilities. In this regard, Mali has established an extended list of entities beyond those defined by the FATF and which are subject to the AML / CFT Law because of their vulnerabilities and the ML / TF risks they present in the context of Mali and the UEMOA zone. In this framework, NPOs, travel agencies, hotels and some other entities are subject to the AML / CFT Law and are considered as reporting entities (see Articles 5 & 6 of the AML/CFT Law No. 2016-008).

64. The assessment team observed the lack of a national AML/CFT strategy (the last national strategy culminated in 2015). Nonetheless, Mali has taken commendable steps by implementing measures to address some of the ML/TF risks identified in the country. In spite of this deficiency, Mali has taken a good approach in the implementation of some AML/CFT measures to address the ML/TF risks identified in the country. In this regard, a certain number of institutions have been established and policies have been developed to fight against financial crimes and offences and implement AML/CFT measures in line with the country's international commitment (this includes the establishment of OCLEI, the Specialized Criminal Divisions of the Court and (OCS). Regarding money laundering risks, the country launched its first national ML assessment exercise in 2018. Based on the findings of the first ML assessment, Mali contemplates putting in place appropriate prevention, detection and enforcement measures for ML/TF risks identified. Besides, the country has taken other measures such as the development of an AML/CTF compliance culture through the creation of a compliance committee within the APBEF in order to facilitate cooperation within the financial sector.

65. Furthermore, the domestication of Directive No. 02/2015/CM/UEMOA of 2<sup>nd</sup> July, 2015 against money laundering and terrorist financing in UEMOA member States and the existence of guidance for banks and other credit institutions, insurance companies and capital market assisted Mali in complying with most of the 2012 revised FATF recommendations. However, the lack of guidance for designated non-financial businesses and professions does not facilitate the enforcement of AML/CFT measures in this sector. The risks identified in the NRA calls for mitigating measures including the issuance of guidelines for the DNFBP sector.

### ***Exemptions, enhanced and simplified measures***

66. There are no exemptions to the FATF recommendation under the AML/CFT Law No. 2016-008. Nevertheless, the law provides for the application of enhanced and simplified customer due diligence (CDD) for all reporting entities. The NRA in Mali is yet to create an impact on the legal and regulatory provisions relating to enhanced or simplified CDD measures to be applied by the financial institutions and the DNFBPs. This is due to the fact that the assessment process is yet to be concluded, which explains why the implementation of the action plan had not commenced during on-site visit and why the NRA findings had not been disseminated to financial institutions and DNFBP in order that these entities may take the risks into account in their AML/CFT compliance programmes. Nevertheless, the ML/TF risks that have been identified by the FIs are currently being used to undertake SDD and EDD since the NRA has not been completed.

67. Many financial institutions (mainly international group subsidiaries) decided to develop their risk mapping, which enabled them to take measures adapted to each risk identified. Such a move by financial institutions has a limit as the supervisory authorities have not yet fully incorporated the risk-based approach, in spite of the domestication of Directive No. 02/2015/CM/UEMOA on AML/CFT for UEMOA member States, which prescribes a risk-based approach. The reporting entities perform EDD in relation to PEPs and cross-border correspondent banking relationships as well as other transactions that present higher risk. Although, the legal requirements relating to high-risk countries are not comprehensive (see Recommendation 19) however, most banks have acquired the requisite software and implement enhanced measures in regard, in the course of their operations.

### ***Objectives and activities of competent authorities***

68. The NRA was in progress during the on-site visit therefore it has not had significant impact on the competent authorities' operational policies, strategies and activities. However, it is important to specify that before the conduct of the NRA, had taken some measures aiming at addressing the risks related to the recurrence of ML/TF and predicate offences. These include, for example, establishing a specialized criminal division of the court with powers to try ML/TF and transnational crimes nation-wide. However, only five cases have been processed out of 20 provided by the FIU between 2014 and 2018. This ineffectiveness might be linked to the existence of a number of major challenges identified including the lack of resources, training, appropriate working tools and legal gaps in the use of new investigative techniques. Prior to that, as a response to the upsurge of illicit drug trafficking, Mali has established a specialized unit, the Central Office against Illicit drug trafficking (OCS). Mali has also established the Central Office for Combating Illicit Enrichment (OCLEI). Other activities of competent authorities relate to the implementation of the National Policy on Terrorism and Violent Extremism. One of the main objectives of this policy is the prevention of terrorism and TF. Some departments have also been established to deal with trade-based money laundering and terrorist financing and Mali has established a brigade for border control.

### ***National cooperation and coordination***

69. Mali has an institutional framework for the development of national policies and the coordination of ML/TF issues. The Inter-Ministerial Committee (IMC) against money laundering and terrorist financing was established by the Inter-ministerial order No. 2011/4971/MJ-MSIPC of 18 November 2011. The IMC is responsible for the development and implementation of national AML/CFT policy; making proposals aiming at enhancing national and international AML/CFT cooperation; identifying the national legal and regulatory proposals that are not compliant with internationally accepted principles and practices and developing action plans designed to resolve continuing deficiencies and other failings. The IMC is operational. The Chair of the committee is the Director of the FIU. The other members of the Committee are as follows: two representatives from the Ministry of Justice, two representatives from the Ministry of Finance, two representatives from the Ministry of Security and Civil Protection, one representative from the Ministry of Defense and Veterans, one representative from the Ministry of Foreign Affairs, one representative from the BCEAO, one representative from CSOs, one representative from the FIU and one representative from the APBEF. The Committee may request assistance from any expert or resource person from the public and private sector for the accomplishment of its mandate and it is required to convene at least once a quarter and, when necessary, at the request its Chairperson.

70. However, major gaps make the ML/TF cooperation mechanism very ineffective. These include the limited operationalization of the national AML/CFT Inter-ministerial Committee, which has powers and responsibilities clearly stipulated in a Decree and the fact that the committee is not chaired at a much higher level (at the ministerial level for example) which limits engagement at the policymaking level. There are also few meetings and engagements between key stakeholders, the Financial Intelligence Unit (FIU), supervisors and other relevant competent authorities. Also, some key stakeholders are not represented. For example, apart from the BCEAO other supervisory bodies are not represented.

71. At the operational level, the FIU, its institutional correspondents and the various stakeholders exchange information on a regular basis and submit to the public authorities' proposals aimed at enhancing the AML/CFT system. The national strategy developed following the first mutual evaluation was subject to a large participatory process involving various relevant stakeholders from civil society, public and private sectors, at all its various stages of development. The NRA also brought together all the stakeholders whose contributions resulted in the development of an action plan that will be implemented in phases.

72. Within the framework of counter-terrorism, Mali established a committee for counter-terrorism coordination pursuant to Order No.128/MAECI-SG of 25 September 2008. This framework enables all the relevant stakeholders involved to meet and exchange information related to security, especially on counter-terrorism. The coordination committee is active. However, TF is not well integrated into its operations.

73. National cooperation reveals some limitations. In fact, along the criminal justice chain, there is no clear cooperation mechanism to process AML/CFT issues. Besides, the effective operationalization of both committees mentioned above has not been demonstrated. As regards countering PF, there is no coordination mechanism in place.

### *Private sector's awareness of risks*

74. In Mali, certain stakeholders from the private sector have limited awareness of AML/CFT issues. Even though the FIU does not have sufficient resources for this purpose, it has organized numerous training and awareness-raising actions to enable reporting entities to become aware of the ML / FT risks to which they are exposed. The FIU has trained and conducted awareness-raising for the precious stones and metals sector, issuers of electronic money, several banks, notaries, hotels, and some insurance companies. However, apart from the financial institutions, other reporting entities like the DNFBPs did not understand their ML/TF risks prior to the NRA exercise.

75. The NRA process in Mali was conducted with the active participation of the private sector, particularly the financial institutions and DNFBPs including NPOs. This process brought together their respective contributions and also facilitated their understanding of the risks they are exposed to. The process ended in the production of a draft report and an action plan that was shared among the stakeholders. However, the dissemination mechanism of the NRA findings to specific sectors or the general public has not been clearly mapped out.

### **Conclusions on Immediate Outcome 1**

76. The overall understanding of ML/TF risks by Mali is fairly satisfactory. The country was yet to begin implementation of risk mitigation measures as at the time of the on-site visit. The national risk assessment is a step forward towards identification and understanding of those risks though, some limitations in the process have been noted, especially the non-existence of a consistent policy or strategy for the collection, management and dissemination of statistical data and the reluctance to provide some information deemed sensitive. Furthermore, it was highlighted that few sectors had conducted a risk assessment, apart from the banking sector, which carried out a status review during the establishment of the APBEF Compliance Committee. Nonetheless, certain stakeholders from the financial sector had also assessed their risks at the institutional level and put in place risk mitigation measures prior to the conduct of the NRA. In fact, the discussions with almost all the banks, EMIs and the large DFIs indicated that they had conducted their risk assessments. The securities brokers had also assessed their risks. However, the other financial institutions such as the foreign exchange bureaus as well as DNFBPs had not conducted any institutional assessment of their risks. Besides, Mali had not developed an action plan to mitigate the risks identified especially within the high-risk reporting entities.

77. On the whole, based on the discussions held with the competent authorities and reporting entities, the NRA exercise including the sensitization campaign that followed, were useful and provided the orientation for stakeholders to better understand their AML/CFT risk.

78. **Mali has achieved a Low level of effectiveness for Immediate Outcome 1.**

## CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

### Key Findings and Recommended Actions

#### Key Findings

##### Immediate Outcome 6

1. The FIU regularly obtain information from state authorities and reporting entities. It does not have direct access to databases of the competent authorities. Thus, the information-gathering process is unduly resource intensive. In addition, the information analysed by the FIU is, limited by the fact that reporting entities other than banks do not comply with their reporting obligations and have not submitted any STRs.
2. While useful, the financial intelligence disseminated by the FIU has not resulted in a significant number of prosecutions for ML or TF. The financial intelligence disseminated by the FIU has led to only one conviction for terrorism, while the other TF-related case file submitted was eventually dismissed.
3. The resources (human, material, technical and financial) of the FIU could be strengthened to enable it to perform all its functions. The FIU staff have not received comprehensive training on operational and strategic analyses that would enable the Unit to improve and develop its expertise in STR/CTR analyses. As at the end of the on-site visit, the FIU had not analysed any Cash Transaction Report (CTR) received from reporting institutions. At the operational level, STR processing is done manually, with no IT tools and no direct access to any database. This negatively impacts on the quality of the analyses and lengthens the processing time of case files. The operationalization of the GESSTR software recently acquired by the FIU will help improve the quality in the processing of case files.
4. The FIU does not carry out, as provided for in its mandate, any strategic analysis that identifies ML trends and methods which it could disseminate to all competent authorities and reporting entities. The FIU has not provided the State with strategic analyses that could influence the direction of its ML/TF policy.
5. In processing its case files, the FIU maintains effective cooperation with other state departments and exchanges information with them, with due regard to confidentiality.

##### Immediate Outcome 7

1. Mali has established a Specialized Judicial Division of the court that handles certain predicate offences (economic crimes) and another Specialized Judicial Division that handles ML cases.
2. ML offences are typically identified by the FIU and transmitted to the Specialized Judicial Division where the cases are investigated and prosecuted. However, only a few cases have been investigated and prosecuted by the Specialized Judicial Division. Other agencies that handled predicate offences do not conduct ML investigation because the law obliges these other law enforcement agencies to forward ML case to the Specialized Judicial Division. These specialized agencies tend to consider only the predicate offence and cooperation with the specialized court on proceeds generating predicated is rare. Thus, the number of parallel

ML investigations conducted by the other investigative and prosecutorial authorities during the investigation of a proceed generating predicate offences is low.

3. The number of ML investigations is relatively low given the high number of predicate offences prosecuted by the criminal investigative and prosecutorial authorities.
4. It appears that there is a significant amount of possible ML cases that are not being investigated because of the limited capacity of relevant officials and the fact that the different LEAs appear to be working in silos.
5. The classification of the ML offence as a felony triggers preliminary investigation at the lower court and a hearing at the of the Appeal Court and this constitutes a bottleneck in the prosecution and trial of ML cases.
6. In spite of the high number of predicate offences, the Malian courts have only secured one ML conviction and this is not consistent with the ML threat and risk level indicated in the draft NRA report.

### **Immediate Outcome 8**

1. The Malian authorities have a fairly satisfactory legal framework for freezing, seizure and confiscation of criminal assets, including instrumentalities used or intended to be used in money laundering and predicate offences. Mali makes moderate use of provisional measures.
2. Mali's criminal policy and AML/CFT strategy do not explicitly identify confiscations as a priority, and only a few criminal investigation officers and magistrates have received trainMali does not proactively pursue confiscation as a policy objective.
3. The PJS has exclusive jurisdiction over matters relating to ML. Thus, State Prosecutors in other Judicial Divisions that handle predicate offences are obliged to forward the report of cases that have ML components to the State Prosecutor at the PJS. However, in practice, other judicial divisions conduct few parallel/asset and financial investigations on the perpetrators of these predicate offences because their focus is mainly on punishing the predicate offence.
4. Mali's legal framework prescribes management and disposal of assets by the Public Deposit Fund (Caisse des Depots et Consignations) as well as the court registries. However, in practice, assets are not managed adequately.
5. Cash and bearer negotiable instruments in amounts exceeding the prescribed threshold are seized by the customs authorities at the air borders and administrative fines are imposed. However, no inquiries are made to establish whether the amounts seized are linked to TF or ML. Furthermore, it appears that implementation of confiscation of falsely declared or undeclared cross-border transaction of currency/BNI at the land borders is limited.
6. The confiscation statistics do not reflect the level of ML/TF risks in Mali.

### **Recommended Actions**

### **Immediate Outcome 6**

1. Mali 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
2. Authorities should strengthen cooperation between FIU and other relevant agencies, including through conducting awareness raising for tax and custom administrations on their STR-related obligation including the reporting of to permit the FIU to have more pertinent information.
3. Mali should increase the awareness raising in the non-bank DNFBPs and NPOs sectors on their STR-reporting obligations.
4. Authorities should ensure the continuous training of FIU staff on operational and strategic analysis to help improve the quality of financial intelligence provided to the competent authorities and should conduct more strategic analysis, in line with identified ML/TF risks in the country.
5. Authorities should provide the FIU with more human, material, technical and financial resources to enable it accomplish its mandate.
6. Mali should implement a system for assessing STRs, in order to improve feedback mechanisms and strengthen cooperation between FIU and other agencies

### **Immediate Outcome 7**

1. Authorities should build capacity of investigative and judicial officers involved in investigation and prosecution of ML cases particularly PJS and the BIS and the Economic and Financial Division of the Court. Provide training in the area of financial investigation and implementation of all the legally available special investigation techniques to facilitate the ML investigations.
2. Authorities should build capacity/ raise awareness among investigative authorities to proactively used financial intelligence in their investigations.
3. Relevant investigative and judicial authorities should develop and put in place a consultative inter-agency framework that would promote the efficient conduct of ML investigations and prosecutions. Mali should in particular, ensure that all agencies handling the investigation of predicate offences also conduct parallel financial investigations to identify potential ML cases and trace proceeds of crimes and where necessary, refer the case, to a competent body that has all the relevant powers to prosecute ML.
4. Mali should prioritize investigation and prosecution in line with the high ML threats or risks identified in the NRA and ensure that investigative and prosecutorial authorities pursue the different types of ML cases consistent with the ML threats facing the country, including foreign predicate offences in accordance with the identified risks in Mali.

5. Mali should ensure that all judicial divisions, especially the economic and financial division investigate and prosecute ML offences, and only refer all ML/TF cases of a transnational nature to the PJS/PJS.

### **Immediate Outcome 8**

The Malian authorities should:

1. Incorporate pursuing confiscation of assets and instrumentalities used or intended to be used to commit ML/TF and associated predicates in their AML/CFT strategy
2. Conduct sensitization and training on financial investigation and asset tracing for various investigation units including the OCS, SIJ/GN, BIJ/PN, the investigative units attached to the economic and financial divisions as well as any other structure with powers to conduct ML investigations and parallel financial investigations.
3. Maintain comprehensive statistics on the number and volume of seizures and confiscations for ML and the predicate offences including TF.
4. Take measures to prevent the decline in seizures and confiscations by allowing all judicial divisions, especially the economic and financial divisions to investigate and conducting financial investigation when dealing with proceeds generating crimes.
5. The Republic of Mali should consider establishing a national agency for identifying and tracing of assets of equivalent value, and recovery and management of confiscated assets. The agency should be staff with forensic accountants. The establishment of this sort of agency will reinforce and facilitate the strategic objective to pursue confiscation of illicit property related to ML, TF and other predicates.
6. The Malian authorities should implement measures to control cross-border movement of cash and BNI that are above the prescribed threshold at the land borders and monitor transportation of cash and BNI by post given ML/TF risks faced by the country. Custom officers should take reasonable measures to ascertain that cash and BNIs being transported are not linked with ML or TF.

79. 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*

80. In Mali, the FIU, the police, the gendarmerie, the OCLEI, the OCS, the customs, the taxes authorities all have access to and use financial intelligence and other relevant information in the framework of their operations. All these agencies use financial information to identify predicate offences. However, typically, only the FIU uses financial intelligence to identify ML/FT cases.

The FIU appears to be the main provider of financial intelligence for the Specialized Judicial Court (PJS) for ML / TF investigations. The ML or TF investigations that are underway at the PJS were mostly opened on the basis of FIU reports. Thus, the 2 cases of TF which are under investigation in the PJS were derived from the FIU. Nevertheless, all other agencies should be able to use financial intelligence to trigger ML/FT investigations. Customs and tax administrations have not submitted cases to the prosecutor's office for purpose investigating ML, because of the use of alternative administrative arrangement which is granted by law even though this arrangement should not preclude the referral of ML/FT investigations to the PJS. The FIU has access to a vast amount of information and financial intelligence from various entities which it analyzes. It uses financial intelligence and other information to gather evidence and trace proceeds in investigations of ML, FT and related predicate offences. It receives STRs mainly from financial institutions. By virtue of its extended right of communication, the FIU also receives, spontaneously or on request, information and financial intelligence from the public sector authorities and the investigative and prosecuting authorities. The two TF cases investigated is not consistent with the high risk of TF in the country.

81. The FIU requests for additional information from the reporting entity that filed an STR, as well as from all other entities with information that could enrich the analysis. As such, the FIU uses information held by the competent public sector authorities (LEAs, Taxes, Customs, Justice, Transport, Land Registry and so on) and those of the private sector (FIs, DNFBPs). The pace at which the information is collected poses a problem for the Malian authorities since the FIU does not have direct access to other databases. Law enforcement agencies do not proactively solicit or use information held by FIU in their investigations.

82. The Mali FIU became a member of the Egmont Group in July 2011. In the framework of this cooperation, the FIU receives relevant information from foreign FIU through the Egmont platform. The information received from counterparts is used to identify assets and develop evidence for investigations. The FIU also exchanges information with other countries on the basis of MOUs.

83. The information received at the national level is physically delivered to the FIU. Despite the swearing-in of members of the FIU and the confidentiality agreement signed by the support staff, the measures taken by the FIU to ensure the confidentiality of the information seem to leave room for risk of leakage of information, because of the physical and manual maintenance of the said information. However, the Malian FIU has not had a case of leakage since it was established. In addition, even though the FIU has been able to process information and has provided a satisfactory quality of intelligence which has been disseminated to international and national competent authorities, the manual processing and analysis of the case files do not guarantee the highest quality of processing. «However, the FIU has recently acquired an information management software called "GESDOSGESSTR delivered three weeks prior to the on-site visit. This tool, which is yet to be operationalized, will provide a higher quality of processing of financial information and other relevant information held by the FIU.

84. The intelligence gathered by the FIU is disseminated to the prosecution and law enforcement authorities, particularly the Specialized Criminal Divisions as indicated in Box 1 below. The brigade of the specialized judicial division as well as the investigating judges in this

jurisdiction rely on the information provided by the FIU to continue the investigations. This information enables them to gather sufficient evidence about the offence and allows the case to be referred to the court. It also allows for tracing of illicit funds during the investigation of money laundering or terrorist financing.

### **Box 3.1 - The DD ML case**

Mr. D.D. (politically exposed person) and his wife received money of doubtful origins in their respective bank accounts amounts. They subsequently transferred the sums collected to accounts opened abroad in the wife's name for reasons other than those mentioned at the time of the said transfers. Subsequently, Mrs. D.D. received, a cumulative transfer of the order of 400 000 000 FCFA into her almost inactive account domiciled at a bank. The lack of precise and concise information on the reason for the transactions carried out by the PEP for such a large and unusual amount provoked the suspicion of money laundering. Mr. DD holds several bank accounts in Mali and abroad and owns several commercial enterprises. He made transfers from the accounts shell companies to various accounts belonging to his wife opened abroad. These intentional operations to scramble the tracks were aimed at buying real estate abroad.

The case was transmitted to the investigative and prosecutorial services.

85. The customs administration collects information on the seizures it makes. Despite the relevance of such information that could lead to the initiation of an investigation of ML or TF the customs administration did not file any information to the FIU as mandated under the AML/CFT law.

86. Pursuant to Article 79 of the AML/CFT Law No. 2016-008 the customs administration is required to file STRs and is obliged to transmit to the FIU all cases of violation of the customs regulation, particularly in the case of non-declaration or false declaration of cross-border physical transportation of cash. Despite these provisions of the law, The Mali-FIU has not received any STR from the customs administration. Nor has it received any information on the violation of the customs regulation. Similarly, the law enforcement agencies, in particular, the Public Prosecutor, are not recipients of the information collected by customs in this regard. However, pursuant to the Customs Code, the notice of infringement should be forwarded to the Public Prosecutor where the parties have been unable to reach a settlement.

87. The tax administration has information about legal persons, their directors, shareholders and, where applicable, their beneficial owners. Although the tax administration does not conduct investigations for ML purposes, it gathers evidence to establish breaches of the tax code and impose administrative fines and other tax adjustments. All these types of information may add value to the analysis at the FIU. However, none of these has been provided to the FIU.

88. Despite the relevance of the information held by the customs and tax authorities, both authorities do not communicate such information spontaneously to the FIU. Thus, the FIU is deprived of information that could be analyzed and disseminated to other relevant entities and where appropriate, lead to the initiation of ML/TF investigations.

89. On the whole, the financial intelligence obtained by the FIU through the analysis of the STRs and other information it holds is mainly used by the judicial authorities that do not use or request for additional information held by the FIU. Between 2014 to June 2018, the FIU sent twenty (20) files (reports) to the prosecutor's office. However, relevant information held by other competent authorities contributes little to ML/TF investigations.

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

90. Reporting entities are required to report all sums recorded in their books or any transactions relating to sums which they suspect or have good reason to suspect are derived from an ML/TF offence to the FIU. In this regard, the Malian FIU receives STRs from financial institutions, particularly banks. It has been noted for some time that the STRs filed by the banks are of better quality. This is due to the banks' compliance with AML/CFT obligations and the sensitization workshops organized within the sector.

91. Over the period 2015-2018, the number of STRs has increased steadily (see table 3.2) although only FIs have submitted STRs. The analysis reveals that banks and one electronic money issuer (the largest EMI in Mali) are the only institutions that filed STRs. This lack of reporting by other reporting entities, despite the high ML/TF risk posed to some of the other sectors, may not allow the country to optimally address ML/TF risks or put in place mechanisms to mitigate those risks. The lack of reporting by the DNFBBs and the low reporting from the banks is concerning given the high risk attributed to DNFBBs in the draft NRA. Although the FIU has conducted some awareness-raising and training programmes, the impact of these activities is yet to be seen in the nonbank and DNFBB sector. In addition, it was noted that no supervisory authority has filed any STR to the FIU. This implies weak contribution from the supervisory authority to the collection of financial intelligence.

92. The quality of the STRs is not being assessed or rated systematically by the FIU. The FIU generally request for more information and improvement of the report when the quality is low. The FIU provides feedback but only on the status of the file i.e. where the case has been passed on to the prosecution the reporting entity is informed.

93. Mali has not indicated a breakdown of statistics on STR by the type of crime they may be linked to. Financial intelligence disseminated after the analysis of STRs have also supported ongoing cases. The country indicated that there were three (3) STRs related to TF, two (2) of which were disseminated to courts for investigation and prosecution.

94. As regards other types of reports, Article 43 paragraph 4 of the AML/CFT Law No. 008 of 17<sup>th</sup> March 2016, requires that any cash donation to a non-profit organization of an amount equal to or greater than one million CFA francs, should be reported to the FIU by the authority responsible for maintaining the register. Similarly, any donation for the benefit of a non-profit organization, regardless of the amount, shall also be declared to the FIU by the competent authority responsible for monitoring NPOs, where funds are likely to relate to a terrorist or terrorist financing venture. The findings of the on-site visit suggest that there is no specific legislative or regulatory

text that indicates the identity of the competent authority responsible for the supervision of NPOs in Mali in the area of AML/CFT.

95. The Ministry of the Interior, which is responsible for issuing licenses and monitoring NPO activities in relation to their purpose, has not yet put in place the mechanism for registering donations made to NPOs. Only basic information on the identity of the directors, the purpose of the NPO, its registered office, etc. are held by the Ministry of the Interior and are accessible to law enforcement agencies at their request. In this context, no information has been filed to the FIU on the donations received by NPOs. This gap in the country's AML/CFT regime does not allow the country to capture the flow of funds received by NPOs, identify donors and conclude after analysis whether they have links to ML/TF or to terrorist entities, organizations or groups. Given the high risk of the use of NPOs for terrorist financing in Mali as reflected in the NRA report, the Malian authorities should urgently address the gaps in the supervision of NPOs in the area of AML/CFT.

96. The financial institutions and Designated Non-Financial Businesses and Professions are required to declare to the FIU all cash transactions of an amount equal to or greater than fifteen million CFA francs. However, only a few banks file CTRs to the FIU. Besides, these reports in a majority of cases, are made by the banks in paper form. This mode of transmission of the CTRs presents significant challenges in their analysis by the FIU which, as at the end of the on-site visit, had not analyzed any CTR. Mali does not maintain statistics on CTRs.

### ***Operational needs supported by FIU analysis and dissemination***

97. The FIU's operational analysis is mainly based on STRs received from banks and other relevant information that it receives spontaneously or at its request from reporting entities and other relevant authorities. The awareness-raising campaigns organized by the FIU for reporting entities, particularly banks, have brought about a gradual increase in STRs. On the other hand, the assessment team noted a low level of involvement of the other AML/CFT sectors particularly the DNFBPs. This low level of involvement has resulted in the limited filing of STRs by the other sectors. The Unit also uses all the information it receives through international cooperation with foreign FIUs for its operational analysis. On the basis of the information collected, the FIU processes, analyzes and disseminates the information to the competent authorities.

98. Under the provisions of the AML/CFT Law No. 008 of 17<sup>th</sup> March 2016, where the FIU's analysis leads to the establishment of sufficient suspicion to warrant prosecution of ML or TF, it shall file a report to the State Prosecutor. It may also file a report on the findings of its investigations to the customs administration, revenue authorities or spontaneously to any other competent authority. However, due to the low number of specialized training received by FIU staff and the lack of sophisticated tools for information analysis, only a fraction of the STRs are analyzed and disseminated to the competent authorities.

### **Table 3.2: STRs Disseminated**

Year	STRs RECEIVED		STRs CLASSIFIED		REPORTS FILED TO THE PROSECUTOR		Number of Court Rulings Delivered
	No. of STRs	STR Suspected amounts	Number of STRs classified	Amounts involved in classified STRs (in CFAF)	No. of reports filed to the judge	Amounts involved in reports filed to the judge (in CFAF)	
<b>2014</b>	20	2,183,245,340	0	0	1	860000000	
<b>2015</b>	19	2,983,327,388	0	0	0	0	
<b>2016</b>	25	10.334.568.178	05	512059555	5	7118525979	
<b>2017</b>	53	4 170 276 861	05	55.756.345	5	7496748566	01
<b>2018</b>	61	47 996 483,387	10	2015 125,452	9	38596325121	
<b>TOTAL</b>	178	63,497,624,293	20	769 328 445	20	46 574 851100	01

99. The analysis of statistics produced by the Malian authorities reveals that the FIU disseminated 20 reports to the State Prosecutor. The number of STRs processed, analyzed and disseminated seems low compared to the number of STRs received by the FIU. In addition, the Mali-FIU has not established any STR processing procedure that sets timelines for the analysis of an STR or its provisional classification. However, the statistics provided reveal that the FIU has provisionally classified 20 out of 178 STRs (11.2%) received during the review period. Files provisionally closed are normally reviewed again if necessary. However, no cases of recourse to a file provisionally closed were reported to the evaluation team. However, the prosecution authorities that receive the FIU's reports are satisfied with the analysis and quality of the information provided.

100. As part of its powers provided for under Article 60 of the AML/CFT Law No. 2016-008, the FIU carries out operational analysis. It also carries out strategic analysis based on the information it collects. In this capacity, it conducted a study relating to the Countering Money Laundering and Terrorist Financing in Mali the report of which was submitted to the authorities in October 2018, in accordance with Article 60 of Law 2016-008.

101. From the foregoing, the FIU seems to have carried out modest strategic analysis with respect to the ML/TF risks identified in the country. However, the FIU has not used the result of the strategic analysis to support the operations of the reporting entities, including the assessment of their risks. Failure to effectively implement this aspect of the FIU's mandate means Mali cannot determine the ML/TF methods and trends in the country and plan its actions to prevent the use of its system for ML/TF purposes.

## *Cooperation and exchange of financial information and intelligence; Confidentiality*

102. The Mali FIU, within the framework of its attributions and the accomplishment of its functions, has recourse to regular exchange of information with the other stakeholders within the public and the private sector. As part of the processing of its files, the FIU requests for information from other competent authorities as well as reporting entities. It also responds to requests for information sent to it by other competent authorities. However, the Mali FIU did not provide statistics on the cases and the number of requests for information that was received and processed by the FIU or those that the FIU made. In these circumstances, the evaluation team was unable to assess the quality of the information exchange between the FIU and the other actors.

103. In addition, as regards cross-border physical transportation of cash and bearer negotiable instruments, the Customs stated that several seizures have been made by the administration staff at the airport. However, no such information has been communicated to the FIU. This finding is equally true for land borders. Therefore, the FIU does not obtain information that could be used to investigate the possible links between the illicit cross-border physical transport of cash and bearer negotiable instruments and the ML or TF. The authorities noted that a meeting between FIU and the customs administration has been scheduled to address this gap.

104. Moreover, the FIU did not demonstrate to the evaluation team that an operational mechanism or platform that facilitates the exchange of information between FIU and the law enforcement agencies exists. The FIU has however signed MOUs with other competent authorities to facilitate information exchange.

105. The law stipulates that information exchanged between FIU and other competent authorities must be conducted in a confidential manner. There are also internal rules and procedures relating to the exchange of information, including rules on confidentiality. The FIU building is quite secured. A request for information is submitted in writing through a confidential channel. However, measures to guarantee the confidentiality of information received or transmitted by the FIU are apparently inadequate. The information is physically transmitted to the FIU. The FIU analyzes this information and disseminates financial intelligence in the same way. In addition, non-automated processing of information that leads to the circulation of physical records could undermine the confidentiality of information. The reports filed to the State Prosecutor, are undertaken in compliance with the legal provisions that ensure confidentiality. The identity of the reporting entity is preserved, as well as that of the staff members who analyzed the information processed.

### **Conclusions on Immediate Outcome 6**

106. Mali FIU conducts operational analyzes. However, the quality of these is negatively impacted by insufficient human resources and technical tools for processing information. This situation is accentuated by the lack of operational cooperation framework for cooperation between criminal investigation and prosecution bodies. These authorities make limited use of information held by the FIU; they do not have direct access to their different databases and also do not actively share the information they hold among them. As a result, there is little investigation or prosecution on the basis of financial intelligence, which explains why only one conviction for TF has been

secured despite the high risk of ML / FT identified by the NRA. The FIU also carries out a limited strategic analysis which has a detrimental effect on the orientation of the policies of the government as well as the AML / CFT stakeholders.

**107. Consequently, the level of effectiveness achieved by Mali for Immediate Outcome 6 is low.**

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

### *Identification and Investigation of ML Cases*

108. Mali was the first country in the region to domesticate Directive No. 02/2015/CM/UEMOA on AML/CFT by passing the AML/CFT Law No. 008 of 17<sup>th</sup> March 2016. The Malian authorities have established several specialized agencies to conduct investigations and prosecutions on economic and financial offences. These include the Central Office for the Control of Illicit Enrichment (OCLEI), the Central Office of Narcotics (OCS), the Criminal Investigations Bureau (BIJ/PN), Criminal Investigation Department of the National Gendarmerie (SIJ/GN), the Economic and Financial Division of the Courts and more recently, the Specialized Criminal Division of the Courts (PJS), which has presiding magistrates and specialized investigation brigades (BIS) that conduct ML investigations. Prior to the establishment of Specialized Criminal Division of the Courts and the BIS, the economic and financial brigade attached to the three Economic and Financial Divisions of the Courts in Bamako, Kayes and Mopti could conduct ML investigations.

109. The FIU typically identifies ML and transmits the cases to the Specialized Criminal Division (PJS). However, certain LEAs have also identified ML and have transmitted the files to the PJS. The PJS now has exclusive jurisdiction to prosecute matters relating to ML. Thus, state prosecutors in other Judicial Divisions that handle predicate offences are obliged to forward the minutes of cases that have ML components to the State Prosecutor at the PJS. However, in practice, other judicial divisions and LEAs conduct few parallel ML investigations when dealing with these predicate offences. Most of the Malian LEAs met, surmised that due to the PJS's exclusive jurisdiction to *try* ML it was unnecessary to conduct ML investigations on their files. Although the other judicial divisions and LEAs have the competence to *investigate* ML, this is not done often. The Economic and Financial Division which handles offences of an economic nature<sup>22</sup> seldom conducts ML parallel investigations, due to the exclusive jurisdiction given to the PJS to try ML even though most of the offences under their purview are proceeds generating offences which should typically trigger parallel ML investigations.

110. A combined reading of the provisions of Articles 609-1 new, 610, 610-1 new, 612 and 612-1 of Law No. 2013-016 of 21st May 2013 amending the Criminal Procedure Code suggests that no other criminal investigation unit apart from the PJS, can investigate ML. According to these

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<sup>22</sup> Including offences against public assets, counterfeiting, forgery, possession and the use of forgery, damage to public assets, bribery, corruption of officials, insider trading, offences defined by the Business, Tax, Customs and Public Procurement Codes as well as offences provided for by the Finance and Accounting

provisions, it appears that an investigator in any Criminal Investigation Department (OPJ) that is of the opinion that a money laundering offence has been committed must inform the relevant State Prosecutor, who has the responsibility to forward the matter without delay to the PJS Prosecutor. Specifically, Decree 2013-016 of 21<sup>st</sup> May 2013 amending the Code of Criminal Procedure, provides in Article 610-1, that for the prosecution and investigation of ML offences, the matter shall be instituted in the High Court of Area 6, District of Bamako, a specialized Criminal Division. It appears that the misinterpretation of this legal provision in relation to investigative and prosecutorial powers on ML cases has resulted in the low number of parallel investigations by criminal investigation officers. The numbers of parallel investigations will ultimately impact on the number of ML prosecution and convictions. The provisions outlined above seem to present a major operational challenge as very few parallel investigations have been conducted in the country.

111. Furthermore, beginning in 2017, all the ML case files held by the Economic and Financial Division were transferred to the Specialized Criminal Division (PJS). The court's procedures require the Prosecutor - General of the Appeal Court to approve the transfer of these cases. The process is still ongoing thus, the PJS indicated that it is yet to receive these transferred files. LEAs have submitted three cases to PJS to investigate ML. Most of the LEAs and other authorities within the criminal justice system are of the opinion that since the creation of the PJS their roles have become very limited as the FIU identifies ML cases and transmits to the PJS. While the creation of the specialized courts will, no doubt, result in greater efficiency, higher quality decisions and a reduction of case backlogs in generalist courts, the notion that the other LEAs need not focus on ML is a significant drawback in the system.

112. The Malian authorities noted that in practice, special investigative techniques are not frequently used and this somewhat impacts on the identification of ML cases and limits the extent of investigation on ML cases.

113. The country is proposing an expansion of the PJS through the establishment of PJS branches in the townships of SEGOU, MOPTI, GAO and TOMBOUCTOU. The decentralization of the PJS through the establishment of branches in major cities other than Bamako will encourage the prosecution of ML offences in these localities. However, in order to ensure the effectiveness of these new structures, the units should be manned by highly qualified and skilled staff who are able to conduct ML investigations and prosecutions. The units should also be allocated material and financial resources.

114. The FIU contributes significantly to the identification of ML cases. In a few cases, information used to identify ML was received through the international cooperation channels. The bulk of the ML cases investigated were initiated from STRs received by the FIU. Currently, 23 cases (20 derived from the FIU intelligence and 3 cases from other investigations) have been transmitted to the Specialized Criminal Division of the Court (PJS) and sums of money have been frozen in 11 of these cases. The specialized investigation brigades (BIS) of the PJS which became operational in January 2017 has opened five (5) ML cases and one ML conviction has been secured.

115. The customs and tax authorities can trigger an investigation and send cases to the prosecutor at the Specialized Criminal Division after an investigation is conducted within the

relevant units at these agencies. However, both the tax and customs authorities prefer to use administrative fines rather than pursuing criminal proceedings. Mali has multiple institutions that can conduct investigations into predicate offences to ML. However, it appears that these institutions do not have enough appreciation of the need to identify and investigate cases of ML when handling proceeds generating offences. It appears that these institutions are more focused on pursuing predicate offences than on identifying ML when dealing with proceeds generating offences.

116. In spite of laid down procedures relating to the investigation and prosecution of ML, most of the investigative authorities charged with conducting investigations into predicate offences have little knowledge of the procedure to follow in the case of an ML offence. These institutions tend to work in silos and typically focus on the predicate offences and there is some confusion in the understanding of each of their roles in the context of AML. Furthermore, the staff of the BIS, the special investigation unit of the PJS, lack the requisite expertise to conduct ML investigations including financial investigations because only one-eighth of investigators have received training in AML/CFT and associated expertise on financial investigation. The level of expertise and training is even less within the other agencies. More so, only about half of the magistrates at the PJS have received AML/CFT training and this dearth of relevant skills impact on the number of ML prosecutions and convictions.

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

117. Mali had commenced its National Risk Assessment before the on-site visit. Although Mali was yet to complete the assessment as at the time of the onsite, the country had produced a draft report. The draft report reveals that the most common predicate offences to ML are illicit trafficking of drugs, pharmaceuticals and cigarettes, tax, customs and banking fraud, human trafficking and similar practices, kidnapping, abduction and hostage-taking, offences against public property, theft, breach of trust, fraud, forgery and use of forgery, terrorism, financing of terrorism, arms trafficking, counterfeiting, illegal logging and environmental crime generating profits. However, the statistics provided by the Malian authorities indicate only the offences of TF, computer fraud, criminal association, forgery and the use of forgery as the main predicate offences to ML.

118. However, some ML cases were pending before the courts at the time of the on-site visit. Tax evasion is also a significant issue in Mali. According to sources from the Taxes Department, Mali's annual losses in tax revenue amounts to 7 billion FCA, involving 2 to 3 million actors. However, the tax authority prefers the imposition of administrative penalties rather than prosecution. The draft NRA also noted that the impact of corruption remains dominant in Malian society. Despite this, the number of ML investigations related to corruption is negligible.

119. There are a significant number of proceeds generating predicate offences which are ML threats as identified by the NRA. However, only a limited amount of these offences is targeted in the context of ML investigations. Most LEAs are not focused on ML investigation. This is mainly due to the limited capacity to conduct ML investigation, the lack of understanding of their roles and inadequate operational cooperation among LEAs. Thus, the ML activities investigated and

prosecuted are generally not consistent with the ML risk and threats in Mali, as indicated in the country's NRA.

### ***Types of ML Cases Prosecuted***

120. At the time of the on-site visit, only one ML case had been tried by Mali. The lack of convictions in ML cases, despite the number of proceeds generating predicate offences prosecuted in the country, raises concerns. The statistics provided by the Malian authorities indicate that twenty-three (23) ML cases had been sent to the investigating judges of the PJS at the time of the onsite. The underlying offences were identified in only for 5 of 23 cases. These relate to computer fraud, criminal association and forgery and use of forgery. The predicate offences of the remaining 17 cases were not identified. Malian authorities stated that among the cases transmitted to the prosecutor, there was no third-party ML case. However, there were five standalone cases, ten cases involved legal persons and twelve self-laundering cases. It is not clear whether the facts being prosecuted were committed in Mali or abroad. Also, the cases being prosecuted do not appear to be complex ML cases.

### ***Effective, proportionate and dissuasive nature of sanctions applied for ML***

121. The AML/CFT Law No. 2016-008 criminalizes the ML offence as a felony. Thus, the prosecution of ML offences is initiated by a preliminary investigation at the level of the investigative magistrate at PJS. This is followed by committal for hearing at the Assize Courts at the Court of Appeal. However, the assize court sessions are not held frequently. Thus, due to the characterization of the ML offence as a felony as adopted by the Malian Judiciary, there are procedural constraints which constitute a bottleneck in the swift processing of cases.

122. For these reasons, one case of ML was tried by the Court of Appeal during the session of assize on 22 August 2017. The sum of 16, 864,893 FCFA was confiscated. A fine of 483,000,000 FCFA and an imprisonment term of two years was also imposed on the two accused persons. The sentence appears to be proportionate however, the amount of the fines appears unrealistic as it is unlikely that the sum indicated will be realized. In view of the fact that only one ML conviction has been secured, the assessment team could not assess the effective, proportional and dissuasive nature of Mali's ML sanctions regime.

### ***Implementation of Alternative Measures***

123. The Malian authorities have not provided any cases of implementation of alternative measures when the courts are unable to pursue ML cases. This is probably due to the fact that the cases are still at a primary level of investigation. Furthermore, most of the agencies still focus on predicate offences.

124. Overall, Malian authorities have given priority to investigations and prosecutions for ML by the establishment of the Specialized Criminal Division of the Courts (PJS). However, there is

a poor understanding of the mechanisms by which investigative and prosecutorial authorities that typically handle predicate offence can initiate an ML case. This has led to a limited number of investigations, prosecution and convictions for ML.

125. **Mali has achieved a low level of effectiveness for Immediate Outcome 7.**

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

126. Mali has a satisfactory legal framework in relation to seizure and confiscation of illicit proceeds as well as instrumentalities of ML, TF and predicate offences. The country is able to confiscate property of corresponding value and apply provisional measures. Mali utilizes a number of legal tools in this regard, including seizure, forfeiture, fines and tax penalties.

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

127. Prosecutorial authorities use seizure or restraint to preserve the possibility of future confiscation. When investigating judges, are informed of the facts of ML following reports filed to the prosecutor's office by the FIU or the findings emanating from certain parallel investigations conducted by the criminal investigation officers, they immediately anticipate the application of provisional measures to restrain the assets in question in order to preserve the possibility of future confiscation. Also, requisitions are sent to affiliated banks and financial institutions in order to trace the assets of the suspects and provisional measures are ordered. In some instances, the investigating judge may, in the course of the criminal investigation, direct the investigation officers to trace assets earmarked for further seizure.

128. Nineteen bank accounts were frozen in 11 ML of the cases at the Specialized Criminal Division of the Court. (PJS) and the sum of 24, 146, 750 CFAF (\$ 41 221.5) was also seized in relation to TF.

129. The Republic of Mali has secured a conviction for ML that resulted in the confiscation of the sum of CFAF 16 864 693(\$29,073).<sup>23</sup> The other confiscations by the Malian authorities relate to predicate offences. The underlying predicate offences in these cases relate to IT fraud, criminal conspiracy and swindling.

130. Based on STRs received, the Mali-FIU, has in some cases applied for administrative freezing of suspected accounts for a period of 48 hours. This timeline appears to be too short to conduct any meaningful investigation. However, the FIU may ask the investigating magistrate for an extension, where necessary. In the absence of such an extension, this freezing measure which aims to ensure that assets do not dissipate will be lifted. The examining magistrate may also make a provisional order for seizure of assets while awaiting the prosecutor to issue a leave to institute proceedings against the accused.

