

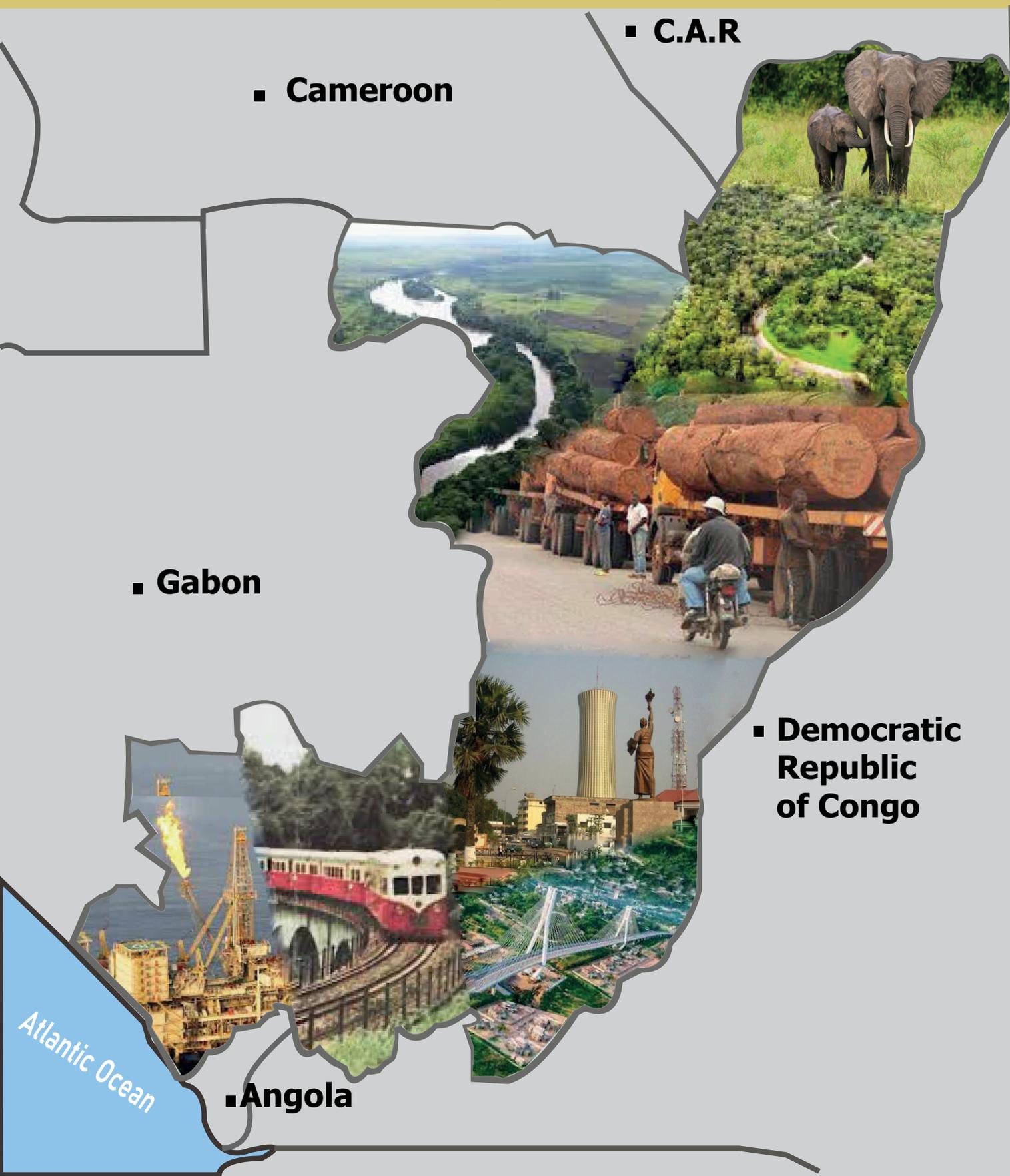


# Anti-money laundering and counter-terrorist financing measures Republic of Congo



## Mutual Evaluation Report

April 2022



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## LIST OF ACRONYMS

ACFIU	African Conference of Financial Intelligence Units
ACHA	Anti-Corruption High Authority
AML	Anti-Money Laundering
AML	Anti-Money Laundering
ARTF	Money Transfer Regulatory Agency
ASTROLAB	Questionnaire on Assistance to Surveillance, Treatment and Organization of Anti-Money Laundering
ATM	Automatic teller machines
ATM	Automatic Teller Machine
AU	African Union
AUDCG	Uniform Act Relating to General Commercial Law
BEAC	Bank of Central African States
BNIs	Bearer Negotiable Instruments
BPC	Banque Postale du Congo
BPI	Bearer Payment Instrument
Bs	Billions of CFA Francs
BVMAC	Central African Stock Exchange
C	Compliant
CAPCCO	Central African Police Chiefs Committee
CAR	Central African Republic
CBDA	Congolese Business Development Agency
CCIAM	Chamber of Commerce, Industry, Agriculture and Trades
CDD	Customer Due Diligence
CEMAC	Central African Economic and Monetary Community
CIMA	Inter-African Conference of Insurance Markets
CIPA	Criminal Investigation and Prosecution Authority
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora

CLEA	Criminal Law Enforcement Agency
COBAC	Central African Banking Commission
COGELO	Congolaise de Gestion de Loterie
COSUMAF	Central African Financial Market Supervisory Commission
DGAT	Directorate General for Territorial Administration
DGDDI	Directorate General of Customs and Excise
DGI	Directorate General of Taxation
DGL	Directorate General of Leisure
DGPN	Directorate General of National Police
DGST	Directorate General for Territorial Surveillance
DN	National Headquarters
DNA	National Directorate for Insurance
DNFBP	Designated Non-Financial Businesses and Professions
DRC	Democratic Republic of Congo
DSC	Directorate of Civil Security
ECCAS	Economic Community of Central African States
EIG	Economic Interest Groups
EITI	Extractive Industries Transparency Initiative
FAFT	Financial Action Task Force
FI	Financial Institution
FIU	Financial Intelligence Unit
FP	Financing of Proliferation
FPWMD	Financing the Proliferation of Weapons of Mass Destruction
FSRB	FATF-Style Regional Body
GABAC	Task Force on Anti-Money Laundering in Central Africa
GDP	Gross Domestic Product
GP	General partnership
GSI	General State Inspectorate
HC	High Court

ICCWC	International Consortium on Combating Wildlife Crime
ICT	Information and Communication Technology
IMF	International Monetary Fund
INTERPOL/NCB	Interpol National Central Bureau
IO	Immediate Outcome
JPO	Judicial Police Officer
KM	Kilometre
KYC	Know Your Costumer
LCB	La Congolaise de Banque
LLC	Limited Liability Company
LP	Limited Partnership
LC	Largely Compliant
MER	Mutual Evaluation Report
MFBPP	Ministry of Finance, Budget and Public Portfolio
MFI	Micro Finance Institution
MJDHPPA	Ministry of Justice, Human Rights in charge of Indigenous Peoples Empowerment
MMTSP	Mobile Money Transfer Service Providers
MTC	Money Transfer Company
MUCODEC	Mutuelles Congolaises d'Epargne et de Crédit
NAFI	National Agency for Financial Investigation
NC	Non-Compliant
NGO	Non-Governmental Organization
NIS	National Institute of Statistics
NPO	Non-Profit Organization
NRA	National Risk Assessment
OECD	Organization for Economic Cooperation and Development
OHADA	Organization for the Harmonization of Business Law in Africa
ONECC	National Order of Chartered Accountants of Congo

PC	Partly Compliant
PLC	public limited company
PEP	Politically Exposed Person
PSRA	Prudential Supervision and Resolution Authority
R	Recommendation
STR	Suspicious Transaction Report(ing)
SVT	Primary Dealers
TF	Terrorist Financing
TFS	Targeted Financial Sanctions
TPPCR	Trade and Personal Property Credit Register
UBA	United Bank for Africa
UMAC	Central African Monetary Union
UNDP	United Nations Development Programme
UNO	United Nations Organization
UNODC	United Nations Office on Drugs and Crime
UNSCR	United Nations Security Council Resolution
USD	United States Dollars
VA	Virtual Assets
VASP	Virtual Asset Service Provider
WAMU	West African Monetary Union
WCO	World Customs Organization

## **PREAMBLE**

The Task Force on Anti-Money Laundering in Central Africa (GABAC) is a specialized institution of the Central African Economic and Monetary Community (CEMAC) and a FATF-style Regional Body (FSRB) that promotes norms, instruments and standards for combating money laundering, terrorist financing and the proliferation of weapons of mass destruction, as well as other threats, including related methods and trends, in order to ensure the integrity of the financial system of member and associated States.

States under GABAC's jurisdiction have formally recognized the FATF standards as the benchmark for combating money laundering, terrorist financing and the proliferation of weapons of mass destruction.

GABAC was admitted as an FSRB in 2015. Its duties include evaluating the anti-money laundering and combating the financing of terrorism (AML/CFT) systems of the States under its jurisdiction in order to assess their compliance with international standards and the effectiveness of measures taken.

After successfully conducting the first round of mutual evaluation of its member States, GABAC began its second round with evaluation of the system of the Democratic Republic of Congo, and continued implementing the schedule of mutual evaluations of the States under its jurisdiction with the evaluation of Cameroon's AML/CFT system, and that of the Congo.

This report, together with any data and maps it may contain, is without prejudice to the status of any territory, the sovereignty over such territory, the delimitation of international boundaries and limits, and the name of any territory, city or region. It has been prepared based on the 2013 FATF Methodology updated in November 2020 and the GABAC Round 2 Mutual Evaluation Procedures Manual. It incorporates the new requirements introduced in the 2012 revision of the FATF Recommendations and contains provisions on technical compliance and effectiveness.

The report was reviewed by Ms Jacqueline AREND, Adviser at the Luxembourg Financial Sector Commission, and Mr Franck OEHLERT, Member of the French Prudential Supervision and Resolution Authority (PSRA), with the mentoring of FATF represented by Mr Francesco POSITANO, Policy Analyst at FAFT Secretariat.

The Plenary Meeting of GABAC adopted the Evaluation Report, on 31 march 2022 at Libreville in Gabon.

## EXECUTIVE SUMMARY

1. This document presents a summary of the AML/CFT measures in place in the Congo at the time of the on-site visit, from 7 to 25 June 2021. It analyses the level of compliance with the FATF 40 Recommendations and the effectiveness of the Congo's AML/CFT system, and sets out priority recommendations for strengthening the system.

### A. KEY FINDINGS

(a) Overall, the Congo did not demonstrate a good understanding of the ML/TF risks it faces. The understanding of the risks varies with the competent authorities and the sectors under consideration. The supervisory and control authorities of the reporting entities have not conducted any in-depth analysis of the ML/TF risks to which their areas of competence are exposed; only the insurance supervisor, CIMA, stated that it programmed its missions on a risk-based approach, without providing proof of this through any sectoral risk evaluation report. The level of control of ML/TF risks by FIs also varies from sector to sector and from one institution to another. For financial institutions, while the banking sector has a satisfactory understanding of the ML/TF risks to which it is exposed, other non-bank financial institutions have a fairly average understanding of the ML/TF risks associated with their various professions. Regarding DNFBPs, the majority of the various actors in this sector interviewed did not demonstrate any understanding of the ML/TF risks inherent in their activities, except for accounting firms that are subsidiaries of large international groups and which implement their groups' standards in this area.

(b) The Congo completed its NRA in March 2021. The NRA identified ML/TF threats and vulnerabilities for the reporting entities and its findings are generally reasonable in that they reflect the main ML/TF risks facing the country. This process ended with the approval of the NRA report, together with a national AML/CFT strategy and a three-year action plan, by Order No. 7557/MFBPP-CAB of 21 April 2021 of the Minister of Finance and Budget, whose implementation will make it possible to strengthen the level of understanding of the risks of all actors involved in AML/CFT. Dissemination of the NRA report, its main findings and recommendations, and the appended action plan, is thus a major priority to be taken into account by the national authorities.

(c) The Congo has an authority responsible for coordinating national AML/CFT policies. The authority is not yet operational and the major actors in the fight against financial crime in general do not seem to have a mechanism or platform for pooling their actions in order to improve or perfect their effectiveness.

(d) NAFI works with the reporting professions and discloses its reports to the judicial authorities. NAFI Congo receives STRs exclusively from a few banking institutions out of the ten (10) in the Congo and from three (3) microfinance institutions out of the twenty-four (24) MFIs. The other reporting professions, DNFBPs, Customs and Taxation authorities do

not yet report suspicious transactions to NAFI, because they are mostly unaware of their declarative obligations and all the required diligences.

**(e)** Investigative authorities do not systematically conduct parallel investigations for ML/TF when processing files on underlying offences. Similarly, there is no evidence that investigations focus on the different types of ML activities, including self-money laundering, third party laundering, as well as laundering of proceeds from the underlying offences committed abroad. Through the reports forwarded by NAFI to the judiciary, the Congo has initiated several cases of money laundering prosecutions, which are currently under investigation, and no convictions have been handed down to date. Thus, the different types of ML cases prosecuted, characterized by the prosecution of underlying offences with foreign ramifications, third party laundering or self-laundering cannot be assessed, as well as their consistency with the country's ML risk profile and national AML/CFT policies and priorities. The same applies to the effectiveness, proportionality and dissuasiveness of the penalties provided for.

**(f)** The Congo faces a moderately high risk of TF, the sources of which may be criminal activities, in particular the illicit exploitation of natural resources and wildlife crimes. The competent courts are not well structured and do not have the financial and human resources or specific training in this area. Underlying offences that may constitute sources of TF are not systematically investigated in parallel for TF. To a lesser extent, criminal investigation and prosecution authorities institute proceedings and conduct investigations for underlying offences such as corruption, customs fraud, trafficking in protected wildlife, drugs and precious stones and metals.

**(g)** With regard to targeted financial sanctions relating to TF and FPWMD, the Congo has not designated a central administrative authority responsible for freezing assets and the majority of AML/CFT actors are unaware of the existence of the United Nations financial sanctions lists. Furthermore, the mechanism for disseminating sanctions lists established by Law No. 28-2021 of 12 May 2021, which establishes a legal regime for freezing assets linked to terrorism and its financing, does not allow for the freezing of assets and prohibitions aimed at preventing funds and other property from being made available to persons and entities designated by the UNSC to be carried out within a few hours (without delay). No national list on the basis of UNSCR 1373 has been established.

**(h)** The Congo does not apply the risk-based approach and its authorities have not conducted a specific study to identify NPOs which, because of their characteristics and activities, are most exposed to abuse for TF purposes and to assess TF vulnerabilities and threats to NPOs. The country has not adopted a strategy to train and raise awareness of NPOs at risk and the measures they can take to protect themselves from such exploitation. Most NPOs are unaware of their due diligence obligations in this area.

**(i)** Banking FIs generally understand their AML/CFT obligations and implement appropriate due diligence measures. Insurance companies have a moderate understanding of their AML/CFT obligations and implement weak due diligence measures. Non-bank FIs, in particular financial market actors, microfinance institutions, leasing companies, money remitters, and foreign exchange bureaus, have an average understanding of their AML/CFT obligations and have implemented basic due diligence measures commensurate with the risks

identified in their sector. Apart from the local subsidiaries of large accounting firms, DNFBPs as a whole have no knowledge of their AML/CFT obligations. As a result, they do not implement the appropriate due diligence to prevent them and do not forward STRs to NAFL. VASPs are not regulated and therefore are not liable to any AML/CFT obligations and due diligence.

**(j)** Supervision by the supervisory authorities is not programmed on a risk basis. For the FIs that it supervises, COBAC has not organized any thematic control on AML/CFT issues. Nevertheless, an AML/CFT component is systematically taken into account during general missions and thematic missions on compliance with foreign exchange regulations. With regard to DNFBPs, the mission noted the absence of competent authorities designated to ensure AML/CFT supervision.

**(k)** None of the supervisory authorities (COBAC, CIMA or COSUMAF) had imposed sanctions for breaches of AML/CFT obligations on the entities they supervise at the time of the on-site visit.

**(l)** The Congo has put in place most of the elements of the legal framework for collecting basic information from legal persons and making same available. However, there is no clear mechanism for identifying beneficial owners in the Congo, nor is there a designated place to centralize such information. The Organization for the Harmonization of Business Law in Africa (OHADA), to which the Congo is a party, does not recognize trusts and other legal arrangements. However, trusts set up abroad can operate in the country, but there are no mechanisms for their control and supervision.

**(m)** The Congo does not have a mechanism or entity for managing frozen, seized and confiscated property in order to effectively preserve and manage the value of such property.

**(n)** The Congo has an appropriate legal framework for international judicial cooperation. However, the level of activity recorded is unsatisfactory. The country has not demonstrated a proactive use of international judicial cooperation in ML/TF cases that reflect its risk profile, although it is exposed to a range of ML/TF risks, the most significant of which are transnational. There is no mechanism for sharing confiscated assets in the context of international cooperation.

**(o)** Competent authorities and supervisors have an appropriate legal framework for cooperation with their foreign counterparts. With the exception of NAFL, the implementation of this AML/CFT exchange framework is limited.

## **B. RISKS AND GENERAL SITUATION**

2. The Republic of Congo is exposed to a range of money laundering and terrorist financing (ML/TF) risks. The geographical location, the sharing of an economic and monetary area with five States underpinned by the principle of free movement of people and goods on the one hand and, on the other hand, its wealth of natural resources, the particularity of its economy (dominated by oil production and logging) essentially marked by cash transactions, the low financial inclusion, the large size of the informal sector, and the multiplication of new financial products are some of the vulnerabilities that make the Congo attractive to ML/TF.

3. In addition, Congo's open maritime and porous land borders with neighboring States expose it to cross-border flows of illicit funds and trafficking. Such vulnerability factors are accentuated by deficiencies in the national AML/CFT prevention and control system but, above all, by the lack of implementation of a global policy in this area.

4. The threat of laundering money is characterized by a range of underlying offences that attract attention because of their recurrence or the size of the profit generated, such as corruption, embezzlement of public funds, tax and customs fraud, environmental crimes such as trafficking in precious metals, poaching and illegal felling of forest species, trafficking in wildlife and wood products, theft, scamming, embezzlement, breach of trust, drug trafficking, smuggling of pharmaceutical products, illicit currency trafficking, counterfeiting, etc.

5. The Congo has not experienced any terrorist acts on its territory. However, the threat of terrorist financing exists and can be explained by the Congo's border situation with countries that are sometimes unstable and victims of insecurity and terrorism caused by religious extremism, the desire of secessionist groups, and the political activism of armed groups or bands. The upward trend in illicit trafficking of arms, explosives and ammunition revealed by Congo's NRA seems to corroborate the effectiveness of the TF threat. The shortcomings of the legal framework for the implementation of targeted financial sanctions are a threat-aggravating factor.

6. According to Congo's NRA report, none of the sectors is immune to ML/TF risks, each according to its level of vulnerability. In this respect, the real estate sector, banks, microfinance, casinos and gambling, the mining sector, the money transfer sector, and hotel and restaurant services are sectors with a high-risk level.

## **C. OVERALL LEVEL OF EFFECTIVENESS AND TECHNICAL COMPLIANCE**

7. Congo's AML/CFT system has made progress since the previous evaluation, particularly with the effective operation of its FIU and strengthening of the institutional framework for combating corruption through the setting-up of the Anti-Corruption High Authority (ACHA). However, the overall level of effectiveness of the AML/CFT system is still low due to some shortcomings, in particular the non-functioning of the authority set up to coordinate national policies on AML/CFT issues, the lack of effective implementation of a criminal policy on AML/CFT, the absence of a mechanism for disseminating lists of sanctions to reporting entities to ensure prompt implementation of the TFSs, and the weak targeted controls on AML/CFT by the supervisory and control authorities.

**8.** In terms of technical compliance, the legal framework was updated after 2015, with the adoption of the new CEMAC AML/CFT Regulation, laws and regulations, to be consistent with international standards, notably the FATF Recommendations.

**9.** There are shortcomings in the production of statistics, the establishment of guidelines, the regulation of non-bank FIs, the monitoring of DNFBPs and NPOs, etc.

*Risk assessment coordination and policy sitting (Chapter 2 –IO.1; R.1, R.2, R.33)*

**10.** Overall, Congolese stakeholders did not demonstrate a good understanding of ML/TF risks. The level of understanding of the risks varies from one sector to another and from one profession to another. While NAFI and the investigative and prosecution authorities have a fairly good understanding of ML/TF risks, the same cannot be said for other public sector actors. At the level of supervisory authorities, the understanding of ML/TF risks is acceptable for those in the financial sector, and rather mixed for the other self-regulatory or supervisory authorities of DNFBPs. Overall, the supervisory, control, self-regulatory or regulatory authorities have not undertaken a thorough analysis of the ML/TF risks to which the activities of their respective financial and non-financial sectors are exposed.

**11.** At the level of reporting entities, financial institutions as a whole, and banks in particular, have a better understanding of ML/TF risks than DNFBPs, which have no control over the threats and vulnerabilities inherent in their activities. Among financial institutions, the level of understanding of ML/TF risks varies across business lines and institutions. While the banking sector has a satisfactory understanding of the ML/TF risks to which it is exposed, other non-bank financial institutions have a rather limited understanding of the risks associated with their different professions, apart from MMTSPs that conduct internal risk assessments of new products. As for DNFBPs, the various actors in this category that we met have no control over the ML/TF risks associated with their activities, except for accounting firms that are subsidiaries of large international groups, which implement their groups' standards in this area.

**12.** The NRA report adopted by Congolese authorities in April 2021 highlights some of the threats and vulnerabilities facing the country. The key findings of this first NRA are generally acceptable, as they reflect the major ML/TF risks. However, at the time of the mission, the validated NRA report had not yet been disseminated to the various State, public and private stakeholders in AML/CFT. This situation constitutes a major weakness in the national AML/CFT system, as the main professionals concerned are not aware of the risks associated with their respective fields of activity.

**13.** With regard to national coordination, the country established a National AML/CFT/Proliferation Policy Coordination Committee in June 2018. However, until the date of the evaluation mission, three years after its establishment, the Committee was not operational and had still not held its first meeting.

**14.** During the on-site visit it was noted that there is a lack of cooperation and exchange of information between the various national AML/CFT stakeholders, apart from NAFI which works with the reporting professions and discloses its reports to judicial authorities. The key actors in the fight against financial crime in general do not seem to have a mechanism or platform for pooling their actions in order to improve or perfect their effectiveness.

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

**15.** In the opinion of the evaluation mission, financial intelligence is still insufficient in terms of quantity, given the number of cases forwarded by NAFI between 2018 and 2020 (46), and in terms of quality insofar as such intelligence has not led to any convictions for money laundering. Through the reports forwarded by NAFI to the judiciary, the Congo initiated several cases of money laundering prosecutions, which are currently under investigation and have not resulted in any convictions to date. Thus, the various types of ML prosecuted, characterized by cases of prosecution of underlying offences with foreign ramifications, money laundering by a third party or self-laundering, cannot be assessed.

**16.** Congolese Customs and Tax administrations have investigative services with the power to collect financial intelligence. Customs offences generating funds likely to be laundered stem from the violation of exchange regulations, commercial fraud (falsification of documents, false or non-declarations) and smuggling. Tax offences, for their part, consist mainly of tax fraud (false or non-declaration, falsification of documents, etc.). Customs authorities seize the goods in question and confiscate them or conclude a transaction. Tax authorities impose fines and other tax adjustments. However, although they have such data, neither Customs nor Tax authorities carry out investigations for ML and do not forward STRs to NAFI.

**17.** Congolese authorities have adopted legislative measures making confiscation supplementary to sentencing. The Code of Criminal Procedure and CEMAC Regulations explicitly identify confiscation as a priority. The Congo has not yet established a central agency responsible for managing seized, confiscated or frozen property or funds and for asset recovery. Thus, Court Registries remain competent in this matter and are unable to effectively manage the said assets which, most of the time, depreciate or are destroyed. Congolese authorities have not provided any data on the seizures made at the airport and at the various land and sea borders, on passengers for non-declaration of currency.

*Investigation and prosecution of terrorist financing and proliferation financing (Chapter 4 – IO. 9-11; R. 5-8)*

**18.** In its NRA, the Congo noted that TF risk is moderately high as no act of terrorism has occurred on its territory and no case of fundraising for TF has been detected. However, discussions with some investigative and prosecuting authorities reveal that some cases of suspected TF forwarded by NAFI are under investigation. Criminal activities, in particular the illegal exploitation of natural resources and wildlife crimes can also be sources of TF. However, the competent jurisdictions are not well structured and do not have the financial and human resources or specific training in this area. Underlying offences that may be sources of TF are not systematically investigated in parallel for TF.

**19.** CEMAC Regulations provide for the freezing of assets in application of UN Sanctions Committee Resolutions 1267 and 1373, the definition of which funds may be liable to freezing measures is consistent with the requirements of such Resolutions. The Community instrument also provides for derogations, authorizations and exemptions on a humanitarian basis in this

regard, and the Congo has completed its legal system in this area by adopting Law No. 28-2021 of 12 May 2021 on the legal regime for the freezing of assets linked to terrorism and its financing. However, the mission notes major shortcomings in this legal system, in particular the lack of a central administrative authority responsible for freezing assets and the long delays in disseminating sanctions lists, which do not allow freezing and confiscation measures to be taken within a few hours. Most AML/CFT actors are unaware of the existence of the UN financial sanctions lists and their implementation mechanisms.

**20.** Regarding NPOs, their AML/CFT supervisory and control bodies have not been designated. Most NPOs are unaware of their due diligence obligations in this area. The country has not adopted a strategy to train and sensitize NPOs to prevent terrorist groups from using such entities for terrorist financing purposes.

**21.** With regard to proliferation financing, the Congo does not have a legal framework and mechanisms for disseminating prohibitions on commercial transactions with UN-sanctioned entities and individuals. The authority responsible for freezing assets has not been designated, nor has the supervisory authority.

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

**22.** In the Congo, there is a body of law and regulations in force that requires all reporting entities to apply preventive standards in terms of ML/TF, in particular by adopting measures and mechanisms to assess, understand and mitigate the risks to which they are exposed.

**23.** Generally, the vast majority of Congolese banks have a good understanding of the ML/TF risks to which they are exposed, as a result of the internal evaluations carried out by most of them, together with a categorization of customers, services and products by identified risks. However, the level of effective implementation of risk mitigation measures is varied and not satisfactory for all banks. The absence of guidelines for the management of some at-risk customers and transactions hampers the effectiveness and efficiency of the preventive measures adopted by the banks. Furthermore, the absence of a formal mechanism for the implementation of targeted financial sanctions in the area of AML is a major risk factor in this area. Congolese banks apply their AML/CFT due diligence obligations satisfactorily for the most part, and report suspicious transactions. They maintain acceptable relations with NAFI, and are liable to COBAC supervision and control.

**24.** The insurance sector has a diverse range of AML/CFT risk management and regulatory requirements. Insurance companies have established appropriate customer due diligence measures. However, internal evaluations of the AML/CFT risks inherent in their activities are not yet systematized. On the other hand, knowledge of basic AML/CFT requirements and the implementation of related procedures are still very limited at the level of insurance intermediaries; this situation is further accentuated by the absence of awareness campaigns on the standards prescribed by the new CIMA AML/CFT Regulation, issued on 2 March 2021.

**25.** MFIs have an understanding of ML/TF risks that is not derived from internal evaluations and, as a result, the mitigating measures in place are inadequate and unsatisfactory. While the obligation to identify customers is generally met at the time of entry into the relationship, the

required internal procedures regarding customer profiling, identification of BOs, detection and reporting of suspicious transactions are not implemented.

**26.** The other FIs have a rather limited understanding of the ML/TF risks inherent in their sectors of activity, apart from MMTSPs, which carry out risk assessments prior to the launch of any new product. This results in a general lack of measures to mitigate the risks.

**27.** As far as DNFBPs are concerned, there is a general failure to implement the customer due diligence obligations, apart from subsidiaries of international groups of accounting firms, which apply the procedures in force within their groups in the Congo.

**28.** As for VASPs, their activities are not regulated and therefore not subject to any AML/CFT obligations and due diligence.

**29.** In general, the identification of beneficial owners and access to reliable sources of information, especially with regard to the identity of customers and the constitutive documents of companies, and the lack of training and awareness-raising among the various actors involved in AML/CFT are major challenges for most of the reporting professions in the Congo.

### *Supervision (Chapter 6 – IO.3; R.26-27, R.34-35)*

**30.** In Congo, the supervisory authorities of financial institutions implement, through information collected and processed at the time of entry into the market and during major changes in transaction, vigilance measures to prevent criminals and their accomplices from holding a significant stake in these institutions, from taking control of them or from occupying a management position. Appropriate checks are carried out on the legality of the origin of funds, the character and good repute of the owners, directors and managers. However, checks on beneficial owners are only carried out at the level of banks that are subsidiaries of groups and the actors and service providers contractually backed by the latter's AML/CFT arrangements.

**31.** Manual foreign exchange bureaus, which often start their activities before obtaining approval from the monetary authority, suffer greatly from competition from informal actors, identified mainly in Brazzaville Beach and in the West African community, which widens the meshes of the Congolese system, promotes the intrusion of potential criminals and encourages approved foreign exchange bureaus to extend their activities, without prior approval, to payment services in order to keep their turnover afloat.

**32.** With regard to DNFBPs, the conditions for authorization and licensing refer to legal and regulatory instruments that have not been updated in line with the CEMAC AML/CFT regulations. The mission noted a lack of information on the CEMAC Regulation, AML/CFT requirements and risks at the level of the administrative or self-regulatory authorities it met.

**33.** Self-regulatory bodies, such as those for lawyers, notaries or accountants, are satisfied with the standard procedures and conditions for access to the profession, to restrict access to criminals and their accomplices. For others, these requirements are less satisfactory, thus increasing the risk of ML/TF, and some reporting entities such as those operating in the field of gambling, are faced with a deficient regulatory framework.

**34.** In the real estate sector, the evaluation team found that real estate agents were unduly operating under the status of non-trading real estate companies.

**35.** Supervisors of the banking, microfinance, payment service providers and insurance sectors have a satisfactory and ongoing understanding of the ML/TF risks of their sectors, unlike the supervisors of other financial institutions.

**36.** In practice, the various supervisory authorities do not take sufficient care to ensure that the actors under their jurisdiction understand the ML/TF risks to which their respective sectors are exposed on an ongoing basis. However, it is worth noting that, because of the specific requirements on banks, particularly in relation to correspondent banking, they keep a constant watch on the matter, which enables them to understand the risks associated with their sector and their products, and thus to implement mitigating actions.

**37.** Supervisory authorities have a wide range of administrative, civil, disciplinary and criminal sanctions at their disposal in the event of breach of the regulations. However, at the time of the on-site visit, COBAC, CIMA and COSUMAF had not yet imposed sanctions on the entities they supervise, for failure to comply with AML/CFT obligations.

#### *Transparency of legal persons and beneficial ownership (Chapter 7 – IO.5; R.24-25)*

**38.** The creation of legal entities in the Republic of Congo is the responsibility of the Registry of the Commercial Court and the Congolese Agency for Business Establishment (CABE). CABE serves as a one-stop shop for business establishment and is under the supervisory authority of the Minister in charge of Small and Medium Enterprises, Handicrafts and the Informal Sector. Its mission is to simplify formalities for the establishing businesses by allowing them to file the declarations they are required to make in a single place and on a single document.

**39.** The information contained in the TPPCR is not directly accessible to the public and access thereto is subject to prior authorization by the Registrar-in-Chief of the competent court. Similarly, the TPPCR file is not centralized, fully computerized and updated. This implies a probability of inaccuracy of the said information.

**40.** Congolese authorities responsible for creating legal entities and keeping company registers, in particular CABE, the registries of the competent courts and notaries, only have knowledge of the identity of promoters when business establishment files are submitted; there is no mechanism in place in the Congo to identify beneficial owners. The formalities for setting up companies in the Congo do not make it possible to obtain information on the beneficial owners.

**41.** The Congo has a legal framework for collecting basic information from legal persons and making same available. However, identifying the beneficial owners (BOs) of legal persons is a major challenge. Furthermore, the Congolese system does not recognize trusts and other beneficial ownerships.

**42.** Thus, the evaluation of ML/TF risks inherent in the various categories of legal entities, other than NPOs established in the Congo has not yet been conducted. Accordingly, the ML/TF risks relating to the various categories of legal entities established are not known; neither are the measures taken sufficient to prevent criminals from controlling or managing legal entities.

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

**43.** The Congo has a well-developed legal framework for international cooperation, especially judicial cooperation. However, the level of activity recorded is unsatisfactory. The country has not demonstrated a proactive use of international cooperation in ML/TF cases that reflect its risk profile, although it is exposed to a range of ML/TF risks, the most significant of which are transnational.

**44.** Competent authorities and supervisors have an appropriate legal framework for cooperation with their foreign counterparts. However, with the exception of NAFI, the implementation of this AML/CFT exchange framework is limited.

## D. PRIORITY MEASURES

Based on the overall findings, the priority actions recommended to Congolese authorities are as follows:

- (a)** Disseminate as soon as possible the NRA report with its action plan and AML/CFT strategy paper to all national actors involved in AML/CFT and organize awareness-raising sessions for all such actors on the main findings of this exercise, the content of the priority action plan adopted and its implementation;
- (b)** Make the National AML/CFT Policy Coordination Committee effectively operational in order to provide a framework for cooperation, coordination of national actions and effective information exchange and evaluation for the consistent implementation of national AML/CFT policies by all actors;
- (c)** Update the legal and regulatory instruments governing DNFBPs in line with CEMAC AML/CFT regulatory requirements and clearly designate the competent AML/CFT supervisory or oversight authorities for each category of DNFBP, provide them with sufficient powers of approval/authorization, control and sanctions, and implement a risk-based supervision program;
- (d)** Promote operational cooperation between competent authorities, including with regulatory, supervisory and oversight authorities, and ensure that the latter integrate a risk-based approach into the supervisory process of their entities;
- (e)** Develop statistical data collection mechanisms and maintain comprehensive, consolidated and up-to-date statistics on all matters relating to investigations, prosecutions, convictions and frozen, seized or confiscated assets in order for the authorities to have reliable quantitative data to measure the effectiveness of their AML/CFT system and to allocate resources appropriately;
- (f)** Increase and strengthen the human, material and financial resources of prosecuting authorities to enable them have sufficient means to competently trace, freeze, seize and confiscate the proceeds and instrumentalities of crime, including those located abroad, and to systematically engage in parallel investigations of ML when investigating the underlying offences and facilitate convictions for ML;
- (g)** Provide NAFI with adequate premises and reinforce its staff in quantity and quality;
- (h)** Strengthen coordination and cooperation between the various actors in the criminal justice chain to ensure successful investigations and prosecutions, in particular by establishing permanent and regular exchange platforms and by carrying out joint actions or activities;
- (i)** Ensure that Criminal Law Enforcement Officers (CLOs), prosecutors, investigating judges and trial judges implement the confiscation policy objective, including the confiscation of property of corresponding value and the instrumentalities of crime;
- (j)** Establish a sanctions list dissemination mechanism that allows for asset freezing and prohibitions to prevent funds and other assets from being made available to UNSC-designated individuals and entities within hours (without delay);

- (k)** Designate an administrative authority for the freezing of assets and for the management of seized or confiscated property in order to apply and implement specific delisting and freezing procedures in accordance with UN Security Council Resolutions 1267 (1989), 1373, 2253 and 1988;
- (l)** Designate competent authorities responsible for monitoring and implementing targeted financial sanctions (TFSS) relating to weapons of mass destruction (WMD) proliferation financing and establish a legal framework and mechanisms for disseminating prohibitions on business transactions with listed entities and individuals in the repression of WMD proliferation financing;
- (m)** Strengthen the capacity of investigative and prosecution bodies by providing them with specialization in TF investigation and prosecution techniques;
- (n)** Review the legal framework applicable to NPOs in order to establish control mechanisms to ensure that all funds are properly accounted for and used in accordance with the purpose of their declared activities, and to ensure transparency in the management of their funds; and conduct a study to enable the identification of the category of NPOs vulnerable to TF;
- (o)** Review the instruments governing the professions of real estate agents, notaries and lawyers so as to effectively incorporate AML/CFT requirements, particularly with regard to customer identification, identification of originators and beneficial owners, and knowledge of the origin of the funds and assets involved in the transaction;
- (p)** Establish a system of computerization of criminal records to allow for the verification and optimal storage of information and data on owners and managers of legal entities;
- (q)** Legislate on the virtual asset sector in order to specify procedures for licensing virtual asset providers, regulate their transactions, license activities and designate an authority specifically responsible for the supervision and control of VASPs;
- (r)** Review Decree No. 2015-248 of 4 February 2015 to regulate the activity of domestic money transfer by money transfer companies, to extend its scope to all money transfer companies;
- (s)** Adopt measures to identify natural persons or legal entities that provide money or value transfer services without being licensed or registered, in order to apply proportionate and dissuasive sanctions.

## E. EFFECTIVENESS AND TECHNICAL COMPLIANCE RATINGS

Table 1: Level of effectiveness<sup>1</sup>

RI 1	RI 2	RI 3	RI 4	RI 5	RI 6	RI 7	RI 8	RI 9	RI 10	RI 11
<b>Low</b>										

Table 2: Technical compliance level<sup>2</sup>

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

<sup>1</sup> The ratings for the level of effectiveness are "high, significant, moderate or low".

<sup>2</sup> Technical compliance ratings are C - compliant, LC - largely compliant, PC - partly compliant, NC - non-compliant or NA - not applicable.

## MUTUAL EVALUATION REPORT OF THE REPUBLIC OF CONGO

### Foreword

This report summarizes the AML/CFT measures in force in the Congo on the date of the on-site visit (**from 7 to 25 June 2021**). It analyses the level of compliance with the 40 FATF Recommendations and the level of effectiveness of the Congo's AML/CFT system, and makes recommendations for strengthening the system.

Based on the 2012 Financial Action Task Force Recommendations, this evaluation was prepared using the 2013 Methodology (updated in November 2020). It was carried out on the basis of information provided by the Congo and that obtained by the evaluation team during its on-site visit to the Congo from 7 to 25 June 2021.

The evaluation was carried out by a team composed of the following:

#### **Legal experts:**

Ulfrid AGAYA (Gabon);

Jean Bertin MEBA (Cameroun);

#### **Financial experts:**

Didier Maurice MINLEND NOUMA (Cameroun);

Daranaïm ABDELKERIM (Chad);

Léon MAMBUKU NTIMASI (DRC)

#### **Prosecution authorities' experts:**

Jean Firmin BEDET (CAR);

Cyprien DABIRE (Burkina Faso).

The team was backed by the Permanent Secretariat of GABAC represented by:

- ✓ ETIENNE TABI MBANG, Director of Studies and Forecasts;
- ✓ Alphonse NLOZEH, Assistant to the Head of the Money Laundering Division;
- ✓ Carmène Charline KASSA, Assistant at the Regulatory Division;
- ✓ Constantin Rodrigue N'GUENEDI, Assistant Head of the Terrorist Financing Division.

The Congo was under Mutual Evaluation as part of the first round of GABAC mutual evaluations, from 9 to 20 March 2015. The 2015 Congo MER, adopted at the March 2016 Technical Committee meeting, has been published by GABAC and is available at the following address: [www.spgabac.org](http://www.spgabac.org)

The Mutual Evaluation concluded that the Congo was:

- Largely Compliant (LC) for 2 Recommendations relating to ML;
- Partly Compliant (PC) for 23 Recommendations including 20 relating to ML and 3 to TF and;
- Non-Compliant (NC) for 23 Recommendations including 17 relating to ML and 6 to TF.

After adoption of its MER in 2016 and submission of its first report in March 2017, the Congo was successively placed under the Accelerated Monitoring regime for the first three (3) monitoring and evaluation reports, requiring the country to submit a report after every six months. It was at the 4<sup>th</sup> monitoring report, in September 2018, that the Congo was placed under the Regular Monitoring regime, requiring it to submit the 5<sup>th</sup> report one year later.

Thus, in September 2019, the Congo was removed from the monitoring process to prepare for the second round evaluation of its AML/CFT framework and was invited to submit a progress report in March 2020. As the Technical Committee did not meet in March 2020 due to the restrictive measures in response to the Corona virus pandemic (COVID-19), it was the October 2020 Plenary that took note of the Congo's progress report and the progress made in implementing most of the recommendations made by the evaluation team to improve its AML/CFT system.

## 1. ML/TF RISKS AND CONTEXT

**45.** Located in Central Africa, the Republic of Congo has a surface area of 342,000 km<sup>2</sup> with an estimated population of 5,678,030 inhabitants.<sup>3</sup> The Congo is bordered to the north by the Republic of Cameroon and the Central African Republic, to the south by the Republic of Angola (Cabinda Enclave), to the east by the Democratic Republic of Congo and to the west by the Republic of Gabon. The country has a 170 km long coastline in the south-west and a vast network of waterways, including River Congo and its tributary, River Oubangui in the east.

**46.** The Republic of Congo is a sovereign State, independent since 15 August 1960. The country's current constitution, promulgated on 6 November 2015, makes the Congo a State governed by the rule of law and establishes three powers, namely the executive power led by a President of the Republic, Head of State, elected for a five-year term by universal suffrage, the legislative power composed of two houses (the National Assembly and the Senate) and the judicial power exercised by the Supreme Court, the Audit and Budgetary Discipline Court, Courts of Appeal and other national courts.

**47.** The administrative division of the Congo subdivides the country into twelve divisions. The country has six communes, which are the main cities of the country, namely Brazzaville (political capital), Pointe-Noire (economic capital), Dolisie, Nkayi, Mossendjo and Ouessou. The official language of the Congo is French; the main national languages are Lingala and Kituba.

**48.** With an estimated GDP of USD 12.54 billion in 2019 and a per capita GDP of USD 2,280,<sup>4</sup> the Congo uses the CFA franc (XAF) as its official currency and has an economy largely dominated by oil production (which accounts for almost 2/3 of GDP, 90% of exports and 75% of fiscal revenues). This dependence on oil makes the country dependent on variations in commodity prices. Congo's economy has been hit by low oil prices, coupled with the global COVID-19 pandemic in 2020.

**49.** The Congo is richly endowed with natural resources, including timber, potash, magnesium, natural gas, peat bogs, etc. The country has the fourth largest oil reserve in sub-Saharan Africa and a strong mineral potential, including an iron deposit ranked among the largest in West and Central Africa. Congo's mining industry also includes cement, diamond and gold production. Its forests represent the third largest forest area in Africa and constitute an important carbon stock. The Congo is a major producer of tropical hardwoods.

**50.** The Congo is a member of several sub-regional, regional and international organizations, including the Economic Community of Central African States (ECCAS), the Central African Economic and Monetary Community (CEMAC), the Task Force against Money Laundering in Central Africa (GABAC), the African Union (AU), the United Nations (UN), the Organization for the Harmonization of Business Law in Africa (OHADA), the Inter-African Conference on Insurance Markets (CIMA), etc.

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<sup>3</sup> [Congo-Brazzaville/\(Congo\) Population 2021 \(countrymeters.info\)](https://countrymeters.info) Source: United Nations Department of Economic and Social Affairs.

<sup>4</sup> Source: IMF - World Economic Outlook Database, April 2021.

**51.** The AML/CFT system in the Congo is based on a legal framework established in accordance with the revised CEMAC Treaty and GABAC Regulation No. 01/CEMAC/UMAC/CM of 11 April 2016 on the prevention and suppression of money laundering and terrorist financing and proliferation in Central Africa. Under these provisions, the AML/CFT mechanism is driven at community level to be applicable or transposable into the national/domestic AML/CFT legal framework of each CEMAC Member State, depending on whether it is a regulation or a directive. This legal framework incorporates some international AML/CFT norms and standards, in particular FATF Recommendations and United Nations Security Council Resolutions, as well as the international agreements to which the country is a party, including its regional commitments under CEMAC and the African Union.

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

### **1.1.1 Overview of ML/TF risks**

**52.** The Congo faces real money laundering risks and threats resulting from the commission of a number of offences whose proceeds are introduced into its economy and financial system. The underlying offences considered to be the most recurrent, and which can generate income likely to be laundered, include fraud, corruption, breach of trust, environmental crimes, led by poaching and illegal logging, drug trafficking, human trafficking, smuggling and counterfeiting of pharmaceutical products, currency counterfeiting, etc.

**53.** These risks are exacerbated by several vulnerabilities, including the unrestricted acceptance of cash in economic transactions, regulatory weaknesses and the lack of oversight of some sectors of activity (real estate, money transport, hotels and restaurants, gambling, mining and electronic money companies, cash couriers, money transfer companies, etc.).

**54.** The Congo has not experienced any terrorist acts on its territory. Nevertheless, the country is highly vulnerable to the financing of terrorism due to its location on the border with several countries facing the phenomenon of terrorism, namely Cameroon (plagued by the terrorist group Boko Haram and a security crisis in its English-speaking regions), and the Democratic Republic of Congo (which is experiencing a resurgence of terrorist acts in part of its territory). Indeed, some criminal gangs operating in this country have claimed membership of the Daesh group, which has been identified as a terrorist group by United Nations bodies, Chad and the Central African Republic. The latter two countries serve as channels for transporting funds intended to finance Boko Haram's terrorist activities. This vulnerability is reinforced by the country's porous borders, the free movement of people and goods, and to an extent, the sharing of the same financial and monetary system in the Central African sub-region.

### **1.1.2 Country's Risk Assessment and Scoping of Higher Risk Issues**

**55.** In March 2021, the Congo concluded its first national AML/CFT risk assessment launched in May 2018, through the validation of the report of the exercise by Order No. 7557/MFBPP-CAB of 21 April 2021 of the Minister of Finance and Budget, accompanied by a three-year action plan and a national AML/CFT policy and strategy paper. This NRA, which was intended to be inclusive, was carried out under the coordination of Congo's National Agency for

Financial Investigation (NAFI), with technical assistance from the World Bank and support from GABAC. Most of the actors involved in AML/CFT took part in the seminar to launch the NRA, organized in Brazzaville from 14 to 18 May 2018. However, it emerged from the various interviews during the on-site visit that many of the major stakeholders in Congo's AML/CFT system (State Inspectorate General, Anti-Corruption High Authority, Customs, Lawyers, Notaries, Real Estate Agents and Developers, Police, Gendarmerie, etc.) were not actively involved in data collection and analysis during this assessment; this could also explain the absence of statistics in some sectors that are nevertheless very sensitive.

**56.** This exercise enabled the Congo to assess the threats and vulnerabilities of its national AML/CFT system. Its report covers the scope of action of financial institutions (banks, insurance companies, MFIs, other FIs) and DNFBPs (lawyers, notaries, accountants, etc.).

**57.** To assess the country's exposure to ML/TF risks, the NRA team used a qualitative approach through general input variables, and a quantitative approach through field surveys. The information to be used here should cover STRs, financial flows and incidences, data on investigations, prosecutions, convictions, etc. However, the non-involvement of the relevant key actors in the operational phase of the exercise has hampered the mobilization of statistics and impacted on the quality of the ensuing analyses.

**58.** Nevertheless, the findings of this first National Risk Assessment are generally reasonable in that, despite the lack of statistical data and the non-involvement of some strategic actors, they reflect the main ML/TF risks facing the country.

**59.** At the time of the mission, the NRA report and its three-year action plan had not yet been disseminated to the various national public and private AML/CFT actors. This does not allow for a uniform understanding of AML/CFT risks among the various actors concerned.

**60.** The evaluation team identified the most important areas and issues of concern that warranted further attention, given their impact on Congo's AML/CFT system. This identification is based on the NRA, the 2015 MER, previous monitoring reports, analysis of information provided by Congolese authorities on technical compliance and effectiveness, and statistics provided. The evaluation team also drew on available information on the legal and institutional environment and the context of ML/TF in the Congo, including points of potential vulnerability in the country. The following issues and areas were discussed in depth during the site visit:

**61. Understanding ML/TF risks and applying a risk-based approach:** In the absence of full and wide dissemination of the NRA findings, the evaluation team focused on existing mechanisms that allow for the country's identification and understanding of ML/TF risks and their actual impact on the AML/CFT system. In particular, the types of risks, the degree of involvement of relevant actors in AML/CFT and their understanding of criminal threats, the nature and quality of the findings or risk mitigation measures implemented, as well as their dissemination mechanisms.

**62. ML/TF investigations, prosecution and confiscation:** The idea was to assess the handling of investigation, prosecution and confiscation activities by judicial police officers, the prosecutor and judges against ML/TF, and implementation of the strategic objective on

confiscation, including confiscation of property of equivalent value and confiscation without prior conviction.

**63.** To this end, focus was on the channels used by criminals to launder money, the means of detection and the capacity of investigative authorities to prosecute and convict criminals, to conduct parallel investigations to ML and TF (NPO framework, identification of vulnerable NPOs, understanding of related risks, mitigation measures and consistency), to search for, trace and seize proceeds generated by the original, laundered or blackened offences.

**64. Financial sanctions on terrorist financing:** The evaluation team examined the mechanisms implemented by the relevant entities to implement targeted financial sanctions (TFs) under UN Security Council resolutions.

**65. Cash couriers:** The country's efforts in relation to the types of financial crimes in neighbouring countries to control the cross-border movement of cash and valuables, to identify the framework for such control and the consideration of the ML/TF aspect for investigation purposes, including how the competent authorities could prevent the illicit cross-border physical transport of cash and other bearer payment instruments (BPIs) through cash couriers and other actors, as appropriate.

**66. DNFBPs:** Structuring of DNFBPs with the highest AML/CFT risks (real estate agents and developers, transport agencies, hotels and restaurants, NPOs, notaries and lawyers, traders and miners, casinos and gambling providers, etc.), understanding of the risks within the sector, mitigation measures taken, evaluation of the level of implementation of AML/CFT preventive measures and outcomes.

**67. Microfinance institutions (MFIs):** This financial sub-sector is highly exposed to criminal activities and has a high level of vulnerability. Thus, the evaluators discussed on whether the level of formalization, internal organization and implementation of AML/CFT processes and procedures by MFIs take into account their exposure to risk in view of their large size (number of users/clientele) and the variety of financial inclusion products provided.

**68. Transparency of legal persons and beneficial owners:** Given the threat of corruption in the Republic of Congo, the evaluation team was interested in the level of transparency of legal persons regarding beneficial owners and the system in place for registration, record keeping and updating basic information on beneficial owners. The evaluation team sought to verify whether the information contained in the registers opened on the creation of companies and enterprises (TPPCR, Congo's Agency for Business Establishment) covers the entire national territory and makes it possible to resolve the issue of identification of beneficial owners and accessibility of information concerning them.

**69. Currency exchange bureaus and manual money changers:** The evaluation team looked at how the supervisory authorities ensure on an ongoing basis that manual money exchange activities are carried out exclusively by licensed agents, that such agents comply with AML/CFT procedures, and that the controls carried out, and their regularity, are of high quality. In addition, the team examined how the authorities proceed in practice to identify manual money changers who operate informally or illegally and what measures are taken against them.

**70. Transfer of funds or valuables:** The team assessed the implementation of conditions for the operation of the professional activity of transferring funds or valuables, in particular the regular inspection of funds or valuables transfer services, as well as the penalties for non-compliance with the regulations in force. Similarly, the evaluators looked at the mechanisms set up by the Congo to identify, pinpoint and sanction networks that encourage informal money transfers.

**71. Electronic money institutions (EMIs):** The evaluation team examined how supervisors reconcile, in practice, financial inclusion through the development of new means of payment (*use of electronic money payment services*) and AML/CFT requirements in an environment where there are significant risks of criminal activity and money transfers to terrorist groups operating in neighbouring countries.

**72. Virtual asset service providers (VASPs):** In the absence of a community normative framework on the use of new technologies in relation to new products (*use and reliance on cryptocurrencies*), the evaluators examined how Congolese actors and regulators identify and assess the risks associated with the use of such new products, virtual assets (VAs) or VASPs operations and what actions are taken to mitigate such risks.

**73. International cooperation:** A number of offences committed in the Congo (notably corruption and embezzlement of public funds) generate funds that are channelled abroad with the involvement of individuals with different nationality and residence status. The cross-border nature of ML and TF offences requires collaboration with other States. In this respect, the evaluators laid particular emphasis on the conditions and mechanisms for implementing the international, regional and national legal instruments available to the Congo for judicial and institutional cooperation, the mechanisms for sharing confiscated assets with third States, the measures for protecting the content of requests for and exchange of information, statistics and the quality of such cooperation (received and granted) at judicial level and between peer and non-peer competent authorities.

## 1.2. Items of specific importance (materiality)

**74.** With a GDP of USD 12.54 billion in 2019 and a GDP per capita of USD 2,280 in 2019, the Congo is considered a lower middle-income country.<sup>5</sup> Holding nearly 15% of the CEMAC money supply and accounting for 15% of CEMAC GDP, the Congo is the third largest economy in the sub-region.<sup>6</sup> The country is endowed with a great diversity of natural resources. It is largely covered by tropical forests with high and relatively stable rainfall (national average annual rainfall: 1,650 mm) and extensive arable land covering about one-third (1/3) of its territory.

**75.** The budget balance has dropped from a surplus of 5.8% of GDP in 2019 to an estimated deficit of 2% of GDP in 2020. Congo's public debt, already unsustainable before the pandemic, has continued to rise. From an estimated 83.3% of GDP in 2019, it went up to 101.7% of GDP in 2020, but is expected to fall to 90.5% of GDP in 2021 and 84.5% of GDP in 2022.<sup>7</sup> This high

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<sup>5</sup> Source: IMF - World Economic Outlook Database, April 2021.

<sup>6</sup> Source: Page 10 [Tableau-de-bord-du-CPM Sept -2021.pdf \(beac.int\)](#)

<sup>7</sup> According to World Bank estimates.

level of debt threatens the stability of the entire financial system. As a result, the country has started a debt restructuring process with its creditors. Inflation remained stable at 2.4% in 2020 and is expected to remain under control in 2021 (2.6%) and 2022 (2.8%).

**76.** In the Congo, agriculture contributes 7.8% of GDP and employs 34% of the working population (World Bank, 2019), most of whom practice subsistence farming. Although the country has a lot of fertile land, only a small proportion of this land is cultivated (less than 10%). The Congo is heavily dependent on food imports. These account for about 80% of domestic food consumption. The main crops are cassava, plantains, bananas, groundnuts and palm oil.

**77.** The industrial sector contributes 50.4% of GDP and employs 21% of the working population. The oil, timber and mining sectors are the main drivers of the economy. The oil sector, in particular, is the country's main source of revenue. Oil production accounts for almost 2/3 of GDP, 90% of exports and 75% of fiscal revenues. The sector is dominated by foreign companies. The country has large hydrocarbon reserves, with about 1.6 billion barrels of oil reserves and 90 billion cubic metres of natural gas.

**78.** The services sector accounts for 39.1% of Congo's GDP and employs 45% of the working population. This sector is mainly based on support services for the oil sector.

**79.** The unemployment rate in the Congo was estimated at around 10.3% in 2020 (World Bank). According to the UNDP Human Development Report 2020, the Congo ranks 149<sup>th</sup> out of 189 countries and territories covered by the Report. The country is then considered to have an average human development index. At the same time, life expectancy at birth is estimated at 64.6 years.

**80.** Also, the volume of cash transactions and the informal economy in the Congo makes it difficult to distinguish between the proceeds of criminal activities and those of informality, which at the same time provides opportunities for "launderers" to conceal the proceeds of crime.

**81.** In 2020, measures implemented to deal with the COVID-19 pandemic such as border closures, curfews and the cessation of some non-essential activities took a toll on Congo's economic sectors, in particular the service sectors and some industries.

**82.** Congo's trade is directed towards countries in Europe, America, Asia and Africa. Asia was the leading geographical area for Congo's exports in 2019 (84% of total sales), with China its leading customer. It accounted for 67% of exports in 2019, i.e. CFAF 1,946 billion, followed by India (CFAF 395 billion). The United States and Spain ranked third and fourth respectively with 4% and 3% of sales. Exports to Africa stood at 1.32%.

**83.** Crude oil is the main export product (89%). Oil exports amounted to CFAF 2,584 billion in 2019, compared with over CFAF 4,000 billion in 2018. Wood is the country's second largest export (around 6% of external sales), ahead of copper (1.7%).

**84.** The Congo's leading import partner in 2019 was France with a market share of 17%, according to Congolese customs, followed by China, Belgium and the United States accounting for 13%, 12% and 6% of total imports respectively.

**85.** Agricultural and agri-food products (meat, fish, cereals) are the country's main import items, followed by "petroleum oils or bituminous minerals" and "medicines".

**86.** The Congo's financial system is composed of ten (10) commercial banks, twenty-four (24) microfinance institutions (MFIs), eight (8) insurance companies and two (2) pension funds. At end December 2020, the total equity of the financial sector stood at CFAF 275 billion and accounted for 4.4% of GDP, with 73.5% coming from the banking sector, 19.1% from the microfinance sector and 7.3% from the insurance sector. The aggregate total balance sheet of the financial system's institutions amounts to CFAF 2,542 billion (or 40.4% of GDP), 90.2% of which is in the banking sector. Total deposits in the financial system amounted to CFAF 1,753 billion (or 27.9% of GDP), of which banks accounted for 87.2%, MFIs 10.4% and the insurance sector 2.5%. Total loans granted by the Congo's financial system as a whole amounted to CFAF 1,550 billion (i.e. 24.7% of GDP), with loans from banks accounting for nearly 91.9% and those from the microfinance sector 6.9%, while outstanding premiums ceded or issued by insurance companies accounted for 1.2%.<sup>8</sup>

**87.** Banking activity is predominant in the financial sector. Their shareholding is dominated by financial holding companies or credit institutions (54%) in nine (9) banks, with only one (1) bank (BPC) being 100% owned by the State, which also holds shares in five (5) other credit institutions out of the ten (10), i.e. 22.4% of the banking sector's cumulative capital. The remaining portion is held by private Congolese individuals (11.5%), public enterprises (6.9%), private foreigners (4.9%) and the State of Tunisia (0.3%). The financial inclusion strategy, carried out in particular by BPC and LCB banks, increased the number of bank branches in the Congo to 127 by end 2020. The number of ATMs of banking institutions is growing rapidly and stands at 374, while the number of cards issued by credit institutions is 174,071.

