



Inter-Governmental Action  
Group Against Money  
Laundering in West Africa

## Mutual Evaluation Report

### Anti-Money Laundering and Combating the Financing of Terrorism

07 May 2008

Senegal

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# INTRODUCTION

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## INFORMATION AND METHODOLOGY USED FOR THE EVALUATION

1. Pursuant to Articles 13 and 14 of the Revised Statutes of the Action Group Against Money Laundering and Terrorist Financing in West Africa (GIABA), and in line with the Senegalese authorities, the anti-money laundering and combating the financing of terrorism (AML/CFT) regime of the Republic of Senegal was subjected to an on-site mutual evaluation from 23 July to 03 August 2007.

2. The evaluation was conducted on the basis of the 2003 Forty Recommendations on Money laundering and the 2001 Nine Special Recommendations on Terrorist Financing prepared by Financial Action Task Force (FATF). It was also based on the assessment methodology related to the compliance with the 2007 update of the FATF 40 Recommendations and Nine Special Recommendations. The evaluation was based on the legal documents supplied by the Republic of Senegal as well as on the data collected during the on-site visit and throughout the assessment process. During the visit, the evaluation team met with authorities, officials and representatives of relevant organizations in the public and private sectors.

The evaluation team was composed as follows: Mr. Vincent SCHMOLL, Originator Administrator, FATF Secretariat ; Mrs Séverine DOSSOU, Account Executive of the General Collector of the Treasury and Public Accounts General Management of the Ministry of Economy and finance of the Republic of Benin, Financial Expert ; Mrs Valérie ALEXIS, Deputy Bureau Chief – Treasury and Economic Policy General Management, French Ministry of Economy, Finance and Industry, Financial Expert ; Mr. Abdou DAOUDA, President of the National Financial Data Processing Unit (CENTIF) of the Republic of Niger, Financial Expert; Mr. Djaha Benoît KONAN, Customs Service of the Republic of Côte d’Ivoire, Operations Expert; Mr. Abdoulaye BARRY, General Prosecutor, Ministry of Justice, Republic of Burkina Faso, Legal Expert; Mr. Vincent SCHMOLL, Principal Administrator, FTAF Secretariat; Dr. Elisabeth DIAW, GIABA Deputy Director General, Coordinator; Mr. Elpidio FREITAS, GIABA Legal Advisor, Deputy GIABA Coordinator.

The experts reviewed the institutional framework, the relevant laws, guidelines and other existing AML/CFT requirements at the level of financial institutions and designated non-financial businesses and professions. The capacity, implementation and effectiveness of the entire AML/CFT system were also examined.

3. This report offers an executive summary of the current AML/CFT measures in Senegal at the time of the on-site visit, or immediately after it. It describes and analyses the above mentioned scheme, and also indicates the level of compliance of the Republic of Senegal with the (40+9) FATF Recommendations (see Table 1). It also provides recommendations on how measures could be taken to strengthen certain aspects of the system (see Table 2).

## **EXECUTIVE SUMMARY**

### **1. - GENERAL INFORMATION**

4- This is a summary of Anti-Money Laundering and Terrorist Financing (AML/CFT) measures in force in Senegal during the on-site visit, from 23 July to 3 August 2007 or immediately afterwards. It describes and analyzes these measures and makes recommendations on how to strengthen some aspects of the system. The summary also indicates the level of compliance of the Republic of Senegal with the FATF Recommendations (40+9) (see Annexed FATF Recommendations Compliance Assessment Table).

5- Senegal's strategy to combat money laundering initially targeted the resources drawn from Narcotics trafficking. To this end, Law 97-18 of 1 December 1997 on the Narcotics Code has in its Articles 134 to 137, specifically provided for "measures designed to screen money laundering." Currently, Senegal has set up a rather comprehensive legal framework to combat money laundering. The criminalization of this offence by Uniform Law No. 2004-09 of 6 February 2004 on anti-money laundering, hereafter referred to as "the Law," is broadly in line with the provisions of the Vienna and Palermo Conventions. On the other hand, the Financing of Terrorism is not criminalized by virtue of the Law on terrorist activities in line with FATF requirements. There is no jurisprudence as far as infractions to AML/CFT laws are concerned.

6- The ordinary law system relating to freezing, seizure or forfeiture of the proceeds of crime, applicable as regards money laundering, is likely to combat effectively this type of offence. However, the fund freezing mechanism used to finance terrorism does not comply with international standards required in the matter. In addition, the National Financial Intelligence Unit (CENTIF) appears to be working properly.

7- Senegal has designated a number of competent authorities in charge of conducting inquiries and instituting proceedings for money laundering. Useful provisions also exist in the sphere of domestic and international cooperation.

8- The Act does not cover all financial institutions within the meaning of the FATF. The banks are more aware of due diligence and reporting obligations than other financial or non-financial professions who have little knowledge of it. As a general rule, with the exception of banks, the other subject professions fail to implement the Act. The rules applicable to record-keeping seem to be correct, but those relating to customer identification and wire transfers do not comply with the required standards. The control system of the financial sector includes several actors some of whom have not yet extended their control to the field of anti-money laundering and they do not have specific powers to monitor and ensure compliance of the practices noted by financial institutions under their control.

9- The Act does not fully cover the Designated Non-Financial Businesses and Professions (DNFBP). Specific rules are provided for casinos and gaming halls. Since the repeal of Law No. 82-07 of 30 June 1982 on the activities of promotion, transaction and real estate management, studies and consultancy in organisation and management and in company management, agencies and real estate agents seem to evade the obligation for the

permit to exercise and therefore any control on the implementation of the AML/CFT legislation. The same is true of other professions within the range of DNFBP.

**10-** Senegal is a unitary state and a constitution-based democracy characterized by the separation of legislative, executive and judicial powers. Its population is estimated at about 11.7 million inhabitants. The Gross Domestic Product of Senegal was estimated in 2006 at 4235.5 billion FCFA, currency of the country, but common to the eight member states of the West African Monetary Union (WAMU).

**11-** Referring to the stage of laundering (investment, stacking and integration), it has been noted, on the basis of the reports of suspicious transactions reports handled, the preponderance of the initial investment stage.

## **2- LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES**

**12-** The criminalisation and sanction of money laundering were introduced in Senegalese criminal law Senegal by Law 97-18 of 1 December 1997 on the Drug Code, in its article 102. But this provision, which covered the material elements of conversion, transfer, dissimulation, concealment, acquisition, detention and use, only concerned money laundering from drug. The Uniform Law No. 2004-09 of 6 February 2004 on anti-money laundering hereinafter called the Act, transposing into domestic law Directive No. 07/2002 //CM/WAEMU relating to AML in WAEMU member states, completed the mechanism, making it in conformity with the requirements of the Vienna and Palermo Conventions, particularly by greatly expanding the scope of the offence to any crime or offence. The Act has been completed, particularly by Instruction No. 01/2007/RB of the BCEAO relating to AML.

Nothing opposes, under Senegalese law, prosecution for money laundering of the perpetrator of the criminal offence generating the products to launder (self-laundering). No sentence for money laundering has been reported so far.

**13-** The Financing of Terrorism is not a criminal offence in accordance with article 2 of the 1999 International Convention for the Suppression of the Terrorism Financing. Indeed, the incrimination made by Law No. 2007/01 of 12/02/2007 on Terrorist acts amending the Senegalese Criminal Code based on the notion of terrorist act and does not link the offence to the relevant international instruments. In addition, it is not specifically and clearly directed at the "terrorist" and "terrorist organization" notions, as indicated by the aforementioned Convention.

**14-** The provisions of the ordinary law in force allow the freezing, seizure and confiscation of the proceeds of offences and crimes. However, in terms of funds or products used for the financing of terrorism, there are many shortcomings. Thus, Resolution No. 1267 (1999) of the UN Security Council is not properly enforced: the list of persons and entities covered by the sanctions committee is communicated only to banks and financial institutions, for the purposes of freezing of assets of **persons and entities**. With regard to Resolution 1373 (2001), its application is not yet effective and Senegal did not adopt the principle of a list at the national level. Concerning the implementation of these two resolutions, there are no procedures for the withdrawal of the list, disbursement of funds, and challenging of freezing measures to draw to the attention of the public.

**15-** The Act has set up, in its article 16, a National Financial Intelligence Processing Unit (CENTIF) placed under the supervision of the Minister of Finance. Therefore, the Unit has a central and national dimension. The CENTIF is an Administrative Service, endowed with

financial autonomy and an autonomous decision-making power on matters within its jurisdiction. It is responsible for receiving, analyzing and processing information likely to establish the source of transactions or the nature of the transactions that are subject to reports of suspicious transactions which liable people are bound to. Exceptionally, the CENTIF can, on the basis of serious, corroborating and reliable information in its possession, oppose the carrying out of a suspicious transaction. It has direct access to any financial, administrative information, as well as those from the prosecution authorities that are likely to make easier the fulfilment of its mission. It has a Website and it created a secure database.

The CENTIF benefits from the financial and material support of the government that helps it to assume the bulk of its duties. It presents favourable signs of effectiveness and professionalism and constitutes a key device of the AML/CTF in Senegal.

**16-** Prosecution authorities in charge of appropriate investigations into money laundering and terrorist financing offences are those of ordinary law. Police, gendarmerie and customs officials are competent to carry out the investigations and are placed according to the stage of the investigation, under the authority of the state prosecutor or his representative. There is no specific measure allowing competent authorities investigating cases of money laundering, to defer the arrest of suspects and/or seizure of funds, or not to carry out such arrests and seizures, for the identification of the people involved in these activities or collect evidence. The mission was unable to assess, for lack of detailed information, the resources made available to the investigating and prosecution authorities. According to these officials, these resources are reportedly insufficient.

**17-** Concerning the detection of physical cross-border transportation of cash and instruments to the bearer related to ML/TF to and from abroad, the reporting system in force in Senegal does not comply with RS.IX, since residents are exempt from any statement concerning the monetary signs emitted by BCEAO and transported within the WAMU.

### **3. - PREVENTIVE MEASURES – FINANCIAL INSTITUTIONS**

**18-** There is a general awareness at the level of authorities but there is no global national strategy stated into policy and programmes with clearly defined priorities. Senegal has not provided a risk-based approach of anti-money laundering, as provided for by the FATF. However, enhance due diligence obligations are provided for by the Act and the Instruction for some types of transactions or customers. Customer identification exemptions are granted, contrary to the requirements of the FATF.

**19-** **All persons or entities** who carry out, on a commercial level, one or several activities or transactions covered by the FATF, do not seem to be subject to the anti-money laundering obligations, as Senegal has no rule to combat terrorist financing. No legislation expressly prohibits the holding of anonymous accounts or under fictitious names.

**20-** There is no prohibition to open accounts, establish business relationships or carry out a transaction in the absence of identification of the customer or beneficial owner.

**21-** No text obliges financial professions to pay special attention to Politically Exposed Persons (PEPS), request authorization from senior management to establish a relationship with the a PEP, identify the source of wealth and funds of PPE customers or exercise

**22-** No due diligence identification is performed and identification of the beneficial owner is not required when the institution is located in a WAEMU country. The obligations towards financial institutions located in the countries outside the WAEMU are not demanding enough, and no verification of the controls put in place by the client financial institution in terms of anti-money laundering and terrorist financing is required.

**23-** The Act contains specific provisions relating to the misuse of new technologies, but they are not in line with FATF requirements. The Section includes provisions for transactions over the Internet or other electronic means, but it concerns only part of liable people and it is too recent to be able to assess its implementation

**24-** In the Senegalese law, there are no provisions allowing the use of intermediaries or third persons to fulfil certain due diligence elements, which makes unenforceable the FATF recommendation on this point.

**25-** Professional secrecy cannot be invoked by the liable people, notwithstanding any contrary statutory or regulatory provisions, for refusing to provide information to the competent authorities or making statements under the Act. Legal obligations relating to record-keeping are complete with the exception of the two-year retention period allotted for documents relating electronic money transactions. There is no provision requiring that the transfers that is equal or exceeds 1,000 EUR give rise to the retention of comprehensive information on the originator in cross-border transfers, or domestic ones. Senegal should adopt provisions to implement Recommendation VII, including transfers between countries of the franc area.

**26-** Senegal should be careful to harmonize the provisions contained in the Act and the Instruction, compelling liable people to exercise special consideration for some transactions depending on the context. In addition, financial institutions should be encouraged to pay special attention to their business relationships and their transactions **with individuals and corporations**, including companies and financial institutions, located in countries that do not or insufficiently implement the FATF Recommendations. The legislation should also enable Senegal to implement countermeasures against countries that do not or insufficiently implement the FATF Recommendations.

**27-** The scope of the predicate offence for money laundering provided for by the provisions of the Act should not cover the list of designated categories of offences as defined in the FATF 40 Recommendations. The Act does not provide for an obligation to report on suspicious transactions involving funds from "criminal activity" and only cites the laundering and not the underlying offences. It does not explicitly provide for an obligation to carry out reports of suspicious transactions in the event of terrorism financing. The Act does not expressly oblige financial institutions to report any attempted transactions, whatever the amount.

Financial Institutions, their managers and employees are protected by the Law against any action intended to call into question their responsibility for any reporting of suspicious transactions made in good faith.

**28-** The authorities have not assessed the possibility of systematic reporting for all cash transactions exceeding a prescribed threshold. The competent authorities have not

established guidelines towards the Designated Non-Financial Businesses and Professions, in the form of assistance on issues covered by the relevant recommendations of the FATF. The CENTIF does not provide specific background or on a case-by-case basis, to the reporting entities, as recommended by the FATF.

The drafting of the Act subordinates the reporting of suspicious transactions in the field of terrorist financing terrorism to the existence of an underlying money laundering offence and does not require the reporting of funds related to the financing of terrorist acts, terrorist organisations or those that finance them.

**29-** The obligation for financial institutions to adopt a harmonized programme against money laundering is not efficiently implemented by all financial institutions.

**30-** There are no legal provisions governing foreign-based branches and subsidiaries

**31-** The law does not expressly prohibit shell banks and there is no legal provision prohibiting correspondent banking relationships with shell banks. In addition, the law contains no provision requiring financial institutions to ensure that the Financial Institutions that are part of customers abroad do not allow shell banks to use their accounts.

**32-** Supervisory authorities are not endowed with specific prevention powers in the field of AML/CFT. The monitoring of compliance with the implementation of the uniform law on money laundering is inadequately performed during on-site inspections of financial institutions by their respective supervision and control organs. The resources made available to some control structures considering the significant number of institutions seem to be insufficient. Training on anti-money laundering and terrorist financing of the staff of most of the supervision and control bodies is to be strengthened. No sanction has been taken against financial institutions by the supervisory authorities for failure to implement the provisions relating to anti-money laundering and terrorist financing. Certain supervisory bodies should enact guidelines likely to help the financial institutions under their supervision to enforce and comply with their AML obligations.

**33-** The fund transfer and transmission services do not appear to be subject to regular and thorough controls and no sanction seems to have been taken against them for failure to comply with anti-money laundering legislation. In addition, activities fund transfer activities seem to be carried out without prior authorization by people in the informal sector.

#### **4. - PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS (DNFBP)**

**34-** Senegal has extended beyond the FATF requirements the list of DNFBP, but all DNFBP as defined by the FATF are not covered by the AML/CTF obligations. Thus, chartered accountants and accountants are not subject to AML obligations and a doubt persists concerning the subjection of bailiffs and legal advisor. Since the repeal of Law No. 82-07 of 30 June 1982 on the activities of promotion, transaction and real estate management, studies and consultancy in organisation and business management as well as its implementing order, agencies and real estate agents seem to evade any regulation and control while they represent an area with a high risk of money laundering in Senegal.

The DNFBP are not fully aware of their AML obligations that they fulfil to a limited extent, and the provisions applicable to them are the same as the financial institutions (with the exception of casinos that are subject to specific rules and independent legal professions that are subject when they attend or represent their customer outside any judicial proceedings). Therefore, these provisions do not comply with the reasons indicated above for financial institutions.

**35-** All the FATF DNFBPs are not covered by the reporting obligations. In terms of statistics, no reporting of suspicious transactions by the Designated Non-Financial Businesses and Professions has been reported by the CENTIF. The DNFBP have not implemented internal AML/CTF programmes. They are not compelled to pay special attention to their business relationships and in their transactions with **individuals and legal persons** located in countries that do not or insufficiently implement the FATF Recommendations.

**36-** There are no guidelines enacted for Designated Non-Financial Businesses and Professions, in the form of assistance on issues covered by the FATF corresponding Recommendations.

Senegal must provide an exhaustive list of subject additional professions, designate and grant if necessary powers of control and sanction to the competent authorities.

## **5. - PLEGAL PERSONS, LEGAL ARRANGEMENTS AND NON-PROFIT ORGANISATIONS**

**37-** The information provided to RCS does not help to identify the beneficial owner within the meaning of the definition of the FATF.

Senegalese authorities did not take appropriate measures to ensure that legal entities that issue shares to the bearer are not used to bleach funds.

**38-** There are no trusts in Senegal.

**39-** The regulation has no provision relating to the prevention of risk of misuse of non-profit organisations for terrorist purposes. There are no concrete sensitisation measures to avoid that the funds or other property collected or transferred be diverted to finance terrorism.

Inadequate of controls made on NGOs does not allow assessing the effectiveness of the system.

## **6. - NATIONAL AND INTERNATIONAL COOPERATION**

**40-** Senegal has well structured institutions and generally endowed with resources as part of AML/CTF. At national level, the CENTIF banks on its network of correspondents in the public as well as in the private sector to forge efficient cooperation relationships in the search for information necessary to the processing of STR. However, there seems to be no mechanism for the systematic exchange of information, particularly of statistical order between the various actors of the AML/CTF. Such a mechanism would be useful to set up and a systematic communication of the said information to the CENTIF is to be established. Moreover, there is no formal cooperation framework bringing together all the AML/CTF institutional actors.

41- Senegal has signed and ratified:

- ✓ the United Nations Convention Against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances (Vienna Convention of 20 December 1988);
- ✓ the United Nations Convention Against Transnational Organised Crime (Palermo Convention of 15 December 2000);
- ✓ the United Nations Convention for the Suppression of Financing of Terrorism (New York Convention of 9 December 1999).

The implementation of the Resolution 1267/1999 of the United Nations Security Council and subsequent Resolutions does not involve all liable people. The list of **individuals and entities** affected by decisions on the freezing of assets and other property of the Security Council should be disseminated to other **taxpayers**, in addition to credit institutions. With regard to Resolution 373/200, its implementation is only very partial considering the provisions of the special law of 31 January 2007 on the suppression of terrorist acts, even if the reports which Senegal addressed to the Security Council reflect the will of the authorities to comply with international legislation on the matter. In this respect, Senegal should incorporate into its domestic legal order, the Directive No. 04/2007/CM/UEMOA of 4 September 2007 of the WAEMU relating to the fight against terrorist financing in WAEMU member states.