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<sup>23</sup> The judgment of the court on August 22, 2017

131. In cases where the investigative and prosecutorial authorities are not able to trace the illicit proceeds of an offence, the court can order the confiscation of assets of equivalent value. The Malian authorities indicated that assets of equivalent value had been seized. The execution of a court order falls within the remit of the Treasury, which has delegated this prerogative to court registries. However, the seizure and confiscation of assets and instrumentalities used to commit the offences as well as the seizure of assets of equivalent value do not seem to be a priority for the Malian investigative and prosecutorial authorities. In the course of conducting investigations on proceeds generating predicates, investigative and prosecutorial structures such as the Bamako Commune 3 Economic and Financial Division, OCS, SIJ/GN, BIJ/PN and BIS, do not typically, conduct financial investigation to enable them to trace, seize and ultimately confiscate illicit assets.

132. Few asset and financial investigations are conducted on the perpetrators of these predicate offences, resulting in a decline in the number of seizures and confiscation of criminal assets.

133. The BIS of the PJS which became operational in January 2017 opened 358 files from January 2017 to the first quarter of March 2019 comprising 347 for terrorism, six (6) on human trafficking and five (5) on the ML. Parallel financial investigation was carried out only in a fraction of these cases. There is no doubt that the AML law clearly contemplates taking the profit out of crime. Nevertheless, the Malian authorities do not appear to have implemented policies that underpin the objective to follow the money and deprive the criminal of illicit proceeds. The provisions of the Malian law which prescribes recruitment of specialized financial investigators is yet to be implemented. There were no policy documents or statements that demonstrated that confiscation was a key priority and there is no evidence that confiscation is actively being pursued and monitored by the authorities.

134. Furthermore, the BIS, which is the special investigation unit of the PJS, lacks personnel with the requisite expertise to conduct financial investigations because only 7 of 56 investigators have received trained in AML/CTF and associated expertise on financial investigation. In addition, within the other agencies, only a few of the criminal investigation officers have attended courses dedicated to AML/CFT. Although the PJS is a specialized agency for AML, only 6 of the ten PJS magistrates have received AML/CFT training and the limited skills of relevant officers impact negatively on the amount of seizures confiscations.

135. The NRA indicated that tax evasion cost Mali 7 billion FCFA (\$1 206 725) annually. The tax authority generally has the power to transmit cases to the courts for prosecution however this power is limited and subject to the procedures that permit the tax authority to recover unpaid taxes through administrative processes namely fines and surcharges. Mali did not provide any statistics on confiscation as a result of breaches of the tax code. It appears that there are limited criminal justice measures to tackle tax evasion.

136. In reality, orders by court to confiscate are seldom executed due to the lack of enforcement documents. The Republic of Mali does not have any national agency for the recovery and management of criminal assets. However, the Malian authorities claim that the Public Deposit Fund (Caisse des Depots et Consignations) as well as the court registries make up for the non-existence of this agency. This state of affairs is not without its challenges which among others, include, the lethargy in the execution of court rulings in favour of the State and the inadequate

storage of the instrumentalities of crime leading to their degradation. Mali is considering setting up an asset recovery and management agency that will facilitate the execution of judgments made in favour of the State and effective management of such assets.

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

137. The legal framework permits confiscation of proceeds of crime, assets and instrumentalities of crime as well as assets of equivalent value from both domestic and foreign predicates including those located outside Mali. The AML/CFT Law No. 2016-008 broadly covers instances where Mali seeks assistance to confiscate proceeds from foreign predicates or those located abroad.

138. A number of tools are available to the Malian authorities. These include provisional freezing measures (to prevent dissipation of assets), confiscation, seizure and administrative tax fines and surcharges. Mali has not implemented a comprehensive non-conviction based confiscation regime. Mali does not have comprehensive data on the number of confiscation of proceeds from foreign predicates and proceeds located abroad, and the exact sums recovered in cases where administrative fines have been applied in tax matters as the authorities do not distinguish between the recovered taxes and the surcharges.

139. The authorities however, mentioned a case where the instrumentality of crime (relating to a domestic predicate offence) which was located in another country was recovered. In that case, Mali made a request for the seizure of an instrumentality of crime located abroad on the basis of a domestic criminal investigation which revealed that the vehicle used in a robbery had been spotted in Senegal. Police authorities in Mali contacted their counterparts in Senegal who conducted investigations to locate the vehicle. Malian police were informed that the vehicle had been removed from Senegal and taken to a border village in Mali. The vehicle was seized by the Malian police with the support of the Senegalese police authorities.

140. The table 3.3 mainly relates to domestic predicate offences. The table shows that the most prevalent proceeds generating offence is tax fraud followed by customs fraud and illicit trafficking of drugs, pharmaceuticals & cigarettes before illegal logging and environmental crime. It is important to note that none of the cases of seizure or confiscation in the table relates to ML.

141. It appears that Mali did not request for repatriation of any criminal proceeds over the period from 2014 to 2017. In addition, confiscation of sums of money or property was secured in only one domestic ML case. There seems to be some weakness in the regime for confiscation and freezing within the criminal justice system as it appears that nearly all the sums were recovered administratively. Mali has, notwithstanding, confiscated property domestically in matters related to foreign predicate offences as indicated in the examples below.

#### **Box 3.2 - The JC case**

This case relates to a foreign predicate offence. Following a request made by the French judicial authorities for mutual legal assistance on a money laundering and drug trafficking proceedings instituted against J.C in France, The Malian investigating judge, seized sums in bank accounts and a luxury BW vehicle. The case is still ongoing.

### Box 3.3 - Samuragon case

Burkina Faso sought mutual legal assistance concerning certain persons involved in the attack on Samuragon in Burkina Faso. The suspects were arrested in Sikasso (Mali) as part of an opened case in Mali, following the Misseni attack. The amount of one million (1,000,000 FCFA) was seized and retained by the Malian judicial authorities in the framework of the procedure opened in Mali against the same persons. The case is still ongoing.

**Table 3.3: Status of Convictions for Predicate Offences to ML (2015-2018)**

	PREDICATE OFFENCE					
	Number of cases detected or investigated	Number of lawsuits filed	Number of convictions (cases)	Number of people sentenced	Amounts of assets seized or frozen (without charge for ML)	Amount of confiscated assets (without charge for ML)
<b>Data limitations and other issues for each indicator (where applicable)</b>	<b>CFA</b>					
<b>Predicate Offence (This list must be reviewed by assessors)</b>						
<b>Illicit trafficking of drugs, pharmaceuticals &amp; cigarettes</b>	869	539	369		1 194 468 545	
<b>Tax Fraud</b>	1,596	1,596			251 818 782 444	251 818 782 444
<b>Customs fraud</b>	16,673				15 730 535 839	15 730 535 839
<b>Human trafficking and similar practices</b>	102	21	1	1	0	0
<b>Abduction, kidnapping and hostage-taking</b>	98					
<b>Offences against public assets</b>	223	122	75		730 936 356	
<b>Theft</b>	13,849	4,961	4,961		113 929,263	
<b>Breach of trust</b>	5,298	1,963	1,963			
<b>Scam</b>	3,945	1,826	1,826			
<b>Forgery and use of forgery</b>	370					
<b>Terrorism</b>	248	248	29	80	0	0
<b>Terrorist financing</b>	3	3	0	0	23 665,250	0
<b>Arms trafficking</b>	9	0	0	0	0	0
<b>Currency counterfeiting</b>	35	0	0	0	0	0
<b>Cyber crime</b>	0	0	0	0	0	0
<b>Illegal logging and environmental crime Generating Profits</b>	15,119	1	1	1	130 609 030	130 609 030
<b>TOTAL</b>	<b>58,446</b>	<b>11,280</b>	<b>9,225</b>	<b>82</b>	<b>2,69743E +11 \$465 million</b>	<b>2,69743E +11 \$465 million</b>

***Confiscation on cross-border movements of cash and bearer negotiable instruments due to false declaration/non-declaration or false disclosures***

142. The Malian authorities seize cash and bearer negotiable instruments which have been falsely declared or undeclared in accordance with Article 12 of Law No. 2016-008. Travelers are required to declare amounts over the prescribed threshold when leaving or entering Mali. In addition, the Customs authority stated that a screening security device has been installed at the airport to detect movement of cash and bearer negotiable instruments. However, this type of control is only being implemented at Bamako airport. The declaration system at the land border posts are not as rigorous and implementing controls on the 7,200 km of border poses a challenge to the authorities. Moreover, the authorities do not implement measures to monitor cross-border movements of cash and bearer negotiable instruments through the postal system.

143. Although, according to Article 12 of No. 2016-008, travellers who enter or leave Mali from or to non UEMOA states are required to complete a declaration of cash and BNIs if the amount carried by the traveller is equal to or greater than the BCEAO threshold which is set at CFAF 5 million (\$6,535.65) (Article 12 of Act 16-2016). Customs officials, however indicated that in practice the threshold for declaration of cash and negotiable instruments for *all travelers, including citizens of the UEAMO entering or exiting the country is 2 000 000 CFAF (\$,3 414.25) even when the movement is within the UEMOA zone.* The custom officers claimed that they were relying on the customs internal regulations but did not provide the assessment team with specific provisions. The data below shows the amount of cash and BNI seizures made by the Malian authorities from 2014 to 2018.

**Table 3.4: Status of Cash and BNIs Seized**

<b>Year</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>Total</b>
<b>Type</b>	Quantity (units)	Quantity (units)	Quantity (units)	Quantity (units)	
<b>Euros</b>	879215	964490	11000		<b>1854705</b>
<b>Dollars</b>	393157	83810	20700		<b>497667</b>
<b>Gold**</b>	27.07	5147			<b>5174.07</b>
<b>Diamond ***</b>	64.29				<b>64.29</b>

**Source: DGD**

144. When the carrier admits his failure to declare cash/BNIs, the cash/BNIs are seized by the customs and an administrative fine is imposed. Cash and BNIs seized by the customs authorities are subject to two procedures. Firstly, the customs authority may consider an agreement with the wrongdoer who accepts his wrongdoing as specified in a signed statement. In this case, an administrative fine will be imposed. Alternatively, the statement could be transmitted to the

prosecutor's office for criminal prosecution. Additionally, the procedures also allow the chairman of the civil court in the community where a seizure is made to confiscate instrumentalities and proceeds of the offences committed in contravention of the customs regulations where perpetrators are unknown.

145. The Malian authorities, however explained that the perpetrators of these acts are always identified and apprehended. However, the Malian authorities did not provide data to differentiate between the procedures governing agreements and those that are referred to the prosecutor's office. Based on the statistics provided it appears that there has been no criminal prosecution in these cases. Furthermore, the customs noted that they generally do not focus on the possibility of ML/TF where persons fail to declare currency/BNIs.

146. Although the AML/CFT law obliges the Malian customs authorities to block or seize cash and negotiable bearer negotiable instruments for a period of 72 hours where the information provided on the origin and destination of cash and negotiable bearer negotiable instruments indicate potential ML/TF risks, the customs authorities stated that they have never applied this provision. The authorities' long-established option is to impose administrative fines. Generally, it is not usual for the customs to seek information or make inquiries to establish whether the cash and negotiable bearer negotiable instruments are intended to be used for ML/TF.

### *Consistency between the outcomes of confiscations and national AML/CFT policies and priorities*

147. The NRA noted that the illicit trafficking of drugs, pharmaceuticals, cigarettes, tax and customs fraud, human trafficking and similar practices, kidnapping, abduction and hostage-taking are some of the high-risk ML/TF offences in Mali. There were only confiscations relating to tax evasion and customs fraud. There appears to be no confiscation related to criminal proceedings associated with high ML threats like human trafficking, abduction, kidnapping and hostage-taking. Moreover, the amounts seized for the illicit trafficking of drugs, pharmaceuticals and cigarettes which are among the highest-risk offences are considerably low. Seizures and confiscations by the Malian authorities do not appear to be in line with the ML/TF risks resulting from the NRA.

### **Conclusion on Immediate Outcome 8**

148. Mali's investigating judges have applied provisional seizures in ML/TF cases. But seizures and confiscations of assets and instrumentalities of crime are not a priority for the Malian competent authorities who lack adequate training to carry out financial investigations. Seizures of cash and BNIs are only applied at Malian air borders. Seizures and confiscations do not appear to be generally in line with the ML/TF risks identified.

149. **Mali has achieved a low level of effectiveness for Immediate Outcome 8.**

## CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

### Key Findings and Recommended Actions

#### Key Findings

##### Immediate Outcome 9

1. Mali faces significant TF risk emanating from homegrown locally funded terrorists on one hand and terrorists/ terrorist groups that have allegiance with, and receive support from international actors on the other. Sources of funding are derived from the collection of ZAKAT and through certain NPOs. Illegal sources of financing include traditional criminal activities and undue exploitation of natural resources. In addition, some individual terrorists are funded by certain terrorist groups. TF in Mali is facilitated by the predominance of fiduciary money, the existence of informal channels of payment and money transfer systems such as Hawalas and the lack of an effective mechanism for controlling cross-border physical transportation of cash.
2. Authorities have established a specialized court and a specialized investigation brigade to handle terrorism and TF cases. Nevertheless, investigative prosecutorial and judicial authorities are not sufficiently trained to effectively conduct TF investigations.
3. Investigation and prosecution authorities do not use special investigative techniques and do not systematically include TF in their terrorism investigations. Although the FIU has not disseminated intelligence relating to TF to the judicial officers, Mali has conducted some TF investigations. The PJS, initiated TF proceedings in three (3) cases one of which resulted in a conviction on Terrorism. The country has also seized sums related to TF. However, the special investigation brigade responsible for TF at the PJS does not have sufficient material resources to expedite TF investigations.
4. Mali has a counter-terrorism strategy which does not include TF. Although at the operational level, the national intelligence picture is shared regularly with key agencies, there is a limited focus on TF. Thus, TF is not well integrated into the country's counter-terrorism strategy.
5. Mali has not criminalized the financing of (i) an individual terrorist and a terrorist organization for any purpose (ii) a foreign terrorist fighter. This shortcoming in the country's legal framework negatively impacts the country's ability to prosecute TF cases.
6. Mali has not demonstrated that it pursues alternative measures where TF conviction is not possible.
7. Mali does not maintain comprehensive statistics on TF investigation.

##### Immediate Outcome 10

1. Mali has a legal basis for implementation of targeted sanctions pursuant to the United Nations Security Council Resolution without delay. However, competent authorities do

not disseminate the sanctions list to all reporting entities. Although the larger financial institutions screen customers and transactions against UN targeted financial sanctions lists and other sanctions lists, there is generally a lack of implementation of targeted financial sanctions by the non-bank financial institutions and DNFBPs.

2. Despite the significant TF threats identified, Mali has not made or received third party requests pursuant to UNSCR 1373. The mechanism Mali utilizes to implement TFS, the National Commission for Freezing the Funds and other Financial Resources of Terrorists, is not operational. Mali has not made any national designations or frozen assets pursuant to UNSCR 1373.
3. Competent authorities have not conducted a comprehensive assessment of the NPO sector. In addition, Mali has not carried out comprehensive and sustained outreach to NPOs that are at risk within the sector.
4. There are no risk-based regulatory or supervisory mechanism in place, and the supervisory authorities of the NPO sector are under-resourced.
5. The National Commission for Freezing the Funds and other Financial Resources of Terrorists is not operational and there have been no administrative seizures related to the terrorist financing.
6. Mali has a legal framework for the regulation of NPOs and most NPOs that have signed a framework agreement with the authorities which requires them to submit their activity and financial reports. However, most NPOs do not comply with this requirement.

### **Immediate Outcome 11**

1. Mali has a legal basis for implementing TFS on PF however, there is no implementing text to complement the legislation and ensure that TFS related to PF is implemented without delay.
2. Some financial institutions, particularly banks, have taken steps to comply with their obligation to implement TFS. These institutions conduct screening to identify designated persons and entities. The Banking Commission examines the implementation of TFS but this obligation is not well understood by most reporting entities particularly medium and small FIs.
3. DNFBPs do not generally implement TFS. DNFBPs and their supervisors have very limited knowledge of the subject
4. Supervisory action is limited and no sanctions have been imposed on FIs or DNFBPs.

### **Recommended Actions**

### **Immediate Outcome 9**

1. Mali should criminalise the financing of an individual terrorist and a terrorist organization for any purpose, as well as the financing of a foreign terrorist fighter.

2. The Malian authorities should continually ensure that their approach to terrorism and its financing is well adapted to identified TF risks in the sub-region, including emerging threats.
3. Mali should strengthen the capacities of LEAs and judicial authorities to investigate and prosecute TF cases including by:
  - allocation of sufficient human and material resources;
  - provision of tools to identify TF activity; by ensuring that all relevant actors: (i.e. investigators, investigative judges, prosecutors and sitting judges) receive training and sufficient investigative support to conduct investigation prosecution and adjudication of TF cases;
  - enabling authorities to conduct TF investigations effectively through the use of special investigative techniques.
4. TF should be well integrated into Mali's counter-terrorism strategy. At the operational level, Mali could consider setting up joint terrorism and TF investigative teams or involving financial forensic experts in terrorism investigations. Mali should systematically conduct parallel financial investigations when conducting investigations on terrorism or terrorist activities.
5. Competent authorities should maintain statistics on TF investigation.
6. Mali should put in place measures that will permit the country to pursue alternative measures where TF conviction is not possible.

### **Immediate Outcome 10**

Mali should:

1. Improve its domestic implementation of TFS by ensuring timely dissemination of sanction lists to all reporting entities to ensure freezing of targeted assets without delay.
2. Operationalize the National Commission for Freezing the Funds and other Financial Resources of Terrorists and provide the commission with sufficient human and financial resources to implement freezing measures. The commission should also take steps to implement TFS when reasonable grounds for designation has been established.
3. Establish a framework for comprehensive monitoring or supervision of DNFBPs to ensure compliance with the obligation to implement targeted financial sanctions. In addition, enforce compliance and issue proportionate and dissuasive sanctions for failure to implement sanctions without delay.
4. Reporting entities should strengthen their implementation of TFS and improve compliance and effectiveness in this area. Mali should provide adequate awareness-raising and training to the private sector, in particular to non-bank financial institutions and DNFBPs in this regard.
5. Proactively trace terrorist funds as a means of disrupting terrorist networks.

6. Conduct a comprehensive assessment of the NPO sector in order to identify the features and types (or subset) of NPOs which by virtue of their activities or characteristics, are likely to be at risk of terrorist financing abuse including pin-pointing how terrorist actors abuse those NPOs and adopt a risk-based approach to address the identified risk.
7. Amend laws to take account of AML/CFT requirements and establish an adequate and binding framework for supervising the activities of NPOs. The country should provide supervisory bodies with sufficient resources to enable them to carry out their tasks effectively. Supervisory authorities ought to conduct sustained outreach to those NPOs that have been assessed as having a high risk of being abused for TF and adopted a risk-based approach to supervision. In addition, monitoring should focus on ensuring compliance with AML/CFT requirements and verification of the source and purpose of funds received by NPOs to better detect potential TF abuses.
8. Establish clear mechanisms for prompt information sharing among competent authorities in order to take preventive or investigative measures in cases where an NPO is used for TF purposes.

### **Immediate Outcome 11**

The Malian authorities should:

1. Put in place efficient mechanisms to disseminate the sanction list. Mali could consider creating an official website to publish the sanction lists and any updates in real-time and promptly send updates to all reporting entities to facilitate the freezing of funds and other property of persons and entities involved in the financing of proliferation, without delay.
2. Review Decree No. 2015-0230 of 02 April 2015 on the implementation of administrative freezing of funds and other financial resources of terrorists, and those who finance terrorism and terrorist organizations in order to include implementation of TFS relating to proliferation financing.
3. Conduct training and awareness-raising programmes for all stakeholders and provide guidance on TFS related to PF to reporting entities and competent authorities.
4. Monitor reporting entities and ensure that these entities are complying with the obligation to implement targeted financial sanctions related to proliferation.
5. Apply proportionate and dissuasive sanctions for non-compliance with implementation of TFS related to PF.

150. The relevant Immediate Outcomes for this chapter are RI.9-11. The relevant recommendations for the evaluation of effectiveness under this section are R.1, 5-8.

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

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

151. After the 2012 insurrection (the Azawad war resulting from the armed conflict between the Malian army and the Tuareg rebels of the National Movement for the Liberation of Azawad (MNLA) and its allies), Mali continued to experience rebellion which transformed into terrorism. Terrorist groups which were initially established in the northern regions have spread to the central region. Mali has been confronted by terrorist groups such as Ansar Eddine, the support group for Islam and Muslims, the Islamic State in the Great Sahara (EIGS), Al Qaeda in the Islamic Maghreb (AQIM), Al Mourabitoun, the Movement for Unity and Jihad in West Africa (MUJAO) and Ansarul al Islam. With the exception of AQIM and Al Mourabitoun, which were founded by foreigners, these terrorist groups are home-grown. The country also faces threats of foreign terrorist fighters (FTFs) as a few locally recruited actors have travelled abroad to carry out their terrorist activities before returning to Mali.

152. According to Mali's National Risk Assessment draft report, there are two main streams of funding. The first source of funding stems from fundraising (ZAKAT case) and donations to NPOs that have links with terrorism. Illicit sources of financing include drug trafficking, smuggling, extortion, abduction of persons, smuggling of migrants, arms smuggling, hostage-taking robbery and the undue exploitation of natural resources. In addition, some terrorists are funded by the terrorist group Anar Dine through its leader Iyad Ag Ghali. TF is facilitated by the predominance of fiduciary money in Mali and the existence of informal channels of payment and money transfer such as hawala, as well as the lack of an effective mechanism for controlling cross-border physical cash transfers.

153. The Malian authorities generally understand the terrorism and TF risks Mali faces. The draft NRA report acknowledges that Mali faces TF threat caused by terrorist groups that have allegiance with, and receive support from international actors sometimes through NPOs on one hand, and homegrown locally funded terrorists on the other. Due to these threats, the NPO and the mining sector are considered as sectors that are exposed to a high risk of TF.

154. The national authorities responsible for investigating TF cases include the intelligence agency and the investigation brigade (BIS) at the specialized court (PJS) which was established to handle cases on terrorism including TF and other transnational organized crimes. Investigations are conducted by the BIS under the direction of the Public Prosecutor at the PJS who can direct the investigative judges at the PJS to open a case and commence judicial inquiry into a matter. Investigation of cases relating to terrorism and TF is underway at the PJS investigation cabinets. The Malian authorities have initiated TF proceedings in three (3) cases. It appears authorities are not focused on Foreign Terrorist Fighters and no prosecutions relating to foreign terrorist fighters have been brought by the Malian authorities even though some Malian nationals have traveled abroad to join terrorist groups from other countries to fight and some may have returned to Mali. This shortcoming may be due to the deficiencies in Mali's legal framework on TF as the law does not criminalize financing Malians who travel to other countries for the purpose of terrorist training or participation in terrorist acts. The law does not also cover the financing of an individual terrorist and a terrorist organization for any purpose.

155. There are no convictions for TF in Mali, however, the country has made a provisional seizure of the sum of CFAF 24,146,750 as part of a TF investigation. The TF cases currently being

investigated appear to correspond in part with the risk profile identified in the NRA, in that terrorists and terrorist organizations use cash that is transferred outside the banking system making traceability tedious. Nevertheless, the investigations conducted did not uncover the origin of the cash seized and it was not possible to conclude that the sources of funds were derived from theft of natural resources, drug trafficking, smuggling, extortion, abduction of persons, smuggling of migrants, mutual assistance between terrorist groups, arms smuggling or hostage-taking as indicated by the authorities.

### **TF identification and investigation**

156. The Republic of Mali has a national intelligence coordination framework on counter-terrorism which does not incorporate terrorist financing elements. The informal economy and cash-based system in Mali make the identification and detection of TF more challenging thus making co-operation between the different agencies crucial. The country established a committee, which meets once a week and whenever needed. This committee shares intelligence among national relevant competent authorities in order to detect Terrorist activities. Furthermore, intelligence gathered in Mali is shared with foreign authorities such as Burkina Faso, Niger, Senegal Nigerian and Côte d'Ivoire. This sharing of intelligence has resulted in the arrest of individuals who have committed or could have committed terrorist acts, including TF in those countries. The committee does not however, include the FIU.

157. The Malian FIU received only three STR relating to TF two of which were reported to the public prosecutor's office. However, the three TF cases that are being prosecuted<sup>24</sup> were initiated by the judicial police having been detected following arrests for acts of terrorism. A number of persons being prosecuted for TF were arrested in the northern region. The forensic investigation department of the gendarmerie, which is responsible for TF investigation, maintains that it is difficult to detect the terrorist-related financial flows because of the predominance of cash and the difficulties relating to its traceability. In this regard, the authorities noted that banks are seldom used to move funds for terrorism purposes and efforts are geared towards intelligence operations.

158. The scarcity or absence of STRs relating to TF could be explained by the low rate of bank access, the use of small amounts not monitored by banks and the predominance of cash in the Malian economy.

159. The difficulties in detecting the facts of TF by the investigative authorities in Mali and the problem of traceability of the fund used for TF, may also be due to insufficiency of the resources dedicated to TF investigations. Indeed, the BIS at the PJS, which is responsible for handling TF cases has fifty-six (56) investigators but only seven (7) have received training on TF investigation. In addition, BIS investigators do not make use of special investigative techniques which are essential for effective TF investigations, especially in an informal economy dominated by cash transactions. For instance, electronic surveillance is not utilized by authorities even though the AML/CFT law prescribes special investigative techniques. Criminal and prosecutorial authorities do not use special investigative techniques for procedural reasons. Although the Uniform AML/CFT law that was transposed into Mali's national law prescribes the use of special

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<sup>24</sup> One of these cases has resulted in a terrorism conviction

investigative techniques, the Criminal Procedure Code does not explicitly set out the procedures and basis for their use. Given the vulnerabilities occasioned by the predominance of cash and porous borders, cross-border cash declarations could be useful in identifying TF. Cross border declarations transmitted to the FIU could be used to support/initiate financial investigation into TF. However, these declarations are currently not being transmitted to the FIU.

### **Integration of TF investigations into the national counter-terrorism strategies**

160. Mali has a national counter-terrorism strategy. The Malian authorities have somewhat attempted to integrate TF at the operational level, however it is not part of the national counter-terrorism strategy. Nevertheless, at the level of the national intelligence coordination committee, TF is sometimes considered. The FIU is however not a member of this committee and this may limit the extent of collaboration on TF issues. Thus, TF is not well-integrated into the national counter-terrorism strategy. Mali does not incorporate terrorist financing investigation as a matter of course when conducting investigation on terrorism. Although, at the level of the gendarmerie, financial investigations are sometimes conducted, in practice, TF investigations are not systematically integrated into terrorism investigations as prosecution authorities handling terrorism do not typically consider TF and investigating judges are not proactive in conducting parallel financial investigations in terrorism cases.

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

161. The maximum penalty for natural persons who commit the TF offence is an imprisonment term of at least 10 years and a fine of not less than five times the value of the assets or funds involved in financing the operations concerned; while the penalty for legal persons is five times higher than that imposed on natural persons. Theoretically, these sentences are effective, proportionate and dissuasive. However, Mali has not yet secured a conviction for TF. Consequently, in the absence of convictions for TF, the evaluation team was unable to assess the effectiveness, proportionality and dissuasiveness of sanctions imposed.

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

162. The Malian authorities, including the investigative and prosecutorial authorities, seized 24,146,750 FCFA which could have been used to finance terrorist acts and terrorist organizations. Mali has also secured several convictions on Terrorism.

163. Decree No. 2015-0230 / P-RMDU of April 02, 2015 on the appointment of the competent authority for administrative freezing under the Terrorist Financing Act, authorizes the National Commission for the Freezing of Funds and Other Financial Resources of Terrorist to freeze the funds and other resources of terrorists as well as all those who finance terrorism and terrorist organizations. The Ministers for Security, Justice and Foreign Affairs can refer such matters to the Minister of Finance who invites the National Commission to consider whether an entity or persons can be included on the national list. The assets of such a person can be frozen without delay and without prior notification to the persons, entities or bodies concerned. However, as at the time of the on-site this measure had been used. In addition, other measures such as the seizure of passports,

deportation, prohibition of entry and similar measures are possible but in practice, are only used after a conviction for terrorism or TF.

## **Conclusion**

164. Mali has established a national coordinating and information-sharing committee that deals with terrorism and terrorist activity. To that extent, the Malian authorities have somewhat attempted to integrate the TF into the counter-terrorism strategy. Nevertheless, TF investigations are not systematically integrated into terrorism investigation. The predominance of cash in the Malian economy, the lack of human and material resources, and the limited use of special investigation techniques hamper TF investigations. Mali has not yet obtained a conviction for TF. There are limited alternative measures to resort to where a TF conviction has not been accomplished. In addition, the number of TF investigations and prosecutions do not appear to correspond with the TF risks identified in the country. Given the high TF risk Mali faces, there is the need to underpin both the legal framework and implementation of measures to effectively combat TF in the country.

165. **Mali has achieved a low level of effectiveness for Immediate Outcome 9**

## **Immediate Outcome10 (TF preventive measures and financial sanctions)**

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

166. Pursuant to AML/CFT Law No. 2016-008, Mali has a legal basis to implement Targeted Financial Sanctions in accordance with United Nations Security resolutions 1267, 1373 and successor resolutions. Decree N ° 2015-0230 / P-RMDU of April 02, 2015 designates the Minister of Finance, acting on the advice of the National Commission for the Freezing of Funds and Other Financial Resources of Terrorist, as the competent authority responsible for administrative freezing of the funds and other financial resources of designated persons and entities. The competent authority is also responsible for proposing names to the United Nations Security Council Committees for inclusion in the Al Qaeda and Taliban sanctions list in accordance with UNSCR 1267.

167. In practice, the mechanisms employed in implementing UNSCR 1267 do not appear to be effective. Implementation of TF-related TFS does not occur without delay because the competent authorities do not notify all FIs and DNFBPs when the sanctions list is updated and in addition, the listing is not communicated to reporting entities in a timely manner as required. However, financial institutions that have the sanctions list monitoring software are able to freeze targeted funds immediately and report to the FIU on the basis of Article 100 of the AML/CFT Law No. 2016-008.

168. The Ministry of Foreign Affairs and International Cooperation receives the list of new designations or modification to previous designations which is forwarded to the country by the Permanent Representative of Mali to the United Nations. The list is transmitted by post to the relevant Ministries including the Ministries of Economy and Finance, Justice and Security. The ministries are required to transmit the sanctions list to the relevant competent authorities that

should communicate it to the reporting entities. However, the list is not circulated to DNFBPs, some financial institutions, NPOs, and certain other administrations. Thus, implementation of TFS is limited.

169. Most DNFBPs do not appear to understand the obligations to implement TFS. The competent authorities do not appear to monitor non-compliance with this obligation and there are no examples of sanctions for non-compliance with TFS.

170. Some financial institutions, particularly banks and insurance companies that are subsidiaries of international groups, and some large DFIs, have taken steps to ensure that they comply with the obligation to implement TFS. These receive the lists of designated persons from the group they belong to, or directly consult the UN site or acquire software that incorporates and updates all the lists of targeted persons and has automated screening and filtering mechanisms in place to identify the individuals targeted by these sanctions.

171. Regulation 14/2002 requires the UEMOA Council of Ministers to compile biannual lists of persons, entities and organizations whose funds and assets must be frozen. BCEAO is required to transmit the list to banks and financial institutions. Between the two sessions of the Council of Ministers meeting, the regulation empowers the President of the Council of Ministers, upon a proposal by the Governor of the Central Bank, to modify or add to the list of persons, entities or bodies whose funds should be frozen on the basis of the decisions of the Sanctions Committee. The proposal by the Governor will be approved at the subsequent meeting of the Council of Ministers. Again, this procedure does not allow TFS to be implemented with hours. The supervisory authorities do not appear to comprehensively monitor non-compliance with this obligation and there are no examples of sanctions for non-compliance with TFS.

172. Following the outbreak of the socio-political crisis and the occupation of the north of the country by armed and terrorist groups, Malian nationals identified as members of terrorist groups or who finance terrorism were designated on the initiative of the Malian government<sup>25</sup>. Mali 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.

173. The National Commission for the Freezing of Funds and Other Financial Resources of Terrorist and financiers of terrorism is mandated to: propose a list of persons or entities to be subject to administrative freezing measures pursuant to UNSCR 1373; consider requests for administrative freezing and unfreezing of funds and other financial resources, and review other country's application for administrative freezing. The commission is not operational as the members of the commission had not been appointed as at the time of the onsite visit. Thus, notwithstanding the current presence of armed and home-grown terrorist groups operating in parts of Mali, Mali has not drawn up a national list on the basis of UNSCR 1373.

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<sup>25</sup> At the request of the Malian government, three people who were believed to be impeding the implementation of the Agreement for Peace and Reconciliation in Mali, which was signed in 2015 by the Government of Mali and the armed groups of the Azawad Coalition Platforms and Coordination of Movements, were included in the list of Resolution 2374.

174. The Malian authorities state that they have not received foreign requests for inclusion of a targeted person in its national list, pursuant to United Nations Security Council Resolution 1373. Since the Advisory Commission on Administrative Freezing, which is competent in this matter, is not operational, the authorities may not be in a position to respond effectively to a future request from a foreign country.

175. The AML/CFT Law No. 2016-008 and the Decree No. 2015-0230 / P-RMDU of April 02, 2015 set down mechanisms for delisting, unfreezing and providing access to frozen funds. However, nonuse of these mechanisms did not permit the evaluation team to appreciate their usefulness.

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

176. The preliminary report of the NRA identified the significant risk relating to the misuse of NPOs for TF purposes. Despite this observation, the country has not conducted a comprehensive assessment of the NPOs in Mali. No sectoral study on NPOs was conducted to identify their sources of funding, possible links between NPOs and terrorist groups and the potential of their misuse for TF purposes. Furthermore, the country has not identified and classified those NPOs that are vulnerable to terrorist financing or applied a targeted risk-based approach to supervision and monitoring.

177. NPOs are composed of associations, NGOs and foundations. The Directorate General of Territorial Administration (DGAT) of the Ministry of Territorial Administration is the organ in charge of the supervising the sector. In addition to the DGAT, the National Commission for the Evaluation of Associations has signed a framework agreement with the State and its regional and local branches are also involved in monitoring NPOs that are parties to this agreement. In practice, however, controls are scarce or non-existent while the number of NPOs, in particular, associations and NGOs, is increasing. According to the draft NRA report, as of 31 December, 2017, 1450 associations and NGOs that were signatories to a framework agreement with the State had been included in the national directory and as of 27 August, 2018, 115 foundations had been included in the directory of foundations. These supervisory bodies do not have sufficient resources and capacity to carry out supervision of the NPOs that are at risk. DGAT does not have sufficient means to effectively carry out its supervision and monitoring, while the national commission responsible for organizing consultation meetings with associations that have signed framework agreements with the state has not been operational since the outbreak of the 2012 socio-political crisis.

178. In order to ensure the transparency of the activities, the NPOs that are signatories to the agreement with the State are required to submit their financial reports and activity reports annually to the DGAT, this obligation is generally not complied with by NPOs.

179. According to the sector, religious NPOs are more exposed to FT because they receive more donations from abroad and are less subject to control. Thus, in order to strengthen the supervision of these NPOs, the Ministry of Religious Affairs and Cults through its National Directorate of Religious Affairs was established in 2018 with the mandate to supervise religious NPOs. It aims to combat violent extremism and terrorism and introduced a National Policy for the Prevention

and Combating of Violent Extremism and Terrorism in February 2018. It however does not have a specific mandate or strategy in relation to CFT. The authorities stated that identification and geo-location of NPOs are underway, but the measures currently being taken by the National Directorate of Religious Affairs are not based on an assessment of the (religious NPOs) sector.

180. The authorities have not put in place an outreach strategy for NPOs. Mali has organized only a few training programmes in which a limited number of NPOs took part. This limited training has not allowed the majority of NPOs to understand their obligations or become aware of the TF risk they are exposed to. Although NPOs are reporting entities under Malian law, no NPO had filed an STR to the FIU. The NGOs and associations acknowledged that they were unable to identify the actual source of funds made available to them by donors and potential donors, to fund their activities.

181. Furthermore, even though investigations have been conducted by investigative units on NPOs, there is no formal mechanism for coordination, cooperation and investigation for those NPOs that may be involved in TF.

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

182. Mali has a specialized Judiciary division and a special investigation brigade (BIS) in charge of TF investigations. TF investigations are ongoing and the sum of 24,146,750 FCFA (\$ 41,810) has been seized but there has been no confiscation of property or instruments related to TF. At the time of the on-site visit, no funds had been frozen by Mali pursuant to UNSCRs 1267 (1999) and 1373 (2001) and successive resolutions.

183. Primarily, the National Commission for the Freezing of Fund and other Financial Resources of Terrorist established under Decree No. 2015-0230 / P-RMDU of 02 April 2015 is not operational and no administrative seizure has been made. The difficulties in conducting investigative operations in the north of the country, which is currently occupied by terrorist groups, also reduce the ability of investigative officers to detect and disrupt the funding channels of these groups.

184. There exists a significant number of terrorist groups on Malian soil including: Ansar Eddine, Support Group for Islam and Muslims, Islamic State in the Great Sahara (EIGS), Al Qaeda in Islamic Maghreb (AQIM), Al Mourabitoun, Movement for Unity and Jihad in West Africa (MUJAO) and Ansarul al Islam. These groups have the ability to recruit and sustain personnel, purchase equipment, and organise several terrorist attacks. According to the draft NRA report, MINUSMA reported 921 attacks in Mali between 29 September 2013 and 23 November 2018, resulting in the deaths of 192 civilians. The involvement of these groups in trafficking, illegal imposition of taxes on the right of crossing, as well as other lucrative activities generates illicit proceeds which these groups use to finance terrorist activity. Importantly, a considerable number of stakeholders within the criminal justice system have limited capacity to effectively identify and disrupt the financing networks of these terrorist groups.

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

185. The risk of terrorist financing in Mali is high because of the active presence of home-grown terrorist groups in the north of the country, whose sources of funding are obtained locally. The unstable security environment in the entire Sahelian sub-region and Mali's porous borders aggravates this risk.

186. Mali has some tools that could aid the country in combating TF, including a framework for TFS however, the country has not been able to use TFS to freeze the assets of entities, organizations, or persons who are directly or indirectly linked to the lethal attacks that have occurred within its territory. Competent authorities do not disseminate the sanction list to reporting entities. The National Commission on the Freezing of Fund and other Financial Resources of Terrorist is not operational and has not made any seizures. In addition, there is no national list of designated persons. NPOs have very little awareness of AML/CFT issues, including their vulnerability to terrorism and the competent authorities in charge of the sector have insufficient means to carry out effective and regular targeted monitoring and supervision. These authorities have not put in place a risk-based policy and a mechanism to raise awareness within the NPO sector.

187. There is a significant disparity between the overall level of TF risk and the measures taken by the country.

## **Conclusion**

188. Mali has not adequately used the tools at its disposal to identify terrorists, terrorist organizations, including their support networks to deprive them of their funds, assets and other resources, or prevent the misuse of the NPO sector for TF purposes. Mali's actions are not consistent with the overall terrorist financing risk profile of the country.

189. **Mali has achieved a low level of effectiveness for Immediate Outcome 10.**

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

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

190. Mali 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. The provision of Article 100 of Law No. 2016-008 prescribes the freezing of funds related to PF without delay. Nevertheless, Mali should adopt implementing texts to establish a mechanism that will facilitate the effective implementation of targeted financial sanctions related to proliferation financing.

191. The AML/CFT Law No. 2016-008 prescribes implementation of TFS related to PF thus, financial institutions have a legal basis to freeze targeted funds. However as indicated under IO10, the dissemination of the sanctions list by competent authorities to reporting entities is limited and dissemination is not carried out within hours.

192. As with sanctions related to TF, banks, some insurance companies and large DFIs have sanctions screening tools to identify the individuals and entities targeted by these sanctions and do not need to rely on communication from competent authorities to freeze targeted funds. Most of the other financial institutions and DNFBPs do not implement TFS related to PF.

193. Mali maintains diplomatic relations with the Republic of Iran and the two countries have respective diplomatic representation. Financial transactions are prohibited between Mali and targeted persons and entities however there are no express measures to monitor trade with targeted entities. Mali has put in place, a regulation aimed at controlling the flow of prohibited products for import and export (Inter-Ministerial Decision No. 2015-1535 / MCI / MEF-SG of 15 June 2015).

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

194. There is no constructive system for effectively identifying the funds or other assets of individuals and entities designated by the United Nations Security Council. The sanction list is not disseminated to actors who can carry out this identification. Furthermore, most of the investigative authorities are not well versed on the issue of financing the proliferation of weapons of mass destruction.

195. The implementation of these obligations by the some of the Malian banks, using the screening tool, has not resulted in identification of any case and no assets have been frozen. Mali has no mechanism specifically geared towards sharing information and creating awareness on identification of PF.

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

196. Within the financial sector, banks are well aware of the obligations regarding targeted financial sanctions relating to proliferation financing. Similarly, financial institutions that are subsidiaries of international groups have mechanisms and tools that allow them to comply with this obligation; others have varied knowledge on the subject.

197. The overwhelming majority of DNFBPs, have limited knowledge of TFS related to PF and there is a lack of implementation of TFS by DNFBPs. This is obviously due to the gap relating to the lack of a mechanism for effective implementation of TFS relating to PF. Majority of DNFBPs do not receive the UN sanctions list from their supervisory authorities or other competent authorities.

198. All the actors met (within both the private and public sectors) by the evaluation team indicated that financing of proliferation is a fairly new area of discipline and there is the need for training in this field.

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

199. Some financial institutions have established filtering mechanisms and tools that incorporate preventive measures and sanctions lists for proliferation financing. Some of the supervisory bodies

verify the existence of these mechanisms, as part of the wider AML/CFT supervisory framework. This appears to be the case with banks and some large DFIs. As regards insurance companies bureaux de change, small and medium-sized DFIs, which are numerous, the examination of these entities did not lay emphasis on the measures in place to identify individuals and entities subject to TFS related to proliferation financing. In the case of the DNFBPs, there is no monitoring and supervision for compliance with TFS.

200. Generally, besides BCEAO, supervisory authorities did not demonstrate that they have a comprehensive understanding of the obligations related to the TFS. The failure 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.

## **Conclusion**

201. Mali has a legal basis for the immediate implementation of the TFS on PF. The lack of an implementing text for effective implementation of TFS on proliferation financing, the limited understanding of the subject, including obligations relating to PF, by a significant number of stakeholders, and the lack of expertise of certain supervisory bodies and reporting entities on this issue, prevents Mali from achieving an effective outcome in the fight against PF.

202. **Mali has achieved a low level of effectiveness for Outcome 11.**

## CHAPTER 5. PREVENTIVE MEASURES

### Key Findings and Recommended Actions

#### Key Findings

1. Unlike other financial institutions, banks and large DFIs, have a good understanding of their AML/CFT risk and obligations. They have put in place due diligence measures tailored to their risks and taken specific due diligence measures for high-risk situations, particularly with regard to PEPs whose relationship is approved at a senior level. They provide training for their staff and are the providers of the overwhelming majority of STRs to the FIU. Furthermore, banks perform their CDD obligations satisfactorily. However, identifying beneficial owners is still a challenge for most financial institutions.
2. Most DNFBPs do not understand their CDD obligations. They do not systematically assess their risks in order to apply specific mitigation measures. They have not put in place procedures including an internal control system equivalent to their size to understand and analyze suspicious transactions. DNFBPs have not transmitted any STR to the FIU. These facts do not permit adequate mitigation of the risks associated with gold and real estate transactions
3. A major characteristic of the insurance sector is the lack of AML/CFT training and awareness as well as limited knowledge on AML/CFT. Also, the sector has not evaluated the risks to which it is exposed, resulting in weak implementation of preventive measures by the sector stakeholders, particularly small companies and insurance brokers.
4. Most foreign exchange bureaus and money transfer service providers face considerable ML/TF risks due to the high number of cash transactions. Moreover, both sectors have a limited understanding of their AML/CFT risks and obligations and do not have risk management frameworks in place.
5. Although the NRA classified real estate sector as high-risk, there are no licensing requirements for real estate administrators and agents, there is a predominance of informal transactions in the sector, and limited AML/CFT due diligence are applied during real estate operations.