**88.** The microfinance sector comprises twenty-four (24) MFIs operating throughout the Congolese territory, twelve (12) of which are in the first category and as many in the second category. Their cumulative membership, made up of all the savings account balances of clients with the status of members, stood at CFAF 52.6 billion at end December 2020. The number of branches is 161 nationwide, with MFIs having a denser network of branches in the hinterland, although 60% of such branches are concentrated in Brazzaville and Pointe Noire. The MFIs' fleet of automatic teller machines (ATMs), composed of 75 ATMs and concentrated in Brazzaville and Pointe Noire, is exclusively held by MUCODEC, whose network is predominant.

**89.** The electronic money business is in full development in the Congo. There are three (3) banks in Congo carrying out this activity (BGFI Bank Congo, Ecobank Congo and UBA Congo, respectively with "Mobile money" products for the first two and "VISA prepaid card" for the latter), in partnership with three telecommunication operators (Airtel Congo, MTN Congo and GTP). At end 2020, the number of open mobile money accounts was 6,871,899, the number of registered mobile money outlets was 67,596 and the number of accepting merchants' contracts was 126. Also, the balance of active mobile money accounts amounted to FCFA 17.843 billion, and the total number of mobile money transactions was 35,7832,93 for a value of FCFA

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<sup>8</sup> Source: National Economic and Finance Committee (CNEF) Annual Report 2020, June 2020 version.

125.958 billion. In addition, no virtual assets service providers (VASPs) and/or crypto-currency operations were identified in the Congo.

**90.** The insurance sector in the Congo is made up of eight (8) insurance companies, two (2) of which are in the life sector, namely NSIA Congo-vie (51% of the "life market" share) and AGC-vie (49%), whose life insurance products, in addition to the individual insurance contracted between the insurance company and the insured, are also distributed by banks under a group insurance contract, which implies that the saver subscribes through a bank that has a contract with an insurance company. In addition to insurance companies, there are eighty-eight (88) insurance intermediaries, including thirty-eight (38) brokers and fifty (50) general insurance agents.<sup>9</sup> The insurance penetration rate, which is the share of income spent on insurance, was estimated at 3% in 2017. At end 2020, the share capital of insurance companies amounted to FCFA 29.2 billion, including 6.2 (21.2%) for the life branch. The shareholding structure reveals a heavy investment of foreign capital.

**91.** For financial market participants in the Congo, only one stock exchange company is authorized, the CORRIDOR ASSET MANAGEMENT. It is responsible for portfolio management and manages FCFA 229,000,000 in assets as at 28 May 2021 (of which the shares acquired on the WAEMU financial market, in particular the BRVM, represent a rate of about 10% of the total equity portfolio, i.e. about FCFA 22,900,000). It works in partnership with a bank depository, the LCB.

**92.** In addition, since 22 February 2017, the Congo joined the market for government securities issued by auction, organized by BEAC. The regional market for government securities is based on the mechanism for issuing government securities, according to which auctions of Treasury bonds are carried out through calls for tenders, organized by BEAC's National Headquarters. The total amount of Congolese State bond issues amounts to CFAF 298,304,850,000, corresponding to two (2) bond issues on the Central African financial market: "EOCG 6.5% net 2016-2021" operations for an amount of CFAF 192,304,850,000 and "EOCG 6.25% NET 2021-2026" for an amount of 106,000,000,000 CFAF.

**93.** The DNFBP sector occupies an important position in the Congo, given their activities, which contribute significantly to national wealth development and creation. It is dominated by the sub-sectors of legal and accounting professionals (lawyers, notaries, chartered accountants), operators and traders in precious stones and metals and works of art, real estate companies, agents and promoters, gambling establishments, transporters and non-profit organizations (NPOs).

### **1.3. Structural elements**

**94.** The geographical location, the sharing of an economic and monetary area with five States underpinned by the principle of free movement of people and goods on the one hand, and on the other, its wealth of natural resources, the particularity of its economy (dominated by oil production and logging) essentially marked by cash transactions, the low financial inclusion,

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<sup>9</sup> Source: Congo NRA Report, March 2021.

the large size of the informal sector, and the multiplication of new financial products are some of the vulnerabilities that make the Congo attractive to ML/TF.

**95.** The Congo has an open maritime frontage and porous land borders with neighboring States that expose it to cross-border flows of illicit funds and trafficking.

**96.** There is a threat of terrorist financing that can be explained by the Congo's border situation with countries that are sometimes unstable and victims of insecurity and terrorism caused by religious extremism, the desire of secessionist groups, the political activism of armed groups or gangs.

**97.** The upward trend in illicit trafficking in arms, explosives and ammunition revealed by Congo's National Risk Assessment (NRA) report<sup>10</sup> seems to corroborate the reality of this TF threat.

**98.** The Congolese territory has enormous potential in mining and forestry resources, whose illegal and uncontrolled exploitation, exacerbated by embezzlement of public funds, organized fraud, trafficking of all kinds, including drugs, smuggling and counterfeiting, has a considerable impact on the development of the national economy.

**99.** Corruption is endemic and affects all sectors of activity and almost all branches of the country's public administration. In its Governance and Corruption Report drafted in consultation with IMF staff and published in June 2018, Government acknowledges that there are persistent significant weaknesses in the following six areas: (i) the rule of law, (ii) public finance management, (iii) financial sector supervision, (iv) the business climate, (v) anti-money laundering (AML/CFT), and (vi) the anti-corruption regime.

## **1.4. Other contextual factors**

### **1.4.1 AML/CFT strategy**

**100.** Congo's National Risk Assessment, whose report was adopted by the country's authorities in March 2021, led to the establishment of a national AML/CFT policy and strategy for the first time in the country. Congo's national AML/CFT strategy takes into account the main risks identified in the NRA report and aims to substantially improve the AML/CFT system on seven strategic thrusts, namely: improvement of the AML/CFT legal framework, reporting entities' compliance system, control and supervision framework, NAFI operational and strategic capacities, prosecuting authorities' capacities and terrorist financing prevention.

**101.** The action plan resulting from the National Assessment of the Risks of Money Laundering and Terrorist Financing lays down the activities to be implemented in order to achieve the objectives set out above by 2022. However, it can be noted that the action plan was exclusively implemented by NAFI at the time of the on-site visit, i.e. three months after validation of the NRA report, as most of the anti-money laundering entities declare that they are not aware of the NRA and its recommendations on the one hand and, on the other hand, that they do not have any particular relationship with the FIU. Congolese authorities, in this case NAFI officials, stated that a campaign to disseminate the NRA report would be launched as soon as possible.

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<sup>10</sup> See paragraph 2 of page 2 of the NRA report.

But the Action Plan does not explicitly contain activities relating to dissemination of the NRA's findings.

**102.** In addition to the national AML/CFT policy and strategy, there are a number of sector strategies to combat underlying offences, including the actions of the Anti-Corruption High Authority, the General State Inspectorate and the judiciary, notably Law No. 5-2009 of 22 September 2009 on corruption, misappropriation of funds, fraud and similar offences. The sector strategies must be coordinated for greater effectiveness in anti-money laundering and terrorist financing.

#### ***1.4.2 Legal and institutional framework***

**103.** Several government services, institutions and agencies make up the anti-money laundering and terrorist financing institutional framework in the Republic of Congo, in particular for the development, control, supervision and, in general, the implementation of policies and strategies in this area. The bodies concerned include:

##### **Ministry of Finance, Budget and Public Portfolio**

**104.** It is the ministry responsible for preparing and implementing the legislative and regulatory policy in the areas of customs, taxation, cash flow, currency, external financial relations and national financial institutions. This ministry is thus at the forefront of the prevention of financial crime by implementing the legal and institutional frameworks for the control and supervision of a large number of entities liable to AML/CFT regulations, and is also responsible for approving credit institutions after their files have been validated by COBAC. Lastly, it is NAFI's administrative supervisory authority.

##### **Ministry of Justice, Human Rights and Empowerment of Indigenous Peoples**

**105.** It is in charge of developing (Department of Criminal Affairs and Pardons) and implementing the country's criminal policy (General Prosecutor's Office and Public Prosecutor's Office). It is also responsible for assessing and acting on requests made under international judicial cooperation in relation to mutual legal assistance and extradition procedures. Courts and Tribunals also have jurisdiction *rationae materiae* in matters of money laundering and terrorist financing. Under Law No. 28-2021 of 12 May 2021 to institute the legal regime for freezing of assets linked to terrorism or its financing, the Ministry of Justice, through Courts and Tribunals, is empowered to approve administrative and judicial freezes and to hear disputes arising from freeze incidents, whether administrative or judicial. Lastly, the Ministry of Justice exercises disciplinary power over the auxiliaries of justice of liberal professions, in particular lawyers, notaries and bailiffs.

##### **Ministry of Security and Public Order**

**106.** Responsible security throughout the country, the Ministry of Security and Public Order has authority over the police and gendarmerie forces by virtue of the latest reforms being completed. However, the judicial police powers of these forces fall under the jurisdiction of public prosecutors' offices. In addition, the Ministry exercises some powers over gaming

companies, casinos and non-profit organizations, such as some formalities relating to their approval and the controls carried out on these entities.

### **Ministry of Foreign Affairs and Cooperation**

**107.** It is the Government Ministry authorized to correspond with foreign countries in matters of diplomacy and coordination of cooperation. As such, it is responsible for negotiating, signing and maintaining international agreements to which the Congo is a party. The United Nations Resolutions on targeted financial sanctions (TFSs) are therefore received by this Ministry, which ensures their dissemination to the public and private entities responsible for their implementation. Lastly, in the area of mutual legal assistance and extradition, it is the channel for transmitting and receiving all requests between the Congo and the requesting or requested countries.

### **Anti-Corruption High Authority**

**108.** Established from the remnants of the National Anti-Corruption Observatory and the National Anti-Corruption Commission, the Anti-Corruption High Authority, set up by Law No. 3-2019 of 7 February 2019, is now the national entity responsible for implementing Government anti-corruption policy. As such, it conducts investigations into corruption cases referred to it or which it takes up on its own initiative and, where the facts are established, refers them to the judicial authorities with the possibility of filing a civil suit, as appropriate.

### **General State Inspectorate**

**109.** It is a supreme good governance administrative control body, under the direct supervision of the President of the Republic, with universal competence to control all public services, public establishments, local authorities, defence and security forces, the financial services of Parliament as well as private law legal persons for their obligations towards the State.

### **NAFI**

**110.** NAFI is an administrative financial intelligence unit set up on 31 March 2008 but which effectively started activities in 2014. Its duty is to collect and process financial intelligence on money laundering channels and the financing of terrorism and proliferation. In this respect, it is responsible for receiving, analyzing and processing information to establish the origin of transactions or the nature of transactions that are subject to suspicious transaction reports by reporting entities. It has forwarded a number of investigation reports to judicial authorities, which are still being processed in investigating offices.

**111.** NAFI also expresses opinions on the implementation of Government policy on anti-money laundering and the financing of terrorism and proliferation. To this end, it proposes all reforms necessary to strengthen the effectiveness of AML/CFT.

**112.** NAFI Congo has been a member of the Egmont Group since 2018. Internally, it has signed a number of bilateral agreements with some structures and reporting entities to make its action more effective through flexibility in information exchange.

**113.** It has also carried out awareness-raising and popularization activities on Regulation No. 01/CEMAC/UMAC/CM of 11 April 2016 on the prevention and suppression of money laundering and terrorist financing and proliferation among reporting entities.

### **Criminal investigation and prosecution authorities**

**114.** The authorities responsible for investigating and prosecuting money laundering and terrorist financing offences and proliferation are the same as those responsible for ordinary offences, notable: members of the police and gendarmerie forces recognized as judicial police officers or agents whose task is to establish offences against criminal law, gather evidence, seek out the perpetrators of such offences and bring them before the competent judicial authorities, including in matters of money laundering and terrorist financing.

**115.** This also includes customs, tax, mining, environmental and all other specialized services to which the law confers the same powers as those granted to judicial police officers and agents for the implementation of strategies to combat financial, tax, mining and wildlife crimes, etc.

**116.** The powers of these investigative authorities are exercised under the control of the Public Prosecutor, represented in person or by his deputies. In the jurisdiction of the Court of Appeal, the judicial police is under the supervision of the Public Prosecutor, represented in person or by Advocates General, and under the control of the Indictment Division.

#### ***1.4.3 Financial institutions, designated non-financial businesses and professions (DNFBPs) and virtual asset service providers (VASPs)***

**117.** This section provides information on the structure, size and composition of the Congo's financial sector and DNFBPs at the time of the mission. The weight of each of these sectors and the various sub-sectors linked to them in the Congo's economy is a key factor in assessing the degree of ML/TF risks relating to their activities. Categorization here is based on the relative significance of the various sub-sectors in the Congo, taking into account their respective materiality and exposure to ML/TF risks. Categorization serves as a basis for all the analyses contained in this report in order to assess the level of risk and the scope of measures taken for the entire Congolese AML/CFT system.

**118.** Depending on their weighting, the various categories of financial institutions and DNFBPs are listed in this section. It should be noted that VASPs did not exist in the Congo at the time of the on-site visit, despite the presence of a few crypto-asset transactions.

**119.** At the time of the evaluation team's visit in June 2021, the Congo's financial sector was composed of ten (10) banks, twenty-four (24) microfinance institutions (MFIs), eight (8) insurance companies, two (2) pension funds and one (1) portfolio management company which is also a mutual fund. The total equity of the financial sector stood at CFAF 275 billion<sup>11</sup> as at 31 December 2020. The aggregate total balance sheet of the entire financial system amounted to CFAF 2 542 billion at the same period, accounting for 40.4% of GDP. In addition to these listed sub-sectors, there are also mobile money transfer service providers (MMTSPs), money transfer companies and manual exchange bureaus.

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<sup>11</sup> Source: Congo's CNEF Report.

120. With regard to DNFBPs, the most prominent operators in the Congo are: real estate professionals, actors in the mining, metals and precious stones sector, liberal legal professions, accountants and gaming professionals.

### *Highly rated weighting*

121. In the light of the macroeconomic data collected, banks, money and securities transfer companies, the real estate sector and the precious metals and stones traders sector are the highest weighted in the Congo, based on their materiality and their exposure to ML/TF risks.

#### **(a) Banking sector**

122. The Congo's banking sub-sector had ten (10) licensed institutions as at 31 December 2020, made up of nine (9) commercial banks and one bank specializing in housing finance.

123. The cumulative total capital of Congolese banks at end December 2020 was CFAF 193.33 billion, 64.9% of which is concentrated in four of the ten banks. Of the 10 banks in the Congo as at 31 December 2020, two are subsidiaries of international banking groups, five subsidiaries of African groups, two controlled by Congolese capital and one a subsidiary of a Chinese group.

124. With a cumulative equity volume of CFAF 193.33 billion at end 2020, the banking sub-sector is by far the most significant in the Congolese financial sector with 73.5% of total equity. Bank equity accounted for 3.07% of Congo's GDP in December 2020.

125. At end December 2020, the banking network in the Congo had 127 branches in all departments. At that date, 51.9% of the branches belonged to three banks that control the majority of the national banking network in terms of geographical coverage.

126. As at 31 December 2020, the total balance sheet of banks operating in the country stood at CFAF 2,280.7 billion. With a total number of 528,202 accounts, the volume of deposits collected by banks stood at CFAF 1,528 billion at the same period, while the total outstanding loans distributed stood at CFAF 1,424.3 billion. The ML/TF risks inherent in the activities and operations of the banking sub-sector are significant and constantly increasing due to the continuous increase in the diversity, speed and volume of transactions, and the cross-border nature of most banking operations. Its structure and weight in the national economy, interconnection with the domestic and international financial system are determining factors in the weighting. The information provided by the country indicates that most ML mechanisms involve, at some point, bank accounts and transactions through banks. The size of the sub-sector and its openness make it attractive to criminals seeking to conceal the proceeds of crime through legal persons/arrangements and thus to conceal beneficial owners and politically exposed persons. The Congo NRA report indicates that the banking sub-sector is exposed to increased ML/TF risks, largely due to deficiencies in AML/CFT due diligence mechanisms.

#### **(b) Money and value transfer services sector**

127. At the time of the mission, apart from financial institutions, there were seventeen (17) independent money transfer service providers operating in the Congo. At the time of the mission, the institutions did not have authorizations from the Minister of Finance as provided for in Article 3 of Decree No. 2015-248 of 4 February 2015. They were operating on the basis

of "provisional authorizations" issued by ARTF, pending the finalization of their approval files. However, this derogation for issuing "provisional authorizations" is not governed by any legal provision, which would specify the information to be provided to obtain it. Among the 17 active providers, fourteen (14) carry out international transfers and three (3) are active only in internal transactions. Those that carry out international transfers are supposed to do so under the cover of a credit institution on the basis of formally established agreements, in accordance with Article 17(2) of Decree No. 2015-248. However, no such agreement was provided by these providers to the evaluators, even though international money transfer services are rendered. In addition to the registered operators authorized by ARTF to operate, at the time of the mission there were several informal operators in the Congo carrying out money transfer services without any control.

**128.** Among the unlicensed operators are local offices of large international money transfer service groups (Western Union, Money Gram, Ria), whose activities are backed by banks. This category of actors controls the majority of the market share of international transfers in the Congo, without any formal approval.

**129.** Remittance providers facilitate domestic and international money movements, due to their lower costs and greater geographical coverage. However, basic due diligence in terms of customer identification, screening of transactions and detection of suspected ML/TF is not always in place. Contextual factors, such as the ease of conducting business in the sector, increase the sector's exposure to ML/TF risks. The NRA noted that the sector's vulnerability rate is very high due, among other things, to weaknesses and deficiencies in the quality of AML controls. The almost exclusive use of cash at the counters of these providers is also a major factor of vulnerability.

**130.** Despite a notorious lack of statistics on the activities of this sector, the various reports of international organizations, in this case the World Bank, indicate a very high volume of international remittances, making this sector one of the most vulnerable to ML/TF.

**131.** At the same time, several elements indicate a high level of risk in developing unregulated Hawala-type transfer services. At the time of the mission, such underground capital transfer networks were flourishing with BEAC's implementation of new foreign exchange regulations, which strengthened the monitoring and follow-up of formal international money transfer operations.

### **(c) Real estate sector**

**132.** The real estate sector includes various professions liable to reporting obligations under the CEMAC Regulation, such as construction companies, dealers in building materials and real estate promoters and agents. The high weight of this sector in the contextual analysis is explained by the strong explosion of construction sites and the large volume of financial flows recorded, generally in cash. The high rate of cash use in this sector, and the difficulties in identifying the actual beneficiaries of investments, make this sector one of the most exposed to ML/TF risks. However, as with most non-financial sectors, the evaluators were confronted with a serious lack of statistics on real estate activities. The national accounts of the National Institute of Statistics report a gross domestic product of the construction sector of CFAF 90.1 billion in

2019. However, such statistics seem to fall far short of reality in view of the large volume of investments observed in this sector in the Congo. In practice, real estate is often purchased through mortgages, but the largest share of real estate investment comes from own funds.

**133.** There are numerous ML cases in the country that demonstrate the use of this sector. Real estate contracts can be concluded without the intervention of real estate agents or legal professionals, transactions can be concluded in cash outside the regulated financial sector, and real estate agents, although subject to AML/CFT obligations, do not carry out CDD. In light of the elements contained in the report of the GABAC study of ML typologies in the real estate sector, the large number of cases pending before the courts involving real estate, the risks relating to companies selling construction materials, the amounts relating to real estate investment transactions, the high use of cash and the recurrent use of nominees and shell companies for carrying assets are factors that explain the high weighting of this sector.

#### **(d) Precious metals and stones traders sector**

**134.** According to the 2018 EITI report, the Congo is endowed with significant resources and a very large geological potential that is not yet optimally exploited. Most mining companies have completed their geological research phases, as well as their feasibility studies, identifying the infrastructure that will need to be built to achieve exploitation. Mining resources in the Congo are characterized by their abundance and variety. The Congo has a significant geological potential with a wide variety of mineral substances. The immense potential includes iron, gold, diamonds, potash, magnesium, polymetals (copper, lead and zinc), phosphates and peat.

**135.** According to the NRA report, in 2015 the Congo's mining sector had seventy-five (75) mining companies, 10 of which had mining permits, 48 had research permits and 17 had prospecting permits. Despite a general lack of reliable data, the volume of informal transactions is very high in the country's mining sector. The lack of traceability of records, the profile of clients, the problem of identifying beneficial owners, the presence of unregulated sites without mining permits, the lack of control over production and distribution channels, the absence of an AML/CFT system and the high risk of tax evasion, the use of shell companies and intermediaries, the high dominance of informal transactions, the use of cash in transactions for artisanal mining, the use of offshore accounts for industrial mining, and the porous nature of Congo's borders with neighboring countries are all factors that make this sector one of the most vulnerable to ML/TF.

**136.** All these factors are exacerbated by the weak controls and the absence of sanctions. For example, the NRA report shows that the mining permit register is manual. The entities responsible for examining applications for approval in the sector lack appropriate human, financial and technical resources, which increases the risks of corruption.

#### ***High weighting***

**137.** Due to their high level of involvement in financial transactions, the number of actors in the Congolese market and the insufficient implementation of AML/CFT preventive measures, the evaluators gave particular importance to the following sectors in their analysis: manual foreign exchange, microfinance, money transfer by mobile phone and liberal legal professions.

### **(e) Manual foreign exchange sector**

**138.** Various actors are involved in manual foreign exchange in the Congo, including banks, MFIs, money transfer companies and foreign currency exchange bureaus. The findings of the survey on foreign exchange operations in CEMAC conducted by COBAC in 2016 show that the stock of foreign exchange held by Congolese banks in December 2016 was estimated at CFAF 28,904,000,000. In that year, sales of euros in the Congo by banks were estimated at CFAF 40,304,000,000, while sales of dollars amounted to CFAF 98,526,000,000.

**139.** In addition to banks, MFIs also offer currency buying and selling services. Despite the absence of statistics on the volumes of currencies exchanged at the level of MFIs, lack of implementation of AML/CFT regulatory due diligence makes it possible to classify these operations as among the riskiest for these professionals.

**140.** The mission team was not given any information on the number of foreign currency exchange bureaus formally approved by the competent authorities, in accordance with the foreign exchange regulations. However, it should be underscored that manual exchange is made particularly vulnerable by the existence and free exercise of clandestine networks. Such networks, which seem to benefit from the complicity of some banks that supply them with foreign currency, have no knowledge of the due diligence required in terms of AML/CFT. Moreover, they are not liable to any control on the regularity of their transactions and compliance with the instruments governing the profession. Other factors that explain this high level of vulnerability are: the high volume of fund movements in foreign exchange transactions, the extent of clandestine distribution of this product, the porous nature of the border with the DRC where the dollarization of the economy is almost widespread.

### **(f) Microfinance sector**

**141.** The role of the microfinance sector is increasingly important in the Congo's economic sphere. This sector is a suitable alternative for the development of financial inclusion, by making it possible to open up financial services to populations living outside major urban areas. Thus, these services are intended to be closer to populations that do not have easy access to basic financial products. The popularity of microfinance services among rural and semi-urban populations of all social categories, due to the geographical coverage and the adequacy of the services offered to the clientele, shows in many respects the importance of the sub-sector in the Congolese economic arena. The ML/TF threats and vulnerabilities in this sector were deemed high in view of factors such as the insufficient application of vigilance measures, the very large volume of financial flows, the wide range of services offered to customers and, above all, the low level of controls by the competent authorities.

**142.** As at 31 December 2020, the microfinance sector in the Congo had twenty-four (24) MFIs, twelve (12) of which were first category and twelve (12) second category. The institutions have a total capital of CFAF 52.6 billion, for a total balance sheet of CFAF 232.9 billion, accounting for 3.7% of GDP. The sub-sector has 161 branches throughout the Congo. The cumulative volume of customer deposits at end December was CFAF 182 billion, compared with total outstanding loans of CFAF 107.36 billion.

### **(g) Mobile phone money transfer service sector**

**143.** Mobile money transfers are regulated in the Congo by Regulation No. 04/18/CEMAC/UMAC/COBAC of 21 December 2018 on payment services in CEMAC. At end December 2020, the number of mobile money accounts opened was 6,971,899, compared with 3,496,580 a year earlier, a 96.5% increase, which is why the sector was rated as significantly high in the analysis. During the same period, the number of mobile money transactions for 2020 stood at 35,783,293 for a value of CFAF 125.98 billion, up by 5.9% compared with 2019. An analysis of transactions by type of service shows a concentration on two services, namely: the purchase of telephone credit (85.7%) and national transfers (11.3%). Other services include salary payments (1.9%), purchases in supermarkets (1.02%) and the payment of water and electricity bills (0.01%). In terms of coverage, the number of mobile money outlets stood at 67,596 at the end of 2020, compared with 34,154 a year earlier, representing an increase of 95.9%.

**144.** The Congolese market for the provision of mobile money transfer services has two main actors, namely Airtel Congo, whose technical partner is BGF Bank Congo, and MTN Congo, whose technical partner is Ecobank Congo.

**145.** The large volume of mobile phone transfers, the number of transactions and the mass of flows tracked, the use of various agents, the difficulties in identifying the actors, the wide penetration of the products among the population and the absence of real control are all factors of ML/TF vulnerability in this sub-sector.

### **(h) Liberal legal professions**

**146. Notaries:** The notary profession is governed in the Congo by Law No. 017/89 of 29 September 1989 to institute the notary profession. The law made the notary the key player in huge financial transactions that are not without risk, given the Congo' economic, social and criminogenic context. Factors such as the authentication of transactions, involvement in the constitution of legal persons and legal arrangements as well as the probative value of notarial acts before the competent authorities justify the high rating of this sector. These vulnerability factors are further reinforced by the fact that the profession in the Congo is not very well informed about its AML/CFT obligations. The AML/CFT compliance function is non-existent. This is compounded by the obsolescence of the basic instruments governing the activity of notaries, which do not specifically take into account the AML/CFT component, apart from the general obligations provided for by the CEMAC Regulation.

**147.** The National Chamber of Notaries of the Congo has about one hundred members divided into two departmental chambers, namely: the departmental chamber of Brazzaville and the departmental chamber of Pointe Noire.

**148. Lawyers:** The profession is regulated in the Congo by Law No. 026 of 20 August 1992 to organize the legal profession. There are also the internal regulations of the National Bar Association of the Congo, which state that a bar may be set up at each Court of Appeal if there are more than six lawyers. At the time of the mission, the National Bar Association had two bars: the Brazzaville bar with 131 members and the Pointe Noire bar with 126 members.

**149.** Because of its involvement in the incorporation of companies, assistance in drafting company constitutive acts, support for economic operators in transactions involving large amounts of money, sometimes in cash, and in real estate transactions, this profession was considered by the evaluators to be important in assessing the ML/TF risks in the Congo.

### *Low weighting*

**150.** The other sectors (insurance, financial market, chartered accountants, other DNFBPs) are relatively significant, either because of their weight in the Congo's economy, their limited level of development, or the lesser risks identified in terms of ML/TF.

#### **(i) Insurance sector**

**151.** This sector is governed by the CIMA Treaty and its annexes, as well as Decree No. 2010-561 of 3 August 2010 to lay down the powers and organization of the Directorate General of National Financial Institutions, and Regulation No. 001/CIMA/PCMA/PCE/SG/2021 of 2 March 2021 replacing Regulation No. 0004/CIMA/PCMA/PCE/SG/08 to define the procedures applicable by insurance undertakings in CIMA Member States in the fight against money laundering, terrorist financing and the proliferation of weapons of mass destruction. As at 31 December 2020, the Congo's insurance market was made up of eight companies, including six non-life insurance companies and two life insurance companies. On that date, the cumulative share capital of the insurance companies stood at CFAF 29.2 billion, 78.8% of which was for the non-life branch and 21.2% for the life branch. The non-life branch accounts for 89.8% of the total balance sheet (which is CFAF 106.7 billion), 90.5% of the turnover, and 50.3% of the net result. The non-life branch employs 97.6% of the insurance companies' staff. These elements explain the low weighting of this sector in ML/TF. In terms of insurance intermediaries, the Congolese market has thirty (30) brokers and thirty-nine (39) general agents.

#### **(j) Financial markets sector**

**152.** The securities market sub-sector was in its infancy in the Congo at the time of the mission. At that time, the actors included were: (i) a stock exchange company, LCB Capital, licensed in May 2015, with no assets; (ii) a portfolio management company (PMC), Corridor Asset Management, licensed in June 2015. The PMC, which employs five (5) people and has assets worth CFAF 300 million.

#### **(k) Chartered Accountants**

**153.** At the time of the mission, there were 58 independent chartered accountants and 15 accounting firms; in total there were about 150 professionals, independent and employed by firms. The National Order of Chartered Accountants of the Congo (ONECC) was still in its infancy at the time of the mission. Its constitutive general assembly was held on 10 December 2019.

#### **(k) Other reporting professions**

**154.** This category includes cash-in-transit companies, virtual asset service providers (VASPs), gaming establishments and travel agencies. They are professions that do not yet exist

in the Congo (VASPs) or those whose weight is fairly negligible in relation to the country's GDP.

#### *1.4.4 Preventive measures*

**155.** Regulation No. 01/16/CEMAC/UMAC/CM of 11 April 2016 on the prevention and suppression of money laundering and terrorist financing and proliferation in CEMAC is the basic instrument governing AML/CFT preventive measures applicable to all reporting entities in the Congo. It contains AML/CFT due diligence obligations, including provisions on knowing the customer, assessing the risks inherent in their sector, adopting a risk-based approach, staff training, the obligation to report suspicious transactions, and record keeping.

**156.** In addition to these measures, some professional categories (banks, insurance, securities market) have measures specifically dedicated to their sectors, aimed at providing a more precise framework for AML/CFT activities. It is noted that preventive measures are stronger at the level of financial institutions than at the level of designated non-financial businesses and professions.

**157.** With regard to financial institutions supervised by COBAC, it was observed that the preventive measures provided for by the afore-mentioned CEMAC Regulations are supplemented by COBAC Regulations. Such is the case of (i) COBAC Regulation R-2005/01 of 1 April 2005 relating to the diligence of reporting entities in combating money laundering and terrorist financing in Central Africa, (ii) Regulation No. 03/18/CEMAC/UMAC/CM of 21 December 2018 relating to the conditions of exercise, control and supervision of the activity of credit information bureaus in CEMAC, (iii) COBAC EMF Regulation R-2017/06 of 24 October 2017 relating to internal control in microfinance institutions, (iv) COBAC Instruction I-2006/01 on information on the prevention of money laundering and terrorist financing, (v) COBAC EMF Regulation R-2016/04 of 8 March 2016 on internal control in credit institutions and financial holding companies, (vi) Regulation No. 04/18/CEMAC/UMAC/COBAC of 21 December 2018 on payment services in CEMAC, (vii) Regulation No. 02/18/CEMAC/UMAC/CM of 21 December 2018 on foreign exchange regulation in CEMAC, etc.

**158.** Regulation No. 001/CIMA/PCMA/PCE/SG/2021 of 2 March 2021 replacing Regulation No. 0004/CIMA/PCMA/PCE/SG/08 to define the procedures applicable by insurance undertakings in CIMA Member States in the fight against money laundering and terrorist financing and the proliferation of weapons of mass destruction also supplements and clarifies the general provisions of the CEMAC Regulation with respect to the insurance sector.

**159.** COSUMAF's General Regulations are part of the same approach but concern only financial market actors. The COSUMAF Regulations contain provisions relating to prudential rules, ethical principles and rules of good conduct applicable to all those liable to the Regulations.

**160.** Regarding DNFBPs, there is no central authority in the Congo for the control and supervision of these professionals. Similarly, no specific instrument had been adopted at the time of the mission to define more precise AML/CFT procedures applicable to some non-financial actors. Only the subsidiaries of large international accounting groups have group procedures and guidelines relating to AML/CFT due diligence.

#### *1.4.5 Legal persons and arrangements*

##### **Legal persons**

**161.** The Republic of Congo is party to the OHADA Treaty which institutes Uniform Acts directly applicable in the Member States. As a result, company law is mainly constituted by the Uniform Act relating to commercial companies and Economic Interest Groups (EIG).

**162.** Pursuant to the OHADA Uniform Act, several types of companies can be set up: the public limited company (SA), the limited liability company (SARL), the general partnership (SNC), the limited partnership (SCS), the simplified joint stock company, the single or multi-person company, cooperative companies, economic interest groups (EIG) etc.

**163.** At national level, the OHADA Uniform Act is now supplemented by Law No. 16-2017 of 30 March 2017 to set up the Congolese Agency for Business Establishment. Declaration formalities on the creation, transfer, extension, modification and cessation of commercial activities are carried out at this one-stop shop, which brings together: the departmental directorate of commerce for the establishment of the authorization to carry out commercial activities; the departmental directorate of labour for registration of the opening of a business; the registry of the commercial court for the establishment of the trade and personal property credit register (RCCM); the Chamber of Commerce, Industry, Agriculture and Trades (CCIAM) for registration; the National Social Security Fund (CNSS) for registration; the National Institute of Statistics (NIS) for obtaining SCIET- SCIEN numbers.

**164.** The Registry of the Commercial Court of Brazzaville is responsible for the registration of companies whose files were previously deposited at the one-stop-shop. On the basis of the OHADA Treaty, the information required for the registration of companies includes: the articles of association, minutes of incorporation, an identity document, the criminal record for nationals, a sworn statement for foreigners who, after 75 days, must provide the criminal records.

**165.** The Uniform Act does not give the right to search for the natural persons behind the legal persons. The Registry is contented with the identity documents provided in the file. Computerized data only concern the cities of Pointe Noire and Brazzaville, as the rest of the country does not yet have the equipment to computerize data. It should be noted that the data recorded at the Trade Registry are not directly accessible to the public.

**166.** The non-profit sector is not familiar with AML/CFT issues or the ML/TF risks to which it is exposed. The legal system in place is based on the Law of 1 July 1901 on associations and has not been updated. This instrument does not protect associations and NPOs from misuse for terrorist financing purposes. After their establishment, no monitoring and control action is carried out on these entities. The diversity of control and supervisory authorities in this sector is an impediment to effective performance of their duties, since they are almost non-existent.

##### **Legal arrangements**

**167.** The concept of legal arrangements is not well known in the Congo, such that the country's legislation does not provide for their creation or prohibit their use. No information was brought to the attention of the assessors on the existence of trusts in accordance with FATF definitions and requirements. The NRA does not mention any research or analysis in this regard. The OHADA framework does not take into account the specific obligations relating to beneficial

owners. When registering non-trading property companies, for example, it is only mentioned: creation of the non-trading property company on behalf of third parties.

**168.** Even if national legislation does not provide for the legal supervision of trusts and NPOs in accordance with the FATF Recommendations, the CEMAC Regulation fills this gap in that it makes these activities liable to AML/CFT obligations. This legal instrument therefore needs to be effectively implemented.

#### *1.4.6 Supervisory arrangements*

##### **Banking sector**

**169.** The banking sector in the Congo is subject to the supervision and control of COBAC, a body established by the Convention of 16 October 1990, with a duty to supervise all credit and microfinance institutions in the CEMAC zone.

**170.** To this end, COBAC has regulatory powers (it issues general and prudential regulations), administrative powers (it issues compliance notices that are binding on national monetary authorities in licensing procedures), supervisory powers (on-site and off-site monitoring of credit and microfinance institutions) and disciplinary powers (jurisdictional body that can impose sanctions without prejudice to those that may be imposed by the national authorities).

**171.** Indeed, the country, with a 170 km coastline on the Atlantic Ocean, is bordered to the north by Cameroon and the Central African Republic, to the south by Angola (Cabinda enclave), to the east by the Democratic Republic of Congo (DRC) and to the west by Gabon. Hence the need for international cooperation.

##### **Financial market**

**172.** The regulation, supervision and control of the financial market in the Congo, as in CEMAC, is the prerogative of COSUMAF, which is thus responsible for ensuring the protection of savings invested in securities and other financial instruments, providing information to investors and the proper functioning of the Central African financial market. It therefore intervenes in procedures to ensure the regularity of transactions, the conformity of approvals issued to institutions and can impose sanctions in the event of failure to comply with the legal requirements of the financial market, without prejudice to the sanctions that may be imposed by the national authorities of the Congo.

##### **Insurance market**

**173.** Established by Treaty on 10 July 1992 in Yaoundé, Cameroon, to replace CICA, CIMA is a community body with the duty to regulate, supervise and control the insurance sector.

**174.** One of the instruments appended to the Treaty of 10 July 1992 establishing CIMA concerns the duties and status of the National Insurance Directorate, which in the Congo is housed in the Ministry of Finance, Budget and Public Portfolio and ensures, in coordination with the Regional Insurance Control Commission, that insurance regulations are enforced, grants licenses to insurance companies and their managers, authorizes exercise of the profession

of insurance intermediaries and ensures compliance with the rules of professional qualification and solvency imposed on this profession, within the limits of the powers delegated by CIMA.

**175.** The Professional Association of Insurance Companies of the Congo and the Professional Association of Insurance and Reassurance Brokers assist insurance companies and also ensure that their members comply with prudential measures.

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

**176.** There are no designated authorities in the Republic of Congo to supervise and monitor the implementation of AML/CFT requirements by designated non-financial businesses and professions.

#### ***1.4.7 International cooperation***

**177.** The Republic of Congo, a country endowed with abundant natural, forestry and mining resources, is faced with major criminal threats resulting from poaching and illicit trafficking of its resources. Beyond the damage caused to the environment and biodiversity, illicit trafficking represents one of the most worrying threats to the peace, security and sustainable development of the country and the sub-region. In addition, there are several other underlying offences such as corruption, misappropriation of public property and drug trafficking, the proceeds of which can be laundered abroad to finance terrorism or terrorist groups due to the porous borders.

**178.** With a 170 km coastline on the Atlantic Ocean, the country is bordered to the north by Cameroon and the Central African Republic, to the south by the Democratic Republic of Congo (DRC) and Angola (Cabinda enclave), to the south-west by the Atlantic Ocean, to the east by River Congo and its tributary River Oubangui, and to the west by Gabon. Hence the need for international cooperation.

**179.** Accordingly, the country has already developed a body of legislation to better combat the threats and is backed by the International Consortium on Combating Wildlife Crime (ICWC), which was established in 2010 through the concerted efforts of the United Nations Office on Drugs and Crime (UNODC), the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the World Bank, INTERPOL and the World Customs Organization (WCO).

**180.** In addition, the Congo has a body legal instruments consisting of agreements and conventions governing mutual legal assistance, extradition, police and customs cooperation to which the country is a party. However, the effective implementation of this mechanism in combating money laundering or terrorist financing is still a real challenge for the country.

**181.** According to information made available to the evaluators, mutual legal assistance and extradition agreements between CEMAC countries are implemented. This is not necessarily the case with countries that have not signed cooperation agreements with the Congo. As soon as requests for mutual assistance arrive the Ministry of Foreign Affairs, Cooperation and Congolese Abroad, they are forwarded to the Ministry of Justice within a general period of two to six days for processing and dissemination.

**182.** NAFI regularly shares information with its counterparts in Central Africa as part of cooperation between FIUs in the region, such as CAC and, since 2018, with FIUs in other countries of the world, as a member of the Egmont Group. NAFI has also signed bilateral agreements with FIUs in the sub-region. Other competent authorities, such as the Police, a member of Interpol, and Customs, a member of WCO, cooperate with their foreign counterparts via secure information exchange platforms. Such information exchanges mainly concern only the offences underlying ML/TF.

## 2. NATIONAL AML/CFT POLICIES AND COORDINATION

### 2.1. Key findings and recommendations

#### *Key findings*

- (a) The Republic of Congo conducted its first National Money Laundering and Terrorist Financing Risk Assessment between May 2018 and March 2021. Despite a significant deficit of statistical data to enable better identification of the country's high-risk areas and sectors, the main findings of this Congo's first NRA are broadly acceptable, as they reflect the major ML/TF risks to which the country is exposed.
- (b) At the time of the mission, the NRA report validated in March 2021 had not yet been disseminated to the various State and non-State actors involved in AML/CFT. This is a major weakness in the national AML/CFT system, as the main professionals involved are not aware of the risks inherent in their respective fields of activity.
- (c) The validated NRA report is accompanied by an Action Plan and a national AML/CFT policy and strategy paper which, if effectively implemented, will make it possible to reduce most of the identified AML/CFT risks.
- (d) The launch seminar for this exercise in May 2018 was attended by AML/CFT stakeholders from public and private sectors. However, many officials met during the mission (Customs, Lawyers, Notaries, General State Inspectorate, Anti-Corruption High Authority, etc.) stated that they were no longer involved in the operational phase of the exercise after the launch seminar. Consequently, they are not informed of the practical conduct of the evaluation and the key findings and recommendations contained in the report. The non-involvement of such key actors in the analytical phase of the NRA has contributed to the lack of reliable and comprehensive data noted in the report for some sectors with considerable weight in Congo's economy.
- (e) With regard to financial institutions, the level of control of ML/TF risks varies from one sector to another and from one institution to another. While the banking sector has a satisfactory understanding of the ML/TF risks to which it is exposed, other non-bank financial institutions have a fairly average understanding of the risks associated with their various professions. As for DNFBPs, the various actors in this sector that we met have no control over the ML/TF risks inherent in their activities, except for accounting firms that are subsidiaries of large international groups, which implement their groups' standards in this area.
- (f) For reporting entities' supervisory and control authorities, no in-depth analysis of the ML/TF risks to which their areas of responsibility are exposed had yet been conducted at the time of the on-site visit.
- (g) With regard to national coordination, in June 2018, the Congo set up a Committee for the Coordination of National Policies on Anti-Money Laundering, Terrorist Financing and Proliferation, which was not yet operational at the time of the mission. Furthermore, no other framework for operational cooperation between national actors existed at that time.
- (h) Operational gaps were noted in cooperation and information exchange between the various national actors involved in AML/CFT, apart from NAFI which works with the reporting professions and discloses its reports to judicial authorities. The major actors in

the fight against financial crime in general do not seem to have a mechanism or platform for pooling their actions to improve or perfect their effectiveness. Nor is there a formal framework for information exchange between supervisory and regulatory authorities on the one hand, and between these supervisory authorities and the FIU on the other hand.

### ***Recommendations***

Congo should:

1. Implement a strategy to disseminate the NRA report to all national State and non-State actors involved in AML/CFT as soon as possible, together with its action plan and AML/CFT strategy paper;
2. Organize awareness-raising sessions for the various actors on the risks identified in the NRA report in relation to their respective sectors and on the proposed corrective measures. Such awareness-raising sessions should also be the appropriate framework for informing all stakeholders of the various conditions of implementation of the action plan and the expectations of their respective contributions;
3. Provide for updating of the action plan from the date of its adoption by the National Authorities and undertake its effective implementation in a risk-based approach;
4. Develop sector action plans to fully address the identified risks, in particular by those sectors identified in the NRA report as having a high level of ML/TF risk;
5. Define a periodicity for updating the NRA and effectively integrate all strategic actors from the public and private sectors in such updates, to ensure a more inclusive and objective analysis;
6. Make the National AML/CFT Policy Coordination Committee operational as soon as possible and encourage the establishment of an operational cooperation framework therein to review and address vulnerabilities in the national AML/CFT system;
7. Promote operational cooperation among competent authorities, including regulatory, supervisory and enforcement authorities;
8. Include into the instruments in force in the Congo binding provisions to enable the development of data collection mechanisms and the maintenance of complete, consolidated and up-to-date statistics on all matters relating to investigations, prosecutions, convictions, as well as frozen, seized or confiscated assets, mutual legal assistance and external information requests, to enable the competent authorities to have reliable quantitative data to measure the effectiveness of their AML/CFT system and to allocate resources accordingly;

### ***Risk assessment and risk-based approach (R.1)***

9. Encourage the competent authorities to review the CEMAC Regulation to specifically include a requirement that should a country identify higher risks, it must have an AML/CFT regime that can address such risks by requiring FIs and DNFBPs to take enhanced measures to manage and mitigate the risks, and to ensure that the information is incorporated into their risk assessments.

**183.** The relevant Immediate Outcome for this chapter is IO 1. The Recommendations relevant to assess effectiveness in this section are R.1, 2, 33 and 34 and some items of R.15.

## **2.2. Immediate Outcome 1 (Risk, policy and coordination)**

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

**184.** Overall, the level of understanding of ML/TF risks in the Congo is quite diverse. At the level of the public authorities, it appears from the various interviews that NAFI has a satisfactory understanding of the ML/TF risks to which the country is exposed as a whole. However, as the NRA report has not yet been disseminated, and the understanding of ML/TF risks by other public authorities is rather elementary. First-line services such as the Gendarmerie, Customs, the Ministry in charge of Mines, the GSI and ACHA do not have an appreciable grasp of the ML/TF risks that the Congo faces.

**185.** With regard to private sector actors, the level of understanding of ML/TF risks varies across areas and sectors of activity. In general, financial institutions are more aware of their ML/TF risks than DNFBPs, which have not yet fully appreciated their ML/TF vulnerabilities. But going back to FIs, banks have a good understanding of the ML/TF risks inherent in their activities; in addition to the proceedings of the NRA, most of them conduct internal ML/TF risk assessments of their customers, products and services. Other non-bank financial institutions have a fairly diverse degree of control over their ML/TF risks. For almost all DNFBPs, the understanding of ML/TF risks is not yet effective.

**186.** As regards the supervisory and control authorities of financial sector reporting entities, most of them have not yet carried out an in-depth analysis of the ML/TF risks to which the activities of their entities are exposed; only CIMA stated that it had planned its control missions on the basis of a risk-based approach, without providing any proof thereof. For the supervisory authorities of DNFBPs, the control of ML/TF risks does not yet seem to be a priority in their various action plans.

**187.** The NRA report highlighted the ML/TF threats and vulnerabilities of the various actors. The report shows that the ML risk to which the Congo is exposed is high. The findings of the NRA report are largely consistent with the evaluation team's findings. The most recurrent underlying ML offences, which are the main vectors of the overall ML threat, are corruption, embezzlement of public funds, tax and customs fraud, environmental crimes such as trafficking in precious metals, poaching and illegal felling of forest species, trafficking in wildlife and wood products, theft, fraud, embezzlement, breach of trust, drug trafficking, smuggling of pharmaceutical products, illicit currency trafficking, counterfeiting, etc. The most exposed sectors are banks and money transfer companies, real estate, mining and forestry sectors. Others are transport, hotels and restaurants, microfinance, electronic money, money and value transport companies, NPOs, etc.

**188.** The following are prominent among the vulnerabilities relating to ML: insufficient human and financial resources of investigative and prosecution authorities, limited effectiveness of controls carried out by supervisory authorities, non-availability of a systemic information system on the beneficial owners of legal persons, preponderance of cash in financial transactions, and lack of knowledge of the instruments in force on AML/CFT by the key actors concerned. Apart from these major vulnerabilities, there is also the lack of supervision of DNFBPs in terms of AML/CFT, inadequate cooperation between national actors, non-

exhaustive laws on asset confiscation, significant weight of the informal economy, absence of administrative and criminal sanctions for failure to implement the required diligence by the reporting professions, lack of data on investigations and prosecutions that should make it possible to assess the outcomes and impact of AML actions, and porous borders. Many of the vulnerabilities identified by the evaluation team are contained in the NRA report. However, the fact that it was not disseminated did not allow all stakeholders to identify the shortcomings in their response to ML.

**189.** With regard to terrorist financing, the findings of the NAR report are rather ambiguous; the Executive Summary refers to a "moderate" level of TF risks in the Congo, while Chapter 2 on TF indicates a "high" risk in this regard. Such discrepancy in the NRA report largely reflects the rather mixed level of understanding by all Congolese stakeholders of the TF risks to which the country is exposed. The direction of funds, the potential sources, the possible related criminal activities, or the channels through which the funds are channelled, are not clearly identified. However, it emerged from the various interviews that there are real TF risks in the Congo due to the great mobility of people and the multitude of commercial channels with areas where terrorist groups are active. For example, some authorities told the mission that prepaid cards linked to accounts opened in the Congo had been recovered from terrorists in the Sahel and used by terrorists outside the Congo. Lastly, the mission noted the inadequate internal standards for internalizing international instruments to combat TF. In addition to the CEMAC Regulation, on 12 May 2021 the Congo adopted Law No. 28-2021 on the legal regime for freezing assets linked to TF. However, this instrument, which is new and therefore not sufficiently known to national actors, has major shortcomings, notably the absence of a central administrative authority responsible for freezing assets. The mission also noted that most authorities and private entities are unaware of the existence of lists drawn up under Resolutions 1267 and 1373 of the United Nations Sanctions Committee, and of the obligations and mechanisms for their implementation.

**190.** In the end, the evaluation team is of the opinion that the Congo's understanding of the overall ML/TF risks could be further improved if all stakeholders were sufficiently aware of the findings and recommendations contained in the NRA report and the broad outlines of the action plan adopted. Furthermore, the relevance of the NRA report's content could have been improved if all key stakeholders in the fight had been solicited and involved in the analysis phase of the ML/TF risks to which the country is exposed; such was not the case for this first NRA of the country, hence the variation in the overall level of understanding of the risks.

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

**191.** A three-year action plan was adopted by the Congo after validation of the NRA report by the authorized authorities, together with an AML/CFT policy and strategy paper. The action plan covers the period 2020-2022. While the adoption of this action plan, which is in principle based on the shortcomings identified in the NRA report, should make it possible to develop an efficient framework for the deployment of national AML/CFT measures, its coverage period raises questions. Indeed, the NRA report and the action plan were adopted in March 2021, while the action timeline extends from 2020 to 2022, thus more than a year before the adoption of the action plan. As a direct consequence, several activities programmed for 2020 have not been

carried out. In fact, at the time of the mission, implementation of the action plan had not really started.

**192.** Furthermore, as the NRA report has just been adopted and not yet disclosed to the relevant actors, Congolese authorities have not yet adopted the risk-based approach identified following the NRA in the conduct of AML/CFT policies. The non-involvement of several relevant actors in the national AML/CFT system suggests that there will be difficulties in implementing the action plan, due to the lack of awareness and understanding of national AML/CFT issues and challenges by most stakeholders. During the evaluation mission, Congolese authorities did not prove the existence of frameworks or platforms for cooperation between national actors to mitigating the known ML vulnerabilities.

**193.** However, aware of the risks of economic and financial crime to which the country is exposed, national authorities have set up specialized institutions to combat corruption and other economic crimes, although such national policy actions focus more on the underlying offences than on the ML/TF. Such institutions include: (i) the General State Inspectorate (GSI), set up by Decree No. 70/274 of 18 August 1970, which operates, at the time of the on-site visit, on the basis of Decree No. 2006-493 of 3 August 2006 to reorganize the GSI; (ii) the Anti-Corruption High Authority (ACHC), set up by Law No. 3-2019 of 7 February 2019, which was still in the process of starting its operational activities at the time of the mission; (iii) the Audit and Budgetary Discipline Court, established by Articles 189 and 190 of the Constitution of the Congo of 25 October 2015, but which, at the time of the mission, was not yet exercising the full extent of its missions and prerogatives due to the absence of an organic law specifying its powers, organization, composition and functioning; (iv) the National Agency for Financial Investigation (NAFI), which is the Congo's financial intelligence unit, whose organizational, operational and financing arrangements are set out in Decree No. 2008-64 of 31 March 2008, and which began its activities in 2014, with responsibility for combating money laundering and terrorist financing. After conducting interviews, the evaluation mission noted that these institutions operate in isolation, and that there are no real national policies allowing the actions of all the entities to be merged for greater efficiency.

**194.** In addition, the evaluators noted the non-implementation of the strategic thrusts contained in the national AML/CFT policy and strategy paper, which had just been adopted in March 2021. Furthermore, it emerged from the various interviews that the Congo does not have a genuine national anti-corruption strategy. The development of such a strategy is one of the projects contained in ACHC's 2021 action plan. However, the various authorities met during the on-site visit acknowledged a very high level of corruption in the Congo, which has a negative impact on all of the country's development policies. This observation by senior Congolese officials is confirmed by the 2015 report of the NGO Transparency International on the corruption perception index,<sup>12</sup> which ranked the Congo among the 15 most corrupt countries in the world. This situation justifies the need for a comprehensive and inclusive anti-corruption strategy, which would promote the implementation of key AML/CFT measures.

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<sup>12</sup> Page 3 Source: [2019 CPI Report FR.pdf \(transparency-france.org\)](https://www.transparency-france.org/fr/rapports/2015-cpi)

**195.** In the fight against terrorism and its financing, the National Security Council is the body responsible for identifying and addressing all forms of internal and external threats to which the Congo may be exposed. In this capacity, it plays the role of a coordinating body and ensures that the other competent authorities responsible for combating TF, in particular the gendarmerie and the national police, share information and intelligence on terrorism and TF. However, at the end of the mission, the fight against terrorist financing did not appear to be a priority in the definition of government action. The NPOs present in the Congo, which are nevertheless potential vectors for the movement of resources by terrorists, are not subject to any specific monitoring, and are still governed by an obsolete law dating back to 1901.

**196.** Despite the still recent adoption of the AML/CFT policy and strategy paper, at the time of the mission the Congo did not seem to have an objective approach guiding its decisions on AML/CFT risk management. Various institutions have been set up with specific missions and prerogatives, but there is no framework for planning their actions on the basis of previously identified threats and vulnerabilities.

**197.** Congolese authorities have generally demonstrated a commitment to international and sub-regional AML/CFT initiatives. In 2015, the country agreed to undergo the first mutual evaluation of its national AML/CFT system. Following the evaluation, various corrective measures were taken with the adoption of instruments such as Regulation No. 01/CEMAC/UMAC/CM of 11 April 2016 on the prevention and suppression of money laundering and terrorist financing and proliferation in Central Africa, Law No. 28-2021 of 12 May 2021 on the legal regime for the freezing of assets linked to terrorist financing, Law No. 16-2017 of 30 March 2017 on the establishment of the Congolese Agency for business establishment, Law No. 10-2017 of 9 March 2017 to institute the code of transparency and accountability in public finance management, Decree No. 2018-67 of 1 March 2018 on the general regulations for public accounting, or Law No. 10-2017 of 9 March 2017 to institute the code of transparency and accountability in public finance management, transposing Directive No. 061/11/UEAC-190-CM-22 on the code of transparency and good governance in public finance management.

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

**198.** Congo's NRA validated in March 2021 has not yet allowed for new legal and regulatory provisions on exemptions and application of enhanced and simplified due diligence measures that could apply to financial institutions and DNFBPs, due to the limited time between adoption of the NRA report and the on-site visit. Furthermore, the NRA report does not explicitly identify specific areas of application of the said exemptions nor does it make clear that exemptions are allowed in application of standards.

**199.** However, several credit institutions have carried out risk mapping which enables them to better target the categories of at-risk customers or products due to their intrinsic characteristics. However, according to the various interviews conducted during the on-site visit, such risk matrices drawn up by the credit institutions are not always followed by effective and assessable measures to mitigate the risks identified. Moreover, the limits to the scope of these banks' internal measures are worsened by the limited involvement of COBAC in monitoring the sector risk assessments of its reporting entities.

**200.** At the time of the on-site visit, there was no effective application of simplified vigilance measures by the professionals concerned in the Congo, based on an estimated low level of risk. The risk maps disclosed to the mission and consulted by it reveal that specific ML/TF risks are taken into account. However, some credit institutions apply increased vigilance measures according to the category of some customers identified as high risk, in particular PEPs, MFIs, ICSs and NGOs. This categorization of customers, which results from the implementation of the internal policies of these institutions, is based on the nature of their activities and the volume of their transactions.

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

**201.** The implementation of the NRA should have enabled all the competent authorities, in particular NAFI, the prosecution and repression authorities, and the supervisory and self-regulatory bodies, to better identify the ML/TF risks to which they are exposed and to include their activities in a process to reduce the threats and vulnerabilities identified. However, according to the various officials interviewed, the fact that most of these competent authorities were not included in the operational phase of the NRA made it impossible to achieve such objective. Furthermore, the NRA, which had just been validated at the time of the mission, had not yet been disseminated to the competent authorities and consequently had not yet had any impact on the policies, strategies and operational activities of the competent authorities.

**202.** Prior to implementation of the NRA by the Congo, some institutional measures had been taken to address the risks of financial crime that could be vectors of ML or TF. Such measures include the setting-up of specialized institutions such as the GSI, ACHA, the Audit and Budgetary Discipline Court, and the National Agency for Financial Investigation. However, it emerged from the various interviews that most of the institutions, whose missions are nevertheless highly strategic, are not yet fully operational; such is the case, for instance, of ACHC or the Audit and Budgetary Discipline Court.

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

**203.** The Congo set up a Coordination Committee through Presidential Decree No. 2018-261 of 26 June 2018 to lay down the establishment, powers, composition and functioning of the Coordination Committee for national policies to combat money laundering, terrorist financing and the proliferation of weapons of mass destruction. To render the Committee operational, Ministerial Order No. 12073/MFB-CAB of 26 June 2018 to appoint members of the said Coordination Committee was signed. However, up to the date of the evaluation mission, the Committee had not yet held its first meeting. Discussions with NAFI officials revealed that another order appointing new members should be issued, due to the unavailability of many officials referred to in the first order. On the ground, the mission noted a fairly pronounced lack of operational exchanges and coordination between the various national AML/CFT stakeholders. NAFI works with reporting professions and discloses its reports to judicial authorities. Apart from this circuit for processing suspicious transaction reports, the major actors in the fight against financial crime in general do not seem to have a mechanism or platform for pooling their actions to improve or perfect their effectiveness.