42- The Act defines the procedures for mutual legal assistance and offers a wide range of measures including all investigation acts. It brings no restriction concerning the powers devolved to the competent authorities acting as part of the execution of a request for mutual legal assistance. Mutual legal assistance is not subject to unreasonable, disproportionate or unduly restrictive conditions. However, in view of non-conformity with the New York Convention on the criminalization of terrorist financing by the Senegalese special law, the implementation of mutual legal assistance in cases of terrorist financing offences is likely to encounter difficulties.

43- **Physical persons** accused of money laundering offence may be subject to extradition. Extradition shall not be granted when the individual, subject of the request is a Senegalese national, as the quality of 'national' is appreciated at the time of the offence for which extradition is required. In case of refusal to extradite a Senegalese national, the Senegalese legislation poses no obstacle to his being brought to justice. If need be, there is no opposition to a cooperation among countries, especially with regard to aspects concerning procedure and evidence, in order to ensure the effectiveness of the proceedings. In case of emergency, the Competent Authority of the requesting State may ask for the provisional arrest of the wanted person, pending the submission of the extradition request. However, in view of non conformity with the New York Convention on the criminalization of terrorist financing by the Senegalese special law, the implementation of extradition in cases of terrorist financing offences is likely to encounter difficulties.

44- In the course of 2006, three (3) cooperation agreements have been signed between the CENTIF of Senegal and the Financial Information Units of states outside the WAEMU. Some administrations, such as customs have signed cooperation agreements or mutual administrative assistance conventions with their counterparts in other countries. Relationships between supervisory authorities at international level also seem to work but there is no synergy for the effectiveness of the AML/CTF system at domestic level.

## **7- ADDITIONAL ELEMENTS**

### **7. - Resources and statistics (R30 and 32)**

**45-** The resources put at the disposal of some supervisory and control structures seem to be insufficient in the light of the significant number of institutions to control.

The training programme given to officials and agents of customs services does not sufficiently cover the aspects related to money laundering detection techniques and some underlying offences such as counterfeiting and piracy.

There is no training program for members of the judiciary encountered. The latter wished that this situation be remedied including through the specialization of magistrates in AML/CTF

**46-** There is no mechanism to assess the implementation of the Act, relating to money laundering criminalisation. There is no assessment mechanism and the mission was unable to provide elements establishing the effectiveness of the implementation of the special law on the suppression of terrorist acts. No statistics are available; no criminal penalty relating to the special law seems to have been pronounced. There is no mechanism for the regular evaluation of the effectiveness of the freezing, seizure or confiscation device. The mission could not have statistics on freezing, seizure or forfeiture measures taken by the competent authorities, or the fate of the confiscated property. According to the CENTIF, this situation is explained by the newness of the legislation on Money Laundering and Terrorist Financing.

The CENTIF has not set up a mechanism to monitor, particularly at the level of statistics, objections to the requests to perform suspicious transactions, the fate of the statements sent to the judicial authorities or the number of submitted files in which freezing, seizure or confiscation have not been pronounced. There are no statistics of statements relating to the physical cross-border transportation of cash.

Statistics on the implementation of the anti-money laundering mechanism in terms of mutual legal assistance are less provided. In the absence of comprehensive statistics, it is difficult to assess the quality of cooperation actions performed by the various Senegalese competent authorities.

## **1- GENERAL INFORMATION**

### **1-1 General information on Senegal**

**47.** Senegal is a West-African country with a population of 11.7 million inhabitants and land coverage of 196,722 km<sup>2</sup>. Its capital city is Dakar.

In addition to the Gambian enclave, Senegal shares borders with Mauritania to the north, Mali to the east, and Guinea and Guinea-Bissau to the south.

Senegal is party to the West African Economic and Monetary Union (WAEMU), the Economic Community of West African States (ECOWAS), the Inter-Governmental

Action Group Against Money laundering and Terrorist Financing in West Africa (GIABA), the Organization for the Harmonization of Business Law in Africa--Organisation pour l'Harmonisation du Droit des Affaires en Afrique (OHADA), the Zone Franc (CFA franc), the African Union (AU) and the United Nations Organization (UNO).

#### a) **POLITICAL AND ADMINISTRATIVE ORGANIZATION**

48. Senegal is a unitary state and a constitution-based democracy characterized by a separation of powers. Voted on March 1960, the Senegalese Constitution has been revised on 7 January 2001.

The executive power is exercised by a democratically-elected President of the Republic for a five-year period (5-year period) renewable only once, compared to a previous seven-year period (7-year period). This function is currently held by recently re-elected President Abdoulaye WADE.

The President of the Republic is assisted by a Government headed by a Prime Minister whose appointment and dismissal is at his discretion. The Government is also answerable to the National Assembly which can dissolve it through a vote of no confidence.

The legislative power rests with the National Assembly whose members are elected for a renewable five-year mandate (5-year mandate). A Senate has been instituted by virtue of a constitutional law voted in July 2007. The one-hundred-member senate (100-member senate) is partly elected or appointed by the President of the Republic for a renewable five-year period (5-year period).

The judicial power is exercised by the Constitutional Council, the State Council, the Court of Cassation, The State Account Office, and the various Courts and Tribunals around the country (two courts of appeal are operational at Dakar and Kaolack, and two others that are yet to open have already been created in Ziguinchor and Saint-Louis; there is a tribunal in each of the eleven (11) administrative regions of the country and a departmental tribunal in every department).

6. The country has three administrative levels embodied by the regions, the departments and the local communities.

#### b) **OVERVIEW OF THE MACROECONOMIC AND MONETARY ENVIRONMENT**

49. If the data supplied by the Commission of the West African Economic and Monetary Union (WAEMU) are anything to go by, Senegal achieved a 2.16% real growth of its gross domestic product (GDP) worth CFAF4,176.6 billion in 2006, compared to 5.5% in 2005.

At the level of the primary sector (13.5% of the GDP), The Senegalese economy is heavily dependent on agriculture (7.3% of its GDP and 60% of its active population) which in its turn is also dependent on external factors (rainfall, commodity prices on the international market, etc.). The secondary sector activities (21% of the GDP) are based on phosphates

and on the processing of groundnuts and sea products. Building and public works activities are dynamically boosted by the governmental major infrastructures and housing projects programme. The tertiary sector (62% of the country's GDP) is benefiting from the dynamism of services such as the new technologies of information and communications.

International aid and remittances accruing from Senegalese nationals abroad contribute to the covering of the country's external financial needs.

The informal sector which is quite dynamic is an important source of employment for the active population that is generally not qualified and attracts a good deal of the monies circulating through several transactions that are often done outside the conventional banking system. Because of its resilience, this lucrative niche is currently a refuge for more and more people and at the same time lures in nationals of neighbouring countries.

The UNDP Human Development Index ranks Senegal 157th out of 175 countries worldwide.

**50.** Monetary wise, Senegal is party to West African Monetary Union (WAMU) instituted by the 14 November 1973 and which comprises eight (8) member countries (1). The Union is particularly characterized by the transfer of the coinage power (Franc de la Communauté Financière Africaine--CFA (African financial community franc), common currency unit), to a common Coinage Institution, the Central bank of West African States (Banque Centrale des Etats de l'Afrique de l'Ouest-BCEAO) headquartered in Dakar and which also manages the foreign reserve assets of its member countries.

Senegal is part of the Zone Franc (CFA Franc Zone) which is governed by four principles:

- Convertibility of currencies coined by the various coinage institutions of the CFA Franc Zone is limitlessly guaranteed by the French Treasury.
- Fixed parity: The Zone's currencies are mutually convertible at fixed parity rates with no limitation of amounts. A fixed parity has also been set against the Euro, common European currency.

(1) Benin, Burkina Faso, Guinea-Bissau, Mali, Niger, Senegal, Togo.

- Free transferability: transfers are, in principle, freely made within the Zone, be they run-of-the-mill-transactions or capital flows.
- Centralized foreign exchange reserves: in exchange of the unlimited convertibility guaranteed by France, African central banks within the zone must deposit part of their exchange reserves (to the exception of the monies needed for their current treasuries and those related to their transactions with the International monetary Fund) with the French Treasury on their respectively opened operations accounts. Since 1975, the deposited assets have enjoyed an exchange guarantee concerning special drawing rights (STDs).

Senegal is also party to the West African Economic and Monetary Union (WAEMU) instituted by the 10 January 1994 aiming at completing the WAMU Treaty with which it shares the same State parties. The decisions of the WAEMU organs are directly applicable when they are in the form of rules or decisions.

The Treaties establishing WAMU and WAEMU are still coexistent because their projected merging is yet to be achieved.

**51.** Senegal is a member of the Economic Community of West African States (ECOWAS) which comprises, in addition to WAEMU member countries, seven (7) other States<sup>1</sup> of the West African sub-region. The Treaty establishing ECOWAS, signed on 18 May 1975 and revised on 24 July 1993 at Cotonou (Benin), aims at promoting cooperation and integration with a view to establishing a West African economic Union in order to raise the living standards of the populations, to maintain and increase their economic stability, to reinforce the relations between member states and to contribute to the development of the African continent. The ECOWAS Executive Secretariat has become the ECOWAS Commission headquartered in Abuja, Nigeria. ECOWAS publishes legal norms under the form of Guidelines, Rules or Decisions applicable indirectly or directly within member countries depending on the legal nature of relevant acts.

**52.** Within the framework of Business Law, Senegal has ratified the OHADA Treaty in June 1994. The OHADA uniform Acts, especially those relating to general commercial laws and the Laws of trading corporations and economic interest groupings (EIG) that are directly applicable in the member countries, have been implemented in the country since 1998 (Article 10 of the OHADA Treaty indicates that uniform Acts "...are directly applicable within the member countries, notwithstanding any anterior or posterior contrary internal law provision...").

It must be noted that the membership of Senegal to the various sub-regional, regional and international organizations, binds it to the standards set by those organizations endowed with specific normative powers (see annexed explanatory document).

**53.** Corruption and influence peddling are criminalized and sanctioned by Articles 159 to 163 of the Penal Code.

Unjust enrichment defined as the impossibility for incriminated people to prove the licit origin of the resources enabling them to own properties or to live beyond their legal revenues leads to 5- to 10-year imprisonment assorted with a fine equal to the amount of the enrichment, or sometimes twice as much (see Article 163*bis*, of the Penal Code).

Senegal has signed and ratified the 2003 United Nations Convention against Corruption (Mérida Convention); it has also established a National Commission to combat Non-Transparency, Corruption and Misappropriation.

Senegal has adhered to the African Peer Review Mechanism (APRM), a commitment to a mechanism in favour good governance standards set up by the African Union and which counts twenty-seven members.

## **1.2 Money laundering and terrorist financing general status**

**54.** Despite their insufficiency, statistics and trends concerning AML/CFT communicated by the Senegalese Financial Intelligence (FIU)—Cellule Nationale de Traitement des Informations Financières (CENTIF)—and corroborated by the financial delinquency statistics from the Ministry of Home Affairs and the Customs General Office of the Senegalese Ministry of Economy and Finance provide an overview of the general status of AML/CFT in Senegal.

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<sup>1</sup> CAPE VERDE, GAMBIA, GHANA, GUINEA, LIBERIA, NIGERIA, SIERRA LEONE

The general and comparative study of criminality and delinquency conducted by police services show that criminality in Senegal slightly increased in 2006, compared with 2005 level. This trend is somewhat often exacerbated depending on the typology of offences. At other times, the trend is linear or declining for certain types of offences that the repressive services have managed to suppress because of the orientations and combined preventive measures taken by the relevant authorities. Overall, one can state clearly that there is a sharp increase in petty delinquency.

The statistics underlying the study have been prepared on the basis of the following four broad headings:

- Thefts, including receiving stolen goods ;
- Economic and financial fraud and crime ;
- Crime and offences against individuals ;
- Narcotics, public security, regulations.

Analysis reveals that cases of armed robberies have almost doubled, rising, according to police sources, from 86 in 2005 to 140 in 2006. Violent thefts have slightly increased.

Ordinary thefts rose from 3,768 to 4,763 cases.

Swindling and other economic and financial frauds and crimes have recorded about a hundred additional cases.

Concerning crimes and offences against individuals, blows and injuries have been slightly on the rise.

Regarding narcotics, trafficking moved from 794 down to 715 cases and consumption from 1,500 to 877 cases.

Concerning narcotics seizures, one ton of cannabis was seized in 2006, compared with 3.3 tons in 2005, and 7 kilos of cocaine, against 22.7 over the same period. However, it must be noted that during the on-site visit the media reported record cocaine seizures in Senegal and neighbouring Guinea-Bissau.

The Police, Gendarmerie and Customs services play a paramount role in the fight against money laundering and terrorist financing in Senegal. Since 2004, the police have registered some money laundering cases which have not yet been brought before the tribunals.

### Money Laundering

**55.** According to CENTIF, from 1 March 2005 to the end of July 2007, a total of one hundred and ten suspicious transactions were reported as follows:

- Eleven (11) in 2005, marking the beginning of CENTIF operations ;
- Sixty (60) in 2006 ;
- Thirty-nine (39), 1-31 July 2007.

It must be noted that the suspicious transactions reports (STR) received by CENTIF came exclusively from the banking system.

Besides, in 2006 CENTIF initiated two hundred and eight (208) written requisitions out of which thirty (30) were directed to foreign FIUs to urge them to collect additional information for the processing and strengthening of case files under investigation. Thirty-three (33) requisitions had been transmitted in 2005.

The following trends were noted by CENTIF at the end of the typologies exercise it carried out in 2005 and 2006:

1. surfing
2. use of shell companies
3. false justification of the origin of suspicious funds
4. alteration of public cheques and use of transit accounts
5. suspicious commercial transactions
6. use of cross-border bank accounts and wire transfers to recycle funds accruing from frauds on value-added tax (VAT)
7. embezzlement of public funds
8. repatriation of suspicious funds
9. international financial swindling via the Internet (“419-scam type”)
10. money laundering through real estate investments
11. life insurance schemes as money laundering means to cover up the origin of suspicious funds

**20.** Regarding the money laundering phase (placement, layering and integration), a preponderance of the initial placement stage has been noted on the basis of files concerning processed suspicious transactions reports.

The mission team could not get information on proven money laundering cases because of the absence of relevant jurisprudence on the matter.

### Terrorist Financing

**56.** CENTIF has not yet received any report of suspicious activity concerning terrorist financing. The relevant financial organizations have declared that they were not very much exposed to the risk of being used for the financing of terrorist activities due to the rigorous conditions attached to the access to their profession, on the one hand, and the vigilance measures adopted, on the other hand.

However, the Mission team has been informed by the security enforcement authorities of the dissolution of a charity Association and the suspension of the agreement of a charity NGO in 2002, well before the implementation of the Anti- Money Laundering Act. The legal bases of the dissolution have not been explained to the Mission.

#### **1.3 Overview of the financial sector and designated non financial businesses and professions**

**57.** The financial sector comprises the organizations dependent on the banking system, microfinance, insurance, regional financial market, and manual change institutions.

The organizations depending on the banking sector are the banks and other financial institutions. They are governed by both the commercial companies common law defined by OHADA which is a supranational body and by Law no. 90-06 of 26 June 1990 establishing the Banking Law. The legal texts namely set the rules concerning their creation, operation and dissolution. The Banking Law, in particular, does not include any specific clause on AML/CFT.

**25.** According to Article 3 of the Banking Law, only companies professionally engaged in receiving funds retrievable through cheques and transfers and which they can use for their own account or on behalf of third parties in the form of credit operations or investment, can be called banks.

There are seventeen (17) commercial banks in addition to the presence of national institutions affiliated to well known international groups around the world.

Out of the seventeen (17), thirteen (13) are considered as generalists, two (2) as specialised in microfinance, one (1) as specialized in agriculture, and one (1) as specialized in housing and real estate. Article 66 of the Banking Law provides for the carrying out of activities aimed at taking businesses to banks and financial institutions.

According to Article 4 of the same law, only physical or legal persons regularly engaged in professionally managing their own credit operations, leasing or change activities, or who traditionally receive funds they use for their own account in the form of investment, or who usually act as intermediaries in their capacities as commissioners, brokers, or who fully or partially participate in the various operations, can be considered as financial institutions.

Three (03) financial institutions are currently operational and dealing with leasing and factoring.

According to the WAMU banking Commission, the supervisory body of the banking system, the 18 operational credit institutions presented as at 31 December 2006 an overall balance of CFAF1, 956,836 Million.

Currently, there is no electronic monetary institution recognized by the Central Bank since the coming into force of the BCEAO instruction on the conditions governing the creation of such a type of financial organization.

Article 5 defines as credit operations: loans, discounts, pension schemes, debt claim acquisitions, securities, credit sale financing and leasing; whereas share holding in existing or virtual companies, and all forms of security acquisition by public or private entities, are considered under the same article as placement operations.

According to the Banking Law, only insurance companies, retirement scheme institutions, foreign exchange agents, solicitors and ministerial officials bearing such functions, are considered as banks or financial institutions.

The monitoring of Credit Institutions is incumbent upon the BCEAO, the Banking Commission, and the Ministry of Finance.

**58.** The microfinance sector organizations are the mutual or cooperative savings and credit institutions, as well as other organs or bodies that are not organized as mutual or cooperative institutions and that aim at collecting savings and/or granting credits. They are governed by Law no. 95-03 of 5 January 1995 that does not include any provision concerning AML/CFT. Microfinance has considerably developed with a quite comprehensive coverage of the national territory with about 770,000 beneficiary members. The sector offers adequate services to the informal sector where women are remarkably present (66 billion CFA francs have been mobilised as savings and 87 billion CFA francs have been granted as credits in 2005).

The regulation of the microfinance sector is under the joint responsibility of the State, BCEAO, and the Banking Commission. It is Law No. 95-03 of 5 January 2005 organizing mutual or cooperative savings and credit institutions (IMCEC--Institutions Mutualistes ou Coopératives d'Épargne et de Crédit) governing the sector. The monitoring of microfinance activities is jointly carried out by State authorities, BCEAO and the Banking Commission.

**59.** The insurance sector covers insurance and reinsurance companies, insurance and reinsurance brokers whose activities are governed by a supranational organization, the Conférence Interafricaine des Marchés d'Assurances (CIMA)—InterAfrican Conference on Insurance Markets—instituted by treaty. The community insurance code, referred to as the CIMA Code, does not include any provision concerning AML/CFT. The Insurance sector comprises twenty (20) insurance companies and one (1) reinsurance company that have mobilised in 2006 a turn-over of 60 billion CFA francs derived essentially from the general damage insurance section (Incendies-Accidents- Risques Divers—IARD insurance scheme covering damages accruing from fire, accidents and other risks).

Besides, forty (40) insurance brokers have been registered in 2007.

The monitoring of insurance and reinsurance activities devolve upon CIMA and its supervisory organ, the Commission Régionale de Contrôle des Assurances (CRCA) and the Direction des Assurances (at the national level).

**60.** There is a two-group regional financial market that covers all WAEMU member countries as follows:

- a public group composed of the Conseil Régional de l'Épargne Publique et des Marchés Financiers (CRPMF)—Regional Council for Savings and Financial Markets—representing the general interest and charged with the safeguarding of market security and integrity, as well as overseeing shareholders;
- a private group constituted by the Bourse Régionale des Valeurs Mobilières (BRVM)—the Regional Stock Exchange—and the Dépositaire Central/ Banque de Règlement (DC/BR)—Central Repository/Settlement Bank—which are specialised financial institutions exempt from the banking law and exclusively enjoying a public service concession throughout the UEMOA zone.