#### Recommended Actions

1. DNFBPs and non-bank financial sector with the highest ML/TF risks assessment to better understand the ML/TF risks they are facing.
2. Reporting entities should develop training and awareness programs to increase their compliance with their AML/CFT obligations (such as on TFS, PEP screening, etc.). In particular, Mali should set up robust training and awareness-raising programmes for DNFBPs to facilitate their understanding and assessment of ML/TF risks. DNFBPs should also put in place measures to mitigate the risks identified and implement AML/CFT obligations, particularly CDD measures.
3. In relation to the insurance sector, Mali should ensure that:

- a) Insurance companies (particularly smaller companies) insurance brokers, foreign exchange bureaus and MVTs implement CDD measures, establish internal control departments, and intensify AML/CFT training for their staff.
  - b) Entities assess their M/L risks and recommend specific preventive and mitigating measures.
4. In view of the high to corruption threat in Mali, authorities should require, financial institutions to take reasonable steps to determine whether the beneficiary or beneficial owner of a life insurance policy is a PEP. Mali should consider making a list of national PEPs available to reporting entities.
  5. DNFBPs (dealers in precious metals and notaries) and FIs, particularly banks, should strengthen their customer due diligence measures in the real estate and mining (artisanal) sectors that are identified by the NRA as channels for terrorist financing.
  6. Mali should update Directive 35/2008, which constitutes the specific AML/CFT regulatory framework for the capital market, needs to be updated to take into account the terrorist financing aspects and implementation of the AML/CFT risk-based approach.
  7. FIs, particularly banks, should enhance due diligence measures with regard to some sectors such as the real estate and mining, which the NRA has defined as terrorist financing channels.

203. The relevant Immediate Outcome considered and assessed in this chapter is IO4. The recommendations relevant for the assessment of effectiveness under this section are R9-23.

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

204. Within the financial sector in Mali, banks are by far the most important subsector. The non-bank financial institutions (microfinance and EMIs) have seen an increase in the volume of accounts but the sub-sectors are still relatively small in terms of their market share. The capital market is not significant in Mali. The insurance sector is quite small and the number of life insurance policies are even smaller. The foreign exchange operators are considered as a moderately important sector due to the potential volume of cash that could be involved in these transactions and against the backdrop of a cash-based economy. Given Mali's risk profile, some weight was given to the microfinance, bureau de change, and EMI sub-sectors. With some exceptions, the DNFBP sector is less material particularly in terms of its size. Mali has only one casino and a small number of notaries that certify real estate transactions. Nevertheless, the DNFBP sector is characterized by weak AML/CFT compliance, the real estate sector and the precious metal sub-sectors being considerably important compared to other DNFBPs, particularly in view of Mali's TF risk.

205. Mali has strengthened its AML/CFT system with the passing of the Uniform AML/CFT Law No. 2016-008 of 17<sup>th</sup> March 2016. Besides, there are other texts, particularly new Circulars on governance, risk management, internal control, compliance and the exercise of Manager's positions in banks. At its meeting on 27<sup>th</sup> September 2017, the Banking Commission adopted Directive No. 007-09-2017 of 25<sup>th</sup> September 2017 outlining detailed rules for financial institutions to implement the Uniform Act on Money Laundering and Terrorist Financing within UEMOA Member States and Directive No. 010-09-2017 of 25<sup>th</sup> September 2017, setting the

threshold for reporting cash transactions to the Financial Intelligence Unit (FIU) by the BCEAO.

### ***Understanding of ML/TF risks and relevant obligations by financial institutions and DNFBBs***

206. Generally, banks have a good understanding of the risks to which they are exposed. This level of understanding is reflected in the existence of a risk mapping that provides a comprehensive understanding of the risk associated with their activities. These identified risks relate to: their own products and services, such as cash transactions, rapid transfers, deposit products; customers' sectors of activity such as trade, mining, particularly gold and real estate transactions; customers' country or geographical area of residence; and customers' status, particularly politically exposed persons (PEPs). Banks classify their customers by risk category and apply a rating scale to them that determines the degree of due diligence to be applied to them and the frequency of their monitoring. The risk assessment exercise is renewed on an annual basis. This understanding of risks is all the more remarkable with banks that are subsidiaries of international and regional groups and that apply the fairly high standards of their groups. In this regard, automated processes are used to detect risk cases and assign scores. Nevertheless, this approach to updating risk assessment on an annual basis may present a certain weakness where a new product is introduced during the year, or an existing customer obtains a PEP status, or where a new type of risk is revealed by a typology study or identified by the competent authorities.

207. Banks have a good understanding of their ML/TF risk and their AML/CFT obligations. They conduct awareness-raising and capacity-building programs for their staff. Like banks, the large decentralized financial systems (DFIs) also have an understanding of their risks, including TF risks and their AML/CFT obligations. Banks provided relevant risk information during the NRA exercise. Furthermore, the APBEF of Mali has taken a good initiative by establishing a Compliance Commission comprising all the compliance heads of banks. This commission, which is an information-sharing organ, has created an opportunity for the least-developed banks, which are not generally sound in term of compliance, to improve and enhance compliance with international standards and best practices.

208. In the insurance sector, with the exception of companies and brokers that are subsidiaries of large groups, stakeholders have a limited understanding of their ML/TF risks and AML/CFT obligations. Insurance brokers did not participate in the National Risk Assessment (NRA) and have a very limited understanding of their risks. Smaller DFIs, MVTS and foreign exchange dealers have a limited understanding of their risks. Most DNFBBs have a very limited understanding of the ML/TF risks associated with their activities. This situation is particularly noticeable among casinos, dealers in gems and precious metals, gold miners and real estate developers. Also, these categories of DNFBBs have little knowledge of their AML/CFT obligations. Notaries, lawyers and accountants also have a limited understanding of their AML/CFT risks and obligations. The DNFBBs have not conducted any risk assessments and have not put in place any procedures and programs to mitigate their ML/TF risks.

### ***Implementation of proportionate risk mitigating measures***

209. Financial institutions and DNFBBs are required by Mali's Law No. 2016-008 on AML/CFT and other existing laws to implement their AML/CFT obligations. To this end,

following the assessment of their ML/TF risks, they are required to put in place mitigation measures and programs.

- **Banks.** Banks have written AML/CFT procedures in place to address the identified risks. On the basis of the risk profiles, banks apply appropriate due diligence measures for the risk situations under consideration. Transactions involving certain threshold are filtered by automated programs and analyzed by the compliance officer. Specific due diligence measures are applied to certain categories of customers, particularly Politically Exposed Persons (PEPs) whose relationship authorization is managed by senior management and maybe escalated, in some subsidiary banks, to the group level. The list of PEPs is generally reviewed annually by the banks, while the list of other customers is reviewed every two (2) years. However, the detection of customers that are PEPs, especially national PEPs, is considered as a challenge and banks are utilizing the list that is uploaded into the system by the parent company. Tools for filtering customer transactions against sanctions list are also utilised to mitigate TF risk. Banks periodically train their staff and file STRs to the FIU. However, financial institutions, particularly banks, should strengthen due diligence measures with regard to transactions from/to the northern area, identified as a stronghold for terrorist groups, as well as sectors such as real estate and mining, which the NRA has defined as constituting significant TF risks.
- **Securities sector.** Compared to the banking sector, the capital market is not well developed in Mali. The sector has three main activities: fundraising, portfolio management and securities brokerage. These activities or services are associated with three main products, namely debt securities, bonds and equities. Fundraising remains the dominant activity or service that generates the most revenue, in line with the development of the public securities market. Mali has only one brokerage firm, with 98% of its resources coming from financial institutions. The firm has customers of Malian nationality, but also individual customers abroad. It does not have lists of PEPs; however, it has customers who have become PEPs whose accounts remain in its portfolio even if they have not experienced any movements since their owners became PEPs. The brokerage firm has no list of sanctioned persons and entities. However, pursuant to the provisions of the AML/CFT Law No. 2016-008, brokerage firms are required to implement the due diligence measures required for this category of customers. Article 12 of the AML/CFT Directive No. 35-2008 of 23 November 2009, governing authorized dealers in the regional capital market, stipulates that brokerage firms may receive cash from their customers up to a maximum of CFAF 50 million. Such funds are paid into the firm's account, as it is not authorized to receive cash. The managers of the brokerage institution are aware of their customer due diligence obligations; however, implementation is limited. They do not verify the identity of customers nor do they verify the origin of the funds insofar as, they rely only on the CDD carried out by the customer's bank for their operations. The AML/CFT regulatory framework in this sector, particularly Directive 35/2008, needs to be updated with regard to terrorist financing and the implementation of the risk-based approach to AML/CFT.
- **Insurance companies.** In the insurance sector, stakeholders' understanding of risk is limited. Most insurance companies and brokers in Mali do not implement their AML/CFT obligations. Specifically, insurance companies have not conducted any risk assessment or implemented measures to mitigate the relevant risks in their industry.

The sector is characterized by a lack of AML/CFT staff training. Insurance brokers have not received any AML/CFT training and have not developed any AML/CFT training programs for their staff. In addition, they did not participate in the National Risk Assessment (NRA). No periodic risk assessment is carried out by industry stakeholders. However, insurance companies and brokers that are subsidiaries of large international groups have internal procedures in place, including avoiding cash payments, investigating the origin of funds and identifying customers. Staff also receive online training. These reporting entities conduct reasonable due diligence, particularly with respect to PEPs, as they cannot execute transactions without the consent of the compliance department.

- **DFIs (Microfinance)** - The large DFIs have a compliance department. They implement risk mitigation programs, which include a mapping of the risks inherent in their activities. They also classify their risks, particularly those related to the transfer and credit of funds. Smaller DFIs are characterized by poor knowledge of their risks and limited risk mitigation programs. However, the smaller DFIs participated in the national ML/TF risk assessment exercise. While DFIs do not have a comprehensive list of PEPs, some have a list of high-risk countries and blacklisted customers, which is annually inspected. A subsidiary of a large group updated its records on KYC measures for these types of customers in April 2019.
- **Money and Value Transfer Services (MVTs)** - Based on the regulations governing them, MVTs enter into service agreements with the Banks to implement customer identification, risk identification and suspicious transaction reporting requirements. The MVTs are technical operators that allow banks and DFIs to have access to their technology platforms; the latter are the only entities authorized to execute the rapid transfer service and to sign contracts with sub-agents and agents in order to execute such transactions, on their behalf and under their supervision. Sub-agents are subject to AML/CFT provisions. At the end of each year, the authorized intermediaries forward the list of their agents as well as the standard template of the sub-agent contract to be signed with them to the BCEAO, the Banking Commission and the Ministry of Finance. Any amendment to the contractual agreement must be notified to the supervisory authorities. Some sub-agents providing money transfer services are directly licensed by BCEAO. It is the responsibility of the financial institution to which the sub-agent is attached to prepare a progress report on the sub-agent's operations and forward it to the BCEAO. The assessment team was informed that during an audit exercise with a sub-agent, a bank identified a suspicious case and filed an STR against the sub-agent. The sub-agents who provide the transfer service are supposed to verify the identities of customers but lack the wherewithal to do so. The list of sanctions against individuals and entities, as well as those of high-risk countries and PEPs are scheduled on a few platforms. However, Money and Value Transfer Services generally depend on the banks to implement mitigation measures. Outside the formal system, the HAWALA system is evolving and it is difficult to identify providers, given the informal nature and discretion surrounding this activity.
- **Electronic money operators.** These operators have compliance units and apply risk management measures, including screening tools targeting individuals and entities on the United Nations sanctions list and PEP lists. Besides, risk management measures are implemented for individuals who have been granted an identification exemption for

financial inclusion. These include restrictions on the number of their financial transactions that cannot exceed a modest threshold.

- **Authorized foreign exchange dealers.** Authorized foreign exchange dealers do not have a risk management framework and have a very limited understanding of their AML/CFT requirements. In terms of customer identification, they have a register of customers and the transactions they carry out. They identify their customers using the national identity card for residents and passport for non-residents, but have no identity verification mechanism. They participated in several training and awareness-raising sessions organized by the FIU. All purchases and sales of foreign currency must be recorded in a registration form made in four copies, one copy for the customer and the others for the Treasury, the BCEAO and the Foreign Exchange Bureau. The Exchange Bureau's copy is kept for a period of 10 years. While the Exchange Bureau's purchases of foreign currency against CFA francs are unlimited, foreign currency sales are limited to 2 million for residents and 500,000 for non-residents. However, they often do not have information on the origin of the funds. Apart from the regulated exchange control system, there is the HAWALA system, in which it is difficult to identify the sender. Foreign exchange bureaus also receive training from the banks with which they have a relationship and from the FIU. Foreign exchange transactions are also carried out informally with unlicensed individuals. This practice can be a source of money laundering and terrorist financing. Informal exchange represents an important part of the operations of the Authorized Foreign Exchange Dealers and the measures taken to verify the identity of customers are very weak or non-existent. The function of the AML Compliance Officer is not well known to a large majority of Authorized Foreign Exchange Dealers, which drastically increases the sector's vulnerability to ML/TF threats.

### **Designated Non-Financial Businesses and Professions**

210. Most of the DNFBPs fail to implement their customer due diligence obligations. They have not assessed their ML/TF risks and have no procedures and programs in place to mitigate their risks. This is particularly noticeable in the real estate, casino and gaming sectors, as well as within the legal profession (lawyers), which are very high-risk sectors. The NRA reveals that the proceeds of all offences are likely to be laundered through real estate, works of art, entertainment, casinos and gaming halls or operations involving huge amounts of cash. These businesses generally have no system in place to combat ML/TF.

- **Lawyers** have a limited understanding of AML/CFT and have not conducted any assessment of the risks to which they are exposed. However, in accordance with UEMOA Regulation No. 5, the Bar Association recently created the Autonomous Lawyers' Financial Settlement Fund (CARPA), which is a cash payment account opened in a local bank where all lawyers are required to register all their professional transactions. It is intended to enable lawyers to identify their customers and particularly, to know the origin of the funds. In the performance of their duties, lawyers incorporate companies, carry out real estate transactions, manage customer accounts, etc. Lawyers are empowered to provide assistance and advice services, in addition to being empowered to create a business. In order to do this, they identify customers by means of identification documents, for individuals and on the basis of the Articles of Association for legal persons. They are required to put in place enhanced due diligence measures and to inquire about the origin of the funds as well as identify the beneficial

ownership. Lawyers are entitled to reject a customer in the event of incomplete documentation and when a transaction appears suspicious. However, the Bar Association does not have lists of PEPs or lists of persons under United Nations sanctions.

- **Notaries** have not conducted risk assessments. They do not generally fulfil their customer due diligence obligations and generally rely on banks for CDD in the case of natural persons. The identification of legal persons and beneficial ownership is carried out on the basis of the information in the Articles of Association. However, the notaries mentioned the possibility of verifying the identity of a foreign customer or the existence of a foreign company by using embassies counterparts or other third parties abroad. Notaries carry out residential and commercial conveyancing and registration, contract drafting, authentication of documents and company formation. However, some of the operations of notaries are not carried out on a face to face basis including real estate transactions. In the case of real estate transactions, oftentimes, notaries have no knowledge of the sums involved in the transactions, which are apparently and most often undervalued and typically, the origin of funds often is unknown. The parties usually approach the notary only for the purpose of registering the sale of the property after the contract has been executed by the parties, a practice that should be discouraged as it could be used for money laundering and terrorist financing purposes. However, the Notaries Association has referred the matter to the FIU and requested for AML/CFT capacity building for its members.
- **Chartered Accountants and Licensed Accountants** have a limited understanding of their due diligence obligations. They have no risk management framework and have not conducted any AML/CFT risk assessment. The Association of Chartered and Licensed Accountants organized two training sessions for its members first in 2017 in collaboration with FIU and with the assistance of the Association of Chartered and Licensed Accountants of France, in 2019 on IFAC standards, which included a module on money laundering and terrorist financing.
- **Real estate agents and developers** have poor knowledge of AML/CFT requirements and do not understand the ML/TF risks to which they are exposed. In Mali, there is no known entity that regulates this sector. According to the NRA, the real estate sector is at risk and is dominated by informal transactions. Real estate administrators and agents operate in Bamako and major cities without license. It appears real estate agents do not apply AML/CFT due diligence measures when conducting their operations.
- According to the NRA, casinos and other games of chance are considered as one of the most vulnerable sectors to money laundering and terrorist financing in Mali. Mali has only one casino whose managers have very limited knowledge of their AML/CFT due diligence obligations. They do not register customers, as there are no registers designed for this purpose. This makes it very difficult to reconstruct the list of players. The casino managers have not conducted any risk assessment and have not introduced any risk mitigation measures. The use of cash is very high in the sector, particularly in terms of the payment of bets and winnings. Casino managers do not implement their customer due diligence obligations. The controls carried out by the supervisory authorities, particularly the Ministry of Security, do not cover AML/CFT. As a result, casinos could be misused for money laundering and terrorist financing by casino customers and owners. Measures should be taken by the Malian casino supervisory authorities to address this shortcoming and conduct training and awareness-raising, to ensure that casino managers comply with their due diligence obligations, including the identification and registration of customers in accordance with the provisions of Article 44 of the AML/CFT Law No. 2016-008, while also limiting the use of cash.

- The Mining and Precious Metals Sector-** Mining sector licenses are granted by the National Directorate of Geology and Mines and the General Directorate of Trade, Consumer Affairs and Competition. The installations and equipment are subject to a technical qualification certificate issued by the National Directorate of Geology and Mines. The artisanal sector in Mali is governed by Decree No. 2-536/P-RM of 3<sup>rd</sup> December 2002, regulating the collection, processing and marketing of gold and other precious or fossil materials, and Inter-ministerial Order No. 03-0239/ MIC-MMEE-MEF, establishing the requirements for the licensing and operations of collectors, purchase and export desks for jewelry and works of art in gold or other precious or fossil materials. Exporters of jewelry and works of art in gold or other precious or fossil materials must have a permit issued by order of the Minister of Commerce. Gemstone and precious metal dealers, particularly operators of large-scale mines, apparently have an understanding of their AML/CFT due diligence obligations, unlike the small-scale mines. The sector is dominated by artisanal gold mining, which has a significant ML/TF risk according to the NRA. There is no list of PEPs in the sector. A typical feature of the sector is the lack of ML/TF controls. The typology studies carried out reveal that the sector could be subject to abuse for money laundering and terrorist financing purposes. Sometimes gold sales do not go through the purchase desks, with buyers purchasing it directly on the spot, while the measures taken by the authorities in the sector, particularly the withdrawal of the license for non-payment of the 10 million guarantee for the permit to do business, is a clearly inadequate measure and does not cover AML/CFT.

### *Implementation of customer due diligence and record-keeping measures*

211. Large banks and DFIs generally implement customer due diligence measures. They also put in place enhanced due diligence measures in situations of high risk. These due diligence measures take account of risks related to the customer, risks related to products and services and situations involving a PEP. Most of the banks refuse to enter into a relationship when the customer does not have all the required documents. Some other banks will establish a relationship but no transaction will be carried out if the CDD requirements are not fully met. For non-bank FIs and DNFBPs, the implementation of due diligence measures remains weak because the vast majority of them have not mapped out the risks inherent to their activities and have not put in place any measures to mitigate their risks. As a result, they have not implemented any enhanced or specific measures. Risk mitigation measures supported by a risk assessment are required in the DNFBP sector, which has been deemed vulnerable to ML/TF. Records relating to the transaction and the customer's identity are required to be kept for 10 years and this requirement is generally respected by the reporting entities.

212. **Politically Exposed Persons** - Banks implement specific measures, using commercial databases to detect and monitor Politically Exposed Persons (PEPs). They have also established internal procedures whereby the Chief Executive Officer identifies and approves entry into a business relationship with a PEP and include them on the list of customers under enhanced monitoring in order to obtain an alert for each transaction above a defined threshold carried out on their account. These banks conduct an annual review of PEP activities. Some banks have, a list of international PEPs, in addition to the list of national PEPs. However, within the insurance sector, there are generally no official lists of PEPs, except for companies and brokers that are subsidiaries part of large groups. With regard to DNFBPs, no specific measures seem to be in place to detect PEPs, thus, there is a possibility of the sector being abused for ML/TF purposes.

213. **Correspondent Banking Services** - In the course of their activities, banks establish relationships with other correspondent banks. To this end, they are required to take enhanced and appropriate measures as soon as they enter into contact. In accordance with the AML/CFT Law No. 2016-008, correspondent banks collect information on the nature of the business of the correspondent bank and ensure that the correspondent banking institution applies anti-money laundering standards equivalent to those implemented by their institutions. Due diligence measures are in place, including approval by the designated authority. Banks periodically exchange compliance monitoring sheets with their correspondents. In the context of peer-to-peer relationships, banks define criteria such as the level of compliance, the quality and scope of the network and the country of location, in accordance with the FATF recommendations and the requirements of Law No. 2016-008 and the BCEAO Directives.

214. **Identification of Beneficial ownership and implementation of beneficial ownership obligations** - The obligation to terminate a business relationship or not to carry out a transaction as part of the business relationship, due to the impossibility of implementing the required due diligence measures, particularly for the determination of beneficial ownership, seems to be respected by the banks. They take steps in this direction and may terminate a business relationship if the required information is not available and file a report to the FIU in case of doubt. One bank claims to have filed a TF-related STR to the FIU in 2017 against an NGO for repeated large deposits as these sums raised concerns about the persons that ultimately control the NGO. The identification of beneficial ownership seems to be difficult for some reporting entities, particularly authorized foreign exchange dealers, lawyers and notaries. Despite the customer due diligence requirements mentioned in Articles 18, 19, 20, 21 and 22 of Law No. 2016-008, it is very difficult to access beneficial ownership information. This may be partly attributed to the lack of database and unreliable nature of some identification documents at the national level; the difficulty in locating customers geographically; and the prevalence of cash in the financial circuit. However, financial institutions rely on their own knowledge of customers and public information.

215. **Targeted Financial Sanctions (TFS)** - FIs, especially banks, take specific measures to implement their obligations regarding financial sanctions targeting terrorist financing. They consult the EU and OFAC lists and have lists of persons involved in terrorist financing, including nationals who have been designated and are under surveillance. However, reporting entities do not receive from the competent authorities lists of persons and entities under sanctions designated by the United Nations Security Council resulting in limited implementation of TFS by FIs, including asset freezing measures against designated persons and entities. Mali has not developed a national list under Resolution 1373. With the exception of subsidiaries of large groups, insurance companies and brokers are not aware of the United Nations sanctions lists. The DFIs are also not aware of these lists. The DNFbps, particularly lawyers and notaries, are not aware of the United Nations sanctions lists. They often rely on their banks to conduct these audits on their customers. For the proper application of TFS, the competent authorities concerned should make these sanction lists available to financial institutions and other reporting entities through their own supervisory or regulatory authorities for the purpose of implementing these obligations.

216. **New Technologies.** FIs carry out risk assessments and implement enhanced CDD measures for high-risk customers, products and transactions. FIs perform monitoring based on the level of risk observed. However, there is no information to suggest that they have implemented enhanced due diligence measures in relation to new technologies.

217. **Wire Transfers.** Financial institutions, particularly banks, have put in place mechanisms to identify originators and beneficiaries of wire transfers. In this regard, FIs screen the names of the originator and beneficiaries against the sanctions lists and take account of high-risk jurisdiction. In addition, FIs check the correspondence between the type of message and the transfer to be executed and also ensure the completeness of the information accompanying the transfer, i.e. that all mandatory fields are completed. FIs also ensure the contents of the message tally with the known profile of the customer concerned and decide, accordingly, whether to authorize or block the transaction.

218. **Higher Risk Countries identified by the FATF.** All banks have taken account of the list of high-risk countries in their software. These lists are taken into account in the computer programs used to filter wire transfer transactions. Banks regularly monitor FATF publications to this effect.

219. **Insurance Companies.** The majority of insurance companies and brokers do not implement due diligence measures as required by the provisions of CIMA Regulation No. 04 on AML/CFT. The above-mentioned regulation requires these entities to establish compliance functions at the company level in order to investigate the origin of funds. Insurance brokers are required to comply with specific due diligence measures with respect to cash payments, as brokers are not expected to receive more than one million cash premiums. Only insurance companies and brokers that are subsidiaries of large groups implement customer due diligence requirements in a fairly satisfactory manner. Moreover, no due diligence measures are applied with regard to a beneficiary of an insurance contract.

220. **Other Financial Institutions.** The level of implementation of due diligence measures in other financial institutions remains low, particularly among licensed foreign exchange dealers. The NRA identified foreign exchange bureaus and dealers in gems and precious metals as ML/TF risk sectors. Similarly, small-scale DFIs do not implement their customer due diligence obligations. The supervisory authorities of these reporting entities should provide guidance, including AML/CFT training and awareness-raising.

### ***Implementation of enhanced or specific measures***

221. Banks implement customer due diligence and record-keeping obligations in a satisfactory manner. For high-risk activities, banks - particularly those that are subsidiaries of large banking groups - have enhanced procedures for identifying certain customers. Risk mitigation measures will be enhanced with the effective implementation of the measures provided for in the NRA, which will be reflected in the action plan. With regard to transactions, some banks have imposed daily thresholds for cash payments according to customer categories. Large banks and DFIs understand the requirement to collect beneficial ownership information.

222. Most of the DNFBPs do not implement their customer due diligence obligations. Lawyers and notaries implement their due diligence obligations towards customers in a limited way. They most often rely on their banks to obtain beneficial ownership information on corporate customers when registering companies on behalf of their customers. However, the establishment of the Autonomous Fund for the Financial Settlement of Lawyers in Mali under Regulation 5, which requires lawyers to open a customer-account, is the ideal tool to identify customers and track the origin of the funds.

223. With regard to record keeping, FIs generally comply with the ten-year period provided for under Article 35 of the AML/CFT Law 2016-008. These data are kept in paper and electronic form and are accessible to all competent authorities upon request.

224. Most of the DNFBPs do not satisfactorily implement their due diligence obligations. However, in terms of record-keeping, lawyers and notaries keep documents for a period of 10 years in accordance with the AML/CFT Law No. 008-2016. However, the records kept, particularly those relating to customer identification, transaction-related documents, including account books and business correspondences, are not specified as stipulated by Law No. 2016-008.

***Compliance with suspicious transaction reporting obligations and the prevention of tipping off***

225. With regard to FIs, banks, unlike other FIs, comply with their obligations to report suspicious transactions. They have tools to automatically track and report suspicious transactions and other large and unusual cash transactions.

226. Most STRs were filed by banks and none have been filed by DNFBP. The lack of STRs from lawyers, notaries and chartered accountants may be due to weak detection of ML/TF activities. A large DFI submitted 3 STRs. The insurers have not filed any STR to the FIU.

**TABLE 5.1 STATISTICS OF STR AND CASH TRANSACTION REPORTS RECEIVED BY THE FIU PER SECTOR**

SECTOR	2015		2016		2017		2018	
	STR	Cash Reports						
<b>Breakdown by type of financial institution</b>								
Commercial Banking and Credit Institutions	19	0	25	0	51	0	60	0
Decentralized Financial Systems	0	0	0	0	0	0	0	0
Electronic Money Issuer	0	0	0	0	2	0	1	0
Bureaux de change	0	0	0	0	0	0	0	0
Money transfer companies	0	0	0	0	0	0	0	0
Insurance companies	0	0	0	0	0	0	0	0
Financial market operators	0	0	0	0	0	0	0	0
Others (Customs and Excise)	0	0	0	0	0	0	0	0
<b>Total FI STRs</b>	<b>19</b>	<b>0</b>	<b>25</b>	<b>0</b>	<b>53</b>	<b>0</b>	<b>61</b>	<b>19</b>
<b>DNFBP Sector</b>								
STR and cash reports received by DNFBPs	0	0	0	0	0	0	0	-
<b>Other Reports</b>								

Cross-border Reports by Customs (submitted to the FIU)	0	0	0	0
Transaction Reports by NPOs	0	0	0	0
STRs received from other sources (national / foreign oversight bodies, other persons / organizations, etc.)	0	0	0	0

227. In general, the majority of banks have a manual or automated tool for monitoring their customers' transactions, which allows them to detect suspicious transactions. Three (3) STRs related to the FT were filed and forwarded (2011, 2017 and 2018) by 3 of the 4 banks visited.

228. The Compliance Department reviews transactions and submits STRs to FIU. One hundred and fifty-eight (158) STRs were submitted from 2015 to 2018, including 156 by banks and two (2) by an electronic money issuer. Nevertheless, the rate of STRs filed by banks seems low in view of their numbers and the country's context. Besides, no STR was received from the insurance industry, including insurance companies and brokers. In particular, insurance company members of staff are barely trained on AML/CFT while most insurance brokers have no knowledge of AML/CFT.

229. The DNFBPs did not submit any STR. This shows that they are not implementing their customer due diligence obligations. Due to the high risk of this sector, as noted in the NRA, the lack or low number of STRs may affect the effectiveness of Mali's AML/CFT system. Most of the managers and staff of these businesses or professions have little or no knowledge of their AML/CFT obligations. Mali should take measures, including sanctions, against DNFBPs that do not comply with AML/CFT requirements and also encourage supervisory authorities to implement AML/CFT training and awareness-raising programmes. This requires the designation of a dedicated supervisory authority. The same applies to the insurance sector, which also fails to implement customer due diligence requirements.

***Internal controls and legal/regulatory requirements impending implementation***

230. Directives No. 02-2007/RB of 02/07/2007 organizes the compliance system. The BCEAO has adopted a new Directive intended to ensure that the compliance system corresponds to the current Uniform AML/CFT Act in UEMOA Member States. This is Directive No. 007-09-2017 of 25/09/2017, which sets out the procedures for financial institutions to implement the Uniform AML/CFT Act in UEMOA Member States.

231. These Directives and the provisions of Article 23 of the AML/CFT Law No. 2016-008 require FIs to establish internal AML/CFT training and information programs for their staff. Banks are required to implement their compliance obligation in accordance with Circular No. 03/2011/CB/C of 4 January 2011 organizing the UEMOA internal control system for credit institutions. Financial institutions, particularly banks, have developed internal policies and procedures that take into account their risks, including those related to money laundering and terrorist financing.

232. **Insurance** - Insurance companies and brokers that are subsidiaries of large groups have internal compliance functions, and in accordance with the provisions of CIMA Regulation No. 4 on AML/CFT, they have appointed compliance officers and implemented individual internal training programs. Small-scale companies do not have the same measure of internal controls and fail to meet their AML/CFT obligations. Besides, their information system cannot be used to track customer transactions against their profile or to identify PEPs.

233. **DFIs**- Internal compliance officers are appointed in the large DFIs, but the smaller DFIs do not have them and do not meet their due diligence requirements in this regard.

234. **Stock brokerage firms**- Mali has only one stock brokerage firm with a compliance department and an internal compliance program that takes account of the products and services provided as well as customers' profiles. The firm has an internal control manager who also deals with compliance, but there is no dedicated AML/CFT compliance officer.

235. **Other Financial Institutions**- This category includes foreign exchange bureaus, money transfer companies and electronic money issuers. With the exception of foreign exchange dealers, these entities have compliance departments. However, these compliance units do not have adequate resources to accomplish their mandate.

236. **With regard to DNFBPs**, only chartered accountants have a compliance department, unlike lawyers, notaries and other reporting entities in the sector who have none.

237. New circulars on governance, risk management, internal control, compliance and the performance of directors' duties in banks were adopted by the Banking Commission at its meeting of 27<sup>th</sup> September, 2017. In accordance with these guidelines, FIs, including banks, have introduced internal control policies and procedures. However, they should strengthen their profiling tools, taking into account customer risks, particularly PEPs and the United Nations Security Council's financial sanctions lists. In the case of insurance brokers, the level of implementation of controls remains weak. Insurance companies and brokers that are subsidiaries of large groups have internal control policies and procedures in place, unlike small-scale insurance companies.

238. On the whole, the DNFBPs have no internal control policies and procedures. In terms of monitoring, they do not significantly implement their customer due diligence requirements. Financial institutions, particularly large banks and DFIs, have AML/CFT training programs and train their staff on a regular basis. This intervention is particularly visible among banks that are subsidiaries of large groups, which continuously train their staff and submit reports to the BCEAO for this purpose. Insurance sector regulators should ensure that the reporting entities within the insurance sector implement their AML/CFT obligations with respect to internal control policies and procedures including through AML/CFT training and awareness-raising programs. As regards DNFBPs, Mali should designate a supervisory authority for these reporting entities. This, together with training, awareness-raising and monitoring would assist DNFBPs to implement AML/CFT requirements effectively.

#### **Conclusion on Immediate Outcome 4**

239. Banks that are subsidiaries of large groups and large DFIs understand their risks and implement their AML/CFT obligations in accordance with the current AML/CFT legislation.

As for other financial institutions, particularly the securities and insurance sectors, the implementation of AML/CFT measures is limited. The vast majority of DNFBPs do not generally understand the ML/TF risks associated with their activities and have not put in place any due diligence measures to address the risks to which they are exposed. They also have a very limited understanding of their AML/CFT obligation.

**240. The level of effectiveness achieved by Mali on Immediate Outcome 4 is Low.**

## CHAPTER 6. SUPERVISION

### Key findings and Recommended Actions

#### Key findings

1. Mali has an adequate licensing framework to prevent criminals and their associates from participating in the ownership, control or management of FIs, particularly the banks and insurance institutions, are generally well implemented. At the stage of market entry, several pieces of information are required, including proof of the origin of the funds. The probity and competence of directors and officers are checked by requiring them to provide criminal records and their CVs. Additional information is requested through information exchange with peer supervisory authorities if the applicant is not from the UEMOA. However, identifying beneficial ownership remains an impediment to preventing criminals or their accomplices from owning or participating in the management of business. Mali does not maintain statistics on rejection, refusal of applications or withdrawal of licence except within the DFI sector - for prudential reasons, as authorities do not keep statistics on rejected and discontinued applications.
2. Mali has not designated an AML/CFT oversight authority for DNFBPs. Licensing and registration procedures by some competent authorities and SRBs that regulate DNFBPs, specifically lawyers, accountants and notaries, include criminal background checks.
3. The banking and financial regulatory authorities (BCEAO, Banking Commission and the Ministry of Finance), have some understanding of ML/TF risks, which is not the case in other supervisors (insurance and capital market). The Banking Commission uses a risk-based supervisory approach in the banking sector through the establishment of a rating system. However, AML/CFT supervision of FIs does not seem to be fully risk-based, because specific AML/CFT criteria have not been incorporated in the rating system.
4. Mali has not designated an AML/CFT oversight authority for DNFBPs.
5. Off-site AML/CFT supervision within the banking sector and the DFIs are regularly carried out on the basis of an annual report, but on-site visits are increasingly rare. CREPMF and CIMA impose AML/CFT obligations on its reporting entities, but they have not yet put in place appropriate methodology and monitoring tools to carry out risk-based AML/CFT supervision. Onsite inspections relating to AML/CFT are insufficient at the level of other financial institutions<sup>26</sup> and non-existent at the DNFBP level.
6. In the absence of statistics on sanctions or evidence of follow-up implementation of the corrective actions, supervisory authorities cannot demonstrate that proportionate dissuasive and effective sanctions are applied for non-compliance with AML/CFT obligations.

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<sup>26</sup> Including the MTVS, Bureaux de Change and EMEs

7. Some supervisory/regulatory authorities such as the Ministry of Mines, and self-regulating bodies like the Chamber Bar Association of Notaries Public lack the capacity to conduct AML/CFT supervision.

### **Recommended Actions**

1. Mali should designate the authorit(ies) in charge of monitoring the implementation of AML/CFT requirements within the DNFBP sector, with sufficient resources to conduct inspections and apply sanctions. Mali should prioritize monitoring of high-risk DNFBPs as identified in NRA (the real estate sector, operators of precious stone and metals). Furthermore, the AML/CFT mandates of the appropriate self-regulatory authority for certain DNFBPs (the legal and accounting profession) should be established by express legal provisions and appropriate training. AML / CFT supervision of high-risk sectors of the DNFBPs should be considered as a short-term priority.
2. CIMA and CREPMF should improve or develop a rigorous evaluation methodology to identify, evaluate and understand risks in their respective sectors. CIMA and CREPMF should also ensure implementation of the Uniform Law on AML/CFT through the development of the new guidelines.
3. All FIs supervisory authorities for FIs should develop risk-based AML/ CFT supervisory models that take account of the NRA results. In particular, for banks, the UMOA Banking Commission should incorporate AML/CFT risk scores into its rating system. Supervisors should further increase the frequency and coverage of on-site AML / CFT visits with a focus on risk-based supervision.
4. Supervisors should impose dissuasive sanctions on reporting entities that do not comply with AML/CFT requirements, with a view to improving the sector's overall level of compliance.
5. Mali should further strengthen the institutional framework of supervisory / regulatory authorities, provide adequate human and financial resources and enhance the capacity of supervisors/ regulators through the provision of training tailored to each sector.
6. Mali should provide guidelines to the DNFBP sector to assist in the mitigation of the high risk identified within the sector.
7. Ensure the competent supervisory authorities include the risks identified in the NRA into the risk-based supervision process including through the application of enhanced or simplified measures.

241. The relevant Immediate Outcome considered and evaluated in this chapter is IO.3. The relevant recommendations for the evaluation of effectiveness under this section are R.26-28 and R.34-35.

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

242. As at the end of 2018, Mali's financial sector comprises 17 credit institutions including 14 banks and 3 leasing and mortgage guarantee institutions and 84 microfinance institutions. The total balance sheet for this sector amounts to CFAF 4,713 billion (\$8.1 billion) and 1,586,998 accounts. The banking access rate is 6.9%, the extended rate to decentralized financial systems stands at 13.8% and the access rate of the population aged 15 and over to financial services (banks, microfinance institutions and electronic money) is 44.7%. The approved financial market participants in Mali are as follows: One (1) securities management and brokerage companies (SGI), One (1) Mutual Fund Management Company and two (2) brokers. In the insurance sector, there are 13 insurance companies including 9 non-life Insurance companies, 3 (three) life insurance companies and 1 (one) Micro Insurance Company. There are also two EMIs, one approved by BCEAO, and one operator not yet approved that works in collaboration with a bank in the country.

243. The banking and financial sector is generally governed under various national and regional legal frameworks (regulation and supervision) through:

- BCEAO, the Banking Commission and the Ministry of Finance (CCF / DFS) in Banks, Credit Institutions, Decentralized Financial System (DFIs), EMEs, and Authorized Foreign Exchange dealers;
- CREPMF for financial market operators;
- CIMA through the CRCA and the Insurance Department under the Ministry of Finance in insurance and brokerage companies.

#### ***Implement measures to prevent criminals and their accomplices from owning or becoming beneficial owners of, or holding a significant interest in or control of credit institutions or designated non-financial business and professional companies***

244. The various laws regulating FIs at the community level and the decrees organizing the competent authorities supervising them at the national level confer broad powers on these authorities to prevent criminals and their accomplices from holding a significant share or occupying a managerial position in these institutions. These powers are also set in the AML / CFT legislation. Based on these powers, several measures to prevent criminals and their accomplices from participating in the ownership, control or management of credit institutions are generally well implemented. At the stage of market entry, several pieces of information are requested, including proof of the origin of the funds. Appropriate controls are also carried out regarding the morality and competence of directors and officers, by requiring a criminal record and background check and their CVs. In addition, through exchanges of information with counterpart supervisory authorities, additional information is requested if the applicant is not from the UEMOA zone.

245. The activities of credit institutions are subject to approval or authorization by the competent authorities in charge of regulation, supervision or monitoring (MEF, BCEAO, UMOA Banking Commission, CREPMF and CRCA).

246. Specifically, the Banking Act<sup>27</sup> and the Instruction No. 017-04 / 2011 establishing the list of documents and information required when applying for authorization to establish a credit

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<sup>27</sup> Articles 13, 14, 15, 18 among others

institution, provide the framework for approval and the various authorizations concerning credit institutions. Under these provisions, a complete set of documents and information on shareholders, directors and management staff as well as the origin of the funds are required. In addition to this, the UMOA Banking Commission, under the terms of the Memoranda of Cooperation and Exchange of Information with other jurisdictions, requests information on institutions or persons operating in these jurisdictions.

247. With regard to the DFIs, the license for operation is granted by the Ministry of Economy and Finance after approval of the Banking Commission. Law No. 2008-047 of September 03, 2008 defines, in particular in its Articles 7 and 8 the provisions applicable to approval of DFIs and the BCEAO Instruction No. 005-06-2010 of 14 June 2010 defines the constitutive elements of an application for approval of a decentralized financial institution in the UEMOA Member States subject to control of the BCEAO, in accordance with the provisions of Article 44 of the aforementioned Law. Requirements for approval or authorization to carry out activities of issuing electronic currencies are governed by Instruction No. 008-05-2015 of May 21, 2015. For the Insurance sector, the CIMA Code, as well as the implementing texts, provide for an authorization process for companies, management staff and directors and insurance brokers.

248. For banks, insurance companies and financial market operators, the authorization process provides for specific diligence and sufficient knowledge of natural and legal persons. For banks, shareholders having at least 5% of the voting rights or share capital are required to provide a notarized report on the status of their assets, the source of the funds used to subscribe to the company's capital and the legitimacy of these funds, together with a notarized report on the lawful origin of funds by each legal entity that is a shareholder. The same requirements apply to insurance companies and financial market operators in the case of shareholders having at least 20% and 10% of the voting rights or share capital, respectively. Similarly, for the financial market operators, the CREPMF requests for certain information at the level of regional and foreign Stock Exchange Markets as well as at the level of other members of the Financial Stability Committee concerning other reporting entities.

249. Furthermore, Articles 25 and 26 of the UMOA Banking Act describe how a criminal or their accomplice is to be prevented from participating in the capital or management of a credit institution. Community law and the provisions of Article 29 ensure permanent monitoring to prevent these persons from playing these roles. For the approval of Management staff and Directors, apart from the documents relating to the conditions of competence candidates are required to fill a form of good character. In addition, for Directors from outside the UEMOA zone, information is requested from the supervisors of origin to know their skills and morality before their approval.

250. All of the foregoing effectively prevents criminals and their accomplices from owning credit institutions or becoming shareholders, management staff or directors. The process is also verified throughout the life of the institution and of its management staff or directors.

251. Generally, some operators in the DNFBP sector are subject to certain licensing and market entry requirements, primarily for prudential purposes. With regard to legal and accounting professionals (legal advocates, notaries public, external auditors and chartered accountants), entry into the profession is guided by Community Regulations. Under these procedures, requirements relating to the training, skills and reputation of the various professionals in the sector are taken into account. For lawyers, entry into the profession requires

compliance with the provisions of Articles 14, 15 and 39 of Law No. 94-042 / AN-RM of 13 October 1994. The application of the above provisions guarantees that fit and proper persons are accepted into the profession. In the same vein, Ordinance No. 2013-027 / P-RM of December 31, 2013 addresses this requirement in the case of notaries and Law No. 08-015 of June 4, 2008, in the case of accountants.

252. Establishment of companies in the DNFBPs is subject to entry control by regulatory authorities (public administrations, professional bodies or the chambers of commerce).

253. Authorization to open casinos is regulated by Decree No. 97-182 / P-RM of 02 June 1997 authorizing certain games of chance in specialized establishments.

254. Real estate development activities are governed by Law No. 99-040 of 10 August 1999 and those of real estate Administrators by Law No. 10-021 of 10 June 2010. In this sector, also no Supervisory body has been designated for AML / CFT supervision, despite the fact that this sector has been considered a high-risk sector in the NRA.