**204.** Operationalization of the Committee for the Coordination of National Policies to Combat Money Laundering, Terrorist Financing and the Proliferation of Weapons of Mass Destruction, set up in 2018, is therefore one of the major actions that the Congo needs to carry out in the short term, to strengthen cooperation between the various AML/CFT stakeholders.

**205.** However, national coordination and cooperation in the fight against ML/TF is ensured by NAFI through its network of correspondents in several government services. At the time of the mission, NAFI Congo had correspondents in the following government services: Justice, National Police, Defence, Forest Economy, Public Treasury, Customs, Taxation and the General Directorate of Currency and External Financial Relations. These correspondents should serve as relays between NAFI and their respective administrations, as part of AML/CFT missions. Unfortunately, their effective contribution to NAFI's actions was not established during the various interviews.

**206.** In addition, NAFI has signed cooperation agreements with the following government services: (i) the Audit and Budgetary Discipline Court on 16 July 2020; (ii) the Directorate General for Territorial Surveillance on 17 August 2020; and (iii) the Directorate General for National Police on 1 December 2020. However, these agreements had not yet led to any real information exchange or merger of actions between the institutions at the time of the mission.

**207.** NAFI also forwards information to criminal prosecution authorities. Between January 2014 and June 2018, 55 reports were forwarded to the Public Prosecutor's Office. However, the evaluation team noted a real need for training of the investigative and prosecuting authorities on the handling and processing of AML/CFT cases, in the light of the relevant instruments and standards in force.

**208.** NAFI's relations with supervisory authorities are rather mixed. COBAC, which is the primary supervisor of financial institutions, remains very inaccessible, thus hampering the establishment of an effective cooperation framework with NAFI and other national actors. The evaluators were not able to meet with COBAC officials during their entire mission, despite numerous reminders. This is a concrete sign of the very low level of accessibility of this institution. CIMA, which seems to be more willing to cooperate with the authorities, does not exchange with NAFI as part of supervision of the insurance sector. COSUMAF has not yet made AML/CFT a real priority in its action plan. At the level of DNFBPs, the supervisory authorities have very limited knowledge of AML/CFT issues; some of them even seemed to be unaware, at the time of the on-site visit, of NAFI's exact missions. Moreover, the CEMAC Regulation does not provide for formal mechanisms allowing the competent authorities and reporting professionals to consult each other.

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

**209.** Many private sector actors have very limited knowledge of the ML/TF risks they face. The Congo has just adopted its NRA report, which had not yet been disseminated at the time of the mission. Furthermore, most private sector actors did not take part in the practical phase of the NRA and are therefore unaware of the findings and recommendations contained in its report.

**210.** The evaluators did not have the impression that financial institutions as a whole, even banks, are aware of the ML/TF risks identified in the NRA report. Banks, EMIs and some

insurance companies carry out internal analyses that allow them to have an acceptable level of knowledge of the ML/TF risks to which they are exposed. At the level of DNFBPs, the vast majority do not understand their ML/TF risks. For some of these professional categories, the NRA report is not explicit enough on the nature and extent of the risks they face.

**211.** NAFI conducts awareness-raising activities on AML/CFT issues to enable reporting entities to become aware of their AML/CFT obligations. However, these sessions have not, up to the date of the mission, been focused on the understanding of sector ML/TF risks. The interview with NAFI officials showed that sectoral awareness campaigns on the outcomes of the NRA will be organized progressively. In addition, some of the actors attend the awareness-raising seminars and workshops organized by GABAC. During such meetings, they are informed about the risks identified, the relevant recommendations and any measures taken by the authorities to mitigate or manage the risks. However, the assessment team noted that the recommendations resulting from these seminars are not followed by effective implementation and internal dissemination campaigns among all the private actors concerned.

#### ***Overall Conclusions on IO 1***

**212.** The Congo validated its first NRA report in March 2021. However, the outcomes of the NRA, the enclosed action plan and the AML/CFT strategy and policy paper have not yet been disseminated to the various national public and private AML/CFT stakeholders. As a result, the general level of understanding of AML/CFT risks by all actors at the time of the mission is still rather mixed.

**213.** Furthermore, at the time of the mission, there was not yet an operational framework for cooperation between the relevant national authorities and for the coordination of AML/CFT activities in the Congo. The Committee for the Coordination of National AML/CFT Policies, which was set up, is not yet operational.

**214. Congo is rated as having a low level of effectiveness for IO 1.**

### 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

#### 3.1. Key findings and recommendations

##### *Key findings*

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

- (a) NAFI Congo receives STRs from some of the ten (10) banking institutions in the Congo and from three of the twenty-four (24) microfinance institutions. The other reporting professions, notably DNFBPs, Customs and Taxation, do not yet report suspicious transactions to NAFI.
- (b) By making use of the right of communication conferred on it by the laws in force, at national and international level, NAFI processes and analyses the STRs and information. However, the volume of files forwarded to the justice system seems to be very small compared to the number of STRs received. This low rate of transmission could be explained by the poor quality of the information contained in the STRs and the number of analysts deemed insufficient by the evaluation team.
- (c) NAFI Congo disseminates the findings of its financial information analysis only to the judiciary and no decision has yet been rendered on the basis of the files forwarded by NAFI. The mission considers this lack of decisions to be due to the poor quality of information, coupled with the lack of training of the judicial authorities.
- (d) No other competent authority had received NAFI files at the date of the mission; the mission noted a mixed collaboration at national level with all the actors, apart from the banking sector through the requests for information that NAFI sends them.

##### **Immediate Outcome 7**

- (a) Congolese authorities assert a political will to combat ML/TF, as evidenced by the adoption of a legal and institutional framework inspired by international standards. However, there is no well-defined national criminal policy commensurate with the potential risks, nor is there an overall strategy by prosecuting authorities to prioritize and ensure the success of ML investigations.
- (b) Criminal investigation and prosecution authorities (CIPAs) open cases and conduct investigations for underlying offences such as corruption, customs fraud, trafficking in protected species, drugs and precious materials, but do not conduct systematic parallel investigations into ML when investigating an underlying offence. There is also no evidence that investigations focus on different types of ML activities, including self-money laundering, third party laundering, as well as laundering of proceeds from the underlying offences committed abroad.
- (c) CIPAs (Investigation Chambers, Prosecutor's Office, Police, Gendarmerie, Customs, Water Resources and Forestry...) have neither the necessary AML training, nor do they use special investigative techniques (infiltration, controlled deliveries, wiretapping, electronic surveillance) and resources to successfully investigate and

prosecute ML cases, including seeking or using national inter-agency cooperation and mutual legal assistance.

- (d) As no convictions for money laundering have been recorded, the effectiveness, proportionality and dissuasiveness of the penalties provided for this purpose cannot be objectively assessed. Moreover, alternative criminal justice measures are not implemented in the punishment of ML.

### **Immediate Outcome 8**

- (a) The Congo has a relatively comprehensive legal framework for provisional freezing, seizure and confiscation measures. The country's legal framework provides a legal basis for the confiscation of property of equivalent value, instrumentalities of the offence and the sharing of proceeds of crime with their foreign counterparts.
- (b) The Congo has prioritized the confiscation of the proceeds of crime as a strategic objective at national level. However, the bulk of confiscations are often for predicate offences committed in the country. Therefore, the level of implementation of this measure by judicial and law enforcement authorities cannot be fully established due to the lack of convictions in relation to ML.
- (c) The lack of expertise among prosecutors and investigating magistrates in the field of financial analysis and investigations has a negative impact on ML-related confiscation or seizures.
- (d) There have been no confiscations relating to smuggled or undeclared cross-border assets. Such lack of confiscation does not reflect the risks of smuggling of protected monetary and wild species and their proceeds.
- (e) There is no central mechanism for the recovery and management of seized and confiscated property.

### ***Recommendations***

#### **Immediate Outcome 6**

Congo should:

1. Raise awareness and train all national AML/CFT stakeholders, in particular non-bank FIs, DNFBNs and VASPs, to get them carry out due diligence and improve the quality of information that must be forwarded to NAFI; supervisory and self-regulatory bodies to improve their collaboration with NAFI; investigative and prosecuting authorities in the use of financial intelligence and the conduct of money laundering and terrorist financing cases in order to increase the use of said intelligence; Customs, Taxation and Treasury authorities to encourage them to fulfil their reporting obligations to NAFI and to cooperate spontaneously with it;
2. Provide NAFI with suitable premises to hold a large staff and build its capacity and staff strength.

### **Immediate Outcome 7**

Congo should:

1. Define a penal policy that prioritizes the punishment of ML and underlying offences and that is consistent with the country's risk profile;
2. Increase and strengthen the human, material and financial resources of prosecution authorities, to enable them have sufficient means to process financial intelligence and facilitate convictions for ML. This could be done through, inter alia, specialized training or the support of recruited crime experts;
3. Build the capacity of judicial police officers (JPOs) and magistrates with regard to financial investigations, particularly those relating to the investigation of ML cases, including the search for mutual legal assistance;
4. Encourage investigative and prosecuting authorities to regularly conduct parallel investigations into ML, when investigating underlying offences;
5. Strengthen coordination and cooperation between the various actors in the criminal justice chain to ensure successful investigations and prosecutions, including by establishing permanent and regular exchange platforms and carrying out joint actions or activities;
6. Encourage judicial authorities to speed up the processing and trial of ML cases, applying effective, proportionate and dissuasive penalties;
7. Encourage the use of alternative criminal justice measures by prosecuting and punishing authorities;
8. Develop and maintain statistical data relating to ML investigations, including the number and types of ML investigated, prosecuted and convicted, and underlying offences.

### **Immediate Outcome 8**

The country should:

1. Ensure that in taking provisional or final decisions, Criminal Law Enforcement Officers (CLEOs), prosecutors, investigating magistrates and judges of trial courts implement the confiscation policy objective, including the confiscation of property of corresponding value and the instrumentalities of crime;
2. Develop a freezing, seizure and confiscation guideline for CLEOs, investigating magistrates and trial judges to ensure compliance with the national objective of focusing on the confiscation of the proceeds of crime;
3. Increase and strengthen the resources and training of CLEOs, investigating magistrates and trial judges to enable them to competently track, freeze, seize and confiscate the proceeds and instrumentalities of crime, including those located abroad;
4. Provide training to taxation, customs and forestry officials on the importance of confiscating all proceeds of crime and conducting financial investigations following seizures;

5. Establish procedures for the effective implementation of the obligation to report currency and bearer negotiable instruments at the borders, including the reporting of suspicious ML activities to NAFI, and ensure compliance by applying effective, proportionate and dissuasive penalties;
6. Produce and keep statistics on seizures and confiscations;
7. Establish a central mechanism for the recovery and management of seized and confiscated property, in order to respond to the depreciation, disappearance or destruction of certain assets, as well as the inadequacy of the legal instruments and premises made available to Court Registrars.

**215.** The relevant Immediate Outcomes examined and evaluated in this Chapter are: IO 6, IO 7 and IO 8. The relevant Recommendations for the assessment of technical compliance under this Chapter are: R3, R4, R29, R30, R31 and R32: R3, R4, R29, R30, R31 and R32.

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

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

**216.** NAFI Congo has access to financial information through the exercise of the right of disclosure granted to it by the CEMAC Regulation. This right of disclosure is exercised with regard to the reporting professions and government services, public establishments, local authorities and private sector entities or any other person entrusted with a public service mission. NAFI also has access to financial information through cooperation with its foreign counterparts.

**217.** At the time of the on-site visit, NAFI's only domestic sources of financial intelligence in the Congo were banks and three (3) microfinance institutions which, between 2018 and 2020, forwarded five hundred and sixty-four (564) suspicious transaction reports (STRs), and the Public Prosecutor's Offices of the High Courts of Brazzaville and Pointe Noire, which have referred to NAFI two (2) requests for information. During the processing of these STRs and information, NAFI resorts, if need be, to additional information, through a mechanism called "request for information". On the basis of this mechanism (request for information), the collaboration between NAFI and the reporting professions (Banks) is deemed to be quite satisfactory.

**218.** NAFI also has a database which is its second source of financial intelligence. The database contains information on automatic reports of cash transactions of an amount equal to or greater than FCFA 5,000,000 (five million). This database is an important tool in analyzing information from the STRs, as it contains thousands of pieces of information that can further enrich the STRs and thus provide the competent authorities with exhaustive information to carry out their investigations.

**219.** NAFI Congo is member of the Egmont Group since 2018, which gives it access to information held by its counterparts, members of this important information exchange forum.

**220.** Apart from information from the STRs, the Public Prosecutor's Office of the High Court of Pointe Noire and foreign Financial Intelligence Units (FIUs), NAFI Congo does not receive

information from other competent authorities such as Customs, Taxation, Treasury or prosecution authorities. The few exchanges that the evaluation team was able to note can be summarized as responses to the information that NAFI requests from these authorities.

**221.** With regard to the Customs administration, the CEMAC Regulation makes it a reporting profession by virtue of Article 6 and therefore an administration liable to the obligation to report suspicions. At the date of the mission, the Customs administration had not reported any suspicion to NAFI. During the interviews, it admitted that it was not aware of this obligation. In its traditional duties, Congolese Customs collect information on the physical cross-border transport of cash and bearer negotiable instruments (BNIs). It has data on seizures of narcotics, rare and protected species, counterfeit medicines, etc. None of such data was collected in the past. None of the data has been disclosed to NAFI, let alone used in the fight against money laundering or terrorist financing, notwithstanding Article 15 of the CEMAC Regulation, which makes it "compulsory to report or communicate the physical cross-border transport of cash or bearer negotiable instruments". This provision is also ignored by the Congolese customs.

**222.** Prosecution authorities receive reports from NAFI on the analysis of information contained in the STRs. At the time of the mission, NAFI had forwarded 55 reports from STRs to judicial authorities. However, no convictions for money laundering or terrorist financing had been handed down. The evaluators conclude that financial intelligence (from NAFI) is not used appropriately by the competent authorities during investigations into money laundering and terrorist financing (in the sense of Immediate Outcome 6). Interviews with the various prosecution authorities (Head of the Central Investigation Department of the National Gendarmerie, Prosecutor at the Brazzaville High Court, the Dean of the Investigating Judges) reveal that some prosecutions for money laundering or terrorist financing have been initiated on the basis of the information forwarded by NAFI. An interview with the Prosecutor General of the Brazzaville Court of Appeal revealed that the difficulty in concluding money laundering cases lies in the lack of training, awareness and capacity building of members of the judiciary on the issue, despite the few awareness sessions organized by NAFI.

**3.2.2 Reports received and requested by the competent authorities**

**223.** NAFI Congo receives suspicious transaction reports from reporting professions by virtue of Article 6 of the CEMAC Regulation. The reports are analyzed and forwarded to the competent authorities, as appropriate. The table below shows the number of STRs (received by NAFI) and information requested<sup>13</sup> (from NAFI by the judicial authorities) from 2018 to 2020, i.e. the last three years.

Table 3: Number of STRs received and information requested over the period (2018-2020)

Year	Number of STRs	Amount of information	Total /year	Percentage/year
2018	90	0	90	16%
2019	271	1	272	48%
2020	203	1	204	36%
<b>Total</b>	<b>564</b>	<b>2</b>	<b>566</b>	<b>100%</b>

Source: NAFI Congo

<sup>13</sup> In accordance with Article 73(3) of the CEMAC Regulation relating to referral to the Public Prosecutor by NAFI.

The table above shows a significant increase in the number of STRs from year to year, which reflects some mastery of due diligence by credit institutions and a sign of the quality of collaboration that is clearly improving between this category of reporting entities and NAFI.

224. An interview with NAFI officials revealed that the agency received STRs only from financial sector entities, notably banks and three microfinance institutions. STRs were forwarded manually by a person dedicated to this task and at the time of the on-site visit, and the evaluation team did not note any information leakage, although it strongly recommends the implementation of a secure system for information transmission between reporting entities and NAFI on the one hand, and between NAFI and the competent authorities on the other.

Table 4: Number of STRs by source

Reporting entities	2018	2019	2020	Total
Banks	88	268	202	558
Micro finance	02	03	01	06
<b>Total</b>	<b>90</b>	<b>271</b>	<b>203</b>	<b>564</b>

Source: NAFI Congo

225. During the period under review, NAFI Congo also received two (2) pieces of information from the Prosecutor's Office of the High Court of Pointe Noire, one in 2019 and another in 2020.

226. Interviews with NAFI and the various stakeholders revealed that other financial sector reporting entities, and especially DNFBPs, have not yet sent any STRs to NAFI, either because they are unaware of their AML/CFT obligations, or even because they are unaware of NAFI's existence. The evaluation team finds that there is a real need to raise awareness not only on AML/CFT, but also on the existence and powers of NAFI and, more specifically, on the obligations of reporting entities which do not yet collaborate in this area.

3.2.3 Operational needs supported by FIU analysis and dissemination

227. An analysis of the information forwarded to NAFI Congo between 2018 and 2020 showed forty-six (46) transmissions exclusively to judicial authorities, as follows:

Table 5: Number of transmissions over the period (2018-2020)

Years	Number of STRs and other information received (1)	Number of transmissions (2)	Transmission rate (2/1) in %
2018	90	16	17,8%
2019	272	12	4,5%
2020	204	18	8,8%

Source: NAFI Congo

228. By way of illustration, in 2019, NAFI received 272 STRs (268 from banks and 3 from MFIs). It forwarded 12 files to the Prosecutor (i.e. a rate of 4.5%), closed 70 files (i.e. a rate of 25.7%), put 58 files on hold (21.3%) and the remaining 132 files (48.5%) were under investigation during the said year.

229. These statistics show that cases referred to the Prosecutor have a lower rate than other outcomes of STRs received in 2019. Thus, the evaluation team noted, in general, that this trend is the same throughout the period under review (2018-2020) and attributes the said trend to two main factors.

**230.** The first is related to the quality of the STRs which supposedly did not contain relevant information to be forwarded to the competent authorities. The second factor relates to the number of analysts. NAFI had only four (4) analysts at the time of the on-site visit. This number seems quite insufficient to process and analyze the increasing number of STRs. This shortage of Analysts justifies the rather high number of files still under investigation, in particular for the 2019, namely 132 files out of the 272 STRs (i.e. 49%).

**231.** Furthermore, interviews with NAFI officials show that their current tiny premises do not allow for an increase in the number of analysts and other staff.

#### ***3.2.4 Cooperation and exchange of financial information/financial intelligence***

**232.** Article 75 of the CEMAC Regulation give an extended right of communication to NAFI Congo. There is also Article 80 relating to cooperation between FIUs of the GABAC jurisdiction, and Article 83 of the same Regulation on international cooperation.

**233.** On the basis of this right of communication and apart from the transmission of files to the Justice system, NAFI Congo cooperated with other government services. Such cooperation was generally reflected in the requests for information that NAFI sent to government services. Between 2018 and 2020 and apart from the files forwarded to judicial authorities, as mentioned above, NAFI sent thirty-six (36) requests for information to various government services (Police, Gendarmerie, Taxation, Customs and public administrations among others). At the time of the on-site visit, no government service had spontaneously forwarded information to NAFI. To encourage such collaboration, NAFI signed a cooperation agreement with the Audit and Budgetary Discipline Court.

**234.** The evaluation mission did not note any information exchange between NAFI and the supervisory or self-regulatory authorities. Some of them were not even able to receive the evaluation mission. Such was the case with COBAC, a major player in the fight against money laundering and terrorist financing, in its capacity as "Gendarme" of the banking sector and MFIs, which was unable to travel from Libreville (its headquarters) to Brazzaville, let alone respond favourably to the request for a videoconference meeting sent by NAFI and the GABAC Secretariat.

**235.** NAFI is member of the Egmont Group since 2018. As such and in addition to the provisions of Articles 80 and 83 above, NAFI exchanges information with counterpart FIUs. Between 2018 and 2020, NAFI sent eight (8) requests to foreign FIUs and also received eight (8) requests for information from foreign FIUs.

**236.** The confidential management of information held by NAFI Congo is governed by Articles 70 (confidentiality) and 71 (disclosure of information forwarded to NAFI) of the CEMAC Regulation. In fact, and following the interview with its officials, NAFI Congo complies with the provisions on confidentiality of information. NAFI's premises are secured by biometric entrances and armoured doors. NAFI has a safe to secure STRs. Requests for information, including reports to the judiciary, are forwarded under sealed cover by a dedicated agent. At the time of the on-site visit, no information leakage had been reported. However, the mission recommends that a secure system be set up in accordance with Recommendation 29, similar to

the one in place between NAFI and other FIUs, with which it exchanges information via the secure "Egmont Secure Web" network.

#### ***Overall Conclusion on IO 6***

**237.** NAFI receives, processes, analyzes and forwards, as appropriate, information to the competent authorities responsible for combating money laundering and terrorist financing. However, the destination of NAFI's financial intelligence is unfortunately limited to judicial authorities. Furthermore, the small number of files forwarded to the judiciary compared to the number of STRs received, closed, shelved or in process, led the evaluation team to express reservations about the quality of STRs and the reduced number of analysts. This concern about the information quality could also justify the fact that, at the time of the mission, no court decision had been issued, in addition to the lack of training raised by judicial authorities. Furthermore, the evaluation mission deplores the fact that the other authorities do not communicate spontaneously with NAFI, in particular the Customs, Taxation and investigative authorities (police and gendarmerie). This lack of collaboration is total with regard to the sub-regional supervisory and self-regulatory authorities.

**238.** For the following reasons:

- Lack of cooperation from other financial sector reporting entities and DNFBPs;
- Lack of spontaneous information exchange with the various actors and authorities responsible for AML/CFT, which hampers collection of a wide variety of financial intelligence;
- Poor quality of the information received by NAFI and, consequently, of the information forwarded to the justice system;
- Insufficient training of human resources and skills of judicial authorities to use financial intelligence in their analyses and investigations;

**239.** The Congo is rated as having a low level of effectiveness for IO 6.

### **3.3. Immediate Outcome 7 (ML investigation and prosecution)**

#### ***3.3.1 ML identification and investigation***

**240.** The legislative and regulatory framework in force in the Congo gives law enforcement agencies, in particular judicial police officers (JPOs), civil servants ranking as such (customs and water resources and forestry officers), and criminal magistrates (prosecutors' offices and investigating magistrates' offices), general jurisdiction to investigate and prosecute all crimes.

**241.** Investigation and prosecution of money laundering and the associated underlying profit-generating offences fall within the scope of these prosecuting authorities. Law enforcement authorities in the Congo may prosecute ML offences if such offences are identified in the course of investigations into underlying offences, but money laundering is not often prosecuted. All criminal justice officials focus on predicate offences. The Criminal Investigation and Prosecution Authorities (CIPAs) met by the evaluation team stated that they do not consider investigating ML when an underlying offence has been committed. They noted that tracing the proceeds of crime requires considerable resources and specific knowledge, which is lacking.

**242.** Other competent authorities also have JPOs and officers with either general or special jurisdiction who could investigate money laundering and related offences, notably:

- the General State Inspectorate (GSI), in its control mission, has staff with special competence in the recovery of evaded duties, repatriation of export revenues and blocking bank accounts;
- the Directorate General of Customs and Indirect Taxation (DGDDI) is responsible, among other duties, for combating fraud, cross-border crime and money laundering from customs fraud. It has anti-fraud brigades spread throughout the country;
- the Directorate General of Taxation (DGI) is responsible, among other duties, for combating tax fraud, tax optimization, fraudulent transfer prices and money laundering of tax fraud;
- the general directorates of the Ministry of Forest Economy through the departmental directorates and that of the Congolese Wildlife and Protected Areas Agency, as well as the National Office of the Lusaka Agreement, a technical department specialized in the fight against environmental crimes at the Ministry of Forest Economy (DCE), ensure, through forestry officers and Eco-Guards, the punishment of crimes arising from violation of wildlife and forestry legislation. In general, it is responsible for punishing any violation of environmental protection legislation.

**243.** Investigations and enquiries are carried out by the competent authorities on the basis of general notions of criminal investigation techniques learned in the various training schools. There are no JPOs specifically trained in money laundering investigations and no special investigation techniques are used. Similarly, there is no coordination and cooperation between the various actors in the criminal chain to ensure the success of investigations and prosecutions, in particular by establishing permanent and regular exchange platforms and by carrying out joint actions or activities.

**244.** Members of the judiciary (public prosecutors and investigating magistrates' offices) met by the evaluators clearly pointed out the lack of training and specific expertise in this field.

**245.** The number of cases investigated for money laundering in no way reflects the scale of the phenomenon in the Congo. They all come from the financial investigation reports forwarded to the Public Prosecutor's Office by NAFI. No case has yet led to conviction and confiscation.

**246.** According to the information collected, a wide range of offences underlying money laundering are investigated and prosecuted. However, due to the lack of available statistics in the various government services, it was impossible to collect details on the outcome of such proceedings.

**247.** Nevertheless, from 2016 to May 2021, the various divisions of Congo's Judicial Police Command recorded the economic and financial offences listed in the table below:

Table 6: Number of Judicial Police investigations by presumed offence

Underlying offences	2016	2017	2018	2019	2020	Jan - May 2021
Fraud	142	138	39	05	05	00
Breach of trust	108	122	98	17	02	00
Theft	24	18	21	11	08	00

Counterfeiting	01	00	01	02	02	00
Illegal sale of pharmaceutical products	00	00	01	01	01	02
Drug trafficking	03	02	03	06	04	01
Poaching	04	03	10	02	02	04
Corruption	00	03	01	00	00	00
Traffic of migrants					01	
Trade in humans					01	
<b>Total</b>	<b>282</b>	<b>286</b>	<b>174</b>	<b>48</b>	<b>26</b>	<b>07</b>

Source: *Judicial Police Command*

In view of the geo-strategic context and the potential risks identified in the country, this table indicates a low rate of investigations and does not specify the judicial outcome.

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

**248.** The small number of cases prosecuted by the Congolese judicial authorities, the lack of convictions for ML and the non-implementation of the national AML/CFT policy, made it impossible for the evaluation team to establish the general adequacy between the country's risks and prosecutions. In addition, it should be noted that tax and customs offences, which generate the greatest volume of illicit proceeds, are generally dealt with administratively, whereas the CEMAC Money Laundering Regulation should allow tax and customs administrations to take into account the criminal aspect by targeting the offence of tax laundering or customs fraud.

**249.** All the data collected and provided show that, generally speaking, prosecution and criminal law enforcement authorities have limited knowledge of the ML sector risks identified in the country, as opposed to those of the underlying offences generating illicit profits that are likely to become part of money laundering. Thus, the actions taken do not seem to target or prioritize offences deemed to be high risk and the virtual absence of law enforcement in this area hinders the implementation of the CEMAC AML/CFT Regulation.

**250.** Significant shortcomings in the judicial system hamper the efforts of investigators whose cases do not get to trial. The prosecutors and investigating magistrates met by the evaluators stressed the complexity of money laundering investigations and acknowledged their limited expertise and experience in conducting such investigations. Lastly, they stated that the partnership and exchanges with NAFI, which has expertise in this area, are not constant.

### ***3.3.3 Types of ML cases pursued (prosecution)***

**251.** The financial intelligence reports forwarded by NAFI to judicial authorities did not lead a conviction and are still being processed in the investigating offices of the Brazzaville and Pointe-Noire High Courts. It is not clear from the statistics provided whether any of the cases concern third party ML, self-laundering or ML committed abroad or with foreign elements. The Congo did not provide a breakdown of the types of ML offences prosecuted.

### ***3.3.4 Effectiveness, proportionality and dissuasiveness of sanctions applied for ML***

**252.** According to the CEMAC Regulation, persons guilty of a money laundering offence are punished with imprisonment of five to ten years and a fine equal to five to ten times the value

of the property or funds involved in the laundering operations, but no less than ten million (10,000,000) CFA francs. As no conviction for money laundering has been recorded, the effectiveness, proportionality and dissuasiveness of the penalties provided for in this regard cannot be objectively assessed.

**3.3.5 Use of alternative measures**

**253.** Congolese judicial authorities have not reported any cases of implementation of alternative criminal justice measures, in the absence of convictions.

**254.** The customs and tax legislation in force in the Congo authorizes the customs and taxation services to conclude transactions with the perpetrators of customs or tax offences or persons who have organized the avoidance or evasion of customs duties or taxes. The evaluation mission was not provided with any information on the practice of such measures as an alternative to a criminal conviction for money laundering.

**Overall Conclusion on IO 7**

**255.** Overall, the Congolese prosecution and law enforcement authorities do not prioritize the investigation and prosecution of ML, including parallel investigations, due to the lack of material, financial and human resources and issues relating to their training in financial investigations. Furthermore, in the absence of a conviction for ML, the effectiveness, proportionality and dissuasiveness of the sanctions provided for by the CEMAC AML/CFT Regulation cannot be assessed.

**256. Congo is rated as having a low level of effectiveness for IO 7.**

**3.4. Immediate Outcome 8 (Confiscation)**

**257.** Congo’s legal framework provides authorities with an adequate basis to restrict and confiscate the proceeds and instrumentalities of ML, TF and a number of predicate offences. The competent authorities may also confiscate property of equivalent value. The country can apply provisional measures and various legal tools, including seizure, confiscation, fines and fiscal penalties. The competent authorities have the necessary powers to identify, seize and confiscate criminal assets.

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

**258.** As a general rule, the investigating magistrate may order seizures or confiscations. The various CLEOs and agencies, including the national police, gendarmerie, Anti-Corruption High Authority, customs, taxation authorities, water and forestry and the FIU, may refer cases to the court for criminal proceedings and seizure in cases where the alleged offences are believed to have generated proceeds of crime. Congolese courts may seize assets before criminal proceedings are initiated if they suspect that such assets are the proceeds or instrumentalities of a crime. Basically, Article 104 of the CEMAC AML/CFT Regulation provides for provisional measures that allow for the freezing of funds as a preventive and exceptional procedure allowing for the sequestration of assets pending the commencement of criminal proceedings or pending a possible formal request for assistance from a foreign

country. Freezing or sequestration may then be replaced by seizure under the Criminal Procedure Code. In addition, the FIU may, on the basis of concrete, consistent and reliable information in its possession, freeze funds for a period of 48 hours and bring the case before the courts to obtain a sequestration or seizure order. However, application of interim measures is limited.

**259.** Seizure and confiscation of proceeds and instrumentalities of crime are clearly established by law as a priority for prosecution authorities. However, in the absence of a clear and stated policy by the authorities, it is unclear whether these objectives have been integrated into the activities of prosecuting authorities and other investigative bodies in practice. Concretely, CLEOs and investigating magistrates do not have the resources to conduct financial investigation. The Congo has not developed a standard operating procedure in line with the objective of confiscating the proceeds of crime.

**260.** Further, there were no ML-related confiscations, since there were no convictions for ML. However, the confiscation statistics indicate that some confiscations were made in relation to predicate offences.

**261.** Some entities such as the Directorate General of Customs and Indirect Taxation (DGDDI) and the Department in charge of environmental crimes, carry out seizures and confiscations at the borders and in the forest. Customs seizures often open transactions with the offender. Seizures made by water resources and forestry officers, however, are passed on to the judicial authorities through JPOs.

**262.** Congolese law provides for international cooperation and assistance in the repatriation of confiscated property. However, Congolese authorities pointed out that they were faced with refusal to repatriate such property located abroad.

#### ***3.4.2 Confiscation of proceeds from foreign and domestic underlying offences, and proceeds located abroad***

**263.** The legal framework allows for the confiscation of ML and TF proceeds in the Congo and abroad, as well as proceeds generated by most domestic predicate offences or their corresponding value. There are no estimates of the economic losses resulting from crime in the Congo. It has therefore not been easy to establish the real impact of provisional and confiscation measures taken in the country. Proceeds from an underlying foreign offence can be identified, traced and confiscated on the basis of an international letter rogatory and a request for mutual legal assistance. However, the authorities do not systematically seek confiscation or freezing of foreign proceeds or of foreign predicate proceeds. The authorities do not have comprehensive data on the number of confiscations of proceeds of offences committed abroad and of proceeds located abroad. Article 154 of the CEMAC Regulation provides for the possibility for the country to dispose of confiscated or seized assets. The country has requested the repatriation of the proceeds of wildlife crimes on protected species. However, these actions have not been successful due to the reluctance of the foreign courts solicited. Furthermore, in none of the ML cases has there been any confiscation of money or property. This situation is not only due to a delay in the judicial process, but also seems to be due to a lack of expertise in conducting financial investigations and dealing with ML cases.

**264.** Although tax evasion and fraud are common offences in the Congo, the tax authorities have chosen to use administrative fines for non-payment of taxes. However, the Congo has not provided statistics on such administrative fines, nor information on the fraud that generated such fines.

**265.** Confiscated property and funds are recorded by the Court Registrar. However, the authorities stated that they have difficulties in managing some assets that depreciate, disappear or are destroyed. In addition, the premises and legal instruments available to Court Registrars are inadequate. There is no central agency to manage and recover seized or confiscated assets.

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

**266.** Monitoring of cross-border cash movements is an important element in Congo's AML/CFT system because of the widespread use of cash in the country and the extensive and porous land and maritime borders. The legal framework for the circulation of the CFAF within the Union provides that no declaration is required for the physical transport of the currency issued by BEAC. However, Article 15 of the CEMAC Regulation imposes the obligation to declare cash and bearer instruments (BNIs) of an amount equal to or greater than FCFA 5,000,000 (approximately EUR 7,633 and USD 8,728). The competent authorities may block or detain, for up to 72 hours, all cash or BNIs that may be linked to money laundering or terrorist financing and seize the full amount of cash in the event of non-declaration or false declaration. The National Police should work in collaboration with Customs at the borders to detect the above cases.

**267.** While there is a risk of ML relating to undeclared cash smuggling, Congolese authorities have not provided any data on seizures made at the airport and at the various land and sea borders, on passengers for non-declaration of currency. The cash seizures should be carried out in accordance with the provisions of Regulation No. 02/18/CEMAC/UMAC/CM on foreign exchange regulations in the CEMAC zone, adopted on 21 December 2018, and the Community Customs Code.

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

**268.** The NRA indicates that the risk of money laundering is high and is fuelled by threats, the most significant of which are fraud, breach of trust, poaching, corruption, embezzlement of public funds and drug trafficking. The NRA also stated a high risk of terrorism and TF. To some extent, data on seizures and confiscations reflect the country's assessed ML/TF risks, as seizures and confiscations are largely related to the underlying offences that present the highest ML/TF risk for the Congo. The Congo did not provide an estimated size of the illegal economy. However, the moderate volume of seizures and confiscations from 2016-2021 represents only a small fraction of the proceeds likely to be laundered in the country, and to that extent the statistics are not commensurate with ML/TF risks.

**269.** With regard to terrorist financing risks, Congolese Authorities are implementing policies to combat terrorism and the risk of terrorist financing that the country faces, including measures to detect and seize funds linked to terrorist financing. The NRA has showed a number of vulnerabilities in the effective implementation of seizures and confiscations. Although the

criminal justice system applies a confiscation policy, the non-existence of seizures and confiscations relating to money laundering and terrorist financing does not fully reflect the policies and priorities of Congolese authorities. Implementation of the national AML/CFT policy should provide the necessary impetus to align confiscation outcomes with ML/TF risks and fully implement national confiscation policies.

***Overall Conclusion on IO 8***

**270.** In general, implementation of the obligation to confiscate the illicit proceeds of crime, its recovery and management, is difficult to perceive. The volume of seizures and confiscations remains low for underlying offences and is non-existent for ML offences. These shortcomings demonstrate a lack of expertise of the prosecution and law enforcement actors in conducting financial investigations and dealing with ML cases.

**271. Congo is rated as having a low level of effectiveness for IO 8.**

## 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

### 4.1. Key findings and recommendations

#### *Key findings*

##### **Immediate Outcome 9**

(a) The threat of terrorist financing is real in the Congo owing to its proximity to some countries (Cameroon, CAR and DRC) and the porous borders with these countries, where terrorists and armed groups are active, i.e. Boko-Haram in Cameroon, and Seleka, Anti-balaka, and recently the CPC in CAR, and the ADF-NALU and armed groups in the DRC.

(b) At the time of the on-site visit, Congolese judicial authorities had not yet prosecuted or sentenced the alleged terrorist financing acts on their territory, despite the existence of related files identified through the afore-mentioned STRs.

(c) In the Congo, the National Police, the Gendarmerie, the Customs Administration, the Public Prosecutor's Office composed of the Public Prosecutor and the Investigating Magistrates are able to conduct investigations into acts of TF. In their investigations, officials of the FIU (NAFI) can forward a report to the public prosecutor if the facts are likely to be TF. However, there are no criminal prosecution authorities and investigative authorities specialized in TF or in the detection of acts of terrorism and TF.

(d) The TF cases in progress in the country were essentially identified through the STRs received from reporting entities by NAFI, whose reports are forwarded to the Public Prosecutor.

(e) Investigative and prosecuting authorities are not sufficiently trained or equipped to conduct TF investigations.

(f) The Congo has a community legal framework to criminalize TF. However, there is no criminalization of the financing of foreign terrorist fighters, despite the high risk due to the proximity of high-risk countries and porous borders.

(g) The Congo has adopted a national policy and strategy to combat money laundering and terrorist financing that includes ML/TF, but combating terrorist financing has not been prioritized in Government's action plan.

(h) According to the Congo NRA report, an anti-terrorism unit (GIGN) has been set up in the Ministry of Defence, but is not yet operational and its personnel do not have specific training.

##### **Immediate Outcome 10**

(a) The Congo has a Community legal framework and a mechanism for disseminating lists, enabling it to implement the targeted financial sanctions (TFSs) for TF in accordance with UNSC Resolutions 1267, 1373 et sec. The Congo supplemented its legal framework in this area with the adoption of Law No. 28-2021 of 12 May 2021, which establishes a legal regime for freezing assets linked to terrorism and its financing. However, the mission notes major shortcomings in this law, in particular the non-designation of a central administrative

authority responsible for freezing assets, and establishment by the said law of a mechanism for disseminating lists with time limits deemed long enough to allow, in a few hours (without delay), the freezing of assets and prohibitions aimed at preventing funds and other property from being made available to persons and entities designated by the UNSC.

**(b)** The Congo has not submitted a national list based on UNSC Resolution 1373. Furthermore, the country has not identified a competent authority responsible for executing or proposing the designation of persons or entities to the 1267 Committee, despite the significant TF threats facing the country. No freezing measures have been taken on the basis of the above-mentioned resolutions.

**(c)** Despite the non-effective implementation of the mechanism to disseminate the sanctions lists, some banks receive such lists through commercial software and proceed to filter their transactions. Other actors, notably foreign currency exchange bureaus, MFIs and DNFBPs, have very limited knowledge of the matter, and their non-implementation of such measures remains unpunished.

**(d)** Congolese authorities have not conducted a study to identify NPOs whose characteristics and activities may be leveraged for terrorist financing purposes. The country has not adopted a strategy to train and raise awareness among NPOs. Most NPOs are unaware of their due diligence obligations and the risks to which they may be exposed due to the nature of their activities.

**(e)** The supervisory authority does not exercise any supervision or control over the activities of NPOs and had not yet received, at the time of the on-site visit, the financial or activity report of any NPO as required by the CEMAC Regulation.

**(f)** There is, therefore, a strong mismatch between the level of TF risk and the measures adopted.

#### **Immediate Outcome 11**

**(a)** The Congo does not have a legal framework and mechanisms for disseminating bans on business transactions with countries and individuals on sanctions lists that allow it to implement targeted financial sanctions (TFSS) without delay for financing the proliferation of weapons of mass destruction.

**(b)** No awareness-raising activities were organized for FIs and DNFBPs on compliance with the prohibitions on doing business with countries, companies and individuals under UN sanctions.

**(c)** Supervisory authorities do not monitor the implementation of sanctions by financial institutions and therefore no sanctions are applied.

#### ***Recommendations***

#### **Immediate Outcome 9**

Congolese authorities should:

1. Build the technical, human, material and financial capacities of the investigative and prosecution bodies by specializing in TF investigation and prosecution techniques;
2. Criminalize the financing of travel by persons who go abroad either to commit, organize or prepare terrorist acts, or to provide or receive terrorist training, and integrate TF investigations into counter-terrorism strategy or activities;
3. Ensure that TF investigations are integrated into domestic counter-terrorism strategies and investigations;
4. Raise awareness among State actors on the implementation of the CEMAC Regulation and national AML/CFT instruments, on the effectiveness of prosecution of terrorist financing and the application of effective, proportionate and dissuasive penalties;
5. Promote the application of alternative sanctions in the event of non-conviction for terrorist financing;
6. In order to improve and better measure the effectiveness of the fight against TF, produce statistics on TF investigations, convictions and confiscations.

### **Immediate Outcome 10**

#### **The Congo should:**

1. Establish a mechanism for the prompt dissemination of sanction lists to reporting entities. Such mechanism should include an authority responsible for notifying STR decisions, monitoring and ensuring compliance by all reporting entities with their STR obligations, and applying sanctions for failures to implement STR without delay. The country could adopt a fast mechanism, e.g. digital dissemination by e-mail or other modern digital communication channels;
2. Establish specific delisting and freezing procedures in accordance with the designation made under Resolutions 1267 (1999) and 1373;
3. Accelerate the internalization of community directives on the legal framework for NPOs and verification of the sources and use of funds received by them;
4. Conduct a study to identify the categories of NPOs vulnerable to TF, and to assess the proportionality and adequacy of measures applicable to NPOs in relation to TF risks;
5. Revise existing legislation to ensure transparency in the management of NPO funds and establish control mechanisms to ensure that funds are properly accounted for and used in accordance with the purpose and aim of their declared activities;
6. Increase awareness of the funding risk identified in the NPO sector;
7. Provide adequate resources to NPO supervisory institutions;
8. Create a central coordination and information sharing framework to foster better collaboration between NPOs and their supervisory authorities including investigative bodies;
9. Communicate to persons and entities, including financial institutions, DNFBPs and VASPs, their obligations to implement the TFSs under the UN Resolutions on Terrorist Financing; also by establishing comprehensive supervision of DNFBPs in this regard;
10. Build the capacity of all AML/CFT stakeholders, including the customs administration in charge of controlling cross-border capital flows.

### **Immediate Outcome 11**

**Congolese authorities should:**

1. Establish a legal framework and mechanisms for the timely dissemination (without delay) of prohibitions on commercial transactions with entities and individuals as part of punishing the financing of the proliferation of weapons of mass destruction;
2. Designate competent authorities responsible for monitoring and targeted financial sanctions (TFS) relating to WMD proliferation financing and provide them with the means to monitor compliance by all reporting entities and enforce sanctions;
3. Organize training and awareness-raising programs on TF-related TFS for reporting entities and competent authorities;
4. Communicate to all persons and entities, including financial institutions, DNFBPs and VASPs, their obligations to implement the TFS under the UN Resolutions on Proliferation Financing;
5. Build the capacity of all actors involved in the fight against proliferation, including regulators and institutions in charge of controlling cross-border financial flows.

272. The Immediate Outcomes relevant to this Chapter are IOs 9, 10 and 11. Recommendations relevant to the assessment of effectiveness in this section are R.5 to 8.

#### **4.2. Immediate Outcome 9 (TF investigations and prosecutions)**

##### **4.2.1 Prosecution/conviction of types of activity consistent with the country's risk profile**

273. The Congo has not experienced terrorism on its territory, but the threat of terrorist financing at national level is high due to a high overall vulnerability. The Congo shares borders with five (5) countries including Cameroon, CAR and DRC which are confronted with the phenomenon of terrorism and armed gangs, namely Boko-Haram in Cameroon, Seleka, Anti-balaka and recently the CPC in CAR, and the ADF-NALU and armed groups in DRC. The CEMAC and CAEC treaties, which impose the free movement of people, goods and capital within the community, are a source of vulnerability for the movement of terrorist fighters and the resources needed to finance terrorist acts. This vulnerability is reinforced by the country's porous borders, the free movement of people and goods, and to some extent the sharing of the same financial and monetary system in the Central African sub-region.

274. No TF activities have been prosecuted in the Congo. However, five (5) TF suspicion files have been forwarded to the Prosecutor's Office, but no prosecution or conviction had yet been carried out in these cases at the time of the on-site visit. The lack of prosecutions and convictions for TF in the Congo is therefore not consistent with the country's TF risks.

##### **4.2.2 TF case identification and investigation**

275. Congolese authorities have a legal framework for identifying and investigating TF. The competent services are, among others, the Judicial Police Command, the Central Judicial Research Service of the National Gendarmerie under the direction of the Public Prosecutor. However, these services do not have sufficient experience or expertise to identify and punish terrorist financing.

276. The afore-mentioned five (5) suspicious cases relating to terrorist financing were detected by reporting entities and led to STRs. At the time of the on-site visit, the cases were under

investigation. However, the evaluation team was not able to meet with the investigating magistrates in charge of the cases to get more information and to verify the outcome of these TF suspicions.

**277.** Interviews conducted by the evaluation team revealed the following difficulties encountered by the investigation services in detecting TF offences:

- non-existence of judicial services specialized in the detection and punishment of TF acts, believed to be the cause of the slow processing of TF cases;
- absence of systematic opening of parallel investigations of TF, whereas the investigation services deal with offences that generate funds likely to be used for TF;
- lack of sufficient resources and appropriate training;
- non-transmission of cross-border declarations of funds and assets to NAFI, even though they can be a real source of identification of TF offences.

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

**278.** The Congo does not have a specific national strategy paper on combating terrorist financing that includes related investigations. However, the country has developed a national policy and strategy to combat money laundering and terrorist financing in which the fight against terrorist financing is not prioritized in Government's action plan.

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

**279.** Article 121 of the CEMAC Regulation provides for a sentence of 10 to 20 years' imprisonment for commission of a TF offence and a fine equivalent to at least five times the value of the goods or funds used to commit the TF offence. Article 122 provides for doubling of the penalty where the offence is committed habitually or the perpetrator is a repeat offender or uses facilities provided for the exercise of a professional activity.

**280.** In the absence of any conviction for terrorism or TF in the Congo, the effectiveness, proportionality and dissuasiveness of these penalties cannot be assessed.

#### ***4.2.5 Alternative measures used where TF conviction is not possible***

**281.** The Congo asserts that other alternative regulatory measures can be taken when a conviction cannot be obtained, such as administrative seizures, confiscation of travel documents, expulsions and entry bans, but this assertion cannot be verified as the Congo has never handed down a conviction for TF, let alone one in which alternative measures were applied.

#### ***Overall Conclusion on IO 9***

**282.** The Congo has not experienced any terrorist acts on its territory. Nevertheless, the country is exposed to a real terrorist financing threat due to its border location with several countries facing the phenomenon of terrorism. Investigative and prosecution authorities are not sufficiently trained or specialized in TF and do not have sufficient human and financial resources to perform their duties. Failure to criminalize the financing of travel by foreign terrorist fighters and failure to effectively implement the national AML/CFT policy and strategy are major weaknesses in this fight. Out of five (5) cases of suspected TF received

by the Prosecutor's Office, no prosecution had been carried out at the time of the on-site visit and no conviction had yet been handed down in relation to TF.

**283. The Congo is rated as having a low level of effectiveness for IO 9.**

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

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

**284.** The Ministry of Foreign Affairs and Cooperation receives the lists of new designations or modifications which are forwarded by physical mail or e-mail by the Permanent Representation of the Congo to the United Nations. Such lists are sent to the Ministry of Finance, which ensures that they are disseminated to reporting entities for application (through NAFI in accordance with Law No. 28-2021 of 12 May 2021 on the legal regime for freezing assets in the Congo) and to other competent authorities.

**285.** The mechanism for disseminating sanctions lists to reporting entities established by the said law is inadequate because, on the one hand, the law has not designated an administrative authority responsible for the freezing of assets in accordance with Resolutions 1267 and 1373 on the dissemination of lists and, on the other hand, the dissemination deadlines provided for are long enough to allow, within a few hours (without delay), for the freezing of assets and prohibitions aimed at preventing funds and other property from being made available to persons and entities designated by the UNSC. Furthermore, many AML/CFT stakeholders are unaware of the existence of such lists.

**286.** Conversely, the bank officials met by the evaluation mission stated that their institutions have a tool for filtering international transactions as part of the fight against TF and PF. Indeed, some subsidiaries of international banking groups receive updated lists through their respective headquarters. The other stakeholders, notably foreign currency exchange bureaus, MFIs and DNFBPs, have very limited knowledge of the subject and do not apply these measures.

**287.** The Congo has not established a national list on the basis of UN Security Council Resolution 1373. However, the country has received a request from a third country under this Resolution, but had not yet acted on this request for assistance at the time of the on-site visit.

**288.** In addition, the country has not identified a competent authority with responsibility for proposing the designation of persons or entities to the Committee and for establishing specific delisting and unfreezing procedures in accordance with Resolutions 1267 (1999) and 1373.

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

**289.** The study<sup>14</sup> on the misuse of NPOs for TF in Central Africa conducted by GABAC acknowledges the high risk of misuse of NPOs for TF in Central Africa. However, the Congo has not yet internalized the Community Directives on the legal framework for NPOs in order to make up for lack of coordination of initiatives at national level and to have a general idea of

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14 Adopted in March 2016

the risks linked to this sector, with a view to preventing their use for terrorist financing purposes.

**290.** Congolese authorities have not conducted a specific study to identify NPOs whose characteristics and activities make them susceptible to exploitation for terrorist financing purposes, in order to protect them by applying risk-based approaches and targeted and proportionate measures.

**291.** NPOs in the Congo are composed of associations, NGOs and foundations. According to Congo's NRA report, supervision of NPOs is the responsibility of the Ministry of Territorial Administration, in particular the Directorate General of Territorial Administration (DGAT) and the Directorate General of Territorial Surveillance (DGST). Discussions between the evaluation mission and the supervisory authority revealed that it is the Directorate General of Territorial Administration that used to issue approvals and receipts to NGOs, foundations and associations. However, since 2015, following Decree No. 2003-20 of 6 February 2003, heads of departments, i.e. the *préfets*, have been authorized to issue receipts to associations in their respective capitals, except for foundations, national or international NGOs and religious associations, which remain the prerogative of the DGAT.

**292.** NPOs do not comply with the obligation to file annual activity reports for monitoring by supervisory authorities, as required by the 1901 Law on associations and the CEMAC Regulation. NPOs are also unaware of their obligations of vigilance in the fight against TF and are not able to identify the real source of funds made available to them by donors to finance their activities. The number of international and national associations, foundations and NGOs was not communicated to the evaluation mission because the system for granting approval and receipts is decentralized and there is no central management, control and supervision authority in the Congo.

**293.** Congolese authorities have not conducted a specific study to identify NPOs whose characteristics and activities may be exploited for terrorist financing purposes, in order to protect them by applying risk-based approaches and targeted, adequate and proportionate measures applicable to NPOs.

**294.** A formal coordination framework bringing together all supervisory and control authorities has not been established to facilitate cooperation, collection and centralization of information on NPOs in the event of an investigation involving them in ML/TF.

#### **4.3.3** *Deprivation of TF assets and instrumentalities*

**295.** At the time of the on-site visit, there was no confiscation of property that had been used or was intended to be used to commit TF offence because no judgement had been rendered.

#### **4.3.4** *Consistency of measures with overall TF risk profile*

**296.** The banking, EMI, forestry and environmental sectors as well as NPOs present TF risks. The Congo has identified potential TF threats but there is a strong disparity between the level of TF risk which is real (with a high TF threat according to the NRA) and the measures taken by the country which are not consistent with the risk profile.

### **Overall Conclusion on IO 10**

**297.** In the Congo, the measures for implementing the targeted financial sanctions recommended by the United Nations Security Council (UNSC) are mainly found in Law No. 28-2021 of 12 May 2021 on the legal regime for freezing of assets linked to terrorism and its financing. However, the mechanism for disseminating the sanctions lists established by this Law has deadlines that do not allow the freezing of assets and prohibit funds and other property from being made available to persons and entities designated by the UNSC to be carried out within a few hours (without delay). Furthermore, the said Law has not designated an administrative authority responsible for freezing assets.

**298.** With no specific de-listing and freezing procedures in place in accordance with the designation made under Resolution 1267, not having conducted a specific study to identify NPOs whose characteristics and activities are likely to be exploited for terrorist financing purposes, and not having defined appropriate controls or a contact point to respond to an international request in case an NPO is suspected of FT;

**299. The Congo is rated as having a low level of effectiveness for IO 10.**

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

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

**300.** The Congo has not established a legal framework and mechanism for the timely dissemination of the lists of TFS on WMD proliferation financing to FIs, DNFBPs and VASPs, nor has it designated the competent authorities for monitoring and implementation of targeted financial sanctions (TFS) relating to WMD proliferation financing.

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

**301.** In practice, there is no mechanism for identifying funds or other assets of individuals and entities designated by the UNSC targeted sanctions. However, Customs services state that they carry out controls at the borders. Moreover, no measures have been taken to this effect for the time being.

**302.** Some banks receive the lists through commercial software and proceed to filter their customers and transactions. So far, no bank has identified a PF case in the Congo. Many reporting entities do not apply TFS relating to proliferation financing and have very limited knowledge in this area.

##### **4.4.3 *FIs, DNFBPs and VASPs understanding and compliance with obligations***

**303.** Subsidiaries of large international banking groups, which receive the tools adopted by the group at international level, have a good understanding of their obligations in general and have satisfactory mechanisms for implementing the PF's targeted financial sanctions. Other actors, e.g. foreign currency exchange bureaus, MFIs, DNFBPs and VASPs, have very limited knowledge of the subject and do not apply these measures.

#### *4.4.4 Monitoring and verification of compliance*

**304.** Although FI supervisory and control authorities focus on the implementation of targeted financial sanction obligations by checking the existence of an information system to link names to listed persons and entities, the degree of supervision by these authorities cannot be clearly assessed as no report has been produced and no sanctions are applied. With regard to DNFBPs and VASPs, no monitoring and compliance measures were noted by the assessment team.

#### ***Overall Conclusion on IO 11***

**305.** The Congo has no legal framework and list dissemination mechanisms to implement targeted financial sanctions relating to WMD proliferation financing without delay. The authority responsible for the freezing of assets has not been designated, nor has the supervisory authority.

**306. The Congo is rated as having a low level of effectiveness for IO 11.**

## 5. PREVENTIVE MEASURES

### 5.1. Key findings and recommendations

#### *Key findings*

(a) Congolese banks have a good understanding of the ML/TF risks to which they are exposed. Most of them carry out internal risk assessments and categorize their customers according to the level of the risk identified. Unfortunately, the implementation of enhanced measures to mitigate the identified risks is not satisfactory for all financial institutions in this category. Most of them implement their due diligence obligations satisfactorily and report suspicious transactions. However, the number of suspicious transaction reports filed by banks is still far below the level of vulnerability and threat to which this sector is exposed in the case of the Congo.

(b) In the insurance sector, control of ML/TF risks is still very weak. Knowledge and implementation of regulatory obligations are acceptable at the level of insurance companies and still unsatisfactory at the level of intermediaries. These shortcomings are further accentuated by the absence of awareness campaigns on the new standards prescribed by the new CIMA AML/CFT Regulation, adopted on 2 March 2021.

(c) E-money issuers carry out risk assessments before launching any product. At the end of such assessments, risk maps are drawn up, together with mitigation measures. They have effective tools for filtering transactions and profiling customers, but there are not enough human resources for the effective handling of alerts.

(d) MFIs have an acceptable understanding of the ML/TF risks to which they are exposed, though the understanding is not derived from objective internal risk assessments and the mitigating measures adopted are inadequate. The implementation of due diligence by these financial institutions is still rather weak. While the obligation to identify customers is generally respected at the time of entering into a relationship, the required internal procedures regarding customer profiling, detection and reporting of suspicious transactions are not implemented.

(e) Other financial institutions (foreign currency exchange bureaus, money transmitters) and DNFBPs have a very limited understanding of the ML/TF risks to which they are exposed, despite the high level of ML/TF risks inherent in the activities of most of these actors. The risks are confirmed in the findings of the NRA, whose report had not yet been disseminated at the time of the mission. In the majority of these professional categories, the required AML/CFT due diligence is not known and therefore not implemented.

(f) Overall, the implementation of enhanced due diligence measures by reporting entities is still very incomplete. This failure concerns all the services or products, transactions, customers and areas at risk requiring enhanced vigilance. Just as, outside banks and insurance companies, the effectiveness of internal control systems is still very weak.

(g) With regard to VASPs, there are still no regulations governing the activities of this sector, which are not yet very common in the Congo, but are expanding rapidly in neighboring countries.

**(h)** The identification of beneficial owners and access to reliable sources of information, especially with regard to the identity of customers and the constitutive documents of companies, are major concerns for most of the reporting professions in the Congo. The same applies to the generalized need for training and awareness-raising among the various AML/CFT stakeholders.