The two institutions are headquartered in Abidjan, but the BRMV has a national branch in every member country of the Union.

The BRVM and the DC/BR are the structures of the market. The other stake holders of which are the commercial actors such as management and intermediation firms (Sociétés de Gestion et d'Intermédiation—SGI), wealth management firms (Sociétés de Gestion de Patrimoine—SGP), Stock Exchange Investment Advisers (Conseils en Investissement Boursier—CIB), business introducers (Apporteurs d'Affaires—AA), and field sales agents—Démarcheurs).

The latest BRVM report indicates that quoted securities capitalization was at 1,623 billion CFA francs. As at the end of 2005, there were 61 quoted securities lines distributed as follows:

- 39 share lines ;
- 18 quoted bond lines ;
- 10 non quoted bond lines.

**61.** The regulation and monitoring of the financial market devolve upon the Conseil Régional de l'Épargne Publique et des Marchés Financiers (CREPMF)—Regional Council on Savings and Financial Markets—a supra national organ. The General Rules and Regulations of the CREPMF do not include any provision concerning AML/CFT.

Authorized manual change agents are under the umbrella of BCEAO and the Ministry of Finance. Their activities are governed by Rule No.R09/98/CM/UEMOA of 20 December 1998, concerning the external financial relations of the Union member countries. The data collected from the Direction de la Monnaie du Crédit et de l'Épargne (DMCE) of the Ministry of economy and Finance, as at 20 July 2007, indicate that 241 bureaux de change had been authorized but only 68 of them bureaux were operational.

**62.** The Activities of “La Poste” national company are governed by Law no. 95-24 of 29 August 1995 and the decrees relating to its implementation. Exempt from the Banking Law, excepted for matters pertaining to the mandatory information of BCEAO and the *Commission Bancaire* (Banking Commission), La Poste is authorized to collect public funds and to offer services notably concerning the following products and services:

- Means of payment and transfer of national and international funds in any form and through any technological process ;
- Cheque books, savings bank book and other savings products.

“La Poste” National Company which created in 2006 a branch called POSTEFINANCES, is subjected to the supervision of the Cour des Comptes—General State Accounting office (via the Commission de Vérifications et de Contrôle des Entreprises Publiques—Commission for the Monitoring and Supervision of Public Interest Companies).

**63.** The Caisse de dépôts et Consignations (CDC) whose activities are governed by Law no. 2006-03 of 04 January 2006 is a special-status public interest company under the authority of the Minister of Finance. The CDC's mission is to:

- Manage the deposits and to keep the securities belonging to the institutions and attached to the Funds they keep or seek to have kept ;
- Receive administrative and legal payments in court as well as provisional credits ;
- Manage services related to cashier's desks or the funds entrusted with it.

The CDC's accounts are subjected every year to the closure of the financial year at the moment of the Cour des Comptes' audit which can intervene in the middle of the financial year through the Commission de Vérification et de Contrôle des Comptes des Entreprises Publiques.

The banking and prudential regulations are enacted at community and national levels.

The payment means and systems regulations rest with community and state organizations.

**64.** As regards designated non financial businesses and professions, Senegal has notably registered the following activities) of:

- Independent members of the legal professions and accountants : (400 lawyers are registered with the Bar Association ; 32 solicitors with the Notaries' Chamber; 111 chartered accountants and commercial auditors with the Ordre National des Experts Comptables et des Comptables Agréés-ONECCA) ;
- Real estate agents ;
- Dealers in high-value goods (precious metal and gems, art objects) ;
- Cash transporters under the control of the Ministry of Home Affairs (Ministry of Interior) ;
- Casinos and other gambling game centres including national lotteries (6 casinos have been authorized by the Ministry of Interior throughout the country; four (4) of them are located in Dakar) ;
- Travel agencies (239 travel agencies have been registered under the jurisdiction of the Ministry of Craftsmanship and Tourism);
- Service providers to financial institutions (business introducers)

The carrying out of those non financial activities require, in certain cases (casinos, namely) the previous authorization by relevant authorities (line Ministry), in the form of licenses and certifications, for example. Failing that, sanctions are imposed. In many cases, a simple declaration or registration with the Registre du Commerce et du Crédit Mobilier (RCCM) is sufficient because of the implementation of a policy of liberalization of economic activities.

#### **1.4 – Overview of commercial laws and mechanisms governing legal persons and arrangements**

**65.** The conditions set for the creation, operation and dissolution of companies and legal arrangements are fixed by the OHADA Uniform Acts notably concerning general commercial laws and commercial companies and economic interest groups (GIE) laws.

The legal types of companies under consideration are the following:

- General partnership companies;
- Share-limited partnership companies;
- Limited liability companies (SARL);
- General corporations (SA);
- Joint ventures;
- Economic interest groupings (GIE).

**66.** It must be particularly noted that the legal form of banks and financial institutions is regulated. The Banking Law imposes the general corporation type with fixed capital or, with the authorization of the Ministry of Finance, that of cooperative or mutual company with variable capital. The minimum corporate capital for banks is set at CFAF one(1) billion.

Regarding financial institutions, they must be of the general corporation type with fixed capital, or the limited liability company type, or the cooperative or mutual company type with variable capital. The minimum corporate capital for financial establishments is set at CFAF three hundred (300) million.

The shares floated by banks and financial institutions must be nominative in nature.

67. To the exception of *joint ventures*, all companies must be registered with the Registre du Commerce et du Crédit Mobilier to be recognized as legal persons.

Any physical person acting as a tradesman under the Uniform Act must, during the first month of the running of their businesses, request their registration certificate from the Registrar's Office under the jurisdiction of which the business is being done.

The request must indicate a certain number of information items and supporting documents likely to namely allow the identification of the relevant person.

Penal sanctions are provided for in cases of non-compliance with the clauses of the Uniform Acts.

## **1.5 – Overview of strategy to prevent money laundering and terrorist financing**

### **a) AML/CFT Strategies and Priorities**

68. The mission team noted a general awareness of the public authorities but did not perceive the existence of national comprehensive strategy translated into a policy and programmes with a clear set of priorities.

Apparently a series of reflexions is underway and the setting up of a national ad hoc structure is said to be envisaged.

Senegal's strategy to prevent money laundering was initially aimed at the resources derived from narcotics trafficking. In this respect, Law 97-18 of 1 December 1997 on the Drugs Code particularly provided in its Articles 134-137 for measures destined to track money laundering.

Afterwards, initiatives have been taken at various levels to combat the money laundering plague.

Consequently, within the Zone Franc, the Ministers of Finance and the Governors of the Central Banks of the Zone's member countries affirmed in April 2001 their will to adopt laws against money laundering as early as 2002.

69. At the subregional level, the Actions taken within the ECOWAS have led to the creation on 19 December 1999 by the Conference of Heads of State and Government of the Inter-Governmental Action Group against Money laundering and Terrorist Financing In West Africa (GIABA) headquartered in Dakar. Senegal is party to GIABA which is entrusted with the responsibility of promoting anti-money laundering laws and facilitating the coordination initiative of member countries in the field.

Within WAEMU, a community momentum has been set under the impulsion of BECEAO around the following phases:

- Adoption of the Guideline on AML in WAEMU member countries by the Union's Council of Ministers, 19 September 2002.
- Adoption by the Republic of Senegal of the Uniform Law no. 2004-09 of 06 February 2004 on AML, referred to below as « The Law », transposing into the internal legal order, the above-mentioned community guideline (it was the first member country of the Union to accomplish the diligence). The Law is directed to actors of the financial sector or designated non financial professions and entrust them, within the framework of preventive measures, with various obligations, including those related to customer due diligence issues, and suspicious transaction reporting, record keeping, assorted with administrative and penal sanctions; the disciplinary sanctions emanating from auto regulation (self-regulation), surveillance or monitoring authorities.

**70.** Other specific legal texts concerning financial institutions designated non financial businesses and professions, as well as underlying offences, supplement the scheme.

In this respect, regulation, surveillance and monitoring authorities have also edicted standards for the matter. It is the case for BCEAO Instruction no. 01/2007/RB of 2 July 2007 concerning AML within financial institutions (called hereafter “The Instruction”) and Instruction no.1/2006 /SP of 31 July 2006 on the adoption of electronic currency and electronic currency institutions, which provides for an AML monitoring system.

**71.** A financial intelligence unit (Cellule Nationale de Traitement des Informations Financières—CENTIF) has been created by Decree no. 2004-1150 of 18 August 2004 to collect, process and analyse financial intelligence for the documentation of files concerning suspicious transactions reports (STRs). Within the framework of its mission, CENTIF can when it deems it necessary resort to correspondents within institutional services such as the State Police, the Gendarmerie, the Customs Office, the judicial system, or any other services whose collaboration is indispensable in tracking money laundering activities. The latter are, just like members of CENTIF, subjected to the obligation of confidentiality.

**72.** Regarding CFT, because of its awareness of the vulnerability of member states due the frequency of terrorist attacks, the high level of organization of terrorist groups and the sophisticated nature of the means they use, Senegal has besides signing and ratifying the international legal instruments on the matter, adopted in January 2007 a special law criminalizing and sanctioning with perpetual forced labour “terrorist acts” including terrorist financing and environment damages.

**73.** Besides, at the sub-regional community level, Senegal has participated in the 4 July 2007 adoption by the WAEMU Council of Ministers of the Guideline initiated by BCEAO on terrorist financing in WAEMU member countries. The Guideline criminalizing terrorist financing on the basis of the prescriptions of the main international instruments on the issue must be transposed into the internal judicial order by national legislations within a maximum timeframe of six (6) months.

**74.** Senegal has also participated in the proceedings of GIABA's elaboration of the draft parent legislation against terrorist financing within ECOWAS member countries adopted in June 2007 by GIABA's Ad Hoc Ministerial Committee. GIABA Statutes which have been actually revised in January 2006 broaden the Group's anti money laundering objectives to cover anti terrorist financing objectives; they also seek the concerted harmonization of adequate measures against those plagues.

During the revision of GIABA's Statutes, the member countries committed themselves to complying with auto- and mutual assessment procedures.

75. Senegal has ratified the New-York Convention on Terrorist Financing, as well as the then Organization of African Unity (OAU) Convention on the Prevention and Combating of Terrorism.

**b) AML/CFT institutional framework**

➤ **MINISTRIES**

**76. \* MINISTRY OF ECONOMY AND FINANCE**

The Minister of Finance is in charge of the preparation and implementation of rules and regulations, especially in the customs, currency, credit and insurance sectors.

The Ministry has the financial and technical responsibilities of the establishments and companies under its tutelage. In this regard, it is composed, among others, of the Direction de la Monnaie et du Crédit (DMC) and the Direction des Assurances.

✓ Direction de la Monnaie et du Crédit (DMC)

The DMC covers, among other things, the tutelage and control of the Ministry of Economy and Finance (MEF) over banks and financial institutions and receives for that matter inspection reports from the Commission Bancaire (Banking Commission), the Surveillance Authority.

✓ Direction des Assurances (DA)

It ensures the coverage and control of insurance and reinsurance companies as well as their representatives and intermediaries in collaboration with the Commission Régionale de Contrôle des Assurances (CRCA) set up within the framework of the CIMA Code.

It has a power of control (on site and against justifications) over the above-mentioned organisations and collaborates with the CRCA towards the consideration of the demands of the Uniform Act on AML, especially at the community regulation level.

**77. \* MINISTRY OF TRADE**

It covers physical or legal persons carrying out regulated commercial activities. In this respect, it issues them, if the need arises, previous authorizations or receives their declarations of activities in line with current requirements.

**78. \* MINISTRY OF INTERIOR**

The Minister of Interior is in charge of internal security over the entire territory. In conjunction with the Ministry of Economy and Finance, as well as with the Minister of Armed Forces, he is responsible for the protection of the national economy against smuggling, fraudulent or prohibited importations. He has a power of authority over the police force in the absence of Prosecutors in the field of judicial police. He has the Gendarmerie at his disposal when it comes to administrative and internal security matters.

The Economic and Financial Brigade (La Brigade Economique et Financière--BEF), is a structure of the Division of Criminal Investigations (Division des investigations

criminelles—DIC) attached to the Directorate of the judicial police, which is one of the directorates of the General Directorate of National Security (Direction Générale de la Sûreté Nationale). Since early 2007, it has been approached with six (6) cases of information request from CENTIF and judicial institutions.

The Ministry has the jurisdiction of casinos, cash transportation companies and associations some of which are of the Non-Governmental Type (NGOs) or Non-Profit Making Type (NPMOs). As for the tutelage of NGOs, it is entrusted with the Ministry of Social Action (Ministère de l'Action Sociale).

The Gendarmerie National which is under the umbrella of the Ministry of Armed Forces (Defence) has set up a specialized entity, the Section des Recherches—Investigations Section—that plays an important role in AML activities by investigating and corroborating information on behalf of notably CENTIF and the Judicial Police.

**79. \* MINISTRY OF JUSTICE**

It defines criminal policy and is the relevant authority empowered with appreciation and decision making, if need be, concerning requests filed in within the framework of judicial cooperation and extradition procedures. The Ministry of Justice also monitors the coherence and legality of all the texts containing criminal provisions for the guidance of tribunals.

**80. \* MINISTRY OF FOREIGN AFFAIRS**

It is entrusted with the application of Agreements and Conventions Senegal is a party to.

Being the sole entity authorized to deal with foreign countries, it intervenes in judicial cooperation and extradition procedures, but as a simple intermediary between the requesting State and the Ministry of Justice which has the final word.

➤ **OPERATIONAL AGENCIES AND CRIMINAL JUSTICE**

**81. \* CELLULE NATIONALE DE TRAITEMENT DES INFORMATIONS FINANCIERES (CENTIF) —Financial Intelligence Unit.**

The Law, in its Article 16, has created a financial intelligence unit (Cellule Nationale de Traitement des Informations Financières--CENTIF) placed under the Ministry of Finance.

By virtue of the provisions of Article 17 of the Law, CENTIF is an Administrative Service with a financial autonomy and power of decision on matters under its jurisdiction.

Its mission is to collect and process financial intelligence related to money laundering circuits. For this reason, it is in charge of the reception, analysis and processing of adequate information to determine the origin of transactions or the nature of operations reported as suspicious activities.

It advises on the implementation of the AML State policy. To this end, it proposes all the necessary reforms to reinforce the efficiency of the combat.

82. \* CRIMINAL PROSECUTION AUTHORITIES

The criminal prosecution authorities responsible for the appropriate investigations into offences of money laundering and terrorist financing are Common-Law institutions (Judicial Police Officers and the like, Prosecutor and Judge at Trial) covered by the Code of Criminal Procedure.

By virtue of the provisions of the Code of Criminal Procedure, the judicial police is responsible for searching and spotting criminal law infringements, to gather related evidence and track the criminals, pending information opening. This exercised under the authority of the State Prosecutor. Within the Court of Appeal, it is placed under the surveillance of the Prosecutor General and the control of the Accusation Chamber.

Gendarmerie commissioned and non non-commissioned officers employed as Brigade Commanders, Police Superintendents and Officers, qualify for the appellation of « Judicial Police Officers » (Officier de Police Judiciaire—OPJ). The Judicial Police Agents are the Gendarmes and the members of the Police Force when they do not work as OPJ.

The Prosecutor General can personally represent, or send a substitute to represent, the Public Ministry at the Court of Appeal or the Assize Court instituted within the Court of appeal. He is responsible for the enforcement of criminal laws over the entire jurisdiction of the Court of Appeal and has a power of authority over all the representatives of the Public Ministry under the jurisdiction of the Court of Appeal.

The State Prosecutor can personally, or via one his substitutes, represent the Public Ministry at the Regional Tribunal. He receives claims and reports that processes at his own discretion. He undertakes or delegates all the necessary actions for the conduct of searches and the tracking of criminal law infringements.

83. \* RELEVANT JUDICIAL AUTHORITIES (notably in seizure-related matters)

The examining judge is authorized to take conservative measures in line with the Law by ordering the seizure or forfeiture, at the State's expense, of the goods and properties related to the offence under investigation.

The tribunals are authorized to order the seizure to the profit of the Public Treasury of notably the products derived from the offence.

84. \* CUSTOMS SERVICES

It is the Bureau des Poursuites et du Recouvrement (Prosecution and Recovery Office), of the Direction du Renseignement et de la Lutte contre la Fraude (Intelligence and Anti-Fraud Department) that centralizes all AML-related information at the level of the Direction Générale des Douanes (Central Customs Office).

85. \* ANTI-NARCOTICS TRAFFICKING SPECIALIZED AGENCIES

The above-mentioned Narcotics Code has been instituted by an Anti-Narcotics Inter-ministerial Committee (Comité Interministériel de Lutte contre la Drogue--CILD) in charge of the coordination of all anti-narcotics actions at State level. The Committee aims at:

- Determining a national policy against unlawful use and trafficking of narcotics and psychotropic substances;
- Coordinating the Following activities of the various state services and national and international non governmental organizations (NGOs) intervening in the fight against drug addiction and unlawful use and trafficking of narcotics and psychotropic substances;
- Proposing adequate measures for the improvement of the means at the disposal of various government services and NGOs;
- Representing the Senegalese Government in all international anti-narcotics actions and activities.

CILD is placed under the tutelage of the Ministry of Interior that chairs it. It is composed of representatives of many other ministries (18).

The same Code stipulates that the coordination of the fight against drug addiction and unlawful use and trafficking of narcotics and psychotropic substances is entrusted with the Office Central de Repression du Traffic Illicite de Stupéfiants et de substances psychotropes (OCRTIS), which notably centralizes all the information likely to facilitate searches and the prevention of unlawful trafficking. OCRTIS is attached to the Direction General de la Sûreté Nationale and includes mainly police agents supplemented by a Gendarmerie liaison officer and a Customs Office liaison officer. It is a judicial police structure that keeps its autonomy in relation to the Directorate of the Judicial Police.

## ➤ **FINANCIAL SECTOR ORGANIZATIONS**

### 86. \* **MINISTRIES OR AGENCIES IN CHARGE OF GRANTING APPROVALS, REGISTRATIONS AND OTHER TYPES OF AUTHORIZATIONS TO FINANCIAL INSTITUTIONS**

The authorizations are granted to the banks and financial institutions by a decision of the Minister of Finance based on a previous conformity certification from the Commission Bancaire (Banking Commission).

The authorization concerning the conduct of electronic cash activities is issued by BCEAO that is bound to inform the Minister of Economy and Finance about it.

The authorization is delivered for the conduct of insurance activities by the Minister of Economy and Finance, following the visa of the Commission Régionale de Contrôle des Assurances. The same applies for the authorization for a private manual change operator, following a BCEAO visa.

The Conseil Régional de l'Épargne Publique et des Marchés Financiers (CREPMF) can authorize the market management structures, the Bourse Régionale (Regional Stock Exchange) and the Dépositaire central/Banque de Règlement, the commercial shareholders, notably Management and Intermediation Agencies, Property Management Companies (Sociétés de Gestion de Patrimoine), business introducers, as well as professional shareholders, physical persons working with authorized structures, by issuing them with professional cards.