255. The gold and other precious metal sectors in Mali is governed by Decree No. 02-536 / P-RM of 3 December 2002, regulating the collection, processing and marketing of gold and other precious stones or metals and the Inter-Ministerial Decree No. 03-239 / MIC-MMEE-MEF setting the conditions of approval and activities of the collectors, the purchase counters and exportation as well as the export of jewelries and art object made of gold or other precious stones or fossil substances.

256. Legal Advocates practice under the supervision of the Ministry of Justice through self-regulation of the Bar Association chaired by the President of the Bar.

257. Notaries Public practice under the supervision of the Attorney General and under self-regulation of the Chamber of Notaries Public.

258. Mali did not provide examples of any case of refusal to approve a credit institution or DNFBP. With regard to the withdrawal of licences, a few cases were notified concerning DFIs. However, these cases are not related to ML / FT. The Supervisory bodies of Banks, DFISs and Insurance companies indicated that approval application files are only presented to the decision-making bodies when they comply with the relevant requirements and procedures.

259. Despite this robust legal framework and satisfactory implementation of market entry controls in certain sectors, identifying beneficial owner remains an impediment to preventing criminals or their accomplices from owning or participating in the management of businesses in Mali. Most of the competent authorities met by the evaluators mentioned this as a concern.

#### ***Verification of an on-going understanding of ML / FT risks in the financial and other sectors***

260. The Banking Regulatory Authorities (BCEAO, Banking Commission and Ministry of Finance) have some understanding of ML / TF risks in the sector notwithstanding the fact that no dedicated sectoral evaluation has been carried out to date. The same understanding has not been demonstrated at the level of the Regulatory Authorities of other FIs.

261. The internal control system put in place by the Banking Commission through Circular COB No. 003-2011 / CB / C of 4 January 2011, which defines a Methodology for the analysis

and mitigation of all the risks inherent in the products, services, customers, distribution channels and geographic locations, including ML / FT. This Methodology comprises half-yearly Reports based on a questionnaire drawn up for credit institutions and a report on their internal control system. Added to this requirement are the obligations stipulated in Instruction No. 007-09-2017, which deals with the application of AML/CFT system in the institutions subject to this requirement.

262. Supervisors of FIs are also able to identify and understand their reporting entities' specific risks through verification of documents, on-site visits and / or periodic internal control reports. This system ensures that regulators in the banking system have good system overall. However, Mali did not demonstrate that an AML/CFT risk-based approach is employed in carrying out its missions. Ultimately, the use of the risk-based supervision methodology would help incorporate the provisions of the new Uniform Law on AML/CFT.

263. For DNFBPs, since there is no AML / CFT Supervisory and Regulatory Authority, no risk assessment was carried out by any institution, including self-regulatory bodies, to understand the risks in the sector. The NRA was an opportunity to identify the risks that DNFBPs face. However, the little or no coverage of some DNFBPs in the NRA limits the overall understanding of risks in the sector.

***Control, in terms of risk-based supervision of compliance by credit institutions and DNFBPs of their AML / CFT obligations***

264. The supervisory authorities for the banking sector conduct their risk-based supervision through off-site and on-site inspections. Credit Institutions are required to perform their internal ML/FT risk assessment and forward the reports together with the identified risk and mitigation measures to the relevant authorities. These risk mapping reports and the annual AML / CFT implementation reports enable monitoring and supervisory authorities to monitor and mitigate ML/FT risks of reporting entities through appropriate recommendations. They also monitor the consistency of the objectives and activities of these authorities with national AML / CFT policies and identified risks.

265. The UMOA Banking Commission<sup>28</sup> set up a UMOA Credit Rating System (SNEC-UMOA) which is a credit institution rating tool based on ten (10) set of criteria, which includes seven (7) fundamental criteria and three (3) complementary criteria. The fundamental criteria include capital, corporate governance, information and reporting system, internal control, financial structure, risk management and financial performance. These serve to position credit institutions on a scale of risks. The three (3) complementary criteria, relating to the environment, shareholding and development prospects, are used to complete the first rating resulting from the said fundamental criteria and to establish a segmentation of the risk profiles. The SNEC-UMOA includes a list of one hundred (100) sub-criteria for risk assessment, each broken down into ten (10) sub-criteria whose scores are summarized through a simple arithmetic average.

266. Insurance market regulators and financial market operators have not yet integrated risk-based supervision into their supervisory framework for their various reporting entities. The Methodologies of control and on-site verification of documents integrate more prudential risks

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<sup>28</sup> Source: 2017 CB / UMOA Annual Report

than those related to ML / FT. It is to be noted that, since October 2012, CREPMF launched an automated supervision software for the Regional Stock Exchange Market.

267. The Banking Supervisory Authorities plan to introduce risk-based supervision into their regulatory reforms, including verification of documents and on-the-spot checks. The AML / CFT document checks are carried out through periodic reports sent for this purpose by the reporting entities. Although there is no ML / FT-specific onsite examination, most on-site prudential visits have AML / CFT components. Likewise, in accordance with provisions of the Memorandums of Understanding with the other Banking Supervisory Authorities, the Banking Commission carries out certain joint examinations on AML/CFT with other regulators who integrate AML/CFT components.

268. AML/CFT supervision by Insurance Supervisory Authorities and Financial Market stakeholders are weak, supervision at the level of these Authorities requires substantial improvement.

269. The following table provides comparative statistics of general inspection and AML / CFT onsite visits by Credit Institutions Supervisory Authorities.

**TABLE 6.1: STATISTICS ON AML / CFT SUPERVISION (FINANCIAL SECTOR AND DNFBS)**

SECTOR	2015		2016		2017		2018	
	Prudential supervision	AML/ CFT						
<b>Banking sector</b>								
Banks					3	3	7	
<b>Insurance sector</b>								
Insurance companies								
<b>Financial Market Operators</b>								
securities management and brokerage companies (SGI)								
Assets Management Company (SGP)								
Business Partners								
Guarantors								
<b>Total Financial Markets</b>								
<b>Other Financial Institutions</b>								
DFIs	16		17		42		26	
Bureaux de Change								
Transfer of Funds and Securities / Funds transfer companies								
Others								
<b>Total Supervision (Financial sector)</b>								

<b>DNFPBs</b>							
Casinos and other lottery companies							
Developers / Real Estate Agents							
Non-Profit Organizations						00	00
Dealers in Precious Metals and Precious Stones						0	
Car Dealers							
Professionals of the legal sector (Legal Advocates, Notaries Public)						00	00
Accountants						00	00
Other DNFPBs							
<b>Total Supervision (DNFPBs)</b>						0	
<b>Total Supervision (Financial sectors and DNFPBs)</b>						0	

- In 2017, the BC conducted onsite examinations which had AML/CFT components on 3 (three) Malian banks;
- In 2018, the BC conducted onsite examinations on 7 (seven) out of the 14 (fourteen) operating Malian banks. It appears from discussions with the BCEAO Office that on-site supervisions generally include ML/FT components, but no ML/TF-specific thematic missions have been carried out in Mali.
- There has been no AML/CFT on-site examinations for the capital market operators, foreign exchange dealers, MTVS and DNFBPs that were met by the assessment team.

### *Effective, proportionate and dissuasive nature of remedies and / or penalties applied*

270. Laws and specific texts give the supervisory authorities the powers to sanction their respective reporting entities in the event of a breach of the provisions of these laws and specific texts. A wide range of administrative, pecuniary and criminal penalties are provided for in these specific laws and texts. However, it appears that sanctions have not been applied for AML / CFT breaches. The supervisory authorities justify this situation with the fact that the orders made to the reporting entities are generally followed eventually in the context of the recommendations and action plan implementation submitted by the reporting entities. The assessment team were not provided with statistics on the sanctions imposed, excluding the one relating to the withdrawal of 38 DFI licenses (from 2014 to 2019). These decisions, are not however, linked to AML / CFT, but only indicate that enforcement actions relating to breaches of regulation are sometimes taken.

**Table 6.2: SANCTIONS IMPOSED ON FIs**

<b>Nature of the Prudential Sanctions</b>	<b>Observations</b>
License Withdrawal	38 DFIs (from 2016 to 2017);
Disciplinary sanctions	Number not provided
Criminal sanctions	Number not provided

271. In addition, on-site visit carried out by the supervisory authorities (Banking Commission, CCF-DFS, Insurance Department, CRCA, CREPMF, etc.) lead to recommendations inviting FIs to implement an action plan to correct the weaknesses observed. However, the evaluators did not receive any documents indicating implementation of the recommendations. The authorities did not demonstrate that they have taken steps to verify whether the identified deficiencies have been remedied.

272. No statistics on AML / CFT sanctions were provided to enable the assessment team to determine their effectiveness, proportionality and dissuasiveness.

***Impact of the Supervisory Authorities actions on the level of compliance of financial institutions and DNFBNs***

273. The supervisory authorities informed the evaluators that their reporting entities' participation in the NRA, the content of the Annual Reports on implementation of the internal ML / FT prevention system provided particularly by Instruction 007-09-2017, the findings of off-site control and on-site visits, training and awareness sessions, cooperation and information exchanges with FIUs had a positive impact on the level of compliance of reporting entities. The supervisory authorities indicated that the National Risk Assessment carried out by Mali and the sensitization that ensued from it, led the credit institutions' Governing Bodies to become more aware of their AML / CFT responsibility.

274. In the case of the Supervisory authorities of the insurance and financial market sector, because of the low number of AML / CFT supervision, the impact of the actions of supervisory on their reporting entities remains very limited.

275. With respect to DNFBNs, the supervisory authorities are yet to be designated, no AML / CFT supervision has been undertaken.

276. It should be noted that while actions by some supervisory authorities have had positive effects on some FIs (Banks, EMIs), other FIs including DFIs, insurance, foreign exchange bureau, money transfer companies have not been impacted to the same degree. This is due to the fact that these institutions are rarely supervised.

277. Mali has not demonstrated that supervisory action has brought about an improvement in AML/CFT compliance.

***Promoting good understanding by Credit Institutions and DNFBNs of their AML / CFT obligations and ML / TF risks.***

278. The sector-specific AML / CFT implementing instructions and the internal control system issued by the regulatory authorities of credit institutions, insurance companies and financial market operators have, in general, contributed to a good understanding by FIs of their AML / CFT obligations. These guidelines allowed these institutions to develop their internal procedures and to map their AML/CFT risks. However, in light of developments in the FATF standards and the new Uniform Law, these guidelines should be adapted accordingly.

279. The training, education and awareness activities carried out by the regulatory authorities and the FIU, as well as meetings and working sessions with the reporting entities, have also

made it possible, in general, for the FIs to better understand the AML / CFT requirements. In addition, Annual Reports, periodical publications and the FIU website are also sources of information and awareness for reporting entities. However, this understanding is more pronounced at the level of FIs that are affiliates of major foreign groups.

280. The FIU has carried out awareness-raising and conducted training for reporting entities on their AML/CFT obligations. Despite this, a large number of DNFBPs and some smaller FIs do not have a sound understanding of AML/CFT risks or the requirement to implement preventive measures. The FIU should, therefore, increase its training and awareness-raising activities for DNFBPs and FIs that have a low level of understanding of the AML / CFT requirements. Providing feedback to reporting entities is a means of enhancing their understanding. Most of the credit institutions indicated that feedback from the FIU was not generally effective.

281. Furthermore, sharing the NRA report with the relevant reporting entities will enable them to better understand the ML/TF risks that their particular sectors face. However, the mechanisms for validation and even dissemination of the NRA are not yet clearly defined.

### ***Conclusions on Immediate Outcome 3***

282. The Banking Commission developed a risk assessment Methodology to assess and understand the risk of institutions in the banking and financial sector, other sectoral regulators have not yet done so and therefore have a poor understanding of risks of the institutions that they supervise. In addition, no information is available on the classification of ML / TF risks of FIs by the supervisory authorities.

283. Furthermore, AML / CFT supervision is ongoing, particularly in the banking and insurance sectors. However, the overall supervisory regime appears weak, the number of on-site visits remain very low, and the depth and scope of on-site visit coverage in the financial sector remains a significant challenge, as no AML / CFT on-site visits were undertaken in the other financial sectors. In addition, given the high risk of the DNFBP sector, lack of supervision of DNFBPs for AML / CFT remains a major concern and a weak link in the supervision system in Mali.

284. While regulator and supervisory authorities may require FIs to address observed deficiencies, sanctions are hardly or rarely applied and, in the absence of statistics, their effectiveness, proportionality, and deterrence could not be verified.

285. Despite the high level of risk posed by the DNFBP sector, there is no designated AML/CFT Supervisory Authority for these sectors.

286. **Mali achieved a low level of effectiveness with regard to Immediate Outcome 3.**

## CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS

### Key findings and Recommended Actions

#### Key findings

1. The establishment of legal persons in Mali falls under the jurisdiction of the chief registrars of the commercial courts and the chief registrars of the ordinary courts, in localities where there is no commercial court.
2. Information on the creation and types of legal persons are enshrined in the OHADA Uniform Act and are available to the public.
3. Basic information on legal persons are contained in the Trade and Personal Property Credit Register (RCCM). This information is stored and archived manually. Due to the non-computerization of the registry and the RCCM, the information contained in the RCCM is not easily accessible to the public but can be accessed by the public upon request and the payment of a prescribed fee.
4. The Malian authorities conducted a National Risk Assessment which was not attended by all the competent authorities. In particular, those responsible for company formation and maintaining company records were not involved in the NRA. The draft NRA report did not include an assessment of how legal persons created in Mali can be misused for ML/TF. The authorities responsible for the establishment of legal persons and maintenance of company registers, in particular registrars, notaries and lawyers, have a weak understanding of the risk posed to legal persons.
5. Legal entities are governed in Mali by OHADA Uniform Act. As such, they are subject to general obligations which protect them from misuse for ML purposes. These include the obligations relating to registration of companies, providing accurate information and updating the information contained in the RCCM. There are however no measures to prevent the misuse of bearer shares in private companies. Moreover, there are no sanctions to enforce compliance with the obligations stipulated under the OHADA Uniform Act.
6. There is no obligation to maintain beneficial owner information in the RCCM. In general, competent authorities (investigative authorities) can access information on beneficial owners held by banks upon the consent of the prosecutor.
7. The manual and non-computerized processing of the RCCM raises problems relating to the retention of adequate, accurate and up-to-date information on legal persons and timely access to the information requested by the competent authorities. Mali is gradually rolling-out the OHADA software that was acquired in 2017 which will facilitate the proper maintenance of basic information and identification of the beneficial owner and also permit timely access by all relevant authorities.

#### Recommended Actions

1. Malian authorities should continue the computerization of the registries of the commercial courts and ordinary courts to enhance the operations of the RCCM and allow timely access to the information contained therein.

2. The Malian authorities should assess the ML / TF risks posed by legal persons established in the country and take steps to mitigate those risks.
3. Mali should enact necessary laws, as obliged by the OHADA Uniform Act to ensure that sanctions are available against both legal persons and natural persons who fail to meet the relevant obligations and the country should consistently apply and enforce the sanctions.
4. Mali should ensure that the basic information kept in the registry is accurate and up-to-date.
5. The Malian authorities should have the necessary means to determine the beneficial owners of legal persons and consider keeping a register of information on beneficial owners at the RCCM.
6. Mali should implement measures to mitigate the misuse of bearer shares in private companies.
7. Malian authorities should conduct outreach and training for the actors responsible for the incorporation of legal persons and the maintaining of company registers given these actors' limited understanding of the ML *risk* posed by the misuse of *corporate* structures and lack of due diligence applied by the authorities responsible for incorporation and retention of information relating to legal persons.

287. 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 legal arrangements**

288. The creation of various types of legal persons in Mali, as in the other 15 member countries of the OHADA, is governed by the OHADA Uniform Act on Commercial Companies and Economic Interest Groups of the 30<sup>th</sup> of January, 2014. Legal persons created on the basis of the Uniform Act are either commercial companies or economic interest groups (EIGs). These include public limited companies, limited partnerships, limited liability companies, simplified joint-stock companies, variable capital company, civil partnerships and cooperatives. The chief registrars of the commercial courts and those of the ordinary courts in the localities where there are no commercial courts, are in charge of incorporation and also maintain information relating to the types of legal persons in Mali and the process of establishing these entities.

289. In 2005, the Malian authorities established the Agency for the Promotion of Investments in Mali (API-MALI), with a view to promoting investment and facilitating administrative procedures including procedures for the creation of legal persons. Through its one-stop-shop, API-MALI offers a single point of entry where the administrative formalities necessary for the creation of a company can be undertaken. Relevant information on the creation and types of legal persons is also publicly available at API-MALI.

290. Apart from commercial companies and EIGs, other types of legal persons exist in Mali. The law 04-038 of August 5, 2004, covers the establishment of associations, including foreign associations. This law specifically excludes foundations which are covered by separate legislation, Law No. 2017-049 of September 08, 2017. The establishment of an association is authorized by the Minister of the Interior. The Ministry of Interior through the Directorate General of Territorial Administration (DGAT) receives requests for the establishment of associations. A declaration at the court stating the name of the association, its purpose, the address of its head office and the names, professions and addresses of persons responsible for the association, in any capacity is required. The DGAT is obliged to keep a register containing the information relating to associations. The information on the creation of associations is publicly available at the Directorate General of Territorial Administration (DGAT).

291. The legal texts in force in Mali do not provide for the establishment of legal arrangements such as the trust and Mali has not ratified the Hague Convention relating thereto. However, it is not impossible to contemplate that a person on Malian territory could be managing property on behalf of a third party living abroad or that property located in Mali may be trust property. In these cases, the relevant information on the beneficial owner is not available and basic information on the parties to the trust may not be easily available.

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

292. Mali has carried out its NRA. The interim report of the NRA did not provide any indication of the level of ML/TF vulnerabilities and risks as pertains to legal entities operating in Mali. It is therefore impossible to appreciate the ML risks faced by legal persons and the extent to which they are used for ML / FT in Mali. Moreover, discussions with the competent authorities responsible for incorporation and retention of information relating to legal persons revealed that officials within those authorities had very limited understanding of the risks that legal persons are exposed to. Despite the risk inherent in the use of corporate vehicles, these authorities do little in terms of ensuring the reliability of the documents presented by the applicants. Competent authorities merely register companies without applying due diligence measures because applications for registration are typically forwarded to them by the notaries who are required to conduct CDD. In view of the concerns noted under IO3 and IO4 on the limited implementation of preventive measures, including CDD and the very limited AML/CFT supervision, the approach taken by registries creates a loophole that could encourage the abuse of legal persons for ML / FT purposes.

293. The draft NRA report identified the sectors vulnerable to ML/FT but did not specifically identify and analyze the ML/TF risk of legal persons. Similarly, the FIU has not conducted a strategic analysis based on the STRs it received to identify and assess the ML/TF risks and vulnerabilities of corporate entities. Investigative and prosecutorial authorities do not appear to have a good knowledge of the risk of ML/TF as pertains to legal persons.

294. Ultimately, Mali has not identified, assessed and understood the extent to which both domestic and foreign legal entities established in the country can be or are being used for ML/TF purposes.

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

295. Measures to prevent the misuse of legal persons for ML purposes are in force in Mali. The OHADA Uniform Act on Commercial Companies and Economic Interest Groups prescribes some measures that can prevent the use of companies for ML/FT purposes. Articles 25-28 of the Uniform Act on General Commercial Law sets out the information to be provided to the RCCM prior to the creation of a legal person. These include the company name or commercial name, acronym, or logo; description of activity/activities to be carried out; the form of the legal person, the amount of the registered capital with an indication of the amount of contributions in kind, address of registered office and, if applicable, the address of principal establishment and that of each of the other establishments; full names and addresses of partners who have unlimited liability vis-à-vis the company's debts, specifying their date and place of birth, nationality, date and place of marriage, the kind of marriage settlement adopted and any provisions enforceable against third persons restricting the free disposal of property of the spouses or the absence of such provisions, as well as any petitions for the separation of property, the full names, date and place of birth and address of managers, directors or partners with general power to bind the company or corporate person and full names, date and place of birth, and residence of auditors. All the relevant information collected during incorporation are transmitted to the chief clerk of the commercial court who is responsible for recording them in the commercial register and ensuring their preservation. Although the above information required by OHADA Uniform Act is relatively broad, however, it is not enough to obtain information on beneficial ownership.

296. In addition to the above information, when incorporating a company, a declaration of regularity and conformity or a notarial declaration of subscription and payment, a certified list of the managers, directors, officers or associates who have unlimited and personal liability or who have the power to bind the company is required. A sworn statement by the applicant certifying that he is not subject to any proscription is also required. The sworn statement must be completed within seventy-five days of the date of registration with an extract of a criminal record. The chief registrar of the commercial court and the API-MALI observe these requirements in the processing and registering companies and reject incomplete files or invite applicants to provide the missing information. This practice ensures the collection of basic information that can be used by the investigative and prosecutorial authorities, where necessary. However, it appears that the authorities responsible for incorporation do not perform the necessary steps to guarantee the authenticity of the particulars produced. In addition, there are no specific mechanisms in place to determine the beneficial owner(s) of a legal person at the RCCM.

297. The creation of certain legal entities such as banks and insurance companies require partners or shareholders to justify the origin of the funds before the supervisory bodies, in particular the Banking Commission, the Ministry of Finance and the organs of the Inter-African Conference of Insurance Markets (CIMA) can issue approval.

298. Although OHADA requires bearer shares to be registered in the case of public companies, this is not the case with private companies. The difficulty in identifying beneficial owners is increased in the case of companies that accept bearer shares. In this case, because of the ease of transmission of the shares between bearers, the identification of the beneficial owner presents even more difficulties.

299. The failure in assessing the ML/TF risks associated with all types of legal person created in Mali has precluded a sound assessment of the effectiveness of the measures described

above. Similarly, the absence of such an assessment has prevented the authorities in Mali from adopting appropriate measures to mitigate the risks.

300. With regard to trusts, Malian law prohibits their creation but does not inhibit their activities in the country. In accordance with the AML/CFT Law No. 2016-008, lawyers and members of the independent legal professions are required to keep all information relating to their clients, including information about the beneficiary of foreign trusts. In addition, the law requires financial institutions to obtain information about parties to a trust when the client is a trustee. These provisions aim to improve transparency, although FIs, as well as members of the independent legal professions practicing in Mali, indicated that they do not have trustees as customers or clients. Thus, there is no indication of the number of trustees operating in Mali or the amount of trust assets held by trustees.

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

301. Information on the establishment and types of legal persons is held by the Chief Registrar of the Commercial Court of Bamako and the chief registrars of ordinary courts in localities where there are no commercial courts. The information collected by the API-MALI during incorporation is forwarded to the Chief Registrar of the Commercial Court of Bamako. The OHADA Uniform Act on General Commercial Law provides that this information should be publicly available. However, Mali does not have a central or national RCCM and this information is kept manually by chief registrars without any automated system. As a result, the public has no direct access to information on the legal persons operating in the country. However, this information can be accessed at the request of any interested person upon the payment of a small fee to the chief registrar.

302. As regards NPOs and other associations, information concerning their structure, managers, members, budget and object is available from the Ministry of the Interior, which is responsible for the establishment of these entities.

303. The competent authorities, in particular, the investigation and prosecution authorities (police, gendarmerie, prosecutors, investigating judge), as well as lawyers, notaries and financial institutions, use the information contained in the RCCM in the context of the exercise of their functions. Competent authorities can access information on beneficial owners held by banks upon the consent of a state prosecutor.

304. Basic information on legal persons operating in Mali is maintained at the RCCM and available to the public. Beneficial ownership information is not maintained at the RCCM. Due diligence is not conducted by the chief registrars to ensure that the information provided during incorporation includes information on beneficial owners. Similarly, the verification conducted at the one-stop shop is limited. The Chief Registrar of the Commercial Court of Bamako justified this lack of diligence by the fact that the requests are addressed to him by notaries who should typically conduct due diligence on their clients before filing the application for incorporation. Notaries and other legal and professional agents are sometimes retained by clients to incorporate companies and are required by the AML/CFT law to conduct CDD on their clients however, in practice, these agents do not conduct robust due diligence on their clients and identification of the beneficial owner presents a major challenge. According to the notaries, these procedures are particularly difficult in the case of foreign companies that want to establish a company in Mali or when the shareholders are of foreign nationality.

Nevertheless, they often employ colleagues from the foreign country to conduct the verification. They also use embassies for identification and verification of documents presented by foreigners.

305. The relevant information collected, either directly by the chief registrars or transmitted by the API- MALI, is manually stored in an archive and this does not guarantee the safe-keeping of the records. These archives are kept and managed manually without automated management tools. This fact reduces public access to information held by the chief registrar. Any person that wishes to access this information, must go physically to the office of the chief registrar to make this request and pay a small fee. Ultimately, the mechanism in place in Mali does not ensure timely public access to information held by authorities. In addition, the information contained in the RCCM does not include information on the beneficial owner. The ongoing RCCM computerization process will allow the digitization of information held and stored and will improve public access to such information. In the absence of a computerized information management system at the RCCM, a search to obtain the information desired by the competent authorities and the public will present major challenges. The current situation lengthens the search time and could be a hindrance to the speed of investigations.

306. Legal persons are required to submit documents relating to any change in the life of the company, the directors, shareholders and beneficiaries to the chief registrar in order to update the records at the RCCM in accordance with the OHADA Uniform Act. However, legal persons are not compelled by law to update the information contained in the RCCM. The OHADA Uniform Act obliges each State Party to adopt appropriate legal frameworks to sanction breaches of the Act, however, Mali is yet to enact the requisite legislation. As such, there is no evidence that legal persons comply with the obligation to up-date records since the requisite legal framework to enforce this obligation is absent. Consequently, the information kept in the RCCM is not likely to be accurate and up-to-date.

307. The legal texts in force in Mali do not provide for the creation of legal arrangements such as trust. However, legal professions such as notaries or lawyers may carry out fiduciary activities. In these circumstances, the AML / CFT law requires them, as agents, to retain all information about their clients, including information on beneficiaries to the trust. The law requires these agents to maintain information on the beneficiaries of foreign trusts and the parties to the trust. Financial institutions are also required to obtain information about the parties to a trust when establishing a business relationship with a trustee and banks in Mali request this information in practice. Competent authorities and reporting entities have little knowledge of administration of legal arrangements specifically trusts and it appears that competent authorities generally do not seek access to information on legal arrangements.

#### ***Effective, proportionate and dissuasive nature of the sanctions***

308. The OHADA Uniform Act states that the penalty for failure to comply with the obligations imposed on legal persons should be implemented by each State Party. Each state is therefore required to enact relevant laws to establish offences for contravention of the provisions of the Act. Mali is yet to enact legislation that will establish an effective, proportionate and dissuasive sanctions regime for this purpose. Thus, there is no penalty for non-registration within the prescribed time limits for natural or legal persons; there is no penalty imposed where a legal person fraudulently executes any of the formalities prescribed by the OHADA Uniform Act; and there is no sanction in case of failure to update basic information maintained in the RCCM. Furthermore, there is no penalty imposed where a corporation fails

to keep its share register at its registered office. However, as regards basic and beneficial ownership information that is maintained by reporting entities, sanctions for failure to maintain the information are prescribed in Articles 112 and 116 of the AML /CFT Law No. 2016-008. The Malian authorities did not provide any information on the penalties imposed under Articles 112 and 116 above.

309. **Mali has achieved a low level of effectiveness for Immediate Outcome 5.**

## CHAPTER 8. INTERNATIONAL COOPERATION

### Key Findings and Recommended Action

#### Key findings

##### Immediate outcome2

1. The Republic of Mali has a satisfactory legal framework for mutual legal assistance and extradition. However, there is no comprehensive internal system of prioritization or case management to monitor the processing of requests for MLA and Extradition. As a result, the response rate is low. The number of requests made by the Mali is also limited and not consistent with the country's risk profile.
2. The competent Malian authorities, including the FIU, UEMOA, the Police and other law enforcement agencies regularly exchange information with foreign counterparts. The country also uses informal networks for this purpose. Police-to-police cooperation appears to be satisfactory, although this cooperation is not always timely due to inadequate human resources and redeployment of staff within the division.
3. There are more outgoing requests than incoming requests to the FIU which suggests that the FIU proactively engages in international cooperation. Nevertheless, the FIU did not demonstrate that the requests for information are processed in a timely manner.
4. Mali does not keep comprehensive statistics which will better allow the authorities to appraise the country's performance as regards engagement in international cooperation.

##### Recommended Actions

1. The Malian authorities should strengthen the capacity of investigators and magistrates in order to facilitate the use of mutual legal assistance, extradition, and other forms of cooperation to prosecute ML /TF and predicate offences and trace, seize and confiscate illicit assets by providing specialised training, guidance, and tools on MLA and international co-operation to relevant staff and also provide additional human capacity for the DNAJS.
2. The Malian authorities should establish a case management and tracking system. The relevant competent authorities should consider developing a manual of procedures which will provide guidance on prioritization, confidentiality and timelines for processing requests.
3. The Malian authorities should allocate sufficient material and human resources to the NCB/INTERPOL. The human resources assigned to this unit should not be redeployed frequently in order to capitalize on their experiences and ensure effective and timely processing of requests.
4. The supervisory authorities should strengthen international cooperation with their foreign counterparts.
5. Mali should take steps to join the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes.

6. The country should ensure that beneficial ownership information on legal persons and arrangements is readily available and competent authorities in other countries should be able to obtain this information upon request.
7. Mali should keep comprehensive statistics on international cooperation.

310. 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)**

### ***Providing Constructive and Timely MLA and Extradition***

311. The Malian authorities provide mutual legal assistance and extradition based on multilateral and bilateral conventions in relation to ML, TF and predicate offences. Title VI (Article 130-161) of Law 2016 on AML/CFT also provides a legal basis for international cooperation in ML and TF cases. Mali has established a specialized judicial division of the court that handle cases relating to transnational organized crime including ML, TF and Terrorism. This specialised division handles MLA related to ML, TF and other transnational crimes. This specialisation within the judicial system should result in a more targeted approach to MLA and Extradition, particularly considering the high risk that TF and terrorism pose to the country.

312. The Ministry of Foreign Affairs and International Cooperation of Mali is the central authority for international cooperation. However, it currently does not have a unit or department that is solely dedicated to judicial cooperation. Requests for judicial assistance are transmitted to the Ministry of Justice (MOJ). The Department of Criminal and Legal Affairs (DNAJS) at the MOJ is the technical division responsible for monitoring and assisting the courts in handling requests for mutual legal assistance and extradition. The DNAJS has fifteen (15) key areas of competence in terms of its powers, including reviewing requests for mutual legal assistance and extradition and monitoring their execution. The DNAJS is staffed with eight (8) magistrates. However, the magistrates generally handle tasks related to all the areas of competence as there are no specialisations within the Directorate. Discussions with authorities indicated that the lack of specialization appears to hamper the improvement of specific skills set required and limits the efficiency of the unit, which has an impact on Mali's ability to engage in international cooperation. Nevertheless, the feedback provided by countries indicate that the assistance provided by Mali is generally satisfactory.

### **Mutual Legal Assistance**

313. Requests for mutual legal assistance are received by the Ministry of Foreign Affairs and International Cooperation (MAECI), through its Legal Affairs and Litigation Department, which forwards the requests to the MOJ. At the MOJ, the requests are assigned to the DNAJS. The DNAJS transmits them to the various competent judicial authorities for processing.

314. The Legal Affairs and Litigation Department of the Ministry of Foreign Affairs and International Cooperation lacks human resources. There is a mismatch between the volume of work and the number of staff in the department which undoubtedly has an impact on the management of cases. Similarly, the DNAJS was run by only two (2) judges until 2017. The DNAJS is currently staffed with eight (8) magistrates although twenty (20) magistrates were initially expected to be employed. This has had a significant impact on the operational capacity of the Directorate and the timeliness of responses to MLA requests. There is currently a civil administrator who is responsible for monitoring requests for cooperation. The DNAJS assists magistrates of the courts by sending reminders to them from time to time for the timely processing of mutual legal assistance requests. The magistrates of the courts that process these requests recognize that the resources allocated to DNAJS are insufficient.

315. There is no specific mechanism in place for the confidential transmission of the requests from the MAECI to the Ministry of Justice. Upon receipt of requests by the Ministry of Justice, such requests are forwarded to the DNAJS which approaches the judicial authorities in charge of processing the request, without using any special transmission channel. Consequently, the transmission channel is not sufficiently confidential to enable the investigating judges entrusted with processing the requests for mutual legal assistance to preserve the integrity of the process. Moreover, some judges maintain that requests forwarded to them were not placed in sealed envelopes and marked confidential.

316. From 2014 to 2018, the Republic of Mali received sixty-six (66) requests for mutual legal assistance which relates, among others, to the search of information, tracing and seizure of assets, requests for indictment, interrogations, and hearings. The investigating judge of the specialized judicial court in Bamako highlighted a case where a witness’s statement was taken by video conference to execute a request for mutual assistance from a French magistrate. The statistics on MLA requests received are indicated in the table below.

**Table 8.1: MLA requests received for ML /TF/ Predicate Offences**

	2014	2015	2016	2017	2018
<b>Total number of requests received</b>	7	9	10	15	25
<b>Total number of requests received for ML offences</b>	0	0	0	0	0
<b>Total number of requests received for predicate offences</b>	4	8	7	11	16
<b>Total number of requests received for TF offences</b>	0	0	0	0	1

Source: DNAJS

317. Mali was unable to provide specified timeframes within which requests for MLA are expected to be responded to. The requests received did not specifically relate to ML offences and Mali did not indicate whether the requests had resulted in successful trials. Mali has not received any requests related to ML offences and only one request for MLA related to terrorism financing. The Malian authorities estimated that the average time to process a mutual legal assistance request is three to four months. By way of illustration, among the twelve (12) requests for mutual assistance processed, the processing dates of six (6) were not specified. For the other six requests, the duration of execution varied between one (1) and seven (7) months. However, the Malian authorities are considering setting up technical and coordination departments which will be solely dedicated to mutual legal assistance. This should facilitate the timely execution of incoming and outgoing MLA.

318. Within the framework of the Malian authorities' international co-operation policy, prioritization in the processing of requests for mutual legal assistance is generally based on the urgency indicated by the requesting party. The assessment to prioritise a case is subject to the discretion of the national competent authorities. However, there is no formalised prioritization mechanism in the processing of requests. For instance, the involvement of a PEP in the case, the need for seizure and delivery of assets or the seriousness of the threat to public peace in relation to TF and terrorism are not underscored.

319. Of the sixty-six (66) mutual legal assistance requests received by Mali between 2014 and 2018, only twelve (12) were processed, representing an execution rate of 18%. In addition, Mali did not provide comprehensive information on the nature of the offending and the type of assistance sought in MLA requests. Mali did not indicate why the execution rate was low or the reasons for the delay in the execution of the request.

320. The judicial authorities mentioned a case where Mali granted a mutual legal assistance request to seize and repatriate proceeds and instrumentalities used in perpetrating offences. In the context of a request for mutual assistance received by the Malian authorities, an investigating judge of the Judicial Specialized Court (PJS) was able to seize the proceeds and instrumentalities of crime which were subsequently sent to the requesting country; namely France.

321. The Malian authorities noted that where the information provided is incomplete, they do not reject the request for mutual legal assistance but instead request for additional information. The lack of a mutual legal assistance agreement can also be supplemented by an offer of reciprocity addressed to Mali, and is thus, not a systematic cause for rejecting the request. Authorities state that dual criminality is not a requirement where the mutual legal assistance being sought is not coercive or punitive. Mali did not indicate why some requests for MLA were denied however, there is no reason to conclude that this was due to the absence of dual criminality. The Republic of Mali is yet to criminalize the financing of a terrorist individual or terrorist group for any purpose or foreign terrorist fighters in accordance with UN Resolution 2178 and the FATF recommendations. The country could therefore, refuse to provide any mutual legal assistance in connection with these offences under the principle of dual criminality, which is a general principle of law according to the judicial authorities particularly as the existence of Malian citizens who are terrorist fighters in certain neighbouring countries has been proven. Besides, the Malian authorities noted that in practice, they do not typically use the special investigation techniques therefore, it is unlikely that a request that requires special investigation techniques will be processed. However, in processing mutual legal assistance requests, the competent authorities in Mali permit the presence of foreign counterparts on Mali territory for the execution of incoming requests. Some Malian authorities noted that during the investigation into the terrorist attacks at La Terrasse and Radisson Blu hotel, foreign investigators were able to enter Mali and conduct joint investigations.

## **Extradition**

322. From 2014 to 2018, the Malian authorities received eleven (11) extradition requests. However, the criminal prosecution authorities, in particular, the PJS magistrates, claimed that not all requests were granted. However, Mali does not maintain statistics relating to the number of requests granted, the number of requests refused or the reasons for refusal and the statistical data on requests for extradition indicated that only four (4) out of eleven (11) requests were

processed, representing an execution rate of 36%. It is not clear whether extradition was actually granted in all these cases as “execution” could mean a provisional arrest of the person to be extradited.

**Table 8.2: Extradition requests received**

	2014	2015	2016	2017	2018
<b>All extradition requests received</b>	2	0	3	2	4
<b>ML-related Extradition requests received</b>	0	0	0	0	0
<b>ML-related Extradition requests executed</b>	0	0	0	0	0
<b>TF-related Extradition requests received</b>	0	0	0	0	1
<b>TF-related Extradition requests executed</b>	0	0	0	0	0

Source: DNAJS

323. As a general rule, in accordance with its positive law. Mali does not extradite its citizens. The country cited a case where a request for extradition of a Malian citizen was refused. The country stated that in case of denial, Mali will prosecute the matter. However, the authorities did not specify whether proceedings had been instituted against the citizen whose extradition was refused.

324. The Malian authorities also explained that the refusals to extradite could be as a result of the risk of violating the fundamental rights of the person whose extradition was requested, particularly where the person has refugee status or where capital punishment could be applied if the person is tried in the requesting country. In addition, the Malian authorities explained that dual criminality is a pre-requisite for granting of extradition. Thus, the fact that the Republic of Mali has not yet criminalized the financing of a terrorist individual or terrorist group for any purpose as well as foreign terrorist fighters in accordance with UN Resolution 2178 and the FATF recommendations, will likely result in a refusal of extradition in these cases.

325. The Malian authorities also indicated that certain requests could not be executed due to the lack of, or inaccurate information by the requesting party. It is unclear whether extradition is granted in a timely manner because, in addition to Mali’s inability to specify the date when the three (3) requests made in the years 2014 and 2016 were granted, a request dated 15<sup>th</sup> December 2016 was processed on 4<sup>th</sup> April, 2017. Besides, seven (7) requests, including one from 2014, remain unexecuted and the Malian authorities did not give reasons for not processing these requests. Therefore, it appears that Mali does not always grant extradition in a timely manner.

326. Requests for extradition follow the same transmission channel as those relating to mutual legal assistance; from MAECI to the competent courts through the DNAJS of the Ministry of Justice, with no particular confidentiality mechanism other than those generally required for transmission of this nature. There are no written procedures on prioritization, monitoring or processing of extradition request.

***Seeking timely Mutual Legal Assistance and extradition with respect to ML, associated predicate and TF offences***

## Mutual Legal Assistance

327. The statistical data provided by the Malian authorities demonstrate that the country made limited requests for mutual legal assistance as the table below indicates.

**Table 8.3: Request for Mutual Legal Assistance for money laundering, terrorist financing and associated predicate offences**

	2014	2015	2016	2017	2018
Total number of requests issued	1	1	0	3	0
Total number of ML-related requests issued	0	0	0	0	0
Total number of requests issued for predicate offences	1	1	0	3	0
Total number of TF-related requests issued	0	0	0	0	0

Source: DNAJS

328. The statistics provided reveal that from 2014 to 2018, the Malian authorities used mutual legal assistance only five (5) times in five (5) years, and only for predicate offences to ML. The small number of requests for mutual assistance is due to, amongst other things, to the inadequate number of criminal justice personnel and staff capacity. Very few PJS magistrates and PJS investigators handling cases on transnational organized crime have been trained in ML and TF investigations. While the new Article 609-1 of the CCP defines terrorism, TF and ML as transnational crimes, no request has been made by the Malian authorities for ML and TF. Mali's limited number of requests for mutual legal assistance is not consistent with the country's risk profile, particularly TF risks.

329. The limited number of mutual legal assistance request by Mali may also be partly attributed to the lack of a specialised unit for judicial assistance. This would have facilitated judicial assistance through improved knowledge and fostering of relationships between judges and prosecutors from requesting and requested countries and facilitate the processing of incoming and outgoing requests within the judicial system. The lack of response to Mali's requests for mutual assistance from 2014 to 2018 may be attributed to the absence of follow-up action by the DNAJS, which lacks human resources as well as a unit that is solely designated to mutual legal assistance.

330. The Republic of Mali could not provide the assessment team with the average time it takes to process outgoing requests for mutual legal assistance. It is, however, clear from the statistical data on mutual legal assistance, that Mali made five requests for assistance to Senegal, France, Switzerland, Belgium and Burkina Faso which remain pending. Mali did not provide reasons why the requests remained unanswered. The lack of response to these requests for mutual legal assistance may explain why the Malian competent authorities are reluctant to use them even in situations where the cases have an international ramification or foreign dimension.

## Extradition

331. According to the information provided, the Malian authorities made three (3) requests for extradition from 2014 to 2018.

**Table 8.4: Extradition Requests made by Mali**

	2014	2015	2016	2017	2018
<b>Total of outgoing extradition requests</b>	2	0	0	1	0
<b>ML-related Extradition requests received</b>	0	0	0	0	0
<b>TF-related Extradition requests received</b>	0	0	0	0	0

**Source: DNAJS**

332. The extradition requests relate to predicate offences. No requests have been made for ML or TF which is inconsistent with Mali's risks. The Malian competent authorities however, explained that the low number of extradition requests is due to the complexity and the cumbersome nature of the procedure. They insisted that the competent authorities utilize foreign arrest warrants made directly by the police which offers a simplified and more effective form of surrender.

333. All three (3) outgoing extradition requests from the Republic of Mali are yet to be responded to by the requesting state. The Malian authorities did not explain why the requests were not yet executed by the requested country.

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

334. Mali engages in informal cooperation with foreign counterparts. The country is a party to agreements and initiatives that support international cooperation. Mali uses international platforms including the Egmont Group, Interpol, World Customs Organization (WCO), West Africa Prosecutor's Network (WACAP) and Asset Recovery Inter-Agency Network of West Africa (ARINWA) as channels for information exchange.

335. Requesting authorities communicate with the national competent authorities through the focal point of certain cooperation platforms such as the West Africa Prosecutor's Network (WACAP), the Asset Recovery Inter-Agency Network of West Africa (ARINWA) as well as the Sahel platform which brings together the G5 Sahel countries and Senegal. The DNAJS also acts as a focal point for these three (3) platforms. Furthermore, the INTERPOL channel and the West Africa Police Information System (WAPIS) through its platform also exchange information. Judges of the courts who are responsible for processing requests for assistance sent to Mali often communicate by telephone and/or e-mail with their counterpart requesting authorities.

336. The Malian authorities also stated that they carry out exchange of information on an informal basis with foreign authorities particularly neighbouring countries and this can lead to the arrest of persons in connection with ongoing investigations. The country did not submit any statistical data relating to this type of informal exchange of information.

*Law enforcement*

337. Malian police authorities exchange information with counterparts through the Interpol secure network. Mali seeks relevant intelligence and information within the framework of investigations. However, the statistics provided by the BCN of Mali did not indicate if the

request for information related to ML or TF investigations. The Police authorities in Mali receive requests for information and active cooperation through Interpol. The BCN of Mali resorts to the competent Malian authorities in order to obtain the requested information which is transmitted via channel I24/7. The table below indicates the of information request received and executed by Mali.