### ***Recommendations***

Congolese authorities are requested to:

#### **Under Immediate Outcome 4:**

1. Require reporting entities in the various financial sectors and DNFBPs to systematically conduct an internal assessment of the ML/TF risks inherent in their activities and to take the necessary measures to mitigate them;
2. Develop guidelines, in particular on the identification of the beneficial owner, the strengthening of due diligence measures on at-risk transactions/customers, and the implementation of a risk-based approach, and make them available to DNFBPs and non-bank financial institutions to enable them effectively implement AML/CFT due diligence;
3. Organize training sessions on AML/CFT for all reporting professions. For greater effectiveness, such training sessions should bring together professionals from the same sectors of activity;
4. Clarify the concept of beneficial owner in accordance with the FATF standards and take necessary measures to require its identification in the management of reporting entities relations with customers, including those in the insurance sector and PEPs;
5. Ensure that reporting entities have integrated their obligations to verify information on the identity of customers and the constitutive documents of legal persons through reliable and independent sources;
6. Revise the instruments governing the professions of real estate agents, notaries and lawyers so as to effectively integrate AML/CFT requirements, particularly with regard to customer identification, identification of originators and beneficial owners, and knowledge of the origin of the funds and assets involved in the transaction;
7. Take appropriate measures to ensure that reporting entities effectively implement the targeted financial sanctions under the relevant UN resolutions, in particular with regard to the freezing of assets and the screening of transactions “without delay”;

#### ***Customer due diligence (R.10):***

8. Encourage the competent CEMAC authorities to amend the AML/CFT framework instruments in order to formally specify the requirement for reliability of the source of information obtained by reporting entities on the beneficial owner, on the one hand, and to require financial institutions, in the event of doubt as to the identity of the beneficial owner, to identify by other means the natural persons, if any, who exercise control over the legal

person (or legal arrangement) or through whom a transaction is carried out, on the other hand;

*Politically exposed persons (R.12):*

**9.** Encourage the competent CEMAC bodies to revise the instruments governing AML/CFT in order to integrate the notion of beneficial owner with regard to the origin of funds or assets for PEPs, as well as the beneficiaries of insurance contracts or, where applicable, the beneficial owner of a life insurance policy, always with regard to this category of customers;

*Bank correspondence (R.13):*

**10.** Initiate with the competent CEMAC bodies a review of the instruments in force in order to oblige financial institutions to ensure that the correspondent is able to provide, upon request, the relevant information relating to transit accounts;

*Money or value transfer services (R.14):*

**11.** Take measures to identify natural or legal persons providing money or value transfer services without being licensed or registered, in order to apply proportionate and dissuasive sanctions;

**12.** Compel remittance service providers using agents to integrate them into their AML/CFT programs and to monitor the agents' compliance with such programs;

*New technologies (R.15):*

**13.** Legislate on the virtual asset sector in order to regulate their transactions, license the activities of virtual asset service providers and designate an authority specifically responsible for VASPs supervision and control;

*Wire transfers (R.16):*

**14.** Initiate a review of the CEMAC Regulation with the relevant CEMAC bodies by introducing specific standards that require intermediary financial institutions to take reasonable steps to identify cross-border wire transfers for which the required originator or beneficiary information is missing, and to keep the information received from the originator's financial institution or other intermediary financial institution for at least five years;

**15.** Incorporate provisions into existing legislation to file a suspicious transaction report in all countries where a suspicious wire transfer occurs;

**16.** Provide for provisions obliging the originator's financial institution to transmit, upon request, the information accompanying the transfer to the beneficiary's financial institution or to prosecuting authorities within three (3) working days of receiving the request from either the beneficiary's financial institution or the appropriate competent authorities;

**17.** Incorporate provisions into existing legislation requiring financial institutions to have risk-based policies and procedures for deciding when to execute, reject or suspend wire transfers that do not include the required originator or beneficiary information;

*Reliance on third parties (R.17):*

**18.** Have the competent CEMAC bodies review the relevant instruments to oblige financial institutions to formally ensure that the third party is liable to AML/CFT regulation and supervision;

*Countries with a higher risk (R.19):*

**19.** Initiate with the competent CEMAC bodies a review of the CEMAC Regulation to formally integrate binding measures for the application of risk-proportionate counter-measures at the express request of FATF or independently;

*Suspicious transaction reports (R.20):*

**20.** Have the competent CEMAC bodies review the CEMAC Regulation to include an obligation to report all attempted suspicious transactions relating to money laundering or the financing of terrorism and proliferation;

*DNFBPs - Customer Due Diligence (R.22)*

**21.** Formally incorporate into the CEMAC Regulation the obligation for DNFBPs to: (i) keep records relating to customers and transactions; (ii) assess the risks inherent in the use of new technologies; (iii) ensure in advance that third parties they may use apply AML/CFT due diligence in a satisfactory manner;

*DNFBPs – Other measures (R.23)*

**22.** Review the instruments governing the activities of DNFBPs to include authorities responsible for monitoring compliance with AML/CFT standards by these professionals;

**23.** Include provisions to oblige DNFBPs to implement enhanced due diligence measures in their relations with higher risk countries.

**307.** The relevant Immediate Outcome for this Chapter is IO 4. The Recommendations relevant to the assessment of effectiveness in this section are R.9 to 23 and some elements of Recommendations 1, 6 and 29.

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

**308.** The Congo has a legal and regulatory framework defining all the preventive measures that financial institutions and DNFBPs must implement as part of AML/CFT. This framework is composed of general scope instruments and instruments specific to some sectors of activity, notably the financial sector.

**309.** As at December 2020, the Congo's financial sector was made up of ten (10) commercial banks, twenty-four (24) microfinance institutions (MFIs), eight (8) insurance companies and two (2) pension funds. According to BEAC, at end 2020, banks represented the most significant financial sub-sector in terms of stock of equity capital and total balance sheet. Other non-bank financial institutions account for a small share of the financial sector market. The financial market remains very embryonic in the Congo, driven only by government bond issues. The microfinance sub-sector comprises 24 institutions with a total capital of CFAF 52.6 billion as at 31 December 2020, according to BEAC statistics, and more than 89% of its market

share is controlled by a single institution, MUCODEC. Mobile money activities are expanding rapidly in the Congo, with three actors on the market at end December 2020: two MMTSPs (MTN Money and Airtel Money) and a Visa prepaid card issuer (GTP). The financial messaging sector consists of 17 licensed national money transfer companies. However, the majority of the market share in this sector is controlled by international companies, which are neither incorporated nor licensed in the Congo, but have contracts with local financial institutions. As for DNFbps, the real estate and mining sectors record a fairly large volume of activity, compared with the other non-financial professions which are of minor significance.

**310.** An analysis of the effectiveness of preventive measures was carried out on the basis of information and quantitative data collected from reporting entities, national authorities, supervisory, control and regulatory bodies, NAFL, open sources on the one hand, and thanks to the various interviews conducted with the different public and private sector stakeholders, on the other.

### *5.2.1 Understanding of ML/TF risks and AML/CFT obligations by FIs, DNFbps and VASPs*

**311.** The obligations of the various stakeholders to assess ML/TF risks are set out in the instruments governing AML/CFT in the Congo. Interviews with relevant officials during the on-site visit revealed that subsidiary banks of major international and regional groups have a good understanding of the money laundering and terrorist financing risks to which they are exposed, which are for the most part contained in the NRA report. Such banks apply the standards of their groups, which are for the most part more restrictive than those in force in the Congo. They carry out an assessment of the risks inherent in their sectors and have a map of the risks linked to their activities and their environment. To handle this, they have adopted procedures and tools to identify and classify customers according to risk. As for smaller and domestically owned banks, their level of understanding of ML/TF risks is acceptable. However, the procedures and tools adopted to manage such risks are not satisfactory. All banks have a good command of their due diligence obligations and have AML/CFT procedures that are monitored by COBAC via the ASTROLAB platform.

**312.** Although BEAC does not carry out commercial activities per se, it is also liable to AML/CFT in accordance with Article 6 of the CEMAC Regulation, due to its central role in the execution of international financial transactions by commercial banks and its role in the management of internal currency flows. In this light, by Decision No. 001/GR/2017 of 3 January 2017, the Governor of BEAC published the framework procedure relating to preventive measures to combat money laundering and the financing of terrorism and proliferation. In application of the Decision, the National Director of BEAC for the Congo signed Service Note No. 55/2021 of 25 March 2021 on AML/CFT preventive measures. A risk mapping matrix relating to the products and services of the DN/BEAC-Congo was drawn up, identifying the various services at risk and related due diligence measures.

**313.** Insurance professionals have a good knowledge of their AML/CFT obligations. However, they do not have a good grasp of the AML/CFT risks associated with their activities, despite the obligation to carry out an annual assessment as provided for in the CEMAC and CIMA Regulations. At the time of the mission, none of the insurance companies and intermediaries operating in the Congo had carried out a proper assessment of the ML/TF risks inherent in

their sector. Moreover, the findings of the NRA have not yet been disseminated to professionals in this sector, which further limits their control of ML/TF risks.

**314.** Microfinance institutions have a rather mixed understanding of the money laundering risks relating to their activities; they rather proceed to a de facto categorization of their customers without any prior study. Subsequently, the risk management procedures in place do not define specific vigilance measures for customers classified as "high risk". There are no tools for filtering and profiling customer transactions, which leads to manual processing of alerts reported by branch staff. The other financial sector actors' understanding of money laundering risks is still mixed, despite the publication of various reports sanctioning the studies conducted by GABAC.

**315.** For other financial institutions, mobile money companies' understanding of ML/TF risks is acceptable, thanks to the implementation of internal procedures to manage products according to risks and the systematization of risk assessment of new products. However, risk management measures do not appear to be effective, as they lack objective criteria and automated tools for screening transactions. Licensed money transfer companies, manual currency exchange bureaus and pension funds have a mixed understanding of the ML/TF risks associated with their activities. International money transfer companies that are not licensed in the Congo sign contracts with banks to carry out this activity. The regulations require banks to ensure that AML/CFT obligations are implemented. No risk assessment has been carried out by these transfer companies. The securities sector is still in its infancy in the Congo; professionals in this sector have an acceptable knowledge of the ML/TF risks inherent in their operations.

**316.** DNFBPs' understanding of the ML/TF risks associated with their activities is still very limited, as they do not carry out an internal assessment of such risks, and the Congo has not yet made public the findings and recommendations of its NRA. It emerged from the various interviews during the on-site visit that even chartered accountants, lawyers and notaries have only a limited understanding of the ML/TF risks associated with their activities, and do not adopt satisfactory due diligence and procedures in this area. As for casinos, dealers in precious stones and metals, and real estate developers, they have no knowledge of their AML/CFT obligations or of the related risks.

**317.** For VASPs, their activities are still timid in the Congo. However, there are platforms for the use of some crypto-currencies in the Congo, although these activities are not regulated and have not undergone any risk assessment.

### ***5.2.2 Application of risk mitigation measures***

**318.** The level of application of risk mitigation measures varies from sector to sector, being more pronounced at the level of financial institutions than at the level of DNFBPs.

#### **Financial institutions**

**319.** Most FIs understand the ML/TF risks to which they are exposed as a result of the internal assessments carried out, the relevance and completeness of which vary from one sub-sector to another and from one institution to another. The non-disclosure of the NRA report at the time

of the mission was an impediment for a uniform level of understanding of ML/TF risks by all actors, particularly those in the non-bank financial sector. As a result, banks, insurance companies, MMTSPs, some microfinance institutions and money transfer companies demonstrated varying levels of ongoing implementation of proportionate ML/TF risk mitigation measures. Such measures include staff training, customer due diligence through assessment of the customer's risk profile at the outset of the relationship and regular updating, due diligence and implementation of a customer profiling system and filtering of atypical transactions.

**320. Banking sector:** All banks operating in the Congo have AML/CFT programs that include procedures for dealing with and mitigating risks identified through self-assessments, the relevance of which varies between subsidiaries of large groups and local banks. Reinforcement of vigilance measures depends on the risk profile identified for the customer or product. Profiling begins at the start of the relationship, during which scenarios for categorizing customers by risk level are determined. For example, in the case of legal entities active in some sectors classified as at-risk (mining, fund transfers), the opening of accounts is validated by senior management (compliance and/or legal) for the vast majority of banks. Some banks that do not yet have automated profiling and control tools carry out periodic reviews after accounts have been opened, to classify customers at their appropriate risk level and apply the corresponding vigilance measures. For the latter category of local institutions, the due diligence in place at the time of entry into the relationship is unsatisfactory. On the whole, transactions over a certain amount are subject to automated screening at compliance level. In most banks, establishing and keeping lists of domestic and foreign PEPs remains a major challenge, which reduces the effectiveness of front-end screening procedures. For targeted financial sanctions, banks, especially subsidiaries of large international groups, have adopted appropriate screening tools and the relevant lists are updated either at the level of the financial group or by private contractual sources. All banks have training and awareness-raising programs on AML/CFT for all their staff; they regularly send STRs to NAFI.

**321. BEAC:** At BEAC, in implementation of Service Note No. 55/2021 on AML/CFT preventive measures, specific measures have been taken to strengthen vigilance with regard to services and products considered at risk.

**322. Insurance companies:** In accordance with the CIMA Regulation, insurance companies have compliance departments with AML/CFT officials appointed. However, the understanding of risks by actors in this sector is limited. Beyond the knowledge of basic due diligence obligations, none of the insurance sector actors interviewed had carried out a risk assessment of their activity, customers, products or distribution channels. Furthermore, at the time of the mission, no company had effective automated customer profiling tools that could generate alerts for atypical transactions. The vigilance implemented here is much more focused on premium thresholds. As for intermediaries, their level of understanding of risks is still very low. This situation has led to non-application of appropriate measures to mitigate the relevant risks in this sector. The sector is characterized by a lack of AML/CFT training for staff. Insurance brokers have not developed AML/CFT training programs for their staff. Stakeholders across the industry have no information on the findings and key

recommendations of the NRA. There are no specific due diligence measures in place to mitigate risks relating to PEP customer management.

**323. Microfinance institutions (MFIs):** The MUCODEC network and the large second category MFIs met during the mission all have a compliance department. They classify customers according to risk without any real internal assessment. Such is the case for PEPs who are de facto classified as "high risk customers", without any real reinforcement of vigilance measures. Some offer money transfer services as a major activity, without any real control of the related risks. Small MFIs have a very mixed understanding of the ML/TF risks to which they are exposed; their action plans are much more focused on managing cash flow difficulties. In addition to these shortcomings, the findings and recommendations of the NRA were not disclosed. This had led to non-effective and disproportionate ML/TF risk mitigation measures in this sector.

**324. Money transfer companies (MTCs):** The money transfer service in the Congo is carried out on the one hand by banks and MFIs, and by financial messaging companies not yet licensed by the Minister in charge of Finance, but having "provisional authorizations" from ARTF, on the other hand. Some international money transfer companies, not licensed in the Congo, sign service agreements with banks, which are then responsible for implementing AML/CFT due diligence obligations, including customer due diligence and STR. The entities providing such services (Western Union, Money Gram, etc.), which hold the majority of the remittance market share, provide banks with a transaction profiling platform controlled outside the Congo (in Morocco), which reduces the effectiveness of the system. A number of banks provide training to these service providers. As for the local companies authorized by ARTF, they are aware of their AML/CFT obligations. However, they have no control over the ML/TF risks inherent in their activities, hence the lack of corrective measures. Some of them have also signed agreements with banks, on which they rely to implement due diligence and mitigation measures for ML/TF risks. Lastly, there is a fairly dynamic informal sector of Hawala-type money transfers in the Congo, particularly to West African destinations. Hawala-type financial transactions are mostly maintained by economic operators who trade with some West African countries.

**325. Electronic money issuers:** At the time of the mission, there were two mobile money issuers in the Congo. In addition to these two entities which control more than 90% of the mobile money market, there is a third player involved in the marketing of VISA prepaid cards, namely the company GTP. The platforms for managing mobile money transactions are secure and use of the products requires customer identification. The platform allows for easy tracking of transactions as all accounts are linked to a specific mobile phone number and information on these transactions (sender's mobile phone number, recipient's mobile phone number, amount and date) remains recorded. Electronic money issuers (EMIs) have AML/CFT policies in place, including the appointment of compliance officers and AML/CFT training programs. They implement risk management measures, including filtering tools targeting persons and entities on the UN and PEP sanctions lists in accordance with Article 29 of the CEMAC Regulation on payment service providers, the launch of any new product is subject to prior authorization by COBAC. In general, MMTSPs adopt mechanisms to manage and mitigate the ML/TF risks to which they are exposed.

**326. Manual currency exchange offices:** Licensed manual currency exchange offices in Congo have a poor understanding of their AML/CFT obligations and lack a risk management framework to mitigate them. No internal ML/TF risk assessment has been conducted by these professionals, who are not aware of the findings of the NRA. They do not have dedicated AML/CFT staff. In terms of customer identification, they have customer registers in which the transactions they carry out are recorded. Customer identification is limited to presentation of an identity document for residents and a passport for non-residents. Licensed currency exchange bureaus in the Congo face a particularly aggressive informal sector, which controls most of the turnover in this sector, and whose risks of use for ML purposes are very high. The supervisory controls to which they are liable are limited to administrative and operational aspects and do not include the AML/CFT component.

**327. Securities sector:** Financial market transactions are still in their infancy in the Congo. No company with Congolese capital is listed on the BVMAC. The securities sector is driven solely by Treasury securities. There is one portfolio management company in the Congo, licensed in 2016, with a fairly negligible asset capitalization, but which has a good command of the ML risks incurred. In addition to this company, eighteen (18) Primary Dealers (SVT) are licensed in the Congo. Most of the investors who subscribe to government bond issues are institutional investors. The SVTs, which are essentially universal banks, have a good understanding of ML/TF risks. However, the effectiveness of measures to mitigate such risks is low.

#### **Designated non-financial businesses and professions**

**328.** Most DNFBPs have no control over the ML/TF risks inherent in their business sectors. They do not implement their AML/CFT obligations as reporting entities and most are not aware of their AML/CFT status. They have not assessed their ML/TF risks and have not adopted any procedures or risk mitigation programs. There is a fairly widespread lack of awareness of AML/CFT requirements among their staff, as well as a lack of compliance mechanisms and suspicious transaction reports to NAFI, despite the high risks faced by their sectors in light of the NRA findings.

**329. Lawyers:** They have a very limited understanding of their AML/CFT obligations and the risks to which their activities are exposed. According to the statements of professionals in this sector met during the mission, most are not aware of the existence of a legal framework governing AML/CFT. They have not carried out any internal risk assessment and are not informed of the findings of the NRA, in which they did not take an active part. In the course of their work, lawyers are involved in the formation of companies, carry out real estate transactions, manage customer accounts, etc. The implementation of preventive measures at the level of the profession is characterized by customer identification through identity documents for natural persons and articles of association for legal persons. In accordance with the CEMAC Regulation, they are obliged to establish reinforced vigilance measures and to inquire about the origin of funds as well as identify the beneficial owners. However, implementation of these measures is far from being effective within the profession. The actors we met acknowledged the difficulty of asking customers about the origin of funds in view of the pressure they might be under. Lawyers are entitled to refuse to enter into a relationship

with a client if the documentation is incomplete or if the purpose of the transaction appears suspicious. Unfortunately, implementation of these measures is still very superficial, with profitability objectives generally being put forward. No specific provisions are made for PEPs and lawyers do not have the tools (lists) to effectively implement targeted financial sanctions.

**330. Notaries:** Notaries are not aware of the challenges of AML/CFT issues. They have not carried out any internal risk assessment and are not aware of the NRA recommendations. As a general rule, customers are identified by presenting an identity document or, in the case of legal entities, their constitutive documents. In practice, however, they are faced with the problem of identifying the beneficial owner and accessing reliable sources of information on identity. For legal persons, this due diligence is carried out only on the basis of the information contained in the articles of association. Notaries are competent in matters of transfer of companies and private property as well as their registration, drafting of contracts, authentication of deeds and incorporation of companies. They do not usually take part in negotiations between the buyer and the seller, especially with regard to the financial aspects of the transaction. Their intervention in these cases is limited to formalization of agreements, which exposes them to the risk of misuse for ML purposes. Accordingly, they rely on the customer to be informed of the sums involved in the transaction and are thus limited in their access to information on the source of funds. Despite the prohibition in Article 17 of the CEMAC Regulation to pay real estate transactions in cash, notaries sometimes do not have full knowledge of the actual amounts of the transactions, which are apparently and most often undervalued, just as the origin of funds is usually unknown. Notaries are also faced with the challenge of record keeping and communication, as archiving is mainly manual. In the end, notaries do not adopt proportionate measures to mitigate the risks to which they are exposed.

**331. Chartered accountants and certified accountants:** This professional category, grouped under the National Order of Chartered Accountants of the Congo (ONECC) established by Law No. 29-2013 of 18 November 2013, has a rather limited understanding of the ML/TF risks inherent in their sector of activity. They do not have a risk management framework and have not carried out any ML/TF risk assessment. There is no training and information on AML/CFT for members, such that knowledge of their legal AML/CFT obligations is basic. The services generally offered to clients by public accountants fall into two categories: assistance and advisory services and audit services. The former services aim to assist the client in the organization, production and use of financial and accounting information. Audit services enable the accountant to verify that the client's systems for organizing, producing and using financial and accounting information are effective and efficient. Audit services may be provided as part of a statutory engagement, in which case they are referred to as statutory audit, or as part of a contractual engagement, in which case they are referred to as contractual audit. No professional in the sub-sector has filed a suspicious activity report with NAFI. The bottom line is that public accountants and chartered accountants have not adopted effective and satisfactory measures to mitigate ML/TF risks.

**332. Real estate agents and promoters:** This sector is described in the Congo NRA report as one of the sectors with high ML risks. It is characterized by a high rate of cash use, no compliance function at the level of real estate companies, no monitoring and reporting of suspicious activities. In addition, the absence of an internal awareness program and initial and

ongoing training for the staff of real estate companies results in a lack of staff knowledge of AML/CFT obligations and responsibilities. This sector is under the supervision of the Ministry of Town Planning, Construction and Housing, which does not take an interest in AML/CFT due diligence in its control missions. The sector is dominated by informal actors, who are beyond the control of any authority. In general, AML/CFT due diligence is ignored in the transactions carried out by these professionals. Identification of the origin of funds and of the beneficial owners of real estate acquisitions are not part of the due diligence carried out by real estate agents and promoters during their transactions. Furthermore, no particular attention is paid to transactions carried out on behalf of or by order of PEPs.

**333. Casinos and other games of chance:** Casino managers have not assessed their risks and have not adopted risk mitigation measures. The gaming sector in the Congo is still very embryonic. It consists of the *Congolaise de Gestion de Loterie* (COGELO SA), a few small casinos in Brazzaville and Pointe Noire and private gambling establishments. Considered in the NRA as vulnerable to money laundering, the gaming sector is characterized by weak AML/CFT arrangements; managers have very limited knowledge of their obligations in this area. Casino managers do not implement their customer due diligence obligations. Actors are not systematically registered, due to the lack of dedicated registers. The use of cash is very high in the sector, particularly in the payment of bets and winnings. Controls carried out by supervisory authorities (Directorate General of Leisure, Directorate General of the National Police, Directorate of Civil Security) do not cover AML/CFT. Consequently, professionals in this sector could easily be used for money laundering purposes by their customers and owners. Training and awareness-raising should be carried out to ensure that professionals in this sensitive sector comply with their obligations of vigilance, in particular the identification and registration of customers in accordance with Article 47 of the CEMAC AML/CFT Regulation.

**334. Mining and precious metals sector:** The findings of Congo's NRA show that the mining and precious metals and stones sector is particularly vulnerable in the Congo, due to the profile of customers, the high level of cash, difficulties in tracing records, the problem of identifying beneficial owners with a pronounced use of intermediaries, the presence of unauthorized sites, the lack of control over production and distribution channels, the absence of an AML/CFT system, and the high risks of tax evasion. No risk mitigation measures have been implemented by the sector's actors and no specific AML/CFT awareness campaign has been conducted among mining companies and traders, nor by the various authorities concerned. The mining sector does not have a specific AML/CFT supervision and control mechanism.

### **5.2.3 Application of customer due diligence and record-keeping requirements**

**335.** Most financial institutions, especially banks and insurance companies, have systematically set up compliance departments that implement the customer due diligence and monitoring system through the definition and implementation of internal policies and procedures. However, such procedures are confronted with the problem of availability of information on the beneficial owner.

**336.** All banks have internal policies and procedures that take into account CDD obligations; most have automated customer profiling and transaction screening systems, archiving and reporting systems, and record-keeping systems in place. However, identification of the

beneficial owner remains a major challenge in all sectors. Account opening procedures provide the required information on the customer, his activities, sources of income, partners, etc. They declare, but do not provide the necessary information on the customer. They state, without providing evidence, that entry into a customer relationship is not possible without the required documents. Banks have drawn up an AML/CFT risk map and have classified the levels of risk (low, moderate, high) according to the nature of their activities and the types of customers. They state that they are strengthening vigilance measures according to the risk level.

**337.** Insurance companies, MFIs, EMIs, money remitters and other FIs implement basic obligations in terms of knowing the customer and monitoring the relationship, in accordance with the CEMAC, COBAC and CIMA regulations. They have procedures, sometimes unwritten, for identifying customers and keeping record. They verify information, particularly when carrying out transactions on behalf of customers. However, the rigour and objectivity of these procedures vary from one category of institution to another. Due diligence measures are difficult to apply due to inaccessibility of information on the beneficial owner.

**338.** Most DNFBPs do not have control over the ML/TF risks inherent in their activities and have not adopted vigilance measures relating to customer identification with a view to knowing the beneficial owner, whether a natural or legal person, as required by the CEMAC Regulation. Although lawyers, notaries and accountants are making efforts to identify their clients, they do not have any specific identification procedures, especially for legal persons and PEPs, and are also faced with the challenge of accessing reliable sources of information. Notaries keep minutes for an unlimited period of time, while lawyers are not expressly obliged by their corporate law to keep records, but must keep track of their accounts for 10 years. However, DNFBPs do not satisfactorily implement the customer due diligence measures required in the context of their AML/CFT activities, in particular the identification of the customer and the beneficial owner. For instance, some casino managers interviewed stated that they do not systematically identify their customers and that they do not keep records of their transactions.

**339.** Regarding record-keeping, FIs generally comply with Article 38 of the CEMAC AML/CFT Regulation, which provides for an obligation to store data for at least 10 years. Such data are kept in physical and electronic form and are accessible on request by all competent authorities. To this end, they have acquired software to track customer transactions. They implement their record-keeping obligations for CDD/KYC for 10 years after the end of the customer relationship or from the date of execution of a transaction. However, in most FIs, records are not centralized in a dedicated location and are often kept at branch level below optimal conditions, which poses a problem of efficiency in retrieving and disclosing documents on request. On the whole, DNFBPs do not comply with record-keeping obligations, except for accountants, notaries and lawyers, who seem to make an effort to preserve documents relating to transactions with their clients.

#### ***5.2.4 Application of enhanced due diligence measures***

**340.** In general, leading financial institutions, including banks and insurance companies, have adopted internal policies and laid down written procedures to meet enhanced due diligence requirements. These policies and procedures are subject to permanent evaluation in terms of objectivity and level of application by supervisory bodies, notably COBAC and CRCA. Only

the subsidiary banks of international groups have been able to demonstrate the application of reinforced measures in a satisfactory manner according to the risks linked to the customer, the risks linked to the products and services, and also if it is a PEP. The other banks classify customers according to risk without actually defining specific due diligence measures for customers classified as high risk. Other FIs and DNFBPs did not present the mission with any specific measures for customers classified as high risk according to their own criteria. Their application of due diligence measures for this category of customers remains weak because the vast majority of them do not have risk maps of their activities and have not adopted risk mitigation measures. As a result, they have not applied any enhanced or specific measures.

**341. Politically exposed persons:** Group subsidiary banks apply specific measures, using databases provided by their groups to identify and monitor politically exposed persons (PEPs). They also have internal procedures in place, whereby senior management approves their entry into a business relationship with the bank. PEPs are also included on the list of customers under enhanced scrutiny so that they receive an alert for each transaction on their account. However, in the absence of a list of domestic PEPs, some banks find it difficult to identify them in real time, or before they enter into a relationship. And even if such lists were available, there would still be the problem of identifying the associates of PEPs (family members, etc.). For other banks, enhanced due diligence measures are in practice not different from other due diligence measures. At other FIs, PEPs are not subject to special vigilance, despite their categorization as at-risk customers. DNFBPs do not apply any specific measures to detect PEPs and carry out enhanced monitoring of the relationship with a PEP. In general, no effective due diligence is carried out at the level of non-bank reporting entities to ensure that existing customers have become PEPs.

**342. Correspondent banking services:** Banks establish correspondent relationships with other banks in the course of their activities. To this end, and in accordance with the CEMAC Regulation, they apply enhanced due diligence measures as soon as they enter into a relationship. To this end, they identify the corresponding banks by collecting information on the nature of their activities, and ensure that the corresponding bank applies anti-money laundering standards equivalent to those implemented by their institutions. Special due diligence measures are adopted, including approval by a designated high authority. Banks periodically exchange compliance monitoring sheets with their correspondents. In the context of peer-to-peer relations, banks define criteria such as level of compliance, quality and scope of the network and country of establishment, in accordance with the FATF Recommendations and the requirements of community regulations.

**343. Identification of beneficial owners and implementation of obligations towards BOs:** Banks are aware of the obligation to terminate a business relationship or not to carry out a transaction under the business relationship due to failure to apply the required due diligence measures, including the identification of beneficial owners. They take appropriate measures and declare that they are terminating a business relationship because of the absence of required information. However, on the whole, they did not report any data on refusals or termination of relationships that would allow assessment of the effectiveness and efficiency of this measure. Identification of beneficial owners remains a permanent challenge for all reporting entities, particularly money transfer companies and manual currency exchange bureaus, which are

faced with unfair competition from the informal sector that does not identify their customers. Despite the vigilance obligations with regard to customers referred to in the CEMAC Regulation, it is not easy to access information on beneficial owners, due to lack of relevant information.

**344. Targeted financial sanctions:** Apart from currency exchange bureaus, the majority of FIs interviewed claim to have taken specific measures to implement their obligations in relation to financial sanctions targeting terrorist financing. They consult the lists of the United Nations Sanctions Committee (Resolutions 1267 et seq.), the European Union, or OFAC and have lists of persons involved in terrorist financing. However, reporting entities do not receive from the Competent Authorities lists of persons and entities under UN Resolution 1267. This results in limited and varied implementation of targeted financial sanctions by FIs, including the asset freezing measures required against designated persons and entities, and the obligation to implement "without delay" under these conditions cannot be met. The Congo does not have a national list of persons or entities designated under Resolution 1373. With the exception of subsidiaries of large groups, insurance companies and brokers are not aware of the UN sanctions lists. Although they are aware of the existence of the UN Sanctions Committee lists, MFIs and money remitters do not have screening tools to implement the identification and asset freezing measures of listed individuals and entities. EMIs, on the other hand, have appropriate profiling tools to implement targeted financial sanctions. DNFBPs, including lawyers and notaries, are not aware of the UN sanctions lists. They often rely on their banks to conduct checks on their customers.

**345. New technologies:** Financial institutions, including banks and EMIs, are developing and marketing a wide range of new products based on new technologies. The CEMAC Regulation requires a risk assessment prior to the launch of any new ICT-based product. Officials interviewed stated that such products are assessed by the compliance department, which reports the findings of assessments to senior management and the board of directors, before incorporating them into the monitoring system. However, they did not demonstrate the application of enhanced due diligence measures for the new technology products.

**346. Wire transfers:** Financial institutions, particularly banks, have systems that allow them to identify the originators and beneficiaries of wire transfers. They do this by screening the names of senders and recipients against lists of persons under sanctions and by considering high-risk jurisdictions. In addition, FIs check the correspondence between the type of message and the transfer to be executed and also check the completeness of the information accompanying the transfer, i.e. that all mandatory fields are filled out. FIs also verify that the content of the message matches the known profile of the customer concerned and decide whether to authorize or block the transaction accordingly. However, at one of the local banks met during the on-site visit, the above-mentioned filtering was still manual, which casts reasonable doubt on its effectiveness.

**347. Higher-risk countries identified by FATF:** Banks include the list of higher-risk countries in their respective filtering systems. Such lists are taken into account when processing transfers. No specific provisions are made by other FIs.

### *5.2.5 Reporting obligations and tipping-off*

**348.** The obligation to report suspicious transactions to NAFI is contained in Regulation No. 01/16/CEMAC/UMAC/CM of 11 April 2016. At the time of the mission, all financial sector reporting entities were aware of their obligations in this regard, while a significant proportion of DNFBPs were not yet aware of such obligation. However, implementation of this obligation remains a challenge in the Congo. Indeed, only banks (99%) and MFIs (1%) have made STRs to NAFI. Even for banks, NAFI statistics show 869 STRs between 2014 and 2020, which gives an annual average of 124 reports. This number seems insufficient in view of the Congolese criminogenic context and the volume of the banks' customer portfolio. Lastly, the ratio between the number of STRs received by NAFI and the number of referrals to judicial authorities raises questions about the quality, relevance and content of the STRs.

**349.** The provisions guaranteeing the confidentiality of STRs are indeed contained in the CEMAC Regulation. Information relating to STRs is only accessible to compliance staff, senior management and internal auditors and is disclosed only to NAFI. At NAFI, there are procedures to ensure that STRs are processed confidentially. No cases of information leakage have been identified.

**350.** As regards FIs, most banks have automated customer profiling and transaction filtering tools that allow them to improve the detection and processing of alerts in order to effectively fulfil their suspicious transaction reporting obligations. However, this obligation is not met uniformly by all banks. The evaluation team noted, for example, that in one local bank with a vast network of branches, the filtering of transactions and the detection of alerts were still done manually, which questions the effectiveness of such a system with more than 80 000 active accounts. In addition, it was noted that the independence of compliance officers in the transmission of STRs is limited in some banks, with a censorship mechanism by senior management. In such generally local banking institutions, alerts are generated and processed, and STRs are forwarded to senior management, which makes the final decision on whether or not to forward them to NAFI. Without stating it openly, one compliance officer interviewed did not formally refute the existence of some form of senior management censorship.

**351.** MFIs also do STR to a lesser extent, although the number of STRs recorded does not reflect the volume of transactions. The main problem with MFIs is the detection and manual handling of alerts. Furthermore, most MFIs are more focused on managing the profitability challenges and serious cash flow problems that they face than on implementing AML/CFT requirements.

**352.** E-money issuers have fairly effective tools for detecting suspicious transactions, despite a lack of necessary resources in terms of numbers to process the alerts generated. They are perfectly aware of their reporting obligations, despite being unaware of the procedures for reporting suspicious transactions to NAFI. One of the operators in the market made a suspicious transaction report, which was not filed directly with NAFI, but with its partner bank for onward transmission to the Agency.

**353.** In the insurance sector, no STRs had been forwarded at the time of the mission, whether by insurance companies, insurance brokers or general agents. This situation is due, on the one hand, to the fact that the main insurance business in the Congo is non-life insurance (92.65%

of the market's total turnover in 2019), which is considered less exposed to ML/TF and, on the other hand, to the fact that the staff of insurance companies have a fairly average grasp of the AML/CFT issue. As for intermediaries (brokers and general agents), their knowledge of AML/CFT obligations is very limited.

**354.** At the level of DNFBPs, the absence of STRs is ascribable to the low level of awareness and information of professionals in this sector on the ML/TF risks to which they are exposed, the absence of a compliance mechanism, the non-application of administrative and criminal sanctions in the event of non-compliance with AML/CFT obligations, and the absence of AML controls in the prerogatives of the self-regulatory and supervisory authorities of these professions.

Table 7: Distribution of STRs received by source (2014-2020)

	2014	2015	2016	2017	2018	2019	2020	Total	%
Banks	22	46	92	151	88	268	202	869	98.86%
Taxes	0	0	0	0	0	0	0	0	0
Treasury	0	0	0	0	0	0	0	0	0
Customs	0	0	0	0	0	0	0	0	0
Consumer credit companies	0	0	0	0	0	0	0	0	0
Casinos	0	0	0	0	0	0	0	0	0
Building societies	0	0	0	0	0	0	0	0	0
Notaries	0	0	0	0	0	0	0	0	0
Bailiffs	0	0	0	0	0	0	0	0	0
Insurance companies	0	0	0	0	0	0	0	0	0
Lawyers	0	0	0	0	0	0	0	0	0
Chartered accountants	0	0	0	0	0	0	0	0	0
MFIs	0	1	0	1	2	3	1	8	0.91%
Others (Office of the Prosecutor)	0	0	0	0	0	1	1	2	0.23%
<b>Total</b>	<b>22</b>	<b>47</b>	<b>92</b>	<b>152</b>	<b>90</b>	<b>272</b>	<b>204</b>	<b>879</b>	<b>100%</b>

Source: NAFI 2020 Activity Report

### 5.2.6 Internal controls and legal/regulatory requirements impeding implementation

**355.** At the time of the mission, most Congolese financial institutions, particularly banks, insurance companies, MMTSPs and MFIs, had internal control and compliance departments responsible for ensuring the existence and effectiveness of internal mechanisms and for assessing compliance by operational units with legislative and regulatory requirements as well as internal procedures, including AML/CFT requirements, when entering into relationships and in all transactions carried out with customers. To this end, they appoint compliance officers who are responsible for monitoring the implementation of AML/CFT regulatory requirements. In addition, they have an internal audit department that conducts AML/CFT assignments and documents the findings and recommendations of such assignments in a report submitted to senior management and the board of directors or equivalent decision-making body, to take the necessary follow-up measures.

**356.** COBAC Regulation R-2016/04 of 8 March 2016 defines the rules of internal control and compliance control in credit institutions and financial holding companies. In implementation of these provisions, all banks operating in the Congo have departments in charge of control and those in charge of compliance control.

**357.** At the level of MFIs, this requirement, which is respected by the majority of Congolese institutions in this category, is contained in COBAC Regulation EMF R-2017/06 of 24 October 2017 on MFI internal control.

**358.** For the insurance sector, pursuant to Article 23 of Regulation No. 001/CIMA/PCMA/PCE/SG/2021 of 2 March 2021 to replace Regulation No. 0004/CIMA/PCMA/PCE/SG/08 defining the procedures applicable by insurance companies in CIMA Member States as part of AML/CFT, all the actors in this sector have a compliance function in their organization. They have appointed a compliance officer for each company and have set up an internal training program, the implementation of which is monitored by the company's audit department. They implement their AML/CFT obligations. However, their information systems do not allow for effective monitoring of customer transactions in relation to their profile, nor for appropriate controls when such transactions are unusual and complex. In addition, politically exposed persons (PEPs) are not yet captured by their internal compliance systems.

**359.** The various interviews conducted during the mission revealed that compliance officers and those in charge of internal control have been appointed at other FIs. However, there were shortcomings in the definition and operationalization of compliance programs, particularly with regard to the AML/CFT component. These compliance units do not have sufficient resources to perform their tasks.

**360.** In general, Articles 88 and 89 of the CEMAC Regulation and Articles 30 and 31 of COBAC Regulation R-2005/01 protect financial institutions, their managers and employees from criminal or civil liability for breach of any rule relating to disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, when they report their suspicions to NAFI in good faith.

**361.** Article 101 of the same Regulation adds that notwithstanding any repugnant legislative or regulatory provisions, professional secrecy may not be invoked by the persons referred to in Articles 6 and 7 (liable to AML/CFT obligations) to refuse to provide information to the supervisory authorities and to NAFI or to make the reports provided for in the Regulation.

**362.** With regard to DNFBPs, apart from chartered accountants, most do not have units specifically responsible for internal control to ensure the implementation of their AML/CFT obligations, nor do they have dedicated AML/CFT officers to meet the obligations defined by the instruments in force.

**363.** As of the time of the mission, there was no legal or regulatory provision that hinders the implementation of internal controls to ensure compliance with AML/CFT obligations in the Congo.

#### ***Overall Conclusion on IO 4***

**364.** Banks have a good understanding of the ML/TF risks to which they are exposed. They implement preventive measures to mitigate the risks associated with their activities, including customer due diligence and internal controls. This effort is visible through the number of STRs they produce. However, in some local banks, the procedures for risk

assessment and implementation of due diligence are still deficient. With regard to other financial institutions, the control of ML/TF risks is still very limited and compliance with preventive measures is not always effective. In this regard, there are no operational risk assessment mechanisms in insurance companies, microfinance institutions, money transfer companies and manual money changers.

**365.** In general, there is also a problem of centralization of documents relating to customer transactions at most of the reporting entities, except for some subsidiary banks of large foreign groups; this is a major concern in the reconstitution of transactions by the competent authorities, where necessary.

**366.** The vast majority of DNFBCs do not have any understanding of the AML/CFT risks to which they are exposed. Consequently, they do not sufficiently implement preventive measures and internal AML/CFT controls.

**367. The Congo is rated as having a low level of effectiveness for IO 4.**

## 6. SUPERVISION

### 6.1. Key findings and recommendations

#### *Key findings*

(a) Community and national FI supervisory authorities implement due diligence measures at the start of transactions and during changes in operations, to prevent criminals and their associates from holding a significant stake in, gaining control of, or assuming a management position in FIs. Checks are carried out on the legality of the origin of funds, the character and good repute of owners, board members and managers, in particular by cross-checking information from the Central Risk Office and/or from peer supervisory authorities in the case of subsidiaries of financial institutions of international groups. However, reports on such investigations are not systematically drafted or included in the approval application file. As such, controls on beneficial owners are only properly carried out at the level of subsidiary banks of international groups.

(b) Designated non-financial businesses and professions (DNFBPs) do not have formally designated authorities to monitor compliance with their AML/CFT obligations. They have administrative supervisory authorities as well as, for some of them, self-regulatory bodies which, however, do not ensure any AML/CFT supervision due to the lack of recent national instruments expressly conferring this responsibility on them in accordance with the CEMAC Regulation. Thus, despite their relative association with the opening seminars of Congo's National Risk Assessment (NRA), DNFBPs as a whole are unfamiliar with basic information on the CEMAC Regulation and the AML/CFT requirements and risks involved.

(c) Self-regulated professions such as lawyers, notaries and accountants, have procedures and controls for access to the profession according to standard and often declarative character requirements, to prevent, to some extent, criminals and their accomplices from entering the profession. For other DNFBPs, notably real estate agents, dealers in precious stones and metals and casinos, compliance with such requirements is much less satisfactory, thus increasing the ML/TF risk.

(d) Congolese authorities have not yet taken any action to identify unlicensed financial or non-financial activities. The formal manual currency exchange sector, reserved for credit institutions, microfinance institutions, postal administrations and currency exchange bureaus, suffers greatly from competition from informal actors that do not enjoy the status of sub-delegated institutions, identified mainly in the Brazzaville Port Authority and in the West African community. The entry of large international money transfer companies into the Congolese market is not subject to specific COBAC approvals, as these companies are content to work under partnership contracts with local banks.

(e) Supervisory authorities of the banking, microfinance, payment service providers and insurance sectors have a satisfactory and ongoing understanding of the ML/TF risks in their sectors, unlike the supervisory authorities of the other FIs.

(f) In practice, individual supervisors do not perform sufficient due diligence to ensure that the actors under their jurisdiction understand the ML/TF risks to which their respective sectors are exposed on an ongoing basis, with banks in particular performing ongoing due

diligence themselves to understand the risks associated with their sector and products, and thus to implement mitigating actions due to specific requirements such as correspondent banking.

(g) Implementation of a risk-based approach to supervision and oversight of FIs by supervisory authorities is weak at the level of banks, microfinance institutions and payment service providers, and non-existent at the level of other financial institutions and DNFBPs. Supervisors of banks, microfinance institutions, payment services, insurance and financial market have not demonstrated that FIs in the Congo are classified according to their ML/TF risk profiles.

(h) Supervisory authorities have a wide range of administrative, civil, disciplinary and criminal penalties available to them for regulatory violations. However, the mission did not find any specific sanctions imposed on the entities they supervise for failure to comply with AML/CFT obligations, whether by COBAC, CIMA or COSUMAF.

(i) The Congo has not yet taken any action to regulate and supervise VASPs.

### ***Recommendations***

#### **Congolese authorities are invited to implement the following actions:**

1. Update the legal and regulatory instruments governing DNFBPs in line with CEMAC AML/CFT regulatory requirements and clearly designate the competent supervisory or regulatory authorities for each category of DNFBP in terms of AML/CFT, provide them with sufficient powers of approval/authorization, control and sanctions, and implement a risk-based supervision program, prioritizing the most at-risk DNFBPs;
2. Strengthen controls in the authorization of DNFBPs and financial institutions, and systematically draft reports and/or minutes of character investigations carried out to this effect, to ensure that the information provided and the analyses carried out at the entry into the respective DNFBP and financial sectors prevent criminals and their accomplices from holding or becoming the beneficial owners of a significant shareholding or control of non-financial institutions liable to the CEMAC Regulation or financial institutions;
3. Provide national regulatory and supervisory authorities (including the directorates under the Ministry of Finance and Budget) with sufficient means, build their human resource capacity, and improve their understanding of the obligations arising from the AML/CFT regulation, to ensure effective supervision of those liable to AML/CFT requirements;
4. In conjunction with the other CEMAC States and with the support of GABAC, request the UMAC Ministerial Committee to require the community supervisory authorities (COBAC, BEAC, COSUMAF and CIMA) to pay greater attention to the AML/CFT issue, so as to make it a major focus of their supervision, and to devote the necessary resources thereto, in the same way as other general or specific requirements, and to mainstream the AML/CFT risk into their control strategies and plans, with the aim of improving and intensifying their specific AML/CFT control missions, and to apply effective, proportionate and dissuasive penalties;
5. Ensure a continuous understanding of ML/TF risks among the reporting entities of the DNFBP and FI sectors and establish a risk-based classification of reporting entities for the purpose of effective control actions for:

- i. FIs and DNFBPs;
  - ii. customers, products and services, distribution channels and geographical areas;
6. Take the necessary measures to identify natural or legal persons providing money or value transfer services without being approved or registered, to make the entry of large international money transfer companies into the Congolese market subject to COBAC approval, and to ensure the prior legal separation of the respective telephony and mobile banking entities within mobile telephone companies authorized to carry out mobile money transactions;
  7. Take necessary measures, particularly awareness-raising and identification, to significantly reduce competition from informal actors in manual currency exchange and from unauthorized real estate agents, and encourage them to integrate their activities into the formal sector, in line with the relevant regulations;
  8. Disseminate instruments pursuant to Article 113 of the CEMAC Regulation to lay down legal bases for sanctions and take corrective measures and effective, proportionate and dissuasive penalties against reporting entities that do not fulfil their AML/CFT obligations, with a view to reducing the scope of defaults;
  9. Issue thematic guidelines to further explain AML/CFT obligations and due diligence to reporting entities and intensify awareness raising, training and disclosure of the AML/CFT legal and regulatory framework, in particular for the DNFBP sector, in order to help reporting entities better understand the ML/TF risks inherent in their activities, as well as cooperation between supervisory authorities and NAFI to ensure proper compliance by reporting entities;
  10. Legislate on virtual assets and designate a competent authority responsible for the licensing and supervision of VASPs.

**368.** The relevant immediate outcome assessed in this Chapter is IO 3. The recommendations relevant to the assessment of effectiveness in this section are R.14, 15, 26-28, 34-35 and some aspects of R.1 and 40.

**369.** The Congolese financial system comprises ten (10) commercial banks, twenty-four (24) microfinance institutions (MFIs), eight (8) insurance companies and two (2) pension funds, to which should be added a stock exchange company that has no assets, and a portfolio management company. As at end December 2020, the total equity of the financial sector accounted for 4.4% of GDP, 73.5% of which came from the banking sector, 19.1% from the microfinance sector and 7.3% from the insurance sector. The aggregate total balance sheet of the financial system's institutions amounts to CFAF 2 542 billion (i.e. 40.4% of GDP), 90.2% of which is in the banking sector.

**370.** The DNFBP sector is prominent in the Congo, in view of its activities, which contribute significantly to development and national wealth creation. It is dominated by the sub-sectors of legal and accounting professionals (lawyers, notaries, chartered accountants), operators and traders in precious stones and metals and works of art, real estate companies, agents and promoters, gambling establishments, and transporters.

**371.** Given their high involvement in financial transactions, the number of actors on the Congolese market and the insufficient implementation of AML/CFT preventive measures,

much importance was given to the banking sector, the transfer of funds and securities, the real estate sector, and traders in precious stones and metals; moderate importance was given to the manual foreign exchange sector, microfinance, the transfer of funds by mobile telephone and the liberal legal professions (lawyers and notaries). The other sectors (insurance, financial market, chartered accountants, some DNFbps) are relatively insignificant, either because of their low weight in the Congolese economy, or because of their negligible level of development, or because of the lower risks identified in terms of ML/TF.

## 6.2. Immediate Outcome 3 (Supervision)

### 6.2.1 *Licensing, registration and controls preventing criminals and associates from entering the market*

**372.** In the Congo, the exercise of activities falling under FIs and DNFbps is subject to prior approval or authorization/certificate, by virtue of the respective instruments governing these activities and laying down the minimum requirements to be met by applicants for approval.

#### **Financial Institutions**

**373.** Generally speaking, the authorities in charge of controlling FIs in the Congo implement vigilance measures to prevent criminals and their accomplices from becoming shareholders, board members or managers and to control them. Controls are carried out on the legal origin of funds, the morality and good repute of the owners, board members and managers, both at the time of licensing and during the life of the institutions. However, only institutions that are subsidiaries of international groups are not subject to the obligation to extend such vigilance to beneficial owners, although at national level there is no objective basis for establishing lists and updating the lists of beneficial owners.

**374.** Indeed, prior to approval by the competent regulatory authority, the legal entity is subject to the obligations of Articles 44 to 47 of the OHADA Uniform Act (AUDCG) and must register with the Trade and Personal Property Credit Register (TPPCR) housed at the Brazzaville Commercial Court, where the registrar-in-chief ensures that the application for registration is in order, checks the conformity of the supporting documents produced on the shareholders, board members and managers, and issues a provisional clearance to enable the applicant company complete its approval file. However, his control does not extend to the search for and identification of the beneficial owner and his control over the origin of the funds is only declaratory.

**375.** For **credit institutions**, in addition to the clearance for registration of the company in the TPPCR, the application for authorization must include a list of all shareholders, natural persons, indicating the level and type of shareholding (cash or in kind) of each, and a notarized statement on the assets of each shareholder with at least 5% of the capital, justifying the origin and legality of the funds with regard to the AML/CFT law. For legal entity shareholders, a notarized statement on the assets and liabilities of an authorized representative, justifying the origin and legality of the funds used to build up the capital is also required. The same obligations apply to financial market actors and insurance companies, in particular for shareholders with at least 10% of the voting rights or shares by virtue of Articles 329-7 et seq.

**376.** The exercise of **banking** or **microfinance** activities as well as the entry into office of shareholders, board members, managers and auditors of credit and microfinance institutions are subject to prior approval by the Minister in charge of Finance and Budget, after COBAC's assent. The files deemed admissible after the control of the National Economic and Financial Committee (CNEF) are forwarded to COBAC, whose Approval Committee (Decision No. 0551/D/MINFI/CAB of 2 June 2016, for credit institutions, and Decision No. 16/0256/D/MINFI/SG/DAJ of 4 March 2016, for MFIs) then examines the constituent elements of the licence application files, including the criminal record of no less than three months old for natural persons applying, the composition of holdings and the information provided on shareholders for legal persons, which enables the Committee to check their possible criminal background. Appropriate checks are carried out when examining approval applications, proof of the origin of funds is requested and character checks are carried out to ensure that the funds are of a legal origin. Criminal records and CVs of board members and managers are required to ascertain their good character, integrity and repute. Furthermore, the information collected is then cross-checked with other sources available to or accessible by COBAC, such as the Central Risk Office, for a more in-depth verification. Concerning foreign board members and managers and when examining applications for approval of subsidiaries of international groups, COBAC relies on cooperation agreements signed with counterpart supervisory authorities to carry out character and good repute investigations on shareholders, board members and managers, and may also refer to the supervisory authorities of the country of origin for additional information.

**377.** At the end of this exercise, the opinion issued by COBAC is binding on the decision of the Congolese monetary authority in the process of issuing the licence. The conditions for approving and updating the items of the approval files as laid down by the regulations in force could prevent criminals and their accomplices from becoming the beneficial owners or from controlling such institutions. In addition, any modification in the course of operations that significantly affects the legal status of the reporting entity (change in shareholding, change in share capital, change in company name, transfer of business, merger, demerger, transfer of significant shareholdings, etc.) is subject to prior authorization by COBAC or the Monetary Authority. Every six months, the reporting institutions send COBAC an updated list of their managers and board members. According to the information gathered, COBAC's on-site inspections, when organized, also verify compliance with these requirements.

**378.** As the evaluation team was not able to meet with COBAC, it was unable to ascertain whether minutes and/or reports of character investigations had been drafted or, on the basis of agreements signed with counterpart supervisory authorities in the context of a board member and/or manager approval procedure, whether such investigations were systematically carried out when processing applications for approval, thus casting a shadow over the effectiveness of the measures applied, which could not be demonstrated. Similarly, to date, no case of refusal or withdrawal of approval or authorization has been traced in the Congo.

**379. Electronic money issuers** are authorized by COBAC, in accordance with Regulation No. 01/11/CEMAC/UMAC/CM of 18 September 2011 on the exercise of the activity of electronic money issuer. Nevertheless, it was observed that these issuers combine their legal personality

as mobile telephone companies with that covering their activities as mobile money issuers, sometimes before COBAC's specific authorization for this second aspect.

**380.** With regard to **manual exchange**, licence applications are received and examined for completeness by the Ministry of Finance before being forwarded to BEAC for study and opinion. On this occasion, BEAC, in addition to the compliance aspects, analyzes the constituent items of the licence application file and ensures that criminals and/or their accomplices cannot participate in the ownership of the currency exchange bureau or take control of them or hold a management position. The opinion of BEAC is binding on the decision of the monetary authority, which may or may not issue the licence. However, after a period of two months, assent is considered to have been given, which questions the imperviousness of the sector, especially as since the entry into force of Regulation No. 02/18/CEMAC/UMAC/CM of 21 December 2018 on foreign exchange regulations in CEMAC, processing of applications for currency exchange bureau approval and new applications sent to BEAC has slowed down.

**381.** In addition, authorized **currency exchange bureaus** deplore the competition from foreign exchange dealers, who are natural persons, mainly at the Port Authority of Brazzaville and within the West African Community of the Congo, who circumvent the requirement of authorization to carry out their manual foreign exchange activities. This is a significant ML/TF risk factor, especially as they do not respect the daily ceiling of 5 million CFA francs (FCFA) per client and the origin of the funds they invest in manual exchange is questionable. Remedial action by the Congolese authorities is slow to come by. Despite the significant informal sector, no unannounced checks are carried out on unauthorized entities, and there is no association of currency exchange bureaus to raise awareness and bring these informal actors in the formal circuit.

**382.** Furthermore, the mission noted a lack of binding legislation requiring prior authorization for the exercise of financial activities by **international money and value transfer companies** operating in the Congo, which only operate under the cover of partnership agreements that they sign with approved credit or microfinance institutions. Although they now compete with electronic money issuers, traditional money transfer offices continue to be prominent in the money transfer sector.<sup>15</sup> The lack of instruments is also noted for financial services of the post office, although on the ground, such services are non-existent, to date.

**383.** In addition to this lack of legislation, there is an operational deficiency due to COBAC's weak controls on non-banking FIs and their multiple branches in the country.<sup>16</sup>

**384.** In the **insurance sector**, applications for approval are sent to the Minister in charge of insurance and undergo a preliminary study before being sent to the CIMA Secretariat General for approval. The information and data collected on the origin of funds and the category of persons involved in setting up insurance companies (particularly insurance companies or

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<sup>15</sup> Current fast money transfer offices are: Western Union, Money Gram, Express Union, Wari, Smal Word, Signé.

<sup>16</sup> It should be noted, for example, that Express Union Congo, a subsidiary of the Express Union Group, is licensed as an MFI but the bulk of its net operating income comes from its money transfer activities, thus greatly exceeding the 10% limit imposed by COBAC regulations.

investment banks that are already subject to supervision) ensure that criminals and/or their accomplices cannot acquire significant shareholding or hold management positions. For the involvement of natural persons, a sworn statement on the origin of the funds is attached to the application and where CIMA still has doubts, it simply rejects the application, without reporting any previous situation. Therefore, in the absence of any case of rejection presented to the mission, the effectiveness of these measures is questionable. As regards the other actors in the sector (notably brokers and general agents), the entire approval procedure is carried out at the level of the National Insurance Directorate.

**385.** With regard to **financial market** actors, licensing files are examined by COSUMAF. The AML/CFT issue is not really a concern, given that the actors are generally extensions of banking companies, whose mature AML/CFT systems ensure, to an extent, that criminals and/or their accomplices cannot take significant shareholdings or control or even hold a management position therein.

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

**386.** As for **DNFBPs**, despite the fact that the approval procedures of some self-regulated categories, notably Notaries, Lawyers, Bailiffs and Chartered Accountants, include a strict verification of the good character, integrity and good repute of the applicants, thus avoiding, to some extent, the shareholding, control or holding of management positions by criminals and/or their accomplices, apart from the consolidated controls by the Big Four Audit Firms<sup>17</sup> that are part of chartered accountants, the AML/CFT requirements of the authorities granting the licence, authorization or receipt are not taken into account. For other DNFBPs, including dealers in precious stones and metals (which the mission was not able to meet), real estate agencies, casinos and other gambling establishments, the shortcomings are even more noticeable with regard to in-depth checks by the supervisory authorities on compliance with AML/CFT requirements upon entry into the market. The related requirements do not sufficiently mainstream AML/CFT issues, despite the existence, for some DNFBPs, of interesting databases such as a register of civil society organizations, professions trades and crafts and a national file on companies and groups of companies (UNICONGO, COPECO, etc.). The Ministry of Mines and Geology, among others, which is the supervisory authority in the sector since its creation in 2005, stated that it only applies the Mining Code (whose objective is to attract investors), ignoring the provisions of the CEMAC Regulation. The same applies to the Ministry in charge of Leisure, which approves and controls the files of games promoters, their working environment and workers' rights, without taking into account the AML/CFT requirements.

### **Virtual asset service providers**

**387.** The Congo did not provide any information regarding the **VASPs**.

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<sup>17</sup> The Big Four are the four largest financial audit and advisory groups in the world, particularly in terms of turnover, namely DELOITTE TOUCHE Tohmatsu, ERNST & YOUNG (EY), KPMG and PRICE WATERHOUSE COOPERS (PWC).