The Commission Bancaire (Banking Commission) is a community institution of the West African Monetary Union (WAMU), responsible notably for the organization and monitoring of banks and other financial institutions established in the Union's member countries. It commissions its General secretariat to undertake on-site and against-justifications controls in order to make sure there is a clear compliance with the applicable rules. The controls can be extended to related companies, namely headquarters and branches under its jurisdiction. The Banking Commission can also control the financial sections of microfinance institutions and companies under the jurisdiction of those financial sections.

The Central Bank has the following powers:

- Ask banking and financial institutions to provide it with all the documents and information needed for its operations. It can also get directly in touch with businesses and professional groupings for the conduct of surveys necessary for its information and that of the Council of Ministers and the member countries of the Union;
- Ask banks, financial establishments and postal current account services to report payment incidents;
- Guarantee the enforcement of rules and regulations set by authorities in line with Article 22 of the Treaty establishing the Monetary union, concerning the banking profession and credit control. Requests for the authorization to create and open financial establishments are under the Central Bank's jurisdiction.
- Propose to the Union's Council of Ministers, if necessary, any clause requesting the banks and financial institutions to collect mandatory reserves it receives, to respect the relationships between the various elements of their resources and employment positions, or the maximum or the minimum amounts attached to some employment positions. It guarantees the application of the relevant decisions of the Union's Council of Ministers.

Besides, the Annex to the Convention establishing the Banking Commission authorizes the Central bank to carry out on-site and against-justifications controls of credit institutions, concurrently with the Commission. The Central Bank is also authorized to control the financial sections of microfinance institutions and all the companies under the jurisdiction of the latter.

The Commission Régionale de Contrôle des Assurances (CRCA)—Insurance Control Regional Commission—is the regulating organ of the Conférence Interafricaine du Marché des Assurances (CIMA)—Inter-African Conference on Insurance Markets. It is responsible for on-site and against-justifications controls, the surveillance and organization of national markets, and the taking of safeguard and rehabilitation measures for insurance companies when their financial situation needs it. It undertakes missions in collaboration with the Direction Nationale des Assurances (National Insurance Central Office) that is under the tutelage of the Ministry of Economy and Finance.

The Conseil Régional d'Épargne Public et des Marchés Financiers (CREPMF) is in charge of the control of the Activities of all the shareholders, especially market management structures and authorized commercial actors. It is also responsible for the enforcement of the conformity of securities traders with the obligations attached to their trade when it comes to public bonds issuing. In this respect, it can, if the need arises, conduct investigations into the Activities of their headquarters and branches, or any other physical or moral having a direct or indirect interest relationship with those actors.

The Cour des Comptes—General Accounting Service—controls, notably via the Commission de Vérification et de Contrôle des Comptes des Entreprises Publiques (CVCCEP), the Activities of the Société Nationale La Poste and the Caisse des Dépôts et Consignations.

88. \* ORGANIZATIONS IN CHARGE OF THE SURVEILLANCE AND MONITORING OF THE COMPLIANCE OF OTHER TYPES OF FINANCIAL INSTITUTIONS WITH AML LAWS (Microfinance, Bureaux de Change, Cash Transmission Services).

The Banque Centrale (CENTRAL BANK) can, after having informed the Ministry of Finance, control any centralised financial system that has a level of activities up to threshold it has instructed.

The Central Bank and the Banking Commission can control cash transmission services in relation with banks and the financial services of La Poste which are the basis of the Activities of cash transmission services.

The Ministry of Economy and Finance is entrusted with the on-site control of the Activities of the bureaux de change that are part of the financial institutions targeted by the Law. BCEAO, on its part, carries out an against-justifications control based on documents that the bureaux de change are bound to send to it periodically. The failure to do so is a sanctionable offence.

The Cellule d'Assistance Technique aux Caisses Populaires d'Épargne et de Crédit (Cellule AT-CPEC), established by decree no. 013773/MEFP of 05 November 1992, is the structure through which the Ministry of Economy and Finance exerts its tutelage over micro-finance institutions (MFIs). It is responsible for implementation of the tutelage of the Ministry of Finance over the networks in line with a climate of credibility, legitimacy and confidence around the idea of mutual networks. Micro-finance institutions are part of the financial organizations covered by the Law.

89. \* SELF-REGULATING ORGANIZATIONS

The Banking Law requires, in its Article 59, that banks and financial institutions adhere to APBEF the statutes of which are subject to the approval of the Ministry of Finance, following the approval of the Banking Commission. All credit institutions are members of the Association which informed the Mission team that it works towards achieving compatibility between the productivity objectives of the profession and the demands of AML Laws.

According to its Statutes, the APBEF aims notably at:

- Reviewing all the questions concerning the banking and related professions.
- Intervening in all cases provided for in current laws and legal instruments.

It can also contact the Banking Commission for any offences noticed vis-à-vis the banking Law.

Besides, it must be noted that there is a federation that regroups all the national APBEF of WAEMU member countries. Recently, Senegal that currently chairs the Union, on a rotational basis, has organized various meetings on fiscal problems attached to the elaboration of constitutional arrangements concerning dubious debts. Apparently, a seminar on money laundering had been organized in 2003 before the implementation of the Senegalese Law.

#### The Fédération Sénégalaise des Sociétés d'Assurances (FSSA)

According to its statutes, it aims at notably promoting insurance companies, safeguarding the interests of its members and setting up a risk monitoring mechanism.

It groups about twenty companies operating in Senegal and works at progressively having its members elaborate the requirements of a national AML legislation since the CIMA Code does not have any provision on that.

#### The Association Professionnelle des Sociétés de Gestion et d'Intermédiation (APSGI)

The recognized Management and Intermediation Companies (Sociétés de Gestion et d'Intermédiation--SGI) are bound to adhere to the Association which is responsible for their representation at the level of regional financial market authorities, public authorities, professional organizations, and more generally at the level of all the shareholders and operators of the Market. It participates in the regulation of the profession which does not seem at the moment to have taken into consideration the legal AML-related requirements.

### ➤ **DNFBPAND OTHER ELEMENTS**

#### 90. \* **SELF-REGULATING ORGANIZATION OF CERTAIN PROFESSIONS**

##### Notaries' Chamber

Notaries are appointed by decree on the recommendation of the Minister of Justice.

The Notaries' Chamber that has registered 32 operating notaries (30 public and 2 paid) is responsible for ascertaining all offences and irregularities committed by notaries in the course of their duties. Under Article 106 of the Decree No. 2002-1032 of 15/10/2002 modifying Decree No. 79-1029 of 5/11/1979 governing the statute of Notaries, any violation of the rules and regulations, or any offence to the professional rules and mandatory arrangements, in full contradiction with probity, honour and delicacy, committed by a notary, even outside the profession, will be prosecuted, even in the absence of any complaint, by the Prosecutor General of the relevant Court of Appeal, without any prejudice to other prosecutions under relevant jurisdictions.

Any notary under criminal or disciplinary prosecution can see his professional activities suspended by a decree of the Minister of Justice pending the final criminal or disciplinary measure.

By virtue of Article 107 of the Decree, the disciplinary sanctions the notaries and notary trainees can face are: i) a reprimand; ii) censorship; iii) indefinite suspension period; iv) exclusion from the trainees' Register; v) destitution.

Reprimands, censorship and exclusion from the trainees' Record are the responsibility of the disciplinary commission (Commission de discipline). Concerning the other types of sanctions, it makes adequate proposals to the Minister of Justice. Suspension and destitution are respectively pronounced by a decree of the Minister of Justice or a decree emanating from the Council of Ministers (Conseil des Ministres).

#### The Bar Association

The Bar Council that functions as a disciplinary council sues and sanctions the offences made notably in the AML field by lawyers registered with the Bar and those on the list of trainees. It acts either ex officio, or at the request of the Prosecutor General of the Court of Appeal, or at the initiative of the Bar's President. Under Article 45 of Law No. 0409 of 4 January 2004 on the Bar association, the disciplinary sanctions are the following: warning, reprimand, temporary exclusion that cannot be more than three years, cancellation of membership to the Law Society or lists of trainee lawyers. About four hundred (400) lawyers are registered with the Bar Association.

The Prosecutor General of the Court of Appeal is responsible for the application of relevant sanctions.

The sanctions are not exclusive of the criminal penalties under Article 40 of the Law.

#### The Ordre National des Experts Comptables et Comptables Agréés (ONECCA)—National Association of Chartered Accountants

- The Association has 111 members. Under the Law, the chartered accountant is a person whose job it is to generally review, assess, check and balance the accounts of firms and organizations to which she/he is not bound by a contract of employment. She/he is solely allowed operate as a statutory auditor.
- The chartered accountant is usually commissioned to keep, open, monitor, centralize, close accounts, and also carry out missions to reconcile the accounts of firms and organizations to which she/he is not bound by a contract of employment.

He is authorized to certify the regularity and sincerity of the summary financial statements of firms and organizations for which she/he is charged to close the accounts.

- Some members of the Association have participated in AML/CFT sensitizing and training workshops. A code of ethics is being prepared in order to take the AML/CFT component into account.
- The Council of the Association is entrusted with the monitoring aspect of the profession and has the power to impose a wide range of sanctions.
- A government commissioner representing the Ministry of Economy and Finance and sitting in the Association's Council, is charged with the external auditing of the Association.

It must be noted that the Law is specifically targeted at the statutory auditors, i.e. the chartered accountants having the mandate to act as statutory auditors.

### **91. The Registre du Commerce et du Crédit Mobilier (RCCM)**

Companies and other legal persons considered under the Uniform Act on the Commercial companies and Economic Interest Groupings Law, must require, within the month they have been established, their registration with the RCCM at the Registrar's Office within the jurisdiction under which their headquarters are placed.

The request should bear the following:

- 1) corporate name;
- 2) if need be, trade name, logo, or sign;
- 3) activity or activities covered;
- 4) type of company or legal person;
- 5) volume of share capital with an indication of cash contributions and contributions in kind;
- 6) address of headquarters and, if need be, that of the head office and each of the other branches;
- 7) duration of the company or legal person in line with the statutes;
- 8) names and home addresses of shareholders indefinitely and personally held responsible for partnership debts with an indication of their dates and places of birth, their nationalities, their dates of marriage, their matrimonial options and the existence or non existence of clauses opposable to third parties in terms of access to the wealth and properties of the married, as well as the requests for a separation of wealth and properties;
- 9) names, dates and places of birth and home addresses of managers, administrators or associates entrusted with the power to commit the company or legal person;
- 10) names, dates and places of birth, as well as home addresses of statutory auditors when their designation is required under the Uniform Act on the Commercial companies and Economic interest groupings.

## **92. Mechanisms concerning Non-Profit Organizations (NPOs)**

Pursuant to Decree No. 96-103, modifying Decree 89-775 of 30 June 1969 fixing the modalities for the intervention of Non Governmental Organizations (NGOs) in its Article 1, NGOs are private associations or organizations regularly registered as non profit and aiming at supporting the development of the Republic of Senegal and that are recognized as such by the Government of the Republic.

The conditions attached to the authorization of NGOs are defined by Article 4 of Decree 93-103. As at the end of July 2007, four hundred and sixty (460) NGOs were authorized.

The authorization request is, after being reviewed by an interministerial commission, addressed to the Ministère de la Femme, de l'Enfant et de la Famille (Ministry in charge of Women, Children and Family matters) which is the tutelage authority. Current provisions notably require the identification of the founders and the members of NGOs.

Authorized NGOs are subject to screenings in order to notably ensure the compliance with the obligations to keep regular annual accounts and financial statements and to use funds in line with set objectives. The controls do not include an AML/CFT component.

### **c) Overview of policies and procedures**

**93.** The mission team noted a general awareness of public authorities in the absence of a national overall strategy composed of a policy and programmes with clearly defined priority lines.

**94.** Senegal does not have a risk-based AML approach in line with FATF recommendations. Senegal should assess the risks and vulnerabilities it is confronted with and define a plan of action in order to minimise them.

However, reinforced vigilance obligations are envisaged within the framework of the Law and BCEAO Instruction. On the contrary, some exceptions to the vigilance obligation are granted.

Besides, prescriptions, especially in the field of internal auditing, impose on certain financial institutions obligations concerning the identification, assessment, prevention and control of certain risks other than those related to counterpart, market, operational and legal structures, etc. Circular No. 10-200/CB of 23 June 2000 of the Banking Commission is very self explanatory in this respect for credit institutions.

### **d) Progress made since last Evaluation or Mutual Evaluation**

**95.** There has been the first Mutual Evaluation that Senegal ever accepted in line with the relevant clauses of GIABA Statutes to which it has freely adhered to. The Mission was afterwards informed of an evaluation conducted in 2004 by the World Bank within the framework of the Financial Sector Assessment Program (FSAP), but it could not obtain the mission report that had supposedly been finalized in 2006.

## **2.- LEGAL SYSTEM AND RELATED INSTTUTIONAL MEASURES**

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

### 2.1.1 Description and Analysis

**96.** The AML/CFT scheme set up at the level of the member countries of the West African Economic and Monetary Union (WAEMU) and BECEAO, and the Senegalese Government at the national level, is based on the following main legal instruments:

- Guideline No. 07/2002/CM/UEMOA of 19 September 2002 on anti-money laundering in WAEMU member countries;
- Regulation No. 14/2002/CM/UEMOA of 19 September 2002 on the freezing of funds and other financial resources within the framework of AML/CFT activities in WAEMU member countries;
- Uniform Act No. 2004-09 of 6 February 2004 transposing into internal law the community AML Guideline;
- Decree No. 2004-1150 of 18 August 2004 on the establishment, organization and operation of a Financial Information Unit (Cellule nationale de traitement des informations financières—CENTIF);
- Decision No. 14/2006 CM/UEMOA of 08/09/2006 on the modification of Decision No. 12/2005/CM/UEMOA of 04/07/2005 concerning the list of people, groupings and organizations targeted in the freezing of funds and other financial resources within the framework of AML/CFT activities in WAEMU member countries;
- Guideline No. 04/2007/CM/UEMOA of 4 July 2007 concerning CFT activities in WAEMU member countries;
- Instruction No. 01/2007/RB/BCEAO of 2 July 2007 on AML activities.

#### **Recommendation 1**

**97. 1.** The criminalization and penalization of money laundering have been introduced into Senegalese penal Law by ACT No. 97-18 of 1 December 1997 concerning the Anti-Narcotics Code under Article 102. But the clause which covered all the material elements related to conversion, transfer, dissimulation, disguise, acquisition, detention and consumption of narcotics, was only aimed at narcotics-related money laundering.

98. It is Uniform Act No. 2004-09 of February 2004 on Anti-Money laundering, hereafter referred to as the Law that has completed the scheme by making it in line with the prescriptions of the Vienna and Palermo Conventions, notably by widely extending the scope of the offence to any crime or fault.

It actually stipulates under its Article 2 that pursuant to the Law, money laundering is defined as the offence deriving from one or several of the purposely committed actions enumerated below:

- The conversion, transfer or manipulation of goods and properties the authors know fully well that they come from a crime or a fault, or the participation in that crime or fault in order to dissimulate or disguise the origins of the illegally acquired goods and properties, or to help any person involved in the commission of the crime or fault to get away with the legal consequences of their actions;

- The dissimulation or disguise of the nature, origin, use, availability, movement or real ownership of the goods and properties and the rights attached to them, which the authors know fully that they are derived from a crime, fault, or participation in that crime or fault;
- The acquisition, detention or use of goods and properties the authors knew, at the moment they received them that they derived from a crime or fault, or a participation in that crime or fault.

The Criminal Code defines as fault any offence that the Laws punish through correctional sanctions; and as crime any offence that the Laws punish by an afflictive or infamous sanction (Article 1).

The penalties in the correctional field are the timely imprisonment in a correctional house, timely exclusion from certain civic, civil or family rights, and fines (Article 9).

The afflictive and infamous sanctions are death (now abrogated), perpetual forced labour, momentarily forced labour, and criminal detention (Article 7).

The only infamous sanction is civic degradation (article 8).

**99.** It must be noted that a recently-passed law (Law 2007-31 of 27 December 2007) has just criminalized money laundering from narcotics and, consequently, aggravated the applicable criminal penalties. This evolution seems to translate the will of the Senegalese authorities to protect the populations against damages brought about by expanding narcotics trafficking, by deterring people from committing this type of offence. However, the criminalization of offences is not in fact always efficient because of notably the slowness and difficulties inherent in the organization of the sessions of an Assize Court. This often leads judges to disqualify crimes to turn them into offences for efficiency reasons, precisely. That is often the case for money forgery.

**100- 2.** The goods and properties concerned, account not taken of their value, under Article 2 of the Law are defined under Article 1 as being all sorts of goods and properties, corporal or incorporeal, movable or immovable, tangible or intangible, fungible, as well as legal acts or documents certifying the ownership of those goods and properties or the rights attached to them.

The Law does not indicate that the goods or properties must directly or indirectly represent the products of the crime.

There is money laundering, even if the events at the origin of the acquisition, detention and transfer of the goods to launder occurred on the territory of a member country or that of a non-member country.

Unless the original offence is cleared as a result of an amnesty law, there is money laundering even if the criminals or offenders are not prosecuted or condemned (Art.3 al 2).

**101.** Article 2 of the Law unlimitedly concern crimes and offences. The qualification as crime or offence allows the coverage of a wide scope of underlying offences. Besides, the Criminal Code (Code Pénal--CP) and related repressive legal texts criminalize and punish as crimes or offences the following designated categories:

1. membership to an organized criminal group and participation in racketeering operation (Articles 238-240 and 290-293 CP)
2. Terrorism, including its funding (Article 279 of the Special Law No. 2007-01 of 12/02/2007 concerning terrorist acts and supplementing the Senegalese Criminal Code)
3. Trafficking in human beings and smuggling of migrants (Article 1 and following of Law No. 2005-06 of 10 May 2005 concerning anti-trafficking in human beings and similar practices, and protection of the victims)
4. Sexual exploitation, including that of children (Article 1 and 2 of Law No. 2005-06 of 10 May 2005 on anti-trafficking in human beings, similar practices, and the protection of victims)
5. Illicit trafficking of narcotics and psychotropic substances (Articles 95, 96 and following of the Narcotics Code)
6. Weapons trafficking (Articles 7 and following of Law No. 66-03 of 18 January 1968 on the general regime concerning arms and ammunition)
7. illicit trafficking in stolen goods and others (Articles 430 and 431 CP)
8. Corruption (Articles 159-163 CP)
9. Frauds and swindling (Articles 376 and 379 bis CP)
10. Currency forgery (Articles 119-124 CP)
11. Counterfeiting and piracy of products (Articles 397-401 CP and 18, 208 of the Customs Code)
12. Environmental crime (offence related to terrorism--Article 279 CP)
13. Murders and serious corporal injuries (Articles 294-298 CP)
14. Abduction, Sequestration and Hostage Taking (Articles 334-337 CP)
15. Theft (Articles 364-370 CP)
16. Contraband (Articles 310-312 Customs Code)
17. Extortion (Article 372 CP)
18. Forgery (Article 125 and following CP)
19. Piracy (Article of Law No. 62/32 of 22 March 1962 establishing the Merchant Navy Code (Code de la Marine Marchande)
20. Inside Trading (Articles 19 of the banking Law, 53 of IMCEC Law and 32 of the Annex to the Convention establishing CREPMF) and Manipulation of markets (articles 36-38 of the Annex to the Code establishing CREPMF)

**102.** The notion of environmental crime does not exist in an autonomous way in the Senegalese Criminal Law. It is through Special Law No. 2007/01 of 12/02/2007 concerning

terrorist acts that one must perceive the criminalization of a form of environmental aggression that could be termed bioterrorism (a study conducted in 2007 by Professor Moustapha NGAIDE seems interesting in this respect).