**Table 8.5: Information request received and executed by the BCN of Mali**

	2014	2015	2016	2017	2018
Request related to persons	17	30	30	40	117
Request related to assets	40	43	40	47	170
<b>Total</b>	<b>57</b>	<b>73</b>	<b>70</b>	<b>87</b>	<b>287</b>

Source: BCN /Mali

338. This cooperation is complemented at the operational level by the West African Police Chiefs Committee on the basis of the Criminal Police Cooperation Agreement between the countries of the Economic Community of West African States (ECOWAS) signed in Accra, on 19 December, 2003. Within the framework of this cooperation, the Malian authorities, through the BCN of Bamako, request for information; the arrest of suspects under international search warrants and also request for police-to-police handover of wanted persons residing in other countries as indicated in the table below.

**Table 8.6: Suspects and Fugitives handed over to Mali by foreign Police Authorities**

	2014	2015	2016	2017	2018
Police-to-police handover	01	02	X	03	02

Source: BCN /Mali

339. It is unclear whether there is prioritization in the processing of responses to requests for information. However, staff shortages, transfer or redeployment of staff with the requisite experience constitutes impediments to timely responses to requests for information.

340. On the basis of this agreement, Malian authorities receive and respond to requests for the search and/or arrest of persons from foreign counterparts within the region and more recently outside the ECOWAS region. In a recent case, the Malian police handed over a person to police authorities in the Democratic Republic of Congo.

#### **Central Office Against Illicit Enrichment (OCLEI)**

341. OCLEI has bilateral agreements with its foreign counterparts, enabling the latter to seek and provide information on corruption and related offences to counterpart foreign authorities.

**Table 8.7: Requests for Information addressed to OCLEI of Mali by foreign authorities**

	2014	2015	2016	2017	2018
<b>Total number of requests received</b>					<b>2</b>

Number of requests processed by Mali					2
Number of requests not processed by Mali					

**Source: OCLEI**

342. The Malian law enforcement authorities explained that they provide spontaneous information to foreign authorities, including Burkina Faso and information exchanged through the telephone with foreign counterparts has led to investigations and prosecutions.

#### **Box 8.1 Neguetana Case**

An example of spontaneous transmission of information to foreign counterparts by the Investigative Police Department (SIJ) of the National Gendarmerie in Mali.

On April 3, 2015, an explosion took place in the home of a Burkinabe national in the Bamako neighbourhood of Sirakoro Neguetana. The security guard died, several others were injured and huge material damages were incurred during the blast. The suspect, a Burkinabe citizen living in Mali, was arrested against the backdrop of violent extremism. Asked about the source of the explosives among others, the suspect claimed that a fellow citizen living in Ouahigouya (BF) ordered to deliver the package to a Malian trader in Bamako. This information was transmitted to the Burkinabe authorities who arrested the citizen at the address indicated. This case is still in court in Burkina Faso. The trader and his accomplice were brought before the prosecutor of their residential area in Bamako.

#### **FIU**

343. The FIU engages in international cooperation in an appropriate manner, by responding to requests for information made by foreign counterparts and disseminating information spontaneously where necessary. The Malian FIU also seeks financial information and intelligence from foreign counterparts to support domestic investigations. Most of the requests were made to the other UEMOA member countries, ECOWAS and North African countries.

**Table 8.8: Requests for information by the FIU from 2015 to 2018**

Geographical Area	Number of Information Requests issued	Number of Responses Received
<i>Period</i>	<i>2015 – 2018</i>	<i>2015 – 2018</i>
Other UEMOA States	37	
West Africa excluding UEMOA (ECOWAS)	6	
Africa (south of the Sahara) excluding ECOWAS	3	
North Africa (Maghreb)	1	
Europe	16	
America	8	
Asia	3	
Russia	1	
Other	1	
<b>Total</b>	<b>76</b>	

**Source: Mali-FIU**

344. The exchange of information with foreign FIUs is conducted through the Egmont Group platform (Egmont Secure Web) which guarantees the confidentiality of the information exchanged. In a few rare cases, the Mali-FIU has had exchanges with FIUs that were not members of the Egmont Group.

345. The FIU does not need an international agreement to cooperate with other UEMOA member countries. As at the time of the on-site visit, it had signed fifteen (15) MOUs with other FIUs. According to the FIU, these MOUs are designed to broaden existing cooperation.

346. The FIU receives information requests but the statistical data provided did not reveal whether the unit responds in a timely manner. Requests are processed without a prioritization sequence due to the lack of an internal manual which provides guidance to analysts on prioritization. Most requests for information come from UEMOA member countries. The Malian FIU provides their foreign counterparts with all the information it can obtain from their database. However, when such information is not contained in the database, the FIU seeks information from relevant national stakeholders and transmits it to foreign authorities.

**Table 8.9: Status of Information Requests received by Mali (2015 - 2018)**

<b>Geographical Area</b>	<b>Number of Information Requests received</b>	<b>Number of Information Requests received</b>
<i>Period</i>	<i>2015 – 2018</i>	<i>2015 – 2018</i>
Other UEMOA States	22	
West Africa excluding UEMOA (ECOWAS)	4	
Africa (south of the Sahara) excluding ECOWAS	-	
North Africa (Maghreb)	-	
Europe	5	
America	4	
Asia	1	
Russia	-	
Other	1	
<b>Total</b>	<b>37</b>	

**Source: Mali-FIU**

347. The Malian FIU has not indicated the reasons why certain requests for information received were unanswered.

*Supervisory information*

348. The Supervisory authorities for the banking and the insurance sectors cooperate with the counterpart authorities on the basis of memoranda of understanding entered into with both counterpart and non-counterpart authorities. The CB/UEMOA has a Memorandum of understanding with Morocco's banking supervisory authority for the supervision of certain Malian banks that are subsidiaries of Moroccan banks. Neither CIMA, the BCEAO nor the Banking Commission provided the statistical data or information that demonstrate the

effectiveness of the cooperation. Also, it could not be ascertained whether requests are related to ML or TF. Foreign supervisory authorities also conduct inspections in Mali as part of the shared supervision of foreign financial groups with establishments in Mali. These inspections provide supervisors with a consolidated view of how the groups implement AML/CFT programmes. For example, the Central Bank of Morocco (Al-Maghreb) conducted a joint inspection with the UEMOA Banking Commission on a subsidiary of a Moroccan bank established in Mali.

**Customs**

349. Mali's customs cooperate with foreign counterparts through several channels including the World Customs Organization (WCO). Requests for information from Customs authorities are sent through the WCO Intelligence and Liaison Office (ILO) Correspondent in Mali. The customs requests for information for the purpose of processing customs-related predicate offences to ML, but do not conduct ML/TF investigations or request for information in this regard. The Malian Customs also receive information requests through the WCO Intelligence and Liaison Office (ILO) Correspondent and under other multilateral and bilateral agreements. Although these requests do not directly relate to ML but to predicate offences.

**Table 8.10: Requests for Information for Tax Purposes Addressed to the DGD of Mali by Foreign Customs Authorities**

	2014	2015	2016	2017	2018
<b>Total number of requests sent</b>		1		1	
<b>Number of responses received</b>		1		1	
<b>Number of unanswered requests</b>					

Source: DGD/Mali

**Tax Administration**

350. The Republic of Mali is not a member of the OECD Global Forum for Transparency and Exchange of Information for Tax Purposes even though the Malian authorities stated that Mali has been participating in OECD meetings. Nonetheless, the country is a member of the UEMOA Tax Information Exchange Forum and has also concluded cooperation agreements with third States. Thus, the Malian Revenue Authorities request information exclusively for tax purposes, within the framework of these bilateral and multilateral agreements. The country can provide tax information and intelligence to other countries. The information provided does not relate to ML and TF, but rather to tax offences that are predicates offences to ML.

*Cooperation in identifying and exchanging basic and beneficial ownership information relating to legal persons and legal arrangements*

351. As indicated under IO5, the records of legal persons are kept at the Trade and Personal Property Register (RCCM) of the Commercial Courts in Mali. The information retrieved through a search of these RCCMs may be communicated to the national authorities, who may also request same for the benefit of foreign authorities. Although the information relates to basic information on legal persons, however, in a significant number of cases this information identifies the beneficial owner. Nevertheless, LEAs may need to consult other sources to confirm this fact.

352. The Malian authorities do not however, respond to request for information on legal entities in a timely manner because Mali does not have a central or national RCCM. In addition, the records on legal persons which are kept at the RCCM of the commercial courts and at the regional courts of jurisdiction is held manually, and this makes the search for information and the timely execution of requests difficult.

353. The OHADA software, that was made available to the RCCM in 2017 will, when fully deployed, facilitate timely access to basic ownership information.

354. Mali did not provide statistics on requests for information on beneficial owners of legal persons and arrangements, but maintained that RCCM information is provided to national authorities and other relevant persons including the FIU, Customs, police, prosecutors, lawyers, and notaries at their request. It appears that the RCCM can also provide information directly to foreign authorities when they so request. Moreover, this type of information is often provided to paralegals, the police, the FIU without the registry knowing the final recipients. The BCEAO also maintains a central register called FICOB for all bank account holders. National authorities are able to access this information for the purpose of identifying the beneficial owner of a legal person. However, Mali did not provide statistics relating to requests for information on the beneficial ownership of legal persons that were sent to the BCEAO by national authorities on behalf of foreign counterparts. It seems that no request has been received with respect to legal arrangements.

## **Conclusion**

355. The Malian authorities make limited use of MLA, whereas the country receives a considerable number of MLA requests from other countries, it made few requests to other countries. In addition, cooperation requests received are not prioritized and processed in a timely manner by the judicial authorities. The proposal to establish a body specifically designated to cooperation and strengthening the capacity of Malian investigators and magistrates could result in improving the numbers of requests for cooperation from Mali and ensure timely processing of requests made and received. Law enforcement co-operation appears to be effective. The Mali-FIU proactively cooperates with counterparts because the requests made are higher in number than those received from counterparts. However, it not clear whether this cooperation is sought and provided by the FIU in a timely manner. Other competent authorities also engage in international co-operation.

356. **Mali has achieved a moderate level of effectiveness for Immediate Outcome 2**

## ANNEX ON TECHNICAL COMPLIANCE

This annex provides a detailed analysis of Mali's compliance with the 40 FATF 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 2008 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**

This is a new Recommendation, which was not assessed in Mali's first MER. The Law No. 2016-008 of 17 March 2016 relating to the Uniform Law on Anti-Money Laundering and Countering the Terrorist Financing (AML/CFT) [referred to in this Technical Compliance Annex as *AML/CFT Law No. 2016-008* or *No. 2016-008*].

**Criterion 1.1** - Article 10 of the AML/CFT Law No. 2016-008 requires authorities to conduct an assessment of ML/TF risk in the country. Mali commenced its ML/TF National Risk Assessment in October 2018. The assessment was still in progress during the on-site although, Mali had prepared a draft report which the country was reviewing at the time. The World Bank NRA methodology was used to conduct the assessment, which involved the participation of relevant competent authorities and private sector representatives. The objectives of the NRA are to a conduct national assessment of threats and vulnerability and assess the specific vulnerability for relevant sectors. This exercise has enabled the country to identify and assess the ML and TF risks that the country is exposed to. This includes identification of (i) the proceeds-generating predicate offences in Mali (ii) the TF risks, with indications of channels of TF (iii) the level of risk posed to some sectors, including the extent to which the sectors are being used for ML or TF. Nevertheless, Mali could improve the consistency of the methodology used and the collection AML/CFT data. In 2018, Mali conducted a separate study of its AML/CFT regime. The assessment examined vulnerabilities inherent in the country's AML/CFT legal and institutional framework.

**Criterion 1.2** - Decree No. 2018-0294 / P-RM of 19 March 2018 designates the FIU as the competent authority responsible for coordinating the national risk assessment.

**Criterion 1.3** - The current assessment is the first NRA report conducted by Mali. Article 10 of the AML/CFT Law No. 2016-008 requires the designated competent authority to ensure that the national risk assessment is updated.

**Criterion 1.4** - Mali has not demonstrated that it has a mechanism in place to share the results of the NRA with competent authorities, self-regulatory bodies, financial institutions and DNFBPs.

**Criterion 1.5** - Article 10 Law No. 2016-008 provides that the designated competent authority should take appropriate measures to identify, assess, understand and mitigate ML/FT risks. Although, the law does not specifically state that the country should adopt a risk-based approach

to allocating resources and implementing measures to prevent or mitigate ML/TF, however, Mali has developed an Action Plan based on the authorities' understanding of ML/TF risks. The Action plan sets out the particular agencies responsible for the implementation of specific activities and measures within a specified time-frame and according to priority.

**Criteria 1.6** - (a) and (b) Mali has not made an exemption in respect of applying the *FATF Recommendations*. The AML/CFT law allows for exemptions from CDD for certain types of consumer credit operations and the financing of physical assets where the ML/TF risk is low.

**Criterion 1.7** -

a) The AML/CFT Law No. 2016-008 states that where financial institutions (FIs) and designated non-financial businesses and professions (DNFBPs) identify higher ML / TF risks they are required to apply enhanced measures on customers, products, financial transactions, and also politically exposed persons, for the purpose of mitigating these risks (Article 50-55 of Law No. 2016-008).

b) The provisions of Article 11 of the AML/CFT Law No. 2016-008 require FIs and DNFBPs to “take measures to identify and assess their ML/TF risks” without 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** - The provisions of Articles 46, 47 and 48 of the AML/CFT Law No. 2016-008 allow financial institutions to take simplified measures when the risk of ML and TF is low, in the absence of any suspicion. The law does not expressly state that the measures taken should be consistent with the country's assessment of its ML/TF risks. However, in practice simplified measures are consistent with institutional risk assessments.

**Criterion 1.9** - Although, Article 11 of Law 2016-008 obliges FIs and DNFBPs to make available to supervisory authorities and Self-Regulatory Organizations (SROs) the results of their risk assessments which should be documented and kept up to date. There is no express provision in the AML/CFT law that states that supervisors or SROs should ensure that financial institutions and DNFBPs implement measures to mitigate identified risks. However, in practice, supervisors of banks ensure that banks are implementing their obligations to mitigate the risk identified.

**Criterion 1.10** - FIs and DNFBPs are required to take appropriate measures to identify and assess ML/FT risks (Article 11 of Law No. 2016-008). (a) Assessments are required to be documented; (b) FIs and DNFBPs are required to take into account the relevant risk factors, such as customers, countries, geographical areas, products, services, transactions, distribution channels; however, the law 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) FIs and DNFBPs are obliged to keep the risk assessments carried out up-to-date; and (d) FIs and DNFBPs are required to make them available to the competent authorities and the SROs.

**Criterion 1.11** - (a) Article 11 (3) of the AML/CFT Law No. 2016-008 states that reporting entities must have policies, procedures and controls to mitigate and effectively manage ML/FT risks; reporting entities must obtain permission from a higher level of their hierarchy for policy, procedures and controls they put in place (Article 11 (5)) (b) There is a requirement to monitor the implementation of those controls (Article 11); (c) Enhanced due diligence measures can be

applied for a list of higher risk cases (Article 50-55). In particular, Article 51 of the same law states that when the risk of ML/FT presented by a customer, a product or a transaction appears high, the reporting entities should apply enhanced the due diligence measures.

**Criterion 1.12** - Article 46 of the AML/CFT Law No. 2016-008 states that where ML/TF risks are low, reporting entities can apply simplified due diligence measures however, "simplified measures should not be allowed where there is suspicion of ML or FT".

### **Weighting and conclusion**

Mali has taken steps to assess its ML/TF risks through the commencement of its ML/TF National Risk Assessment in October 2018. The draft report generally appears to reflect the main ML/TF risks to which Mali is exposed. The assessment team identified certain limitations with regard to: the scope of the risk assessment, the consistency of the methodology used and the availability of some statistics. The AML/CFT law sets out the requirements for the conduct of the ML/TF National Risk Assessment and the application of a risk-based approach to mitigating risks in the framework of preventive measures. The law provides for the application of simplified or enhanced diligence measures based on the level of risks identified and assessed. However, since the NRA was not completed at the time of the on-site visit, the country had not developed a mechanism that guarantees the communication of the results of the NRA to all the competent authorities, SROs and reporting entities. The country was yet to develop a mechanism that guarantees the communication of the results of the NRA to all stakeholders and have not fully developed a risk-based approach to the allocation of resources. In addition, there is no express provision that states that supervisors or SROs should ensure that FIs and DNFBPs implement measures to mitigate identified risks; and the legal provision relating to simplified measures is not linked to proven low risks.

**Mali is rated Largely Compliant with Recommendation 1.**

### **Recommendation 2 - National Cooperation and Coordination**

In its first MER, Mali was rated non-compliant with these requirements. The main deficiency identified was the lack of a mechanism for coordination and internal cooperation.

**Criterion 2.1** - Mali had not completed the NRA exercise at the time of the on-site visit. Thus, the country is yet to develop national AML/CFT policies that take account of the risks identified.

**Criterion 2.2** - The Inter-Ministerial Order of 18 November 2011 establishes an Inter-Ministerial Committee to counter ML and TF [referred below as 'the Committee']. The Committee is responsible for: assisting in the development and implementation of the national AML/ CFT policy; making proposals for strengthening national and international AML/CFT cooperation; identifying national legislative and regulatory proposals that are not in line with internationally accepted principles and practices; and developing action plans aimed at correcting the persistent weaknesses and deficiencies. The President of the FIU chairs the Committee.

**Criterion 2.3** - The Committee's role is also to promote the cooperation among national AML / CFT stakeholders and collaborate with the authorities involved in combating ML and FT. The

Committee brings together the representatives of the Ministries of Finance, Security and Justice as well as the FIU, the BCEAO and the Professional Association of Banks and Financial Institutions (APBEF). The composition of the committee is limited as law enforcement authorities, some supervisors, including supervisors for CREPMF and DNFBPs are not represented.

**Criterion 2.4** - The Inter-Ministerial Order of November 18, 2011 does not cover financing the proliferation of weapons of mass destruction and there are no coordination mechanisms to combat the financing of proliferation of weapons of mass destruction.

**Criterion 2.5** - Cooperation and coordination between competent authorities in Mali is subject to Law n ° 2013-015 of May 21, 2013 on Data Protection. Furthermore, Article 57 and 78 of the AML/CFT Law No. 2016-008 extends data protection and privacy policy to AML/CFT matters. Moreover, the provision of the AML/CFT law ensures that AML/CFT objectives are not restricted by data protection laws.

### **Weighting and conclusion**

Mali has established an Inter-Ministerial Committee to assist national authorities in the development and implementation of AML/CFT policies. The Committee is also responsible for coordination and cooperation among AML/CFT stakeholders in their working relationships. However, Mali does not yet have national AML / CFT policies that take into account the identified risks because the NRA exercise is not completed. Also, the country does not have a coordination mechanism to combat the financing of proliferation of weapons of mass destruction. **Mali is rated Partially Compliant with Recommendation 2.**

### **Recommendation 3 - Money laundering offence**

Mali was rated partially compliant with the requirements of this recommendation in the previous round. The main deficiencies were that property derived indirectly from the commission of an underlying offence was not covered by AML Law. Also, terrorism, its financing, and migrant smuggling were not criminalized under Malian law and did not constitute predicate offences to money laundering. Since the previous assessment, Mali adopted another Uniform Law, namely the AML/CFT Law No. 2016-008.

**Criterion 3.1** - ML is criminalized in line with the Vienna and Palermo Conventions. Article 7 of the AML/CFT Law No. 2016-008 prohibits the conversion or transfer, acquisition, possession or use by any person, of property that is derived from a crime or offence or participation in a crime or offence; or for the purpose of concealing or disguising the nature origin location movement or the real ownership of the property.

**Criterion 3.2** - The ML offence covers all offences under the Malian law (Article 1 AML/CFT Law No. 2016-008 and also refers to a list of categories of predicate offences under the AML/CFT Law including tax offences. Mali has also criminalised terrorism and migrant smuggling.

**Criterion 3.3** - Mali adopts a combination of approaches. The underlying predicate offences for ML is determined by reference to a list of predicate offences (Article 1, paragraph 16) and to a threshold linked to serious offences.

**Criterion 3.4** - Article 1 of the AML/CFT Law No. 2016-008 indicates that the ML offence applies to all types of property. The article, in particular, defines assets to include all assets of every kind. Article 1 Paragraph 45 of the same law states that all funds and property derived directly or indirectly, from a criminal activity are crime proceeds.

**Criterion 3.5** - The AML/CFT Law No. 2016-008 does not explicitly state that when proving that property is the proceeds of crime, it should not be necessary that person be convicted of a predicate offence.

**Criterion 3.6** - The ML offence applies to all predicate offences committed in another country and which would have constituted an offence in Mali if it had occurred there (Article 7 para. 3). The principle of dual criminality is covered by Article 244 of the Code of Criminal Procedure, which provides that the Indictment Division shall verify whether an offence committed abroad is punishable in Malian law.

**Criterion 3.7** - The ML offence apply to any persons, including those who commit the predicate offence (Article 7, paragraph 2 Law No. 2016-008).

**Criterion 3.8** - Proof of knowledge and intent for the ML offence can be inferred from objective factual circumstances (Article 7 Law No. 2016-008).

**Criterion 3.9** - Several types of sanctions can be applied to natural persons convicted of ML, including custodial sentences, pecuniary penalties and supplementary sentences. The ML offence is punishable by a sentence ranging between 3 to 7 years' imprisonment. This sentence is consistent with other serious offences in Mali. The sentence could include a fine equal to three times the value of the assets or funds in respect of which the ML operations took place (Article 113). Penalties can be doubled where: (1) the ML offence is habitually committed or where facilities provided in the exercise of a professional activity is used for ML; (2) recidivism; (3) the ML offence is committed by an organized group. Additional penalties include the definitive prohibition of residence on the national territory, passport withdrawal, permanent or temporary prohibition from exercising the occupation or activity in respect of which the offence was committed and from holding a public office; and confiscation of all or part of the property of the convicted person. Conditional sentences for any ML conviction are not allowed. The range of sanctions appears to be proportionate and dissuasive.

**Criterion 3.10** - For legal persons, the applicable criminal sanctions are laid down in Article 124 of the AML / CFT Law No. 2016-008. These include fines, exclusion from public markets for a period, confiscation of the property that was used or intended to be used to commit the offence, judicial supervision for a period of five years at most; suspension of professional or social activities or closure or dissolution of the establishment. The text also provides for administrative sanctions which are pronounced by the supervisory authorities against the natural persons who are the directors of legal persons, as well as against the legal persons themselves. The law does not preclude parallel proceedings. The range of sanctions provided under the law appears to be proportionate and dissuasive.

**Criterion 3.11** - Participation, association or conspiracy to commit the offence of ML and facilitating its commission are punishable under Article 7 paragraph 1 (d) of the AML / CFT Law which also punishes the participation in one of the acts referred to in paragraph (a), (b) and (c) of that article, the fact of associating to commit, attempting to commit, aiding or abetting a

person to commit or counselling the person to do so or facilitating the commission of such an act. In addition, Article 114 of Law No. 2016-008 lays down criminal sanctions for conspiracy, association and complicity in the ML.

### **Weighting and conclusion**

The AML/CFT Law No. 2016-008 does not explicitly state that when proving that property is the proceeds of crime, it should not be necessary that the person is convicted of a predicate offence. Mali's AML / CFT system is broadly in line with FATF Recommendation 3. **Mali is rated Largely Compliant with Recommendation 3**

### **Recommendation 4 - Confiscation and provisional measures**

In its first MER, the Republic of Mali was rated non-compliant with these requirements due to the lack of implementation of the law relating to confiscation and provisional measures and the absence of criminalization of terrorist financing.

#### **Criterion 4.1**

- a) Articles 99, 128 and 129 of the AML/CFT Law No. 2016-008 provide for the seizure or confiscation of funds and property relating to the offence of money laundering or terrorist financing.
- b) Articles 99, 128 and 129 of the AML/CFT Law No. 2016-008 also cover proceeds, income and other benefits derived from such proceeds, property that has been used or intended to be used to commit ML and TF offences. Articles 66 and 86 of Law No. 01-080 of 20 August 2001, the Criminal Procedure Code of the Republic of Mali, allows judicial police officers acting in flagrant investigation or preliminary investigation to seize weapons and instrumentalities that have been used to commit the offence. Similarly, Articles 109, 110, 111 and 115 of Law No. 01-078 / of 18 July 2001 on the Control of Drugs and Precursors provide for seizure and confiscation.
- c) Mali has legislative measures that enable the confiscation of property that is the proceeds of crime, or used in, or intended or allocated for use in terrorist financing or attempt to commit terrorist financing, including any movable or immovable property intended or used for the commission of these offences.
- d) Article 128 of the AML/CFT Law No. 2016-008 also covers property of corresponding value.

#### **Criterion 4.2 -**

- a) During investigations, judicial police officers and investigating judges conduct searches and investigations that enable them to identify, trace and assess property on the basis of articles 68, 71, 86, 94, 95, 96 and 97 of Law No. 01-080 of August 20, 2001, of the Criminal Procedure Code of Mali. Articles 121 to 124 of Law No. 01-078 / of 18 July 2001 on the Control of Drugs and Precursors are also related to the detection of laundered property.
- b) The investigating judge may prescribe provisional measures which render the property inaccessible; in particular, at the expense of the State, he may prescribe the seizure or confiscation of funds and property linked with the offence of money laundering or terrorist financing, which is the subject matter of an investigation including all the elements likely to make it possible to identify them, as well as the freezing of the sums of money and financial transactions relating to the said property under Articles 99 and 125 respectively of

the AML/CFT Law No. 2016-008 and Law No. 01-078/of 18 July 2001 on the Control of Drugs and Precursors The AML/CFT law does not cover provisional measures related to predicate offences.

- c) Malian courts have the legal authority to prevent actions taken to prejudice the ability to freeze or recover property that is subject to such decisions. It is unclear whether the courts could void these actions.
- d) Authorities can take other appropriate investigative measures through the powers described in R.31.

**Criterion 4.3** - The rights of bona fide third parties are protected by Malian legislation according to 101, 107 and 129 of Law No. 2016-008.

**Criterion 4.4** - Properties seized by the courts and tribunals in Mali are managed by the registries of these courts in accordance with Article 97 of the Criminal Procedure Code. If retention of a property is not required to establish the facts or safeguard the rights of the parties, the examining magistrate may authorize the Registrar to deposit them in *Caisse des Dépôts et Consignation* which was established by the Law No. 063-77 / AN-M of December 27th, 1963, to among others things, receive, administer and keep for as long as necessary, within the legal and administrative circumstances provided, the property or sums that need to be protected either because of its origin or the dispute.

### **Conclusion and weighting**

The Republic of Mali has not shown that it has taken measures to void actions that undermine the country's ability to freeze or seize property subject to confiscation. In addition, Mali has also not shown that it has mechanisms to dispose of property that has been frozen seized or confiscated. **Mali is rated Largely Compliant with Recommendation 4.**

### **Recommendation 5 - Terrorist Financing Offence**

Recommendation 5 was formerly rated non-compliant with this Recommendation mostly because TF was not criminalized. Mali has since adopted the 2010 Uniform Law on CFT and the AML/CFT Law No. 2016-008.

**Criterion 5.1** - The TF offence is criminalized under Article 8 of the AML/CFT Law No. 2016-008 in accordance with the provisions of Article 2 of the UN Convention for the Suppression of TF (TF Convention). Article 8 criminalizes the commission of terrorist acts committed by a natural or legal person who, by any means, directly or indirectly, has deliberately provided or collected property, funds and other financial resources with the intention to use them, or knowing that they will be used in whole or in part, for the commission of terrorist acts. Article 1 paragraph 1 defines a terrorist act in accordance with Article 2(a) and (b) of the TF Convention.

**Criterion 5.2** - The TF offence only covers the financing of terrorist acts including terrorist acts by a terrorist, group of terrorists or terrorist organization. It does not cover the financing of a terrorist organization or an individual terrorist where a specific act of terrorism is not involved. In addition, the provisions do not explicitly state that the TF offence will be established even in the absence of a link to one or more specific terrorist acts.

**Criterion 5.2 bis** - The TF offence does not include financing the travel of persons who travel to a state other than their state of residence or nationality, with the intent to commit, organize or prepare acts of terrorism, or to participate in them or to provide or receive training in terrorism.

**Criterion 5.3** - The TF offence applies to any funds or other assets whether from a legitimate or illegitimate source.

**Criterion 5.4** - Article 8 (4) of the AML / CFT Law No. 2016- 008 provides that the TF offence does not require that the funds or other assets were actually used to carry out or attempt a terrorist act(s); or that it should be linked to a specific terrorist act.

**Criterion 5.5** - Article 8 also provides that knowledge or intent as an element of the TF offence may be inferred from objective factual circumstances.

**Criterion 5.6** - The AML / CFT Law No. 2016-008 provides for proportionate and dissuasive criminal sanctions applicable to natural persons convicted of financing terrorism. Article 119 of the same law provides for criminal penalties for natural persons. These include a minimum of ten years' imprisonment and a fine of not less than five times the value of the property or funds in respect of which terrorist financing has been carried out. Article 120 provides for aggravating circumstances that double the penalties of Article 119. These aggravating circumstances arise when the terrorist financing offence is committed habitually or by using facilities provided for the purpose of a professional activity or the perpetrator is in a state of recidivism (convictions secured abroad are taken into account to establish recidivism) or when the offence of financing terrorism is committed by an organized group. Article 122 provides for additional (optional) criminal penalties for natural persons. This includes among other things (i) the definitive prohibition of residence in the national territory or prohibition for a duration of three to seven years, pronounced against any foreigner that has been convicted, (ii) the definitive prohibition or temporary prohibition for a period of five to ten years from practicing the profession or activity in respect of which the offence was committed and the prohibition from the exercise of a public office, (iii) the forfeiture of the property or a thing that was used or intended to be used in the commission of the offence or the object that is the product of the offence, except for property subject to restitution. Finally, Article 123 provides that no suspended sentences should be ordered for terrorist financing offences.

**Criterion 5.7** - The AML / CFT Law No. 2016-008 provides for criminal penalties that are dissuasive for legal persons. Article 125 of the law provides that legal persons other than the State may be sentenced to one or more of the following penalties, exclusion from public contracts, definitively or for a period not exceeding ten years, the confiscation of the property that was used or was intended to be used in the commission of the offence or the property that is the product of the offence, placement under judicial supervision for a period not exceeding five years, the prohibition, to carry on directly or indirectly one or more professional or social activities in connection with which the offence was committed for a period not exceeding ten years, the definitive closure or a closure for a period of ten years of one or more of the establishments of the enterprise used to commit the criminal acts, the dissolution, where such establishments were created to commit the criminal acts, the display of the decision pronounced or dissemination thereof, by the written press or by any means of audio-visual communication, at the expense of the convicted legal person. Apart from the above criminal sanctions, the supervisory authority with disciplinary power may issue dissuasive disciplinary sanctions including withdrawal of license.

**Criterion 5.8** - Article 8 (3) of Law No. 2016-008 provides that an attempt to commit a terrorist financing offence or to aid, incite or assist a person to commit terrorist financing, or facilitating its execution is also an offence of financing terrorism.

**Criterion 5.9** - Article 1 paragraph 16 of Law No. 2016-008 cites the offence of financing of terrorism as one of the underlying offences of ML.

**Criterion 5.10** - Article 4 of Law No. 2016-008 takes this criterion into account as follows: “The offences defined in Article 7 and 8 of this law are applicable to any natural or legal person and any organization justiciable in Mali regardless of the place where the act was committed.”

### **Weighting and conclusion**

The adoption of the Uniform Law on AML/CFT has resolved some of the shortcomings identified in the 2008 MER. However, Mali's legislation does not cover the issue of financing an individual terrorist or terrorist organizations or financing the travel of foreign terrorist fighters, as indicated by the resolutions United Nations, including resolutions 2178 (2014) and 2253 (2015). Given the country's risk and context, more weight is given to the deficiency under Criterion 5.2. **Mali is rated Partially Compliant with Recommendation 5.**

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

In the first Mutual Evaluation Report (MER), Mali was rated Non-compliant on SRIII which corresponds to the current R6. The main gaps identified were: that the regional mechanism for freezing of funds under Resolution 1267 was incomplete and too restrictive due to the lack of complementary national arrangements for Resolution 1267; the lack of a legal framework for the implementation of Resolution 1373. Since its evaluation, several legislative provisions have been adopted to strengthen Mali's legal framework. These include Decree No. 2015-0230 / P-RMDU of 02 April 2015 on the modalities of implementation of administrative freezing of funds and other financial resources of terrorists, persons who finance terrorism and terrorist organizations; and Law No. 2016-008.

**Criterion 6.1** - With respect to the designations made pursuant to the United Nations Security Council Resolutions 1267/1989 (Al Qaeda) and 1988 (hereinafter the "United Nations Sanctions Regime") Mali has implemented this criterion as follows:

- a) Article 3 of Decree No. 2015-0230 / P-RMDU of April 2, 2015 identifies the Ministry of Finance as the competent authority responsible for proposing names of persons and entities that should be subject to freezing action to the relevant UN Committee.
- b) Mali has mechanisms to identify targets for designation but the criteria set out in Decree No. 2015-0230 / P-RMDU of April 2, 2015 are not detailed.
- c) Decree No. 2015-0230 / P-RMDU of April 02, 2015 does not set down the evidentiary standard of proof required to propose a designation. The decision to designate is not conditional upon the existence of a criminal proceeding.
- d) The AML/CFT Law No. 2016-008 covers designation procedures under United Nations sanction regimes (Article 100 paragraph 3).
- e) The obligation to provide relevant and detailed information is not stipulated in the law.

**Criterion 6.2** - With regard to the designations for UNSCR 1373, Mali has implemented this criterion as follows:

- a) The National Commission 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) Mali has a mechanism to identify designation targets, but all the criteria for designation, as set forth in UNSCR 1373 are not covered under Decree No. 2015-0230 / P-RMDU of 02 April 2015 (particularly persons and entities acting on behalf of, or at the direction of, such persons or entities, the associates or entities controlled directly or indirectly by it).
- c) Decree No. 2015-0230 / P-RMDU of 02 April 2015 obliges the National Commission to examine a request for designation within 10 days. However, the Decree does not specify the standard of proof required to determine whether a person or entity should be designated.
- d) The National Commission examines the applications for designation but Decree No. 2015-0230 / P-RMDU of 2 April 2015 does not set down the criteria of proof required to determine whether a person or entity should be designated. Moreover, the decree does not specify that designations should not be subject to the existence of criminal proceedings.
- e) The legal framework does not address situations where Mali makes a request to a foreign country to give effect to actions initiated under the freezing mechanisms.

**Criterion 6.3** -

- (a) Decree No. 2015-0230 / P-RMDU of 02 April 2015 does not provide for procedures or mechanisms to collect or solicit information to identify persons and entities that meet the criteria of the designation;
- (b) Article 100, para. 5, requires reporting entities to freeze without prior notice to the designated person or entity.

**Criterion 6.4** - Article 100 paragraph 4 provides that: "the competent authority shall order, by decision, the immediate freezing of the property, funds and other financial resources of the persons or entities designated by the United Nations Security Council pursuant to resolutions relating to the fight against the PF. The text does not mention TF. Under Article 4 of Decree No. 2015-0230 / P-RMDU of 02 April 2015 the Minister of Finance orders administrative freezing of funds and other financial resources of targeted persons without delay.

**Criterion 6.5** - The legal framework in Mali empowers the relevant competent authorities to apply targeted financial sanctions as follows:

- a) The competent authority is empowered to order all natural and legal persons in the country to freeze funds and other property without delay and without prior notification (Article 100, paragraph 5 of Law No. 2016-008)
- b) The freezing obligation covers the funds, property and other proceeds of the property that are owned or controlled by the designated person or entity (Article 1, paragraph 30 and 31 (b) of Law No. 2016-008, Article 100 (4) of the Law No. 2016-008). However, assets and funds do not include economic resources. Similarly, the funds and other assets of persons and entities acting on behalf of or on the instructions of designated persons or entities are not targeted.
- c) The law prohibits reporting entities from making funds and assets economic resources 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 Law No. 2016-008, Article 100 Paragraph 7 and 8 of the Law No. 2016-008). The law also strictly prohibits reporting entities from providing or continuing to provide services to the natural

or legal persons, entities or bodies that are designated. Although, Article 100 also states that “*It is prohibited to perform or participate, knowingly and intentionally, in operations the purpose or effect of which is to circumvent, directly or indirectly, the provisions of this article*” Nevertheless, the law only expressly prohibits reporting entities; nationals or other persons are not expressly prohibited from making funds available to designated persons and entities.

- d) Article 101 of the Law N ° 2016-008, provides for a communication mechanism but is not specifically addressed to the financial sector and to the DNFBPs and no information is provided to demonstrate that the communication contains clear guidelines addressed to these entities. However, Regulation 14/2002 requires BCEAO to distribute the lists of designated persons to banks and financial institutions.
- e) Article 100 of Law No. 2016-008 of 17 March 2016 imposes an obligation on financial institutions and DNFBPs to report all assets frozen or actions taken in compliance with the requirements of the relevant UNSCRs to competent authorities.
- f) Remedies are provided to protect bona fide third parties (Article 105 of Law No. 2016-008).

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

**Criterion 6.6** -The following procedures for *de-listing, unfreezing and permitting access to frozen funds or other assets apply in Mali*

- a) The provisions of Article 107 of Law No. 2016-008 states that a natural or legal person may challenge a freezing order in accordance with the relevant procedures of these Resolutions, but specific procedures to submit de-listing requests to the relevant UN sanctions Committee are not set out in Decree No. 2015-0230 / P-RMDU of April 02, 2015.
- b) According to the Decree No. 2015-0230 / P-RMDU of April 2nd, 2015 the National Commission has the power to examine requests for unfreezing funds and to amend the national list as appropriate.
- c) The National Commission is authorized, upon request, to review a designation decision but the decree does not set down detailed procedures in this regard.
- d) For designations based on the 1988 and 1989 UNSCRs, Mali refers listed persons and entities to the appropriate procedure provided under UN Security Council Resolutions (Article 107 paragraph 2 of Law No. 2016-008 and Article 10 of Decree 2012-1136).
- e) The same applies to designations made on the basis of Al-Qaeda sanctions. Persons or entities concerned may initiate de-listing procedures. Malian law refers listed persons and entities to the appropriate procedure provided under UN Security Council Resolutions.
- f) A person inadvertently affected by a freezing action can lodge an appeal with the competent authority that ordered the freeze. (Article 107(1) Law No. 2016-008) and the National Commission is responsible for examining requests for de-freezing under Decree No. 2015-0230 /P-RMDU of 02 April 2015.
- g) Article 101 of Law No. 2016-008 provides for a communication mechanism but is not specifically addressed to the financial sector and to the DNFBPs and no information is provided to show that this communication contains clear guidelines addressed to these entities.

**Criterion 6.7** - Article 103 of Law No. 2016-008 provides access to frozen funds and other property for basic expenses and certain other types of expenses.

#### **Weighting and conclusion**

Mali has adopted a mechanism to implement targeted financial sanctions related to the financing of terrorism, but improvements should be made to ensure that Decree No. 2015-0230 / P-RMDU of April 2, 2015, is fully compliant with the FATF standards and takes account of all the relevant criteria including: clarifying the criteria for identifying targets; specifying the evidentiary standard of proof required to determine whether a person or entity should be designated; establishing clear obligations to provide relevant and detailed information regarding the criteria for designation, as set forth in UNSCR 1373; clearly specifying that designations should not be subordinated to the existence of criminal proceedings; setting down procedures or mechanisms to collect or solicit information to identify persons and entities that meet the criteria of the designation; ensuring that the scope of funds and assets subject to freezing measures include economic resources and funds and other assets of persons and entities acting on behalf of or at the direction of designated persons or entities; and providing specific guidance to the financial sector and DNFBNs. **Mali is rated Partially Compliant with respect to Recommendation 6**

### **Recommendation 7 - Targeted financial sanctions related to proliferation**

In Mali's last evaluation, targeted financial sanctions related to proliferation financing was not included in the Recommendations.

**Criterion 7.1** - The appropriate competent authority is required to order by decision, the immediate freezing of the property, funds and other financial resources of the persons or entities designated by the United Nations Security Council, in accordance with the title of the resolutions relating to the fight against the financing of the proliferation of weapons of mass destruction (Article 100 paragraph 4 of Law No. 2016-008).

**Criterion 7.2** - The authorities responsible for the implementation and enforcement of targeted financial sanctions in Mali are the National Commission and the Ministry of Finance.

- a) The AML / CFT law obliges all natural and legal persons to freeze the funds and assets of designees without delay. (Article 100 paragraph 5 of Law No. 2016-008).
- b) The AML / CFT law requires the freezing of funds and other assets of designees. However, the funds or other assets that are jointly owned or controlled, directly or indirectly by designees or the funds and other property of persons and entities acting on behalf of or on the direction of designated persons or entities are not covered.
- c) Reporting entities are strictly prohibited from making frozen funds available to designated persons (Article 100, 7 Law No. 2016-008). Other nationals are not expressly prohibited from making funds available to designated persons and entities.
- d) Mali has communication mechanisms, including by publication in the official gazette. However, this is not specifically directed at the financial sector and DNFBNs and it is unclear whether this communication contains clear guidelines for financial institutions and DNFBNs.
- e) FIs and DNFBNs are required to report any assets frozen or actions taken in related to designed persons or entities. (Article 100 (6) Law No. 2016-008).
- f) There are measures to protect bona fide third parties (Article 102 and 105 Law No. 2016-008).

**Criterion 7.3** - Mali requires financial institutions and other reporting entities to disclose all frozen assets to the competent authority (Article 100 paragraph 5 and 6, Law No. 2016-008). The Banking Commission also monitors compliance with the implementation of TFS relating

to PF within the banking sector. It appears that no express sanctions are prescribed in law for failure to comply with Recommendation 7.

**Criterion 7.4** - The AML/CFT Law No. 2016-008 lays down procedures for submitting de-listing requests to the Security Council when a person no longer meets the designation criteria as follows:

- a) The provisions of Article 107 specify that any challenge of a freezing action ordered pursuant to a UN resolution must comply with the appropriate procedure provided for by that resolution without expressly specifying recourse to the focal point.
- b) A procedure for contesting the freezing of funds that may have occurred by mistake is provided for in Article 107 of Law No. 2016-008.
- c) The possibilities of authorization of payment or restitution are provided for by Articles 103 and 105 of Law No. 2016-008.
- d) Mechanisms for communication de-listings and unfreezing exists. However, the procedures are not specifically directed at the financial sector and DNFBPs and there appears to be no guidance provided to these sectors.

**Criterion 7.5** - As regards contracts, agreements or obligations that occurred before the date on which the accounts were subject to targeted financial sanctions, Law No. 2016-008 permits derogations in order to honor existing contracts at the time of the entry into force of the sanctions:

- a) This requirement is provided by Article 102 of Law No. 2016-008. “Funds or other financial resources due under contracts, agreements or obligations concluded or done prior to the entry into force of the decision on the freezing of funds shall be deducted from the frozen accounts. The proceeds of the aforementioned funds, instruments and resources, as well as the accrued interest, shall be paid into the said accounts”.
- b) Article 105 of Law No. 2016-008 authorizes payment due under a contract entered into prior to the listing of a person. However, the law is silent on the requirements for the exemptions set by Resolution 2231. In addition, Article 105 does not apply to entities.

### **Weighting and conclusion**

Mali has adopted a legal framework to implement targeted financial sanctions related to proliferation. Nevertheless, 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 funds and other assets of persons and entities acting on behalf of or at the direction of designated persons or entities, only reporting entities are prohibited from providing or continuing to provide services to or for the benefit of designated persons or entities and there are no clear guidelines for financial institutions and DNFBPs. It is important to note that the current mechanism for applying targeted financial sanctions targets only TF and not the PF. Therefore, Mali should amend Decree No. 2015-0230 / P-RMDU of April 2, 2015 to include PF. **Mali is rated Partially Compliant with Recommendation 7.**

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

In its first MER, Mali was rated non-compliant with these requirements. The main gaps identified were that: associations were not subject to any specific measures to prevent their misuse for terrorist financing purposes; there was a lack of concrete awareness-raising measures to prevent funds or other assets collected or transferred from being diverted to finance terrorism

and there was an absence of regulation of the sector. Since then, legislative provisions have been adopted to strengthen the legal framework to regulate the sector. Specifically, the AML/CFT Law No. 2016-008; and Law No. 0055 / of July 28, 2011, establishing the Directorate General of Territorial Administration.