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

**388.** COBAC supervises credit and microfinance institutions with respect to their AML/CFT obligations.

**389.** Most banks conduct at least one annual internal assessment of the ML/TF risks inherent in their customers, the products they offer to customers, their distribution channels and the geographical areas of their transactions. In addition, COBAC remotely monitors the continuous understanding of ML/TF risks by these institutions, which are required to report regularly, every six months, on their AML/CFT due diligence by completing the AML/CFT Monitoring, Processing and Organization Assistance questionnaire (ASTROLAB). However, there are no mechanisms to allow COBAC to ensure that, apart from banks and MFIs that are part of groups, other reporting entities have an ongoing understanding of the ML/TF risks inherent in their field of activity.

**390.** In the insurance and financial market sector, neither CIMA, the National Insurances Directorate, nor COSUMAF implement concrete actions allowing them to verify that the reporting entities under their jurisdiction continue to understand the ML/TF risks to which they are exposed.

**391.** In general, the Congo does not take sufficient action in terms of DNFBPs due diligence, to ensure ongoing understanding of ML/TF risks in their environments. This remark is backed by the absence of designated AML/CFT competent authorities for these categories.

**392.** At the time of the on-site visit, the Congo did not provide supervision for VASPs, which justifies the absence of diligent actions to ensure that VASPs have an ongoing understanding of the ML/TF risks to which they are exposed.

### *6.2.3 Risk-based supervision of compliance with AML/CFT requirements*

**393.** COBAC organizes general audit missions to the institutions it supervises, with a component systematically dedicated to AML/CFT issues. It also conducts thematic missions on currency exchange that also take into account the AML/CFT component. The information and data collected through ASTROLAB are used to feed and enrich the framework notes of these missions. In practice, COBAC does not program or carry out thematic AML/CFT missions and the controls it organizes are not based on an ML/TF risk-based approach, as defined in the FATF Recommendations. Of all the banks met by the mission, only BGF Congo stated that it had hosted a thematic mission by COBAC on ML/TF in 2017, which resulted in fourteen (14) recommendations.

**394.** At national level, the Ministry of Finance and Budget has directorates general and departments that are operational units responsible for monitoring the financial sector, with the capacity to conduct administrative control missions, as provided for in their annual action plans. These include the Directorates General of the Treasury, National Financial Institutions, Money and Financial Relations with the outside world and Public Procurement Control, the Directorates of Securities, Regulation and Capital Markets and the Directorate of Insurance (which is part of the Ministry of Finance). The Ministry of Finance also has supervisory bodies, including the Remittances Regulation Agency (ARTF), responsible for supervising money and value transfer service providers, examining files and, where necessary, granting provisional

authorizations to money transfer companies at national level, pending approval by the Minister. Their audit guides always include aspects that assess FIs fulfillment of their AML/CFT requirements. However, the checks carried out during the inspections remain summary and are not based on knowledge of ML/TF risks. They generally concern recurrent questions to which reporting entities provide answers, without requiring supporting documents.

**395.** At the time of the on-site visit, COSUMAF which, according to the Directorate of Money and External Financial Relations, had identified about ten companies working in the sub-region outside the law, was not yet carrying out AML/CFT controls.

**396.** With regard to DNFBPs in general, risk-based monitoring of the degree of compliance with AML/CFT obligations is not carried out by the public or self-regulatory authorities of the corporations they comprise. DNFBPs as a whole do not have designated authorities to supervise their AML/CFT obligations, which does not allow for risk-based supervision in this area.

**397.** No provision has been made for the supervision of VASPs, making it impossible to verify the implementation of a risk-based approach.

#### ***6.2.4 Remedial actions and effective, proportionate and dissuasive sanctions applied***

**398.** Article 113 of the CEMAC Regulation provides that the supervisory authority may impose sanctions on reporting professionals for failure to comply with AML/CFT due diligence. As the mission was unable to meet with COBAC, it could not find any record of a single sanction recently imposed on banks, microfinance institutions or payment service providers in the Congo for failure to comply with AML/CFT due diligence. It was therefore unable to assess the effectiveness, proportionality and dissuasiveness of sanctions for non-compliance with AML/CFT obligations.

**399.** The entities met by the evaluation team only mentioned the recommendations of COBAC's inspection missions. None of them reported sanctions imposed on them for shortcomings in their AML/CFT system, making the evaluation team to conclude that application of effective, proportionate and dissuasive sanctions and/or corrective actions is not yet reality.

**400.** Similarly, during the on-site visit, CIMA stated that it relied on injunctions to insurance companies following their failure to comply with AML/CFT requirements. It has therefore not applied any other corrective action or sanctions, so that it is no longer appropriate to further analyze whether they are effective, proportionate and dissuasive.

**401.** Regarding COSUMAF, with no control procedures for financial market actors to ensure compliance with their AML/CFT obligations, there are no elements to assess the effectiveness, proportionality and dissuasiveness of the actions and/or sanctions applied.

**402.** The same applies to the national directorates responsible for supervising financial institutions. Also, in this situation of failure to make available supporting documents, data and statistics on the sanctions imposed, the concerns relating to the effectiveness, proportionality and dissuasiveness of the actions and/or sanctions applied cannot be properly assessed. The evaluation team therefore considers that such concerns have not been effectively implemented

by the Congo with regard to FIs, which reflects a major weakness in the system for monitoring reporting entities' compliance with their AML/CFT obligations.

**403.** For all the DNFBPs, the mission noted a complete absence of sanctions for non-compliance with AML/CFT obligations. This reflects the absence of designated competent authorities for the various categories of DNFBPs, which consequently renders the AML/CFT control mechanism inoperative.

**404.** No action is taken in the Congo with regard to the VASP sector.

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

**405.** In general, to date, no evidence has been collected to measure the impact of supervisory authorities' actions on the compliance level of FIs and DNFBPs. Nevertheless, it is noted that banks and microfinance institutions are progressively improving their compliance levels, mainly due to the requirements relating to their exposure to the outside world, notably the correspondent relationships for banks, and the strong interrelationships they establish with banks for MFIs. Correspondents regularly ask banks about the status of their AML/CFT systems through AML questionnaires, and banks do the same for the MFIs with which they have a relationship. In addition, NAFI Congo makes an effort every year to discuss with professions in the FI sector, among others, the improvement of AML/CFT systems and confidentiality, and to involve them in training activities, which is reflected in the fact that the majority of STRs come from the banking sector, in addition to the requirements of the international groups that belong to this sector.

**406.** For other FIs and DNFBPs in general, the weak controls for some and the lack of supervision for others inhibit the conditions for any positive impact on their level of AML/CFT compliance.

**407.** As VASPs are not supervised, no impact can be identified.

#### ***6.2.6 Promoting a clear understanding of AML/CFT obligations and ML/TF risks by FIs, DNFBPs and VASPs***

**408.** Congolese authorities have not issued guidelines for the various categories of reporting entities to promote and ensure a good understanding of their AML/CFT obligations and the ML/TF risks to which their activities are exposed.

**409.** NAFI makes commendable efforts to meet with key AML/CFT stakeholders and involve them in AML/CFT seminars and workshops. However, the limited involvement of most of these stakeholders in the NRA process conducted by the Congo from 2018 to 2021 and the failure to disseminate the NRA report, despite its approval by the Minister of Finance, did not allow this exercise to be the suitable exchange framework that it should have been among reporting entities, on the ML/TF risks inherent in their activities. A broad and continuous dissemination of the findings of the NRA would improve understanding of the identified risks by all stakeholders.

**410.** No promotional action has yet been carried out in the Congo to ensure that VASPs understand their AML/CFT obligations and the ML/TF risks to which they are exposed.

**411.** At different levels, Congolese authorities do not take sufficient action to explain to reporting entities their obligations, the risks to which they are exposed, and the procedures for improving their compliance with AML/CFT requirements.

**412.** To date, the problem of VASPs has not yet been taken into account in AML/CFT policies in the Congo.

***Overall Conclusion on IO 3***

**413.** To some extent, supervisory authorities ensure that the Congolese system is impervious to the entry into the market of potential criminals or their accomplices. Nevertheless, the shortcomings noted in particular with regard to the prior approval of large rapid money transfer companies, the presence of informal actors in manual currency exchange and the real estate sector, the effective identification of beneficial owners (except by some FIs, in particular banks that are subsidiaries of international groups), the lack of evidence of the completion of systematic probes into the character and good repute of shareholders, board members and managers, the lack of sufficient understanding of risks, ML/TF risk-based controls and profiled AML/CFT thematic controls, and the absence of supervisory authorities for DNFBPs in the area of AML/CFT, which play a key role in development and the creation of national wealth, mean that **the Congo is rated as having a low level of effectiveness for Immediate Outcome 3.**

## 7. LEGAL PERSONS AND ARRANGEMENTS

### 7.1. Key findings and recommendations

#### *Key findings*

(a) Legal persons in the Congo are governed by the Uniform Act relating to General Commercial Law (AUDCG) and the Uniform Act relating to the Law of Commercial Companies and Economic Interest Groups (AUSCGIE). As such, they are subject to the obligations to register with the TPPCR.

(b) Companies governed by the Congolese law are registered with the trade and company register in the Trade and Personal Property Credit Register (TPPCR) system established according to the provisions of the Uniform Act relating to Commercial Companies and Economic Interest Groups (EIG), revised on 30 January 2014. However, some companies operate in the informal sector.

(c) Legal persons are registered at the registry of the court. Information contained in the TPPCR is not directly accessible to the public. Access is subject to approval by the registrar and at the request of promoters and the relevant government services. The TPPCR is computerized in only two (2) out of the country's twelve (12) divisions, and is not centralized.

(d) The Congolese authorities responsible for creating legal persons and keeping company registers only have knowledge of basic information on promoters during submission of business development files. There is no clear mechanism for identifying beneficial owners. The formalities for creating legal persons do not help to obtain information on beneficial owners. Information contained in the TPPCR is not updated on time, and it is probably not always accurate.

(e) No sanction is provided for in case of non-fulfilment of obligations regarding accurate and updated information on legal persons.

(f) The Congolese legal order does not provide for the creation of legal arrangements. There is no information on the possibility for some liberal professions in the country to provide services to legal arrangements. The absence of a special instrument does not seem to prohibit economic operators from using such procedures.

(g) No risk assessment has enabled the Congolese authorities to understand the vulnerabilities to ML/TF inherent in the various types of legal persons created in the country.

#### *Recommendations*

The Congolese authorities should:

1. Establish a mechanism for identifying and collecting information on the beneficial owner of legal persons during their creation and the amendment of their articles of incorporation, and ensure that such information is kept and regularly updated in the dedicated register;
2. Computerize the manual databases of the TPPCR of divisions and establish appropriate verification mechanisms in order to have reliable, complete, comprehensive, available and accessible information on all legal persons created nationwide;

3. Provide for an effective, proportionate and dissuasive administrative, civil and penal sanctions mechanism for breaches of the obligations to provide accurate and updated information on legal persons;
4. Carry out an analysis on ML/TF risks relating to all the types of legal persons and arrangements operating in the Congo, disseminate its findings and apply appropriate measures to mitigate the risks identified;
5. Raise the awareness of the relevant authorities, especially those involved in activities relating to the life of legal persons and arrangements, to the issue of related ML/TF risks and build their capacity to obtain the widest possible range of information in accordance with R.24 and provide them with financial, human and material resources;
6. Establish a criminal record information system to enable the verification and optimal preservation of information and data on the owners and officials of legal persons.

**414.** The relevant Immediate Outcome for this chapter is IO 5. The Recommendations relevant to the effectiveness of assessment in this section are Rs.24- 25.

## **7.2. Immediate Outcome 5 (Legal persons and arrangements)**

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

**415.** The OHADA uniform acts (AUDCG and AUSCGIE) provide for information on the creation and types of commercial companies that can be consulted directly by the public on the OHADA official website.

**416.** Like in the other OHADA member countries, the creation of the various types of legal persons is governed in the Congo by the Uniform Act relating to Commercial Companies and Economic Interest Groups. Legal persons created in the country are either commercial companies or economic interest groups (EIGs). They include general partnerships (GPs), limited partnerships (LPs), public limited companies (PLCs) and simplified joint-stock companies (SJACS), whose capital is free and variable, and limited liability companies (LLCs). The last three companies may be created by a single partner. With the exception of joint ventures, each company must be registered with the Trade and Personal Property Credit Register.

**417.** There are other types of legal persons in the Congo, including NGOs, associations and foundations which are all governed by the Law of 1 July 1901 relating to partnership agreements and the Decree of 16 August 1901 relating to the enforcement thereof. Decree No. 2003-20 of 6 February 2003 was added in 2015. It should be pointed out that the informal sector is quite present in the Congo, and the law goes back a very long time.

**418.** In order to promote investments and facilitate administrative formalities and procedures for creating legal persons, the Congolese authorities created an administrative establishment called "*Agence Congolaise pour la Création des Entreprises* (Congolese Business Development Agency) (CBDA)" by Law No. 16-2017 of 30 March 2017 which transposed Directive No. 061/11/UEAC-190-CM-22 relating to the Code of Transparency and Good

Governance in Public Finance Management. The agency runs a one-stop shop for all business development procedures. The public does not have access to basic information on legal persons, and cannot request access to information being processed by CBDA.

**419.** The creation, transfer, extension, modification and cessation of commercial activities are declared at the one-stop shop which comprises: the divisional department of trade, for establishment of authorization to carry out business activities; the divisional department of labour, for registration of the opening of a company; the registry of the commercial court, for establishment of the trade and personal property credit register (TPPCR); the Chamber of Commerce, Industry, Agriculture and Trades (CCIAM), for enrolment; the "*Caisse Nationale de Sécurité Sociale*" (National Social Security Fund) (CNSS), for registration; and the National Institute of Statistics (NIS), for issuing of SCIET- SCIEN numbers.

**420.** The approval, supervision and control of NPOs fall within the powers of the Ministry of Territorial Administration, through the General Directorate of Territorial Administration (DGAT) and the General Directorate of Territorial Surveillance (DGST). Exchanges between the evaluation missions and the supervisory authority show that it is the Director-General of Territorial Administration who grants approval and issues receipts to NGOs, foundations and associations. However, since 2015, following Decree No. 2003-20 of 6 February 2003, "*préfets*", who are heads of division have been authorized to issue receipts to associations in their respective chief towns, with the exception of foundations, national or international NGOs as well as cultural associations which remain the prerogative of the DGAT. The procedures for creating such entities are provided for by the Law of 1 July 1901 relating to partnership agreements and the Decree of 16 August 1901 relating to the enforcement thereof, that can be consulted in the Official Gazette of the Congo.

**421.** The instruments in force in the Congo do not provide for the creation of legal arrangements, and the country has not ratified The Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition.

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

**422.** The National Risk Assessment (NRA) conducted identified vulnerabilities in the various sectors of activity, including NPOs. However, those relating to the various categories of legal persons created in the Congo have not yet been identified, and ML/TF risks in the various categories of legal persons created in the country are not known.

**423.** The absence of assessment of the risks associated with the various categories of legal persons created in the country does not allow for measures to be taken to prevent the use of legal persons and arrangements for ML/TF purposes. For example, the NRA did not identify the risks related to PLCs, LLCs, civil society, commercial companies, etc. in order to determine which of them is exposed to greater ML/TF risks.

**424.** It should be pointed out that discussions with the authorities responsible for creating and keeping information on companies revealed that such authorities have very limited knowledge of the risks to which these companies are exposed. As a result, they perform business development formalities without applying reasonable due diligence measures because requests

for registration are generally submitted to them by notaries who neither have knowledge of nor are trained on the measures.

**425.** Apart from the findings of the NRA, no analysis or typological survey has been carried out by national authorities on vulnerabilities of legal persons.

**426.** The Congolese authorities have inadequate knowledge of the risk of misusing legal persons for ML/TF purposes. CBDA and court registries have limited knowledge of the risks of using legal persons for ML/TF purposes. In the entire chain, only notaries have average knowledge of the issue.

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

**427.** Legal persons created in the Congo as an OHADA member country are governed by the uniform acts and, therefore, subject to the obligations to register in the TPPCR, in accordance with the Uniform Act relating to General Commercial Law (AUDCG) and the Uniform Act relating to Commercial Companies and Economic Interest Groups (AUSCGIE).

**428.** The registrar-in chief of the Brazzaville commercial court and the registrars-in chief of the Congo's courts of first instance in charge of the Trade and Personal Property Credit Register are responsible for entering into the TPPCR and keeping record on legal persons. Information on legal persons can be obtained from registrars-in chief, at the request of promoters and the relevant government services. However, the Congo does not have a centralized database and an adequate archiving system for legal persons created in the country. The TPPCRs of Brazzaville and Pointe Noire are computerized, unlike those of the country's other 10 (ten) divisions (kept manually).

**429.** At CBDA, formalities are carried out at the same place, in one payment and on a single document for traders, industrialists, service providers, commercial companies and project promoters. After drafting the single creation declaration and the payment of the single creation tax at CBDA, all the required documents are issued at the CBDA one-stop shop within 14 days. There is no need to go to the registry of the commercial court for the extract from the TPPCR, to the General Directorate of Taxation for the SIN, to the National Institute of Statistics for the SCIET or SCIEN, or to the General Directorate of Commerce to be issued the authorization to carry out a commercial activity. The fulfilment of these formalities and the issuance of these documents confer a legal, fiscal and corporate existence to the company. However, apart from the criminal record, which is not reliable, no due diligence or measure is taken to prevent criminals from occupying management positions or acquiring majority shares.

**430.** The business development procedure in force at CBDA is administrative and limited to checking that all the required documents have been included, namely the articles of incorporation, the minutes of incorporation, the criminal record and identification papers of the promoters, residence permits and sworn statement (for foreigners who must produce their criminal records 75 days following registration). Indeed, no additional ML/TF-related due diligence is performed with regard to promoters. Moreover, the authorities responsible for registering and archiving information on the creation of legal persons in the Congo pointed out their lack of knowledge of the regulations, and the lack of technical, financial and human resources to successfully perform their duty.

**431.** The Congo does not have a centralized national TPPCR, and information is processed manually in most registries. The Congolese public therefore does not have direct access to accurate, up-to-date and readily available information on legal persons operating in the country. However, information can be obtained from the registrar-in chief, upon request by any interested person. There is no website to be visited by users. In conclusion, the existing mechanism does not guarantee timely access to information held by the authorities.

**432.** During business development in the Congo, it is not compulsory to identify the origin of the capital and the beneficial owner. This constitutes one of the vulnerabilities of legal persons to ML/TF.

**433.** The non-assessment of the risks associated with the various categories of legal persons created in the country does not allow for measures to be taken to prevent the use of legal persons and arrangements for ML/TF purposes.

**434.** Criminal record is a mandatory document during the creation of any legal person in the Congo. It is intended to know the criminal background of business developers. The document is compulsory for officials, managing promoters and partners of legal persons to be created. In the Congo, criminal record may be issued without prior check on those concerned since the services responsible for its issuance are not centralized. The same applies to foreigners on whom appropriate checks are not carried out.

**435.** The authorities have not established any specific measure for the development of foreign companies, especially investigations and enquiries on the promoter(s) and on the origin of funds, followed by an authorization from the Ministry of Trade. This shows that there are no specific measures to prevent the use of legal persons for ML/TF purposes.

**436.** Legal arrangements are not regulated by OHADA instruments. The Congo did not provide any information regarding legal persons such as trusts. Notaries, lawyers and accounting firms that administer property and funds in the Congo did not seem to know this type of legal arrangement, or carry out activities that could be likened to it.

**437.** In particular, the Congolese authorities did not show any concrete action taken to raise awareness and prevent NPOs from misusing legal persons for TF purposes, although they are aware that their country could be used to finance terrorist acts in other countries through this type of legal persons.

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

**438.** The Congo does not have a central national TPPCR, and information is kept manually in most registries. The Congolese public therefore does not have direct access to accurate, updated and readily available information on legal persons operating in the country. However, information can be obtained from the registrar-in chief, upon request, by any interested person. There is no website to be visited by users. Congolese authorities such as NAFI, the taxation administration and prosecution authorities can therefore access information in the register, upon request to the registrar-in chief. The response time is generally not short given the many registers and their keeping. In conclusion, the mechanism in place does not guarantee

the competent authorities timely access to information on all types of legal persons created in the Congo.

**439.** The Congo does not have a mechanism for collecting accurate and updated information on beneficial owners. Moreover, most of the information contained in the TPPCR are declarative and does not specifically include information on beneficial owners. Consequently, it is difficult for competent authorities to access information on beneficial owners. The situation is compounded by the fact that there is no formal mechanism for collecting, keeping, updating and providing information.

**440.** Information on officials and members of NPOs is contained in the articles of incorporation of such legal persons available at divisional offices, for associations, and at DGAT, for NPOs. However, interviews with the Congolese authorities responsible for these categories of legal persons reveal that information on them and their activity reports are not centralized. Moreover, the authorities produced no information concerning the search for and identification of BOs of associations and NPOs.

**441.** NAFI has signed cooperation agreements with the following authorities to ensure national coordination and cooperation in the fight against ML/TF: (i) the Audit and Budgetary Discipline Court on 16 July 2020; (ii) the General Directorate for Territorial Surveillance on 17 August 2020; and (iii) the General Directorate of the National Police on 1 December 2020. However, at the time of the on-site visit, these agreements had not yet resulted in real information-sharing or joint actions by the said authorities.

**442.** Discussions showed that in practice, competent authorities rarely rely on information from the TPPCR in their anti-ML/TF activities. The existence of many registers, doubts about the accuracy of information contained in the TPPCR and failure to update are some of the factors that explain such attitude. In the case of reliance on TPPCR information, it is administrative documents provided by the TPPCR, without real information on BOs, that are placed at the disposal of the said authorities. As a result, few authorities and national stakeholders reportedly use sources other than TPPCR to gather accurate basic information on BOs of legal persons through intelligence, specific software and, at times, accounting firms that perform required due diligence regarding ML/TF, etc.

**443.** It is difficult to assess international cooperation regarding identification and information-sharing on legal persons. The country has not provided relevant information in that connection to help to assess cooperation quality.

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

**444.** The creation of legal arrangements is not provided for in the Congo, and the country has not ratified The Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition. However, legal professionals can manage property belonging to fiduciaries or trusts, and are expected to identify potential beneficiary owners and the parties to the incorporation of the said legal arrangements.

**445.** Although such information may be obtained from the abovementioned professionals, they are not ready to provide information on their customers. In practice, there is no information or

data on the existence of trusts and other local legal arrangements or providers of services to trusts governed by foreign law. As a result, it cannot be assessed whether basic information on BOs is satisfactory, accurate or updated.

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

**446.** The creation of legal persons is declarative and the Congolese legal mechanism has not provided for sanctions for cases of inaccurate information, absence of information on BOs, failure to update information or non-registration in the TPPCR, which are factors that foster the existence of informal activities in many companies.

**447.** Moreover, at the time of the on-site visit, no sanction had been pronounced against defaulters. Therefore, it was impossible to assess the effectiveness, proportionality and dissuasiveness of sanctions in the Congo.

#### ***Overall Conclusion on IO 5***

**448.** The Congo does not have an appropriate mechanism for collecting, keeping and updating accurate basic information on legal persons and BOs.

**449.** Information contained in the TPPCR is mainly declarative and does specifically include information on beneficial owners. This reduces the accuracy and satisfactory nature of information on legal persons and of knowledge of BOs by the competent authorities.

**450.** The Congo does not have a computerized central national TPPCR, and information is kept manually in most registries. In addition, there is no direct access to information. Access is subject to prior authorization from the registrar-in chief of the competent court.

**451.** There is no effective, proportionate and dissuasive sanction for non-fulfilment by legal persons and arrangements of the obligation to provide information. At the time of the on-site visit, no sanction had been imposed for non-fulfilment of transparency obligations.

**452.** The Congo is rated as having low level of effectiveness for IO 5.

## 8. INTERNATIONAL COOPERATION

### 8.1. Key findings and recommendations

#### *Key findings*

(a) The Congo has a mutual legal assistance and extradition legal framework, especially within CEMAC. However, the level of activities recorded and presented to the evaluators remains unsatisfactory. Regarding cooperation needs, the evaluators noted that the country requests mutual legal assistance to prosecute diplomatic matters. The majority of requests submitted to foreign counterparts did not receive any response.

(b) The Minister of Justice is responsible for mutual legal assistance and extradition issues. However, there is no prioritization system in the processing of requests, the centralization, archiving and management of files that provides information on the collection, processing time and quality of cooperation. Moreover, to date, the country has not granted any request for mutual legal assistance or extradition regarding ML.

(c) NAFI is member of the Egmont Group and has signed a few cooperation agreements with a view to facilitating exchanges with its foreign counterparts. In that connection, NAFI has submitted a number of requests for information to its foreign counterparts, and uses information obtained to enhance processing especially of its suspicious transactions reporting. NAFI responds to requests, channels requests for intelligence and provides information to reporting entities and correspondents on behalf of foreign FIUs. However, statistical data are not sufficient to actually assess the dynamism of FIUs.

(d) Some competent authorities such as the National Police through the BCN Interpol, the Customs through WCO and the taxation administration through OECD, cooperate with their foreign counterparts. However, apart from BCN Interpol, data on such cooperation were not provided during the on-site visit, and are not systematically kept.

(e) COBAC has cooperation agreements with its foreign counterparts which enable it to share information on the supervision of reporting entities, including on AML/CFT aspects. However, during the on-site visit, no statistics were provided to the evaluators assess the quality of such cooperation.

(f) The country can share basic information on legal persons. However, the absence of a mechanism to identify beneficial powers hampers exchanges in this area.

#### *Recommendations*

The Congo should:

1. Make greater use of international legal assistance to prosecute ML, predicate offences and TF with transnational ramifications;
2. Broaden its scope of international cooperation, in particular by concluding agreements with countries facing terrorism and its financing in Africa and worldwide;
3. Establish a centralized system for managing and archiving requests for mutual legal assistance and extradition;

4. Establish a mechanism for identifying beneficial owners for international cooperation purposes;
5. Speed up responses to requests for mutual legal assistance and extradition received by prioritizing them throughout the processing chain;
6. Establish a system for keeping statistical data on international cooperation granted and received by competent authorities other than NAFI (Police, Customs, Taxation, ACHC, etc.);
7. Establish a mechanism for proactive monitoring and/or improvement of the quality of requests made by competent authorities other than NAFI.

453. The relevant Immediate Outcome for this chapter is IO 2. Relevant recommendations for assessing technical compliance in this section are Rs.36- 40.

## 8.2. Immediate Outcome 2 (International Cooperation)

454. International cooperation in the Congo is governed by bilateral, regional (ECCAS, CEMAC) and international agreements directly or indirectly linked to AML/CFT to which the country is party. The mutual legal assistance and extradition legal framework is rich.

Table 8: Bilateral and multilateral cooperation and mutual legal assistance treaties and agreements

No.	Country	Name	Place and Date of Signature	Remarks
1	Mali	General Justice Cooperation Agreement between the Congo and Mali	Bamako, 4 May 1964	
2	France	Justice Cooperation Agreement between the Republic of Congo and the French Republic	Brazzaville, 1 January 1974	Ratified by Law No.12/75 of 12 March 1974
		General Justice Cooperation Agreement between the Republic of Congo and the French Republic	Brazzaville, 12 April 1978	
3	Cuba	Amendment to the Legal and Judicial Assistance Agreement between the Republic of Congo, the Democratic Republic of Germany and the Republic of Cuba	The Hague, 22 April 1985	
4	Germany	Civil, Family and Criminal Justice Cooperation Agreement between the Democratic Republic of Germany and the People's Republic of Congo	Brazzaville, 24 June 1987	
5	Rwanda	Agreement on the Extradition and Transfer of Prisoners between The Congo and Rwanda	Brazzaville, 9 November 2013	
		Memorandum of Understanding on Cooperation in the Area of Correctional Services and Penitentiary Issues between the Congo and Rwanda	Brazzaville, 9 November 2013	
6	China	Legal Assistance Treaty between the Republic of the Congo and the People's Republic of China	Beijing, 5 July 2016	
		Extradition Treaty between the Republic of the Congo and the People's Republic of China	Beijing, 5 July 2016	

7	Senegal	Extradition Treaty between the Republic of the Congo and the Republic of Senegal	Dakar, 6 November 2018	
		Agreement on Mutual Legal Assistance in Criminal Matters between the Republic of the Congo and the Republic of Senegal	Dakar, 6 November 2018	

Source: *Ministry of Foreign Affairs, Francophonie and Congolese Abroad*

Table 9: Regional and sub-regional agreements

No.	Organization	Name	Place and Date of Signature	Remarks
1	CEMAC	Judicial Cooperation Agreement between CEMAC Member States	Brazzaville, 26 January 2004	Ratified by the Congo on 7 March 2008
2	African Union	Mutual Legal Assistance and Extradition Agreement against Terrorism	Rabat, 16 May 2008	Ratified by The Congo on 14 December 2011
3	ECCAS	Cooperation and Mutual Legal Assistance Agreement between Member States of the Economic Community of Central African States		Ratified by the Congo on 11 June 2012

Source: *Ministry of Foreign Affairs, Francophonie and Congolese Abroad*

**455.** However, use of international cooperation is not systematic in AML/CFT. Moreover, there is no mechanism for collecting and processing statistics on international cooperation and information-sharing by competent authorities other than NAFI.

### ***8.2.1 Providing constructive and timely mutual legal assistance and extradition***

**456.** The country receives requests for mutual legal assistance and extradition through the diplomatic channel (Ministry of Foreign Affairs, Francophonie and Congolese Abroad). Requests are transmitted to the Ministry of Justice, Human Rights and Empowerment of Indigenous Peoples, which is the authority responsible for mutual legal assistance and which comprises a Department of Criminal Affairs and Pardons responsible for managing requests. The department subsequently forwards the requests to the competent authorities for processing. Mutual legal assistance requests are processed through investigations and other acts normally performed by investigative and criminal prosecution authorities as part of judicial proceedings. Investigations for the processing of requests for mutual legal assistance are confidential. The persons targeted by the request are not notified unless they have to be heard and questioned. After processing, the responses are sent to the same department which fulfils the required formalities for the responses to be sent to the requesting countries through diplomatic channel. According to data provided, the country received no request for mutual legal assistance or extradition with respect to ML/TF. However, it received requests for mutual legal assistance for ordinary law offences and, to some extent, some predicate or ML/TF-related offences. No information was disclosed to the mission to enable assessment of the relevance, speed and quality of the country's responses to requests from foreign countries.

457. The established procedures for mutual legal assistance and extradition make for processing of request in total confidentiality. However, in practice there are no clearly defined prioritization procedures in the processing of requests.

Table 10: Statistics<sup>18</sup> on requests for mutual legal assistance received

Requests Submitted	Requests Received	Actions Taken	Remarks
396	26	Transmission of requests to competent authorities	Out of all the requests received, none was ML/TF- related

Source: Ministry of Foreign Affairs, Francophonie and Congolese Abroad

458. The above table does not provide information on the country's responses (offer of mutual legal assistance) to requests received, or on the responses received in relation to the requests made by the country. The table should have been more explicit by including the various offences and the requesting bodies. The information in the table does not give any indication as to the period under review. Moreover, the mission would have wished to have information on a yearly basis in order to see the trends and analyse the impact of the actions taken by the country.

Table 11: Statistics<sup>19</sup> on requests for extradition issued and received

Requests Submitted	Requests Received	Actions Taken	Remarks
0	16	Transmission to competent authorities	No ML/TF-related file was received

Source: Ministry of Foreign Affairs, Francophonie and Congolese Abroad

459. The table above is silent on the country's responses to requests received (extradition offer). It should have been more explicit by including the various offences and the requesting bodies. The information in the table does not give any indication as to the period under review. Moreover, the mission would have wished to have information on a yearly basis in order to see the trends and analyse the impact of the actions taken by the country.

### 8.2.2 Seeking timely legal assistance to pursue domestic ML, associated predicates and TF cases with transnational elements

460. At the time of the on-site visit, the country was unable to provide information or data on mutual legal assistance, whereas there are legal instruments and references were provided by the country. There are no statistics on mutual legal assistance for ML/TF. Mutual legal assistance in the area of predicate offences was requested mostly within CEMAC or under bilateral cooperation, with police-to-police cooperation on environmental and other crimes (See Table 13 below).

461. The country did not make any request for extradition in relation to money laundering, related predicate offences or terrorist financing.

### 8.2.3 Seeking other forms of international cooperation for AML/CFT purposes

#### NAFI

<sup>18</sup> The reference period was not disclosed by ministry officials.

<sup>19</sup> Idem.

**462.** At community level, NAFI is member of the CEMAC Conference of NAFIs (CAC) and, at international level, member of the Egmont Group since 2018. Such positioning enables it to regularly share information with its foreign counterparts. In that connection, NAFI stated that from 2017 to 2020, it made two hundred and eleven (211) requests to its foreign counterparts, out of which ninety-eight (98) received responses. However, there was no information on all the remaining requests, or precision as to the subject of the requests and their response time. Consequently, the table below does not give precise indication on the foreign FIU with which NAFI Congo communicates. Data are provided generally, which makes it difficult to assess NAFI’s various contacts.

Table 12: Status of exchanges between NAFI and foreign FIUs outside CEMAC from 2018 to 2020

Year	2018		2019		2020	
	Number of Requests	Number of Reponses	Number of Requests	Number of Reponses	Number of Requests	Number of Reponses
To foreign FIUs outside CEMAC	0	0	6	4	5	0
From foreign FIUs outside CEMAC to NAFI	5	3	5	3	2	2
<b>Total</b>	<b>5</b>	<b>3</b>	<b>11</b>	<b>7</b>	<b>7</b>	<b>2</b>

Source: NAFI Congo

**Police and Customs**

**463.** The evaluation team noted that the police, BCN-Interpol and the customs administration have cooperation tools that enable them, where necessary, request information from their foreign counterparts for the discharge of their respective duties. However, apart from BCN-Interpol, no concrete case in which cooperation was requested was made available to the evaluators by the various entities.

*8.2.4 Providing other forms of international cooperation for AML/CFT purposes*

**National Police**

**464.** BCN-Interpol is the police service that acts as interface between the General Interpol Secretariat and national police services, as well as the police services of other countries. The Bureau performs international police cooperation duties, in addition to criminal investigation, intelligence gathering and capacity building support for law enforcement officers and services. BCN-Interpol Congo participates in information-sharing by supplying data to Interpol databases as well as by responding to requests from foreign counterparts. During the evaluation mission, BCN-Interpol agents stated that they had cooperated with their foreign counterparts. The mission was thus able to learn that:

- The Congo, through the Police Command, shared financial intelligence in the prosecution of environmental crimes by INTERPOL’s mechanism I24-7;
- In 2019, the Police Forces Command shared financial intelligence that led to the arrest of poachers operating in the CEMAC zone. Such exchanges also helped to seize 18 bags of pangolins (more than 200kgs);
- There are also exchanges as part of agreements of the Committee of Central African Police Chiefs (CCPAC).

Table 13: Statistics on international police cooperation exchanges on predicate offences

<b>Offer</b>		
	<b>2020</b>	<b>2021</b>
<b>Number of external requests</b>	16	17
<b>Requesting country</b>	Cameroon, DRC	Gabon, DRC, Cameroon and Mali
<b>Number of responses issued</b>	-8 (6 issued from police to police) -8 responses being processed	-10 (6 issued from police to police) -7 being processed
<b>Request</b>		
<b>Number of outbound requests</b>	23	17
<b>Requested country</b>	Cameroon, DRC	Cameroon, DRC and CAR
<b>Number of responses received</b>	5 (2 issued from police to police)	5 (2 awaiting response)

Source: *Judicial Police Command*

## Customs

**465.** The Congolese Customs collaborates with its foreign counterparts, namely: CAR, DRC, Chad and Gabon. They carry out joint actions at the borders and regularly share information within the framework of their respective missions. Regionally, the Customs is connected to the fraud control network (CEN) BRLR-AC. Internationally, the Customs is a member of the World Customs Organization (WCO). However, the evaluation mission was not provided with concrete cases of cooperation in order to assess its existence and relevance.

## COBAC

**466.** Generally, COBAC cooperates and shares information with other supervisory authorities, as part of cooperation between French-speaking regulatory institutions. To this end, it has signed a number of cooperation agreements. Cooperation agreements with central banks include: the agreement relating to cooperation in banking control, information-sharing and general cooperation between the Central Bank of Sao Tome and Principe and COBAC; the agreement relating to cooperation in banking control, information-sharing and general cooperation between the Al-MAGHRIB Bank and COBAC and the Memorandum of Understanding on Cooperation and Information-sharing on the Supervision of Financial Institutions between the Central Bank of Nigeria and COBAC. COBAC has also signed a cooperation agreement on banking control, information-sharing and general cooperation with the Banking Commission of the West African Monetary Union. The purpose of all these agreements is to organize and implement between the supervision authorities, a procedure for sharing information and documents needed to perform duties assigned to them by the instruments governing their banking supervision activities.

**467.** However, COBAC did not provide the evaluation mission with documents on cooperation or information-sharing.

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

**468.** Congolese authorities can forward information on legal persons. The Trade and Personal Property Credit Register (TPPCR) contains all information on the creation and life of commercial legal persons. Such information is entered in the registry of the commercial court

of each division. Basic information in the TPPCR can also be obtained by requesting an extract thereof from the registrar-in chief of the competent court. However, manual archiving of information in the country's twelve divisions may extend the time required to process requests or make the collection of the requested information difficult. In addition, the TPPCR is not centralized.

**469.** Business development formalities in the Congo do not enable the obtaining of information on beneficial owners. The absence of a formal mechanism for identifying the beneficial owners of legal persons hampers information-sharing between the competent national authorities and their foreign counterparts.

***Overall Conclusion on IO 2***

**470.** The Congo has, to a lesser extent, requested mutual legal assistance for the prosecution of predicate offences. With regard to ML/TF, no formal request for mutual legal assistance and extradition has been made or received. NAFI cooperates with its foreign counterparts to an acceptable extent. There are cooperation frameworks for the other competent authorities and their foreign counterparts as well as for supervisory authorities and, in particular, COBAC. However, the insufficient elements of this cooperation provided by the country show that use of international cooperation is low. The TPPCR is computerized in only two (2) out of the country's twelve (12) divisions, and is not centralized. The absence of a formal mechanism for identifying the beneficial owners of legal persons negatively impacts the country's ability to provide effective assistance to other countries.

**471. The Congo is rated as having a low effectiveness level for IO 2.**

## ANNEX ON TECHNICAL COMPLIANCE

### INTRODUCTION

This annex provides a detailed analysis of the level of compliance of the Republic of Congo with the 40 FATF Recommendations. It does not describe the country status or risks, but focuses on analysis of the technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report (MER).

Where FATF obligations and national laws or regulations have remained unchanged, this report refers to the analysis carried out as part of the previous mutual evaluation conducted in March 2015. The report can be consulted on the following website: [www.spagabac.org](http://www.spagabac.org)

Since the last mutual evaluation, the Congo's AML/CFT system has recorded significant legal and institutional improvements which have helped to correct the shortcomings identified, in particular through the adoption of Regulation No. 01/CEMAC/UMAC/CM of 11 April 2016 on the prevention and suppression of money laundering and the financing of terrorism and proliferation in Central Africa, which incorporated the new obligations arising from the revised FATF Recommendations in 2012.

### Recommendation 1 – Assessing risks and applying a risk-based approach

This is a new recommendation that had not been given a specific rating during the previous mutual evaluation of the Congo's AML/CFT system.

#### Country obligations and decisions

##### *Risk assessment*

**Criterion 1.1:** Article 13(1) of the CEMAC Regulation stipulates that each State shall take appropriate measures to identify, assess, understand and mitigate the ML/TF risks to which it is exposed. The Congo had just adopted its NRA report on the date of the mission. Despite the absence of some stakeholders at the operational phase and insufficient statistics, the report findings are reasonable on the whole as they reflect the major ML/TF risks facing the country.

**Criterion 1.2 :** Article 13(2) of the CEMAC states that each State shall designate an authority responsible for coordinating national response to AM/TF risks. NAFI Congo was designated by the Minister in charge of finance as the authority responsible for coordinating the country's NRA.

**Criterion 1.3 :** Article 13 of the CEMAC Regulation contains provisions on the updating of national risks assessments. The Plan of Action which is part of the NRA, approved by the national authorities through Order No.7557/MFBPP-CAB of 21 April 2021, sets update frequency at 3 (three) years.

**Criterion 1.4 :** According to Article 13(2) of the CEMAC Regulation, risk assessment findings are communicated to all the competent authorities, self-regulatory bodies, financial institutions and DNFBPs. The Congolese authorities declared that the NRA report is disseminated through

seminars to raise the awareness of the relevant stakeholders. The said seminars had not yet been organized at the time of the mission.<sup>20</sup>

### *Risk mitigation measures*

**Criterion 1.5 :** Pursuant to Article 13(3) of the CEMAC Regulation, the Congo must adopt a risk-based approach to distribute its resources, and implement measures to prevent or mitigate ML/TF. The Congo has adopted its NRA report, together with an action plan prepared on the basis of risks identified. However, its implementation has not yet been initiated. As a result, the Congo's resources are not distributed following a risk-based approach.

**Criterion 1.6 (*Not applicable*):** The instruments in force in the Congo do not impose any restrictions on the application of FATF Recommendations.

**Criterion 1.7 :** The provisions of Articles 56 to 59 provide for a general obligation for reporting entities to take enhanced due diligence measures in some circumstances, particularly in cross-border correspondent banking or when the ML/FT risk presented by a customer, a product, or a transaction is high. There are no specific provisions in the Congo requiring the country, in case of identification of higher risks, to have an AML/CFT regime that can address such risks, including by:

- (a) requiring financial institutions and designated and non-financial businesses and professions to take enhanced measures to manage and mitigate risks; or
- (b) requiring financial institutions and designated and non-financial businesses and professions to ensure that such information is included in their risk assessments.

**Criterion 1.8 :** Article 52 of the CEMAC Regulation provides that where the risk of ML/FT appears to be low, reporting entities may reduce the intensity of due diligence measures. In this case, they must justify to their supervisory authority that the extent of the measures is commensurate to the risk. However, it is not explicitly stated that the measures taken should be consistent with national risk assessment findings.

**Criterion 1.9 :** Pursuant to Article 12(4) of the CEMAC Regulation, supervisory authorities and self-regulatory bodies should ensure that reporting entities implement mechanisms to identify, assess, and understand the ML/FT risks to which they are exposed. However, most categories of DNFBPs do not have a designated supervisory authority to ensure that they fulfil their AML/CFT obligations, just as some financial institution supervisors do not yet ensure that their reporting entities take steps to identify and understand their risks.

### **Obligations and decisions for financial institutions and designated non-financial businesses and professions**

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<sup>20</sup> However, after the on-site visit, the country adopted a "Sector Conference for the Presentation and Dissemination of NRA Findings" (CSRDCNRA) as dissemination mechanism on 15 July 2021, which has a dissemination program comprising all the national AML/CFT stakeholders. The NRA findings were disseminated from 15 July to 6 August 2021.

### *Risk assessment*

**Criterion 1.10 :** Article 14(1) of the CEMAC Regulation stipulates that reporting entities should take appropriate measures to identify and assess the ML/FT risks to which they are exposed, taking into account factors such as customers, countries or geographical areas, products, services, transactions and distribution channels.

- (a) The assessments referred to above should be documented in accordance with Article 14(2) of the CEMAC Regulation.
- (b) Article 14(3) of the CEMAC Regulation stipulates that reporting entities must have policies, procedures and controls to mitigate and effectively manage identified ML/TF risks. However, it is not clearly stated that the reporting entities should consider all relevant risk factors before determining the overall risk level and the level and type of appropriate measures to be applied to mitigate such risks.
- (c) Risk assessments carried out by reporting entities must be updated, in accordance with Article 14(2) of the CEMAC Regulation.
- (d) Reports of risk assessments carried out by reporting entities must be made available to the control, regulatory and supervisory bodies, competent authorities and NAFL, pursuant to Article 14(2) of the CEMAC Regulation.

The requirement to implement a risk-based approach is also contained in Article 4 of Regulation No. 001/CIMA/PCMA/PCE/SG/2021 of 2 March 2021 which replaces Regulation No. 0004/CIMA/PCMA/PCE/SG/08 defining the procedures applicable by insurance bodies in CIMA Member States in the fight against money laundering and terrorist financing, and the proliferation of weapons of mass destruction.

### *Risk mitigation measures*

**Criterion 1.11 :**

- (a) According to Article 14(3) of the CEMAC Regulation, reporting entities must have policies, procedures and controls to mitigate and effectively manage ML/FT risks identified within CEMAC, in the Congo and other reporting entities. Such policies, procedures and controls must be authorized at a high level of their hierarchy, in accordance with the last paragraph of Article 14 of the CEMAC Regulation.
- (b) The same last paragraph of Article 14 of the CEMAC Regulation also states that the adopted policies, procedures and controls must be monitored and reinforced, as necessary.
- (c) Article 57 of the CEMAC Regulation states that where the ML/TF risks presented by a customer, a product, or a transaction are high, reporting entities are required to step up the intensity of due diligence measures.

### **Criterion 1.12 (Not applicable)**

#### **Weighting and conclusion**

The CEMAC Regulation contains obligations for the State of the Congo to identify and assess ML/TF risks to which it is exposed, to designate an authority to coordinate risk assessment actions, to update risk assessments and to have mechanisms for disseminating the results of risk assessments. At the time of the mission, the Congo had just adopted its NRA report, together with an action plan. However, the NRA report had not yet been disseminated and implementation of the action plan had not yet been initiated. Furthermore, there are no specific provisions compelling the country, in case of identification of higher risks, to have an AML/CFT regime to address such risks. Similarly, it is not explicitly stated that when authorizing simplified measures for some recommendations, the measures taken should be consistent with national risk assessment findings.

**The Congo is rated as Partly Compliant with Recommendation 1.**

#### **Recommendation 2: National cooperation and coordination**

Recommendation 2 refers to Recommendation 31 in the old methodology, on the basis of which the Congo carried out its first mutual evaluation in 2015. In that evaluation, the Congo was rated as non-compliant with Recommendation 31, which dealt with national cooperation. The evaluators noted total absence of cooperation between AML/CFT actors.

**Criterion 2.1 :** The Congo has national AML/CFT policies that take into account the risks identified, through Regulation No. 01/CEMAC/UMAC/CM (CEMAC Regulation), the decree organizing NAFI and the National Risk Assessment (NRA) report, which include provisions for updating or review.

**Criterion 2.2 :** In 2018, the Congo established a National AML/CFT Coordination Committee through Decree No. 2018 - 261 of 16 June 2018 and Order No. 12073/MFB- CAB of 26 June 2018 appointing members of the said Committee.

**Criterion 2.3 :** The combined provisions of the CEMAC Regulation, the decree to lay down the organization and functioning of NAFI (NAFI Decree) and those of the decree to set up the Coordination Committee provide for cooperation mechanisms between the various authorities, at operational and policy levels. However, the major stakeholders in the fight against financial crime in general do not seem to have a mechanism or platform for pooling their actions.

**Criterion 2.4 :** The provisions of the CEMAC Regulation, the NAFI decree and the Coordination Committee decree also apply to proliferation financing. Furthermore, on 12 May 2021 the Congo adopted Law No. 28-2021 on the legal regime for the freezing of funds and assets linked to terrorism and its financing. The instrument describes the procedures for implementing freezing, seizure and confiscation measures in relation to terrorist and proliferation financing.

**Criterion 2.5 :** The comments in criteria 2.4 and 2.3 also apply to criterion 2.5.

#### **Weighting and conclusion**

The Congo has a legal arsenal that governs national cooperation between stakeholders. The arsenal comprises the CEMAC Regulation on the prevention and suppression of money laundering and terrorist financing and proliferation in Central Africa, the 2018 decree on the creation, powers, composition and functioning of the National Coordination Committee and the decree of the same year appointing members of the Committee. However, the Committee is not yet operational and the major stakeholders in the fight against financial crime in general do not seem to have a mechanism or platform for pooling their actions.

**The Congo is rated as Largely Compliant with Recommendation 2.**

### **Recommendation 3: Money laundering offence**

Recommendation 3 refers to Recommendation 1 in the previous methodology and the Congo was rated partly compliant, the main shortcomings being that some of the predicate offences in the designated category were not considered crimes or offences under Congolese law (stock market offences, trafficking in persons, insider trading etc.) and, above all, that no court decision had been taken yet on money laundering.

**Criterion 3.1 :** The CEMAC Regulation considers money laundering a criminal offence, in accordance with the Vienna and Palermo Conventions. Article 8 of the CEMAC Regulation stipulates that: "...Money laundering is the conversion or transfer...concealment or disguise...acquisition, possession or use.... participation...".

**Criterion 3.2 :** Article 1(20) of the CEMAC Regulation establishes the list of categories of designated offences. However, some of these offences are not criminalized domestically, such as product piracy, stock exchange and tax offences, etc.

**Criterion 3.3 :** All predicate offences in the Congo are considered serious offences or crimes punishable by imprisonment of at least one (1) year.

**Criterion 3.4 :** Article 1 of the CEMAC Regulation criminalizes money laundering as the conversion, transfer, disguise or possession of "property" .... derived from a crime or offence. Here, property is understood to be assets of any kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, fungible or non-fungible, as well as documents or legal instruments in any form whatsoever, including electronic or digital, evidencing title to or interest in such assets.

**Criterion 3.5 :** Article 8(2) stipulates that "...money laundering shall be deemed to have occurred even if the activities from which the property to be laundered originated were carried out in the territory of another Member State or of a third party State or did not give rise to prosecution or conviction in that State". Article 120 states that "the provisions of this Part (Prevention of money laundering) shall apply even if the perpetrator of the original offence is not prosecuted or convicted, or if s/he fails to meet a condition for bringing legal proceedings in respect of the said offence. The perpetrator of the original offence may also be prosecuted for money laundering offence".

**Criterion 3.6 :** Articles 8(2) and 120 above apply to Criterion 3.6.

**Criterion 3.7 :** Article 120 above of the CEMAC Regulations are consistent with Criterion 3.7.

**Criterion 3.8 :** The intentional element is enshrined in Article 8(3) of the CEMAC Regulation which states that knowledge or intent, as elements of the above activities (conversion or transfer, concealment or disguise etc.) may be inferred from objective factual circumstances. The burden of proof of the legality of the origin of the property in question lies with the person prosecuted.

**Criterion 3.9 :** The penalties for money laundering are proportionate and dissuasive, as Article 114 provides that natural persons found guilty of money laundering shall be punished with imprisonment for from five (5) to ten (10) years and fine of from five (5) to ten (10) times the value of the property or funds involved in the money laundering operations, but not less than FCFA 10,000,000. Article 115 refers to penalties for conspiracy or criminal enterprise to commit money laundering. Article 116 deals with sentencing in case of aggravating circumstances. Article 117 deals with the penalties applicable to certain acts of money laundering, in particular the act of the owner, the act of destroying or falsifying, the act of informing the perpetrator of money laundering, etc. Article 118 provides for additional sanctions for natural persons.

**Criterion 3.10 :** The criminal liability of legal persons is enshrined in Article 126 (or 127) of the CEMAC Regulation. The sanctions are higher than those applicable to natural persons.

**Criterion 3.11 :** Articles 8, 114 and 115 of the CEMAC Regulation meet the requirements of Criterion 3.11.

### **Weighting and conclusion**

The Congolese law, notably the CEMAC AML/CFT Regulation, contains Partly satisfactory provisions criminalizing money laundering as some categories of designated offences are not criminalized domestically.

**The Congo is rated as Partly Compliant with Recommendation 3.**

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

At the end of the Congo's last mutual evaluation in 2015, Recommendation 4, formerly R.3, was rated as Partly Compliant, because the Congolese law did not allow for the confiscation of property of equivalent value and the evaluators noted the non-implementation of the criteria of the recommendation.

#### **Criterion 4.1:**

- (a) Articles 118 (8), 126 (2) and 130 of the CEMAC AML/CFT Regulation allow for the confiscation of proceeds from ML offence. However, there is no provision for the express confiscation of laundered property.
- (b) There is no provision for instruments used or intended to be used in ML by natural persons. Such provision exists only for ML (Article 126(2)) and TF (Articles 127(2) and 131) by legal persons.
- (c) Article 131 provides for the confiscation of any movable or immovable property intended to be used or used in the commission of TF.
- (d) Articles 130 and 131 exhaustively provide for the confiscation of property of equivalent value:

- 130: concerning TF, the confiscation, up to their value, of legitimately acquired property to which proceeds from the offence are added, as well as the income and other benefits derived from such proceeds, from the property into which they are transformed or invested;

- 131: regarding FT, the confiscation of property, funds and other financial resources that cannot be represented is ordered in "VALUE".

**Criterion 4.2:**

- (a) Articles 98, 99, 104 and 131(3) provide for the identification and location of funds, property and other financial resources to be confiscated.
- (b) The CEMAC Regulation provides for provisional freezing and seizure measures (Part 5: Articles 104, 105 et seq.).
- (c) There are legislative provisions to prevent or annul actions that undermine the Congo's ability to enforce provisional measures. Funds and property that have been the subject of provisional measures for confiscation purposes are made unavailable. Article 104 of the CEMAC Regulation allows for the lifting of such measures on the order of the competent judicial authority under conditions laid down by law. Article 105 prohibits reporting entities from directly or indirectly making funds undergoing the freezing procedure available to or for the benefit of the persons, entities or bodies concerned by the freezing orders. They are also prohibited from providing or continuing to provide services to such persons, entities or bodies. In addition, it is prohibited to knowingly and intentionally carry out or participate in transactions the object or effect of which is, directly or indirectly, to circumvent the freezing orders issued. However, in the area of TF, the non-designation of the competent authority for administrative freezing remains a major shortcoming that hinders the prevention or annulment of actions that compromise the Congo's ability to apply provisional measures.
- (d) Articles 98 to 102 provide for investigative techniques, infiltration, controlled delivery, anonymous testimony, witness protection, lifting of professional secrecy and protection in case of breach of such secrecy.

**Criterion 4.3 :** Protection of the rights of third parties is provided for by Articles 102, 110, 112 and 131 on exemption from liability for breach of confidentiality and the possibility for third parties to assert their right of ownership over property subject to provisional measures or confiscation.

**Criterion 4.4 :** Articles 130 and 131 provide not only for seizure, freezing and confiscation, but also for the disposal of frozen or confiscated property. Court registries are responsible for managing frozen, seized and confiscated property.

**Weighting and conclusion**

The legal framework only provides for the confiscation of proceeds from money laundering and instruments used or intended to be used in the commission of some predicate offences. It does not expressly provide for the confiscation of laundered property. Furthermore, with regard

to TF, the non-designation of the competent authority for administrative freezing is a major shortcoming that hinders the prevention or annulment of actions that undermine the Congo's ability to apply provisional measures.

**The Congo is rated as Partly Compliant with R 4.**

### **Recommendation 5: Terrorist financing offence**

In its previous NRA, the Congo was rated as Partially Compliant (PC) with these requirements, due to the non-criminalization of individual terrorist and terrorist organization financing, the narrow notion of "funds", the uncertainty about national jurisdiction and the non-liability of legal persons. The Congo has implemented reforms to improve its anti-terrorist financing system.

**Criterion 5.1 :** Terrorist financing offence is criminalized under Article 9 of Regulation No. 01/16/CEMAC/UMAC/CM of 11 April 2016 on the prevention and suppression of money laundering and terrorist financing and proliferation in Central Africa, in accordance with Article 2 of the United Nations International Convention for the Suppression of the Financing of Terrorism. Article 9 of the CEMAC Regulation criminalizes the commission of terrorist acts by a natural or legal person who, by any means whatsoever, directly or indirectly, illicitly and deliberately, provides or collects funds for use, or knowing that they will be used in whole or in part: (a) with a view to committing one or more terrorist acts; (b) by a terrorist organization to commit one or more terrorist acts; (c) by an individual terrorist or group of terrorists to commit one or more terrorist acts; and (d) for providing support to a terrorist or group of terrorists.

**Criterion 5.2 :** Article 9 of the CEMAC Regulation states that TF offence is established against any person who, by any means whatsoever, deliberately, directly or indirectly, provides or collects funds for use, or knowing that they will be used in whole or in part:

- (a) to commit one or more terrorist acts;
- (b) by a terrorist organization or by a terrorist, including support for a terrorist or a group of terrorists without any link to a specific terrorist act(s).

However, the CEMAC Regulation does not cover the collection or supply of other goods.

**Criterion 5.2a :** The CEMAC Regulation does not criminalize the financing of travel by persons to a State other than their State of residence or nationality, with the aim of committing, organizing or preparing terrorist acts, or in order to provide, participate in or undergo training in terrorism.

**Criterion 5.3 :** Article 9(2) of the CEMAC Regulation stipulates that TF offence is also deemed to have been committed even if the funds provided or collected are of lawful origin. This provision is reinforced by that of Article 1(38) which defines funds as all financial assets and economic benefits of any kind, whatever their method of acquisition... However, "other property" is not expressly provided for.

**Criterion 5.4 :** Article 9 of the CEMAC Regulation specifies that the offence of terrorist financing is deemed to have been committed whether the act takes place or not. Article 121(2)

does not require that the funds be used or not to commit the act or if there is no link to one or more specific terrorist acts.

**Criterion 5.5 :** Article 9(3) of the CEMAC Regulation states that the criminal intent required to establish proof of TF offence is inferred from objective factual circumstances.