**103.** Concerning the repression against counterfeiting and piracy, the Law is notably problematic because of the private nature of intellectual property rights. In order to fight efficiently against the counterfeiting and piracy of products, draft ad hoc legal texts are said to be in preparation under the aegis of the Directorate of Customs Services (Ministry of Finance) and the Ministry of Culture. Besides, a National Brigade for the control of Piracy and Counterfeiting, attached to the Directorate of Public Security at the Ministry of Interior has been created in 2006.

**104.** As for inside trading and market tampering, they are criminalized by the Annex to the Convention establishing CREPMF that refers to the national legislations for criminal penalties. Should the cases arise, The Senegalese Criminal code does not, however, provide for specific ad hoc penalties. Therefore, there is a legal vacuum that should be filled by instituting adequate criminal penalties.

**105.** 5. The criminalization covers actions having occurred in another country and that constitute an offence not only in that country but also in Senegal, since the qualification as a crime or an offence is, at any rate, a prerequisite.

**106.** 6. According to legal authorities that have been met, under Senegalese Laws, there is nothing against suing for money laundering the author of an underlying offence (self laundering). But there is no case law related to the repression of money laundering offence to support the assertion.

**107.** Besides, in the Senegalese Laws, there is the principle of the autonomy of criminal offences that prevents the double punishment of the same person for the same type of criminal offence (non bis in idem).

**108.** Article 3 of the Law criminalizes as proximity offences, complicity and facilitating actions such as agreements, assistance, association, advice.

7. Article 3 of the Law provides for proximity offences related to money laundering, notably: agreements, association, attempts, incitation or advice aimed at offence facilitating.

**109.** 8. When the product of a crime originates from activities carried out in another country in which they do not constitute an offence, contrary to what would have been the case if they occurred in Senegal, there is no money laundering (dual criminality test).

## **Recommendation 2**

**110.** **2.1** As indicated above, the definition of money laundering criminalization takes the intentional element of the offence into account. It is the awareness of the illicit origin of the good to be laundered at the moment of its laundering (Art. 2).

**2.2** This element is freely appreciated by the trial judge and depending on the circumstances of the cause. The judicial authorities met have all indicated that the intentional element can be deducted from objective factual circumstances. But in the absence of jurisprudence, the mission team could not check the point.

**111.** **2.3** Under Article 42 of the Law, Legal persons other than the State for and on behalf of whom a money laundering offence or any other offence provided for by the current legislation and committed by one of the organs or their representatives, are

sanctioned with a fine equivalent to five times the amount of those incurred by physical persons, for the same facts, without any prejudice to their condemnation as authors or accomplices.

Legal persons other than the State can also be condemned in the following ways:

1. An exclusion from public markets, once for all or for a maximum period of five (5) years;
2. confiscation of the good used, or destined to commit the offence, or the product derived from the offence;
3. placement under judicial surveillance for a maximum period of five (5) years;
4. Banning, once for all or for a period of five (5) years, from carrying out directly or indirectly one or several professional or social activities in the course of which the offence had been committed;
5. Definitive closure or for a period of five (5) years of one or several branches of the enterprise used to commit the criminalized actions;
6. dissolution, in the event they had been created to commit the criminalized actions;
7. Posting the pronounced decision or publishing it via the print media or any audiovisual communication outlet, at the expense of the condemned legal person... ».

**112.** **2.4** The criminal sanctions provided in conformity with Common Law provisions are without any prejudice to other types of administrative or civil actions, notably actions related to requests for compensation.

**113.** **2.5** Coercive measures, criminal, civil or administrative sanctions are provided for under the Law. Thus, physical persons who are guilty of money laundering offences are sentenced to three- (3) to seven- (7) year imprisonment and a fine equal to three times the value of properties or funds deriving from money laundering operations. Any money laundering attempt is subjected to the same sanctions (Article 37).

The sanctions are doubled in the following cases:

- When the money laundering offence is committed in a recurrent manner or by taking advantage of the facilities of a professional activity;
- When the author of an offence is a recidivist; in which case, condemnations pronounced abroad are taken into account to confirm recidivism;
- When the money laundering offence is committed by a gang.

**114.** The various criminal sanctions provided for seem commensurate with other sanctions concerning financial offences, to the exception of notably money laundering and trafficking in narcotics which is more severely repressed (see R1 above). If they are applied as expected by the tribunals, (which is yet to happen), the sanctions could prove efficient and deterring.

**115.** In sum, the criminalization of money laundering by the Law does cover the constitutive elements of the crime, namely the physical, material and intentional aspects of

the offence in conformity with the Vienna Convention (Article 3-1, b, c)) and the Palermo Convention (Article 6-1).

### **Recommendation 32**

**116.** There is no evaluation mechanism for the implementation of the Law concerning the criminalizing of money laundering.

**117.** Regarding investigations, prosecutions and condemnations for money laundering, the statistical data needed to appreciate the effective application of the mechanism and the results obtained; contacts indicate that since the adoption of the Law not a single case has been brought before a tribunal. The various declarations of suspicious activities sent to prosecution authorities and the examining judge are currently under investigation or judicial instruction. Between 2005 and end of July 2007, twelve (12) case-files were transmitted by CENTIF to the General Prosecutor, but no prescription is available. CENTIF does not have a follow-up mechanism to track files sent to the General Prosecutor.

**118.** From the contacts with the prosecuting authorities who have indicated the recent nature of their appointment, one can conclude that there is a great mobility of judges. Besides, there is a lack of means and specialization of judges in the field of AML/CFT. Training needs must be addressed in this respect.

**119.** Furthermore, the elaboration of Article 29 of the Law that stipulates that the General Prosecutor immediately seizes the examining judge is critically appreciated because it could prejudice the power of appreciation of the relevance of prosecutions generally entrusted with the Prosecutor General. The elaboration of the article should, according to the judicial authorities met, be reviewed in order to avoid possible prejudicial impediments to the good conduct of judicial procedures.

### **Recommendations and Observations**

**120.** The Law does not indicate the direct or indirect link between goods and the criminal products.

**121.** The legislation concerning forgery and piracy repression should be reinforced.

**122.** There is no mechanism for the regular assessment of the efficiency of the Law. Such a mechanism should be established.

**123.** Besides, in the absence of effectively pronounced sanctions by the tribunals concerning money laundering offences, no appreciation of efficiency could be made by the mission team in that respect.

**124.** The elaboration of Article 29 of the Law which imposes on the Prosecutor the immediate transmission of all the declarations of suspicious activities received from CENTIF seems to be problematic. A more flexible elaboration (or an intelligent application) of the article should be envisaged to avoid possible conflicts between the powers of the Prosecutor General and those of the Examining judge.

### **Compliance with Recommendations 1 and 2**

	<b>Compliance Assessment</b>	<b>Summary of reasons justifying the compliance assessment</b>
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<b>R.1</b>	<b>LC (largely compliant)</b>	<p>- The Law does not indicate the direct or indirect characteristics of the link between goods and crime products.</p> <p>- The application of the legislation concerning the repression of forgery and piracy encounters difficulties.</p> <p>- There is no provision allowing the effective criminalization of offences designated as inside trading or market manipulations committed with regards to interventions on the regional financial market.</p> <p>The absence of prosecution and condemnations for money laundering raises serious doubts as to the effective application of criminal provisions concerning money laundering criminal offences.</p>
<b>R.2</b>	<b>LC</b>	<p>In the absence of sanctions effectively pronounced by the tribunals as regards money laundering offences, it has not been possible to assess efficiency.</p>

## **2.2 – Criminalization of Terrorist Financing (SR.II)**

### **2.2.1 Description and Analysis**

- Law No. 2007-01 of 12/02/2007 on terrorist actions and supplementing Article 279 of the Senegalese Criminal Code;
- Guideline No. 07/2002/CM/UEMOA of 19 September 2002 on anti-money laundering in WAEMU member states;
- Guideline No. 04/2007/CM/UEMOA of 4 September 2007 on Combating Terrorist Financing in WAEMU member states
- ECOWAS Bill on combating the Financing of Terrorism in the Community member states adopted by the GIABA Ad hoc Ministerial Council of 13 June 2007.

#### ➤ Terrorist financing within the framework of the United Nations Convention:

**125.** The Special law No. 07/2007 of 31 January 2007 modifying the Senegalese Criminal Code defines terrorist actions including environmental damages and terrorist financing. Article 279-1 of the modified Criminal Code stipulates that offences committed intentionally in association with individual or collective enterprises in order to seriously impair public order or the normal operations of national or international institutions, through intimidation or terror, are considered as terrorist actions, which are summarized below:

- 1) Attacks and conspiracies
- 2) Crimes committed as a participation in an insurrectional movement
- 3) Violence and injuries directed to individuals and the destruction or
- 4) Degradations committed during rallies
- 5) Abductions and sequestrations
- 6) Destruction, degradation and damages
- 7) Degradation of State property or public interest infrastructure
- 8) Crime syndicate
- 9) Life attempts
- 10) Threats

- 11) Premeditated violence and injuries
- 12) Construction or possession of prohibited weapons
- 13) Thefts and extortions ».

**126.** Article 279-2 criminalizes under the same conditions as above the fact of introducing in the environment, on the ground, underground or underwater any substance capable of jeopardizing human or animal health or the natural habitat.

**127.** Finally, Article 279-3 criminalizes as a terrorist action the direct or indirect financing of a terrorist company by giving them, collecting or keeping funds, goods and properties or advising them to that end with an intention to see those funds, goods and properties used in full awareness that they are wholly or partially destined to commit a terrorist act.

**128.** Under the Special law, anyone guilty of terrorist acts is subject to perpetual forced labour condemnation instead of the death sentence abolished by Law No. 2004-38 of 28 December 2004. The sanction seems to be very deterring. If the culprit is a legal person or acts as one, the license, authorization or recognition as a legal person is withdrawn for good.

**129.** The terrorist acts enumerated under Article 279-1 are all crimes. The facilitation of terrorism has a lesser sanction. The offences included in the group of terrorist acts or the apology of terrorism, are criminal or tortuous and, therefore constitute offences underlying money laundering.

**130.** The Special Law also creates in the field of criminal procedures an anti-terrorist specialized structure at the Dakar Regional Tribunal composed of a section specialized in court procedures and special hearing cabinets. Only the Prosecutor General of the Tribunal is authorized to take action. Similarly, open public information is entrusted with special hearing cabinets. Finally, special investigation procedures are authorized in the context of police custody, visits, searches and seizures.

The structures seem interesting for the achievement of efficiency if they are created and endowed with sufficient means. If they are really implemented, the procedures could also be efficient. The projected Law would gain in using the model that could be extended to money laundering.

**131.** However, the Special Law does not consider terrorist financing as a criminal offence in line with Article 2 of the 1999 international Convention on the repression of terrorist financing. In fact, the criminalization is based on the notion of terrorist act and does not link the offence with the relevant international judicial instruments.

**132.** Besides, it does not only aim at dealing specifically and clearly with the notions of « terrorist » and « terrorist organization » as indicated in the above-mentioned Convention.

Finally, the Law does not provide anything on the localization of the author of the terrorist financing in relation to the terrorist act, the terrorist organization and the terrorist.

**133.** The Mission team was orally informed that the dissolution of a charity association and the suspension of the authorization of a charity NGO in 2002 on the basis of judicial clauses that were not disclosed, the above-mentioned law on the repression of terrorist acts was not implemented at that moment.

**134.** The WAEMU Guideline on combating terrorist financing adopted on 04 July 2007 by the WAEMU Council of Ministers, defines terrorist financing offence as an offence committed in order to directly or indirectly supply, collect, manage, or try to supply, collect or manage, by any means, funds, goods, financial services, etc. with a purpose of deliberately using them wholly or partly to commit:

1. an act constituting an offence according to one of the legal instruments listed in the Annex to the Guideline, regardless of the place where the offence took place;

2. any other act destined to kill or maim a civilian, or any other person not involved directly in the hostilities of an armed conflict situation when, by its nature or context, the Law aims at intimidating a population or forcing a government or international organization to accomplish or to refrain from accomplishing a given act.

**135.** Terrorist financing offence, defined as such, is committed, even if the funds have not been effectively used for the above-indicated acts.

**136.** There is terrorist financing even if the facts at the root of the acquisition, possession and transfer of the goods and properties destined to finance terrorism, are committed within the territory of another member State or any other third-party state. The definition seems to be in line with FATF Recommendations and the 09 December 1999 United Nations Convention.

**137.** Senegal should without delay domesticate the text into internal law (within the six months specified by WAEMU legislation), in order to be in line with the criterion on the criminalization of terrorist financing.

**138.** It must also be noted that the GIABA ad hoc Ministerial Committee adopted in June 2007 a draft framework legislation on Combating Terrorist Financing, which could be a source of inspiration for ECOWAS member countries for the establishment of their internal legislation in that respect.

**139.** The text defines terrorist financing as an offence committed by anyone who illegally and deliberately, by any means whatsoever, directly or indirectly, supplies, or collect funds, goods and other financial resources , or tries to supply or to collect them with the purpose of seeing them used wholly or partly in order to commit:

1. an act which is considered as an offence within the framework and definition of one of the treaties enumerated in the Annex to the Convention on the repression of terrorist financing, as well as universal legal instruments referred to in the Annex to the Law (adopted by the country);

2. any other act destined to kill or to cause serious bodily injuries to a civilian or any other person not participating directly in hostilities in a situation of an armed conflict when, by its nature or context, the Law is destined to intimidate a population or to force a government or an international organization to accomplish or to refrain from accomplishing a given act.

**140.** For an act to be considered as an offence, it is not necessary that funds be used to commit any of the above-mentioned offences. Awareness, intention, or motivation as constitutive elements of an offence can be deducted from objective factual circumstances...

**141.** Given the national laws, WAEMU member States must adopt through the transposition of the WAEMU Guideline, member countries will have to ensure the harmonization of their future legislations with the text recommended by GIABA for cohesion sake.

## **Recommendation 32**

**142.** The Mission team could not have elements establishing the efficiency of the implementation of the above-mentioned Law on the repression of terrorist acts.

**143.** There were no statistics and no relevant judicial decision seemed to have been taken.

## **Recommendations et Observations**

**144.** Senegal has not correctly implemented the international Convention on the repression of terrorist financing, even though it has signed and ratified it.

**145.** Senegal has not yet domesticated the WAEMU community Guideline on Combating terrorist financing that criminalises the offence. Senegal should without delay, as soon as the draft uniform law on the combating of terrorist financing is adopted by the WAEMU Council of Ministers, adopt on this basis a law to transpose the text into internal law in order to complete the current Special Law and to be perfectly in line with the criterion on the criminalization of terrorist financing, as recommended by the FATF.

**146.** Besides, a mechanism to evaluate the efficiency of the legal instruments to combat terrorist financing should be created.

### **Conformity with Special Recommendation II**

	<b>Compliance Assessment</b>	<b>Summary of reasons justifying the compliance assessment</b>
<b>SR.II</b>	<b>PC</b>	<ul style="list-style-type: none"><li>- Senegal has not implemented the international Convention on the repression of terrorist financing which it has however signed and ratified.</li><li>- The special law on combating terrorist acts does not sufficiently cover the required criteria, namely that regarding the compliance with the international Convention on the repression of terrorist financing.</li><li>- The Mission could not get elements establishing the effective application of the above-mentioned Law on terrorist acts.</li><li>- There are no relevant statistics and no judicial decision seems to have been taken yet.</li></ul>

### **2.3 Confiscation, Freezing and Seizure of criminal products (R3)**

- Law No. 2004-9 of 06 February 2004
- Law No. 97-18 of 1 December 1997 on Narcotics Code
- Law No. 87-47 of 28 December 1987 on Customs Code
- Regulation No. 14/2002/CM/UEMOA of 19 September 2002 and decisions concerning the updating of targeted persons and entities.

- Definitive confiscation of laundered goods and criminal products (of an equivalent value).

**147.** Article 45 of the Law on the mandatory confiscation of products derived from money laundering, sets the regime of the confiscation after the conviction (compulsory supplementary penalty) in the following terms: in all conviction cases for money-laundering based offences or attempts to commit such offences, tribunals order confiscation

in favour of the Public Treasury: a) products derived from the offences, b) movable and unmovable goods into which the products are converted or transformed and, to the tune of their real value, goods legally acquired and with which the above mentioned products are mixed, as well as revenues and other advantages drawn from the products, c) goods into which they have been transformed or invested, or goods with which they have been mixed, no matter who owns the products and goods, unless their owner proves their ignorance of their fraudulent origin.

The so-called mandatory confiscation also applies to:

- Products derived from the offence and
- Movable and unmovable goods into which the products have been transformed or converted;

**148.** Confiscation based on equivalents is provided for in the event of legally acquired goods with which the above-mentioned products are mixed, as well as revenues and other advantages drawn from the products, goods into which they have been transformed or invested, or with which they have been mixed.

**149.** Confiscation of goods belonging to third parties is possible, unless they can establish their ignorance of the fraudulent origin of products or goods. This, however, seems to limit to fraud (and not illicitness, in a more general way) the basic offence the third party can prove their ignorance of.

**150.** Regarding illicit trafficking in narcotics, Article 117 of Law No. 97-18 of 1 December 1997 on the Narcotics Code stipulates notably in the case of narcotics-related money laundering, confiscation in the following terms : tribunals order confiscation in favour of the Public Treasury, of products derived from the offence, movable and unmovable goods into which they have been transformed or converted and, to the tune of real value, legally acquired goods with which the above-mentioned products have been mixed, as well as revenues and other advantages drawn the products, goods into which they have been transformed or invested, or goods with which they have been mixed, no matter who owns them, unless the owners can prove their ignorance of their fraudulent origin.

**151.** As regards customs-related offences, the Customs Code also provides for the competence of tribunals to order the confiscation of relevant objects (notably goods and means of transport).

- Conservatory Measures (Freezing, seizure or confiscation)

**152.** Article 36 of the Law on conservatory measures stipulates that the examining judge can prescribe conservatory measures in line with the Law, by ordering at State expense notably seizure or confiscation of offence-related goods, object of the enquiry and all the elements that can help identify them, as well as the freezing of monies and other financial operations concerning the said goods.

**153.** Thus, reference is made to Common law for the relevant procedure. In this respect, Article 87 bis of the Criminal Procedure Code stipulates that when she/he receives an information file, the examining judge can ex-officio or at the request of the civil party or public ministry, order conservatory measures on the goods of the accused.

**154.** Besides, Article 372 of the same Code stipulates that the tribunal entrusted with the case has the same powers as the examining judge to order the conservatory measures provided for in Article 87 bis.