**Criterion 8.1** - Mali has implemented obligations under Recommendation 8 as follows:

- a) The definition of NPOs under Mali's AML/CFT law is consistent with the FATF definition of NPOs. The law describes a non-profit organization as any association, foundation, non-governmental organization constituted under the laws and regulations in force, whose main purpose is the collection or distribution of funds for charitable, religious, cultural, educational, social or confraternal, or for other types of good works. The National Directorate of Religious Affairs of the Ministry of Religious Affairs and Cults particularly monitors religious NPOs and in February 2018 initiated a National Policy for the Prevention and Combating of Violent Extremism and Terrorism. It however does not have a specific mandate or strategy in relation to CFT. The supervision or monitoring of these NPOs is not based on a comprehensive risk assessment of the NPO sector even though authorities have deduced that the religious NPOs are most likely to be abused for TF purposes Mali is yet to conduct a comprehensive sector review to identify the characteristics and types of NPOs most at risk of TF abuse.
- b) Law No. 0057 of July 28, 2011, and Decree No. 2011-53 / P-RM of September 13, 2011, establishing the Organization and Operating Procedures of the Directorate General of Territorial Administration (DGAT) attributes the NPO supervision to the DGAT but Mali has not identified the nature of the threats posed by terrorists to non-profit organizations which are at risk or how terrorist actors abuse these non-profit organizations.
- c) Mali has not examined the adequacy of measures, including laws and regulations, relating to the subset of the non-profit organization, which may be exploited for terrorist financing purposes.
- d) Mali does not periodically re-evaluate the NPO sector or review new information on potential sector vulnerabilities to terrorist activities to ensure the effective implementation of the measures to prevent abuse of the sector.

**Criterion 8.2** -

- a) The measures provided for in Articles 42 and 43 of Law No. 2016-008, were designed to help ensure the integrity of NPOs and to foster public confidence.
- b) Mali has undertaken training to sensitize certain NPOs about the vulnerabilities of NPOs to terrorist financing abuse and terrorist financing risks, and the measures that NPOs can take to protect themselves against such abuse. But these training programmes did not involve the majority of NPOs and the donor community.
- c) Mali has not indicated that any work has been done with non-profit organizations to develop and refine best practices and to address risks and vulnerabilities related to terrorist financing.
- d) Article 43 of Law No. 2016-008 stipulates that NPOs must deposit all sums of money that have been remitted to them as donations or as part of the transactions they are required to make, in a bank account, a credit institution or an approved decentralized financial system.

**Criterion 8.3** - Mali has not completed a comprehensive risk assessment of the features and types of NPOs that may be vulnerable to TF abuse and, therefore, has not taken steps to promote a risk-based approach to supervision or monitoring of NPOs that may be at risk of TF abuse.

**Criterion 8.4** - Although dissuasive sanctions are provided by the AML/CFT Law No. 2016-008, the supervisory powers of the DGAT are limited. Besides, Mali has not demonstrated that the risk-based measures in criterion 8.3 are being applied to NPOs.

**Criterion 8.5** -

- a) Mali has not demonstrated that there is effective cooperation, coordination and information-sharing between competent authorities or organizations that have relevant information on NPOs.
- b) Mali has not demonstrated that there is sufficient investigative expertise as well as adequate capability to examine NPOs suspected of being exploited by terrorist organizations, or actively supporting, terrorist activities or terrorist organizations.
- c) Article 42 (4) of Law No. 2016-008 stipulates that NPOs must keep all records of their transactions for a period of ten years and make them available to the authorities. Competent authorities have access to information on the administration and management of NPOs (including financial and programmatic information) during an investigation.
- d) When it is suspected that an NPO is being used for illegal purposes, the FIU has the power to investigate and demand that the NPO should respond to any request for an investigation. Besides from this, there is no mechanism to share this information quickly with the relevant authorities.

**Criterion 8.6** - Mali has not designated an authority to respond to requests for international information concerning an NPO suspected of TF or supporting terrorism in any way.

**Weighting and conclusion**

Mali has not conducted a comprehensive assessment that permits the country to identify the features and types of NPOs that are likely to be at risk of terrorist financing abuse and the nature of threats posed by terrorist entities to those NPOs. There are no risk-based supervision/oversight measures in place and no competent authority has been designated to respond to international requests for information on NPOs suspected of TF or supporting terrorism in any other way. In addition, Mali has not demonstrated that the relevant authorities are working with NPOs to develop best practices for dealing with TF risk. **Mali is rated Non-Compliant with Recommendation 8.**

**Recommendation 9 - Acts of Professional Secrecy of Financial Institutions.**

Mali was rated non-compliant with these requirements in the first evaluation of its AML / CFT system in 2008. The deficiencies identified in that assessment relate to the lack of provisions to ensure that professional secrecy does not interfere with the exchange of information between financial institutions. Mali promulgated the AML/CFT Law No. 2016-008 of 17 March 2016 to correct the deficiencies identified.

**Criterion 9** - Article 93 of the AML/CFT Law No. 2016-008 states that for the purposes of obtaining evidence of money laundering and financing of terrorism including the location of the proceeds of crime, the investigating judge may order, according to the law for a fixed period of time, without being subject to professional secrecy, various actions, including those provided for in paragraphs 1, 2, 3, 4, 5 and 6. Article 96 of the same law states that notwithstanding any statutory, legislative or regulatory provisions to the contrary, professional secrecy may not be

invoked by the persons referred to in Articles 5 and 6 (reporting entities) to refuse to provide information to supervisory authorities and the FIU, or to make the declarations provided for by this law. The same applies to the information required in the course of an investigation into money laundering and terrorist financing offences ordered by the investigating judge or under his control, and by the agents of the State responsible for detecting and repressing the said offences. Thus, officials from competent authorities can access the information they require to properly perform their functions in combating ML or FT. Article 97 of the said law also states that no proceedings for breach of secrecy may be instituted against the persons referred to in Articles 5 and 6 or their officers, servants or employees who, in good faith, have transmitted information or reports of suspicion provided for in Article 79 of this law, under the conditions prescribed by the applicable laws and regulations or when such persons have communicated information to the FIU pursuant to Article 60. The provision of Article 53 (paragraph 3) of the framework law regulating the banking sector at the level of the West African Monetary Union (UMOA), states that professional secrecy cannot be invoked either to the Banking Commission or Central Bank, or the judicial authority acting in criminal proceedings. Article 54 of the same law also states that the provisions of Article 53 apply to decentralized financial institutions and the National Post Corporation with respect to financial services operations and postal checks. The sharing of information between competent authorities, domestically and internationally are covered under Articles 93 96 and 97 of the AML/CFT Law No. 2016-008 <sup>29</sup> and there are generally no barriers to information exchange between financial institutions in the context of Recommendations, 13, 16 and 17.

## **Weighting and conclusion**

**Mali is rated Compliant with Recommendation 9.**

## **Recommendation 10 - Customer due diligence**

Mali was rated non-compliant with the requirements of this recommendation during its first mutual evaluation in 2008 due to the following shortcomings: lax identification requirements particularly as regards beneficial owners; absence of ongoing due diligence, absence of the requirement to obtain information on the purpose and nature of the relationship; limited implementation of CDD measures by the banking sector and absence of implementation of CDD measures in non-bank financial institutions. Mali took measures to correct the shortcomings identified in its mutual evaluation report by adopting the AML/CFT Law No. 2016-008.

**Criterion 10.1** Article 20 (2) of the AML/CFT Law No. 2016-008 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-**

- a) Article 18 of the AML/CFT Law No. 2016-008 covers customer due diligence obligations. Reporting entities are required to identify the customer and, where applicable, the beneficial owner of the business relationship by all suitable means. Reporting entities are also required

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<sup>29</sup> Articles 75, 76, 86(4) and (8) and 118

to verify the particulars of the identification documents presented by any appropriate means when establishing a business relationship and verify these identification documents upon presentation. These obligations are also taken into account by Article 19, 26 and 30 of the same law. Provisions relating to procedures and internal control are covered under Article 25 of Law 2016-008.

- b) Article 29 of the AML/CFT Law No. 2016-008, stipulates that reporting entities are required to identify occasional customers and, where applicable, the beneficial owner of the transaction and to verify their identity when the amount of the transaction or related transactions exceeds ten (10 million) CFA francs (\$17,353). In the case of authorized foreign exchange dealers when the amount of the transaction or related transactions exceeds five (5 million) CFA francs (\$8,676), 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 francs (\$1,735) verification is also required. Identification must 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.
- c) These obligations are covered under Article 26 of the AML/CFT Law No. 2016-008, which states that financial institutions are required to identify their customers and, the identity and powers of persons acting on their behalf, by means of independent and reliable source documents, data or information, in particular when carrying out occasional transactions under the conditions laid down in Article 29 of the same law. Under Article 29, CDD is required regardless of the amount when the transaction involves wire transfer.
- d) Article 18 of the AML/CFT Law No. 2016- 008 provides that financial institutions shall identify their occasional customers and, where applicable, the beneficial owner of the business relationship, when they suspect that the transaction could involve money laundering and terrorist financing or (under the conditions provided for by the relevant regulations) when the transactions are of a certain nature or exceed a certain amount. Similar provisions are also outlined in Article 4 of Instruction No. 01/2007/RB /2007 of 2 July 2007 on combating money laundering in financial institutions and in the BCEAO Instruction No. 007-09-2017 on AML/CFT (Article 5, 7 and 8).
- e) Article 31 states that when financial institutions have good reason to believe that the identity of their customer and the identification elements previously obtained are no longer accurate or relevant, they shall resort to another round of customer identification.

#### *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 (Articles 18 (1) and 19 (1) of Law No. 2016-008). Provisions relating to the identification of customers, the identification of a natural person, the identification of a legal

person, the identification of an occasional customer are also laid down in Articles 26, 27, 28 and 29 of the same Act. However, there is no provision for legal arrangements.

**Criterion 10.4** - Article 26 of the AML/CFT Law No. 2016-008 provides that financial institutions are required to identify their customers and, where applicable, the identity and powers of persons acting on their behalf, by means of independent and reliable documents, sources, data or information. Article 28 (1) of the same law also provides that the identification of a legal person, a branch or a representative office implies the obtaining and verifying information relating to the company name, the address of the registered office, the identity and powers of the partners and company officers as mentioned under Law No. 2016-008 or their counterparts under foreign law, and proof of legal constitution. The identification of a natural person involves obtaining particulars of the person and the verification of the identity of a natural person which requires the submission of valid, original and official documents.

**Criterion 10.5 - Articles 18 and 29** of the AML/CFT Law No. 2016-008 provides that prior to entering into a business relationship with a customer or assisting a customer with a transaction, reporting entities must identify the customer and, where applicable, the beneficial owner<sup>30</sup> of the business relationship by appropriate means and must also verify their identity through presentation of any written and reliable document. Reporting entities are also required to identify the occasional customer and, where applicable, the beneficial owner of the transaction and verify these identification elements on the presentation of any reliable written document. Where it is not certain whether the customer is acting on his own account, the financial institution shall inquire by any means as to the identity of the true “principal” (Article 30). The requirement to identify the beneficial owner, “*where applicable*” is not in keeping with the standards. Mali however explained that the law requires reporting entities to identify beneficial owners when they do not know who the beneficial owners are. However, if the information available makes it possible to know or identify the beneficial owner, (i.e. when the financial institutions are certain that a customer is acting on his own account) then it is may not be necessary in that case to carry out identification in that case.

**Criterion 10.6** - Reporting entities are required to collect and analyze elements of information from the list drawn up for this purpose by the competent authority, which will help to enhance appropriate knowledge of their customers and the purpose and nature of the business relationship, in order to assess the risk of money laundering and terrorist financing. (Article 18 and 19 (paragraph 1) of the AML/CFT Law No. 2016-008. Article 20 of the law states that prior to entering into a business relationship with a customer, reporting entities must carefully examine the transactions carried out to ensure that the transaction is consistent with their knowledge of their customers, their business activities, their risk profile and, where necessary, the source of their funds.

**Criterion 10.7(a)** - The steps to be taken regarding conducting ongoing due diligence, including transaction monitoring and updating and reviewing records are covered in Article 20 of the AML/CFT Law No. 2016-008, which stipulates that reporting entities must conduct ongoing due diligence on every business relationship and carefully examine the transactions carried out to ensure that they comply with their knowledge of their customers, their business activities, their risk profile and, where necessary, the source of their funds.

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<sup>30</sup> Article 1 of Law No. 2016-008, point 12, defines a beneficial owner as the natural person or persons who ultimately own or control a customer and/or the natural person on whose behalf a transaction is carried out. This definition also includes persons who ultimately exercise effective control over a legal person or legal arrangement as defined in point 21 of the said Article. The definition of beneficial ownership as applicable under the law, is in line with the FATF definition

**Criterion 10.7(b)** - The provisions of Articles 19, 20 21 and 35 of the AML/CFT Law No. 2016-008 apply to this criterion. 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.

*Specified CDD measures required for legal persons and arrangements*

**Criterion 10.8** - There is no explicit provision in the law that requires FIs to understand the nature of the customer's business and its ownership and control structure, where customers are legal persons or legal arrangements. However, Article 20 of the AML/CFT law states that reporting entities must know their customers (both legal and natural) including their business activities. Article 28 states that for legal persons they should identify and powers of partners and executives. Again, although there is no direct obligation for FIs to identify and take reasonable measures to verify the identity of beneficial owners for customers that are legal arrangements, Article 79 states that any transaction for which the identity of the principal or beneficial owner, or that of the settlor of a trust fund or any other assets allocation management instrument remains doubtful despite due diligence, should be reported to the FIU.

**Criterion 10.9** - Article 28 of the AML/CFT Law No. 2016-008 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 AML/CFT Law or their equivalents in foreign law, evidence of its legal incorporation. There is no provision on identifying and verifying the identity of legal arrangements.

**Criterion 10.10** - Article 30 of the AML/CFT Law No. 2016-008 states that where it is not certain whether the customer is acting on his/her own account, the financial institution shall use every means to obtain information on the identity of the beneficial owner and carry out verification. Article 1, paragraph 12, of Law No. 2006-008 defines the beneficial owner as: the natural person or persons who ultimately own or control a customer or who ultimately exercise effective control over a legal person or legal arrangement (specifically a natural person that owns more than twenty-five percent of the share capital or voting rights of the company, or exercise, by any other means, the power to supervise the management bodies, administration or management of the company or the overall membership of its associates);and/or the natural person on whose behalf a transaction is carried out. This definition also includes instances defined under paragraph 12 of the same article. Thus, impliedly, FIs are to take measures to identify persons who own, control or exercise effective control over the customer.

**Criterion 10.11** - The AML/CFT Law No. 2006-008 does not explicitly 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). Article 79 of the AML/CFT Law No. 2006-008 however, provides an indirect obligation to verify the identity of legal arrangements.

*CDD for beneficiaries of life insurance policies*

**Criterion 10.12** - Article 18 requires FIs including insurance companies and agents to conduct CDD on both the customer and the beneficiaries of a transaction. Article 39 of the AML/CFT Law No. 2016-008 provides that insurance companies, agents and brokers carrying on 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 premium amounts reach a threshold amount or payments are made under certain conditions. The threshold amount and the terms of payment of premiums are set by a CIMA regulation. Article 13 of Regulation 004/CIMA/PCE/SG/08 of 4 October 2008 of the CIMA Code specifies the applicable thresholds. Articles 8.4, 9, 10 and 12 of Title III of Regulation 004/CIMA/PCE/SG/08 of 4 October 2008 of the CIMA Code address the requirements of this criterion.

**Criterion 10.13** - 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 of Law No. 2016-008). The provisions do not allow verification after the establishment of the business relationship; as indicated under c.10.14 (a) and (b).

**Criterion 10.15** - Article 18 (3) and Article 46 of the AML/CFT Law No. 2016-008 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 identify their customers in accordance with the provisions of Articles 18; 19; 20; 40; 50 to 55 of the AML/CFT Law No. 2016-008. Article 31 of the law states that when financial institutions have reasonable grounds to believe that the identity of their client and previously obtained particulars are no longer accurate or relevant, they must resort to another round of customer identification and identify the client again. 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 their knowledge of their customers, their business activities, their risk profile and, where necessary, the source of their funds (Article 19 and 20 of Law No. 2016-008).

#### *Risk-Based Approach*

**Criterion 10.17** - The provisions of Articles 32, 40, 50; 51 of the AML/CFT Law No. 2016-008 require financial institutions to implement enhanced due diligence measures if the risks are higher. Similar measures are indicated in Article 5 of BCEAO Instruction No. 007-09/2017 of 25 September 2017.

**Criterion 10.18** - Article 46 of the AML/CFT Law No. 2016-008 provides that where the risk of money laundering and terrorist financing is low, reporting entities can apply simplified CDD measures, as provided for in Article 19 of law. Reporting entities are however required to inform the supervisory authority and state the justification for such measures and the basis for concluding that the scope of the measures is appropriate to these risks.

*Failure to satisfactorily complete CDD*

**Criterion 10.19** - Where a financial institution is unable to comply with CDD measures relating to identification of the beneficial owner, the financial institution is required to terminate the business relationship. Article 30(2) of Law No. 2016-008 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.

*CDD and tipping-off*

**Criterion 10.20** - There is no express provision requiring that where financial institutions form a suspicion of money laundering or terrorist financing, and they reasonably believe that performing the CDD process will tip-off the customer, they should be permitted not to pursue the CDD process, and instead should be required to file an STR.

**Weighting and conclusion**

Mali has met the most significant criteria under Recommendation 10. However, there is no explicit provision that requires FIs to understand the nature of a business or ownership and control structure of customer that is a legal person or arrangement's. Financial institutions are not explicitly directed 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. FIs are not explicitly required to include the beneficiary of a life insurance policy as a relevant risk factor in determining whether enhanced CDD measures are applicable. There is no provision requiring that where FIs form a suspicion of ML/TF but believe that performing the CDD will tip-off the customer, they should not to pursue the CDD process and file an STR. **Mali is rated Largely Compliant with Recommendation 10.**

**Recommendation 11 - Record-keeping**

In its first MER, Mali was rated partially compliant with the requirements of this recommendation due to the lack of clarification on the nature of the records kept.

**Criterion 11.1** - Article 35 of the AML/CFT Law No. 2016-008 provides that without prejudice to provisions prescribing more stringent obligations, financial institutions shall retain for a period of ten years, from the closure of their accounts or from the termination of their relations with their usual or occasional clients, documents relating to their identity. They shall also keep documents and records relating to the transactions they carried out, including account books and business correspondence, for 10 years after the transaction has been carried out. Article 13

of Regulation No. 0004 CIMA/PCMA/PCE/SG8 and Directive 030-02/2009 laying down the procedures for drawing up and keeping the financial statements of DFIs and Instruction 017-12/2010 which concerns the organization of internal control within DFIs also address these obligations. Article 5 of BCEAO Instruction No. 007-9-2017 on the application of the Uniform Law on AML/CFT by financial institutions also covers these obligations.

**Criterion 11.2** - Article 35 of the AML/CFT Law No. 2016-008 provides that without prejudice to provisions prescribing more stringent obligations, financial institutions shall retain for a period of ten years, from the closure of their accounts or from the termination of their relations with their usual or occasional clients, all documents relating to customer identity. This refers to all information obtained through CDD process. They shall also keep documents and records relating to the transactions they have carried out, including books of account and business correspondence, for 10 years after the transaction has been carried out.

**Criterion 11.3** - Article 35 of the AML/CFT Law No. 2016-008 stipulates that without prejudice to provisions prescribing more restrictive obligations, financial institutions shall keep documents, including documents relating to customer identity for a period of ten years from the closure of their accounts or from the termination of their relations with their usual or occasional customers. They shall also keep documents and records relating to the transactions they carried out, including account books and business correspondence, for 10 years after the transaction has been carried out. Article 36 of the same law provides that documents relating to the identification obligations provided for in Articles 19, 26 to 31 and 32 of the law, the preservation of which is mentioned in Article 35, shall be communicated to the judicial authorities and state officials responsible for detecting money laundering and terrorist financing offences, acting under a judicial mandate, to the supervisory authorities and also the FIU. BCEAO Instruction No. 007-9-2017, which lays down detailed rules for the application of the Uniform Law on AML/CFT (Article 5) by financial institutions, also covers these obligations. However, there is no provision that stipulates that the transaction records should be sufficient to allow the reconstruction of individual transactions to provide evidence, if necessary, in the prosecution of a criminal activity.

**Criterion 11.4** - Documents relating to the identification obligations provided for in Articles 19, 26, 27, 27, 28, 29, 29, 30, 31, 32 of the AML/CFT Law No. 2016-008, which is kept by reporting entities in accordance with Article 35, should be communicated, to judicial authorities and state officials acting under a judicial mandate, the supervisory authorities and the FIU at their request. (Articles 35, 36).

### **Weighting and conclusion**

There is no express provision that states that transaction records should be sufficient to permit reconstruction of individual transactions. **Mali is rated Largely Compliant with Recommendation 11.**

### **Recommendation 12 - Politically Exposed Persons**

Mali was rated non-compliant with these requirements during the last evaluation of its AML/CFT the system in 2008. The main deficiency noted was the absence of obligations regarding PEPs.

### **Criterion 12.1**

- a) Article 22 of the AML/CFT Law No. 2016-008 on AML/CFT provides that reporting entities must have adequate risk management systems in place to determine whether the client is a politically exposed person and, if so, specific measures referred to in Article 54 of Law No. 2016-008 must be implemented. BCEAO Instruction No. 007-9-2017, on the application of the Uniform Law on AML/CFT by financial institutions, also addresses this criterion.
- b) Article 54 (paragraph 2) of the AML/CFT Law No. 2016-008 requires financial institutions to, without prejudice to the obligations provided for in Articles 18 to 20, 26 and 27 of the said law, take specific measures when establishing business relationships or when conducting transactions with or on behalf of foreign PEPs within the interpretation of Article 1, paragraph 44 of the law. Specifically, financial institutions are required to implement adequate and appropriate procedures, based on risk, to enable it to determine whether the client or a beneficial owner of the client is a PEP and obtain authorization from an appropriate level of management before entering into business with such customers. Article 20 requires FIs to conduct continuous CDD on every transaction. 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) of Law 2016-008 requires financial institutions to take all appropriate measures, depending on the risk, to establish the origin of the assets and the origin of the funds involved in the business relationship or transaction.
- d) Article 54 (4) of the AML/CFT Law No. 2016-008 requires financial institutions to implement adequate and appropriate procedures, based on risk, to determine whether the client or a beneficial owner of the client is a PEP. It requires financial institutions to ensure enhanced ongoing monitoring of the business relationship.

### **Criterion 12.2 -**

- a) There is no distinction between domestic and international PEPs under the law. Article 54 of the AML/CFT Law No. 2016-008 provides that, without prejudice to the obligations provided for in Articles 18 to 20, 26 and 27 of the said law, financial institutions shall take some specific measures when establishing business relations or when carrying out transactions with or on behalf of PEPs, including taking reasonable measures to determine whether a customer or the beneficial owner is such a person.
- b) Article 54(2) of Law No. 2016-008 requires financial institutions to obtain authorization from an appropriate level of management before entering into a business relationship with such customers. Article 54 (4) requires financial institutions to ensure enhanced continuous monitoring of the business relationship.

**Criterion 12.3 -** 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 (Article 1(paragraph 44) of Law 2016-008).

**Criterion 12(4) -** Article 39 of Law No. 2016-008 requires insurance companies, agents and brokers carrying on life and non-life insurance activities to identify their customers and verify

their identity in accordance with the provisions of Article 27 of the law, when the amounts of premiums reach a threshold amount or the payments of premiums are made under certain conditions. The threshold amount and the terms of payment of premiums are set by a CIMA regulation. Provisions are also made in article 54 of the said law. However, no provision is made to determine whether the beneficiaries of the contract or, where applicable, 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. **Mali is rated Largely Compliant with Recommendation 12.**

### **Recommendation 13 - Correspondent Banking**

Mali was rated non-compliant with these requirements during the last evaluation of its system in 2008 due to a lack of obligations relating to correspondent banks. Since the adoption of its MER, Mali has adopted BCEAO Instruction No. 07/09-2017 on the application by financial institutions of the Uniform AML/CFT Law (Article 5) and the AML/CFT Law No. 2016-008

#### **Criterion 13.1-**

- a) Article 38 of the AML/CFT Law No. 2016-008 states that in the case of cross-border correspondent relationships and other similar relationships, financial institutions should, in addition to normal customer due diligence measures: identify and verify client institutions which they have correspondent banking relationships with; collect information on the nature of the client institution's activities; assess the reputation of the client institution and the degree of supervision to which it is subject, on the basis of publicly available information; and assess the controls put in place by the institution to combat money laundering and terrorist financing. The authorized officers (who are typically management staff) of the financial institutions must have previously authorized the relationship with the correspondent bank. Article 53 of the law provides that financial institutions shall collect sufficient information on the contracting institution to know the nature of its activities and to assess on the basis of publicly available and exploitable information, its reputation and the quality of the supervision to which it is subject. These procedures are also covered under Article 5 paragraph 2 and 6 of BCEAO Instruction No. 07/09-2017, on the application by financial institutions of the AML/CFT Uniform Law and in the framework for collecting information annexed to Instruction 07-09-2017. However, the law does not specifically state that exploitable information should including whether the FI has been subject to an ML/TF investigation or regulatory action.
- b) According to Article 38(4) and 53(2) of the AML/CFT Law No. 2016-008, financial institutions are required to evaluate the anti-money laundering and countering-terrorist financing measures put in place by the contracting institution. Provisions are also made in Article 5 al 2 paragraph 6 of BCEAO Instruction No.07-09-2017 on the application by financial institutions of the AML/CFT Uniform Law and the framework for collecting information annexed to Instruction 07- 09- 2017.

- c) According to Article 38 of the AML/CFT Law No. 2016-008, the authorized officials, who are typically from the senior management of financial institutions, must have previously authorized the conclusion of a relationship with the correspondent bank. Article 53 paragraph 3 states that financial institutions must ensure that the decision to enter into a business relationship with the contracting institution is taken by a member of the executive body or any other person authorized for this purpose by the executive body. The requirement is also addressed Article 5 paragraph 12 paragraph 6 of BCEAO Instruction 07-09-2017 and in the context of the information collection framework annexed to Directive 07-09-2017.
- d) Article 38 (1) of the AML/CFT Law No. 2016-008 requires financial institutions to identify and verify the identification of client institutions with which they have correspondent banking relationships. Article 5 paragraph 6 of BCEAO Instruction No. 07-09-2017, on the application by financial institutions of the AML/CFT Uniform Law and its annex stipulates that when establishing the correspondence relationship, each bank must ensure that its partner is a duly 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) 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 under Articles 18 and 19 of the Law No. 2016-008 (Article 53 (paragraph 50 of Law No. 2016-008)).
- b) Article 53(4) permits the transmission of information upon the request of the reporting institution.

**Criterion 13.3 -** Article 52(2) of the Law No. 2016-008 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 provision that explicitly requires the respondent and the correspondent bank to clearly understand the respective AML/CFT responsibilities of each institution and the law does not expressly require FIs to gather information on whether the FI has been subject to an ML/TF investigation or regulatory action. **Mali is rated Largely Compliant with Recommendation 13.**

**Recommendation 14 - Money or Value Transfer Services (MVTs)**

Mali was rated non-compliant with these requirements in the previous evaluation of its AML/CFT system in 2008 due to the nonexistence of a competent authority that can issue the requisite authorization to carry out Money or Value Transfer Services; the absence of

supervision as regards the activities of the money transfer services and the lack of a list of agents. The main steps taken to address the deficiencies identified in Recommendation 14 relate to the adoption of BCEAO Instruction No. 013-11- 2015 of 10 November 2015 on the procedures for engaging in rapid money transfer service and adoption of the AML/CFT Law No. 2016-008.

**Criterion 14.1** - According to Article 87 of the AML/CFT Law No. 2016-008, no one may engage in the professional activity of transferring money or value and currency exchange without obtaining the approval of the competent authority. The competent authority shall lay down the minimum operating conditions, in particular as regards the regular inspection of money or value transfer services and the penalties resulting from non-compliance with the provisions in force. These requirements are also reflected in Regulation R09 2010 of 1 October 2010, governing external financial relations and in BCEAO Instruction 013-11-2015 on the modalities for carrying out the activity of rapid money transfer as a subagent within UEMOA. Under this instruction, natural or legal persons providing money transfer services are required to sign contracts with approved intermediaries or decentralised financial institutions that give them the mandate to carry out the activity of rapid money transfer on their behalf and under their full responsibility. As such, the aforementioned transfer service providers do not have authorisation but are authorised as soon as the provider enters into a contractual agreement with an authorised intermediary. The lists of natural or legal persons carrying out the transfer activity or sub-agents are transmitted annually by banks and SFIs to the supervisory authorities, namely the BCEAO, the Banking Commission and the Minister of Finance.

**Criterion 14.2** - Natural or legal persons that provide money or value transfer services and are authorised to operate are registered. Article 7 (1) of Directive 013-11-2015 stipulates that the list of sub-agents (MVTs operators) held by each mandator should be communicated annually to the BCEAO, Banking Commission and Ministry of Finance. The list of approved intermediaries or sub-agents held by the Banking Commission is published. Authorized intermediaries or sub-agent 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. The national authorities have powers to identify and detect activities of MVTs providers who operate without a licence or without being registered but these powers are not being enforced as proportionate and dissuasive sanctions have not been imposed on illegal MVTs operators.

**Criterion 14.3** - Article 14 of BCEAO Instruction No. 006-07-2011-RFE, concerning the conditions for carrying out manual foreign exchange activity, Article 37 of Instruction No. 008-05-2015, governing the terms and conditions for conducting the business of electronic money issuers in the UEMOA zone and Articles 9 and 10 of Instruction No. 013-11-2015, on the modalities for carrying out the activity of rapid money transfer as sub-agent within UMOA address requirements under this criterion. Instruction No. 013-11-2015 requires natural or legal persons providing money transfer services to sign contracts with approved intermediaries or decentralized financial systems that give them the mandate to carry out rapid money transfer services, on their behalf and under their full responsibility. In this regard, the AML/CFT requirements applicable to approved intermediaries and SFD also apply to them. Under Article 8 of the same instruction, approved intermediaries and SFDs must provide monthly information on the transfer operations carried out by their subagents. Article 87 paragraph 2 of the AML/CFT Law No. 2016-008 stipulates that the competent authority shall lay down the minimum operating conditions, in particular as regards the regular inspection of money or value transfer services and the penalties resulting from non-compliance with the provisions in force.

**Criterion 14.4** - Money or value transfer services providers are not directly accredited or authorized by a competent authority. MVTS providers sign contracts with approved intermediaries and DFIs (mandators). There is also no obligation for the agents of these services to be approved or authorised by a competent authority excepting that the mandators are authorized or licensed by a competent authority.

**Criterion 14.5** - Authorized intermediaries, banks and SFIs, are responsible for the sub-agents and the operations carried out by them, which are bound by the same AML/CFT obligations. There is no obligation for remittance service providers using agents, to integrate them into their AML/CFT programmes and to monitor compliance by these agents with these programmes.

### **Weighting and conclusion**

Mali has not taken any steps to sanction natural and legal persons who provide money and value transfer services without being authorised or registered. Sub-agents of Money transfer services are not approved by a competent authority. **Mali is rated Partially Compliance with Recommendation 14.**

### **Recommendation 15 - New Technologies**

Mali was rated as non-compliant with these requirements in its previous MER for the following reasons: incomplete and unclear obligations; inadequate legal and regulatory framework; and lack of implementation. The main steps taken to improve compliance since the last assessment in 2009 were the adoption of Instruction No. 08-05-2015 of 21 May 2015, on the conditions and procedures for conducting the business of electronic money issuers and the AML/CFT Law No. 2016-008 on AML/CFT.

**Criterion 15.1** - Article 37 of the AML/CFT Law No. 2016-008, requires financial institutions to identify and assess the money laundering or terrorist financing risks that may result from: the development of new products and business practices, including new distribution mechanisms; the use of new or developing technologies in connection with new pre-existing products. The risk assessment must take place before the launch of new products or new business practices or before the use of new or developing technologies. Financial institutions must take appropriate measures to manage and mitigate risks. Article 13 of the CIMA Code governs the powers of collection and repayment of premiums. The design and distribution of insurance products is the responsibility of insurance companies. The broker should identify and assess the money laundering and terrorist financing risks that may result from the development of new products and business practices, including new distribution mechanisms; and the use of new or developing technologies in conjunction with new pre-existing products. Instruction No. 007-09-2017 of 25 September 2017, on the application by financial institutions of the Uniform Law on AML/CFT in Article 5 and by Instruction No. 008-05-2015, governing the terms and conditions for the conduct of the activities of electronic money issuers in UEMOA also address these requirements.

**Criterion 15.2(a)** - These requirements are covered Article 37 (2) of the AML/CFT Law No. 2016-008 and also by Instruction No. 008-05-2015, governing the conditions and modalities for the conduct of the activities of electronic money issuers within UEMOA.

**Criterion 15.2(b)** - These obligations are addressed in paragraphs 1 and 2 of Article 37 of the AML/CFT Law No. 2016-008. The requirements are also addressed by Instruction No. 007-09-2017 of 25 September 2017, on the application by financial institutions of the Uniform Law on AML/CFT in Article 5 and Instruction No. 008-05-2015, on the conditions and procedures for conducting the business of issuers of electronic currencies within UEMOA.

### **Weighting and conclusion**

Mali has met all the criteria for Recommendation 15. **Mali is rated Compliant with Recommendation 15.**

### **Recommendation 16 - Wire Transfers**

Mali was rated as non-compliant with the requirements of this recommendation due to the lack of wire transfers obligations. The main changes to the laws and regulations since the last evaluation are the adoption of Instruction No. 13-11-2015 of 10 November 2015, and the AML/CFT Law No. 2016-008.

**Criterion 16.1-** Article 33 of the AML/CFT Law No. 2016-008 provides that financial institutions making electronic transfers are required to obtain and verify the sender's full name and account number. In a case when the 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, if necessary, the name of the sender's financial institution should be provided. Paragraph 2 stipulates that the financial institution of the sender or originator should also require the name of the beneficiary and the account number of the latter, when such an account is used to make the transfer of funds. Paragraph 3 requires financial institutions to include the information referred to above in the message and payment form accompanying the transfer. If there is no account number, a unique reference number must accompany the transfer. Within the meaning of the law, this provision applies to both national and cross-border transfers.

**Criterion 16.2** - Article 33 (2) and (3) of Law No. 2016-008 provides that the financial institution of the originator also requires the name of the beneficiary and the account number of the beneficiary, when such an account is used to transfer funds. Financial institutions are required to include the requisite information in the message and payment form accompanying the transfer. If there is no account number, a unique reference number must accompany the transfer. In practice, this provision applies to both individual transfers and those made in batches by the same originator.

**Criterion 16.3** - **[Not applicable]** Mali does not apply a threshold. The measures provided for in Article 33 of Law No. 2016-008 apply to all wire transfers.

**Criterion 16.4** - Article 34 of the AML/CFT Law No. 2016-008 stipulates that if financial institutions have electronic transfers that do not contain complete information on the payer, they must take steps to obtain the missing information from the issuing institution or the beneficiary in order to complete and verify the information. In the event that they do not obtain this information, they must refrain from carrying out the transfer and inform FIU accordingly.

**Criterion 16.5** - The provisions of Article 33 of Law no. 2016-008 covers both national transfers and cross-border transfers. Article 33 covers verification of electronic transfers.

Articles 35 and 36 of the same law states that “without prejudice to provisions prescribing more stringent obligations, financial institutions shall keep documents including documents relating to their identity for a period of 10 years, from the time of closure of the accounts or the termination of the relationships with their usual or occasional customers, all records relating to their identity. They shall also maintain records relating to the transactions they executed, including account books and business correspondences, for a period of ten years, after executing 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 the law, to the judicial authorities, State agents responsible for detecting offences of money laundering and terrorist financing, acting within the framework of a court mandate, the supervisory authorities and the FIU”.

**Criterion 16.6** - Article 33 (3) of the AML/CFT Law No. 2016-008 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 Law No. 2016-008 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 from either the beneficiary's financial institution or the appropriate competent authorities.

**Criterion 16.7** - In accordance with Recommendation 11, this measure is taken in Law No. 2016-008. 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 Law 2016-008 takes account of FIs who receive wire payments. The intermediary FI in this category is therefore covered by the aforementioned article which requires the financial institutions that receive wire transfers containing incomplete information on the originator to take measures necessary to obtain missing information in order to supplement and verify the said information. 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 a request from either the beneficiary's financial institution or the appropriate competent authorities within 03 working days of receiving the request from either these entities, as required under criteria 16.6.

#### *Intermediary Financial Institutions*

**Criterion 16.9** - These requirements are outlined in Article 33 (3) of Law No. 2016-008. The information referred to in paragraphs 1 and 2 of Article 33 of the law must appear in the message or the payment form accompanying the transfer. If there is no account number, a unique reference number must accompany the transfer.

**Criterion 16.10** - There is no express obligation 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 in a case 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. The AML/CFT law however, requires records of transaction documents to be kept for a period of ten years.

**Criterion 16.11** - The provisions of Article 34 of Law No. 2016-008 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. However, incomplete data on the beneficiary are not covered.

**Criterion 16.12** - Financial institutions that do not obtain the required originator information or the required beneficiary information are to refrain from executing the transfer and inform the FIU accordingly.

*Beneficiary financial institutions*

**Criterion 16.13** - Where the financial institutions receive wire transfers which do not contain complete originator information, they are required to take steps to obtain this information. The provisions of the law do not cover an instance where the wire transfer does not contain the required beneficiary information. Other measures that may be considered in this regard, are set out in Article 6.6 of BCEAO 07-09-2017, which stipulates that financial institutions must have an information system allowing the identification of suspicious or unusual transactions.

**Criterion 16.14** - There is no specific provision requiring a beneficiary financial institution in the case of 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** - The provisions relating to this criterion are set out in Article 34 of Law No. 2016-008 which requires 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 the FIs do not obtain this information, they are to refrain from executing the transfer and should inform the FIU. Furthermore, Article 5 paragraph 2 of the BCEAO 07-09-2017, stipulates 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 observed in terms of supervision, unusual transactions, detection and analysis of transactions that may be the subject of 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 the AML/CFT Law No. 2016-008 (Article 1 paragraph 35 (d) and Article 87). Any person intending to operate a profession of money or value transfer service must obtain the approval of the relevant competent authority. Also, sub-agents providing money and value 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 Law No. 2016-008 require financial institutions, including MVTS providers, that receive wire transfers with incomplete information about the sender to take the necessary steps to obtain the missing information from the issuing institution or beneficiary, with a view to supplementing and verifying it. If the FIs are unable to obtain this information, they are to suspend the transfer and inform the FIU. In this regard, Instruction N ° 008-5-2015, governing the conditions and modalities of the exercise of the activities of issuers of electronic money in the UEMOA and Article 7 of Instruction N ° 13-11-2015, relative to the procedures for exercising the activity of rapid money transfer as sub-agents within the UMOA, also lays down similar provisions. However, the requirement to file a suspicious transaction report in all countries involved in the suspicious electronic transfer and make relevant transaction information available to the Financial Intelligence Unit, is not explicitly stated in the regulation in force.

**Criterion 16.18** - Article 100 of the AML/CFT Law No. 2016-008 provides that the relevant competent authority shall order, by administrative decision, the freezing of property, funds and other financial resources of the persons or entities responsible for the financing of terrorism. A national list of such persons, entities or bodies may, where appropriate, be drawn up in accordance with Resolution 1373 and subsequent resolutions. Article 104 of the said law requires financial institutions that are ordered by a client, other than a financial institution, to execute on their behalf an out-of-territory transfer of funds or financial instruments for the benefit of a person, an organization or an entity subject to a freezing measure, shall suspend the execution of that order and inform the competent authority without delay. Also, financial institutions receiving from abroad, an order 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, must suspend the execution of the 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**

Mali has met a number of criteria under this Recommendation. The originator and beneficiary information referred to in paragraphs 1 and 2 of article 33 of the law 2016-008 must appear in the message or the payment form that accompanies a wire transfer. However, some gaps were identified. Specifically, the AML/CFT law does not require the beneficiary institution to verify the identity of the beneficiary and keep the information in accordance with recommendation 11, where this has not been done previously. In addition, no obligation is placed on the intermediary FI to keep the information received from the ordering FI or other intermediary FI 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. There is also no provision requiring the beneficiary's financial institution to monitor and identify cross-border wire transfers that lack the 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 AML/CFT law and no obligation is placed on the financial institution of the payer to transmit the information accompanying the transfer to the beneficiary's financial institution or to the prosecution authorities within a period of 03 working days upon receipt of the request. **Mali is rated Partially Compliant with Recommendation 16.**

## **Recommendation 17 - Reliance on Third Parties**

Mali was rated non-compliant with the requirements of this recommendation in its previous MER due to the lack of specific measures in this area.

**Criterion 17.1-** Article 56 of the AML/CFT Law No. 2016-008 states that a third party conducting the CDD must make available to the financial institution, information relating to the identity of the client and, where applicable, the beneficial owner, as well as information relating to the purpose and nature of the business relationship. 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 Law No. 2016-008 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 Law No. 2016-008 states that the third party must impose equivalent anti-money laundering and countering the financing of terrorism obligations as provided in paragraph 2 of Article 46 of the law. 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 -**

(a) Article 91 of the AML/CFT Law No. 2016-008 obliges financial institutions to apply measures at least equivalent to those provided for in chapter 3 of Title II of said law, with regard to customer due diligence and record-keeping in their branches located abroad. Financial institutions should ensure that equivalent measures are applied in their subsidiaries located abroad. These measures provide for CDD, record keeping, enhanced due diligence with respect to PEPs, AML/CTF programs, internal control, etc. Moreover, financial institutions that form part of a group shall implement group-wide policies and procedures, including data protection policies and policies and procedures for sharing information within the group for the purpose of combating money laundering and terrorist financing. These policies and procedures should be implemented effectively at the level of branches and subsidiaries established in the Member States and in third States (Article 89 of Law No 2016-008).

(b) The AML/CFT law does not specify whether the implementation of these customer due diligence measures, record-keeping obligations and AML/CTF programs is controlled at the group level by a competent authority, even though this is done in practice.

(c) In order to prevent AML/CTF risks, Article 89 paragraph 2 of the AML/CFT Law No. 2016-008 obliges representative offices, branches or subsidiaries established in a third country, to apply the group's AML/CTF measures if they are more stringent than those of the host country. In essence, the above provisions require that the supervisory authorities must inform each other where the legislation of a third State does not permit the application of the measures so that coordinated action can be taken to resolve the matter. In a case where the legislation of the third State does not permit the application of the group's measures, FIs are required to take additional measures to deal effectively with AML/CTF risks and inform the supervisory authorities of their state of origin. If the additional measures are not sufficient, the competent authorities of the home State shall consider additional measures, which may even go as far as requesting the cessation of the activities of the financial group in the host State.

## **Weighting and conclusion**

The provisions adopted by Mali under Law No. 2016-008 allow financial institutions to use third parties to carry out customer due diligence measures in accordance with Article 56 of said law. However, the law does not explicitly state that countries relying on third parties should have regard to information available on the level of country risk. **Mali is rated Largely Compliant with Recommendation 17.**

## **Recommendation 18 - Internal Controls and Foreign Branches and Subsidiaries**

Mali was rated partially compliant with the requirements of this recommendation in its previous MER due to the lack of sectoral mechanisms in the non-bank sector, particularly in the microfinance sector; and the lack of effective implementation of internal control obligations for the prevention of money laundering. The main changes made to correct these shortcomings are: the adoption of the Law No. 2016-008 and the instruction of the BCEAO 07-09 2017.