**Criterion 5.6 :** According to Article 121 of the CEMAC Regulation, natural persons found guilty of a TF offence are punished with a prison term of from ten (10) to twenty (20) years and a fine equal to at least five times the value of the goods or funds involved in TF transactions. Article 122 provides for the doubling of such penalty where the offence is committed habitually or the perpetrator is a repeat offender or uses facilities provided for the exercise of a professional activity and other specified circumstances. Article 123 of the Regulation provides for optional additional criminal penalties for natural persons, while Article 124 excludes from suspended sentence any conviction relating to terrorist financing. The various penalties are proportionate and dissuasive.

**Criterion 5.7 :** The CEMAC Regulation provides for proportionate and dissuasive criminal sanctions for legal persons. Article 127 provides that legal persons other than the State on whose behalf or for the benefit of whom a TF offence has been committed by one of their organs or managers, are punishable with a fine equal to five times the fines imposed on natural persons, without prejudice to sentencing of the natural persons found guilty as principal offenders or accomplices. They may also be sentenced to one or more of the following penalties: (a) definitive ban from public contracts or for a period not exceeding ten (10) years; (b) confiscation of the property that was used or was intended to be used to commit the offence or the property that resulted therefrom; (c) placement under judicial supervision, for a period not exceeding five years; (d) definitive ban, for managers, for a period not exceeding ten (10) years, from directly or indirectly exercising one or more professional or social activities in the course of which the offence was committed; (e) permanent closure for a period of ten (10) years at most, of the establishments or of one of the establishments of the company used to commit the criminal acts; dissolution, where the legal persons were created to commit the criminal acts; and (f) posting of the decision rendered or dissemination thereof, in the print media or by any audio-visual communication means, at the expense of the convicted legal person.

In addition to criminal sanctions, the control authority having disciplinary powers may impose dissuasive disciplinary sanctions up to, and including, withdrawal of authorization.

### **Criterion 5.8**

- (a) Articles 9 and 121(3) of the CEMAC Regulation criminalize attempted commission of a TF offence.
- (b) The above-mentioned articles criminalize participation as an accomplice in a terrorist financing offence.
- (c) The above-mentioned articles criminalize acts aimed at organizing or ordering third parties to commit a TF offence or an attempted commission of the offence.

The penalties provided for in Article 121 are doubled where the TF offence is committed as part of an organized gang, within the meaning of Articles 9 and 122(3) of the abovementioned Regulation.

**Criterion 5.9 :** Article 1(20)(3) of the CEMAC Regulation on the prevention and suppression of money laundering and terrorist financing and proliferation in Central Africa, lists terrorist financing offence as one of the ML predicate offences.

**Criterion 5.10 :** According to Article 9(2) of the CEMAC Regulation, terrorist financing offence is established even if TF perpetrators reside in a territory different from that of the perpetrators of terrorist acts.

### **Weighting and conclusion**

The Congo has met the main criteria relating to the recommendation on criminalization of terrorist financing. However, it has not criminalized the financing of travel by persons to a State other than their State of residence or nationality, with the aim of committing, organizing or preparing terrorist acts, or in order to provide, participate in or undergo training in terrorism.

**The Congo is rated as Largely Compliant with Recommendation 5.**

### **Recommendation 6: Targeted financial sanctions for terrorism and terrorist financing**

In the previous MER, the Congo was rated Non-Compliant with the requirements of Resolutions 1267 and 1373, due to a confusing regional mechanism for freezing of funds under the Resolutions; the absence of national regulations on implementation of the requirements of Resolutions 1267 and 1373; the absence of mechanisms for considering lists submitted by third States under Resolution 1373; and the absence of confiscation of property of equivalent value.

### *Identifying and designating*

#### **Criterion 6.1**

- (a) The CEMAC Regulation and Law No. 28-2021 of 12 May 2021 on the regime for freezing funds or assets linked to terrorism and its financing do not provide for the designation of an authority or a court empowered to propose the designation of persons or entities to the 1267/1989 Committee and to propose the designation of persons or entities to the 1988 Committee.
- (b) The CEMAC Regulation and Law No. 28-2021 of 12 May 2021 on the regime for freezing funds or assets linked to terrorism and its financing do not provide for designation mechanisms to identify designation targets.
- (c) The CEMAC Regulation and Law No. 28-2021 of 12 May 2021 on the regime for freezing funds or assets linked to terrorism and its financing do not set out the level of proof required for any proposed designation. The said instruments do not specify whether or not the decision to designate is subject to the existence of criminal proceedings.
- (d) The CEMAC Regulation and Law No. 28-2021 of 12 May 2021 on the regime for freezing funds or assets linked to terrorism and its financing do not cover all designation procedures

under the UN sanctions regimes. Furthermore, not all powers, means of publication and remedies are set out in full and in detail in the said instruments.

- (e) The obligation to provide relevant and detailed information on the proposed name and the statement of reasons for the listing has not been provided for by the CEMAC Regulation and Law No. 28-2021 of 12 May 2021 on the regime for freezing funds or assets linked to terrorism and its financing. Furthermore, the Congolese legal framework does not specify whether its status as a designating State can be made public.

### **Criterion 6.2**

- (a) The CEMAC Regulations and Law No. 28-2021 of 12 May 2021 on the regime for freezing funds or assets linked to terrorism and its financing do not provide for the designation of an authority responsible for proposing the designation of persons or entities, in accordance with UNSCR 1373; at the initiative of the country itself or after examining the request of another country and, where appropriate, give effect to the request.
- (b) The CEMAC Regulation and Law No. 28-2021 of 12 May 2021 on the regime for freezing funds or assets linked to terrorism and its financing do not provide for designation mechanisms to identify designation targets, in accordance with UNSCR 1373.
- (c) The CEMAC Regulation and Law No. 28-2021 of 12 May 2021 on the regime for freezing funds or assets linked to terrorism and its financing do not provide any information to ascertain whether upon receipt of a request, the country has the capacity to quickly ensure, under the applicable national principles (*supra*), that the request is substantiated on reasonable grounds or on a reasonable basis to suspect or believe that the person or entity proposed for designation meets the designation criteria of UNSCR 1373.
- (d) Contrary to Article 105(3) of the CEMAC AML/CFT Regulation, Law No. 28-2021 of 12 May 2021 on the regime for freezing funds or assets linked to terrorism and its financing does not set out the level of evidence required for "reasonable grounds" or the "reasonable basis" for any proposed designation. The law does not specify whether or not the decision to designate is subject to the existence of criminal proceedings.
- (e) The CEMAC Regulation and Law No. 28-2021 of 12 May 2021 on the regime for freezing funds or assets linked to terrorism and its financing do not provide for situations where, when another country is requested to give effect to actions taken under the freezing mechanisms, the Congo provides all possible information for identification, as well as specific information to support the decision

**Criterion 6.3 :** The Congo has not designated competent authorities as part of the implementation of UNSCRs, or defined the powers and procedures or legal mechanisms that they should have in order to:

- (a) collect or solicit information to identify persons and entities who meet the designation criteria, on the basis of reasonable grounds, or for which there is a reasonable basis to suspect or believe that they meet the criteria; and

- (b) to intervene ex parte against a person or entity that has been identified and whose designation (or proposed designation) is being examined.

### *Freezing*

**Criterion 6.4 :** The Congo has provided for the immediate implementation of targeted financial sanctions, pursuant to Articles 105 to 107 of the CEMAC Regulation. However, there are shortcomings in the system, as the authority or court responsible for administrative freezing has not been designated and the advisory commission on administrative freeze, which is necessary for the establishment of the national list in accordance with Resolution 1373, has not been provided for.

**Criterion 6.5 :** Article 1 of the CEMAC Regulation defines freezing as "the prohibition of the transfer, conversion, disposal, assignment or movement of any property, equipment or instrument pursuant to an order made by a competent authority or court under a freezing mechanism for the duration of the validity of such order or until a confiscation or release order is issued by the competent court".

- (a) From this definition, it can be noted that the AML/CFT system in the Congo requires financial institutions and any person or entity holding property, funds or other financial resources in the country, to freeze them immediately and without prior notification to the holder (Article 105 of the CEMAC Regulation).
- (b) The freezing obligation extends to all financial assets and economic benefits of any kind, however acquired (Art. 1 (38)), linked to terrorists, terrorist organizations or persons or organizations associated with them (Art. 105(6)). However, the property, funds and other resources of persons and entities acting on behalf of, or on the instruction of designated persons are not targeted.
- (c) It is strictly forbidden for persons subject to the freezing procedure (Art. 6 and 7 of the CEMAC Regulation) to directly or indirectly make funds available to or for the benefit of natural or legal persons, entities or bodies designated by the freezing order. Similarly, they are prohibited from providing or continuing to provide services to designated persons or entities or from using them for their benefit (Art. 105(7) and (8), of the CEMAC Regulation).
- (d) Once the decision is taken, the competent authority shall immediately notify the administrative freezing order to the persons and bodies and to any person likely to hold funds or other property belonging to the persons and entities concerned. Similarly, any decision to freeze or release funds or other financial resources must be made public, in particular through publication in the Official Gazette or in a legal announcement newspaper (Articles 105(5) and 106 of the CEMAC Regulation). This procedure is valid in the event of a revision or addition. However, the Congo has not provided clear guidelines, in particular to FIs and other persons and entities, including DNFBPs, that may hold funds and other targeted assets, as to their obligations under the freezing mechanisms. In addition, the competent administrative freezing authority has not been designated and the advisory committee on administrative freezing has not been established.

- (e) Pursuant to Article 105(6) of the above-mentioned Regulation, financial institutions and other regulated persons immediately notify NAFI of the existence of funds belonging to persons or entities involved in terrorist financing or proliferation, as well as to terrorist organizations or persons or organizations associated with them. They also declare to the competent authority all frozen assets. However, these obligations do not cover attempted transactions. Moreover, the competent administrative freezing authority has not been designated.

Article 110 of the CEMAC Regulation provides that the competent authority may authorize the payment or return of frozen funds, financial instruments or other economic resources to a bona fide third party implementing TFSs. However, the competent administrative freezing authority has not been designated and the advisory commission on administrative freezing has not been established.

### *Delisting, unfreezing and providing access to frozen funds and other assets*

#### **Criterion 6.6**

- (a) There are no procedures for submitting delisting requests to the relevant United Nations Sanctions Committee in the case of persons and entities designated under United Nations sanctions regimes which, in the opinion of the country, do not or no longer meet the designation criteria.
- (b) Article 112 of the CEMAC Regulation organizes procedures or mechanisms to enable any natural or legal person who no longer fulfils the conditions and whose funds and other financial resources have been frozen to lodge an appeal against such decision within one month of its publication in the Official Gazette or in a legal announcement newspaper. The request is addressed to the competent authority, providing all objective elements likely to demonstrate the error. However, the competent administrative freezing authority has not been designated and the advisory commission on administrative freezing has not been set up.
- (c) Under UNSCR 1373, it is possible to review the decision before an Emergency Judge, following the procedure set out in Criterion 6.6 (b).
- (d) With regard to designations made under UNSCR 1988 and 1989, Article 112(2) of the Regulations does not provide for any measures, but requests listed persons and entities to comply with the appropriate procedure provided for under the UN Security Council Resolutions.
- (e) The same applies to Al-Qaeda Sanctions List designations. The persons or entities concerned may also initiate withdrawal procedures in accordance with UN Security Council Resolutions.
- (f) In case of an error affecting a designated person or entity in the implementation of Resolutions 1267, 1988 and 1989, the procedures set out in 6.6 (d) above shall apply. For Resolution 1373, the procedures described in 6.6 (b) shall apply in this case.
- (g) The competent authority is required to inform the public of any decision to freeze or unfreeze funds or other resources, in particular by publishing it in the Official Gazette or in a legal announcement newspaper. However, the Congolese instruments do not provide for specific notification to FIs and EPNFDs, as well as clear guidelines on the

subject. Furthermore, the competent administrative freezing authority has not been designated and the advisory commission on administrative freezing has not been set up.

**Criterion 6.7 :** Article 108 of the CEMAC Regulation allows for the authorization of access to frozen funds and other property, and lays down conditions for such authorizations. Thus, where an administrative measure to freeze funds or other property is taken, the competent administrative freezing authority may, under conditions it deems appropriate, authorize the person or entity that is the subject of the measure, at its request, to dispose of a monthly amount of money, within the limits of available funds, intended to cover recurrent household expenses, for a natural person, or to cover expenses required to carry out an activity that is compatible with the requirements of public order, for legal persons. The amount may also cover legal assistance costs or exceptional costs. All costs must be justified in advance. However, the competent administrative freezing authority has not been designated.

### **Weighting and conclusion**

The Congo has not completed the legal framework for administrative freezing, including the designation of the competent administrative freezing authority and the creation of the advisory commission on administrative freezing, as well as the establishment of mechanisms and clear guidelines for the implementation of TFSs relating to terrorism and its financing.

**The Congo is rated as Non-Compliant with Recommendation 6.**

### **Recommendation 7: Targeted financial sanctions relating to proliferation**

Targeted financial sanctions relating to proliferation was not among the Recommendations of the Congo's last assessment, because the 2004 methodology did not take into account TFSs.

**Criterion 7.1 :** The Congo does not have a legal framework for implementing targeted financial sanctions, in accordance with UN Security Council Resolutions on combating the financing of the proliferation of weapons of mass destruction.

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

**Criterion 7.2 :** The Congo has not designated a competent authority responsible for enforcing proliferation financing-related TFSs, in accordance with the procedures and standards provided for in (a) (b) (c) (d) (e) and (f).

**Criterion 7.3 :** With regard to combating the financing of the proliferation of weapons of mass destruction, the Congo's AML/CFT system has not adopted any measures to monitor and ensure that financial institutions and DNFBPs comply with binding laws and means.

**Criterion 7.4 :** The Congo has not developed or implemented publicly known procedures for submitting delisting requests to the UNSC in case of designated persons and entities who, in the opinion of the country, do not or no longer meet the designation criteria. None of the procedures under (a), (b), (c) and (d) has been implemented.

**Criterion 7.5 :** With regard to combating the financing of the proliferation of weapons of mass destruction, the Congo's AML/CFT framework does not provide for exemptions relating to

contracts, agreements or obligations that arose prior to the date the accounts became subject to TFSs. Thus:

(a) There is no provision for withdrawal from frozen accounts of funds or other financial resources due under contracts, agreements or obligations concluded or arising prior to the entry into force of the decision to freeze funds. Similarly, there is no provision for payments into the said accounts of proceeds from the aforementioned funds, instruments and resources, as well as accrued interest;

(b) Conditions for derogating from withdrawals from the frozen accounts, established by Resolution 2231, of the funds or other financial resources due by virtue of contracts, agreements or obligations, concluded or arising prior to the entry into force of the decision to freeze funds, are not provided for.

### **Weighting and conclusion**

The Congo does not have a legal framework for implementing targeted financial sanctions relating to proliferation financing.

**The Congo is rated as Non-Compliant with Recommendation 7.**

### **Recommendation 8: Non-profit organizations (NPOs)**

In the last NRA, the Congo was rated as Non-Compliant due to shortcomings and non-compliance of regulations with SR VIII criteria, the non-existence of mechanisms for monitoring and controlling associations, lack of awareness-raising on the risks of misuse for terrorist financing purposes, lack of cooperation at national level and the absence of a specific mechanism for NPOs that carry out financial transactions.

#### *Taking a risk-based approach*

##### **Criterion 8.1**

- (a) The Congo has not identified a subset of NPOs that could be used for terrorist financing purposes.
- (b) The Congo has not conducted a national review of its NPOs or identified the nature of threats posed by terrorist entities to NPOs.
- (c) The Congolese authorities have not reviewed the laws and regulations relating to NPOs, and have not adopted strict measures to regulate their organization, functioning and activities with regard to TF risks.
- (d) The Congo did not periodically reassess NPOs by examining new information on their potential vulnerabilities to terrorist activities to ensure effective implementation of measures.

#### *Targeted risk-based supervision or monitoring of NPOs*

##### **Criterion 8.2**

- (a) The binding measures provided for in Articles 44 to 46 of the CEMAC Regulation aim to promote accountability and public confidence in the administration and

management of NPOs, as well as the provisions of Circular No. 0074/MID-CAB of 18 February 2010 which, in addition to the required administrative documents, determine applications for recognition, the reports of investigations into the morality of the heads of associations prepared by police services.

- (b) The Congo has not provided evidence of carrying out awareness-raising and education campaigns to encourage and deepen knowledge within NPOs and the donor community on the potential vulnerabilities of NPOs to use for terrorist financing purposes and the risks of terrorist financing, as well as on the measures NPOs can take to protect themselves from such use.
- (c) The sub-criterion on the development of best practices by involving NPOs in addressing terrorist financing risks and vulnerabilities has not been addressed by the country.
- (d) Article 46(6) of the CEMAC Regulation compels NPOs to deposit in a bank account opened in the books of an approved banking institution, all sums of money provided to them as donations or as part of the transactions they are required to carry out.

**Criterion 8.3 :** The Congo has not provided evidence of applying risk-based monitoring and control measures to NPOs exposed to TF risks (cf. c.8.1 (a)).

#### **Criterion 8.4**

- (a) The Congo has not provided evidence of applying the risk-based measures in Criterion 8.3 to NPOs.
- (b) The Congo has not provided evidence of the existence of effective, proportionate and dissuasive sanctions for violations committed by NPOs or persons acting on behalf of such organizations.

#### *Effective information gathering and investigation*

#### **Criterion 8.5**

- (a) The Congo has not provided evidence of having established mechanisms to ensure effective cooperation, coordination and exchange of information among all appropriate authorities and organizations holding relevant information on NPOs.
- (b) The powers of investigative and prosecution authorities to obtain information are discussed in R.31. It should be noted that the police and gendarmerie have investigative powers and the capacity to examine NPOs suspected of being used for terrorist financing purposes or by terrorist organizations, or to actively support terrorist activities or organizations. They are empowered to obtain information directly, by court order or through NAFI.
- (c) Investigation authorities can directly access information on the administration and management of NPOs. Indeed, Article 45 of the CEMAC Regulation requires NPOs to be able to produce, at any time, information on the object and purpose of their activities and the identity of the person or persons who own, manage and control their activities. They are also required to publish annually, in the Official Gazette or in a legal

announcement newspaper, their financial statements showing the breakdown of their income and expenditure. In addition, NPOs are required to keep all records of their transactions for a period of 10 years and make them available to the authorities.

- (d) Pursuant to Article 46 of the CEMAC Regulation, NPOs are required to enter in a register established by the competent authority and to record therein, any donation received of an amount equal to or greater than five hundred thousand CFA francs (763 Euros). Cash donations of an amount equal to or greater than one million CFA francs (1,526 Euros) must be declared to NAFI by the competent authority, as well as those that may be related to a terrorist undertaking or the financing of terrorism, regardless of the amount. In the event of suspected misuse by an NPO for terrorist financing purposes, NAFI is empowered to carry out investigations and to require the NPO to respond to any request for an investigation.

### *Effective capacity to respond to international requests on NPO of concern*

**Criterion 8.6 :** The Congo has not laid down appropriate procedures and designated a contact point empowered to respond to an international request in case an NPO suspected of TF.

### **Weighting and conclusion**

The NPO framework comprises major shortcomings in that the Congo has not identified a subset of NPOs that may be used for TF purposes, and has not identified the TF threats to which NPOs are exposed. The Congo has also not taken measures to promote targeted risk-based control.

**The Congo is rated as Non-Compliant with Recommendation 8.**

### **Recommendation 9: Financial institutions secrecy laws**

At the end of the last evaluation of the Congo's AML/CFT framework, the recommendation relating to financial institutions professional secrecy laws (former R.4) was rated Partly Compliant (PC). The major shortcoming identified was the absence of regulatory provisions ensuring that professional secrecy does not impede information-sharing between financial institutions and national and community supervisors and regulatory authorities, when required.

**Criterion 9.1 :** According to Article 101 of the CEMAC Regulation, professional secrecy may not be raised by professionals to refuse to provide information to the supervisory authorities as well as to NAFI, or to report suspicious transactions, notwithstanding any legislative or regulatory provisions to the contrary. The same applies to information required in the context of an investigation into acts of ML/TF ordered by the judicial authority or carried out under its control, by State officials responsible for identifying and suppressing such offences. With regard to the specific case of NAFI, Article 75 of the said Regulation specifies that: "under no circumstance may professional secrecy be raised against requests from NAFI". The same Article 75 governs information-sharing between NAFI and other competent authorities and government services at national or local levels.

Article 40 of the COBAC Regulation contains the provisions of the CEMAC Regulation relating to data transmission to NAFI, judicial or investigation authorities and COBAC.

Article 94 of the CEMAC Regulation lays down the terms and conditions for information-sharing between supervisory authorities and financial institutions belonging to the same group, as part of the implementation of AML/CFT due diligence. Lastly, the last paragraph of Article 96 of the abovementioned CEMAC Regulation states that: "financial institutions shall communicate the appropriate minimum AML/CFT measures to their branches or subsidiaries located abroad".

Article 91(4) of the CEMAC Regulation requires supervisory authorities to cooperate and exchange information with other competent authorities, and to assist in AML/CFT investigations, prosecutions or other proceedings.

However, there are no specific provisions governing information-sharing between financial institutions at national level within the context of AML/CFT.

### **Weighting and conclusion**

The AML/CFT legislation in force in the Congo allows, to a large extent, for the implementation of the FATF Recommendations, despite legal provisions on the professional secrecy of financial institutions. The shortcoming here is the absence of specific provisions requiring information-sharing between financial institutions at national level within the context of AML/CFT.

**The Congo is rated as Largely Compliant with Recommendation 9.**

### **Recommendation 10: Customer due diligence**

The recommendation on customer due diligence, which was R.5 in the previous methodology, was rated Non-Compliant (NC) at the end of the Congo's last evaluation, for the following reasons: absence of specific provisions prohibiting anonymous accounts or accounts opened under fictitious names; lack of a formal regulatory mechanism for updating records of old accounts with restructured banks; no obligations regarding the management of numbered accounts; no obligation to identify beneficial owners; no obligation on non-banking financial institutions with respect to the categories of customers at risk; unsatisfactory implementation by the banking sector and non-implementation of enhanced supervision measures by non-banking financial institutions.

**Criterion 10.1 :** Article 23 (2) of the CEMAC Regulation formally prohibit financial institutions from keeping anonymous accounts or accounts under fictitious names.

#### *When customer due diligence is required*

**Criterion 10.2 :** Chapter II of the CEMAC Regulation deals with customer due diligence by financial institutions. These provisions are also contained in Chapter III of COBAC Regulation R2005-1, Part III of Regulation No. 01/CIMA/PCMA/PCE/SG/2021 and Articles 227, 228 and 229 of the COSUMAF General Regulation.

Such due diligence obligations are imposed on financial institutions where:

- (a) they establish business relationships: According to Article 21 of the CEMAC Regulation, they are required to identify their customer and, where applicable, the beneficial owner

of the business relationship through appropriate means, and to check the identification elements upon presentation of any documentary evidence. The same obligations are contained in Article 4 of COBAC Regulation R.2005-1, Article 13 of Regulation No. 01/CIMA/PCMA/PCE/SG/2021 and Article 227 of the COSUMAF General Regulation;

- (b) they carry out occasional transactions: Articles 29(a) and 32 of the CEMAC Regulation prescribe the identification of occasional customers where they carry out (i) a transaction for an amount exceeding ten million (10,000,000) CFA francs for persons other than currency exchange bureaus; (ii) an amount equal to or above five million (5,000,000) CFA francs, irrespective of whether in a single transaction or several transactions which appear to be linked, for FIs, including currency exchange bureaus (Art. 32.2). Identification is also required even where the amount of the transaction is below the threshold set in the event of doubt as to the legality of the origin of the funds. Article 1(4) and (5) of COBAC Regulation R.2005-1 contains obligations regarding the identification of occasional customers, without setting thresholds;
- (c) they carry out occasional transactions in the form of wire transfers: Articles 29 (b), 32 (1) and 36 (1) and (2) define the due diligence duties for occasional customers making a national or international wire transfer within the meaning of R.16;
- (d) there is suspicion of ML/TF: even where the amount of the transaction is below the threshold, Articles 29 and 32 prescribe identification obligations for occasional customers in the event of suspicion of money laundering, terrorist financing or doubts about the lawful origin of the funds;
- (e) the financial institution doubts the veracity or relevance of the customer identification data previously obtained. This obligation on FIs is contained in Article 29 of the CEMAC Regulation.

#### *Due diligence measures required for all customers*

**Criterion 10.3 :** Article 21 of the CEMAC Regulation lays down the prerequisites for entering into a business relationship, requiring reporting entities to identify their customers and, where applicable, the beneficial owners of the business relationship, through appropriate means, by checking the identification elements upon presentation of any supporting document. Article 29 of the same CEMAC Regulation supplements these provisions by requiring financial institutions to identify their customers, irrespective of whether such customers are occasional or permanent, and check the identity and powers of persons acting on behalf of their customers, by means of documents, sources, data or independent and authenticated information. Article 32 prescribes such due diligence requirements exclusively for occasional customers. Lastly, Article 34 recommends that financial institutions re-identify customers where the identity of their customers and the identification elements previously obtained are no longer accurate or relevant.

These provisions are also contained in Articles 4 and 5 of COBAC Regulation R-2005 of 1 April 2005, which take into account the obligation to identify a customer, irrespective of whether such customer is occasional or permanent and whether the customer is a legal or natural

person, and check the identity by means of documents, data and information from reliable and independent sources.

For insurance organizations, the applicable measures are contained in Article 13 of Regulation No. 01/CIMA/PCMA/PCE/SG/2021.

However, none of these instruments expressly provides for due diligence in the case of a legal arrangement. As a result, FIs are not required to identify customers who are or act on behalf of a legal arrangement.

**Criterion 10.4 :** Where the customer does not appear to be acting on his own behalf, Article 33 of the CEMAC Regulation requires the financial institution to inquire about the identity of the real originator using any means. Article 29 of the same Regulation requires financial institutions to identify their customers and, where appropriate, check the identity and powers of persons acting on behalf of their customers, by means of documents, sources, data or independent and authenticated information. These obligations are also contained in Articles 4 and 5 of COBAC Regulation R-2005 and in Article 13 of Regulation No. 01/CIMA/PCMA/PCE/SG/2021 for the insurance sector.

**Criterion 10.5 :** Articles 21 and 33 of the CEMAC Regulation require financial institutions, prior to entering into a business relationship with their customer or assisting him in preparing or carrying out a transaction, to identify the customer and, where applicable, the beneficial owner of the business relationship where the customer is not acting on own behalf, through appropriate means, and check the identification documents upon presentation of any written documentary evidence. They are required, under the same conditions, to identify their occasional customers and the beneficial owner of the business relationship. Lastly, in the event of doubt as to whether the customer is acting on his/her own behalf, the financial institution inquires about the identity of the real originator using any means. However, there is no provision on the requirement to ensure reliability of the source of the information obtained on the beneficial owner.

Article 1(16) defines beneficial owner as the natural person who ultimately owns or controls a customer and/or the natural or legal person on whose behalf a transaction is carried out. Beneficial owner also comprises persons who, ultimately, exercise effective control over a legal person or a legal arrangement. This definition of BO is consistent with the one in the glossary of the FATF Methodology.

**Criterion 10.6 :** Articles 22 and 31 of the CEMAC Regulation contain provisions on obligations relating to understanding the purpose and nature of the proposed business relationship and obtaining related information. Article 22 provides that before entering into a business relationship with a customer, financial institutions must gather and analyse the pieces of information from among those featuring on the list drawn up for that purpose by a competent authority, and required for knowing the customer as well as the purpose and nature of the business relationship. Article 31 requires financial institutions to implement mechanisms that help to understand the planned nature of the business relationship, to understand the nature of the activity of legal persons and legal arrangements and their ownership and control structure. Yet, there is no information list established by a competent authority to be gathered by FIs.

**Criterion 10.7 :** Articles 22 and 23 of the CEMAC Regulation contain provisions that require financial institutions to be constantly vigilant with regard to the business relationship and, especially:

- i. to be permanently vigilant regarding any business relationship and carefully examine the transactions carried out in order to ensure that they comply with what they know about their customers, their business activities, their risk profile and, where applicable, the source of their funds (Art. 23(1));
- ii. throughout the duration of the business relationship, collect, update and analyse the pieces of information from among those featuring on a list drawn up for that purpose by a competent authority, which help to have appropriate knowledge of their customer. Such information must be collected and stored in line with the objectives of ML/TF risk assessment and monitoring adapted to the risk (Art. 22(2)). However, the absence of a list drawn up by an authority constitutes failure to comply with this criterion.

Moreover, Articles 12 and 13 of COBAC Regulation R-2005/1 of 1 April 2005 provide that data relating to customer identification must be periodically revised throughout the duration of a business relationship and that measures to preserve the confidentiality of customers and their transactions must not prevent them from subjecting such customers and their transactions to the same rigorous scrutiny and oversight as customary.

*Specific CDD measures required for legal persons and arrangements*

**Criterion 10.8 :** Article 31(3) of the CEMAC Regulation requires financial institutions to implement mechanisms to understand the planned nature of the business relationship. They must understand the nature of the activity of legal persons and legal arrangements as well as their ownership and control structure.

Articles 5(3) and 7 of COBAC Regulation R-2005/1 of 1 April 2005, for their part, compel financial institutions to understand the nature of the customer's activities and its ownership and control structure, where customers are legal entities or legal arrangements.

**Criterion 10.9 :** Pursuant to Article 31 of the CEMAC Regulation and Article 5 (3) of COBAC Regulation R-2005/1, financial institutions are required to identify and check the identity of the customer using information from the following sources:

- (a) the articles of association and any document establishing that the legal person has been legally constituted and that it has a real existence at the time of identification, any official instrument or register establishing its name and its legal form;
- (b) the powers that govern and bind the legal person (articles of association), the powers of persons acting on its behalf, determination of the source of funds and identification of their beneficiaries as well as of the persons who control such funds;
- (c) the address of the registered office.

This obligation also applies to companies whose capital consists of bearer shares or is held by agents (Article 5(4) of COBAC Regulation R-2005/1).

However, there is no obligation to identify the address of one of the main centres of activity where it is different from the address of the registered office. Also, the identification of a legal arrangement is not expressly stated in the aforementioned instruments. Consequently, FIs are under no obligation to identify customers who are or who act on behalf of legal arrangements. For insurance bodies, this obligation is Met in application of the provisions of Article 13 of Regulation No. 01/CIMA/PCMA/PCE/SG/2021.

**Criterion 10.10** : For customers that are legal persons:

- (a) Pursuant to Article 21 of the CEMAC Regulation, financial institutions are required to identify the beneficial owner of the business relationship and to check its identity elements upon presentation of any written documentary evidence. Article 1(16) defines beneficial owner as the natural person who ultimately owns or controls a customer and/or the natural or legal person on whose behalf a transaction is carried out. Beneficial owner also comprises persons who, ultimately, exercise effective control over a legal person or a legal arrangement;
- (b) There are no provisions requiring FIs, in case of doubt as to the identity of the beneficial owner or where there is no natural person exercising control through a shareholding, to identify the natural persons, if any, who exercise control over the legal person or the legal arrangement by other means;
- (c) There are no provisions requiring FIs, where no natural person is identified after the implementation of measures in (a) or (b) above, to identify the relevant natural person who holds the position of main manager.

**Criterion 10.11** : The current body of laws does not require financial institutions, for customers that are legal arrangements, to identify the beneficial owners and to take reasonable steps to check the identity of such persons through the following means:

- (a) for trusts - the identity of the settlor of the trust, the trustee(s), the protector (if any), the beneficiaries or category of beneficiaries and any other natural person who ultimately exercises effective control over the trust (including through a chain of control/ownership);
- (b) for other types of legal arrangements - the identity of persons holding equivalent or similar positions.

#### *CDD for beneficiaries of life insurance policies*

**Criterion 10.12** : Article 42 of the CEMAC Regulation deals with the specific obligations of insurance companies by defining identification diligence only from the cumulative annual premium threshold of five million CFA francs or a single premium of ten million CFA francs, or under certain conditions for pension insurance. Apart from the general due diligence and beneficial owner identification measures contained in Articles 29, 30 and 31 of the CEMAC Regulation, there are no particularly explicit provisions for the beneficiaries of life insurance policies and other insurance-related investment products.

- (a) Article 13.1 of Regulation No. 01/CIMA/PCMA/PCE/SG/2021 stipulates that before entering into a contractual relationship or assisting their customer in preparing or carrying out a transaction, insurance companies must ascertain the identity of their contracting party, in particular: for beneficiaries who are natural persons, ascertain the identity of all contracting parties (surname, first names, date and place of birth, nationality), irrespective of the amounts paid. This provision does not apply to other categories of financial institutions;
- (b) The same provisions apply to the subscriber, originator, agent or any person paying a premium. Where the subscriber is different from the policy holder, the insurance company may also identify the latter where it deems it necessary. Article 13.4 of the CIMA Regulation specifies that where a transaction appears to be carried out on behalf of a third party, the insurance company must inquire into the true identity of the third party;
- (c) There are no binding provisions on the verification of the identity of beneficiaries of life insurance contracts and other insurance-related investment products at the time of payment of benefits by financial institutions.

**Criterion 10.13 :** There is no regulatory requirement for financial institutions to consider beneficiaries of life insurance contracts as a relevant risk factor when determining whether enhanced due diligence measures are applicable. Article 14 of the CEMAC Regulation establishes a general obligation for liable persons to take appropriate measures to identify and assess the ML/TF risks to which they are exposed, taking into account risk factors such as customers, countries or geographical areas, products, services, transactions or distribution channels. Such measures should be proportionate to the nature and size of the liable persons. There are no obligations to identify and check the identity of the beneficial owner of life insurance contracts and other insurance-related investment products at the time of payment of benefits.

#### *Timing of verification*

**Criterion 10.14 :** Articles 21, 22, 23 and 32 of the CEMAC Regulation and Articles 4 and 5 of the COBAC Regulation R-2005 of 1 April 2005 require financial institutions to check the identity of the customer and the beneficial owner before or during the establishment of a business relationship or the execution of operations for occasional customers.

Moreover, Article 13 of Regulation No. 01/CIMA/PCMA/PCE/SG/2021 specifies that before entering into a contractual relationship or assisting the customer in preparing or carrying out a transaction, insurance companies must ascertain the identity of their contracting party.

**Criterion 10.15 (Not applicable):** Article 95 of the CEMAC Regulation requires financial institutions to establish systems for assessing and managing money laundering and terrorist financing risks. They are required to take measures that are proportionate to their risks, their nature and their size, so that the employees concerned are aware of the provisions adopted pursuant to this Regulation, including the applicable data protection requirements. However, such risk management does not specifically address cases where a customer benefits from the business relationship prior to verification. The instruments in force in the Congo do not authorize entry into a business relationship before verification.

### *Existing customers*

**Criterion 10.16 :** Articles 23 (1), 35, 43, and 44 of the CEMAC Regulation require financial institutions to apply due diligence measures to existing customers, and to implement timely due diligence measures to existing relationships, taking into account the existence of previous due diligence measures. These requirements are supplemented in Articles 7, 18 and 21 of COBAC Regulation R-2005/1 and Article 14 of Regulation No. 01/CIMA/PCMA/PCE/SG/2021.

### *Risk-based approach*

**Criterion 10.17 :** Articles 43, 56 to 61, and 95 of the CEMAC Regulation require financial institutions to implement risk management systems and enhanced due diligence measures where money laundering and terrorist financing risks are higher. These provisions are also contained in Articles 7, 22 and 24 of COBAC Regulation R-2005/1 and in Article 4 of Regulation No. 01/CIMA/PCMA/PCE/SG/2021.

**Criterion 10.18** Pursuant to Article 52 of the CEMAC Regulation, when the ML/FT risk appears to be low, FIs may reduce the intensity of due diligence measures. In this case, they should justify to their supervisory authority that the extent of the measures is proportionate to those risks. Such reduction in the intensity of due diligence measures is only valid where there is no suspicion of money laundering or terrorist financing.

### *Failure to satisfactorily complete customer due diligence*

#### **Criterion 10.19**

Article 33 of the CEMAC Regulation requires financial institutions to close their business relationships where there is persistent doubt about the identity of the beneficial owner. Similarly, Article 32 of the same CEMAC Regulation subjects the performance of transactions by operational clients, from certain thresholds and under certain conditions, to the obligation of due diligence. However, this threshold-based approach creates a vacuum with regard to other transactions that fall outside the scope of the thresholds. Apart from these two hypotheses, there is no standard that explicitly and formally prohibits the opening of an account, entry into a business relationship or performance of a transaction where it is impossible to comply with the obligations relating to due diligence measures.

Article 14 of COBAC Regulation R.2005/1 recommends the closure of accounts on which there seem to be insoluble identification problems during operation.

With regard to insurance, Article 13 of Regulation No. 01/CIMA/PCMA/PCE/SG/2021 stipulates that before entering into a contractual relationship or assisting their customer in preparing or carrying out a transaction, such professionals must ascertain the identity of their contracting party.

Article 83 of the CEMAC Regulation requires financial institutions to report to NAFI any transaction for which the identity of the originator, beneficial owner or the settlor of a trust fund remains doubtful despite the due diligence carried out. This provision is included in Article 26 of COBAC Regulation R.2005/1.

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

**Criterion 10.20** : There are no express provisions that compel financial institutions not to proceed with the customer due diligence process and instead to file an STR where they suspect that a transaction is related to money laundering or terrorist financing, and believe that proceeding with the CDD process will draw customer attention.

### **Weighting and conclusion**

The instruments governing AML/CFT in the Congo contain relevant provisions on customer due diligence in the light of FATF requirements. However, there is no specific provision relating to the requirement of reliability of the source of information obtained by reporting entities on the beneficial owner. Furthermore, there are no provisions requiring financial institutions, in the event of doubt as to the identity of the beneficial owner, to identify the natural persons, if any, who exercise control over the legal person or the legal arrangement by other means. Neither are there any particularly explicit provisions for the beneficiaries of life insurance policies and other insurance-related investment products, or on the obligation for competent authorities to establish an FIs information list. Moreover, there are no regulatory provisions requiring financial institutions to consider beneficiaries of life insurance contracts as a relevant risk factor when determining whether enhanced due diligence measures are applicable.

**The Congo is rate as Partly Compliant with Recommendation 10.**

### **Recommendation 11: Record keeping**

The last evaluation of the Congo's AML/CFT system resulted in a Partly Compliant (PC) rating on the recommendation relating to record keeping (former R.10). The major shortcomings noted were: absence of details on the nature and availability of the documents to be kept, lack of details on the type of information to be collected to enable the reconstruction of transactions (apart from some transactions), lack of an explicit obligation for financial institutions to ensure that they are able to provide the competent national authorities with the information and documents they keep in a timely manner and lack of effectiveness, particularly for the non-banking financial sector.

**Criterion 11.1** : Article 38 of the CEMAC Regulation requires financial institutions, without prejudice to provisions laying down more binding obligations, to keep their identity documents for a period of ten (10) years, from the closing of their accounts or the termination of relations with their regular or occasional customers. They are also required to keep all records and documents pertaining to the transactions they carried out and the confidential report on the special monitoring of some transactions for ten (10) years following the operation”.

Article 39 of COBAC Regulation R-2005/1 and Article 18 of Regulation No. 01/CIMA/PCMA/PCE/SG/2021 also take into account these obligations to keep record for a period of five years.

**Criterion 11.2** : Articles 38 and 61 of the CEMAC Regulation require that the outcomes of the review of implementation of enhanced due diligence measures be kept for at least ten years.

Article 39 of COBAC Regulation R-2005 of 1 April 2005, for its part, provides for a period of five (5) years for record keeping.

However, none of these provisions expressly requires financial institutions to keep the account books and business correspondence of their customers.

**Criterion 11.3 :** Pursuant to Article 39 of the CEMAC Regulation, the documents and records relating to identification obligations provided for in the instruments are disclosed by financial institutions to: judicial authorities; State officials responsible for detecting and suppressing money laundering offences, as part of legal proceedings; supervisory authorities; and NAFI, upon request. According to paragraph 2 of this Article, the purpose of such obligation is to enable the reconstruction of transactions carried out by a natural or legal person and which are linked to a transaction that has been the subject of a suspicious transaction report or the characteristics of which have been recorded in the confidential register in the implementation of enhanced due diligence obligations.

Articles 39 and 40 of COBAC Regulation R-2005/1 and Article 18 of Regulation No. 01/CIMA/PCMA/PCE/SG/2021 contain similar provisions.

**Criterion 11.4 :** Article 39 of the CEMAC Regulation provides for disclosure of documents to competent national authorities and to NAFI by financial institutions. However, it does not contain binding provisions, in a general manner, on deadlines for disclosure of such documents. Article 75, which deals with NAFI's right of disclosure, specifies that the documents must be forwarded to it by financial institutions "within the time limits that it shall set". Lastly, Article 91(7) requires supervisory authorities to communicate "without delay" to NAFI, any information relating to suspicious transactions or facts that could be linked to money laundering or terrorist financing.

### **Weighting and conclusion**

Most of FATF's obligations regarding record keeping are contained in the instruments governing AML/CFT in the Congo. However, none of such provisions explicitly require financial institutions to keep their customers' accounting books and business correspondence, and there are no generally binding provisions on the time limits for disclosure of documents.

**The Congo is rated as Largely Compliant with Recommendation 11.**

### **Recommendation 12: Politically exposed persons (PEPs)**

The recommendation on politically exposed persons (former R.6) was rated Non-Compliant (NC) at the end of the last evaluation of the Congo's AML/CFT system for the following reasons: lack of obligation for non-banking financial institutions regarding politically exposed persons; absence of any relevant obligation for insurance and manual exchange bodies; unsatisfactory implementation of the system by financial institutions and ineffectiveness, particularly for non-banking financial institutions.

**Criterion 12.1 :** Articles 25 and 60 of the CEMAC Regulations deal specifically with the due diligence obligations of reporting entities with respect to PEPs in general, including foreign PEPs.

- (a) These articles require financial institutions to establish adequate risk management systems to determine whether a customer (Article 25) or the beneficial owner (Article 60) is a politically exposed person. However, the obligation to identify beneficial owners who are EPPs is not clearly specified.
- (b) Article 25 obliges financial institutions to obtain the authorization of top management before entering into or continuing a business relationship with the PEP customer.
- (c) These articles require financial institutions to take all reasonable steps to identify the origin of the funds or assets of PEPs. However, none of these articles refer to the beneficial owner as regards the origin of funds or assets.

The above-mentioned articles require financial institutions to ensure strong and permanent monitoring of the business relationship.

### **Criterion 12.2**

- (a) Articles 25 and 60 of the CEMAC Regulation require financial institutions to implement appropriate risk management systems to determine whether the customer or beneficial owner is a politically exposed person, including national PEPs.
- (b) Articles 25 and 60 of the CEMAC Regulations require FIs, for national and foreign PEPs to: obtain the authorization of top management before entering into or continuing a business relationship; take all reasonable measures to identify the origin of the funds or assets of PEPs; and ensure enhanced and continuous monitoring of the business relationship. However, the provisions on the origin of funds and assets do not cover cases where the beneficial owner is a PEP.

**Criterion 12.3 :** Articles 1(55), 25 and 60 of the CEMAC Regulation require financial institutions to extend the enhanced due diligence requirements for PEPs to their close relatives, including their spouses, any partner considered to be the equivalent of a spouse, descendants and their spouses or partners, ascendants, privileged collaterals and persons known to be closely associated.

However, the provisions on source of funds and assets do not cover cases where the beneficial owner is a person closely associated with a PEP.

**Criterion 12.4** Article 42 of the CEMAC Regulation requires insurance companies, agents and brokers conducting life insurance activities to identify their customers and verify their identity in accordance with Article 31 of the Regulations, whenever the amount of premiums payable in a year reaches a certain threshold, or premium payments are made according to certain procedures. However, there is no provision in the Regulation to determine whether the beneficiaries of the policy or, where applicable, the beneficial owner of the beneficiary of a life insurance policy are PEPs. Article 12(4) of Regulation No. 01/CIMA/PCMA/PCE/SG/2021 deals with specific due diligence applicable to PEPs, without specifically addressing life insurance policies.

### **Weighting and conclusion**

The CEMAC Regulation and other instruments relating to AML/CFT in the Congo contain specific provisions on the management of relations with PEPs. They lay down particular diligences to be established in the contractualization and monitoring of the relationship with this category of customers. However, none of the above-mentioned instruments refers to the beneficial owner with regard to the origin of funds or assets. Furthermore, no provision is made to determine whether the beneficiaries of the insurance contract or, where applicable, the beneficial owners of a life insurance policy are PEPs.

**The Congo is rated as Partly Compliant with Recommendation 12.**

### **Recommendation 13: Correspondent banking**

At the end of the first mutual evaluation of the AML/CFT system, former Recommendation 7 (which examined due diligence in relation to "correspondent banking relationship") was rated as Partly Compliant (PC). The shortcomings noted for this recommendation were:

- non-application of due diligence and control requirements in relation to correspondent banking for banks that are not subsidiaries of international groups;
- absence of specific provisions where the correspondent banking relationship involves keeping of transit accounts;
- no obligation for non-banking financial institutions regarding correspondent banking relationships;
- no provisions stating that entry into correspondent banking relationships should be subject to the authorization of top management;
- lack of operational implementation by financial institutions that are not subsidiaries of international groups.

**Criterion 13.1 :** With respect to cross-border correspondent banking relationships and other similar relationships, Article 41 of the CEMAC Regulation requires financial institutions, in addition to normal customer due diligence measures, to;

- (a) identify and verify the identification of customer institutions with which they have correspondent banking relationships, collect information on the nature of the customer institution's activities and assess the reputation of the customer institution and the level of monitoring to which it is subject, based on publicly available information. However, this does not imply knowing whether the correspondent has been the subject of any investigation or action by a supervisory authority in relation to money laundering or terrorist financing;
- (b) assess control systems adopted by the customer institution to combat money laundering and terrorist financing;
- (c) obtain top management approval before entering into a relationship with the correspondent bank;
- (d) adopt specific provisions for understanding the respective AML/CFT responsibilities of each institution.

In addition, Article 11 of COBAC Regulation R-2005 of 1 April 2005, which deals with correspondent banking relationship, obliges all reporting entities to obtain sufficient information on the nature of the correspondent credit institutions, their money laundering prevention and detection procedures, the purpose of the account to be created, and the state of banking regulations and control in the country in which such institutions are located.

**Criterion 13.2** : With regard to transit accounts:

- (a) Article 59(5) of the CEMAC Regulation provides that “where financial institutions receive services from correspondent banks directly used by independent third parties to carry out transactions on their own behalf, they must ensure that the contracting credit institution has verified the identity of the customers having direct access to these correspondent accounts and has taken due diligence measures for these customers, in accordance with those provided for in Articles 24 and 25 of the Regulation”.
- (b) However, no requirement obliges financial institutions to ensure that the correspondent is able to provide the relevant information on transit accounts, upon request by the correspondent bank.

**Criterion 13.3** : Under Article 58 of the CEMAC Regulation, financial institutions are prohibited from entering into or maintaining a correspondent banking relationship with a credit institution or a company carrying out similar activities established in a State where the institution has no effective physical presence allowing it to conduct management activities, if it is not affiliated to a regulated institution or group.

In addition, financial institutions are required to take appropriate measures to ensure that they do not enter into or maintain a correspondent banking relationship with a person who has a correspondent banking relationship that allows a shell bank to use its accounts.

### **Weighting and conclusion**

The CEMAC Regulation and COBAC Regulation R-2005 of 1 April 2005 contain obligations for financial institutions in relation to correspondent banking relationships. However, there is no provision obliging financial institutions to ensure that the correspondent is able to provide the relevant information relating to transit accounts upon request from the correspondent bank.

**The Congo is rated as Largely Compliant with Recommendation 13.**

### **Recommendation 14: Money and value transfer services**

The first mutual evaluation of the Congo's AML/CFT system was concluded with a Non-Compliant (NC) rating for the former Special Recommendation VI on obligations applicable to money or value transfer services. The main shortcomings raised by the evaluators were : non-operationality of the review and supervisory body, non-enforcement of regulations, absence of control of the activity of money or value transfer services and lack of a list of agents.

**Criterion 14.1** : According to Article 92(1) of the CEMAC Regulation, no one may engage in the professional activity of transferring or transporting funds and values without prior approval

from the competent State authority on whose territory they are to carry out the activity. However, this paragraph refers the application of this provision to the "regulations in force". In the Congo, Article 6 of Law No. 7-2012 of 4 April 2012 on the creation and organization of the funds transfer regulatory agency states that the agency is responsible, among other things, for "considering applications for approval of money transfer companies", without clearly specifying who the signatory authority is. The law is supplemented by Decree No. 2015-248 of 4 February 2015 regulating the activity of domestic money transfers by money transfer companies. According to Article 3 of the instrument, exercise of the activity of money transfer in the Congo is subject to obtaining approval from the Minister of Finance. Article 17(2) of Decree No. 2015-248 stipulates that for external transactions, approved money transfer providers must use the services of a credit institution under an agreement signed for that purpose.

Banks and MFIs are approved by the monetary authority, in accordance with Articles 12 and 13 of the Convention of 12 January 1992 on the harmonization of banking regulations in Central African States, and Articles 20, 23 and 47 of Regulation No. 01/17/CEMAC/UMAC/COBAC of 27 September 2017 on the conditions for exercising and controlling microfinance activity.

Lastly, in the Congo, exercise of the profession of payment service provider is subject to approval by the monetary authority, in accordance with Article 23 of Regulation No. 04/18/CEMAC/UMAC of 21 December 2018 on payment services in CEMAC.

**Criterion 14.2 :** There are no legal provisions in the Congo that require the country to take measures to identify natural or legal persons who provide money or value transfer services without being approved or registered, in order to apply proportionate and dissuasive sanctions.

**Criterion 14.3 :** Articles 91 and 92 of the CEMAC Regulations require the supervisory and control authorities to ensure that financial institutions comply with the prescribed requirements regarding money laundering and terrorist financing prevention.

Similarly, Article 6 of Law No.7-2012 of 4 April 2012 entrusts money and value transfer agencies with the duty of "regulating activities relating to money transfers" and "contributing to the fight against money laundering and terrorist financing".

**Criterion 14.4 :** Article 92 of the CEMAC Regulation states that "no one may engage in the professional activity of transferring or transporting funds and values without prior approval from the competent State authority on whose territory they are to carry out the activity. The said authority shall determine, by decree or any other appropriate legal instrument, the operating conditions, in particular regarding the regular inspection of money or value transfer services...". Paragraph 3 states that the provisions of paragraph 1 above are also applicable to any natural or legal person operating as an agent in a CEMAC State. Similarly, paragraph 5 states that money and value transfer service providers are required to communicate the list of their agents to the competent authority of the country in which they operate.

However, no instrument specifically states the competent authority responsible for approving money transfer service providers.

**Criterion 14.5 :** There are no legal provisions in force in the Congo that require money or value transfer service providers using agents to include them in their AML/CFT programs and to monitor the agents' compliance with such programs.

#### **Weighting and conclusion**

The CEMAC Regulation, Law No. 7-2012 of 4 April 2012 and Decree No. 2015-248 contain relevant provisions on the supervision and monitoring of money or value transfer services. However, these instruments do not contain provisions that oblige the country to take measures to identify natural or legal persons who provide money or value transfer services without being approved or registered, in order to apply proportionate and dissuasive sanctions. Lastly, there are no provisions obliging money transfer service providers using agents to include them in their AML/CFT programs and to monitor the agents' compliance with such programs.

**The Congo is rated as Partly Compliant with Recommendation 14.**

#### **Recommendation 15: New technologies**

The first evaluation of the Congo's AML/CFT system resulted in a Non-Compliant (NC) rating for former Recommendation 8 on new technologies and distance business relationships. The shortcomings raised by the evaluators were: lack of specific policies to control the misuse of new technologies, insufficient obligations regarding the establishment of remote business relationships or the conduct of remote transactions and no measures implemented to control the use of new technologies.

#### *New technologies*

**Criterion 15.1 :** Article 40 of the CEMAC Regulation stipulates that, in managing new technology-related risks, financial institutions must identify and assess the ML/TF risks that may result from:

- (a) developing new products and new business practices, including new distribution mechanisms;
- (b) using or developing new technologies in relation to new or existing products.

However, these provisions only apply to financial institutions, not "the country".

#### **Criterion 15.2**

- (a) Article 40(2) of the CEMAC Regulation provides that risk assessment related to new technologies should be conducted before the launch of new products or business practices, or before using or developing new technologies.
- (b) Financial institutions should take appropriate measures to manage and mitigate such new technology-related risks, within the meaning of the same paragraph of Article 40 above.

#### *Virtual assets and virtual asset service providers*

#### **Criterion 15.3**

- (a) Article 13 of the CEMAC Regulation provides that each State shall take appropriate measures to identify, assess, understand and mitigate the ML/FT risks to which it is exposed. Apart from this general provision, the State has not established any standards that specifically address the obligations to identify and assess ML/TF risks arising from activities relating to virtual assets and VASP operations.
- (b) Article 13(3) of the CEMAC Regulation requires the State to apply a risk-based approach to allocate its resources and implement measures to prevent or mitigate ML/TF. However, the provision does not specifically address the risks inherent in virtual asset activities and the activities or operations of VASPs.
- (c) There is no specific provision for VASPs to take appropriate measures to identify, assess, manage and mitigate their ML/TF risks.

**Criterion 15.4**

- (a) (i) There are no provisions specifically requiring that VASPs be approved or registered in the jurisdiction in which they were created, where they are legal persons; or
- (ii) in the jurisdiction where their establishment is located, where they are natural persons.

Only Article 34 of Law No. 26-2020 of 5 June 2020 on cybersecurity provides, without any specification on VASPs, that: "Bodies providing cryptology services must be approved by the national agency for information systems security".

- (b) There is no instrument requiring competent authorities to take legal or regulatory measures to prevent criminals or their partners from owning, or being the beneficial owner of a significant shareholding or controlling interest or holding a management position in a VASP.

**Criterion 15.5 :** There are no legal provisions requiring the country to take measures to identify and apply appropriate sanctions to natural or legal persons who carry out VASP activities without being approved or registered as required.

**Criterion 15.6**

- (a) In accordance with Article 91 of the CEMAC Regulation, control authorities monitor compliance with AML/CFT requirements. Article 2 of Law No. 30-2019 of 10 October 2019 creating the National Agency for Information Systems Security states that the institution is responsible for controlling and monitoring activities relating to the security of information systems and electronic communication networks. However, the Agency's duties do not include AML/CFT-related issues. No other legal provision deals specifically with the regulation and control of VASPs.
- (b) There is no legal standard in the Congo requiring supervisory authorities to have the necessary powers to control or monitor VASPs in order to ensure that they comply with their AML/CFT obligations, including the power to conduct inspections, require the production of any relevant information and impose a range of disciplinary and financial sanctions, including the power to withdraw, limit or suspend the VASP's approval or registration.

**Criterion 15.7 :** Article 97 of the CEMAC Regulation stipulates that NAFI shall provide reporting entities with information it has on ML/TF mechanisms and the responses to their suspicious transaction reports. However, there is no instrument that obliges competent and control authorities to establish guidelines and provide feedback to help VASPs apply national AML/CFT measures and, especially, detect and report suspicious transactions.

**Criterion 15.8**

- (a) The instruments in force in the Congo do not provide for a range of proportionate and dissuasive criminal, civil or administrative sanctions applicable to VASPs that fail to comply with their AML/CFT obligations.
- (b) There is no provision for the above sanctions to be applicable not only to VASPs, but also to members of the administrative body and top management.

**Criterion 15.9**

- (a) Article 29 of the CEMAC Regulation provides that financial institutions must take appropriate due diligence measures in conducting occasional transactions for an amount equal to or above 5 million CFA francs. However, there is no specific provision dealing with the threshold of occasional transactions above which financial institutions are obliged to take due diligence measures.
- (b) (i) Article 36 of the CEMAC Regulation provides that financial institutions shall obtain and verify the name, account number, address, national identification number, place and date of birth of the originator and beneficiary of the transfer, including the name of the originator's financial institution. However, there is no specific measure in the Congo that requires the originator's VASP to obtain and keep the required and accurate information on the originator and the required information on the beneficiary of the virtual asset transfer, to submit such information to the beneficiary's VASP or financial institution immediately and in a secured manner, and to make the information available to the appropriate authorities upon request.
- (ii) Similarly, there is no specific legal requirement for the beneficiary's VASP to obtain and keep the required and accurate information from the originator as well as the required and accurate information from the beneficiary of the virtual asset transfer, and to make such information available to the appropriate authorities upon request.
- (iii) There are no specific provisions on the monitoring of availability of information on virtual assets. Article 105 of the CEMAC Regulation provides for measures on freezing and prohibition of transactions with designated persons and entities for all funds and property, including virtual assets.
- (iv) There are no specific obligations for financial institutions when sending or receiving a transfer of virtual assets on behalf of a customer.

**Criterion 15.10 :** Article 106 of the CEMAC Regulation provides that any decision to freeze or unfreeze funds must be made public. The same applies to the procedures to be followed by any natural or legal person included on the list of persons, entities or bodies covered by the

decision. However, there are no specific provisions regarding the mechanisms for applying targeted financial sanctions applicable to VASPs.

**Criterion 15.11 :** There is no specific requirement for VASP control authorities to have a legal basis for information-sharing with their foreign counterparts, regardless of their nature or status and the differences in nomenclature or status of VASPs, notwithstanding the provisions of Article 91(4) of the CEMAC Regulation which provides that each supervisory and control authority shall cooperate and share information with other competent authorities.

### **Weighting and conclusion**

Although the Congo has some provisions for identifying and assessing the ML/TF risks inherent in the use of new technologies, there are no legislative or regulatory provisions governing transactions relating to virtual assets or carried out by virtual asset providers, nor is there any authority specifically responsible for approving and controlling VASPs.