The examining judge and the tribunal thus seem to be endowed with the power to prevent or to cancel any action likely to prejudice the capacity of authorities to recover goods subject to confiscation.

**155.** Article 139 of the Narcotics Code provides for the use by judicial authorities of the powers conferred upon them by Articles 87 bis and 372 of above-mentioned Code of Criminal Procedure to guarantee the confiscation of products accruing from Narcotics.

**156.** In the event of a Customs offence, the Customs Code allows under-oath agents to seize all objects that can be confiscated.

**157.** Prosecuting authorities and CENTIF seem to be entrusted with adequate prerogatives to detect and trace the origin of goods subject to confiscation or likely to be confiscated or constituting criminal products. They also have access to all the procedural mechanisms (search, audition, submission of documents). However, during the interview of the mission team with the technical departments of the Ministry of Interior, difficulties in detecting traceability and getting to the master minds of money laundering operations were noted. The natures of those difficulties and the means to surmount them have not been clearly indicated.

**158.** The legal confiscation of goods belonging to criminal organizations is possible, because the Criminal Code considers as crime or offence any association or agreement established in order to commit one or several crimes or offences against people or goods. According to Senegalese criminal laws, confiscation seems to be a mandatory supplementary criminal sanction against such entities.

**159.** Besides, civil confiscation based on another regime fixed by the OHADA Uniform Act on the organization of simplified recovery procedures and executing means, still seems possible.

**160.** It must be noted that other applicable texts, notably in relation to underlying offences, provide for seizure and confiscation measures. Such is the case for the Narcotics Code (Articles 116 and 117), the Customs Code (Articles 220 and following) and the Criminal Code.

**161.** To cover all the elements concerned, reference must be made to Common Law (Criminal Procedure Code) as well as to the above-indicated specific regulations, which all give relevant authorities important means to secure or to transfer as offence-derived products, or movable or immovable goods into which the said products are transformed or converted.

### **Recommendation 32**

**162.** There is no mechanism for the regular evaluation of the efficiency of the freezing, seizure or confiscation scheme.

**163.** In the absence of statistics, the Mission could not assess the efficiency of the freezing, seizure or confiscation scheme. According to CENTIF, the situation could be justified by the recent nature of AML/CFT legislation.

### **Recommendations and Observations**

**164.** Senegal should set up a mechanism for the regular evaluation of the efficiency of the freezing, seizure or confiscation scheme. To this end, statistics should be collected by the relevant authorities.

	<b>Compliance Assessment</b>	<b>Summary of reasons justifying the compliance assessment</b>
<b>R. 3</b>	<b>LC</b>	In the absence of statistics, the Mission could not assess the efficiency of the freezing, seizure or confiscation scheme.  There is no mechanism for the regular evaluation of the efficiency of the freezing, seizure or confiscation scheme.

**2.4 - Freezing of funds used for terrorist financing (SR.III)**

**2.4.1 Description and Analysis**

- Regulation No. 14/2002/CM/UEMOA of 19 September 2002 concerning the freezing of funds and other financial resources within the framework of the combating of terrorist financing within WAEMU member States;
- Decision No. 14/2006 CM/UEMOA of 08/09/2006 on the modification of Decision No. 12/2005/CM/UEMOA of 04/07/2005 on the list of persons, entities and organizations covered by the freezing of funds and other financial resources within the framework the combating of terrorist financing within WAEMU member states;
- Guideline No.04/2007/CM/UEMOA of 04 July 2007 concerning the combating of terrorist financing in WAEMU member States.

**165.** The above-cited Regulation No.14/2002 sets the community rules concerning the freezing of funds and other financial resources within the member States in compliance with Resolution No.1267 (1999) of the United Nations Security Council (Article 4) and other resolutions. In practical terms and in line with the said Resolution, the list of persons or entities targeted by Penalty Committee with the endorsement of WAEMU Council of Ministers is communicated by BCEAO to banks and financial establishments for the freezing of the goods and properties of the persons or entities concerned. The list is updated following related decisions from the Council of Ministers. The goods and properties that are detained, frozen, seized or confiscated must be declared by credit institutions to BCEAO and the Banking Commission. The said institutions are also subject to a mandatory cooperation with the above-mentioned two organizations.

**166.** Besides BCEAO, credit institutions receive embassy lists via the Ministry of Interior.

**167.** Because it does not involve banks and financial institutions, this restrictive practice is not in line with the FATF requirements from the country to give clear instructions to financial institutions and other persons or entities likely to detain funds or other goods targeted by their obligation to take measures within the framework of freezing mechanisms. It is to be improved in order to extend it to institutions other than banks and financial institutions likely to be repositories of goods belonging to individuals or terrorist entities.

**168.** Senegal does not have efficient procedures known to the public for a timely review of requests for withdrawal from lists of targeted people and the de-freezing of funds and

other goods and properties belonging to individuals or entities withdrawn from the lists in line with international commitments.

**169.** Efficient procedures made known to the public for the timely release of funds or other goods belonging to individuals or entities inadvertently affected by a freezing mechanism, as shown by a verification establishing that the person or entity is not targeted, have not yet been set up.

**170.** There are no adequate procedures to authorize access to funds or other goods and properties frozen in line with Resolution S/RES/1267(1999) and about which a decision has been taken to use them to cover basic expenses, the payment of some types of commissions, fees and other remunerations for services rendered, as well as extraordinary expenses.

**171.** However, it is possible for an individual or an entity whose funds or other goods and properties have been frozen to challenge the measure in order to have it reviewed by a tribunal. Besides, the freezing, seizure and confiscation mechanisms described above (see point 2.3) are normally applicable in the area of terrorism repression.

**172.** The protection of third-parties rights is guaranteed under the same conditions.

**173.** Given the above mentioned inadequacies, Senegal must organise information schemes for the general public and individuals affected by the freezing, seizure or confiscation measures taken within the framework of CFT actions, as well as find means to access frozen goods destined to cover important expenses and other fees.

**174.** There are no adequate arrangements to efficiently ensure the compliance with the relevant laws, rules and regulations governing the obligations under SR.III.

**175.** No case of freezing for reasons of terrorist financing in Senegal has been indicated to the mission team during interviews with members of the banking profession.

**176.** The measures envisaged in the document on the Best International Practices applicable to SR.III have not been implemented (Supplementary Element).

**177.** Regarding Resolution 1373 (2001), its application is not yet effective and Senegal has not adopted the principle of a national listing. The same applies to the procedures for the withdrawal from lists, the release of frozen funds and the challenging of freezing measures that must be made known to the general public.

In other words, Senegal has not yet adopted, as recommended by Article 8 of the International Convention on the repression of terrorist financing, the measures needed for the detection, freezing or seizure of relevant goods destined to be confiscated.

**178.** It must be noted that Guideline No 04/2007/CM/UEMOA of 04 July 2007 prescribes that member States take adequate measures concerning the freezing of funds and other financial resources belonging to terrorists as well as those who finance terrorist activities and terrorist organizations. The transposition of the community text into internal law should enable Senegal to be up-to-date with current standards.

### **Recommendation 32**

**179.** There is no mechanism for the regular assessment of the efficiency of the freezing, seizure or confiscation scheme.

**180.** The mission team could not get statistics on the measures concerning the freezing, seizure or possible confiscation taken by relevant authorities, or on the destination of confiscated goods or products.

**Recommendations et Observations**

**181.** The list of individuals and entities concerned by Resolution 1267(1999) and other Resolutions should be communicated to all stakeholders likely to be custodians or repositories of funds belonging to listed individuals or entities targeted by the United Nations Sanctions Committee.

**182.** An information base should be set up for relevant authorities, individuals and entities concerned, as well as the general public in line with FATF requirements. In this respect, Senegal should adopt:

- Efficient procedures to be made known to the general public to enable a timely review of requests for withdrawal from the lists of people concerned and the release of funds or other goods belonging to individuals or entities withdrawn from the lists, in line with international commitments.
- Efficient procedures to be made known to the general public to enable the release without delay of funds or other goods belonging to individuals or entities inadvertently affected by a freezing mechanism, after it has been established that the individuals or entities are not concerned.
- Adequate procedures to allow access to funds or other goods frozen under Resolution S/RES/1267(1999) and about which it has been decided that they should be used to cover basic expenses, pay certain types of commissions, fees and remunerations for services rendered as well as extraordinary expenses.

**183.** Senegal should ensure the implementation of Resolution 1373, notably by adopting adequate measures for the detection, freezing, or seizure of relevant funds towards their possible confiscation in line with the provisions of the international Convention on the repression of terrorist financing. In this respect, a mechanism for the regular assessment of the efficiency of the freezing, seizure or confiscation scheme should be established and comprehensive statistics should be kept.

**Compliance with Special Recommendations III**

	<b>Compliance Assessment</b>	<b>Summary of reasons justifying the compliance assessment</b>
<b>SR.III</b>	<b>PC</b>	<p>The list of individuals and entities concerned by Resolution 1267(1999) and following is only communicated to credit institutions. Resolution 1373 (2001) is not applied and the international Convention on the repression of terrorist financing is not implemented in this respect.</p> <p>There are no:</p> <ul style="list-style-type: none"> <li>- Efficient procedures to be made known to the general public to enable a timely review of requests for withdrawal from the lists of people concerned and the release of funds or other goods belonging to individuals or entities withdrawn from the lists, in line with international commitments.</li> <li>- Efficient procedures to be made known to the general public to enable the release without delay of funds or other goods belonging to individuals or entities inadvertently affected by a freezing mechanism, after it</li> </ul>

		<p>has been established that the individuals or entities are not concerned.</p> <ul style="list-style-type: none"> <li>- Adequate procedures to allow access to funds or other goods frozen under Resolution S/RES/1267(1999) and about which it has been decided that they should be used to cover basic expenses, pay certain types of commissions, fees and remunerations for services rendered as well as extraordinary expenses.</li> </ul>
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## **2.5. The Financial Intelligence unit and its functions (R.26)**

### **2.5.1. Description and Analysis**

#### **2.5.1.1. Creation and mandates of the Cellule Nationale de Traitement des Informations Financières (CENTIF) or Financial Intelligence Units.**

**184.** Uniform Act No. 2004.09 of 6 February 2004 concerning AML, referred to hereafter as the Law, stipulates in its Article 16, the establishment of a Cellule Nationale de Traitement des Informations Financières (**CENTIF**) —national financial intelligence unit—under the tutelage of the Ministry of Finance. The Unit has therefore a central and national dimension.

**185.** By virtue of the provisions of Article 17 of the Law, CENTIF is an administrative service with a financial autonomy and the power to decide independently on matters within its jurisdiction.

**186.** Its mission is to collect and process financial intelligence over the money laundering circuits (sic). For this reason, it is charged notably to collect, analyse and process information likely to establish the origin of transactions or the nature of operations subject to declarations of suspicious transactions required mandatorily from the persons concerned. The Law does not provide explicitly for the competence of CENTIF in the AML field.

**187.** It advises on the implementation of the AML State policy. To that effect, it proposes all the reforms needed to reinforce the efficiency of the combat against money laundering.

**188.** Decree No. 2004-1150 of 18 August 2004 on the creation, organisation and operations of CENTIF takes up the provisions of the Law to give them a more precise scope.

**189.** Under Article 28 of the Law, CENTIF processes and analyses promptly the collected data and, if need be, request supplementary information from the reporters, as well as from any public and/or supervisory authority.

**190.** Exceptionally, CENTIF can on the basis of serious, corroborated and reliable information in its possession, oppose the execution of a suspicious operation before the deadline mentioned by the reporter expires. This opposition is notified in writing to the reporter and obstructs the execution of the operation for not more than forty-eight (48) hours.

In the absence of any opposition, or if at the end of the 48-hour deadline, no decision of the examining judge is forwarded to the reporter; the latter can execute the operation.

**191.** CENTIF President contacts the relevant Prosecutor General about the facts likely to constitute money laundering offences, following the advice of the commission charged to review the investigation files under his supervision. The internal regulations of CENTIF do not clearly mention the compliant nature of the advice but the text indicates on the one hand that the Head of CENTIF is the only authority entrusted with the power of decision and signature likely to engage the responsibility of CENTIF, and who, on the other hand, in case of emergency and in the presence of enough evidence can immediately refer to the Prosecutor General facts that bare likely to constitute money laundering criminal offences.

**192.** The Commission that is composed of all CENTIF members normally meets twice a week.

In emergency cases, and if there is enough evidence, the Prosecutor General is immediately contacted by CENTIF President without any previous advice of the Review Commission.

**193.** CENTIF has developed a methodology for the processing of suspicious transactions reports (STRs) which the mission team could not access despite its request. However, it has orally described the procedures which would be as follows:

1. Reception and registration of STRs by CENTIF Deputy President;
2. Transmission of STRs to the President with an acknowledgement of receipt to be signed and returned to the reporting body;
3. Transmission of the file to the Head of the Review and Analysis Bureau for a tactical analysis or compliance rating;
4. Initiation of administrative and financial investigations, as well as police investigations;
5. Convening of the Review commission for advice prior to transmitting a report to the relevant territorial Prosecutor General or simply discarding the file.
6. Sending a declaration of fate to the reporting entity.

**194.** CENTIF advises financial institutions and other entities concerned on the ways and means to elaborate suspicious transactions reports and the ad hoc procedures to follow.

To that end, following a decision of the Ministry of finance, an STR template has been compiled and published by CENTIF for the persons concerned, with instructions as to how it is to be used. In the course de training sessions organized for different categories of persons concerned, CENTIF devotes a special module to the reporting of suspicious transactions with detailed explanations of how to report, as noted in the instructions for use and the procedures to be followed.

The objective of the training is to notably improve the quality of the data supplied by reporting entities.

**195.** The FIU has developed and followed the execution of a sensitizing and training programme for the various stakeholders and partners in order to encourage their effective participation in AML/CTF activities.

Within that framework, it has initiated since June 2005 a series of training sessions for staff members of:

- Banks
- Microfinance Institutions

- State Financial Structures (Tax, Treasury, and Customs financial services)
- Insurance, Reinsurance and Brokers companies
- Designated non financial businesses and professions (lawyers, notaries, chartered accountants)

**196.** Parallel to the training activities, CENTIF periodically organises meetings, notably with the banking sector to assess the setting up of the AML/CFT scheme and to possibly make readjustments and changes of strategies.

In this respect, CENTIF organized an evaluation meeting with its correspondents in the banks and financial institutions in April 2006. On the occasion, the need to be trained adequately on the internal AML/CFT scheme to be set up in credit institutions has been underlined. Besides, institutional correspondents were gathered on 06 November 2006 to discuss impediments to the collection of data by the FIU and the solutions to be found, namely the reinforcement of the sensitizing and training activities for various administrative officials on the operations of CENTIF. It has been affirmed on the occasion that the CENTIF training and documentation Centre was open to all public administrative officials.

**197.** In fact, a functional training and documentation centre that has a special room designed for an interactive training on AML has been set up with the support of the United Nations Office on Drugs and Crime (UNODC) that helps West African governments through its Global Programme against Money Laundering. The launching of the operations of the Centre has enabled the improvement of the capacities of the persons concerned towards understanding the current Senegalese legal provisions in order to comply with prescribed standards. It also helped all the stakeholders in the combat against money laundering and other financial crimes to understand the stakes and modalities.

One hundred and three (103) AML agents were trained in 2006 on the use of AML/CFT softwares with the support of UNODC. The trainees were from the following concerned institutions:

- Banks and financial institutions (including BCEAO): 72
- Microfinance institutions and tutelage: 13
- La Poste: 18

It should however be noted that there is a disparity among people who benefited from the training with a strongest participation of participants from the banking sector.

The sensitization and training activities should be continued and extended to other sectors (DNFBP) whose subjects are not yet aware of the related Law and obligations.

**198.** CENTIF has a direct and timely access to all financial and administrative information, as well as information emanating from prosecuting authorities to help it accomplish its mission.

**199.** In fact, Article 17 of the Law stipulates that CENTIF also receive any other useful information needed for the accomplishment of its mission, especially the pieces of information communicated by monitoring authorities as well as by judicial police officers. In this respect, it has access to data bases created at the level of other administrative services (National police force, Interpol, Gendarmerie and Customs Office).

In addition, it can request the communication by persons concerned and any other physical or legal persons of the information they have and that might help improve the quality of suspicious transactions reports.

**200.** As authorized under Article 19 of the Law, CENTIF has, as indicated above, identified correspondents within the public services of the Police force, Gendarmerie,

Customs Office, Judicial System, as well as within other State services the collaboration of which is necessary within the framework of the Combat against money laundering. Designated ex officio by a Decree of their respective line Ministries, the correspondents cooperate with CENTIF in the execution of its mandates.

Like CENTIF members, they take an oath and are subject to the same rules of confidentiality.

**201.** For their part, financial organizations have designated CENTIF correspondents who are generally responsible for the internal AML scheme. There are 25 correspondents within the banks and financial establishments, 16 within insurance companies and 02 within La Poste national company.

**202.** Besides, CENTIF requests supplementary information from reporting entities to operate correctly.

The right to access information is guaranteed by the ban on professional secrecy (Article 34 of the Law), on the one hand, and the obligation to communicate files and documents concerning due diligence on the part of concerned persons (Article 12 of the Law).

In this respect, it must be noted that the CENTIF correspondents in charge of the internal AML scheme that are appointed within financial institutions, constitute useful relays for the conveyance of supplementary information.

**203.** CENTIF has indicated that it has not so far encountered any refusal to convey information, notably on the part of persons concerned, on the basis of professional secret.

**204.** CENTIF is allowed to transmit financial intelligence to national authorities within the framework of investigations and other actions when there are reasonable grounds to suspect that a transaction is related to money laundering.

**205.** In fact, Article 29 of the Law prescribes that when operations clearly indicate that there are facts likely to constitute money-laundering related offences, the national FIU will transmit a report on the facts to the Prosecutor General who immediately seizes the Examining judge. The report is sent together with all useful justifications to the exception of the STR.

**206.** The identity of the official in charge of the reporting must not appear on the said report that will be upheld until the contrary is proven.

**207.** However, it has been indicated to the mission team that once the report is transmitted to Prosecutor General, CENTIF will no longer process any information request from any authority whatsoever. It will not ensure the follow-up of the files transmitted to the judiciary, either.

The situation does not seem satisfactory because of the need to arrange for a safe feedback and a correct follow-up to enable an efficient AML scheme.

**208.** CENTIF does not have a legal personality, but it has, under the Law, a budgetary autonomy and the power to decide independently on all matters under its jurisdiction.

In this respect, it has been indicated to the mission team that the Ministry of Finance that approves CENTIF operational budget does not interfere in the transmission of files forwarded by CENTIF to judicial authorities.

**209.** The “pluridisciplinary” nature of the composition of the CENTIF team also guarantees its operational autonomy.

In fact, under the provisions of Article 18, CENTIF is composed of six (06) members:

The President (in basic texts, Head is used instead), appointed by Decree approved at the Council of Ministers of 13 January 2005, is a former senior official of the Ministry of Finance.