### **Criterion 18.1 -**

- (a) Article 24, paragraph 2 of the AML/CFT Law No. 2016-008 requires FIs to designate a compliance officer responsible for the application of the AML/CTF system at the management level.
- (b) Article 25, paragraph 5 of the AML/CFT Law No. 2016-008, requires FIs to take account of the level of responsibilities assigned to staff and the risks with respect to the AML/CFT when recruiting their staff.
- (c) Article 24, paragraph 3, provides for the on-going training of personnel to assist them in detecting transactions and acts likely to be related to the ML/TF;
- (d) There is no provision for an independent audit function.

### **Criterion 18.2 [Most met]**

(a) - The requirements of this criterion are covered under the AML/CFT Law No. 2016-008, Article 89, which provides that financial institutions that form part of a group shall implement Group-wide policies and procedures, including data protection policies and information sharing policies and procedures within the group for the purpose of combating money laundering and terrorist financing. These policies and procedures are implemented at the branch and subsidiary level, established in member states and in third states. Article 91 of the law provides that financial institutions shall apply measures at least equivalent to those provided for in Chapter III of Title II of the law, on customer due diligence and record-keeping in their branches located abroad. Article 16 of the UEMOA Banking Commission Circular 05-2017 / CB relating to the management of compliance and Article 5 of Instruction No. 007-09-2017 of 25 September 2017 on the financial institutions' application of the Uniform Law on AML / CFT lay down similar provisions.

**Criterion 18.2 (b)** - Uniform Law No. 2016-008 does not specifically define provisions for this criterion.

**Criterion 18.2 (c)** - **Financial** institutions are required to implement data protection measures.

**Criterion 18.3** - Uniform Law No. 2016-008 addresses the requirement (Articles 89 (2 and 4) and Article 91 of the Law No. 2016-008). Article 89(2) provides that 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.). Where the law of the third State does not permit the implementation of group-wide policies and procedures 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 are required to implement 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 are no requirements for financial institutions to carry out independent audit functions to test the system and there are no express requirements to provide, at group-level compliance, audit, and/or AML/CFT functions, information related to customer, account, and transaction from branches and subsidiaries when necessary for AML/CFT purposes. **Mali is rated Largely Compliant with Recommendation 18.**

### **Recommendation 19 - Higher Risk Countries**

Mali was rated non-compliant with the requirements of this Recommendation in its previous evaluation in 2008. The deficiencies identified include the lack of an obligation to take measures regarding countries that do not apply or insufficiently apply the FATF Recommendations. The changes to the legal framework since the first evaluation include the adoption of Instruction No. 007-09-2017 of 25 September 2017 on implementation of rules by financial institutions and the AML/CFT Law No. 2016-008

**Criterion 19.1-** There is no provision requiring FIs to apply enhanced due diligence measures with respect to natural and legal persons from countries for which the FATF requests it to do so.

#### **Criterion 19.2 -**

(a) Article 5(15) of the Instruction No. 07-09-2017 states that FI should monitor operations with countries and territories declared non-cooperative by the FATF.

(b) Article 50 obliges FIs in Mali to apply enhanced due diligence measures provided for under Article 53, when they have relations with an FI of a third State that does not impose equivalent AML/CFT obligations and where the risk of money laundering and terrorist financing presented by a customer, a product or a transaction appears 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 advise FIs on the weaknesses in other AML/CFT systems. **Mali is rated Non-Compliant with Recommendation 19.**

## **Recommendation 20 - Suspicious transaction reporting**

Mali was rated non-compliant with these requirements due to inaccurate reporting and the fact that the obligation to file STRs were not observed by reporting entities; there was an existence of two competing mechanisms for declarations without coherence between them; the lack of implementation of the obligation; and the absence of the obligation to report terrorist financing operations. The main changes made to the laws and regulations concerned since the last assessment are the issuance of Instruction No. 007-09-2017 of 25 September, 2017, concerning the terms of application by the financial institutions and the adoption of the AML/CFT Law No. 2016-008.

**Criterion 20.1 - Article 79** of the Law No. 2016-008 stipulates that the persons referred to in Articles 5 and 6 (reporting entities) are required to report to FIU, under the conditions set out in this law and in accordance with a model report established by order of the Minister of Finance, 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 offences. Article 5.8 of the Instruction No. 007-09-2017 of 25 September 2017 on the terms of application by the financial institutions has similar provisions. Regulation No. 004 / CIMA requires insurance companies to make suspicious transaction reports to the FIU. However, the AML/CFT law does not expressly state that suspicious transactions must be reported promptly.

**Criterion 20.2 - Law No. 2016-008** does not expressly cover suspicious transaction in the case of attempted transaction.

### **Weighting and conclusion**

The AML/CFT Law No. 2016-008 does not specifically cover attempted transactions. **Mali is rated Partially Compliant with Recommendation 20.**

## **Recommendation 21 - Tipping-off and confidentiality**

In its previous assessment, Mali was rated non-compliant under these requirements due to limited safeguards on confidentiality of the information provided to the FIU.

**Criterion 21.1 - Article 83** of the AML/CFT Law No. 2016-008 states that the persons or officers and employees of the persons referred to in Articles 5 and 6 (reporting entities) who have in good faith shared information or made any report, in accordance with the provisions of the law, shall be exempt from all sanctions for breach of professional secrecy. No action in civil or criminal liability may be instituted, nor any professional sanction pronounced against the persons or the directors, and employees of the persons referred to in articles 5 and 6 of the law. Article 84 of the said law provides that where a suspicious transaction has been filed, and except

in the case of fraudulent collusion with the perpetrator (s) of money laundering or terrorist financing, the persons referred to in Articles 5 and 6 of that law as well as their directors, agents or employees are released from any responsibility and no criminal prosecution for money laundering or terrorist financing can be brought against them, if the declaration of suspicion was made in accordance with the provisions of the law. The provision also applies when reporting entities carry out an operation at the request of the investigating authorities acting in accordance with the provisions of the law.

**Criterion 21.2** - Article 82 of Law No. 2016-008 stipulates that it is prohibited, under pain of penalties stipulated in the law, for the persons referred to in Articles 5 and 6 (reporting entities), to (i) inform the owner or author of any transactions resulting in a suspicious transaction report, or (ii) inform third parties, other than supervisory authorities, professional bodies and national representative bodies, of the existence and content of a report filed with the FIU and (iii) provide information relating to the intended outcome of the suspicious transaction report.

### *Weighting and conclusion*

Mali has fulfilled all the criteria of Recommendation 21. **Mali is rated Compliant with Recommendation 21.**

## **Recommendation 22 - Designated Non-Financial Businesses and Professions: Customer Due Diligence**

Mali was rated non-compliant with these requirements in the previous mutual evaluation. This was because the threshold for triggering the requirements relating to casinos was set too low and there was no threshold for triggering CDD in respect of traders of precious metals. In addition, there was an absence of due diligence mechanism for politically exposed persons and trust and company service providers were not covered in the list of DNFBPs under the law. Since the adoption of its mutual evaluation report, Mali has adopted Law No. 2016-008 of 17 March 2016 on the anti-money laundering and the countering the financing of terrorism (AML / CFT).

**Criterion 22.1** - DNFBPs are required to comply with the CDD requirements set out in Recommendation 10 in the following situations:

- a) Article 18 of Law No. 2016-008 stipulates that before entering into a business relationship with a client or assisting the client with a transaction, reporting entities are to identify the client and, where applicable, the beneficial owner of the business relationship by suitable means and verify the identification elements on presentation of any written and reliable document. Article 29 stipulates that the persons referred to in Articles 5 and 6 of the said law are required to identify their occasional client and, where applicable, the beneficial owner of the transaction and to verify the elements of their identification when the amount of the transaction or related operations exceeds one million (1,000,000) CFA francs (1,524 Euros) for legal representatives and directors responsible for gaming operators. Section 44 (2) of the Act states that for all players who purchase, bring or exchange tokens or plates for an amount in excess of the threshold set in Article 29 paragraph 1 and 3, casinos and gambling establishments are

required to confirm their identity based on a presentation of a valid original official document and taking a copy of the document.

- b) The requirements of this criterion are covered under Instruction No. 009 -09-2017 of 25 September 2017 setting the threshold for the payment of claims in cash or by negotiable instrument and Article 14 of the Law No. 2016-008. Article 45 of the same law provides that persons who carry out, manage or offer advice on real estate transactions are required to identify the parties in accordance with the provisions of Articles 27 and 28 when they are involved in the purchase or sale of real estate.
- c) Articles 18, 19, 20 of the Law N ° 2016-008 requires the persons referred to in Articles 5 and 6 of the said Act (which 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.
- d) Lawyers, notaries, other independent legal professionals and accountants are listed in Article 6 of Law 2016-008. They, like those mentioned in Article 5 of the law are required to apply the due diligence measures provided for in Articles 18, 19, 20 and 21 of the same law, before entering into a relationship, dealing with a client or assisting him in the preparation or completion of a transaction, or during the business relationship.
- e) 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 6 paragraph 1 (b) of Law No. 2016-008). These obligations are also addressed under Articles 18, 19, 20 of the same law.

**Criterion 22.2** - Article 44 of Law No. 2016-008 obliges casinos and gaming establishments to keep documents for a period of 10 years. Article 3 of Ordinance No. 2013-027 / PRM of 31 December 2013, on the status of notaries in the Republic of Mali, also prescribes the obligation to keep records. According to the OHADA Uniform Act on Commercial Companies, companies are required to keep records for a period of 10 years. There are no provisions requiring real estate agents, dealers in precious stones or other persons subject to reporting obligations to maintain records for five years.

**Criterion 22.3-** Articles 22 and 54 of Law No. 2016-008 oblige DNFBPs to pay special attention to PEPs. Article 54 of the law states that reporting entities 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 the law. 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-** Law 2016-008 does not oblige DNFBPs to implement due diligence requirements for new technologies. Mali has not yet developed any sector guidelines in this regard.

**Criterion 22.5-** The AML/CFT Law No.2016-008 does not oblige DNFBPs to implement third-party obligations set out in Recommendation 17 on new technologies. Mali has also not developed any sector guidelines for this purpose.

### **Weighting and conclusion**

Mali has met some of the criteria of Recommendation 22. However, the Law No. 2016-2008 does not oblige DNFBPs to comply with third party requirements set out in Recommendation 17 or the requirements relating to new technologies set out in Recommendation 15. **Mali is rated Partially Compliant with Recommendation 22.**

### **Recommendation 23 - DNFBPs: Other Measures**

Mali was rated non-compliant with these requirements in the previous assessment because of the absence of internal controls for the prevention of money laundering and the fact that Mali did not pay special attention to countries that did not adequately apply FATF recommendations. Since the adoption of the last mutual evaluation report, Mali has strengthened compliance with these obligations through the adoption of the AML/CFT Law No. 2016- 008.

#### **Criterion 23.1**

- a) Article 79 of Law No. 2016-008 provides that reporting entities are required to declare to the FIU, the sums they suspect or have good reasons to suspect originated from an offence of money laundering or terrorist financing. Article 80 of the same law stipulates that public accountants and auditors, notaries, bailiffs, court administrators, legal representatives and lawyers, when acting as trustees as well as auctioneers are each mandated, regardless of the modalities of their professional practice, to respond to any request from the FIU and receive the acknowledgments of the reports of suspicions made under the provisions of the Article 79 of that law.
- b) Articles 79 and 80 of the Law No. 2016-008 require reporting entities to make declarations of any suspicious transaction to the FIU.
- c) (c) Article 1 paragraph 24 of Law No. 2016-008 obliges DNFBPs and company and trust service providers not covered by the law to make suspicious transaction reports to the FIU, in accordance with Article 5, 79 and 80 also oblige reporting entities to report suspicious transaction to the FIU.

However, attempted transactions are not covered under (a) (b) and (c). In addition, as indicated under Recommendation 20, DNFBPs are not required to file STRs “promptly”.

**Criterion 23.2 - Article 25** of Law No. 2016-008 requires DNFBPs to implement internal control procedures and measures consistent with their status, functions and level of activity. Article 44 of the law also sets out the obligations of casinos and gaming establishments in this regard.

**Criteria 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 the weaknesses of other country's AML/CFT system.

**Criteria 23.4** - Article 82 of Law No. 2016-008 states that under penalty of sanctions provided for by the provisions of the law, reporting entities (which 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 third parties, other than supervisory authorities, professional bodies and national representative bodies, of the existence and content of a suspicious transaction report filed with the FIU or provide information on the follow-up to this report. The provisions of Articles 83 and 84 of the said law protect any person when they declare their suspicions in good faith.

### **Weighting and conclusion**

Attempted transactions are not covered under the AML/CFT law and DNFBPs are not required to file STRs "promptly. 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 and there is no requirement for supervisors to inform DNFBPs about the weaknesses of other country's AML/CFT system. **Mali is rated Partially Compliant with Recommendation 23.**

### **Recommendation 24 - Transparency and Beneficial Ownership of Legal Persons**

In its first mutual evaluation report, Mali was rated non-compliant with the requirements of this recommendation because the information required under the OHADA Uniform Act relating to Commercial Companies and Economic Interest Groups (GIE) did not permit the identification of beneficial owners as required under Recommendation 33. Also, there was inadequate information regarding the implementation of the OHADA law in Mali due to the exceptionally significant role of the informal economy.

**Criterion 24.1** - The mechanisms that identify and describe the different types of legal persons established in Mali are indicated in the OHADA Uniform Act relating to Commercial Companies and Economic Interest Groups (OHADA Uniform Act). The different types of legal entities (public limited companies, limited liability companies, limited partnerships, GIEs), their forms and characteristics are described by the OHADA Uniform Act. The procedures for setting up companies are also described in the text. Basic information is obtained at the time of incorporation and kept by the chief registrars of the commercial courts or at the registries of the constituency courts where there is no commercial court. The information is made available to the public in accordance with the provisions of the Uniform Act. In addition, the Laws No. 04-038 of August 05, 2004 which relates to associations and No. 2017-049 of September 08, 2017 which relates to foundations describe the mechanisms for establishing NPOs in Mali, their characteristics as well as basic information that must be obtained prior to their creation. However, information on beneficial owners of legal persons is not always available at registry offices and no mechanism describes the process for collecting this type of information.

**Criterion 24.2** - Although Mali has commenced its NRA, the country has not undertaken a comprehensive assessment of the ML / FT risks associated with the different categories of legal persons created in the country.

**Criterion 24.3** - The provisions of the OHADA Uniform Act relating to Commercial Companies and Economic Interest Groups established the Trade and Personal Property Rights Registry (RCCM) which is maintained by the chief registrars of the commercial courts or the constituency courts in regions where there are no commercial courts. The RCCM contains basic information on legal persons. In particular, it contains information on the company name, legal form, address, registered office, capital, the list of corporate officers and members of the board of directors, and so on. This information may be accessed by the public.

**Criterion 24.4** - Basic information on companies are kept in the RCCM. Companies are also required to maintain documents such as statutes and rules of procedure which contain information on voting rights at the RCCM.

**Criterion 24.5** - Articles 46 to 58 of the Uniform Act describe the mechanisms for updating the information contained in the RCCM in the event of changes during the existence of a company by prescribing the obligations incumbent upon it. However, there are no legal or regulatory provisions that set out the range of sanctions that should be imposed when companies breach these obligations.

**Criterion 24.6** - The records maintained at the RCCM relate to basic information. Beneficial ownership information is not maintained at the RCCM. Nevertheless, Article 18 of the AML/CFT Law No. 2016-008 requires financial institutions and reporting entities to collect information on beneficial ownership when conducting CDD. In some cases, existing information (basic information and information held by FIs) may be used to obtain useful information on the beneficial owner. Nevertheless, existing information held by FIs may not be sufficient to determine beneficial ownership information. As indicated in the NRA verifying BO information is still fairly challenging. Furthermore, it is not mandatory for legal persons to have a bank account with an FI. Thus, this mechanism (allowed under c24.6(c)) may not be wholly adequate to allow timely determination of BO by competent authorities.

**Criterion 24.7** - Article 19 of Law No. 2016-008 obliges reporting entities including FIs, to ensure that all information collected, including those concerning beneficial owners, is updated. However, in view of the comments above (c24.6), the mechanism for determining BO information through FIs needs to be enhanced.

**Criterion 24.8** - There is no mechanism in place to ensure that companies co-operate with competent authorities to the fullest extent possible in determining the basic or beneficial owner.

**Criterion 24.9** - Art. 35 of Law No. 2016-008 obliges financial institutions and DNFBPs to keep the documents and identification documents of their clients as well as those relating to transactions carried out by them for ten (10) years. The OHADA Uniform Act requires that the information entered into the Trade and Personal Property Rights Registry (RCCM) must be kept by the Registry of the court and centralized in a National Register, which is typically is a permanent archive. However, it appears that the companies and liquidators are not required to maintain records for five years after dissolution.

**Criterion 24.10** - Art. 36 of Law No. 2016-008 gives judicial authorities the right to request for disclosure of documents which are required to be maintained by law. Similarly, Article 93 of the same law gives the investigating judge the power to order disclosure or seizure of authentic documents or private documents of banking, financial and commercial documents. These powers generally guarantee timely access to basic and BO information.

**Criterion 24.11** - Article 744-1 of the OHADA Uniform Act requires public limited companies to register securities regardless of their form in the name of their owner. The law does not extend to private companies.

**Criterion 24.12 (a-c)** -There are no legal or regulatory provisions in force in Mali to ensure that nominee shares and nominee directors are not misused for ML/TF purposes.

**Criterion 24.13** - There are no applicable sanctions for any legal or natural person that fails to comply with the requirements of R24. The provisions of the OHADA law obliges States Parties to the OHADA Treaty to implement an appropriate sanctions regime for the purpose of enforcing the provisions of the Act. Mali is yet to adopt a sanctions regime.

**Criteria 24.14** - Mali has signed several regional and international cooperation agreements on mutual legal assistance. In addition, Title VI of the AML/CFT Law No. 2016-008, in its Articles 78 and 130 to 138, provides a legal framework for international cooperation that allows Mali to exchange basic and beneficial ownership information in accordance with Recommendations 37 and 40.

**Criterion 24.15** - There is no legal or regulatory provision that requires Mali to monitor the quality of assistance that it receives from other countries, in response to requests for basic or beneficial owners information or requests for assistance in locating beneficial owners residing abroad. Mali has not demonstrated that the country has been monitoring the quality of assistance received in this regard.

### **Weighting and conclusion**

Mali has not assessed the risks ML / FT associated with the different types of legal persons; there is no legal provision that requires the country to monitor the quality of assistance that it receives from other countries he country. Significantly, Mali has not adopted a sanction regime to enforce obligations relating to transparency of legal persons. As regards nominee shareholding and directors, there is no mechanism to ensure that legal persons are not abused and, there is no express prohibition of bearer shares and share warrants in private companies. **Mali is rated Partially Compliant with Recommendation 24.**

### **Recommendation 25 - Transparency and Beneficial Ownership of Legal Arrangements**

In the previous MER, these requirements were deemed inapplicable under the Mali AML/ CFT regime.

#### **Criterion 25.1 -**

- (a) - Not applicable
- (b) - Not applicable
- (c) - Some DNFBPs, including lawyers, and other members of the independent legal professionals who administer property under the same conditions as a trusts as well as trust and service providers are required to identify and verify information on the identity of some of the parties to the trusts; namely the client (who may or may not be the settlor) and the beneficial

owner of business relationship and maintain these records.. There is no requirement to maintain information on the trustee. (Article 5, 6, 19 and 36 of Law No. 2016-008).

**Criterion 25.2** - - Articles 19 and 20 of the AML/CFT Law No. 2016-008, require reporting entities including professional trustees, to keep information obtained from their client updated. The limitation in c25.1 (c) above, impacts on this criterion.

**Criterion 25.3** - No statutory or regulatory provisions expressly requires trustees to declare their status to financial institutions and DNFBPs when forming a business relationship or carrying out an occasional transaction above the threshold. 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 is no legal or regulatory provision in Mali that prevents legal arrangements from providing the competent authorities with any information or providing FIs or DNFBPs upon request with information on beneficial owners and assets held or managed as part of the business relationship.

**Criterion 25.5** - The investigating judge and other LEAs have the necessary powers to access information held by legal entities, FIs and DNFBPs (Articles 36 and 93 of Law No. 2016-008).

**Criterion 25.6** - Mali has a legal framework on international cooperation which is based on international conventions and agreements as well as the AML/CFT Law No. 2016-008. These allow the country to provide international cooperation in relation to information on trusts and other legal arrangements in accordance with Recommendations 37 and 40.

**Criterion 25.7** - There are no legal or regulatory provisions in force in Mali to ensure that (a) trustees can either be held legally responsible for any breach of their obligations; or (b) proportionate and dissuasive sanctions, whether criminal, civil or administrative, are applicable in the event of non-compliance with their obligations.

**Criterion 25.8** - There are no legal or regulatory provisions in force in Mali to ensure that proportionate and dissuasive sanctions, whether criminal, civil or administrative, are applicable in the event of non-compliance with the obligation to make information on legal arrangements available to competent authorities in a timely manner.

### **Weighting and conclusion**

Professional trustees are not required to obtain and retain information from all parties to the trust. In addition, no penalty exists for trustees who act in breach of their obligation under R25. **Mali is rated Partially Compliant with Recommendation 25.**

### **Recommendation 26 - Regulation and Supervision of Financial Institutions**

In its first Mutual Evaluation Report (MER), Mali was rated non-compliant with the requirements of this recommendation. The main shortcomings identified were related to the fact that remittance services were not subject to any formal accreditation and were not supervised. The rules for monitoring the criteria for competence and integrity of DFI directors were not clearly established. There were no special procedures for controlling the legal origin of capital

contributed when a bank or other financial institution was created, such as a DFI, an asset management company, or an intermediation or insurance company. Since this assessment, the supervisory authorities have taken steps to correct these shortcomings, notably the revision of the UMOA Banking Commission Convention, the introduction of a new AML/CFT law, a new banking law, as well as several Instructions by the BCEAO, CIMA or CREPMF. It should be noted that the new Recommendation 26 reinforces the principle of monitoring and controls according to a risk-based approach.

**Criterion 26.1** - Mali has several Supervisory Authorities for Financial Institutions. These are MEF, BCEAO and UMOA Banking Commission for banks and financial establishments, CIMA for Insurance Companies and CREPMF for stock market operators<sup>31</sup>. Indeed, Article 1 of the Convention Governing the Banking Commission of the West African Monetary Union stipulates that it has the mandate to supervise, in particular, the organization and control of credit institutions, as defined in the law regulating banking. Article 2 stipulates that "the Banking Commission is responsible for ensuring the soundness and security of the UMOA's banking system through, inter alia, the supervision of the institutions subject to it and the resolution of banking crises. Article 21 also states that "The Banking Commission shall carry out or cause to be carried out, in particular by the Central Bank, documentary controls and on-site inspections, on a corporate or consolidated basis, with the reporting institutions in order to ensure compliance with the applicable provisions. As regards the CIMA Code, Article 16 states that "The Regional Insurance Supervisory Commission (CRCA), hereinafter referred to as the Commission, is the regulatory body of the Conference. It is in charge of the control of the companies, it ensures the general supervision and contributes to the organization of the national insurance markets. " All the supervisory authorities have issued sector-specific regulations on AML/CFT. These include Instruction No. 007-09-2017 concerning the application of the Uniform AML / CFT Law in FIs, Instruction No. 35/2008 on combating ML at the regional financial market level and Regulation No. 0004 / CIMA / PCMA / PCE / SG / 08 relating to Insurance companies and brokers.

### *Market Entry*

**Criterion 26.2** - The Banking Act, the DFI Act the General Stock Exchange Market Regulation, the CIMA Code and their respective implementing legislation provide that the financial institutions covered by these instruments and which are subject to the fundamental principles must obtain a license or authorization before carrying out their activities, as stipulated, for example, in Article 13 of the Banking Regulation Act. "no person may carry out the activity defined in Article 2 without having been previously approved and registered on the list of banks or on that of banking financial institutions". In addition, it is important to point out that since 1 January 1999, any credit institution that has been authorized in a Member State of the UEMOA 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 conditions for licenses or authorizations as provided do not allow the establishment or continuation of the activities of shell banks. Natural or legal persons, other

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<sup>31</sup> For the BCEAO: it is the instruction n ° 07 of the Governor of the BCEAO, dated September 25, 2017 (articles 12 and 13); For CIMA: it is the CIMA code articles 16 and 17.

For the Treasury: Decree No. 02-127 / P-RM of 15 March 2002 sets the organization and operating procedures of the National Directorate of the Treasury and Public Accounting, establishing the public treasury of Mali

For Control and Supervision Unit for Decentralized Financial Systems (CC / SFD):

-Law No. 06-002 of June 06, 2006 establishing the CCS / DFI creation texts of CC / SFD

- Decree N ° 06-044 / PRM of 03 February 2006 determining the organic framework of the CCS / SFD

- Decree N ° 06-039 / PRM of February 03, 2006 setting the organization and operating procedures of CCS / SFD

than banks that provide money or value transfer services (Western Union, Money gram, Wari) are not licensed or registered, but they must always have established a partnership with an accredited FI that is subjected to due diligence obligations.

**Criterion 26.3** - - Article 7 of the OHADA Uniform Act on Commercial Companies and GIEs of 30 January 2014 and Articles 3, 11, 12, 13 and 14 of the Circular 02-2017-CB relating to the conditions for the performance of the functions of managers and officers of UEMOA credit institutions addresses this requirement. Specific texts relating in particular to banks and financial institutions, DFI, financial market operators and insurance companies have minimum requirements for issuance of license and authorization of financial institutions. These include requirements for information about shareholders and officers of these institutions. For banks and other financial institutions, these requirements are stipulated in Instruction n ° 017-04-2011 establishing the list of documents and information for a credit institution license application. In addition, the UMOA Commission Circular 002-2011 / CB / C specifies the conditions for the performance of the functions of managers and officers of UEMOA credit institutions. These instruments are likely to prevent criminals or their accomplices from holding or becoming beneficiaries of any financial institution or from or controlling it or occupying a management position therein. However, the requirements laid down in banks and other financial establishments and insurance companies do not extend to other financial institutions (financial market stakeholders, foreign exchange bureaus). Mali should address this shortcoming.

#### *Risk-based approach to control and surveillance*

#### **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 N ° 014/24/06 / CB / UMOA dated June 24, 2016. This decision complies with Principle 12 of the Fundamental Principles. The same consolidation framework is provided for insurance companies. However, there is little evidence that AML / CFT-based risk-based supervision is in place, even though current regulatory reforms incorporate this aspect.
- b) Other financial institutions are subject to regulation and control or supervision, but without taking into account the ML / FT risk of the sector in which they operate. For financial institutions, their AML / CFT obligations are governed by Instruction 008-05-2015 governing the terms and conditions for the exercise of electronic money activities in the UEMOA; and Instruction No. 0013-11 2015 on the procedures for the exercise of money transfer activity by sub-agents.

**Criterion 26.5** - The Supervisory Authority conducts its inspections according to its surveillance policy or the occurrence of major events and not according to the periodic assessment of the risk profile or the occurrence of major events.

**Criterion 26.6** - There are no provisions under the AML/CFT Law 2016-008 requiring a supervisor to review the assessment of the ML/TF risk profile of a financial institution or group (i) periodically and (ii) where major events or developments have occurred in the management and operations of the financial institution or group.

#### **Weighting and conclusion**

The regulation and supervision of financial institutions are enshrined in the general AML / CFT texts and specific texts of financial institutions. Each financial institution or group of institutions

is subject to a specific authority. Although regulation and supervision in terms of licensing or authorization are better developed for banks and insurance sectors, this is not the case for other financial institutions. In addition, although the recent revision of the regulatory framework incorporates the risk-based approach in general and AML/CFT in particular, this approach is yet to be implemented. The authorities intend to take advantage of the results of the NRA to further focus on the risk-based approach. **Mali is rated Partially Compliant with Recommendation 26.**

## **Recommendation 27 - Powers of Supervisors**

In its first MER, Mali was rated Partially Compliant with these requirements due to the fact that the sanctioning powers of some supervisory authorities were not explicitly specified. Since the adoption of its MER in 2008, Mali has enacted legislation and amended certain texts to address the shortcomings. In this respect, the texts relating to the Banking Act, 08-43 of 1st December 2018, the CREMPF and the CIMA Regulation and the DFI Act mandates desk audits, on-site inspections and application of penalties among FIs.

**Criterion 27.1** - The BCEAO, the UMOA Banking Commission, the Ministry of Finance, the Regional Insurance Control Commission (CRCA) and the Regional Council for Public Savings and Financial Markets (CREPMF) all have the powers under the laws establishing them to monitor reporting entities that fall within their supervisory purview and ensure their compliance with the AML / CFT requirements. Off-site supervision entails reviewing statutory returns and any other reports submitted by the reporting entities.

**Criterion 27.2** - The above-mentioned authorities also have a wide range of powers defined by the specific laws to carry out on-site inspections of the reporting entities they supervise. The AML/CFT inspections may be carried out either as general/prudential onsite inspection or as an AML / CFT thematic inspection.

**Criterion 27.3** - Provisions under Article 96 of AML/CFT give supervision Authorities powers to access information held by financial institutions and request for production of records for off-site investigations, including transactions and activities of customers where necessary, without recourse to an order of the tribunal.

**Criterion 27.4** - Penal, civil and administrative sanctions for AML / CFT breaches are set out in the Anti-Money Laundering Act and in specific laws, including the power to withdraw, limit or suspend the approval of the license of a financial institution. According to the provisions of Article 66 of the Banking Act, disciplinary sanctions for breach of banking regulations or any other legislation applicable to credit institutions, including those relating to AML / CFT, are pronounced by the Banking Commission in accordance with the provisions of Article 29 et seq. of the Appendix to the Convention governing the said Commission. The Banking Commission may also impose pecuniary sanctions under the provisions of Article 77 of the Banking Act. Similar provisions are provided by the CIMA Code and the MFS Act. However, the FIU or the Banking Commission did not provide any information on sanctions (whether disciplinary and financial in nature) imposed for failure by reporting entities to comply with AML / CFT requirements.

## **Weighting and conclusion**

**Mali is rated Compliant with Recommendation 27.**

## **Recommendation 28 - Regulation and supervision of DNFBP**

In its first MER, Mali was rated non-compliant with these requirements for the following reasons: (i) Lack of monitoring and supervision of casinos for AML/CFT purposes (ii) Absence of a system to monitor and control compliance with AML requirements by other DNFBPs.

### *Casinos*

#### **Criterion 28.1 -**

- a) In Mali, casinos, gambling and gaming houses require prior approval to operate according to Article 4, Law No. 96-21 of 21 February 1996 which stipulates that “the operation of gaming establishments is dependent on obtaining administrative authorisation”.
- b) Casinos, gambling and gaming houses are subject to several regulations so as to prevent criminals and their associates from holding significant or controlling interests in these establishments. (AML/CFT Law No.2016-008; Law 96-21 of 21 February 1996; Decree 9766-182 / P-RM of 02 June 1997; Inter-Ministerial Order No.03-1731/MEF/MSIPC/MAT of 15 August 2003). In addition to general requirements for identification of a client, Article 44 of the Law No.2016-008 provides specific requirements for casinos, gambling and gaming houses.
- c) Based on the information provided, there is no designated authority to monitor and supervise casinos in AML/ CFT matters.

### *Designated non-financial businesses and professions other than casinos*

**Criterion 28.2 -** There is no umbrella supervisor for DNFBPs, however, some sectors have a supervisory authority or a Self-Regulatory Body (SRB). Article 86 N. 008 of 17 March 2016 related to the AML/ CFT law, states that the regulatory body of each reporting entity must ensure compliance with the requirements set out in Title II of the said law.

**Criterion 28.3 -** - Article 86 of the Law No. 008 of 17 March 2016 stipulates that supervisory authority for DNFBPs (chambers and professional bodies) should monitor and ensure reporting entities' compliance with their AML/CFT obligations. However, any authority has been designated for monitoring compliance with AML/CFT requirements.

#### **Criterion 28.4 -**

- (a) The DNFBP Sector supervisory authority does not have a wide capacity to ensure proper monitoring and compliance with AML/ CFT laws.
- (b) The sector supervisory authority has not taken necessary measures to prevent criminals and their associates from being professionally accredited, or holding (or being the beneficial owner of) a significant or controlling interest, or holding a management function in a DNFBP.
- (c) It appears that the SRBs do not have applicable sanctions to deal with the failure to comply with AML/CFT requirements.

#### **Criterion 28.5 -**

- a) Supervision of designated non-financial businesses and professions is not carried out on a risk-sensitive basis given that they do not have a supervisory authority in charge of carrying out such action.

- b) As a result of the absence of designated supervisors and ML/ TF risk assessment of these designated non-financial businesses and professions, it is practically impossible to determine their risk profile and therefore apply a risk-based approach.

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

There is no designated authority to monitor and supervise casinos and other DNFBPs on AML/ CFT matters. Specifically, regulatory authorities do not have the capacity to adequately monitor reporting entities on AML/CFT matters. There are no regulations or measures to prevent criminals and their associates from holding (or being the beneficial owner of) a significant or controlling interest in some DNFBP and there is an absence of the supervision on a risk-sensitive basis within the sector. **Mali is rated Non-Compliant with Recommendation 28.**

### **Recommendation 29 - Financial Intelligence Unit**

In its first mutual evaluation report (MER), Mali was rated non-compliant with these requirements. The main issues identified were: the lack of an operationally functioning FIU; the lack of an STR template and lack of guidance to persons subject to the law, limitations relating to the non-criminalization of terrorist financing under Malian law. Since its evaluation, several legislative provisions have been adopted with a view to strengthening the legal framework of Mali including the AML/CFT Law No. 2016-008.

**Criterion 29.1** - Article 16 of the AML Law No. 06-066 of December 2006 mandated the establishment of an FIU, a national financial information processing unit by which was established by Decree no. 07-291/P-RM of 10 August 2007 which determines the organisation and the financing modalities for the unit. Mali's FIU is an administrative authority with financial autonomy and decision-making power.

#### **Criterion 29.2** -

- a) The FIU is mandated to receive STRs from reporting entities in accordance with the AML/ CFT law. Under Article 60 of the law 2016-008, the FIU is responsible for collecting, analysing, improving and disseminating all information related to establishing the origin or the destination of money declared by FIs and DNFBPs. The FIU also receives all other useful information necessary for the accomplishment of its mission, in particular those communicated by the supervisory authorities as well as the judicial police officers, which it processes, as the case may be, as in the case of a suspicious transaction report (Article 60 Law No. 2016-008).
- b) The FIU receives declarations made by FIs and DNFBP relating to cash transactions in excess of XOF 15 million in accordance with Instruction No. 10 September 2017 and pursuant to Article 15 of Law No. 2016-008. According to Article 111 of the same law, it also receives declarations on cash and bearer negotiable instruments seized by customs services.

#### **Criterion 29.3** -

- a) According to Article 60 para. 3, the FIU in Mali can request for the disclosure by a reporting entity or any person information held by them which is capable of enriching the suspicious transaction reports. The FIU may request additional information from reporting entities on their transactions (Article 35 and 70 Law No. 2016-008).

- b) Article 60, authorizes the FIU to collect all relevant information in order to accomplish its mission, particularly information from supervisory authorities and judicial police officers, foreign Financial Intelligence Units and other taxable persons. (Article 67 paragraph 1, Law No. 2016-008). Thus, the FIU has direct or indirect access to several sources of internal and external information likely to contain the information sought.

**Criterion 29.4 -**

- a) In accordance with provisions of Article 60 paragraph 1, 2, 3, of Law No. 2016-008, the FIU carries out operational analysis to establish suspicions of ML/ TF and if necessary, forwards a detailed report to the public prosecutor. This is accomplished by collecting, analyzing, enriching and exploiting any information that may establish the origin or destination of the monies or the nature of the transactions that were the subject of a report or information. After comparing the information received and the sources available to the CENTIF, it carries out an operational analysis that allows the FIU to make its hypotheses on the possible activities of the suspect and the proceeds of these activities; information usable by the public prosecutor's office or investigative services.
- b) The FIU is entitled to carry out strategic analysis according to the provisions of Article 60, para. 1 (4), sub-paragraphs 3, 4 and 5 of Law No. 2016-008).

**Criterion 29.5 -** Provisions under Article 66 of Law No. 2016-008 authorize FIU to disseminate information spontaneously or on request to competent authorities, namely the Customs, Article 67 of Law No. 2016-008 stipulates that when its investigations reveal facts likely to fall under ML/ TF, the FIU should refer its findings to the public prosecutor.

**Criterion 29.6 -**

- (a) Confidentiality measures are provided by Law No. 2016-008 under Article 65, para.1 which states that members of the FIU and their correspondents take an oath before a competent court prior to assuming office. Article 65, para. 2 specifically states that members, their correspondents as well as the staff of FIU are required to adhere to confidentiality concerning information received. The FIU has an IT expert that oversees the handling, storage, dissemination, and protection of, and access to, information.
- (b) The Mali FIU has measures in place to ensure that staff members understand their responsibilities in respect of handling and disseminating sensitive and confidential information. But Mali has not provided information on whether FIU staff members the necessary security clearance levels.
- (c) There is limited access to its facilities and information of the FIU, but Mali did not provide any text to demonstrate that limited access to its facilities and information, including information technology systems.

**Criterion 29.7**

- (a) Article 59 of Law No. 2016-008 states that the FIU is an administrative authority which performs its functions in complete autonomy and independence, and makes decisions over matters under its purview.
- (b) In accordance with provisions of Article 76 para.1, the FIU is expected to communicate with other FIUs within the West African Economic and Monetary Union, and at their request provide all information and data concerning investigations undertaken. In respect to exchanges

with counterparts outside UEMOA, Article 78 states that FIU may provide information subject to reciprocity and under certain other conditions, in particular: (i) the counterpart FIU is subject to the same level of confidentiality and (ii) the information to be communicated is treated with sufficient protection. The above-mentioned article adds restrictions on exchange of information, particularly in the case of an ongoing penal procedure and if the communication of information threatens the sovereignty of the State, national interests as well as security and public order. At the national level, the FIU also collaborates with national institutions (Article 66 paragraph 12 and Article 67 paragraph 2 Law No. 2016-008)

(c) N/A

(d) Article 73 of AML/ CFT 2016-008 stipulates that the FIU resources are provided for in the state budget as well as dedicated inputs from UEMOA institutions and development partners.

**Criterion 29.7** Mali has been a member of the Egmont Group since July 2008.

### **Weighting and conclusion**

There are minor deficiencies under this Recommendation. Mali has not indicated if there are procedures for handling, storage, dissemination, and protection of, and access to, information; the country has not provided information on whether FIU staff members have the necessary security clearance levels or demonstrated that there are provisions or text that limit access to FIU facilities and IT systems. **Mali is rated Largely Compliant with Recommendation 29.**

### **Recommendation 30 - Responsibilities of law enforcement and investigative authorities**

Mali was rated partially compliant with the requirements of this recommendation as a result of the non-criminalization of terrorist financing, absence of statistics on investigations and prosecutions, lack of training on money laundering and lack of implementation.

**Criterion 30.1** - Articles 609 to 612 of the Code of Criminal Procedure (amended by Law No. 2013-016 of 21 May 2013) deal with prosecution, investigation and adjudication of corruption, economic and financial offences, terrorism and other organized transnational crimes. The investigations into the predicate offences fall within the competence of the specialized investigation brigades called economic and financial brigades (BEF) attached to the economic and financial division of the courts of Commune III of the District of Bamako, Kayes and Mopti. In addition to these economic and financial brigades, the Judicial Investigation Brigade of the National Police (BIJ / PN), the Investigation Department of the National Gendarmerie (SIJ / GN) as well as the other law investigation structures commonly investigate predicate offenses, while the Central Office of Narcotic Drugs (OCS) conducts investigations relating drugs, narcotics, psychotropic substances, precursors and controlled substances. The specialized investigation brigade (BIS), is responsible for ML / FT and terrorism investigations as well as for investigations of transnational predicate offences.

**Criterion 30.2** - The Decree 2015-0723/P-RM of 9 November 2015, on establishing the organisation and the operational modalities of the specialized judicial court for terrorism and organised transnational crime (PJS). The investigative authorities at the specialized judicial court (BIS) are authorized to conduct investigation into any related ML/TF offences during a parallel financial investigation. In accordance with Article 612-1 of the CCP, the other

investigating authorities are also authorized to pursue the investigation of any related ML/TF offences during a parallel financial investigation under the direction of the Prosecutor of the Republic, who is required to transmit the report to the Public Prosecutor at the PJS to follow up with the investigation.

In addition, the customs and tax authorities are empowered to transmit reports to the public prosecutor at the PJS through the competent public prosecutor when they find, in the exercise of their duty, predicate offences which may warrant an investigation for ML.

**Criterion 30.3** - Judicial police officers of the BEF, BIJ/PN, SIJ/GN, OCS, BIS, and investigative magistrates are expected to identify, trace, and commence procedures to seize assets likely to be subject to confiscation or suspected to be products of crime within the shortest possible time frame. Article 99 and 128 of the Law No. 2016-008 and the provision of the criminal procedure code.

**Criterion 30.4** - The FIU, agents of the General Directorate of Public Treasury and tax officers are not prosecuting authorities, however, they are responsible for conducting financial investigations for underlying offences. The processing of the information submitted to the FIU constitutes a phase of the financial investigation. During the investigation, the FIU may exercise its powers to order disputed funds to be frozen for a period of 48 hours.

**Criterion 30.5** - Anti-corruption enforcement authorities in Mali are authorized to investigate ML/TF offences arising from, or related to, corruption offences and have sufficient powers to identify, trace, and initiate freezing and seizing of assets. The competence to detect, freeze and seize assets related to corruption is vested in the BEF, the specialized prosecutor's office, the specialized investigation offices of the economic and financial courts of the District Courts of Commune III of the District of Bamako, Kayes, from Mopti. These can be assisted by OCLEI at the screening stage. With regard to money laundering related to corruption, the competence is vested in the BIS, the specialized prosecutor's office, the specialized investigation brigade of the Specialized Judicial Division of the High Court of Commune VI of Bamako District. The OCLEI however, has sufficient powers to identify, track, freeze and seize property.

### **Weighting and conclusion**

**Mali is rated Compliant with Recommendation 30.**

### **Recommendation 31- Powers of law enforcement and investigative authorities**

In its last MER, Mali was rated partially compliant with the requirements of this recommendation. This rating was due to the lack of implementation of the necessary prerogatives for the investigation of ML/ TF offences or corresponding predicate offences.

#### **Criterion 31.1 -**

The competent authorities of Mali, the judicial police officers of the BEF, the BIJ / PN, the SIJ / GN, the OCS, the BIS, as well as those of the other units and sub-units of judicial police, the specialized prosecutor's offices and the specialized investigation offices of the Economic and Financial Poles, the PJS and the public prosecutors of the other jurisdictions as well as the investigating judges have the power to access the documents and information necessary for the exercise of the criminal proceedings, and to take evidence from witnesses, to search and seize documents and all evidence. The authorities have the power to apply coercive measures to

access all the necessary documents and information. The investigating magistrates of the various courts (the specialized judicial court and the economic and financial court) and the investigators assigned to these courts acting by order of the court can exercise these powers. The police and gendarmerie also have investigative powers. Article 36 of Law No. 2016-008 and Articles 68, 74 to 101 and 94 of the Code of Criminal Procedure outlines the powers of investigation and prosecution authorities. These authorities, acting under a judicial warrant, may order the production of records and documents held by FIs, DNFBPs and any natural or legal person, carry out searches, collect evidence and seize property related to the offence that is the subject investigation.

**Criterion 31.2** - Articles 93, 94 and 95 of Law 2016-008 of 17 March 2016 on AML/CFT makes provision for special investigation techniques in the area of AML/ CFT.

**Criterion 31.3 - Article 70** of Law 2016-008 of 17 March 2016 on AML/CFT, grants the FIU a right of communication. In other words, the FIU may request for any information held by reporting entities and any other natural and legal person, as well as administrations, local authorities, public establishments, judicial authorities and judicial police officers. In addition, the FIU and the investigative, prosecuting authorities have the power to proceed with the identification of property without prior notice to the owner.