**The Congo is rated as Non-Compliant with Recommendation 15.**

### **Recommendation 16: Wire transfers**

At the end of its first evaluation, the Congo was rated as Non-Compliant (NC) with former Special Recommendation VII on the rules applicable to wire transfers. The country was criticized for the lack of obligations regarding the circulation of information on the originator.

#### *Ordering financial institutions*

##### **Criterion 16.1**

(a) In accordance with Article 36 of the CEMAC Regulation, financial institutions whose activities include domestic or cross-border wire transfers are required to obtain and verify, regardless of the amount:

- i. the full name of the originator;
- ii. the originator's account number or, in the absence of an account, a unique transaction reference number;
- iii. the originator's address or, in the absence of an address, the originator's national identification number or place and date of birth.

(b) For wire transfers, financial institutions are also required to obtain,

- i. the name of the beneficiary of the transfer;
- ii. the account number of the beneficiary of the transfer or, in the absence of an account, a unique transaction reference number.

**Criterion 16.2 :** Article 36 of the CEMAC Regulations states that financial institutions whose activities include wire transfers should obtain and verify the full name, account number and address or, where no address is available, the national identification number or place and date of birth of the originator and beneficiary of the transfer, including, where necessary, the name

of the originator's financial institution. In the absence of an account number, a unique reference number should accompany the transaction.

In practice, this provision applies to individual transfers and batch transfers by the same originator.

**Criterion 16.3 (*Not applicable*):** The Congo does not apply thresholds. The measures provided for in Article 36 of the CEMAC Regulation apply to all wire transfers.

**Criterion 16.4 :** Articles 29(2) and 36 of the CEMAC Regulation stipulate that in the event of doubts as to the veracity or relevance of previously obtained customer identification data, of suspected money laundering, terrorist financing or proliferation, the financial institution should verify customer information whenever there is a suspicion of money laundering and terrorist financing.

**Criterion 16.5 :** Article 36 of the CEMAC Regulation apply to domestic and cross-border transfers.

**Criterion 16.6 :** Articles 29 and 36 of the CEMAC Regulations partly cover this obligation.

However, there is no obligation for the originator's financial institution to forward, upon request, the transfer information to the beneficiary's financial institution or to prosecuting authorities within three (3) working days upon receipt of the request from either the beneficiary's FI or the relevant competent authorities.

**Criterion 16.7 :** Article 38 of the CEMAC Regulation stipulates that financial institutions shall, upon closure of the accounts of or the termination of their relations with their regular or occasional customers, keep the identity documents for a period of ten (10) years. They shall also keep all records and documents pertaining to the transactions they have conducted and the enhanced due diligence reports for ten (10) years after the transaction.

**Criterion 16.8 :** Article 37 of the CEMAC Regulation provides that where financial institutions receive wire transfers that do not contain complete information on the originator, they shall take steps to obtain the missing information from the ordering institution or the beneficiary in a bid to complete and verify the information. Where such information is not obtained, they shall refrain from carrying out the transfer.

### *Intermediary financial institutions*

**Criterion 16.9 :** Articles 36 and 37 of the CEMAC Regulation establish general requirements for FIs of originators, beneficiaries or intermediaries. It states that the information referred to in Article 36(1) should be included in the message or payment form accompanying the transfer. Where there is no account number, a unique transfer reference number must be used.

**Criterion 16.10 :** Article 38 of the CEMA Regulation stipulates that FIs shall, upon closure of their accounts or the termination of their relations with their regular or occasional customers, keep documents relating to their identity for a period of ten (10) years. They shall also keep all records and documents of transactions they have carried out for a period of ten (10) years after the transaction has been carried out.

However, there is no express obligation on the intermediary FI to keep information received from the originator's financial institution or the other intermediary FI for at least five (5) years should some technical restrictions prevent the required originator or beneficiary information accompanying a cross-border credit transfer from remaining attached to a corresponding domestic wire transfer.

**Criterion 16.11 :** There are no specific standards requiring intermediary FIs to take reasonable steps, consistent with end-to-end processing, to identify cross-border wire transfers that lack the necessary sender or beneficiary information. Article 37 of the CEMAC Regulation requires FIs receiving wire transfers with incomplete sender's information to take the necessary actions to obtain the missing information from the ordering financial institution or the beneficiary in order to complete and verify such information. However, incomplete data on the beneficiary are not covered.

**Criterion 16.12 :** Articles 14, 28, 37 and 95 of the CEMAC Regulation require financial institutions to adopt policies and control measures to effectively mitigate and manage ML/TF risks. These policies, procedures and control measures should be consistent with the nature and size of the institutions and the volume of their activities. However, there is no specific provision requiring FIs to: (a) have risk-based policies and procedures to decide when to execute, reject or suspend wire transfers that do not include the required originator or beneficiary information and (b) take the appropriate follow-up measures.

#### *Beneficiary financial institutions*

**Criterion 16.13 :** There are no specific provisions requiring financial institutions to take reasonable steps, which may include post-monitoring or real-time monitoring where possible, to detect cross-border wire transfers that lack the required originator or beneficial owner information. In general, Article 37 of the CEMAC Regulation requires FIs receiving wire transfers with incomplete information on the originator to take the necessary steps to obtain the missing information from the ordering financial institution or beneficiary in order to complete and verify it. Where they do not obtain such information, they should refrain from carrying out the transaction.

**Criterion 16.14 :** There is no specific provision requiring a beneficiary financial institution to verify the identity of a beneficiary who has not previously been identified and to keep the information in accordance with Recommendation 11 in the event of a cross-border transfer of an amount equal to or greater than 1,000 US dollars/euros. According to Article 36 of the CEMAC Regulation, the financial institution is required to verify the identity of the beneficiary in all cases, regardless of the amount of the transaction. Article 38 of the same CEMAC Regulation requires it to keep the information obtained from such verification for at least ten years.

**Criterion 16.15 :** There is no specific provision requiring FIs to have risk-based policies and procedures to decide:

- (a) when to execute, reject or suspend wire transfers that do not contain the required originator or beneficiary information;
- (b) appropriate follow-up actions.

Article 37 of the CEMAC Regulation requires FIs receiving wire transfers with incomplete sender information to take the necessary steps to obtain and verify the missing information from the originator or beneficiary and to refrain from executing the transaction if they do not obtain such information. However, there is no specific requirement to have risk-based policies and procedures in place for this purpose.

### *Money or value transfer service operators*

**Criterion 16.16 :** According to Article 92 of the CEMAC Regulation, no person may engage in the professional activity of transferring or transporting money and values without the approval of the competent State authority where the activity is to be carried out. The authority shall lay down, by decree or any other appropriate legal instrument, the operating conditions, in particular regarding the regular inspection of money or value transfer services. These provisions are also applicable to any legal or natural person operating as an agent in a CEMAC Member State. Money and value transfer service providers are required to provide a list of their agents to the competent authority of the country in which they operate. Likewise, Articles 32, 62 and 63 supplement these requirements with regard to reliance on third parties.

### **Criterion 16.17**

- (a) Article 63 of the CEMAC Regulation contains provisions on the implementation of due diligence obligations by third parties. Article 83(4) requires reporting entities to report to NAFI any transaction in which the identity of the originator or beneficial owner remains uncertain despite due diligence.
- (b) There is no provision for filing a suspicious transaction report in all the countries concerned by the suspicious wire transfer. Article 83 of the CEMAC Regulation only obliges money or value transfer service providers to file a suspicious transaction report, and to provide the financial intelligence unit with all information on the transaction.

### *Implementation of targeted financial sanctions*

**Criterion 16.18 :** Pursuant to Article 105 of the CEMAC Regulation, the competent authority orders, by written decision, the freezing of funds and the seizure, for the purpose of confiscation, of laundered property, proceeds of money laundering, predicate offences and terrorist financing, of persons, entities or terrorist organizations identified by the United Nations Security Council acting under Chapter VII of the Charter of the United Nations. Furthermore, Article 38 of COBAC Regulation R-2005/01 requires institutions under COBAC to immediately freeze funds and other assets belonging to individuals listed under UN Sanctions Committee Resolutions 1267 and 1373.

### **Weighting and Conclusion**

The Congo partly meets the requirements of this Recommendation, although there are some gaps, notably: (i) the non-obligation for the originator's financial institution to forward, upon request, the information accompanying the transfer to the beneficiary's financial institution or to the prosecuting authorities within three (3) working days of receiving the request from either the beneficiary's financial institution or the appropriate competent authorities; (ii) the absence

of a specific obligation on the intermediary financial institution to keep for at least five (5) years the information received from the ordering financial institution or the other intermediary financial institution where certain technical restrictions prevent the required originator or beneficiary information accompanying a cross-border wire transfer from remaining attached to a corresponding domestic wire transfer; (iii) the absence of provisions requiring financial institutions to have risk-based policies and procedures to decide when to execute, reject or suspend wire transfers that do not include the required originator or beneficiary information; or (iv) the absence of provisions for FIs to file a suspicious transaction report in all countries involved in the wire transfer.

**The Congo is rated as Partly Compliant with Recommendation 16.**

### **Recommendation 17: Reliance on third parties**

The former Recommendation 9 on third parties and intermediaries was rated as Non-Compliant (NC) at the end of the first evaluation of the Congo's AML/CFT system on grounds that: (i) there were gaps in the provisions of the Community instruments, particularly regarding time limits for forwarding information, the ability of the third party to provide due diligence information upon request; and (ii) a general lack of implementation and effectiveness in the non-bank financial sector.

**Criterion 17.1 :** Article 62 of the CEMAC Regulation allows financial institutions to rely on third parties to carry out due diligence obligations, without jeopardizing their ultimate responsibility for such compliance. Article 12 of Regulation No. 001/CIMA/PCMA/PCE/2021 of 2 March 2021 also contains provisions relating to recourse to third parties by insurance companies.

- (a) Article 64 states that the third party applying due diligence requirements shall, without delay, provide financial institutions with information relating to the identification of the customer, the beneficial owner, as well as information relating to the purpose and nature of the business relationship.
- (b) In accordance with Article 64 (2) of the CEMAC Regulation, the third party is required to forward, upon first request, copies of the identification documents of the customer and the beneficial owner, and any document relevant to the performance of such due diligence. The requirement to forward documents without delay is not expressly stated in the article.
- (c) Article 63 requires financial institutions that rely on third parties to ensure that they are subject to equivalent AML/CFT obligations. However, there is no provision requiring the financial institution to formally ensure that the third party is subject to AML/CFT regulation, supervision or oversight.

**Criterion 17.2 :** According to Article 14(1) of the CEMAC Regulation, reporting entities shall take appropriate measures to identify and assess the money laundering and terrorist financing and proliferation risks to which they are exposed, taking into account risk factors such as customers, countries or geographical areas, products, services, transactions or distribution channels. These measures, along with the provisions of Article 63 of the CEMAC Regulation,

impose the assessment of risks associated with countries of third-party establishments. However, it does not explicitly state that countries using third parties should take into account the information available at country level.

### **Criterion 17.3**

- (a) This recommendation is taken into account by Article 96 of Regulation No. 01/16/CEMAC which obliges financial institutions to adopt measures at least equivalent to those provided for in Chapter 3 of Part II of this Regulation, in terms of customer due diligence and record-keeping in their branches abroad.
- (b) Articles 63 and 96 oblige financial institutions that use a third party belonging to the same financial group to implement customer due diligence and record-keeping measures and AML/CFT programs. However, there is no obligation for these measures to be monitored at group level by a competent authority.
- (c) In order to prevent ML/TF risks, Article 96 of the CEMAC Regulation obliges branches or subsidiaries established in a third country to apply the AML/CFT measures of the group if they are more stringent than those of the host country. However, no specific provisions specify that any high-risk country risk is adequately mitigated by the group's AML/CFT policies when the financial institution uses a third party that is part of the same financial group.

### **Weighting and Conclusion**

The instruments in force in the Congo allow financial institutions to use third parties to carry out their due diligence obligations. They also specify the steps that financial institutions and their third-party partners must take to fulfil their due diligence obligations. However, FIs are not obliged to take steps to ensure that the third party forwards the documents. Instead, the CEMAC Regulation places the obligation on the third party itself, which may apply if the third party is under the country's jurisdiction.

**The Congo is rated as Largely Compliant with Recommendation 17.**

### **Recommendation 18: Internal controls and foreign branches and subsidiaries**

The Congo was rated as Non-compliant (NC) with the former Recommendation 15 at the close of the previous mutual evaluation. The evaluators raised concerns about the lack of effective implementation of AML internal control obligations by banks that are not subsidiaries of international groups, lack of a compliance mechanism for the majority of non-bank financial institutions, and lack of effective implementation of AML internal control obligations by banks that are not subsidiaries of international groups.

Concerning branches and subsidiaries, the former Recommendation 22 was rated as Partly Compliant (PC) at the conclusion of the Congo's first mutual evaluation. The gaps identified by evaluators included the ineffective application of provisions by non-subsidiary banks of international groups.

### **Criterion 18.1**

- (a) Article 27 of the CEMAC Regulation specifies that FIs must develop and implement programs to prevent money laundering and terrorist financing. Such programs include the appointment of a compliance officer at the corporate headquarters, each branch, and each agency or local office. Articles 54 and 55 of COBAC Regulation R-2016/04 of 8 March 2016 on internal control in lending institutions and financial holding companies contain similar provisions. Article 8 of Regulation No. 001/CIMA/PCMA/PCE/SG/2021 provides for the designation of the officers in charge of implementing AML/CFT programs.
- (b) In the Congo, only Article 10 of Regulation No. 001/CIMA/PCMA/PCE/SG/2021 requires insurance companies to adopt appropriate procedures for hiring employees to ensure that it is carried out in accordance with high standards.
- (c) Article 27(1)(3) of the CEMAC Regulation requires FIs to implement AML/CFT programs that include continuing staff training, to help them detect operations and conducts likely to be linked to money laundering and terrorist financing. This provision is reiterated in Article 46 (3) of COBAC Regulation R-2005/01 and Article 11 of Regulation No. 001/CIMA/PCMA/PCE/SG/2021.
- (d) Article 14 of the CEMAC Regulation obliges FIs to implement AML/CFT programs that include an independent audit function to test policies, procedures and controls. Articles 44 to 48 of COBAC Regulation R-2016/04 of 8 March 2016 on internal control in lending institutions and financial holding companies include provisions relating to the internal audit function within COBAC-regulated institutions.

## **Criterion 18.2**

- (a) Article 94(1) of the CEMAC Regulation obliges financial institutions that are part of a group to implement group-wide policies and procedures, including data protection policies and information exchange policies and procedures within the group to combat money laundering and terrorist financing. Article 96 of the same CEMAC instrument states that financial institutions shall apply measures at least equivalent to those in force in the Congo, regarding customer due diligence and the conservation of information in their subsidiaries located abroad than those imposed in their own territory.
- (b) Article 94 of the CEMAC Regulation specifies procedures for information sharing within the group. However, there are no specific provisions concerning provision of information from branches and subsidiaries relating to customers, accounts and transactions when required for AML/CFT purposes, compliance, audit and/or AML/CFT functions at group level, including data and analysis of unusual transactions or activities, or risk management purposes.
- (c) Article 94(1) of the CEMAC Regulation states that financial institutions are required to implement data protection measures, and paragraph 3 provides that relevant control authorities shall inform each other of cases where the laws of a third country do not allow for the application of appropriate minimum AML/CFT measures to their branches and subsidiaries located abroad. However, these provisions do not explicitly provide for satisfactory guarantees of confidentiality and use of the information shared.

**Criterion 18.3 :** Article 94(2) of the CEMAC Regulation requires FIs to ensure implementation of AML/CFT measures consistent with those of the country of origin, where the minimum AML/CFT requirements of the host country are less stringent than those of the originating country, to the extent permissible under laws and regulations of the host country. Paragraph 3 states that if the host country does not allow for the proper implementation of AML/CFT measures that comply with those of the home country, financial groups should be obliged to implement appropriate additional measures to manage money laundering and terrorist financing risks and to inform the home country control authorities accordingly.

### **Weighting and Conclusion**

CEMAC, COBAC and CIMA regulations contain relevant provisions on internal controls and branches and subsidiaries located outside of the Congo. The instruments require financial institutions to implement ML/TF prevention programs that take into account the risks and scale of the transaction. These instruments also allow for information sharing between supervisory authorities when a third country's legislation does not allow for the application of appropriate minimum AML/CFT measures to their foreign branches and subsidiaries. However, these provisions do not include adequate safeguards for confidentiality and the use of shared information.

**The Congo is rated as Largely Compliant with Recommendation 18.**

### **Recommendation 19: Higher risk countries**

At the end of the previous mutual evaluation of the Congo, former Recommendation 21 on special attention to higher-risk countries was rated as Non-compliant (NC). The gaps identified by the evaluators include: (i) lack of additional counter-measures for countries that do not apply or apply them ineffectively; (ii) lack of measures to inform on concerns arising from deficiencies in other countries' AML/CFT systems; and (iii) lack of due diligence measures by banking institutions other than subsidiaries of international groups relating to transactions with no apparent economic or lawful purpose not specifically applicable to transactions with legal and natural persons residing in countries that do not apply or inadequately apply FATF Recommendations.

**Criterion 19.1 :** Article 14 of the CEMAC Regulation requires reporting entities to take appropriate measures to identify and assess money laundering, terrorist financing and proliferation risks to which they are exposed, taking into account risk factors such as customers, countries or geographical areas, products, services, transactions or distribution channels. These measures should be proportionate to the nature and size of reporting entities. However, there are no obligations for FIs to implement enhanced due diligence measures proportionate to the risks, in their business relationships and transactions with natural and legal persons (and in particular financial institutions) from countries where the FATF requires this.

Furthermore, Article 43 of the same CEMAC Regulation states that reporting entities must take additional due diligence measures when a transaction involves a State or territory whose legal deficiencies or practices impede AML/CFT.

Article 24 of COBAC Regulation R-2005/01 imposes the same special due diligence requirements on any transaction originating or destined for institutions located in countries that are not FATF members or are classified as non-cooperative for AML/CFT.

Article 19 of Regulation No. 001/CIMA/PCMA/PCE/SG/2021 also requires insurance undertakings and institutions to pay close attention to transactions with countries and/or jurisdictions designated as non-cooperative by FATF.

**Criterion 19.2 :** There are no specific legal provisions requiring the use of risk-proportionate countermeasures:

- a. when FATF so requires and;
- b. independently of any request from FATF.

**Criterion 19.3 :** There is no specific provision requiring adoption of measures to ensure that financial institutions are informed on concerns about gaps in other countries' AML/CFT systems.

### **Weighting and Conclusion**

The CEMAC Regulation requires financial institutions to include the country factor in the identification and assessment of ML/FT risks. However, there are no binding measures for implementing risk-proportionate countermeasures at FATF's request or independently.

**The Congo is rated as Partly Compliant with Recommendation 19.**

### **Recommendation 20: Reporting suspicious transactions**

The Congo was rated as Non-Compliant (NC) with former Recommendation 13 on suspicious money laundering (ML) transaction reports, and NC with former Special Recommendation IV on suspicious terrorist financing (TF) transaction reports, at the conclusion of the most recent mutual evaluation of its AML/CFT system.

The shortcomings identified were: non-obligation to report attempted transactions and non-implementation of the system outside the banking sector, lack of reporting of assets of listed persons, and the absence of a mechanism for unfreezing the assets of listed persons.

**Criterion 20.1 :** Article 83 of the CEMAC Regulation, Articles 26 and 28 of COBAC Regulation R-2005/01, Article 21 of Regulation No. 001/CIMA/PCMA/PCE/SG/2021 and Articles 230 and 231 of COSUMAF General Regulations require financial institutions to file suspicious transaction reports to NAFI when they know, suspect or have good reason to suspect that the transaction may be related to money laundering or terrorist financing and proliferation. However, the obligation to report suspicious transactions immediately to NAFI is not clearly stated.

**Criterion 20.2 :** Article 83(2) of the CEMAC Regulation oblige financial institutions to report to NAFI any attempted transactions they are aware of, suspect or have reason to suspect, stemming from customs or tax fraud when at least one criterion defined by the regulations in force is met. As formulated, this obligation is restrictive and does not cover all attempted

suspicious transactions relating to money laundering or the financing of terrorism and proliferation.

### **Weighting and Conclusion**

Regulatory provisions require financial institutions to report suspicious transactions to NAFI. However, the obligation to report attempted transactions is not well defined, and there is no formal requirement to do so without delay.

**The Congo is rated as Partly Compliant with Recommendation 20.**

### **Recommendation 21: Tipping-off and confidentiality**

At the end of the previous mutual evaluation of its AML/CFT system, the Congo was rated as Partly Compliant (PC) with former Recommendation 14 on protection of reporting entities and prohibition on disclosing information to the customer. The Congolese system was criticized for lacking exceptions to prohibition on disclosing information to third parties in the event of dealings between financial institutions belonging to the same group; inconsistency between the measures relating to confidentiality prescribed by the CEMAC Regulation and the filing of suspected transaction reports to the public prosecutor provided for by the CIMA Regulation; and the absence of repressive measures against the disclosure of information to customers.

**Criterion 21.1 :** Articles 88 and 89 of the CEMAC Regulation and Articles 30 and 31 of COBAC Regulation R-2005/01 ensure that financial institutions, their managers and employees are protected from criminal or civil liability for breach of any rule relating to disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, when they report in good faith their suspicions to NAFI, even if they did not know for sure what the predicate criminal activity was or whether the suspected illegal activity did not actually occur.

**Criterion 21.2 :** Under Article 87(2) of the CEMAC Regulation, financial institutions, their managers and employees are prohibited from disclosing the fact that a suspicious transaction report or related information has been sent to NAFI. Article 21.3 of Regulation No. 001/CIMA/PCMA/PCE/SG/2021 contains similar provisions for insurance companies.

### **Weighting and Conclusion**

The CEMAC Regulation, the COBAC Regulation, and the CIMA Regulation include provisions governing confidentiality obligations.

**The Congo is rated as Compliant with Recommendation 21.**

### **Recommendation 22: Designated non-financial businesses and professions – Customer due diligence**

At the end of the latest evaluation of the Congo's AML/CFT system, the country was rated as Non-Compliant (NC) with the Recommendation on DNFBP customer due diligence (former R.12). The main gaps identified include failure to disseminate and implement the CEMAC Regulation among DNFBPs regarding customer identification and verification of the origin of

funds; failure by self-regulatory bodies to mainstream AML/CFT measures; failure to operationalize the national order of chartered accountants; failure to conduct a study to identify AML/CFT risks in each DNFBP; and failure to draft and adopt a law on gambling that includes AML/CFT provisions.

### **Criterion 22.1**

- (a) Article 47 of the CEMAC Regulation obliges casinos to comply with customer due diligence obligations by keeping and updating information relating to gamers who buy, sell or trade coins or chips for an amount equal to or greater than one million CFA francs. However, this is not the same as obtaining and verifying information as in Recommendation 10.
- (b) According to Article 48 of the CEMAC Regulation, persons carrying out, controlling or providing advice on real estate transactions are required to identify the parties (identification of a natural and legal person) when intervening in the purchase or sale of real estate and carrying out transactions, and that amounts above three million CFA francs must be paid by cheque or bank transfer.
- (c) Article 50 of the CEMAC Regulation stipulates that dealers in metal and precious stones are required to comply with the customer identification obligations when they carry out a cash transaction with a customer equal to or greater than the threshold set by the national monetary authority or, failing that, by the Ministerial Committee. However, no threshold has yet been set by these authorities.
- (d) Pursuant to Article 49 of the CEMAC Regulation, lawyers, notaries and other independent legal and accounting professionals should comply with customer due diligence requirements when preparing or carrying out transactions for their clients for the following activities: (i) purchase and sale of real estate; (ii) management of client's funds, securities or other assets; (iii) management of bank, savings or securities accounts; (iv) organization of contributions for the creation, operation or management of companies; and (v) creation, operation or management of legal persons or arrangements, and purchase and sale of business entities.
- (e) Article 51 of the CEMAC Regulation requires trust and company service providers to conduct customer due diligence when preparing or carrying out transactions for a client involving the following activities: acting as an incorporation agent; acting (or arranging for another person to act) as a manager or secretary of a business corporation, member of a partnership, or holder of a similar office for other types of legal persons; establishing a registered office, a business address or premises, an administrative or postal address for a corporation, a partnership, or any other legal person or entity; acting (or arranging for another person to act) as trustee of an express trust or performing an equivalent function for another type of legal entity; acting (or arranging for another person to act) as a shareholder acting on behalf of another person.

These articles, however, do not clearly provide for the identification of the beneficial owner and the origin of the funds.

**Criterion 22.2 :** Article 47 of the CEMAC Regulation requires casinos and gaming establishments to keep accounting records, identify customers whose transactions are equal to or more than one million (1,000,000) CFA francs, their nature and amount, as well as the full names of actors and the record number entered in a register for ten (10) years, after the last recorded transaction. However, there is no obligation for other categories of DNFBPs to keep records for at least five (5) years. It should be noted that DNFBPs include other sectors besides casinos and gaming rooms, such as real estate, notaries' offices, law firms, etc.

**Criterion 22.3 :** Pursuant to Article 25 of the CEMAC Regulation, DNFBPs are required to have adequate risk management systems to determine whether the customer is a politically exposed person (PEP) and, if so, they are required to comply with the obligations relating to PEPs as set out in Recommendation 12. This requirement does not take into account the beneficiary of the life insurance contract and/or, where applicable, the beneficial owner of the beneficiary of the life insurance contract if s/he is a PEP.

However, the above application of due diligence has not included domestic PEPs and family members, or any other type of person closely associated with PEPs.

**Criterion 22.4 :** There are no obligations on DNFBPs regarding new technologies.

**Criterion 22.5 :** DNFBPs are not required to use third parties or to ensure that third parties are regulated or supervised in terms of AML/CFT.

### **Weighting and Conclusion**

There are no requirements for DNFBP sector actors to identify the beneficial owner or the source of funds. The same applies to the obligation to keep records, except for casinos. There are also no regulatory provisions governing new technologies or the use of third parties, as well as the application of due diligence measures proportionate to ML/TF risks.

**The Congo is rated as Partly Compliant with Recommendation 22.**

### **Recommendation 23: Designated non-financial businesses and professions – Other measures**

At the end of the Congo's first mutual evaluation, the country was rated NC with R.16 of the old methodology for lack of internal controls and specific AML/CFT training programs, non-mastery of AML/CFT due diligence, and the absence of provisions for counter-measures against a country that does not implement or inadequately implements FATF recommendations.

**Criterion 23.1 :** DNFBPs are required to report suspicious transactions set out in Recommendation 20, in the following circumstances:

- (a) For lawyers, notaries, other independent legal professionals and accountants when assisting their client in preparing or carrying out transactions relating to: (i) the purchase and sale of real estate or business enterprises; (ii) the management of funds, securities or other assets belonging to the client; (iii) the opening or management of bank, savings or portfolio accounts; (iv) the organization of contributions necessary for the incorporation, management or control of companies; (v) the incorporation,

management or control of companies, trusts or similar legal arrangements; (vi) the incorporation or management of endowment funds;

However, in carrying out an activity relating to the above-mentioned transactions, lawyers, when the activity relates to legal proceedings or when giving legal advice; other independent legal professionals, when giving legal advice, and accountants, when giving legal and tax advice, are not bound by the STR obligation unless the advice was provided for ML/TF purposes or knowing that that the client is requesting it for such purposes;

- (b) For dealers in precious stones and metals, they are bound by the general STR obligation;
- (c) For trust and company service providers, they are bound by the general STR obligation without reference to the circumstances or assumptions referred to in C.22.1(e).

**Criterion 23.2 :** Article 28 of the CEMAC Regulation states that reporting entities other than FIs shall implement the AML/CFT internal control procedures and measures defined by control authorities. The requirement of this criterion is conditional on the supervisory authorities' definition, in accordance with Recommendation 18, of the AML/CFT procedures and internal control measures to be implemented. However, in the Congo's current framework, no such authority has been identified or designated for DNFBPs.

**Criterion 23.3 :** There are no provisions requiring DNFBPs to comply with the higher-risk country requirements outlined in Recommendation 19.

**Criterion 23.4 :** Similarly, Article 87 of this regulation states that it is prohibited for DNFBPs, their managers and employees to disclose that a suspicious transaction report or information relating thereto has been disclosed to NAFI, or to provide information on the action taken in response to the said report, under pain of sanctions.

### **Weighting and Conclusion**

The Congo has not designated a supervisory authority for DNFBPs, which should issue DNFBP-specific procedures and internal control measures. There is also no mechanism for implementing risk-proportionate countermeasures, as required by FATF, nor is there a requirement to adopt measures to ensure that DNFBPs are aware of concerns about deficiencies in other countries' AML/CFT systems.

**The Congo is rated as Partly Compliant with Recommendation 23.**

### **Recommendation 24: Transparency and beneficial ownership of legal persons**

Following the last evaluation of its AML/CFT system, the Congo was rated as Non-Compliant (NC) with former Recommendation 33 on transparency and beneficial owners of legal persons. The main shortcomings identified were that the information contained in the TPPCR recommended by OHADA instruments does not allow for the identification of beneficial owners, that access to information all over the country is difficult due to the absence of a national file, and that the scope of informal activity makes it impossible to obtain adequate, relevant and updated information on all economic operators.

### **Criterion 24.1**

- (a) The provisions of the OHADA Uniform Act on the Rights of Commercial Companies and Economic Interest Groups identify and describe the mechanisms of the different types, forms and characteristics of legal persons that can be created in the Congo. The current legal system is based on the law on associations enacted on 1 July 1901, and has not been updated.
- (b) The Uniform Acts are available online on OHADA official website ([www.ohada.com](http://www.ohada.com)) and the laws are published in the Official Gazette. These same provisions describe the procedures for creating these legal entities and the methods for obtaining and keeping basic information about them. The Congolese Business Development Agency serves as a one-stop shop for all formalities pertaining to the formation of these companies. According to Articles 74(2) and 36(4) of the revised AUDCG, the information contained in the TPPCR registers and directories is intended for the public. However, no provision mentions the obligations to collect and keep beneficial owner information in the same format.

**Criterion 24.2 :** The Congo has conducted a national risk assessment and identified areas of risk in the country based on the assessment. However, the country has not assessed the risks of money laundering and terrorist financing associated with the various categories of legal entities established in the country.

No specific study on risk typologies highlighting the risks of abuse of legal persons has been carried out in the Congo.

#### *Basic information*

**Criterion 24.3 :** The OHADA Uniform Act on General Commercial Law provides for registration in the TPPCR and makes it mandatory for all companies created in the country. This provision is also included in the constitutive instruments of the Congolese Agency for Business Development, which holds a national file of enterprises. The obligation to register with the TPPCR requires information on: the company name, legal form, address of the headquarters, the main elements governing its operation and the list of members of the board of directors.

Moreover, Articles 74(2) and 36(4) of the Uniform Act provide that information on companies be made available to the public. However, not all the information contained in the TPPCR is accessible to the public and there are several registers.

For other companies not covered by the AUDCG, AUSCGIE or AUSC, information on them is held by the State authorities responsible for their licensing, regulation and supervision. However, the country has not provided any information on the information held by these authorities.

**Criterion 24.4 :** There are no provisions obliging companies to keep the information set out in Criterion 24.3, and to keep a register of shareholders or members (containing the names of shareholders and members and the number of shares held by each shareholder as well as the category of shares, including the nature of the voting rights associated with them).

There is no obligation for legal persons not subject to OHADA (associations, foundations, etc.).

**Criterion 24.5 :** The provisions of the AUDCG and the AUSCGIE oblige the registrar in charge of TPPCR to verify the accuracy and update of the information mentioned in 24.3. However, these provisions do not take into account the elements of Criterion 24.4 concerning the keeping and conservation of registers of shareholders or members.

Similarly, there is no obligation for legal persons outside OHADA (associations, foundations, etc.).

### *Beneficial ownership information*

**Criterion 24.6 :** Article 27 of the CEMAC Regulation requires FIs and some DNFBBPs to centralize information on the identity of originators, beneficial owners, beneficiaries, holders of powers of attorney and agents. Besides this mechanism, the Congo has no other means of ensuring that information on the beneficial owners of a company is obtained by that company and made available at a designated location, or that a competent authority can otherwise identify the beneficial owners in a timely manner.

There is no obligation for non-OHADA legal persons (associations, foundations, etc.).

**Criterion 24.7 :** No provision requires information on beneficial owners to be accurate and kept up to date.

**Criterion 24.8 :** There is no provision in the Congo requiring companies to cooperate with the competent authorities in identifying beneficial owners:

- (a) to require that one or more natural persons resident in the country be authorized by the company to disclose all basic and available information on beneficial owners and to provide any other assistance and to be accountable to the said competent authorities; and/or
- (b) to require that a given non-financial business or profession in the country be authorized by the company to disclose all basic and available information on beneficial owners and to further assist and be accountable to the authorities; and/or
- (c) to take other similar measures specifically identified by countries.

**Criterion 24.9 :** There is no requirement for natural or legal persons involved in a company's dissolution to keep information and other records for at least five years after the date the company is dissolved or ceases to exist, or for at least five years after the date the company ceases to be a customer of the professional intermediary or financial institution.

### *Other requirements*

**Criterion 24.10 :** The CEMAC Regulation grants competent authorities, particularly prosecuting authorities, extensive powers to obtain timely access to basic and beneficial ownership information held by relevant parties. The CEMAC Regulation provides for such powers in Article 75 (on NAFI's extensive powers of disclosure) and Article 39 (on the extensive powers of disclosure of entities to authorities).

**Criterion 24.11 :** Articles 744(1) and 745 of the OHADA Uniform Act on Commercial Companies and EIGs state that securities, regardless of their form, must be registered in a securities account in the name of the owner. Each company is required to keep a register of registered or bearer securities. When a bearer security is issued on the financial market, the owner must convert it into a registered security in accordance with Article 746 of the aforementioned Act. The Congo authorizes legal persons to issue bearer shares or bearer share warrants. However, the legislation in force has no provision for the dematerialization of such shares or for the establishment of a mechanism to ensure that legal persons authorized to issue bearer shares or share warrants are not misused for ML/TF purposes.

**Criterion 24.12 :** Nominee shares are non-existent in the Congo, but proxies can be designated to act on behalf of another person. However, Congolese law prohibits legal persons from using several of the mechanisms (a), (b) and (c) existing in the Congo, to prevent managers acting on behalf of other persons from misusing them.

**Criterion 24.13 :** The Congolese legal system does not provide for criminal sanctions where companies make false declarations about their beneficial owners, are unable to provide basic information about their beneficial owners, or fail to update basic information about their beneficial owners. Furthermore, there is no sanction for the obligations imposed by Criteria 24.3 and 24.4.

**Criterion 24.14 :** Competent authorities such as the Police, NAFI, customs, taxation and control authorities rely on regional and international cooperation agreements concerning mutual legal assistance and information sharing under CEMAC, Interpol, CCPAC, WCO, etc. Such collaboration should entail the following:

- (a) facilitating foreign competent authorities' access to basic information in company registers;
- (b) sharing information on shareholders; and
- (c) using investigatory powers of competent authorities, in accordance with domestic laws, to obtain information on beneficial owners on behalf of foreign counterparts. The Congo has established the legal framework for international cooperation on basic information on legal persons and beneficial owners.

**Criterion 24.15 :** In the Congo, there is no legal or regulatory requirement to monitor the quality of assistance received from other countries in response to requests for basic and beneficial ownership information or assistance in locating beneficial owners residing abroad. The Congo does not monitor the quality of assistance it receives in this regard.

### **Weighting and Conclusion**

In the Congo, as in other CEMAC countries, legal persons are subject to registration and record-keeping obligations and procedures. However, there is no system for collecting, updating and keeping beneficial owner information, just as there is no provision for the Congo to ensure that companies cooperate to the greatest extent possible with competent authorities in identifying beneficial owners. There is also no collection and sanction mechanism to address failure to provide basic and up-to-date information on legal persons, including nominee shareholders and members.

## **The Congo is rated as Partly Compliant with Recommendation 24.**

### **Recommendation 25: Transparency and beneficial owners of legal arrangements**

During the first evaluation, the Congolese law did not recognize legal arrangements such as trusts and fiduciaries. This recommendation was rated Not Applicable at the time. Since then, the country's legal system has included CEMAC Regulation No. 01/CEMAC/UMAC/CM on the prevention and suppression of money laundering and the financing of terrorism and proliferation in Central Africa. The Congo has not ratified The Hague Convention and its regulations do not allow for the formation of trusts. However, foreign legal arrangements, including but not limited to DNFBPs, could be managed from the Congo.

#### **Criterion 25.1**

- (a) Not applicable.
- (b) Not applicable.
- (c) Some DNFBPs, particularly lawyers and members of independent legal professions who administer property under the same conditions as trusts, as well as trustees and professional service providers, are required to identify and verify the identity of some of the parties involved in the transaction, namely the client (who may or may not be the constituent) and the beneficial owner of the business relationship, and to keep the registers up to date (Article 7 of the CEMAC Regulation). However, no provision expressly requires professional trustees to keep the required information they initially gathered for at least five years after their involvement in the trust has ended.

**Criterion 25.2 :** Articles 22(2) and 51 of the CEMAC Regulation require reporting entities, including trust and company service providers, to keep information collected from their customers and to ensure that such information is as accurate and up-to-date as possible, and that it is updated in a timely manner.

**Criterion 25.3 :** Financial institutions and designated non-financial businesses and professions are required to identify occasional customers, and special monitoring is carried out when they establish a business relationship or carry out an occasional transaction above the threshold (see Articles 29, 32, 35 and 51 of the CEMAC Regulation). Trustees, on the other hand, are not required by law to disclose their status to reporting entities.

**Criterion 25.4 :** In the Congo, no legal or regulatory provision prohibits legal arrangements from providing information to competent authorities or providing FIs or DNFBPs with information on beneficial owners and trust assets held or managed under the business relationship upon request.

#### **Criterion 25.5**

- (a) Prosecuting authorities have the necessary powers to gain timely access to basic information held by the parties involved, in accordance with the relevant provisions of the Criminal Procedure Code.
- (b) The Criminal Procedure Code authorizes prosecutors to obtain basic information held by the parties involved in a timely manner. Such powers include the ability to gain

access to information held by trustees and other parties, particularly information held by FIs and EPNFDs concerning the trustee's residence.

- (c) Furthermore, the powers granted to prosecuting authorities by the relevant provisions of the Congo's Criminal Procedure Code enable them to obtain basic information held by trustees and other parties in a timely manner, particularly information held by FIs and DNFBPs on any assets held or managed by these entities in connection with any trustee with whom they have a business relationship or for whom they carry out an occasional transaction.

#### **Criterion 25.6**

- (a) and (b) Article 141 of the CEMAC Regulation, particularly point 7, facilitates foreign competent authorities' access to basic information contained in company registers and the exchange of shareholder information (by providing originals or certified copies of relevant files and documents, including bank statements, accounting documents and records showing the operation of a company or its business activities). The information available, however, may not be complete.
- (c) Articles 80 and 82 of the CEMAC Regulation authorize investigative and prosecuting authorities to obtain information on beneficial owners on behalf of foreign counterparts. However, the information available may not be complete.

**Criterion 25.7 :** Regulated entities acting as professional trustees must meet customer due diligence requirements and a variety of penalties are provided for noncompliance. This ensures that trustees are either (a) legally liable for any breach of their obligations, or (b) face criminal penalties if they do not comply. In this case, proportionality and dissuasiveness cannot be assessed.

**Criterion 25.8 :** Congo did not provide information on the existence of a legal or regulatory provision allowing for the imposition of proportionate and dissuasive sanctions, whether criminal, civil or administrative, in the event of failure to comply with the obligation to make trust information available to competent authorities in a timely manner.

#### ***Weighting and Conclusion***

Trusts and express trusts are not governed by the OHADA Community law in force regarding the formation of legal persons and legal arrangements, but trust companies are recognized by the applicable Community legal framework. This Community instrument provides that information on customers of this type of legal arrangement should be kept up to date, and that prosecution authorities should have access to such information. However, at the time of the on-site visit, the Congolese authorities were unable to provide information on the existence of legal arrangements in the Congo. Furthermore, the absence of proportionate and dissuasive sanctions for non-compliance with their obligations does not ensure transparency on the beneficial owners of this type of legal entity.

**The Congo is rated as Partly Compliant with Recommendation 25.**

## **Recommendation 26: Regulation and supervision of financial institutions**

CEMAC regulations, in general, ensure Congo's technical compliance with Recommendation 26. However, a number of aspects need to be improved, particularly the lack of a link with AML/CFT requirements in COSUMAF's financial market regulation and supervision of investment products and transactions, as well as non-bank financial services. The same is true for the ambiguity surrounding the approval of major international money transfer companies operating in the country, the formalization of prohibition on the establishment or operation of shell banks in the country, and precision on the measures required to prevent criminals or their accomplices from becoming beneficial owners, CBDA's powers to supervise mobile money transfer and payment services, and the authority to supervise establishments delegated to carry out manual foreign exchange activities, as well as the profiling of ML/TF risks of financial institutions or financial groups.

**Criterion 26.1 :** Article 91 of Regulation No. 01/CEMAC/UMAC/CM of 11 April 2016 on prevention and repression of AML/CFT in Central Africa establishes the principle of supervision of financial institutions' compliance with AML/CFT requirements by "supervisory and control authorities" in the Congo, a Member State of the Central African Economic and Monetary Community (CEMAC). Other legal and regulatory instruments provide for the existence of these authorities, namely:

- the **Central African Banking Commission (COBAC)**, which regulates and/or oversees, in terms of AML/CFT, the institutions subject to COBAC Regulation R-2005/01 of 1 April 2005 on the diligence of institutions subject to AML/CFT in Central Africa (Article 2), including lending institutions, microfinance institutions, payment institutions, foreign exchange bureaus and issuers of electronic payment instruments;
- the **Bank of Central African States (BEAC)**, which monitors and supervises lending institutions and issuers of electronic payment instruments and ensures that any issuance, advertisement, sale or transfer of foreign securities in CEMAC complies with AML/CFT requirements;
- the **Inter-African Conference on Insurance Markets (CIMA)**, which regulates insurance companies in member countries in terms of anti-money laundering/counter-terrorism financing (AML/CFT);
- the **Regional Insurance Control Commission (CRCA)** at supranational level and the **General Directorate of National Financial Institutions/Directorate of Insurance (DGIFN/DA)** at national level, which control insurance brokers;
- the **Central African Financial Market Supervisory Commission (COSUMAF)**, which regulates and supervises the Central African financial market, including public offerings, covering the market for all investment products and transactions and non-bank financial services offered to the public or made available to economic operators and making public offerings, as well as all public or private persons in charge of the proper execution of such transactions (even if there is no formal link with financial market actors' AML/CFT requirements);
- the **Postal and Electronic Communications Regulatory Agency (ARPCE)**, which oversees mobile money transfer and payment services (though national Law No. 10-

2009 of 25 November 2009 regulating the postal sector is silent on its powers to regulate, supervise, or control AML/CFT);

- the **Money Transfer Regulatory Agency (ARTF)**, which regulates and supervises money transfer activities, including mobile money transactions.

However, no supervisory authority has been formally designated over the sub-delegated establishments as part of manual foreign exchange activities, despite the fact that BEAC requires them to comply with AML/CFT regulations in its Instruction No. 009/GR/2019 of 10 June 2019.

### *Market entry*

**Criterion 26.2 : Lending institutions** are approved by COBAC (COBAC Regulation R-2016/01 on the terms and conditions of issuing authorizations for credit institutions, their managers and their auditors), which sees to it that, in the event of applications for approval from lending institutions or banking groups headquartered abroad, the banking supervisory authority of the country of origin ensures the consolidated supervision of the entire group at international level (Article. 19 of the COBAC Regulation R-2016).

Applications for approval of **microfinance institutions** are subject to dual examination by the DGIFN/DMF and the National Directorate of BEAC, on the recommendation of COBAC, which ensures, where necessary, consolidated control of the entire group (Regulation No. 01/17/CEMAC/UMAC/COBAC of 27 September 2017 relating to conditions for the exercise and control of microfinance activity in CEMAC member countries).

COSUMAF, the supervisory authority, approves financial market actors (COSUMAF General Regulations of 15 January 2009).

**Insurance companies** are licenced by the Ministry of Finance (DGIFN) after regulatory review at two levels: national (the Directorate of Insurance) and regulatory body (the CRCA). **Professional money and value transfer service providers** are approved by the competent public authority (Article 92 of Regulation No. 01/CEMAC/UMAC/CM of 11 April 2016) and the Money Transfer Regulatory Agency for all activities relating to the transfer of funds within and outside the country (Article 6, Law No. 7-2012 of 4 April 2012 establishing the Agency).

The Ministry in charge of money and credit approves **foreign exchange bureaus** on the recommendation of BEAC (BEAC Instruction No. 011/GR/2019 of 10 June 2019 on the terms and conditions for the exercise of manual foreign exchange activities in the CEMAC). Foreign exchange bureaus, in turn, approve legal or private individuals to carry out manual foreign exchange activities on their behalf and under their supervision, in accordance with the terms and conditions specified in the foreign exchange regulations.

However, there is no provision that specifically requires major international transfer companies operating in the country to obtain prior formal approval from the competent Congolese authorities, nor that formally prohibits the establishment or existence of shell banks in the Congo or, where applicable, continuation of their activities (notwithstanding the principle of prohibiting correspondent banking relationships with a shell bank set out in Article 58 of Regulation No. 01/CEMAC/UMAC/).

**Criterion 26.3** : Each supervisory and control authority must define the appropriate criteria for direct or indirect ownership, control or participation in the management, administration or operation of a financial institution (Article 90.1 of Regulation No. 01/CEMAC/UMAC/CM of 11 April 2016). An analysis of the specific regulatory provisions for each type of financial institution shows that there are conditions for approval or authorization to prevent criminals and their accomplices from becoming shareholders, board members or managers by scrutinizing their character and integrity.

These regulatory requirements concern, in particular, the provision of a list of shareholders and managers when submitting an application for authorization or registration, or conditions to serve as a manager or staff member, and board member of a foreign exchange bureau directly or through an intermediary.

However, CIMA, COSUMAF, ARTF, post office, foreign exchange, payment service or Insurance Code regulations do not specify the measures required to prevent criminals or their accomplices from becoming beneficial owners through the management of financial institutions. The regulations have no provisions relating to identification of beneficial owners at the time of application for authorization and/or significant transfer of ownership and do not provide for a reliable, secure and verifiable register of beneficial owners in the country. After granting an authorization or registration, the competent authority has no mechanism in place to ensure the timely monitoring of changes in the ownership or composition of the managers, board members or shareholders of legal persons.

### *Risk-based approach to supervision and monitoring*

#### **Criterion 26.4**

- (b) In keeping with basic principles, reporting institutions are subject to AML/CFT regulation and supervision. According to Article 53 of COBAC Regulation R-2005/01 of 1 April 2005 relating to the due diligence of institutions liable to AML/CFT in Central Africa, any reporting institution with the status of a parent company must forward its policies and procedures to its subsidiaries and branches abroad and have regular consolidated supervision of international banking operations to ensure the effectiveness of its programs at globally. This process must be subject to the control of COBAC (...). At the approval stage, COBAC ensures that the banking supervisory authority of the country of origin ensures consolidated supervision at international level where lending institutions or banking groups headquartered abroad submit applications for approval (COBAC Regulation R-2016/01 on the terms and conditions of issuing authorizations for credit institutions, their managers and their auditors). Article 96 of Regulation No. 01/CEMAC/UMAC/CM of 11 April 2016 requires financial institutions to communicate appropriate minimum AML/CFT measures to their foreign branches and subsidiaries. In contrast, it does not appear as though Congolese financial market institutions, considered in isolation, are governed by a consolidated supervisory framework.
- (c) Concerning other types of financial institutions, Article 12(4) of Regulation No. 01/CEMAC/UMAC/CM of 11 April 2016 requires supervisory and self-regulatory

authorities to ensure that the private sector establishes mechanisms to identify, assess and understand the ML/FT risks to which their sector is exposed.

**Criterion 26.5** : Articles 27 and 28 of the CEMAC Regulation state that supervisory authorities may: (a) specify financial institutions' AML/CFT prevention programs; (b) define the internal control procedures and measures that they must implement; and (c) conduct on-site controls to ensure their proper application.

However, no provision specifies the frequency and scope of documentary and on-site AML/CFT controls based on risk profiles.

**Criterion 26.6** : There is no provision for the ML/FT risk profiling of financial institutions or groups and, thus, no possibility of reviewing the assessment of the ML/FT risk profile of such institutions and groups.

### **Weighting and Conclusion**

The provisions governing market access are inadequate because they do not prevent criminals or their accomplices from owning, controlling and managing financial institutions, and they do not require the prior formal approval of major international transfer companies operating in the country. Furthermore, some of the gaps identified include non-prohibition of the incorporation or existence of shell banks in the Congo or, where applicable, their activities; the absence of necessary measures to prevent criminals or their accomplices from becoming beneficial owners of financial institutions; failure to determine the frequency and scope of documentary and on-site AML/CFT controls based on risk profiles; and failure to determine the Postal Sector Regulatory Agency's regulatory, supervisory or control powers with regard to AML/CFT.

Lastly, the general supervisory and control powers of COSUMAF and the Postal Sector Regulatory Agency regarding AML/CFT have not been formally established.

**The Congo is rated as Partly Compliant with Recommendation 26.**

### **Recommendation 27: Powers of supervisors**

The country's technical compliance with Recommendation 27 is high, except for the fact that the details of some authorities' supervisory powers, such as the sanctions imposed by COSUMAF, CIMA and the Postal Sector Regulatory Agency, are vague.

**Criterion 27.1** : Supervisory authorities have the authority to monitor and control the compliance of financial institutions with AML/CFT requirements (Article 91 of Regulation No. 01/CEMAC/UMAC/CM of 11 April 2016).

COBAC ensures compliance with the legal and regulatory provisions enacted by itself or by national authorities, by the UMAC Ministerial Committee, or by BEAC (Article 1 of the Convention of 16 October 1990 establishing COBAC) and supervises the institutions subject to COBAC Regulation R-2005/01 of 1 April 2005 relating to the due diligence of institutions liable to AML/CFT in Central Africa (Article 2): lending institutions, microfinance institutions, payment institutions, foreign exchange bureaus and issuers of electronic payment instruments. Approved auditors conduct on-site audits of the information forwarded to COBAC by financial

institutions. BEAC supervises microfinance institutions (competence shared with DGIFN), conducts documentary and on-the-spot checks on electronic payment instrument issuers (Instruction No. 008/GR/2019 of 10 June 2019 relating to the terms and conditions for the use of electronic payment instruments outside CEMAC (Article 11) and ensures that any transaction involving the issuance, advertising, sale or transfer of foreign securities within CEMAC complies with AML/CFT regulations (Instruction No. 012/GR/2019 of 10 June 2019 on the issuance of foreign securities within CEMAC – Article 7).

The **Remittance Regulatory Agency (ARTF)** regulates all remittances within and outside the country, including mobile money transactions (Law No. 7-2012 of 4 April 2012 establishing the ARTF).

The **Central African Financial Market Supervisory Commission (COSUMAF)** regulates the Central African financial market (Law No. 22-2011 of 17 May 2011 authorizing the ratification of the Convention governing the Central African Monetary Union – Article 31).

The **General Directorate of National Financial Institutions/Directorate of Insurance (DGIFN/DA)**, at national level, and the **Regional Insurance Supervisory Commission (CRCA)**, at supranational level, have the authority to supervise any insurance broker (CIMA Regulation No. 0004/CIMA/PCMA/PCE/SG/08 defining the procedures applicable by insurance companies in CIMA Member States under AML/CFT).

However, regarding the Postal Sector Regulatory Agency, National Law No. 10-2009 of 25 November 2009 on regulation of the postal sector is silent on its supervisory or control powers with respect to AML/CFT in postal financial services.

**Criterion 27.2** : Articles 27 and 28 of Regulation No. 01/CEMAC/UMAC/CM of 11 April 2016 evoke the possibility for supervisory authorities to carry out on-site inspections of financial institutions. In keeping with Article 10 of the Convention establishing it and in order to complete its documentary control, COBAC organizes and conducts on-site controls through a wide range of inspections of financial institutions, including payment service providers (Articles 14 and 15 of Regulation No. 04/18/CEMAC/UMAC/COBAC of 21 December 2018 relating to payment services within CEMAC). Similarly, BEAC conducts documentary and on-site control of lending institutions (Article 10 of the Convention establishing COBAC) and issuers of electronic payment instruments (Instruction No. 008/GR/2019 of 10 June 2019 on the terms and conditions for the use of electronic payment instruments outside CEMAC, Article 11). All other Community and national supervisory bodies have the authority to conduct on-site investigations.

The absence of a supervisory authority for the financial services of the Post Office, however, casts doubt on the Congo's compliance with this criterion.

**Criterion 27.3** : Supervisory authorities have the right to request information, documents or papers relating, in particular, to the identity of financial institution customers and transactions (Articles 38, 39, 91, and 101 of Regulation No. 01/CEMAC/UMAC/CM of 11 April 2016 on the prevention and suppression of money laundering and the financing of terrorism and proliferation in Central Africa), the identity of their managers or authorized agents, and any change of authorized persons (Article 69).

However, this situation is exacerbated by the absence of a body that has authority over postal sector institutions.

**Criterion 27.4** : Supervisory authorities may impose sanctions for noncompliance with AML/CFT requirements (Articles 113 and 119 of the CEMAC Regulation). Without prejudice to any sanctions imposed by national authorities, COBAC may impose disciplinary sanctions ranging from a warning to the revocation of the institution's licence (Article 13 of the Convention establishing COBAC).

CIMA may impose the sanctions provided for in Articles 534-2 and 545 of the Insurance Code.

However, given that no regulatory, supervisory or control powers of the Postal Sector Regulatory Agency in respect of AML/CFT are set out in National Law No. 10-2009 of 25 November 2009 regulating the postal sector, there are no sanctions applicable to sector institutions that are not subject to supervision by another authority at sub-regional level.

### **Weighting and Conclusion**

Overall, supervisory authorities have extensive powers to control taxpayers under their jurisdiction. They have the authority to conduct documentary and on-site controls, as well as the ability to require reporting entities to produce any information deemed relevant in most cases. They also have the authority to impose a variety of disciplinary and financial sanctions. Regarding postal financial services, the absence of clear powers for the supervisory authority and explicit provisions in this regard means that there is no sector control authority.

**The Congo is rated as largely Compliant with Recommendation 27.**

### **Recommendation 28: Regulation and supervision of DNFBPs**

Following the last evaluation of its AML/CFT system, the Congo was rated as Non-Compliant (NC) with the Recommendation (formerly R.24). Some of the main deficiencies identified include lack of explanatory guides, instructions or guidelines, lack of internal AML/CFT control by DNFBP supervisory authorities and self-regulatory bodies, and the absence of an effective AML/CFT compliance monitoring system.

#### *Casinos*

##### **Criterion 28.1**

- (a) Casinos are approved by the Ministry in charge of tourism and the environment, in accordance with Decree No. 210-245 of 16 March 2010 establishing the General Directorate of Leisure, as echoed by Decree No. 2017-412 of 10 October 2017 relating to the duties of the Minister of Tourism and Leisure, and Service Note No. 263/MTE-CAB on the nomenclature of leisure entities. Furthermore, Article 93 of the CEMAC Regulation states that no actor may operate as a DNFBP without being registered. However, the casino and gambling sector in the Congo has a number of shortcomings, most notably the absence of governing provisions and the proliferation of licencing authorities.

- (b) There are no laws governing gambling in the Congo, and there are no legal or regulatory measures to prevent criminals or their associates from owning or becoming the beneficial owners of significant shareholding or to control a casino, or from holding a management position or operating a casino.
- (c) There is no designated authority to monitor compliance by casinos with AML/CFT.

#### *DNFBPs other than casinos*

**Criterion 28.2 :** There is no provision pertaining to the designation of a supervisory authority or a self-regulatory body in charge of monitoring and ensuring DNFBP compliance with their AML/CFT obligations. As a result, the Congo has made no response or mention of the designation of an authority to this end.

**Criterion 28.3 :** According to Article 91 of Regulation No. 01/CEMAC/UMAC/CM of 11 April 2016, the supervisory and control authorities of DNFBPs must ensure that they comply with their AML/CFT obligations. However, no competent authority has been formally designated and there is no monitoring mechanism to ensure that DNFBPs comply with their AML/CFT obligations.

**Criterion 28.4 :** No competent authority has been designated to monitor the compliance of DNFBPs with their AML/CFT obligations and to:

- (a) monitor compliance with Articles 91 and 93 of the CEMAC Regulations;
- (b) define the relevant criteria for direct or indirect ownership, control or participation in the management or operation of a DNFBP, in accordance with Article 91(1) of the CEMAC Regulation;
- (c) penalize non-compliance with AML/CFT obligations, in accordance with Article 113 of the CEMAC Regulation.

#### *All designated non-financial businesses and professions*

**Criterion 28.5 :** There is no provision mandating risk-based oversight of designated non-financial businesses and professions, particularly by:

- (a) determining the frequency and scope of AML/CFT controls for designated non-financial businesses and professions based on their understanding of AML/CFT risks and taking into account their characteristics, including diversity and number;
- (b) taking into account the AML/CFT risk profile of designated non-financial businesses and professions, and the degree of discretion granted to them under the risk-based approach, when assessing the adequacy of the designated non-financial businesses and professions' internal controls, policies and procedures for AML/CFT.

#### **Weighting and Conclusion**

There is no provision designating a supervisory authority or a self-regulatory body in charge of monitoring and ensuring DNFBP compliance with their AML/CFT obligations. No monitoring mechanism has been set up to ensure that the rest of the DNFBPs comply with their AML/CFT

obligations. Furthermore, there are no provisions prescribing the risk-based monitoring of designated non-financial businesses and professions.