By virtue of the provisions of the Internal Regulations approved by the Minister of finance, the President supervises coordinates and gives impetus to CENTIF activities. He has a power of signature delegated by the Minister of Finance for acts within the scope of his activities; he is also the only holder of the power to take decisions, although he can sub-delegate it.

The five other members, appointed by Decree on 9 May 2005, are as profiled below:

- A judge specialized in financial questions, detached by the Ministry of Justice;
- A senior Judicial Police Officer, detached by the Ministry in charge of Security;
- A BCEAO Representative, in charge of CENTIF secretariat;
- An investigation officer, Customs Office inspector, detached by the Ministry of Finance;
- An investigation officer, Judicial Police officer, detached by the Ministry in charge of Security.

**210.** CENTIF members exclusively work for a period of three (3) years, renewable once. They receive in addition to their regular salaries, benefits attached to their functions and supported by CENTIF budget.

**211.** CENTIF information is correctly protected and transmitted in line with the relevant provisions of the Law.

In fact, Article 20 of the Uniform Law imposes to CENTIF members as well as its correspondents the obligation to respect the confidentiality of collected information that should not be used to ends other than those provided for by the Law.

**212.** The transmission of the information detained by CENTIF is limited to the following cases:

- Acknowledgement of receipt of any written suspicious transaction report (Article 28 of the Law);
- Duly motivated request from CENTIF to another WAEMU member State, within the framework of an investigation, for the communication of all information and data related to investigations undertaken following a suspicious transaction report at the national level (Article 23 of the Law);
- Detailed periodic activity reports to BCEAO headquarters and to the Ministry of Finance (Articles 17 and 23 of the Law);
- Subject to reciprocity, exchange of information with financial intelligence units of third-party states when are bound by the same obligations of professional secrecy (Article 24 of the Law).

**213.** As regards the feedback from prosecuting authorities, the mission team noted that CENTIF has not established a follow-up policy for the files transmitted to the Prosecutor

General. The creation of a follow-up mechanism would go a long way to enable the efficient evaluation of the scheme and to ensure a better feedback to persons concerned.

**214.** CENTIF has developed a Website and set up a Database.

The setting up of the Database is based on the provisions of Article 10 of the decree establishing the creation and operations of CENTIF that indicates clearly that pursuant to current rules and regulations on the protection of private life, CENTIF is particularly in charge of the creation and the operations of a database containing all useful information concerning suspicious transactions reports, as provided by the Law. This information is updated and organized in order to maximise research activities that would help elaborate or discard suspicions.

**215.** Concerning the protection of personal data, the mission team has not been aware of any warning or legal proceeding emanating from citizens whose private lives have been affected.

**216.** The database is secure and receives all information likely to be useful in the processing of suspicious transactions reports.

**217.** The website has been operational since January 2006 at the following Universal Resources Location (URL) address: <http://www.centif.sn>.

The Site has a public component accessible to anyone wishing to get information on CENTIF. There is also a secured part only accessible to persons concerned with passwords and personalised codes that enable them to send their reports on-line in case of emergencies.

It must be noted that CENTIF has a Back-up system that enables the duplication of information for security reasons.

**218.** Concerning the physical protection of information, for security reasons, CENTIF premises are guarded night and day by armed watchmen. The armed guard is ensured by security forces (Police and Gendarmerie). CENTIF President and other members of the team can, if necessary, request body guards. Besides, CENTIF officials have security safes and paper shredders in their offices.

The internal rules and regulations strictly forbid private visits of CENTIF premises. Unauthorized visits are subject to sanctions.

**219.** Article 23 of the Law imposes to CENTIF the obligation to transmit detailed periodical reports (quarterly and annually) on its activities to the BCEAO headquarters that is responsible for the summary of CENTIF reports for the information of the WAEMU Council of Ministers.

**220.** The Rules and Regulations provide in their Article 31 that at the beginning of any quarter and any year, CENTIF send to the Ministry of economy and Finance a report on its activities over the past periods. The reports are also transmitted to the headquarters of BCEAO for the information of the WAEMU Council of Ministers.

**221.** CENTIF published annual reports in 2005 and 2006.

In addition to various elements including statistics, the reports contain notably conclusions of typology exercises carried out by CENTIF.

**222.** Measured against the stages of money laundering (placement, layering and integration), it has been noted on the basis of processed suspicious transactions reports that the placement stage was preponderant.

Besides, the following 11 tendencies have been recorded:

1. Smurfing
2. Use of shell companies
3. False justification of the origin of suspicious funds
4. Forgery of public cheques and use of a transit account
5. Suspicious commercial transactions
6. Use of cross-border bank accounts and wire transfer to recycle funds accruing from a Value-Added Tax (VAT) related offence
7. Embezzlement of public funds by a civil servant
8. Repatriation of suspicious funds by an expatriate
9. International financial swindling via the Internet, “419” Scam-type
10. Money laundering in the real estate sector
11. Life insurance as a money laundering scheme used by a foreigner established in Senegal to dissimulate funds of suspicious origins.

**223.** However, it would be useful that future CENTIF publications take into account the following statistical data, in full compliance with the established norms of confidentiality:

- Number of STRs and international wire transfers;
- Number of reports concerning offences related to change control;
- Distribution of information requests received from foreign FIUs;
- Amounts related to files transmitted to the judiciary system to gauge the scope of money laundering, case by case and globally;
- Distribution of files transmitted to prosecuting authorities on the basis of stages of money laundering; (layering, conversion, reintegration);
- Distribution of files transmitted to prosecuting authorities by main forms of criminality (type of underlying offence).

**224.** According to its 2006 Annual Report, CENTIF has privileged relationships with the French FIU, TRACFIN (Traitement du Renseignement et Action contre les Circuits Financiers Clandestins—Intelligence processing and Action against Clandestine Financial Networks) which is sponsoring it for its membership to the Egmont Group.

Besides, a CENTIF delegation led by its President participated with an observer status in the 14th plenary of the Egmont Group of FIUs held in Cyprus 12-16 June 2006, and in Bermuda in April 2007; on the occasion, the membership candidature of CENTIF to the Egmont Group was examined by the meeting of Heads of FIU of the Group. Its candidature could not be accepted due to the new requirements of the Group in the area of combating terrorist financing.

**225.** Under Article 17 of the Law, CENTIF is authorized to advise on the implementation of the State AML policy. In this respect, it can suggest any reforms necessary to reinforce the efficiency of the combat.

The mission concludes that CENTIF should take advantage of this capacity to make the State adopt a more comprehensive policy to fight against money laundering and terrorist financing in all their forms, with the integration of all relevant stakeholders and with a greater level of specialization within the Police, Gendarmerie and Customs forces, as well as the judicial system.

### **Recommendation 30**

**226.** Since its creation in 2004, CENTIF has been benefiting from the financial support of the Senegalese Government through the attribution of adequately equipped headquarters enabling it to carry out most of its functions. Its 2005 budget was set at CFAF 621,500,000, which was reduced for 2006 .

**227.** CENTIF indicated at its meeting with the mission team members the inadequacy of the financial resources at its disposal, notably for the coverage of the costs of the training of its staff. It also insisted on the need for community institutions such as WAEMU to contribute to the funding of its activities, as provided for by the constitutional texts.

**228.** On 31 December 2006, the staff of the CENTIF was made up by twenty six (26) members.

**229.** The Chairman of the CENTIF is a Top Finance Officer appointed by decree issued by the Cabinet Meeting, at the instigation of the Minister of Economy and Finance. He has the rank of Director of Head Office. In his capacity as manager of the CENTIF, he supervises, coordinates and promotes the Law of the CENTIF. It is the decision-making and signing authority (memo, mission order, CENTIF mandate and any other action committing the CENTIF). He may delegate authority in specific areas to other members.

The Chairman of the CENTIF is assisted by a judge in charge of International Relations and Legal Affairs.

The Secretary General coordinates the technical activities of the CENTIF, manages its relations with the banking industry, the training component and prepares the quarterly and annual reports.

Under the responsibility of the high official of the Judicial Police, the Customs Inspector leads the administrative and financial investigations while the Superintendent deals with police investigations.

In their mission, the Customs Inspector and the Judicial Police Officer (a superintendent) will be assisted by analysts, investigators and assistant investigators.

**230.** As indicated above, the CENTIF benefits from the collaboration of correspondents, estimated at eleven (11), who come from the following Administrative Structures:

- Customs Branch (Ministry of Economy and Finance-MEF);
- General Tax Directorate (MEF);
- Directorate of Public Accounting and Treasury (MEF);
- Insurance Branch (MEF);
- Currency and Credit Directorate (MEF);

- CAT/CEPEC (Technical assistance to popular savings and credit banks) Unit (Ministry of Economy and Finance)
- Civil Matters Directorate (Ministry of Justice);
- Post Office (Ministry of Posts and Telecommunications)
- Community Development Directorate (Ministry of Women, Family and Social Development);
- Judicial Police Directorate (Ministry of Interior);
- Gendarmerie (Ministry of Defence);
- Directorate of Regulation and Control (Ministry of Tourism).

**231.** The staff of the CENTIF is bound to observe strict professional standards, including confidentiality, integrity and competence.

**232.** In accordance with Article 20 of the Law, members and correspondents of the CENTIF take an oath before taking up the position. They are forbidden to disclose the information collected, which cannot be used for purposes other than those prescribed by law.

**233.** Incompatibilities are established between membership in the CENTIF and the performance of duties such as administrator, director, or manager in the subject institutions or election in positions in a political party.

**234.** A code of conduct has been enacted, advocating as values of CENTIF, and obligations of members and correspondents, confidentiality, a sense of ethics, professionalism, efficiency, reservation and respect for the Laws. Conflicts of interest have been identified. The code provides for the appointment of an official in charge of Ethics. It provides for disciplinary and administrative sanctions.

**235.** Officials of the CENTIF have attended training at the Centre, seminars and made working visits, as part of their training. Thus, 41 agents were trained at the CENTIF Centre.

In addition, a workshop designed to impregnate the staff with "procedures for handling the Cell's files", was held in Senegal in June 2005 with the support of experts from the US Treasury Department, the Financial Information Processing Unit (CTIF) of Belgium.

In addition, several study trips were organized for members of the CENTIF.

**236.** However, there does not seem to be a staff continuous training programme which could be assessed. Therefore, it is necessary to design and implement a continuous training program for staff of the CENTIF with specific evaluation indicators (training days/year), despite the involvement of officials in seminars and working visits that they made to other CRF.

The training should mainly focus on the techniques used by supervisory authorities to ensure that financial institutions comply with their obligations.

### **Recommendation 32**

**237.** It emerges from the statistics collected by the CENTIF, the following elements:

- Received Suspicious Transactions Reports

**238.** The number of suspicious transaction reports received at the CENTIF at 1 August 2007 is presented at the chart below:

YEAR Number: SUBJECT DECLARANTS	2005	2006	2007(1-8)	CUMUL
BANKS	11	55	37	103
FINANCIAL ADMINISTRATIONS	00	05	02	007
<b>TOTAL</b>	<b>11</b>	<b>60</b>	<b>39</b>	<b>110</b>

**239.** It emerges from the review of this chart that, between 1 March 2005 and 1 August 2007, 110 reports of suspicious transactions were received by the CENTIF divided per year as follows:

- 11 in 2005;
- 60 in 2006;
- 39 on 1 August 2007.

**240.** During the year 2006, the CENTIF received 60 reports of suspicious transactions, which is five times the volume of reports recorded in the previous year that marked the beginning of the Law of the Unit. This increase seems to reflect the support of the liable people for the fight against dirty money, and particularly the strong mobilization of the banking sector.

In fact, 91.7 percent of the total of reports comes from the banking system, while the rest comes from the financial administrations. However, this high concentration of reports on the banking sector raises questions and should, in any case, bring the CENTIF and other competent authorities to broaden the scope of liable people expected to benefit from sensitisation and training.

**241.** These figures do not specify whether the statements were made before or after the carrying out of the suspected operations.

- Processed suspicious transactions reports

**242.** The chart below presents, on 1 August 2007, the results of the reports of suspicious transactions handled at the CENTIF (comparison between number of files and fate of those files per reference year):

YEAR Number of files	2005	2006	2007	CUMUL
FATE OF FILES				
State prosecutor	3	08	1	12
Follow-up investigations	1	2	0	3
Ranking	0	12	13	25
<b>TOTAL</b>				<b>40</b>

**243.** Thus, it emerges that over the reference period:

- 12 files have been forwarded to the justice: 3 in 2005, 8 in 2006 and one in 2007(1 August)
- Files that have been subject to follow-up investigations: one in 2005 and 2 in 2006.
- 25 files have been ranked: 12 in 2006 and 13 in 2007(1 August).

**244.** The evolution of the number of classified files makes one wonder about the foundation of the suspicions of declarants.

**245.** In addition, 208 requisitions were initiated by the CENTIF in 2006 (30 of which addressed to the foreign financial information units) in order to collect additional information for the processing and enrichment of files. In 2005, 33 submissions were transmitted.

**246.** However, it should be noted that the CENTIF did not set up a mechanism, particularly at the level of statistics, to monitor objections to the applications for the execution of suspicious transactions, the fate of the reports sent to the judicial authorities or the number of files sent in which freezing, seizure or forfeiture have been pronounced.

**247.** However, according to the CENTIF, the setting-up of a Liaison Committee against money laundering is in the offing. It is designed to be a forum of consultation of actors involved in the AML/TF.

**248.** In a bid to ensure its operational capability, the CENTIF has implemented the following regulatory provisions:

- development of rules of procedures that set the operating rules of the Unit approved by the Minister of Economy and Finance on 8 June 2005;
- development of a procedure manual that defines the process to handle reports of suspicious transactions;
- setting the model of the suspicious transaction reports;
- development of a code of conduct setting the rules relating to discipline and line of conduct of members and staff;
- setting a requisition model for the purpose of communicating additional information to the CENTIF;
- Numbering reports of suspicious transactions.

**249.** The CENTIF receives and processes the reports of suspicious transactions to seize if necessary, the judiciary, establish a databank and initiate ultimately money laundering typology exercises.

250. The CENTIF has expanded the number of liable people to state authorities.

Thus, the concept of public treasury has been interpreted in the broadest sense, taking into account the financial liabilities:

- the Treasury Department;
- the Customs Branch;
- the General Tax Directorate;

251. However, further efforts are needed to enhance the effectiveness of the CENTIF.

### **Recommendations and comments**

252. The CENTIF presents favourable signs of efficiency and professionalism. It constitutes a key element of the AML/FT component in Senegal, and tries, as far as possible, to assume this responsibility.

That effectiveness could be analysed through the initiation of some actions including:

- development of rules of procedures that set the operating rules of the Unit approved by the Minister of Economy and Finance on 8 June 2005;
- development of a procedure manual that defines the process to handle reports of suspicious transactions;
- setting the model of the suspicious transaction reports;
- development of a code of conduct setting the rules relating to discipline and line of conduct of members and staff;
- setting a requisition model for the purpose of communicating additional information to the CENTIF;
- numbering reports of suspicious transactions.
- making money laundering typology exercises in 2005 and 2006.
- However, the following remarks are worth making:

253. Most of the **suspicious transaction reports (STR)** are exclusively made by the people liable to the banking sector. Yet, the bancarisation rate is too small in view of the importance of the informal economy.

254. It is necessary that the CENTIF may develop advocacy and training actions towards liable people, particularly manual money dealers, informal money transfer operators, NGOs, real estate agencies and, more generally, other designated non-financial professions.

255. With regard to cases referred to the prosecutor, the CENTIF must implement a mechanism to ensure regular monitoring. One should review the effectiveness of the national cooperation in terms of exchanges of information.

256. As part of awareness and training measures, it would be advisable, at the level of CENTIF, to:

- continue identifying and sensitising some liable people that have not been trained or sensitized falling into the category of financial organisations (National Post Office, Regional Stock Exchange, SGI, fixed-capital investment companies, manual change operators) or that of designated non-financial professions (business brokers to financial institutions, real estate agents, auditors, precious stones and metals dealers, cash carriers, casinos and gaming halls including the National Lottery, travel agencies and NGOs).
- Maintain and expand periodical meetings with liable people (consolidate achievements).
- Establish confidence between liable people and the CENTIF by carrying out actions towards the Customs office, the Post Office, notaries and lawyers, travel agencies, real estate agencies, NGOs, casinos, gaming halls, Manual Change Operators, Business Brokers, Auditors.
- Implement a staff training programme with evaluation indicators.

**257.** Concerning the material and logistic facilities, the CENTIF would be more operational if it were logged on to the database of the:

- *Direction de l'Automatisation du Fichier* (DAF) of the Ministry of Interior;
- Justice: request to log-on to the database of the *Inspection Générale des Services de la Justice* (IGJS) with the support of the CENTIF correspondent at the Ministry of Justice.
- Customs Branch and the General Tax Directorate;
- BCEAO (FICOB and payment incident log);
- Statistics Directorate;
- Confederation of NGOs and other liable people (the CENTIF can receive information from liable people themselves in addition to those provided by the supervisory authorities);
- Public administration other than financial administration ( *Service of vehicle registration and licensing, land registry service, etc.*).

**258.** In addition, if they exist, the supervisory authorities should be identified for each category of liable people.

Compliance with Recommendations 26, 30 and 32

	<b>Compliance assessment</b>	<b>Summary of reasons (peculiar to section 2.5) justifying the global compliance assessment</b>
<b>R.26</b>	<b>LC</b>	<p>The Law does not explicitly provide for CENTIF's competence in CFT-related matters.</p> <p>The financial resources of CENTIF are seemingly insufficient, especially in terms of supporting the costs of training for its staff.</p> <p>There is no overall AML/TF policy and CENTIF has not yet efficiently used its competence in the area.</p>

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**2.6 -The investigating authorities, the criminal prosecution authorities and other relevant authorities – framework of investigation and prosecution of offence and that of forfeiture and freezing (R.27 & 28).**

### **Description and Analysis**

**259.** The Uniform Act, the Penal Code, the Code of Penal Procedure, the Code of drugs and the Customs Code include provisions relating to the investigating authorities, the criminal prosecution authorities and other relevant authorities as well as the procedures to follow as part of the investigation and the prosecution of the offence and that of forfeiture and freezing.

### **Recommendation 27**

**260.** *1-Designation of criminal prosecution authorities (with the exception of the CENTIF):* The criminal prosecution authorities in charge of appropriate investigations on money laundering and terrorist financing offences are those of common law (Judicial Police Officers and those in the same category, Prosecutor and Examining Judge).

**261.** In ordinary law, the judicial police is in charge of investigating penal law offences, gathering evidence and finding the perpetrators, as long as a judicial inquiry is not open. It is performed under the supervision of the state prosecutor. Within the jurisdiction of the Court of Appeal, it is placed under the supervision of the Public Prosecutor and under the control of the Chamber of Accusation.

**262.** Gendarmerie Officers and non-commissioned officers acting as brigade commandants, superintendents and police officers are entitled to be Judicial Police Officers. The Judicial Police Agents are the soldiers of the Gendarmerie and the members of police forces when they do not have the OPJ status.