**Criterion 31.4** - During investigations into money laundering, predicate offences and the financing of terrorism, the competent authorities may request for all relevant information held by FIU. The BIS, and other investigative authorities can ask for all relevant information held by the FIU. (Article 66 of the AML/CFT Law No. 2016-008). The FIU may also provide specialized intelligence services with information relating to facts that may reveal a threat to the fundamental interests of the nation in matters of public security and state security. It can also transmit information to the tax authorities, which is then used for the performance of their duties on issues which may be related to fraud or attempted tax evasion.

### **Weighting and consideration**

**Mali is rated Compliant with Recommendation 31.**

### **Recommendation 32 - Cash couriers**

In its first MER, Mali was rated non-compliant with these requirements. The main gaps identified were: the absence of communication arrangements between customs, police, and FIU on information gathered following seizure of funds, disproportionate sanctions for violations of the regulations relating to physical transportation of currency, the absence of a system for the exchange of information on unusual transportation of gold, precious metals, or precious stones and the absence of a computerized system to retain information on the physical transportation of currency.

**Criterion 32.1-** According to Article 12 of the AML/CFT Law No. 2016-008, travellers who enter or leave Mali from or to non UEMOA states are required to complete a declaration of cash and BNIs if the amount carried is equal to or greater than the BCEAO threshold (Article 12 of Law No. 2016-008). The threshold stipulated by the BCEAO under Regulation n ° 008-09-2017 is 5 million (\$8, 535.62). Article 29 of the regulation No. 09/2010 / CM / UEMOA stipulates that export abroad by mail or any other means of payment instruments, including travellers cheques, bank cheques, foreign currency and domestic or foreign payment instruments are subject to prior authorization by the Ministry of Finance and this authorization

must be attached to the transference. However, there are no thresholds in this regard. Persons living or coming from a UEMOA member country are not required to make a declaration. It appears that there is no regulation to establish a declaration regime for incoming transportation of cash through cargo or mail.

**Criterion 32.2 - Article 12** of the AML/CFT Law No. 2016-008, orders the declaration of cash and BNI of value equal to or above CFAF five million francs (\$8, 535.62). This threshold by the BCEAO which is naturally pegged to the local currency is currently much lower than that prescribed by the FATF standards. The FATF standards are minimum standards, Nevertheless, the BCEAO should consider assessing on a risk basis whether this threshold is appropriate. There is no threshold for cargo and mail transportation

**Criterion 32.3 - Not applicable** – The Malian system provides for a written declaration.

**Criterion 32.4 -** In the case of every traveller entering or leaving Mali, , the customs have the authority to request and obtain further information from the traveller concerning the origin and destination of the cash or BNI, when the threshold is equal to or greater than CFAF 5,000, 000 (\$8 535.62) (Article 12 of Law No. 2016 -008).

**Criterion 32.5 -** In case of non-declaration or false declaration, of cash or bearer negotiable instruments, the customs shall seize the whole amount of undeclared amount (Article 12 of Law No. 2016-008).

**Criterion 32.6 -** In event of non-declaration, false declaration or incomplete declaration, or where there is suspicion of money laundering and financing of terrorism, customs is authorized to seize all funds and prepare a report. The seized funds and a copy of the report are sent directly to the treasury, the deposit and consignment office or to the agency in lieu thereof. The file of the operation is transmitted to the FIU within 8 calendar days by customs. Thus, the FIU is required by law to be notified about suspicious cross- border transportation incidents (Article 111, Law No 2016-008).

**Criterion 32.7 -** The law states that the different services are to set up a general framework of cooperation, but Mali has not provided information on a specific coordination mechanism related to the implementation of this Recommendation.

**Criterion 32.8 -** (a) Customs services can block or withhold currency or bearer negotiable instruments that may be linked to terrorism or money laundering, for a period of no more than 72 hours (Article 12, paragraph 5, Law No. 2016-008) (b) Customs services can also confiscate the entire amount of undeclared or falsely declared cash (Article 12 paragraph 6 of Law No. 2016-008). The Custom can restrain currency or BNIs in case of a suspicion of predicate offences.

**Criterion 32.9 -** International cooperation is authorised pursuant to Article 138 - 155 of Law No. 2016-008. The customs maintain information on relating toon declaration made when the prescribed threshold is exceeded, false declaration, and other illegal or suspicious activity. The customs can share this information with counterparts directly.

**Criterion 32.10 -** The data collected by the customs administration on the cash declaration and BNIs, are required to be shared with the FIU for investigation purposes, where necessary (Article 111 of Law No. 2016-008). The reports provided to the FIU are held securely in accordance with the law. They do not interfere in trade or capital movements.

**Criterion 32.11 -** Cash or BNI, whether declared or not, if linked to money laundering or financing of terrorism can be seized by the competent authority for a period of not more than

72 hours. In cases where cash/BNI is undeclared or falsely declared the total cash or BNI is confiscated according to Article 12 of the AML/ CFT Law No. 2016-008. Persons may be condemned for up to 10 years imprisonment and fined an amount equal to five times the value of the assets or funds if found guilty of ML or TF. The punishment appears to be proportional and dissuasive. The AML/CFT law is silent on predicate offences.

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

The system for reporting cash and BNIs of CFAF 5 million or more applies only to persons entering or leaving the UEMOA zone 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 defined. **Mali is rated Partially Compliant with Recommendation 32.**

## **Recommendation 33 - Statistics**

In the previous mutual evaluation report, Mali was rated non-compliant with the requirements of this recommendation. The main shortcomings identified were a lack of a mechanism for collecting relevant information, the lack of a tool for analysis and monitoring and lack of statistical monitoring.

### **Criterion 33.1 -**

- (a) Mali provided some statistics on STRs, received and disseminated. The statistics were not disaggregated on an annual basis.
- (b) Mali provided statistics on ML/TF prosecutions and convictions but the statistics relating to investigations are not comprehensive.
- (c) Mali provided statistics on frozen, seized and confiscated property.
- (d) Mali did not provide complete statistics on mutual legal assistance or other international requests for cooperation made and received.

Generally, Mali provided assessors with some statistics on matters relevant to the effectiveness and efficiency of its AML/CFT systems. However, it appears that the statistics are not routinely maintained and are not exhaustive.

### **Weighting and conclusion**

Mali has not maintained comprehensive statistics on matters relevant to the effectiveness and efficiency of their AML/CFT systems. **Mali is rated Partially Compliant with Recommendation 33.**

## **Recommendation 34 - Guidance and Feedback**

During its first evaluation, Mali was rated non-compliant with the requirements of this recommendation. The main deficiencies identified were: the limited and inadequate guidelines in the banking sector, the lack of an AML guideline for the insurance and financial market sector. The West Africa Central Bank 01-2007 July 2, 2007 guideline has not been disseminated to all its recipients.

**Criterion 34.1** - Competent authorities are required to issue instructions, guidelines or recommendations to enable FIs and DNFBPs comply with AML/CFT obligations (Article 86.3 of the AML/CFT law). Articles 86 to 92 of the Law No. 2016-008, stipulates provision allowing for feedback to help financial institutions and non-financial businesses and professions designated in the implementation of national AML/ CFT measures, and particularly, to detect and declare suspicious operations.

Supervisory authorities within the financial have issued specific regulations to anti-money laundering and countering the financing terrorism in their respective sectors, as follows: Regulation N. 007-09-2017 which requires procedure for the application of law AML/ CFT in the FIs, Regulation N. 0004/ 35/ 2008 on the AML at the regional financial market level and Regulation N. 0004/ CIMA/ PCMA/ PCE/ SG/ 08 for the insurance sector.. These guidelines provide financial sector players in Mali with detailed information on how to comply with AML/ CFT law. However, it has not been demonstrated that AML/CFT guidelines have been issued to other sectors, particularly DNFBPs.

#### *Weighting and conclusion*

Although law N ° 2016-008 of 17 March 2016 provides that the competent authorities for FIs and DNFBPs should adopt guidelines. It appears that the supervisory authorities and self-regulatory bodies not issued guidelines for DNFBPs. **Mali is rated Partially Compliant with Recommendation 34.**

### **Recommendation 35 - Sanctions**

During its first mutual evaluation (MER) Mali was rated non-compliant with the requirements of this recommendation. The main reasons stated related to the fact that the sanctions applicable under the banking law and the laws regulating the financial markets were not sufficiently dissuasive and did not include financial penalties. The nature and scope of sanctions applicable to DFIs 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 were also shareholders in some of the banks.

**Criterion 35.1** - Sanctions are applicable to FIs and DNFBPs, but also to the officers and staff of such institutions (Articles 112 to 129 of the AML/CFT Law No. 2016-008). Article 112 states that “Where, as a result of either a serious lack of due diligence or a deficiency in the internal procedures and control of the organization, the person referred to in Articles 5 and 6 has not fulfilled the obligations imposed on it by Titles II and III of the law, the supervisory authority having disciplinary power may act ex officio under the specific conditions in force.” The range of penalties is not explicitly stated vis-à-vis the specific nature of AML/CFT contravention.

**Criterion 35.2** - Articles 112 to 125 of the AML/CFT Law No. 2016-008 provides applicable sanctions not only for financial institutions and designated non-financial businesses and professions, but also for members of administrative and management bodies as exemplified by Article 116 of Law No. 2016-008.

#### *Weighting and conclusion*

The AML/ CFT law and other specific laws provide a range of sanctions (including financial sanctions) proportionate and dissuasive, applicable not only to financial institutions and designated non-financial businesses and professions but also for members of administrative and management bodies. However, the range of penalties is not explicitly stated vis-à-vis the specific nature of AML/CFT contravention **Mali is Largely Compliant with Recommendation 35.**

### **Recommendation 36 - International Instruments**

In its first MER, Mali was rated partially compliant under these requirements because it had not fully incorporated the provisions of the Vienna and Palermo Conventions into its domestic laws.

**Criterion 36.1** Mali is a party to the: Vienna Convention (ratified on 31 October, 1995); Palermo Convention (ratified on 12 April, 2002); Merida Convention (United Nations Convention against Corruption) (ratified 18 April, 2018); and the Convention for the Suppression of the Financing of Terrorism (ratified on 28 March, 2002)

**Criterion 36.2** Mali has incorporated the provisions of the conventions into the following national laws: Law 10-062 of 30 December 2010 concerning the combating financing of terrorism; Law 01-078 of 18 July 2001 on the Control of Drugs and Precursors; Decree No. 2015-0230 /P-RM of 2 April 2015 concerning the modalities to implement administrative freezing; Law 2013-016 of 21 May 2013 amending Law 01-080 of 20 August 2001 on the Criminal procedure Code; Laws 06-066 and the AML/CFT Law No. 2016-008. Although substantial provisions of the conventions have been transposed into Mali's national law, the country has not demonstrated that all relevant provisions have been transposed.

### **Weighting and conclusion**

Mali criminalised TF and integrated substantial provisions of the Palermo and Vienna Conventions into the country's legal framework. However, there are some gaps in the transposition of all relevant provisions of the conventions. **Mali is rated Largely Compliant with Recommendation 36.**

### **Recommendation 37 - Mutual legal assistance**

In its first MER, the Republic of Mali was rated non-compliant because mutual legal assistance was not possible in terrorist financing cases since the conduct was not criminalised.

**Criterion 37.1** - Malian can rapidly provide the widest possible range mutual legal assistance for investigations, prosecutions on related money laundering offences associated predicate offences and the terrorist financing offences. This cooperation can be provided on the basis of multilateral or bilateral agreements or based on Articles 138 to 155 of the AML/CFT Law No. 2016-008.

**Criterion 37.2** - The Ministry of Justice is the central authority responsible for the execution of MLA. The Ministry of Foreign Affairs and International Cooperation (MAECI) is the official authority in charge of international cooperation and the Ministry of Justice, through the National Directorate of Judicial Affairs and Seal (DNAJS) is responsible for monitoring the

processing of all mutual legal assistance files. Mali did not show that it has clear procedures and priorities in the execution of requests even though Article 139 paragraph 8 of the AML/CFT Law No. 2016-008 states that the requesting state should indicate the timeframe, in which it wishes the application to be executed. An application for MLA must include a detailed report of all procedures or specific demands that the requesting state expects to be followed and the timelines for execution. However, no formal case management system has been put in place to monitor the progress on requests.

**Criterion 37.3** - Article 140 of the AML/CFT Law No. 2016-008 stipulates the grounds for refusing a request for MLA. There are no unreasonable or restrictive conditions for refusing MLA and professional secrecy cannot be invoked to refuse to execute the request.

**Criterion 37.4** - Mali does not refuse a request for MLA on the sole ground that the offence is also considered to involve fiscal matters; or on the grounds of secrecy or confidentiality requirements on financial institutions or DNFBPs, except where the relevant information that is sought is held in circumstances where legal professional privilege or legal professional secrecy (Articles 5, 6, 96 and 140 of Law No. 2016-008). The tax office is part of the public treasury which is covered under articles 5 and 6 of the AML/CFT Law No. 2016-008 therefore, the Malian tax authority cannot invoke professional secrecy as a basis for refusing to satisfy a request for mutual legal assistance.

**Criterion 37.5** - Competent authorities are required to respect the confidentiality of the request for MLA, including the confidentiality of legal proceedings, the contents of the request, the documents produced and the fact of MLA. The Malian competent authority is also required to inform the competent authority of the requesting State when it is not possible to carry out the request without disclosure to other parties. (Article 141 of Law No. 2016-008)

**Criterion 37.6** - Based on Article 140 of the AML/CFT Law No. 2016-008, dual criminality is a condition for rendering assistance.

**Criterion 37.7** - Dual criminality is required for MLA in Mali. There is no express provision stating that dual criminality is deemed to be satisfied regardless of whether Mali and the requesting country place the offence within the same category of offences, provided that both countries criminalise the conduct underlying the offence. The authorities, however, indicated that in practice, so long as both countries criminalise the underlying conduct, Mali will not focus on whether or not an offence is classified in the same category of offences or whether or not it is designated by the same terminology in both Mali and the requesting country.

**Criterion 37.8** - Judicial police officers, prosecutors and judges in Mali have the power to order the production of all documents including financial records, to carry out searches and seizures in criminal matters pursuant to 68 to 74 of Law 01-080 of 20 August 2001 as amended by Article 71 of the Criminal Procedure Code (Law 2013-016 of 21 May 2013).

In the context of a mutual legal assistance request, the Malian authorities use the same prerogatives under Articles 142 and 147 of the AML/CFT Law No. 2016-008 to conduct investigation and meet the terms of the instructions requested, unless the competent authority of the requesting state has asked that it be carried out in a way which it is incompatible with Malian legislation.

In addition, special investigating techniques prescribed in Articles 93 to 95 of the AML/CFT Law No. 2016-008, Article 71 of Law 2013-016 and Articles 116 to 120 Law 01-078 of 18 July 2001 on the Control of Drug and Precursors may be used by authorities for the

investigation and prosecution of money laundering offences, predicate offences and the financing of terrorism.

### **Weighting and rating**

Dual criminality is required for mutual legal assistance in Mali and the positive Malian law does not explicitly cover situations where the request for MLA does not involve coercive measures. The authorities have not been able to demonstrate that the dual criminality requirement is met in Mali when an offence is not classified in the same category or worded with the same terminology, so far as the predicate offence is criminalized. These deficiencies are not weighted as being particularly significant however, the lack of clear processes for the timely prioritisation and execution of MLA requests and the absence of a case management system constitutes a more significant shortcoming. **Mali is rated Largely Compliant with Recommendation 37.**

### **Recommendation 38 - Mutual Legal Assistance: Freezing and confiscation**

In its 1<sup>st</sup> MER, Mali was rated partially compliant because provisional measures were unavailable in the case of requests involving instruments used or intended to be used in the commission of ML, a predicate offence or TF. In addition, the sharing of assets confiscated in collaboration with other countries was not envisaged.

**Criterion 38.1** - Malian competent authorities have the power to take expeditious action in response to requests from foreign countries to identify, freeze, seize or confiscate: laundered property, proceeds from, instrumentalities used in, or instrumentalities intended for use in, money laundering, predicate offences, or terrorist financing, as well as property of corresponding value. (Articles 99, 128 and 129 of Law No. 2016-008).

**Criterion 38.2** - Mali's law does not permit the provision of legal assistance to requests for co-operation made on the basis of non-conviction based confiscation and related provisional measures in circumstances when a perpetrator is unavailable by reason of death, flight, absence, or the perpetrator is unknown.

**Criterion 38.3** - Articles 3.2 and 6 of the Criminal Police Cooperation Agreement of the ECOWAS Member States of 19 December 2003, allows police authorities to carry out permanent or ad hoc joint operations in specific areas of transnational crime and search for and disclose information that relates to an offence that has been committed or attempted. Other than this, Mali has not shown that the country's legal framework, together with bilateral cooperation agreements and mutual legal assistance agreements, contains provisions which allow coordinated seizures and confiscation with other countries. Pending the establishment of the National Agency for the Management and Recovery of Seized and Confiscated Assets, seized, frozen or confiscated property are currently overseen mainly by court clerks pursuant to Article 97 of the Code of Criminal Procedure. Mali has not indicated whether there are mechanisms in place for disposing of, property frozen, seized or confiscated.

**Criterion 38.4** - Requesting States are entitled to benefit from assets confiscated in Mali provided an agreement has been concluded with the requesting State (Article 151 of Law 2016-008).

## **Weighting and consideration**

The identified gaps relate to the absence of express arrangements for coordinating seizure and confiscation actions with other countries, the lack of mechanisms for disposing of property frozen, seized or confiscated. Furthermore, Malian law does not provide for confiscation without prior conviction in cases where the perpetrator of the offence is dead, is a fugitive, is absent or unknown. However, this deficiency is not so significant in Mali's context since cooperation for coordinated seizures and confiscation could be achieved by an arrangement or bilateral agreement with a country. **Mali is rated Partially Compliant with Recommendation 38.**

## **Recommendation 39 - Extradition**

In its 1st MER, the Republic of Mali was rated partially compliant with the requirements of this Recommendation due to the absence of statistics on requests for extradition.

**Criterion 39.1** - Mali has ratified several multilateral and bilateral conventions on judicial cooperation which permits extradition requests to be executed. Article 156 of the AML/CFT Law No. 2016-008 states that ML, TF and predicate offences are extraditable offences. However, it appears that Mali does not have a case management system in place or clear processes for timely execution of extradition requests, including prioritization. The law does not impose unreasonable or unduly restrictive conditions.

**Criterion 39.2** - Mali does not extradite its nationals. As noted above, where Mali refuses extradition on the basis of nationality, the case must be referred to the competent Malian court in order to prosecute the person concerned for the offence on which the extradition request was based.

**Criterion 39.3** - Dual criminality is a condition for extradition in the Republic of Mali. Specifically, Article 156 of the AML/CFT Law No. 2016-008 states that there is no derogation from the ordinary law of extradition, in particular, those relating to dual criminality. Malian law does not expressly stipulate that the requirement for dual criminality is met so long as both the requesting and requested country penalize the conduct underlying the offence, whether or not both countries classify the conduct in the same category or use the same terminology to describe the conduct. Even though the authorities stated that in practice, so long as both countries criminalise the conduct underlying, Mali does not focus on whether or not it is classified in the same category of offences or whether or not it is designated by the same terminology in the requesting country and Mali.

**Criterion 39.4** - Article 157 of the AML/CFT Law No. 2016-008 makes provision for simplified extradition procedure.

## **Weighting and conclusion**

Malian law does not address prioritization, management and follow-up of extradition requests and there are no clear processes in place in this regard. **Mali is rated Largely Compliant with Recommendation 39.**

## **Recommendation 40 - Other forms of international cooperation**

In its first MER, Mali was rated partially compliant with these requirements due to of the absence of cooperation between all competent authorities and their foreign counterparts, the absence of information needed to assess the effectiveness of exchange of information with foreign counterparts, insufficient controls and safeguards relating to the use of mutual assistance requests and the inability of the FIU to conduct inquiries on behalf of its foreign counterparts.

### *General Principles*

**Criterion 40.1** - Mali can provide a wide range co-operation and exchange information in a timely manner under bilateral and multilateral agreements and relevant legislation.<sup>32</sup> Competent authorities in Mali engage in international cooperation, on the basis of bilateral and multilateral agreements and relevant legislation<sup>33</sup>. Mali is a party to the Agreement on Criminal Police Cooperation between the countries of the Economic Community of West African States (ECOWAS) signed in Accra on December 19, 2003. This cooperation is carried out through INTERPOL's National Office (BCN-Interpol) and other sub-regional bodies that bring together the judicial police. The BCN-Interpol in Bamako works in close collaboration with the International Criminal Police Organization (ICPO) secretariat and other national offices in carrying out its mission to assist the police, the gendarmerie, the customs and all public services contributing to the fight against transnational organized crime including money laundering, predicate offences and the financing of terrorism and in transmitting information to or from abroad via the Interpol I-24/7 communication system. The cooperation between UEMOA States through the BCN-Interpol is aimed at information exchange as well as assistance with investigations. Customs services collaborate with their counterparts in UEMOA countries through the Customs Enforcement Network (CEN). The FIU and the supervisory authorities also have legal basis for cooperating with their respective counterparts. In addition, the FIU has concluded bilateral agreements with foreign FIUs<sup>34</sup>. Information exchanged between the FIU and counterparts and within INTERPOL may be spontaneous or on request. The supervisory authorities can also cooperate with their foreign counterparts.

**Criterion 40.2** - Cooperation between the Malian and foreign authorities on money laundering, predicate offences and financing of terrorism is covered under Articles 130 to 161 of the AML/CFT Law No. 2016-008 and multilateral and bilateral conventions. In case of urgency, requests for cooperation by foreign countries may be communicated through the International

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<sup>32</sup> Mali is a party to the Agreement on Criminal Police Cooperation between the countries of the Economic Community of West African States (ECOWAS) signed in Accra on December 19, 2003; The BCN-Interpol in Bamako works in close collaboration with the International Criminal Police Organization (ICPO) secretariat and other national offices in carrying out its mission to assist the police, the gendarmerie, the customs and all public services; Customs services collaborate with their counterparts in UEMOA countries through the Customs Enforcement Network (CEN); The FIU and the supervisory authorities also have a legal basis for cooperating with their counterparts.

<sup>33</sup> Instruction 07 of September 25, 2017 Governor of the BCEAO Article 11 to 14; Cooperation Agreement in Justice Matters between the French Republic and the Republic of Mali signed on March 4, 1962; Convention on mutual legal assistance, exchange of judicial information and extradition between the Government of the Republic of Gabon and the Government of the Republic of Mali on March 18, 2008, Protocol on the Establishment of the Office of Information and Investigation in Criminal Matters of ECOWAS signed on 12 January 2006; Convention on judicial cooperation between the Republic of Mali and the Republic of Ghana signed on August 31, 1977; Criminal Police Cooperation Agreement between the countries of the Economic Community of West African States (ECOWAS) signed in Accra on December 19, 2003; Memorandum of Understanding of the Lake Chad Basin covering Benin, Cameroun, Mali, Niger, Nigeria, and Chad with a view to pooling their actions and promoting exchanges of information in the fight against the BOKO-HARAM sect.

<sup>34</sup> The FIU of Mali has concluded the cooperation agreements in the context of AML / CFT information exchanges with the FIUs of the following countries: Berlin, RDC and Monaco.

Criminal Police Organization (ICPO / Interpol) or by direct communication with national judicial authorities, through any rapid means of transmission. The FIU, the supervisory authorities and the customs also have a legal basis for exchanging information. Requests for cooperation are transmitted through clear and secure mechanisms including diplomatic, judicial and administrative channels. For example, the EGMONT SECURE WEB can be used for information exchange between FIUs, the I 24 / 7 channel for information exchange between INTERPOL BCN and the SYDONIA WORLD channel between the Customs services. Mali has, however, not demonstrated that there are provisions on having clear processes for the prioritization and timely execution of requests within its positive law. The competent Malian authorities nonetheless maintain that there are generally safeguards for the information received and the confidentiality of the information received is assured.

**Criterion 40.3** - Under Malian law, the FIU may negotiate and conclude agreements with counterpart FIUs. Other competent authorities such as the police and customs can exchange information following the signing of agreements, based on reciprocity. Mali indicated that where required, authorities are able to negotiate agreements in a timely manner.

**Criterion 40.4** - The FIU uses Egmont's standard protocols for feedback. Mali also uses Interpol's secure channel to provide feedback. No law prevents Mali from promptly providing feedback to requested states regarding the use and usefulness of the information obtained and the country has provided feedback to foreign counterparts. Mali has not shown that the other competent authorities provide feedback.

**Criterion 40.5** - Malian legislation does not prohibit or impose unreasonable or unduly restrictive conditions on exchange of information. Tax offences are predicate offences to money laundering. FIs and DNFBPs cannot invoke professional privilege to refuse the production of information in connection with money laundering or terrorist financing investigations (Articles 5, 6 and 96 of Law No. 2016-008). In the context of a request for information or mutual legal assistance, the requested Malian authority cannot invoke professional secrecy to refuse a request.

**Criterion 40.6** - Competent authorities (Supervisory authorities and FIU) have put in place controls and safeguards to ensure that the information that is received from foreign counterparts is used only for the purposes communicated to the requested authority unless prior authorization is granted by the requested authority. Article 78(2) of the AML/CFT Law No. 2016-008 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, under the regulations in force. BCEAO regulatory framework contains similar provisions. Mali has not shown that the same provision exists in the case of the other competent authorities.

**Criterion 40.7** - Malian legislation states that the FIU must maintain the confidentiality of requests made. The Banking Commission (BC) may also disseminate information to counterpart supervisory authorities, provided that these authorities are themselves bound by professional secrecy (Article 60 of Title IV of the BC 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** - Malian substantive law does not expressly state that its competent authorities can 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.

However, the FIU can facilitate the processing of these types of inquiries on behalf of foreign counterparts (Article 78 of the Law No. 2016-008).

#### *Information exchange between FIUs*

**Criterion 40.9** - The FIU has a legal basis for sharing information with foreign counterparts (Articles 76 and 78 of Law No. 2016-008). This cooperation takes place between the Malian FIU and the other UEMOA FIUs and also FIUs established in third states, regardless of whether these are administrative criminal or judicial in nature.

**Criterion 40.10** - The Malian FIU can provide feedback spontaneously and upon request, to its counterparts regarding the use of any information provided, as well as the outcome of the analysis conducted by the unit. (Article 78 of Law No. 2016-008).

**Criterion 40.11** - The FIU of Mali has the power to share all information that can be accessed or obtained directly or indirectly by the FIU under Recommendation 29 as well as other information that it has the power to obtain, directly or indirectly, at the national level, subject to the principles of reciprocity (Articles 75, 76.1, 78 and 79 of Law No. 2016-008).

#### *Exchange of information among financial sector supervisory authorities*

**Criterion 40.12** - Financial sector supervisory authorities are required to provide rapid and effective cooperation to bodies that exercise similar functions in other UEMOA member states or other third countries, including through the exchange of information in the context of the AML/CFT (Article 86.8 of Law No. 2016-008). In addition to this, the Banking Commission may enter into cooperation agreements with other supervisory authorities and can disseminate information concerning *credit institutions* to them, subject to the UEMOA banking regulations and the principle of reciprocity, provided that these authorities are themselves bound by professional secrecy (Art 60 of Title IV of the BC Convention, Sept 2017). The insurance sector is guided by similar provisions. (Article 17, CRCA's Functions).

**Criterion 40.13** - The financial sector supervisory authorities in Mali are empowered to provide rapid and effective cooperation to bodies that perform similar functions in the other member States or other third States, including through the exchange of information. However, the law does not explicitly state that such information should include information held by financial institutions (Article 86.4 and 8 of Law No. 2016-008).

**Criterion 40.14** - Financial supervisory authorities in Mali are able to provide rapid and effective cooperation to bodies that perform similar functions in the other member States or other third States, including through the exchange of information, in the context of AML/CFT (Article 86 of Law No. 2016-008). Besides Article 60 of the BC convention which provides that "The Banking Commission may provide information on the situation of an institution that is subject to another supervisory or regulatory authority, subject to reciprocity and confidentiality," the law does not specify which types of information can be exchanged.

**Criterion 40.15** - Article 86 of the AML/CFT Law No. 2016-008 states that financial sector supervisory authorities should cooperate and exchange information with other competent authorities and assist in investigations, prosecutions or proceedings relating to ML, predicate offences and TF. Article 86 does not expressly state that supervisory authorities should facilitate the ability of foreign counterparts to conduct inquiries themselves in Mali. Nevertheless, Article 61 of the Appendix to the BC Convention provides as follows: The

Banking Commission is empowered to set up, together with other supervisory authorities, a college of supervisors for each financial holding company and parent credit company with significant international activity. BC may also participate, as host supervisory authority, at the college of supervisors of foreign groups at the invitation of the home supervisory authority.

**Criterion 40.16** - Article 60 of the Convention establishing the UEMOA Banking Commission authorizes the Banking Commission to share information subject to confidentiality and reciprocity. The BCEAO stated that the reciprocal confidentiality clauses, mutually accepted by both authorities, determine the nature of dissemination of exchanged information.

#### *Exchange of information among criminal prosecutorial authorities*

**Criterion 40.17** - Article 142 of the AML/CFT Law No. 2016-008 states that a request for investigation or inquiry shall be carried out in accordance with the legislation in force in Mali unless the competent authority of the requesting state has requested that they be carried out in a particular form compatible with Malian legislation. This provision appears to provide a legal basis for information exchange with foreign counterparts for intelligence or investigative purposes. The judicial or police authorities of Mali are also authorized to conduct investigations or inquiries in collaboration with the authorities of other member states. In practice, Malian investigation and prosecution authorities share information on ML, related predicate offences and TF with their foreign counterparts through the ARINWA, WACAP, and Sahel platforms.

**Criterion 40.18** - Articles 93 to 95 of the AML/CFT Law No. 2016-008, Article 71 of Law No. 2001-080 of the Criminal Procedure Code as amended by Law No. 2013- 016 and Articles 116-120 of Law No. 0-078 / of 18 July 2001 on the Control of Drugs and Precursors provide for the use of investigative techniques in the framework of money laundering, predicate offences and the financing of terrorism. LEAs 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 Law No. 2016-008.

**Criterion 40.19** - LEAs in Mali can establish joint investigation teams with counterparts from another country. The AML/CFT Law No. 2016-008 states that judicial or police authorities can collaborate with the authorities of other countries to conduct investigations (Article 142 of Law No. 2016-008).

#### *Information sharing among non-counterpart authorities*

**Criterion 40.20** - Mali can exchange information indirectly with relevant non-counterpart authorities through the FIU on the basis of Article 75 and 78 of the AML/CFT Law No. 2016-008. There appears to be no express obligation for the competent authority requesting indirect information to clearly state the purpose of the request or on whose behalf the request is being made. However, authorities indicated that this information is provided as a matter of course.

#### **Weighting and conclusion**

Competent authorities in Mali largely have the powers and abilities to provide a wide range of international assistance. Certain limitations were however noted in the analysis of this Recommendation. Competent authorities besides the FIU do not have clear mechanisms for prioritizing and managing request for information and this significantly impacts the processing of requests. The law does not expressly specify the type of information that financial

supervisors can exchange; Malian law does not expressly state that its competent authorities are able to conduct inquiries on behalf of foreign counterparts, and exchange all information that would be obtainable by them domestically; and there is no express provision for competent authorities, besides the FIU, to provide feedback to foreign counterparts. **Mali is rated Largely Compliant with Recommendation 40.**

## Appendix

Table Summarizing Compliance with FATF Recommendations

Compliance with FATF Recommendations		
Recommendation	Rating	Factor (s) Justifying Rating
1. Risk Assessment and Implementation of Risk-based Approach	LC	<ul style="list-style-type: none"> <li>• Mali is yet to finalize its NRA and has no mechanism to ensure the findings of the NRA are disseminated to the competent authorities, SRBs and reporting entities;</li> <li>• There is no provision explicitly stipulating that supervisors or SRBs should ensure financial institutions and DNFBPs implement measures to mitigate identified risks;</li> <li>• The legal provisions on simplified measures are not applied to identified low risks.</li> </ul>
2. National Cooperation and Coordination	PC	<ul style="list-style-type: none"> <li>• Mali has not yet developed any national AML/CFT policies to address the risks identified by the NRA exercise;</li> <li>• The country has no mechanism to coordinate the fight against the financing of the proliferation of weapons of mass destruction.</li> </ul>
3. Money Laundering Offence	LC	<ul style="list-style-type: none"> <li>• The AML/CFT Law 2016-008 of 17<sup>th</sup> March 2016 does not explicitly state that when trying to prove that assets are proceeds of crime, the suspect should not necessarily be convicted for any predicate offence.</li> </ul>
4. Confiscation and Provisional Measures	LC	<ul style="list-style-type: none"> <li>• Mali has not demonstrated that it has taken steps to prevent or nullify actions that undermine the country's capacity to freeze, seize or recover assets earmarked for confiscation;</li> <li>• Mali has not demonstrated that it has any mechanism to possibly dispose of frozen, seized or confiscated assets.</li> </ul>
5. Terrorism Financing Offence	PC	<ul style="list-style-type: none"> <li>• Mali's legislation does not cover the issue of financing an individual terrorist or terrorist organization or the travel of foreign terrorist fighters, as indicated by United Nations Resolutions, including Resolutions 2178 (2014) and 2253 (2015).</li> </ul>
6. Targeted Financial Sanctions related to Terrorism and Terrorism Financing	PC	<ul style="list-style-type: none"> <li>• Mali's TFS mechanism should clarify the criteria for identifying the objectives, specification of the standard of proof required to determine whether a person or entity should be designated or not, and the</li> </ul>

Recommendation	Rating	Factor (s) Justifying Rating
		<p>clear obligation to provide relevant and detailed information on the designation criteria as provided for under UNSCR 1373;</p> <ul style="list-style-type: none"> <li>• The mechanism should specify that designations should not be subject to the existence of any criminal procedures.</li> </ul>
7. Targeted Financial Sanctions related to Proliferation	PC	<ul style="list-style-type: none"> <li>• The Malian mechanism does not target funds or other assets that are jointly owned or controlled, directly or indirectly by designated persons, or funds and other assets of persons and entities acting on behalf of or on the directives of designated persons or entities;</li> <li>• The current mechanism for the implementation of targeted financial sanctions only targets TF and not the financing of proliferation.</li> </ul>
8. Non-profit Organizations	NC	<ul style="list-style-type: none"> <li>• There are no risk-based supervisory/monitoring measures;</li> <li>• Mali has not yet identified the characteristics and types of NPOs which, based on their activities, maybe victims of TF abuse;</li> <li>• There is no designated competent authority to respond to international information requests on NPOs suspected of involving in TF or supporting it by any other means.</li> </ul>
9. Financial Institutions' Professional Secrecy Laws	C	
10. Customer Due Diligence	LC	<ul style="list-style-type: none"> <li>• There is no explicit provision in the law that requires financial institutions to understand the ownership and control structure of customers who are legal persons or legal arrangements;</li> <li>• The law does not explicitly require financial institutions to identify and take reasonable steps to verify the identity of beneficial owners of legal arrangement customers;</li> <li>• The law does not explicitly require financial institutions to include the beneficiary owners of life insurance as a relevant risk factor in determining whether enhanced CDD measures are applicable or not;</li> <li>• There is no provision requiring that where FIs form a suspicion of ML/TF but believe that performing the CDD will tip-off the customer, they should not to pursue the CDD process and file an STR.</li> </ul>

Recommendation	Rating	Factor (s) Justifying Rating
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 (PEPs)	LC	<ul style="list-style-type: none"> <li>• There is no explicit requirement for financial institutions to take reasonable steps to determine whether the beneficial owner of a life insurance policy is a PEP.</li> </ul>
13. Correspondent Banking	LC	<ul style="list-style-type: none"> <li>• The law does not explicitly require institutions engaged in correspondent banking to define the respective AML/CFT responsibilities of each institution.</li> </ul>
14. Money and Value Transfer Services	PC	<ul style="list-style-type: none"> <li>• There are no dissuasive sanctions against unlicensed or unregistered natural or legal persons who provide money or value transfer services;</li> <li>• Agents of money and value transfer service providers are not required to be licensed or registered with any competent authority.</li> </ul>
15. New Technologies	C	
16. Wire Transfers	PC	<ul style="list-style-type: none"> <li>• The law does not require the beneficiary institution to verify the identity of the beneficiary and keep the information where this has not been done previously;</li> <li>• There is no obligation the intermediary FI to keep the information received from the ordering FI or other intermediary FI 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 also no provision requiring the beneficiary's financial institution to monitor and identify cross-border wire transfers that lack the required beneficiary information;</li> <li>• 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 law;</li> <li>• There is no obligation is on the financial institution of the payer to transmit the information accompanying the transfer to the beneficiary's financial institution or to the prosecution authorities within a period of 03 working days upon receipt of the request.</li> </ul>

Recommendation	Rating	Factor (s) Justifying Rating
17. Use of Third Parties	LC	<ul style="list-style-type: none"> <li>The law does not explicitly state that countries that rely on third parties should take into account available information on the level of country risk.</li> </ul>
18. Internal Controls and Foreign Branches and Subsidiaries	LC	<ul style="list-style-type: none"> <li>Financial institutions are not required to conduct independent audits to test the system, and there is no explicit obligation to provide to the group’s compliance, audit and AML/CFT functions, any information on customers, accounts and transactions carried out by branches and subsidiaries, as and when necessary, for AML/CFT purposes.</li> </ul>
19. Higher Risk Countries	NC	<ul style="list-style-type: none"> <li>There is no specific provision obliging the country to apply countermeasures proportionate to the risks: where the FATF so requires;</li> <li>There is no explicit provision for measures to be taken to advise FIs on the deficiencies of other AML/CFT systems.</li> </ul>
20. Suspicious Transaction Reporting	PC	<ul style="list-style-type: none"> <li>The law does not expressly state that suspicious transactions must be reported promptly.</li> <li>Law 2016-008 does not require reporting entities to report attempted suspicious transactions.</li> </ul>
21. Disclosure and Confidentiality	C	
22. Designated Non-financial Businesses and Professions: Customer Due Diligence	PC	<ul style="list-style-type: none"> <li>Law 2016-008 does not require DNFBPs to comply with third party requirements under Recommendation 17 or the new technology requirements under Recommendation 15.</li> </ul>
23. Designated Non- financial Businesses and Professions: other measures	PC	<ul style="list-style-type: none"> <li>Attempted transaction are not covered under the AML/CFT law</li> <li>DNFBPs are not required to file STRs “promptly. T</li> <li>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</li> </ul> <p>There is no requirement for supervisors to inform DNFBPs about the weaknesses of other country’s AML/CFT system. .</p>
24. Transparency and Beneficial Ownership of Legal Persons	PC	<ul style="list-style-type: none"> <li>Mali has not assessed the money laundering/terrorist financing risks associated with the various types of legal persons;</li> <li>Mali has not adopted a sanction regime to enforce obligations relating to transparency of legal persons;</li> </ul>

Recommendation	Rating	Factor (s) Justifying Rating
		<ul style="list-style-type: none"> <li>There are limited mechanisms in place to ensure that legal persons are not misused for AML/CFT purposes.</li> </ul>
25. Transparency and Beneficial Ownership of Legal Arrangements	PC	<ul style="list-style-type: none"> <li>There are no sanctions for failure to perform the above requirements under Recommendation 25;</li> <li>Professional trustees are not required to obtain and keep information on all parties to the trust.</li> </ul>
26. Regulation and Supervision of Financial Institutions	PC	<ul style="list-style-type: none"> <li>Regulation and supervision in terms of licensing or authorization are not well covered for financial institutions other than banks and financial organizations as well as insurance;</li> <li>There is no specific periodical assessment of the ML/TF risk profile of financial institutions that takes account of major events or developments in the management and operations of the institution;</li> <li>On-site and off-site AML/CFT supervision of financial institutions or groups should be determined on the basis of risks the ML/TF risks present in the country.</li> </ul>
27. Powers of Supervisory Authorities	C	
28. Regulation and Supervision of Designated Non-financial Businesses and Professions	NC	<ul style="list-style-type: none"> <li>There is no designated authority to monitor and supervise casinos for AML/CFT, and in the case of other DNFBPs, there is no system to monitor compliance with AML/CFT requirements;</li> <li>Apart from casinos, there are no regulation or measure to prevent criminals and their associates from holding (or being the beneficial owners) of a significant or majority interest in a DNFBP;</li> <li>There is no risk-based supervision in the sector.</li> </ul>
29. Financial Intelligence Units (FIUs)	LC	<ul style="list-style-type: none"> <li>Mali has not indicated whether there are procedures for the processing, keeping, dissemination and protection of information and access to it;</li> <li>The country has not indicated whether the FIU staff members have the necessary security clearances or demonstrated that there are provisions or texts that limit access to the FIU's IT facilities and systems.</li> </ul>

Recommendation	Rating	Factor (s) Justifying Rating
30. Responsibilities of Criminal Prosecutorial Authorities and Investigative Authorities	C	
31. Powers of Criminal Prosecutorial Authorities and Investigative Authorities	C	
32. Cash Couriers	PC	<ul style="list-style-type: none"> <li>• The system of declaring cash and BNIs whose value is equal to or higher than 5 million CFAF only applies to persons entering or leaving the UEMOA territory but not applied to those moving around the 8 countries of the Union;</li> <li>• The coordination mechanism among the various immigration, customs and other police services is not clearly defined.</li> </ul>
33. Statistics	PC	<ul style="list-style-type: none"> <li>• Statistics are not routinely maintained and are not exhaustive.</li> </ul>
34. Guidelines and Feedback	PC	<ul style="list-style-type: none"> <li>• Self-regulatory bodies have not published any guidelines for DNFBPs, although Law No. 2016-008 of 17<sup>th</sup> March 2016 provides that the competent authorities for FIs and DNFBPs should adopt guidelines.</li> </ul>
35. Sanctions	LC	<ul style="list-style-type: none"> <li>• The range of penalties is not explicitly stated vis-à-vis the specific nature of AML/CFT contravention.</li> </ul>
36. International Instruments	LC	<ul style="list-style-type: none"> <li>• The Republic of Mali has criminalized terrorism financing and domesticated substantial provisions of the Palermo Convention, but there is no evidence that it has domesticated all the relevant provisions of the Conventions.</li> </ul>
37. Mutual Legal Assistance	LC	<ul style="list-style-type: none"> <li>• Mutual legal assistance in Mali is based on dual criminality, but positive Malian law does not clearly cover a request for mutual legal assistance that does not include coercive measures;</li> <li>• There is an absence of clear processes for the timely prioritisation and execution of MLA requests and a lack of a case management system;</li> <li>• The authorities have not been able to demonstrate that the dual criminality requirement is met in Mali when an offence is not classified in the same category or</li> </ul>

Recommendation	Rating	Factor (s) Justifying Rating
		worded with the same terminology, so far as the predicate offence is criminalized.
38. Mutual Legal Assistance: freezing and confiscation	PC	<ul style="list-style-type: none"> <li>• There is no explicit provision for coordinating seizure and confiscation measures with other countries;</li> <li>• Malian law does not demonstrate that its legislation provides for confiscation without prior conviction (NCB).</li> </ul>
39. Extradition	LC	<ul style="list-style-type: none"> <li>• Mali has no clear procedures for case prioritization, management and monitoring of extradition requests;</li> </ul>
40. Other Forms of International Cooperation	LC	<ul style="list-style-type: none"> <li>• Competent authorities other than the FIU have no clear mechanism for setting priorities and managing requests for information;</li> <li>• There is no explicit provision on the type of financial information that can be exchanged between financial supervisors;</li> <li>• The law does not expressly provide that competent authorities are able to conduct inquiries on behalf of foreign counterparts, and exchange all information obtainable by them domestically;</li> <li>• There is no explicit provision allowing competent authorities outside the FIU, to provide feedback to their foreign counterparts.</li> </ul>