### **The Congo is rated as Non-Compliant with Recommendation 28.**

#### **Recommendation 29: Financial intelligence units (FIUs)**

Recommendation 29 relates to Recommendation 26 in the old methodology. The Congo was rated as Partly Compliant with R.26 at the end of its first mutual evaluation. The main shortcomings identified by the evaluators were lack of synergy among actors, limited access to information, limited operational independence and financial autonomy.

**Criterion 29.1** : Congo has an FIU instituted by Article 65 of the CEMAC Regulation and established by Decree No. 33-64 of 31 March 2008 laying down the organization and functioning of Congo's National Agency for Financial Investigation (NAFI).

#### **Criterion 29.2**

- (a) : NAFI Congo is the central body in charge of receiving suspicious transaction reports issued by reporting entities, in accordance with Article 6 of the CEMAC Regulation.
- (b) : Articles 15 (obligation to report or communicate physical cross-border movement of cash and bearer negotiable instruments) and 18 (obligation to report transactions in cash or bearer negotiable instruments) of the CEMAC Regulation contain provisions that comply with Criterion 29.2 (b).

#### **Criterion 29.3**

- (a) : Article 72 of the CEMAC Regulation states that: "NAFI shall acknowledge receipt of any written suspicious transaction report. It shall immediately process and analyse the information collected and, where necessary, request additional information from the reporting party as well as any public or private authority."
- (b) : Article 75(2) on the right to communication complies with point (b) of Criterion 29.3: "NAFI shall receive, at the request of government services, local authorities, public establishments and any other person entrusted with a public service mission, all the information needed to fulfil its service mission, or shall obtain same within the time limits that fixed by it..."

#### **Criterion 29.4**

- (a) : Article 2 of the Decree establishing NAFI and Articles 66 (1) comply with this point: "NAFI shall be responsible, in particular, for collecting, analysing, enriching and exploiting any information likely to establish the origin or destination of sums or the nature of the transactions mentioned in a suspicion report or a referral by the Legal Department, pursuant to the last paragraph of Article 2." Article 72 states that: "NAFI shall acknowledge receipt of any written suspicion report. It shall immediately process and analyse the information collected and, where necessary, request additional information from the reporting party as well as any public or private authority."

- (b) : This sub-criterion is addressed in Article 66 (4), which states that “NAFI shall conduct or commission periodic studies on the development of techniques used for money laundering or terrorist financing purposes on the national territory.”

**Criterion 29.5** : Article 2 of the Decree establishing NAFI, as well as Articles 66 and 71(2), (3), (4) and (5) provide for cases of communicating information to competent authorities through designated persons responsible for delivering information directly to the relevant authorities. Furthermore, NAFI is member of the Egmont Group and thus interacts with other FIUs through the Egmont Secure Web (ESW).

#### **Criterion 29.6**

- (a) : Articles 9, 16, and 17 of the Decree establishing NAFI, as well as Articles 70 (confidentiality), 71(1) (disclosure of information to NAFI), 73(1) (referral to the Prosecutor), and 82(1) and (2) (transmission of information to foreign FIUs), all comply with Criterion 29.6 (a).
- (b) : Article 9 of the Decree establishing NAFI complies with this sub-criterion.
- (c) : There is no provision in the NAFI Decree, let alone the CEMAC Regulation, governing access to NAFI facilities, including its IT systems.

#### **Criterion 29.7**

- (a) : Article 1 of the NAFI Decree and Article 65 of the CEMAC Regulations both state that NAFI has full autonomy in its functions of receiving, analyzing and disseminating specific information.
- (b) : Pursuant to Articles 79 (cooperation with national authorities), 80 (cooperation with the NAFIs of CEMAC member countries) and 82 of the CEMAC Regulation, NAFI has the powers to exchange information with CEMAC, foreign authorities (cooperation with foreign partner FIUs).
- (c) : Article 2 of the NAFI Decree and Article 65 of the CEMAC Regulation are in keeping with this sub-criterion. However, none of the provisions of the two instruments allow for the location of NAFI or the differentiation of its essential functions from those of its parent entity (Ministry of Finance - Article 2 of the Decree and Article 65 of the Regulation) or any other entity to which NAFI is attached.
- (d) : NAFI’s financial autonomy is enshrined in Article 1 of the NAFI Decree and Article 65 of the CEMAC Regulation. Article 14 of the Decree and Article 8 of the Regulation specify NAFI’s funding sources. Article 14 authorizes deductions from the national budget and resource allocation without specifying the method or frequency of such allocation, making it difficult to assess NAFI’s financial autonomy.

**Criterion 29.8** : Congolese authorities stated that NAFI has been an Egmont Group member since 2018.

#### **Weighting and Conclusion**

The Congo's institutional and legal arrangements are Largely Compliant with R 29 criteria. Criteria 29.6 and 29.7 affect Congo's R29 rating. The country is rated as Compliant with Recommendation 29.

**The Congo is rated as Largely Compliant with Recommendation 29.**

### **Recommendation 30: Responsibilities of law enforcement and investigative authorities**

The Congo was rated as Partly Compliant with the requirements relating to responsibilities of prosecuting and investigative authorities in its previous MER for five main reasons:

- lack of specialization in AML/CFT prosecution and investigation authorities;
- absence of national provisions for deferring arrests and seizures in order to identify suspects;
- inadequate material, technical and human resources of AML/CFT authorities;
- insufficient national arrangements for monitoring the integrity of prosecuting and investigative authorities;
- AML/CFT are not well understood by prosecuting and investigative authorities.

**Criterion 30.1 :** Several law enforcement agencies in the Congo are capable of conducting investigations into ML/TF or related predicate offences. The designated competent authorities are the National Police Force, the National Gendarmerie, the Customs Administration, the Forestry Administration, the Legal Department composed of prosecutors and investigating magistrates. NAFI officers conducting investigations may submit a report to the Prosecutor if the facts are likely to involve AML/CFT. AML/CFT investigations, on the other hand, are unsatisfactory and do not fit into a national AML/CFT policy framework.

**Criterion 30.2 :** The investigators of prosecuting authorities are responsible for determining criminal offences, gathering evidence and tracking down perpetrators. They carry out the delegations of authority and comply with the requests of investigating courts (Articles 14 and 29 of the Criminal Procedure Code). In the Congo, there is no provision for parallel financial investigations.

**Criterion 30.3 :** Law enforcement authorities have the authority to identify, trace and initiate procedures to seize or freeze property suspected of being the proceeds of crime, or intended to be used to fund terrorism. The Prosecutor or Investigating Judge may order asset investigations to assess the assets to be seized. Judicial police officers identify and track down proceeds of crime or property intended for terrorist financing. In the Congo, the Investigating Judge has the authority to seize property as a preventative measure leading to confiscation (Articles 77 and 82 of the Criminal Procedure Code).

**Criterion 30.4 :** Other institutions that are not law enforcement authorities per se can conduct financial and property investigations and seize proceeds of crime. The Customs Administration is competent to retain certain funds as part of the control of cross-border movement of cash. The Tax Administration is competent to combat tax evasion. The Anti-Corruption High Authority (ACHA) conducts financial investigations into cases of fraud, corruption and predicate offences.

**Criterion 30.5 :** The Anti-Corruption High Authority is the designated authority for investigating corruption, but it is unable to conduct investigations into money laundering, terrorist financing or proliferation, and does not have the competence to freeze or seize assets that are the subject of investigation (Cf. Article 3 of Law No. 3-2019 of 7 February 2019 to establish the Anti-Corruption High Authority).

### **Weighting and Conclusion**

Criminal prosecution authorities are mandated by law to investigate money laundering, predicate offences and terrorist financing, but they are not trained in AML/CFT. However, there is no legal provision governing parallel financial investigations.

**The Congo is rated as Partly Compliant with Recommendation 30.**

### **Recommendation 31: Powers of law enforcement and investigative authorities**

The Congo was rated as Partly Compliant with the requirements relating to the powers of prosecuting and investigative authorities in its previous MER for three (3) main reasons:

- lack of specialization in AML/CFT prosecution and investigative authorities;
- absence of national provisions for deferring arrests and seizures to identify suspects;
- inadequate material, technical and human resources of AML/CFT authorities;
- prosecuting and investigative authorities are not trained in AML/CFT.

**Criterion 31.1 :** In general, Congolese authorities have access to the documents and information required for criminal prosecution. The authorities, in particular, are empowered by law to impose the following enforcement measures:

- (a) Production of documents held by FIs, DNFBPs or other natural or legal persons stemming from the application of the CEMAC Regulation. Furthermore, Article 29 of the Criminal Procedure Code provides for the production of documents. Article 3 of Law No. 3-2019 of 7 February 2019 to establish the Anti-Corruption High Authority, gives it the authority to conduct investigations or inquiries into acts of corruption, misappropriation of funds and fraud, as well as to obtain information and documents from any public authority or natural or legal person as part of the investigations it is conducting.
- (b) Articles 40 and 77 of the Criminal Procedure Code provide for the search of persons and premises.
- (c) Articles 46 and 86 of the Criminal Procedure Code govern the collection of evidence.
- (d) Articles 14, 40 and 82 of the Criminal Procedure Code provide for seizure and collection of evidence. Furthermore, Article 104 of the CEMAC Regulation states that “the judicial authority may, in accordance with national law, take precautionary measures that order, in particular, the seizure of funds and property relating to the offence of money laundering or terrorist financing and proliferation that is the subject of the investigation, as well as all elements that can help to identify them, and the freezing of sums of money and financial operations relinquished.”

**Criterion 31.2 :** Articles 98 and 99 of the CEMAC Regulation establish specific prerogatives for the prosecution of money laundering, terrorist financing or even predicate offences. The judicial authority may use special investigative techniques such as undercover operations, surveillance, communication interception, controlled delivery, access to communication networks and infiltration. It may have access to computer systems, networks and servers used or likely to be used by individuals suspected of committing the aforementioned crimes. Professional secrecy does not apply to the disclosure of any acts, documents or records.

**Criterion 31.3 :** The Congo has the following mechanisms:

- (a) Articles 75, 98 and 101 of the CEMAC Regulation, as well as Article 02 of the NAFI Decree, require financial institutions to determine in a timely manner the identity of natural or legal persons, including beneficial owners, who hold or control accounts in their books. Investigators routinely use requisitions to obtain financial intelligence on such individuals; and
- (b) Articles 75 and 98 of the CEMAC AML/CFT Regulations, which require financial institutions to notify the owner of assets identified in advance. The domestic anti-money laundering mechanism is used to enforce this requirement.

**Criterion 31.4 :** NAFI maintains a database that is regularly updated with financial data from a variety of sources, including those provided by financial institutions and other government services. Investigators may use the database to obtain the information they seek as part of their investigative activities by sending requests to NAFI. However, it is forbidden to disclose such information which must only be used for specific purposes. Furthermore, NAFI is authorized to disclose information in its possession to technical services such as Customs, the Treasury, Water Resources and Forestry, Taxation or the Judicial Police.

## **Weighting and Conclusion**

**The Congo is rated as Compliant with Recommendation 31.**

## **Recommendation 32: Cash couriers**

The Congo was rated as Partly Compliant with the requirements in its last MER due to:

- lack of clarity in the traveller information system at borders;
- lack of systematic disclosure to NAFI of information available on the physical movement of cash or bearer negotiable instruments;
- absence of the automated management of information on the movement of cash or bearer negotiable instruments;
- lack of coordination among the various border services;
- lack of direct access to the CEN network by border customs services;
- lack of awareness and training of customs officers in combating money laundering and terrorist financing;
- inadequate material resources to detect the physical movement of cash or bearer negotiable instruments.

**Criterion 32.1 :** Article 15 of the CEMAC Regulation provides for the establishment of a cash declaration system for amounts equal to or greater than 5,000,000 CFA francs (7,633 euros) by anyone arriving from another country and entering or leaving the territory of a CEMAC Member State for another country.

However, the instituted declaration system applies only to travellers entering and exiting the CEMAC territory.

Furthermore, travellers' cheques, cashable bank cheques, foreign banknotes and domestic or foreign securities must be authorized before being sent abroad by post or other means.

**Criterion 32.2 :** Anyone making a physical cross-border transfer of cash or bearer negotiable instruments (BNIs) is required to submit a written declaration to the designated competent authorities when the value of the cash or BNI is equal to or greater than 5,000,000 CFA francs (7,633 euros).

**Criterion 32.3 :** As part of a communication system, natural persons crossing CEMAC borders on entry or exit are permitted to carry with them, without declaration, cash amounts not exceeding the equivalent of 5,000,000 CFA francs (7,633 euros), whether foreign currency or CFA francs. Any amount in excess of CFAF 5,000,000 or the equivalent in foreign currency, as well as negotiable instruments and securities in excess of this threshold, must be declared to the customs services under pain of the sanctions provided for by the regulations in force. The obligation to declare is not met if the information provided by the natural person is incorrect or incomplete. During border controls, customs services identify the traveller and, where necessary, request additional information on the origin of the funds transported. If the origin of the funds cannot be established, the customs services seize the funds and deposit them at the Central Bank.

**Criterion 32.4 :** Additional information on the origin and destination of cash or bearer negotiable instruments with a threshold equal to or greater than 5,000,000 CFA francs (7,633 euros), or in the event of suspicions of money laundering or terrorist financing, may be requested from travellers [Art. 15(2) of the Regulation]. The suspicion must also be based on non-declaration or false declaration.

**Criterion 32.5 :** False and incomplete declarations are prohibited under Article 15(3) and (4) of the CEMAC Regulation. In case of a violation of this prohibition, cash and bearer instruments likely to be linked to ML or TF are withheld or blocked for a period not exceeding 72 hours. The defendant may face ML/TF penalties. The penalties are bolstered by the ability of customs services to seize in full amounts of cash that have not been declared (Articles 15(5) and (6) of the said Regulation). All of these penalties are proportionate and dissuasive.

**Criterion 32.6 :** The CEMAC Regulation, as specified in Criterion 32.5, calls for seizure of all cash found and the drafting of a report in the event of failure to declare, false or incomplete declaration or suspicion of ML/TF.

**Criterion 32.7 :** The Congo did not respond satisfactorily to this criterion.

**Criterion 32.8 :** (a) Under Article 15(5) of the aforementioned Regulation, customs services may seize or withhold cash or bearer instruments likely to be linked to money laundering or

terrorist financing for a period not exceeding 72 hours. (b) In case of failure to declare or false declarations, customs services seize the entire amount of undeclared cash [Art 15(6) of the CEMAC Regulation].

**Criterion 32.9 :** Generally, the international instruments to which the Congo has subscribed call for increased cooperation and assistance, particularly in the execution of mutual legal assistance, extradition, freezing and confiscation, and all other forms of cooperation.

For points (a), (b) and (c), the databases of customs services and NAFI keep reports on amounts exceeding the prescribed threshold, false declarations or communication of false information, or suspicions of ML/TF for a period of ten (10) years. Such information may then be provided within the context of international cooperation and assistance.

**Criterion 32.10 :** The data collected by the customs administration, which is responsible for the cash and NBI declaration system, is shared with NAFI for investigative purposes, as required (Art.18 of the Regulation). Importation of CEMAC zone banknotes or means of payment denominated in foreign currency by non-resident travellers is free. The declaration or communication of cash or bearer instruments for amounts equal to or greater than five million (5,000,000) CFA francs (7,633 Euros) is, however, required. Although the principle is the free movement of capital, the law allows for the traceability of cash or bearer instruments when the threshold is equal to or greater than five million (5,000,000) CFA francs through the obligation to declare or communicate.

**Criterion 32.11 :** In the event of non-declaration or false declaration, all cash or bearer instruments may be seized, according to Article 15(4), (5) and (6) of the CEMAC Regulation. Similarly, when cash or bearer instruments are likely to be linked to money laundering or terrorist financing, the competent authority may withhold them for a period of up to 72 hours. In addition, the offender faces a ten-year prison sentence and a fine equal to ten (10) times the value of the property or funds. Lastly, the judge has the authority to order the confiscation of funds or other financial resources to be paid into the Treasury.

### **Weighting and Conclusion**

The Congo fulfils most of the recommendation's criteria. It did not, however, provide evidence of coordination between the various services involved at the borders in the physical cross-border movement of cash or BNIs.

**The Congo is rated as Largely Compliant with Recommendation 32.**

### **Recommendation 33: Statistics**

The Congo was rated as Non-Compliant in the last evaluation of its AML/CFT system for former Recommendation 32 on statistics, on grounds of lack of monitoring and statistical tools for money laundering offences; lack of a tool for collecting information on terrorist financing offences; lack of data and statistical monitoring tools for confiscation, seizure, and freezing of the proceeds of money laundering offences; and lack of data and statistical monitoring tools for confiscation, seizure, and freezing of proceeds of money laundering offences; absence of statistics on confiscation, seizure, and freezing of terrorist funds; absence of a national

framework for monitoring the effectiveness of the AML/CFT system; fragmentary statistics on predicate offences; absence of statistics on mutual legal assistance requests, investigations, prosecutions, freezes, seizures, confiscations or convictions relating to AML/CFT; absence of a national framework for evaluating the effectiveness of the AML/CFT system; lack of statistical monitoring of data on financial sector supervision; lack of statistical data on cooperation requests received and issued, as well as confiscations; lack of statistical tools for obtaining data on extraditions; lack of effectiveness in obtaining data on the various forms of cooperation initiated.

### **Criterion 33.1**

In the Congo, Law No. 36-2018 of 5 October 2018 on official statistics governs the preparation, production and dissemination of official statistics. However, this instrument does not fulfil the requirements of Recommendation 33 in terms of maintaining complete statistics on issues relating to the efficiency and effectiveness of the Congo's AML/CFT system.

- a. Article 9 of Decree No. 2008-64 of 31 March 2008 to lay down the organization, functioning and financing of NAFI requires this institution to establish a database containing all useful information on suspicious transaction reports (STRs). There are no legal standards requiring the keeping of statistics on the distribution of STRs.
- b. There is no legal requirement to keep statistics on ML/TF investigations, prosecutions and convictions.
- c. In the Congo, there are no laws requiring the keeping of statistics on frozen, seized or confiscated assets.
- d. There is no legal requirement to keep statistics on mutual legal assistance or other international requests for cooperation made and received.

### **Weighting and Conclusion**

The laws in force in the Congo do not have any binding provisions for keeping statistics on the effectiveness and efficiency of the AML/CFT system.

**The Congo is rated as Non-Compliant with Recommendation 33.**

### **Recommendation 34: Guidance and feedback**

Regarding Recommendation 34, the principle of guidance and feedback is in place, but the basis for NAFI supervision and the obligation of the aforementioned principle by NAFI is not specified in its constituent instrument.

**Criterion 34.1 :** Article 91(2) and (3) of the CEMAC Regulation provides that each supervisory and control authority should issue instructions, guidelines and recommendations to assist financial institutions and DNFBPs in complying with AML/CFT requirements. Article 97 requires NAFI to provide feedback to supervisory and control authorities, as well as reporting entities, on ML/TF mechanisms and the follow-up of STRs. This obligation, however, is not included in Decree No. 2008-64 of 31 March 2008, which lays down the organization, functioning and financing of NAFI Congo.

Similarly, no special emphasis is placed on DNFBP self-regulatory authorities with regard to

the aforementioned obligations under the Regulation.

### **Weighting and Conclusion**

The competent and supervisory authorities are responsible for issuing guidelines to financial institutions and designated non-financial businesses and professions. Only feedback from NAFI is provided to assist them in implementing national AML/CFT measures, particularly detecting and reporting suspicious transactions. These obligations do not apply to DBFB self-regulatory bodies.

**The Congo is rated as Partly Compliant with Recommendation 34.**

### **Recommendation 35: Sanctions**

Sanctions are generally provided for financial institutions, but the enforcement of sanctions in the EPNFD sector is deficient.

**Criterion 35.1 :** Articles 113, 114, 116 and 117 of the CEMAC Regulation provide for sanctions, which are supplemented by specific instruments such as the 16 October 1990 Convention Establishing a Banking Commission in Central Africa. These sanctions, which are bolstered by those provided for in the Criminal Procedure Code, range from a warning to the withdrawal of authorization, including the prohibition to carry out certain transactions, dismissal of the auditor and suspension or compulsory resignation of the manager responsible. COBAC imposes sanctions on payment service providers ranging from fines accompanied by implementation of corrective measures to restructuring or disciplinary sanctions under Regulation No. 02/14/CEMAC/UMAC/COBAC/CM (lending and payment institutions) and Regulation No. 01/17/CEMAC/UMAC/COBAC on microfinance institutions. Foreign exchange bureaus are also subject to COBAC's disciplinary powers and sanctions (Article 47 of CEMAC Instruction No. 011/GR/2019 on the terms and conditions for the exercise of manual foreign exchange activities). CEMAC Regulation No. 02/18/CEMAC/UMAC/CM of 21 December 2018 on foreign exchange regulation in CEMAC includes all applicable sanctions. Concerning insurance undertakings, the Insurance Code provides for a series of proportionate and dissuasive sanctions applicable to insurance companies. CIMA Regulation No. 0004/CIMA/PCMA/PCE/SG/08, which defines the procedures applicable in CIMA Member States with regard to AML/CFT, states that the Regional Insurance Control Commission (CRCA) may impose financial and disciplinary sanctions on insurance brokers subject to its control. COSUMAF also provides for the same type of sanctions through Instruction No. 01-15 of 17 September 2015 relating to disciplinary and pecuniary sanctions imposed by COSUMAF.

In DNFBP sectors, besides administrative sanctions, there is a wide range of criminal sanctions for non-compliance with AML/CFT obligations. Such sanctions are provided under Part V of the CEMAC Regulation (Repression of ML and TF) in Chapter II (Administrative, Disciplinary, and Criminal Sanctions) and Chapter III (Enforcement Measures). However, no provisions have been made for enforcing sanctions in this sector.

**Criterion 35.2 :** Sanctions for noncompliance with the aforementioned AML/CFT obligations, whether applied to lending institutions, microfinance institutions, foreign exchange bureaus or

insurance sector companies, should apply to management, managers, and members of the board of directors (Articles 117, 119, and 123 of the CEMAC Regulation).

Specifically, nobody may be a manager or director, or member of the board of directors of a foreign exchange bureau, either directly or through an intermediary, if s/he has been the subject of one of the following COBAC sanctions: suspension, compulsory resignation as a disciplinary measure, unless s/he has been rehabilitated or the period of prohibition from practising attached to the said sanction has expired (Art. 20).

The Minister of Finance has the authority to approve or dismiss credit institution managers and auditors.

However, the DNFBP sector lacks provisions for enforcing the principle of appropriate and dissuasive sanctions in the event of noncompliance with AML/CFT requirements.

### **Weighting and Conclusion**

COBAC has full powers to penalize financial institutions under its jurisdiction. The Insurance Code provides for a variety of proportionate and dissuasive sanctions for insurance companies. Such sanctions are dissuasive and proportionate regarding AML/CFT, and are supplemented by those provided for in the Penal Code regarding financial institutions. However, due to a lack of specific enforcement provisions, the sanctions are absent in DNFBP sectors, making it difficult to have a positive influence on their behaviour, considering their sector risks.

**The Congo is rated as Partly Compliant with Recommendation 35.**

### **Recommendation 36: International instruments**

Recommendation 36 refers to Recommendation 35 in the old methodology. The Congo was rated as Partly Compliant with this recommendation during the previous evaluation due to the partial implementation of the International Convention for the Suppression of Financing of Terrorism.

**Criterion 36.1** : The Congo adheres to the following conventions:

1. The Vienna Convention: Act of Accession signed on 13 January 2004.
2. The Palermo Convention: Act of Accession signed on 14 December 2000 and ratification on 11 June 2021.
3. The Merida Convention: ratification on 31 January 2006.
4. The International Convention for the Suppression of the Financing of Terrorism, ratified on 28 December 2006.

**Criterion 36.2** : The Congo implemented the Merida Convention (Articles 14-17, 23-24, 26-31, 38, 40, 43-44, 46, 48, 50-55, and 57-58) through Law No. 5-2009 of 22 September 2009 on corruption, bribery, fraud and related offences; and the International Convention for the Suppression of the Financing of Terrorism (Articles 2-18) through the CEMAC Regulation and the 12 May 2021 Decree on the legal regime for the freezing of assets). The supplementary protocols to the Vienna and Palermo Conventions, however, are yet to be implemented.

### **Weighting and Conclusion**

The Congo fully fulfils Criterion 36.1, but only partly fulfils Criterion 36.2.

**The Congo is rated as Partly Compliant with Recommendation 36.**

**Recommendation 37: Mutual legal assistance**

Recommendation 37 refers to R36 in the previous methodology, which was used to evaluate the Congo in 2015. The country was rated as Partly Compliant with this recommendation in view of its partial implementation of the International Convention for the Suppression of the Financing of Terrorism.

**Criterion 37.1 :** Chapter 3 of Part 6 (International Cooperation) of the CEMAC Regulation focuses on mutual legal assistance. Articles 141 to 157 present the conditions and procedures for implementing mutual legal assistance.

**Criterion 37.2 :** No document provided by the Congo mentions designation of a central authority, let alone a formal mechanism established for efficient transmission and execution of requests.

**Criterion 37.3 :** Article 143 specifies the grounds for rejecting a request for mutual legal assistance.

**Criterion 37.4 :** Article 143 specifies the grounds for rejecting a request for mutual legal assistance. They do not focus on:

- tax issues;
- or on the secrecy or confidentiality of financial institutions or DNFBPs. Article 43(2) clearly states that “professional secrecy may not be used as grounds for refusing to comply with a request for mutual legal assistance.”

**Criterion 37.5 :** Article 144 of the CEMAC Regulation provides that “the competent authority shall maintain the confidentiality of the request for mutual legal assistance, its contents and the documents produced, as well as the substance of the assistance.”

**Criterion 37.6 :** Article 143 of the CEMAC Regulation specifies the conditions for refusing mutual legal assistance. These have nothing to do with dual criminality. Point 4 of this Article states that mutual legal assistance may be refused in case of coercive action if “the measures requested or any other measures having similar effects do not apply to the offence referred to in the request, under the law in force.” The requested decision is not enforceable under the existing law.

**Criterion 37.7 :** Conditions for refusing a request for mutual legal assistance are set out in Article 143 of the CEMAC Regulation. These have nothing to do with the principle of dual criminality, but rather with the terminology of the original offence.

**Criterion 37.8**

- (a) Articles 146 (delivery of procedural documents and judicial decisions), 147 (appearance of non-detained witnesses), 148 (appearance of detained witnesses), 150 (request for search), 150 (request for confiscation) and 152 (request for

precautionary measures in preparation for confiscation) are in keeping with this sub-criterion.

- (b) Articles 98 to 100 of Part 4 of the CEMAC Regulation provide for a wide range of investigative powers and techniques.

### **Weighting and Conclusion**

Criterion 37.2 (non-compliant) affects the Congo's overall rating on this recommendation, despite the fact that the other criteria are Met.

**The Congo is rated as Partly Compliant with Recommendation 37.**

### **Recommendation 38: Mutual legal assistance: Freezing and confiscation**

The Congo was rated as Partly Compliant with Recommendation 38, which had the same number in the previous methodology, due to the absence of provisions on confiscation of property of equivalent value or provisions on the coordination of seizure and confiscation initiatives.

#### **Criterion 38.1**

- (a) Articles 130 (mandatory confiscation of proceeds of money laundering) and 151 (request for confiscation);
- (b) Articles 130 (request for provisional measures to prepare for confiscation), 131 (mandatory confiscation of funds and other financial resources related to terrorist financing are consistent with this sub-criterion);
- (c) Articles 130 and 131 refer to property used for both money laundering and terrorist financing;
- (d) The instruments intended to be used refer only to the case of terrorist financing (Article 131), whereas Article 130 on confiscation of property for money laundering does not refer to instruments intended to be used;
- (e) Article 130 of the CEMAC Regulation states that property shall be confiscated "up to its corresponding value," while Article 131(4) states unequivocally that "where the funds, property and other financial resources to be confiscated cannot be represented, their confiscation may be ordered in "VALUE."

**Criterion 38.2 :** There is no reference in the legislation to the core elements of this sub-criterion, such as request for cooperation based on non-conviction-based confiscation proceedings or cases where the offender is dead, at large, absent or unknown.

#### **Criterion 38.3**

- (a) No instrument in the documentation submitted provides for agreements with other countries to coordinate seizure and confiscation actions.
- (b) Article 154 (fate of confiscated property) simply states that the State has the authority to dispose of confiscated property on its territory at the request of foreign authorities,

unless an agreement with the requesting State provides otherwise. There is, however, no clear mechanism for this purpose.

**Criterion 38.4:** Article 154 of the CEMAC Regulation on the disposition of confiscated property allows the State to dispose of such property. There is, however, no mechanism in place for sharing confiscated assets with other countries, especially where confiscation is the direct or indirect outcome of law enforcement actions coordinated with other countries.

### **Weighting and Conclusion**

The Congo is rated as non-compliant with point (d) of Criterion 38.1 and points (a) and (b) of Criterion 38.3.

**The Congo is rated as Partly Compliant with Recommendation 38.**

### **Recommendation 39: Extradition**

The Congo was rated as Partly Compliant with Recommendation 39 which has the same number as in the previous methodology, due to the lack of a provision allowing for prosecution of nationals under an extradition request.

#### **Criterion 39.1**

- (a) Money laundering and terrorist financing are extraditable offences under the CEMAC Regulation (Articles 8, 9, 114, 123, and 159).
- (b) The CEMAC Regulation contains legal provisions for extradition (Articles 159 to 163), but there are no provisions for a case management system or clear procedures for the timely execution of extradition requests.
- (c) Article 159 (conditions for extradition) specifies two conditions for extradition: the commission of money laundering and terrorist financing offences, as well as a prior conviction for these two offences. These conditions are neither unreasonable nor excessively restrictive.

#### **Criterion 39.2**

- (a) The Congo does not extradite its nationals.
- (b) Article 164 of the CEMAC Regulation states that in the event of refusal to extradite on grounds of nationality, the case is brought before the competent national courts for prosecution.

**Criterion 39.3 :** Article 159 deals with the terms of extradition. This article states in paragraph 2 that “there shall be no deviation from the ordinary rules of extradition, particularly those relating to double criminality.”

**Criterion 39.4 :** Article 160 of the CEMAC Regulation addresses the “simplified procedure” of an extradition request.

### **Weighting and Conclusion**

The provisions of the CEMAC Regulations on extradition meet the requirements of R.39. However, no provisions on the case management system or clear procedures for the timely execution of extradition requests are provided.

**The Congo is rated as Largely Compliant with Recommendation 39.**

#### **Recommendation 40: Other forms of international cooperation**

The Republic of Congo was rated PC in the initial evaluation. The main shortcoming identified was insufficient implementation of international cooperation. Since then, there has been normative progress, with the adoption of Regulation No. 1/CEMAC/UMAC/CM of 11 April 2016 on the prevention and suppression of money laundering and the financing of terrorism and proliferation in Central Africa.

##### *General principles*

**Criterion 40.1 :** Competent authorities such as the Police, NAFI, Customs, Taxation and supervisory authorities have the legal basis to ensure international cooperation in the areas of money laundering, related predicate offences and terrorist financing (see particularly Articles 80, 82, and 133 to 163 of the aforementioned Regulation No. 1/CEMAC/UMAC/CM).

Article 82 of the CEMAC Regulation provides that, upon request or on its own initiative, NAFI may disclose information it holds to equivalent foreign financial intelligence units, in accordance with the Egmont Group Charter of FIUs.

The Republic of Congo has signed a number of cooperation agreements, notably in the fields of security, finance and justice. These agreements compel the relevant AML/CFT authorities to work together. Information must be exchanged on the spur of the moment and upon request.

##### **Criterion 40.2**

- (a) The Congo has sufficient legal instruments consisting of agreements, conventions, regulations and laws that constitute the legal basis for cooperation between competent authorities on AML/CFT.
- (b) As part of judicial cooperation, competent authorities are authorized to use all effective means and procedures offered by the laws and regulations in force. The Congo is signatory to the 29 April 1999 Agreement on Cooperation in Criminal Police Matters, as amended by CEMAC Regulation No. 4/CEMAC-069-CM-04 of 21 July 2000. The country also collaborates with other countries in the field of information exchange through the Interpol I-24/7 system via its National Central Bureau (NCB). The Congo is member of the International Criminal Police Organization (ICPO-INTERPOL) network. It also collaborates in police matters with its Central African neighbours under the Agreement on Cooperation in Criminal Police Matters between the States of Central Africa, signed on 29 April 1999 and adopted through Regulation No. 4/CEMAC-069-CM-04 on 21 July 2000, between Cameroon, the Central African Republic, the Republic of Congo, the Democratic Republic of the Congo, Gabon, Equatorial Guinea, the Democratic Republic of Sao Tome and Principe, and Chad.

- (c) Requests for mutual legal assistance are received by the Ministry of External Relations and Cooperation. After receiving the request, the latter forwards same to the Ministry of Justice which, in turn, refers it to the competent judicial authority. Moreover, in case of an emergency, the request is forwarded directly to the competent judicial authority for processing.
- (d) However, there are no clear procedures for prioritization and timely execution of requests and for protection of information received.
- (e) The competent authority maintains the confidentiality of the request for mutual legal assistance, its content and the documents produced, together with the very existence of mutual assistance (Article 144(1) of the CEMAC Regulation).

Competent authorities (NAFI, Police and Customs) in AML/CFT matters are members of international organizations in their sectors. As such, they usually communicate through secure circuits, channels or networks of these institutions, which ensure the protection of information received. They benefit, for example, from the EGMONT SECURE WEB channel for correspondence between FIUs, the I24/7 channel for correspondence between INTERPOL NCBs, and the AFSECOM channel via AFRIPOL National Liaison Offices, of which the Congo is a member. Such channels or networks are secure and ensure information security.

**Criterion 40.3 :** Pursuant to the CEMAC Regulation, NAFI may negotiate and sign agreements with its foreign counterparts. The Congo has signed judicial cooperation and extradition agreements with CEMAC Member States in order to enable effective collaboration between the judicial authorities of these States. Likewise, bilateral agreements have been signed with CEMAC countries and others around the world. The CEMAC Regulation provides that requests for mutual legal assistance from a third State be executed where the legislation of this State obliges it to respond to requests of the same nature issued by the competent authority [Article 141(2)]. The Congo is a signatory to the cooperation agreement between Central African police forces.

**Criterion 40.4 :** According to Article 138 of Regulation No. 01/CEMAC/UMAC/CM, judicial authorities of the requested State carry out prosecution and all other procedural matters, in accordance with the law in force in its territory, and notify the prosecuting authority of the requesting State of the decision taken or rendered at the conclusion of the proceedings.

**Criterion 40.5 :** International cooperation in the Congo appears to be free of irrational and disproportionate restrictions, particularly:

- (a) the fiscal nature of the purpose of the request is not considered as a reason for refusing to execute a request for mutual legal assistance as stated in Article 143 of the CEMAC Regulation;
- (b) professional secrecy or confidentiality are not obstacles to the execution of a request for mutual assistance for financial institutions or DNFBPs [Art.143(2) CEMAC Regulation];

- (c) Article 143(3) of the CEMAC Regulations provides for the refusal of a request for mutual assistance when the offence to which it relates is the subject of criminal proceedings or has already been the subject of a judgement in the national territory;
- (d) whether the nature or status (civil, administrative, judicial) of the requesting authority is different from that of its foreign counterpart, it is irrelevant to the granting of mutual legal assistance. A request for mutual legal assistance may be refused only if it was not made by a competent authority according to the legislation of the requesting State or if it was not forwarded in accordance with applicable laws [Art. 143(1) of the CEMAC Regulation].

**Criterion 40.6 :** According to Article 144 of the CEMAC Regulation, information shared by competent authorities may only be used for the purposes and by the authorities for which it was requested. Furthermore, according to Article 14(2) of the aforementioned CEMAC Regulations, “where it is not possible to execute the said request without disclosing the secret, the competent authorities shall inform the requesting State, which shall decide whether to maintain the request.”

**Criterion 40.7 :** Congolese authorities, members of the Egmont Group and Interpol, collaborate in a secure manner through the channels of these international organizations. Article 144 of the CEMAC Regulation also guarantees confidentiality in the processing of requests. Furthermore, pursuant to Article 82 of the said Regulation, information sharing between NAFI and its foreign counterparts is subject to the obligation of confidentiality.

**Criterion 40.8 :** Article 82 of the CEMAC Regulation provides a number of options for judicial cooperation. The Congolese police and gendarmerie are free to provide information if requested by a foreign police service, either directly or through Interpol. The Congolese customs authorities are authorized to open customs investigations at the request of their counterparts and on the basis of customs treaties. The country’s judicial authorities work together within the confines of the country’s laws and regulations.

#### *Exchange of information between FIUs*

**Criterion 40.9 :** Articles 80 and 82 of the CEMAC Regulation govern the relationship between CEMAC member NAFIs and third-country FIUs in matters of ML, related predicate offences and TF. Such cooperation takes place regardless of the legal nature of the counterpart FIU.

As member of the Egmont Group, NAFI Congo also cooperates with other FIUs on a reciprocal or mutual agreement basis.

**Criterion 40.10 :** According to Article 81(1) of the CEMAC Regulation, NAFI Congo is required to disclose, at the duly reasoned request of a NAFI of a CEMAC Member State, all information and data relating to the investigations undertaken following a suspicious transaction report at national level, as part of an investigation.

Feedback to counterpart FIUs outside CEMAC on the use of the information provided and the outcome of the analyses conducted, complies with the principles contained in the Egmont Group of Financial Intelligence Units Charter.

As member of the Egmont Group since 2018, NAFI Congo is required to inform its foreign counterparts of how the information provided and the outcomes of the analysis have been used in accordance with point 19 of the Egmont Group Principles for Information Exchange between Financial Intelligence Units. However, according to point 3 of Article 82 of the CEMAC Regulation, exchanges between NAFI and a foreign FIU require prior approval by the Minister in charge of Finance.

**Criterion 40.11 :** The CEMAC Regulation (Art. 80.1 and 82 of the CEMAC Regulation) grants NAFI Congo broad powers of exchange, particularly on:

- (a) all information it may consult or obtain directly or indirectly, particularly pursuant to Recommendation 29; and
- (b) any other information it may consult or obtain directly or indirectly, at national level, subject to the principle of reciprocity.

#### *Exchange of information between financial sector supervisors*

**Criterion 40.12 :** COBAC has full authority to enter into cooperation and information-sharing agreements with financial system supervisory authorities in accordance with the Basel Committee's basic principles and the provisions of Paragraphs 4 and 8 of Article 91(2) of the CEMAC Regulation, as well as Regulation No. 02/09/CEMAC/UMAC/COBAC.<sup>21</sup> Articles 3 to 5 of the aforementioned Regulation provide in particular that COBAC may forward information relating to banks and financial institutions to the supervisory authorities of similar institutions in other countries, subject to reciprocity and on condition that such authorities are themselves bound by professional secrecy.

**Criterion 40.13 :** Articles 4 and 8 of Article 91(1) of Regulation No. 01/CEMAC/UMAC/CM provide that supervisory and control authorities may share with their foreign counterparts the information they possess at national level, particularly that held by financial institutions, to the extent of their respective needs.

Regulation No. 02/09/CEMAC/UMAC/COBAC of 28 September 2009 allows COBAC to sign cooperation agreements with some regulators. It has also joined regional and international groups as supervisors in charge of cross-border supervision of banking groups.

**Criterion 40.14 :** Banking supervisors exchange, in the context of AML/CFT, particularly with their relevant counterparts sharing a common responsibility for financial institutions operating within the same group, in accordance with the above provisions and the Basel Committee's recommendations for the organization of supervisory colleges:

- (a) regulatory information such as information on national regulations and general financial sector information;
- (b) prudential information such as information on financial institutions' activities, beneficial owners, management, competence and good repute;
- (c) AML/CFT-related information, particularly through joint inspection missions.

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<sup>21</sup> Regulation No. 02/09/CEMAC/UMAC/COBAC of 28 September 2009 granting COBAC the authority to conclude cooperation and information-sharing agreements with financial system supervisory authorities.

However, the Congo did not provide any information regarding other supervisory authorities.

**Criterion 40.15 :** COBAC relies on agreements to share information when cooperating with its foreign counterparts. Such exchanges are undertaken on its initiative or at the request of a foreign supervisory authority.

According to Article 14 of the cooperation agreement between COBAC and the WAEMU Banking Commission and Article 7.1 ii, iii and iv of the Memorandum of Understanding between COBAC and the Central Bank of Nigeria, “upon the request of its foreign counterpart, an authority may carry out, alone or together with the latter, inspections in institutions within its jurisdiction that have capital or other links with an institution reporting to the requesting authority.

In this case, a copy of the inspection report shall be sent to the requesting authority as soon as possible.

In the event of joint inspection, the two authorities shall jointly validate and sign the reports and follow-up letters prior to their transmission to the inspected institution and shall send each other a copy of the final reports and follow-up letters forwarded to that institution.

Upon completion of the inspection, the parties shall send each other the final reports and follow-up letters forwarded to the institution.

They shall mutually inform each other of the subsequent decisions taken with regard to the institutions concerned and ensure their implementation”.

The same is true for Article 14 of the cooperation agreement between COBAC and the Central Bank of Congo (BCC).

From the foregoing, COBAC may seek information for its foreign counterparts and/or authorize them to seek information themselves, but this should be done jointly as specified in the various cooperation agreements.

**Criterion 40.16 :** COBAC, which is the banking sector supervisor, collaborates with its foreign supervisory counterparts to obtain the information it deems necessary for the discharge of its duties. Information is most often shared on the basis of cooperation agreements.

Thus, in accordance with the agreements, the information shared between the different authorities cannot be used for purposes other than those for which it was requested. When the shared information is to be used for administrative, disciplinary or criminal proceedings, the requesting authority informs its counterpart in advance or before the start of such proceedings.

#### *Exchange of information between law enforcement authorities*

**Criterion 40.17 :** Articles 141, 145 and 150 to 152 of Regulation No. 01/CEMAC/UMAC/CM authorize prosecuting authorities to conduct investigations on behalf of their foreign counterparts. The above-mentioned provisions, which are applicable in this domain, provide guarantees for information confidentiality. Furthermore, the instruments listed below allow for the extension of this judicial cooperation.

- The Protocol on Judicial Cooperation of the International Conference on the Great Lakes Region (ICGLR) of 1 December 2016;
- The General Convention on Judicial Cooperation of 12 September 1961;
- Law No. 35-2011 of 21 October 2011 authorizing the ratification of the Convention on Mutual Legal Assistance and Extradition Against Terrorism;
- The 1974 Convention on Mutual Legal Assistance with France.

These provisions are strengthened by the implementation of the police cooperation mechanisms established by ICPO-INTERPOL as well as by the Criminal Police Cooperation Agreement between Central African States.

**Criterion 40.18 :** Pursuant to the provisions of the CEMAC Regulation, Congolese law enforcement authorities use their powers, including investigative techniques, to conduct investigations and obtain information on behalf of their foreign counterparts, particularly to respond to requests for mutual legal assistance concerning investigative and inquiry measures (Art. 145), search and seizure (Art. 150), confiscation (Art. 151), and provisional measures for the purpose of preparing confiscation (Art. 152).

**Criterion 40.19 :** Congolese prosecution authorities may set up joint investigation teams to conduct cooperative investigations through agreements such as the Cooperation Agreement between the Chiefs of Police of Central and West Africa, with INTERPOL and AFRIPOL, and in accordance with the provisions of Article 145(3) of the CEMAC Regulation. Similarly, they may establish bilateral or multilateral agreements to authorize such joint investigations, where necessary.

#### *Exchange of information between non-counterparts*

**Criterion 40.20 :** The Congo does not have indirect information exchange mechanisms between national competent authorities and foreign non-counterpart authorities.

#### **Weighting and Conclusion**

All bodies have the authority and competence to engage in a wide range of international cooperation activities. They have access to a number of mechanisms for inter-country cooperation. However, some limitations in the analysis of this recommendation have been identified, particularly the absence of a mechanism for prioritizing and managing requests for mutual legal assistance.

**The Congo is rated as Largely Compliant with Recommendation 40.**

## Technical compliance summary – Key deficiencies

Annex Table 1. Compliance with FAFT Recommendations

Recommendation	Rating	Rating Factor(s)
1. Assessing risks and applying a risk-based approach	<b>PC</b>	<ul style="list-style-type: none"> <li>▪ No dissemination of NRA report;</li> <li>▪ Non-implementation of the action plan;</li> <li>▪ No specific provisions obliging the country, where it has identified higher risks, to have an AML/CFT regime to address such risks;</li> <li>▪ Inconsistency of the measures taken with the findings of the national risk assessment in accordance with Article 52 of the CEMAC Regulation.</li> </ul>
2. National cooperation and coordination	<b>LC</b>	<ul style="list-style-type: none"> <li>▪ Non-operationality of the national AML/CFT policy coordination committee;</li> <li>▪ Absence of a mechanism or platform for pooling the actions of the major actors in combating financial crime in general.</li> </ul>
3. Money laundering offence	<b>PC</b>	<ul style="list-style-type: none"> <li>▪ Existence of some categories of designated offences not criminalized at national level.</li> </ul>
4. Confiscation and provisional measures	<b>PC</b>	<ul style="list-style-type: none"> <li>▪ No provisions on confiscation of laundered assets in the mechanism;</li> <li>▪ Non-designation of the competent authority for administrative freezing.</li> </ul>
5. Terrorist financing offence	<b>LC</b>	<ul style="list-style-type: none"> <li>▪ Non-criminalization of financing of travel of foreign terrorist fighters.</li> </ul>
6. Targeted financial sanctions relating to terrorism and terrorist financing	<b>NC</b>	<ul style="list-style-type: none"> <li>▪ Non-designation of the competent authority for administrative freezing;</li> <li>▪ Absence of an advisory commission on administrative freezing;</li> <li>▪ Lack of mechanisms and clear guidelines on the application of TFS relating to terrorism and its financing.</li> </ul>
7. Targeted financial sanctions relating to proliferation	<b>NC</b>	<ul style="list-style-type: none"> <li>▪ Lack of a legal framework for the application of targeted financial sanctions relating to proliferation financing.</li> </ul>
8. Non-profit organizations	<b>NC</b>	<ul style="list-style-type: none"> <li>▪ Non-identification of the subset of NPOs likely to be used for TF purposes;</li> <li>▪ Non-identification of TF threats to which NPOs are exposed;</li> <li>▪ Lack of measures to promote targeted risk-based control.</li> </ul>
9. Financial institutions secrecy laws	<b>LC</b>	<ul style="list-style-type: none"> <li>▪ Lack of specific provisions requiring information exchange between financial institutions at national level, as part of AML/CFT.</li> </ul>
10. Customer due diligence	<b>PC</b>	<ul style="list-style-type: none"> <li>▪ No requirement for reliability of the source of beneficial owner information obtained by reporting entities;</li> <li>▪ No obligation for institutions to identify by other means the natural persons controlling the legal person or the legal arrangements in case of doubt as to the identity of the beneficial owner;</li> </ul>

		<ul style="list-style-type: none"> <li>▪ Lack of explicit provisions for beneficiaries of life insurance contracts and other insurance-linked investment products;</li> <li>▪ No obligation for financial institutions to have an information list established by the competent authorities;</li> <li>▪ Lack of a regulatory requirement for financial institutions to consider beneficiaries of life insurance contracts as a relevant risk factor when determining whether enhanced due diligence measures are applicable.</li> </ul>
11. Record keeping	<b>LC</b>	<ul style="list-style-type: none"> <li>▪ Lack of provisions expressly obliging financial institutions to keep the books of account and business correspondence of their customers;</li> <li>▪ Lack of generally binding provisions on the time limits for disclosure of the above documents.</li> </ul>
12. Politically exposed persons	<b>PC</b>	<ul style="list-style-type: none"> <li>▪ No provision on PEPs to determine from the origin of funds or assets whether they are not the beneficial owners;</li> <li>▪ No instrument to determine whether the beneficiary of an insurance contract, or the beneficial owner of a life insurance contract is a PEP.</li> </ul>
13. Banking correspondence	<b>LC</b>	<ul style="list-style-type: none"> <li>▪ Lack of provision for financial institutions to ensure that the correspondent is able to provide relevant information relating to transit accounts upon request from the correspondent bank.</li> </ul>
14. Money or value transfer services	<b>PC</b>	<ul style="list-style-type: none"> <li>▪ Lack of provisions obliging the country to take measures to identify natural or legal persons providing money or value transfer services without being licensed or registered, in order to apply proportionate and dissuasive sanctions;</li> <li>▪ Lack of provisions obliging money transfer service providers using agents, to include them in their AML/CFT programs and to monitor their compliance with such programs.</li> </ul>
15. New technologies	<b>NC</b>	<ul style="list-style-type: none"> <li>▪ Lack of legislative or regulatory provisions governing transactions relating to virtual assets or carried out by virtual asset service providers;</li> <li>▪ No provision designating an authority specifically responsible for authorization and supervision of VASPs.</li> </ul>
16. Wire transfers	<b>PC</b>	<ul style="list-style-type: none"> <li>▪ No requirement to oblige the originator's financial institution to forward the information accompanying the transfer to the beneficiary's financial institution or to the prosecution authorities upon request within three (3) working days of receipt of the request from either the beneficiary's financial institution or the competent authorities;</li> <li>▪ Lack of an express obligation on the intermediary financial institution to keep for at least five years the information received from the originator's financial institution or the other intermediary financial institution;</li> <li>▪ Lack of provisions requiring financial institutions to have risk-based policies and procedures for deciding when to execute, reject or suspend wire transfers that</li> </ul>

		<p>do not include the required originator or beneficiary information;</p> <ul style="list-style-type: none"> <li>▪ Lack of a standard for filing a suspicious transaction report in all countries concerned with the suspicious wire transfer.</li> </ul>
17. Reliance on Third Parties	<b>LC</b>	<ul style="list-style-type: none"> <li>▪ No obligation for FIs to take steps to ensure that the third party forwards the documentation.</li> </ul>
18. Internal controls and foreign branches and subsidiaries	<b>LC</b>	<ul style="list-style-type: none"> <li>▪ No satisfactory provision for confidentiality and use of information exchanged as part of internal control of FIs and foreign branches and subsidiaries.</li> </ul>
19. Higher risk countries	<b>PC</b>	<ul style="list-style-type: none"> <li>▪ Lack of binding measures for the application of risk-proportionate countermeasures at the express request of FATF or independently.</li> </ul>
20. Reporting of suspicious transactions	<b>PC</b>	<ul style="list-style-type: none"> <li>▪ Unsatisfactory framework for the obligation to report attempted suspicious transactions.</li> </ul>
21. Tipping-off and confidentiality	<b>C</b>	<ul style="list-style-type: none"> <li>▪ All criteria of this recommendation are met.</li> </ul>
22. Designated non-financial businesses and professions: customer due diligence	<b>PC</b>	<ul style="list-style-type: none"> <li>▪ Lack of provisions obliging those involved in DNFbps to identify the beneficial owner or the origin of funds;</li> <li>▪ No obligation to keep records, except for casinos;</li> <li>▪ Absence of regulatory provisions on new technologies, or on the use of third parties, as well as on the application of due diligence measures proportionate to ML/TF risks.</li> </ul>
23. Designated non-financial businesses and professions: other measures	<b>PC</b>	<ul style="list-style-type: none"> <li>▪ Non-designation of the authority responsible for supervising DNFbps, which should issue procedures and internal control measures applicable by DNFbps;</li> <li>▪ Lack of a mechanism for the application of risk-proportionate countermeasures;</li> <li>▪ Non-obligation to adopt measures to ensure that DNFbps are aware of concerns about the AML/CFT shortcomings of other countries.</li> </ul>
24. Transparency and beneficial owners of legal persons	<b>PC</b>	<ul style="list-style-type: none"> <li>▪ No system for collecting, updating and keeping information on the beneficial owner;</li> <li>▪ Lack of a provision allowing the Congo to ensure that companies cooperate to the fullest extent possible with the competent authorities in identifying beneficial owners;</li> <li>▪ Lack of a collection mechanism and sanctions to address failure to provide basic and up-to-date information on legal persons, including nominee shareholders and board members.</li> </ul>
25. Transparency and beneficial ownership of legal arrangements	<b>PC</b>	<ul style="list-style-type: none"> <li>▪ Lack of information on the existence of legal arrangements operating in the Congo;</li> <li>▪ Lack of proportionate and dissuasive sanctions in case of non-compliance with obligations, hence no guarantee of transparency on the beneficial owners of this type of legal entities.</li> </ul>
26. Regulation and supervision of Financial Institutions	<b>PC</b>	<ul style="list-style-type: none"> <li>▪ Absence of provisions specifically requiring prior formal approval of large international transfer companies operating in the country by the competent Congolese authority, or formally prohibiting the establishment or existence of shell banks in the Congo or, where applicable, the continuation of their activities;</li> </ul>

		<ul style="list-style-type: none"> <li>▪ Lack of measures to prevent criminals or their accomplices from becoming beneficial owners through the corporate management of financial institutions;</li> <li>▪ Lack of regulations providing for the identification of beneficial owners at the time of application for authorization and/or significant transfers of ownership, or providing for a reliable, secure and verifiable register of beneficial owners in the country;</li> <li>▪ Lack of clarity on the general supervisory and control powers of COSUMAF and the Postal Regulatory Agency.</li> </ul>
27. Powers of supervisors	<b>LC</b>	<ul style="list-style-type: none"> <li>▪ Lack of power to supervise the financial services sector of postal services.</li> </ul>
28. Regulation and supervision of designated non-financial businesses and professions	<b>NC</b>	<ul style="list-style-type: none"> <li>▪ Lack of legal provision designating supervisory authorities or a self-regulatory body responsible for monitoring and ensuring DNFBP compliance with AML/CFT obligations;</li> <li>▪ Lack of a monitoring mechanism to ensure that the remaining DNFBPs comply with their AML/CFT obligations;</li> <li>▪ No provisions prescribing risk-based supervision of Designated Non-Financial Businesses and Professions.</li> </ul>
29. Financial Intelligence Units (FIUs)	<b>LC</b>	<ul style="list-style-type: none"> <li>▪ No provision in the NAFI Decree or the CEMAC Regulation on the conditions of access to NAFI's facilities or its computer system;</li> <li>▪ No provision allowing distinction between NAFI's basic functions and those of its administrative supervisory authority;</li> <li>▪ Lack of precision on the method and frequency of allocation of NAFI's resources, thus making it impossible to assess the autonomy of the FIU regarding its financing.</li> </ul>
30. Responsibilities of law enforcement and investigative authorities	<b>PC</b>	<ul style="list-style-type: none"> <li>▪ Lack of a specialized AML/CFT prosecution authority;</li> <li>▪ Lack of legal provision for parallel financial investigations.</li> </ul>
31. Powers of law enforcement and investigative authorities	<b>C</b>	<ul style="list-style-type: none"> <li>▪ All the criteria for this recommendation are met.</li> </ul>
32. Cash couriers	<b>LC</b>	<ul style="list-style-type: none"> <li>▪ No coordination between the various services intervening at the borders, regarding the physical cross-border transport of species or BNIs.</li> </ul>
33. Statistics	<b>NC</b>	<ul style="list-style-type: none"> <li>▪ Lack of binding provisions for keeping statistics on the effectiveness and efficiency of the AML/CFT system.</li> </ul>
34. Guidance and feedback	<b>PC</b>	<ul style="list-style-type: none"> <li>▪ No obligation on self-regulatory bodies of DNFBPs to provide feedback to supervisory and control authorities following instructions, guidelines and recommendations issued to them by these authorities.</li> </ul>
35. Sanctions	<b>PC</b>	<ul style="list-style-type: none"> <li>▪ Lack of sanctions in the DNFBP sectors due to lack of specific enforcement provisions, making it difficult to positively influence their behaviour in view of the risk in their sectors.</li> </ul>

36. International instruments	<b>PC</b>	<ul style="list-style-type: none"> <li>▪ Non-implementation of the Vienna and Palermo Conventions and their supplementary protocols.</li> </ul>
37. Mutual legal assistance	<b>PC</b>	<ul style="list-style-type: none"> <li>▪ Lack of a designated central authority, let alone an established formal mechanism for the effective transmission and execution of mutual legal assistance requests.</li> </ul>
38. Mutual legal assistance: freezing and confiscation	<b>PC</b>	<ul style="list-style-type: none"> <li>▪ No provision on confiscation of instruments intended to be used for money laundering;</li> <li>▪ No provision on request for cooperation based on non-conviction-based confiscation procedures or cases where the offender is dead, fugitive, absent or unknown;</li> <li>▪ No instruments of agreements to coordinate seizure and confiscation with other countries;</li> <li>▪ No mechanism for sharing confiscated assets with other countries, in particular where confiscation is the direct or indirect outcome of coordinated law enforcement actions with other countries.</li> </ul>
39. Extradition	<b>LC</b>	<ul style="list-style-type: none"> <li>▪ No provision for a case management system and clear procedures for the timely execution of extradition requests.</li> </ul>
40. Other forms of international cooperation	<b>LC</b>	<ul style="list-style-type: none"> <li>▪ Lack of clear procedures for the prioritization and timely execution of requests for judicial cooperation and for the protection of information received;</li> <li>▪ No provision for other supervisory authorities to share information on financial institutions;</li> <li>▪ No legal obligation to disclose or communicate information exchanged by financial sector supervisory authorities;</li> <li>▪ No express provision for financial sector supervisors to verify that they have the prior approval of the required financial sector supervisor for any dissemination of the information exchanged or any use of the information exchanged for supervisory or other purposes;</li> <li>▪ No mechanisms for indirect information exchange between national competent authorities and foreign non-peer authorities.</li> <li>▪ No mechanisms for prioritizing and managing mutual legal assistance requests.</li> </ul>