**263.** The Public Prosecutor represents in person or by his deputies the public prosecution at the Court of Appeal and to the Assize Court instituted at the Court of Appeal. It is in charge of ensuring the implementation of the criminal law throughout the jurisdiction of the Court of Appeal and has authority over all representatives of the public prosecution within the jurisdiction of the Court of Appeal.

**264.** The state prosecutor represents in person or by his deputies the public prosecution at the Regional Court. He receives complaints and denunciation and appreciates the Actions to take concerning them. He carries out all the Actions necessary for the investigation and prosecution of criminal offences.

**265.** In general, article 72 of the Criminal Procedure Code gives the examining judge a broad investigation power useful for ascertaining the truth.

The investigations are conducted by judicial police officers under the supervision of the examining judge.

The examining judge is empowered to prescribe provisional measures, in accordance with the Law, by ordering, at the expense of the state, the seizure or forfeiture of property in connection with the offence, subject of the inquiry.

**266.** The courts are competent to order the forfeiture of products drawn from the offence.

## **2-Measures to defer the arrest and/or seizure:**

**267.** There is no specific measure allowing the competent authorities to investigate money laundering cases, defer the arrest of suspected people and/or seize funds, or fail to carry out such arrests and seizures, in order to identify those involved in these activities or gather evidence.

### **Additional elements**

**268.** With regard to terrorist financing, Law of 31 January 2007 on the suppression of terrorist acts provides exemptions to the Code of Criminal Procedure in the field of police custody, visits and house searches and competence for prosecution (setting-up of an anti-terrorist pool at the Dakar Regional Court with absolute jurisdiction, establishment of the court of criminal appeal of the Court of Appeal of Dakar as the sole second level competent jurisdiction).

**269.** Concerning anti-money laundering, the judge can prescribe provisional measures, in accordance with Article 36 of the Uniform Act, by ordering, at the expense of the state, the seizure or forfeiture of property in relation to the offence, subject to the inquiry and all the elements likely to identify them, as well as the freezing of money and financial transactions involving such property.

**270.** Conversely, he can order withdrawal of these measures, under the conditions provided for by the legislation.

**271.** Besides, it should be noted that in cracking down on drug-trafficking, an underlying offence to money laundering, the Drug Code provided for special investigation procedures such as search at any time of the day, phone-tapping and the “monitored delivery”.

**272.** Likewise on search and investigations, the Customs Code confers to customs offices wide powers in searching and reporting offences.

Thus, during checks and investigations made on people or companies, authorized customs officers can seize documents of any kind (accounting, invoices, copies of letters, cheque books, drafts, bank accounts, etc.) likely to facilitate the conduct of their mission. According to the procedures provided for in the criminal code or the customs code and in cases requiring promptness, the judge can allow the temporary seizure of movable effects of authors, accomplices and people involved in fraud or according to a sentence ruling or even before the ruling.

**273.** Special enquiry measures mentioned above could usefully be extended by the Law to the offences of money laundering and terrorist financing

**274.** Methods, techniques and trends in money laundering are regularly studied by the CENTIF that shares the findings of its typology operations with prosecuting authorities mainly in training workshops.

### **Recommendation 28**

**275.** Under the supervision of the examining judge, competent authorities in charge of conducting enquiries on money laundering offences have a free hand to demand, search houses or facilities, secure and seize any useful information to reveal the truth.

**276.** These powers are used on legal bases set out both in the criminal Code and the Law with respect for the rights of the defence. In this regard, the Code in question enables competent authorities to serve procedural acts such as subpoenae for hearing, issue search and seizure warrants, rogatory commissions, etc.

**277.** Article 33 of the uniform Law on investigation measures states:

“To establish the proof of the original offence and the proof of money laundering-related offences, the examining judge can indefinitely and in accordance with the Law without opposition from secrecy, order various actions mainly :

- Monitoring of bank accounts and accounts related to bank accounts when serious signs allow to suspect they are or might be used for operations related to the original offence or offences set forth in the current law ;
- Access to computer systems, networks and servers used or likely to be used by people against whom there are serious signs of involvement in the original offence or to offences provided for in the current law ;
- Communication of genuine acts or private agreements, banking, financial and commercial documents.

He can also order the seizure of the Laws and documents mentioned above”.

**278.** Regarding underlying offences as earlier stated, specific laws provide mainly for freezing and confiscation procedures.

**279.** The above authorities are authorized to secure and use testimonies in their enquiries related both to money laundering and to underlying offences. In that respect, CENTIF in particular is allowed to use indicators.

### **Recommendation 30 – Structures and Resources of law enforcement and prosecuting Authorities**

**280.** As the requests for specific information on the **means** allocated to the police, military police and the customs service were not responded to mainly due to some authorities citing State security reasons, the mission could not assess the prosecuting authorities’ logistic capacity to adequately perform their duties on LBC/CFT. But the interviews show that these means are generally limited and insufficient. On justice, the Ministry’s Department of the Judicial Services reported 67 magistrates in the Prosecution Department in August 2006 (out of 245 magistrates on the bench). However due to a lack of specialisation, it’s difficult to know the number of staff dedicated to LBC/ FT.

**281.** Personnel in law enforcement and prosecuting bodies and authorities has to comply with strict **professional norms** mainly on confidentiality, integrity and competence. In addition, for some categories, incompatibilities with running political activities are provided for to ensure their independence. Violating related requirements is punishable by administrative sanctions that can lead to expulsion.

**282.** In particular, the independence of the judiciary regarding the parliamentary and executive is ensured by the constitutional and legal status conferred to magistrates. Indeed, Article 88 of the Constitution states that “the judiciary is independent of the legislative and the executive” Article 90 sets out that “judges are subject only to the authority of the Law in carrying out their duties” and that “magistrates on the bench are irremovable”.

Magistrates in the prosecution department belong to the legal profession and as such depend on a hierarchical structure but they enjoy wide powers and free judgement in fulfilling their tasks.

**283.** On **training, targeted** workshops were organized by the CENTIF for AML/CFT players mainly from the public sector. But more training need to be done mainly for prosecuting authorities. The main goal of the various trainings offered is to prompt the beneficiaries to acquire or build their capacities to fully conduct their duties as prosecuting authorities.

**284.** At the level of the Police, the need for specialised trainings mainly in banking and financial techniques was expressed by the Authorities during the on-site visit to allow criminal police officers to be efficient on specific issues (patrimony enquiry, bankruptcy and money laundering in particular).

**285.** At the level of the customs, Senegal organized training workshops mainly on:

- The suppression of counterfeiting and piracy with among other results the drafting and publication of the “Dakar Declaration” ;
- Payment means

**286.** However during the assessment, it was noted that the training programme offered to the customs officials on the ground, does not adequately cover aspects related to techniques for detecting money laundering and some underlying offences such as offences to foreign currency control, counterfeiting and pirating.

The customs authorities expressed the wish to make customs officers benefit, in collaboration with the MDG Secretariat, training courses in order to build their capacity in combating these forms of criminality. In that respect, a specialised training on appropriate countermeasures and the conditions to be met regarding procedures could be planned.

**Additional elements:** Training of judges and courts

**287.** According to the CENTIF correspondent at the Ministry of justice, training seminars for magistrates in the AML field are organized at the Centre de Formation Judiciaire (CFJ). The Mission could not get supporting elements likely to help confirm the assertion and assess its real scope. On the other hand, the judicial authorities met expressed their strong wish to undergo training with the particular objective of specializing magistrates in the field.

**288.** There are no specific legislative or regulatory provisions in Senegal allowing the customs service to intervene at its own initiative to report, prosecute and suppress violations to intellectual property rights (counterfeiting and pirating).

**289.** On the prospects to adapt the legal framework to the needs of an effective fight against counterfeiting and pirating, the customs department has submitted with the competent authorities the following bills:

- Proposed Decree on exerting the right for restraint by the Customs Department and organising the simplified deposit;
- Proposed Decree organising and running the national watchdog against counterfeiting and pirating;

- Bill amending and supplementing articles 18, 208, 220, 308, 309 and 316 of Law N° 87-47 of 28 December establishing the Customs Code on the suppression of counterfeiting in Senegal.

### 3. Statistics by prosecuting authorities

**290.** At its request, police statistics on criminality as well as customs statistics on the seizures of foreign currencies and drugs were reported to the mission.

Apparently there is no systematic information exchange mechanism mainly on statistics among the various AML/CFT players. It would be useful to set up such mechanism as well as a systematic communication of the information to the CENTIF.

### **Recommendations**

**291.** Prosecuting authorities' staff should benefit from an AML/CFT adequate and relevant training.

**292.** A systematic information exchange mechanism on statistics should be set up and a systematic communication of this information to the CENTIF instituted

### **Compliance with Recommendations 27 and 28**

	<b>Compliance assessments</b>	<b>Summary of reasons (only for section 2.6) for compliance assessments</b>
<b>R.27</b>	<b>LC</b>	There is no specific measure allowing competent authorities investigating in money laundering cases, to differ the arrest of suspicious persons and/or funds seizure or to guard from making such arrests and seizures in order to identify people involved in these activities or to gather evidence
<b>R.28</b>	<b>C</b>	The recommendation is fully observed

### **2.7 - Cross-border reporting or communications (RS.IX et R32)**

#### **2.7.1 Description and Analysis**

#### **Special recommendation IX.**

#### **1- System for detecting cross-border physical transportation of ML/FT-related cash and bearer instruments from or to foreign places (Reporting or Communication).**

**293.** Senegal belongs to the Franc Zone area grouping fourteen (14) Sub-Saharan African countries in addition to the Comoros which signed with France monetary cooperation agreements mainly with a currency guarantee clause. Senegal is also member of the West African Monetary Union and the West African Economic and Monetary Union. Its financial relations with outside countries are therefore governed mainly by Community Regulation R09/98/CM/WAEMU of 20/12/1998 on WAEMU member state's external financial relationships called here the Regulation and its Annexes as well as by Order n°94-29 of 28/02/1994 on currency offence disputes. It should be recalled that the Regulation can be directly applied to Senegal.

**294.** The Law states in its article 6 the principle for complying with the currency Regulation governed by money laundering prevention measures as follows:

“Currency operations, capital flows and settlements of any kind with third party state must be carried out in line with the provisions of the current currency Regulation”. Violating this provision regarding money laundering can lead to the implementation of the penalties laid out in the uniform law.

According to the General Directorate of Customs Services, by “movement of funds” one should also understand the physical cross-border transportations of ML/FT-related cash or bearer instruments.

**295.** On the other hand, regarding the cross-border physical transportations of ML/FT-related cash or bearer instruments, the Regulation sets the applicable rules whether the “travellers” are residents or not.

**296.** Indeed, section IV of Annex II of the Regulation on particular Procedures for making some settlements titled “Delivery of currency allowances and customs checks on payment means by travellers” provides for the two following situations:

- For residing travellers: article 22 of the Annex notes that no reporting is required for the transport of BCEAO banknotes for their movements in the member States. When they travel to the Union non member states, each person is allowed to carry person up to CFAF 2,000,000 in banknotes other than the CFAF banknotes. The surplus amounts of this limit can be carried in the form of travel, certified cheques or other payment means (Article 23). Besides they can import freely banknotes from the franc zone area or payment means made out in foreign currency. However, they should sell to an authorized intermediary within eight days from the entry date, the foreign banknotes and other payment means made out in foreign currency when their exchange value exceeds CFAF300,000 (Article 24)
- For non residing travellers: article 26 stipulates that they can freely import banknotes from the Franc zone area or other payment means made out in foreign currency. However they have to report in writing when entering and leaving the country all payment means when their amount exceeds the exchange value of CFAF1,000,000 (article 27). Non residing travellers are allowed to export without justification up to the exchange value of CFAF500,000 in foreign banknotes as well as other payment means abroad or in the WAEMU member states and made out in their name. The export of foreign banknotes exceeding the limit set at CFAF500,000 must be justified by the production of documents (bill of entry, foreign banknotes purchase note etc. Surplus amounts regularly reported that cannot be exported must be deposited at an authorized intermediary to be freely transferred for him (article 28).

**297.** Annex II of the Regulation on the foreign currencies and not specifically the AML/CFT shows that the current reporting system in Senegal does not comply with the RS.IX as residents are exempt from making reporting on funds transported inside the WAMU.

**298.** As part of physical detection means in addition to scanners, hand luggage and targeted body searches are carried out by the customs Services in combating trafficking of foreign currency and in LML/FT.

**299.** On reporting offences, article 5 of the abovementioned Regulation says that officers authorized to report offences to foreign currency checks are the following:

- Customs officers;
- Other sworn officers from the Finance ministry appointed by the minister ;
- Criminal Police Officers;
- Central Bank officers appointed by the Economy, Finance and Planning ministry at the proposal of the BCEAO Governor.

**300.** However, according to the customs authorities, offences reported in foreign currency seizures immediately require a suspicious transaction report.

**301.** Concerning the search for infractions to foreign currency checks, officers are authorized to conduct house searches anywhere under the conditions set forth in the Laws and regulations.

**302.** If they note a foreign currency offence, they are allowed to:

- Seize all objects liable to be confiscated and to withhold official copies and other documents related on the seized objects or allowing establishing the existence of the offence, all on the condition of drawing up a report pursuant to the customs laws and regulations (the customs service can seize cash and/or goods smuggled into borders for money laundering ends).
- Make sure they identify the culprits, but only when they are caught red handed.

**303.** On noticing an infringement of the change Regulations, a report must be prepared. According to the Directorate of Customs Services, the Head of Bureau of Prosecutions and Recovery of the Customs Administration files a complaint on behalf of the Ministry of Finance before the relevant court by virtue of Ministerial Decision No. 8381/MEF/DGD of 25 August 2000 based on the implementation of Article 341 of the Customs Code dealing with special clauses related to infringements of the change laws. A copy of the minutes of the infringement is attached to the complaint.

**304.** But prosecuting infractions to foreign currency checks can only be made following complaints of the Ministry of Finance or of one of its authorized representatives to that end. Legal action can be taken by the Public Prosecutor.

**305.** The Finance minister or his authorized representative to that end is allowed to negotiate with authors or accomplices of a foreign currency control offence as well as on actions provided for in article 14 in the conditions lay down in article 17. A regularly concluded and successfully conducted transaction voids any further action based on the same acts. The transaction request can be considered a proof of the offence only if it contains the confession of the criminal acts.

**306.** When no legal action is undertaken, the transaction can be accepted by the Finance minister or his authorized representative under the conditions set by decree. If the amount of the transaction exceeds FCA70 million, the transaction can be accepted by the Minister only after advice from the foreign currency disputes Commission.

**307.** Once the Legal action is started, the transaction can be accepted by the Finance Minister or his authorized representative for the matter on decree-fixed conditions. If the volume of the transaction exceeds CFAF70,000,000, it can only be accepted by the Minister, after the advice of the Commission in charge of foreign currency disputes.

**308.** Advice from the legal authority is provided by the State Prosecutor who conducts the public action. In the case provided for in article 14, advice is given by the chief justice in the referred jurisdiction

**309.** Following a final decision, the transaction can only be sanctioned through confiscation or some other type of pecuniary condemnation. It can only be accepted through a joint decision by the Minister of Justice and the Minister of Finance following the advice of the Chief justice of the relevant the jurisdiction and, if the transaction exceeds CFAF70 million, of the foreign currency disputes commission. The foreign currency disputes commission can be referred to for advice by the Minister of Finance on all transaction requests, regardless of their amounts (Article 17 of the Ordinance).

**310.** Penalties include imprisonment sentences of between one and five years which can be doubled in the event of a second offence, confiscation of the main evidence, confiscation of the means of transportation used for the fraud and a fine equal to at least the amount or not more than five times the amount of the cost of the value of the object of the offence or the attempted offence. Subsidiary and supplementary sanctions (incapacities and various prohibitions) are also provided for.

**311.** In multiple infractions to foreign currency checks, confiscations and other pecuniary judgments are pronounced for each of the offences fully established without prejudice to the penalties incurred for other offences. In view of this provision, the money laundering offence could be, if necessary, fully sanctioned.

**312.** It must be noted that the transaction only stops prosecutions following criminal offences related to change regulations and that, at any rate, prosecution for money laundering criminal offence (autonomous offence) is always possible.

**313.** The customs services play an important role on combating the illicit transport of payment means carried by travellers. Statistics on foreign currency seizures were filed to the mission. However the customs services recorded no summary statistics on reporting foreign currency either on entry or exit.

**314.** Furthermore, it would be advisable to setup a better collaboration between the customs services and CENTIF mainly to maintain statistics on the reports related to cross-border physical transportation of cash (travellers, security companies).

**315.** The choice of the geographic scope of the reporting requirement implies the existence of mutual assistance mechanisms among administrative authorities in WAEMU member countries and on the gains of the domestic market (which has an area without internal borders in which the free movement of goods, people, services and capitals is ensured). Yet so far, it seems that these mechanisms cannot ensure the respect for some requirements.

### **Recommendations and Observations**

**316.** The Law makes no specific provision on cross-border physical transportation of ML/FT-related cash and bearer instruments

**317.** The control system of cash flows at the Senegalese borders falls within the framework of Community regulation R09/CM/WAEMU of 20 December 1998 on the external financial relations of WAEMU member countries. The review of the rule which, it must be recalled, concerns change operations and not particularly AML/CFT activities, shows that the current reporting system in Senegal does not comply with the RS.IX as residents are exempt from making any reporting of funds transported within the WAMU.

**318.** Regarding the search for infractions to foreign currency checks, officers are authorized to conduct house searches anywhere under the conditions set forth in the Laws and regulations.

**319.** If they note an offence to the foreign currency control, they are allowed to make seizures and even make sure they identify the culprits, but only when they are caught red handed.

**320.** According to the customs officers, offences reported in foreign currency seizures immediately require a suspicious report.

The penalties for foreign currency check offences mainly include imprisonment sentences of between one to five years with the double in case of second offence, of the confiscation of the main evidence, confiscation of the means of transportation used for the fraud and a fine equal to at least the amount or not more than five times the amount or cost of the object of the offence or attempted offence.

**321.** The customs services play an important role on combating the illicit transport of payment by travellers.

**322.** However, summary statistics on foreign currency declarations should be maintained by customs services both at the entry and at the exit of the country.

**323.** Besides, it would be advisable to set up a better collaboration between the Customs Services and CENTIF mainly to record statistics on the declarations related to the cross-border physical transportation of cash (travellers, security companies).

**324.** Finally, it would be advisable that CENTIF process the financial information (bank transfers) for comparison with the customs information to ensure compliance of the reported values and the amounts transferred or received from abroad.

**2.7.3. Compliance with Special Recommendation IX**

	<b>Compliance assessment</b>	<b>Summary of reasons (only for section 2.6) for overall compliance assessment</b>
<b>RS. IX</b>	<b>PC</b>	<p>The Law makes no specific provision on the cross-border physical transportations of ML/FT-related cash and bearer instruments</p> <p>The Community Law that deals with the issue does not contain any specific provision related to FT.</p> <p>Residents are not subjected to any declaration for cross-border physical transportations of cash within the WAEMU area.</p> <p>No formal collaboration between the customs Services and the CENTIF mainly for keeping statistics on declarations related to the cross-border physical transportations of cash.</p> <p>No statistics on cross-border physical transportations of cash and bearer negotiable instruments.</p> <p>The sanctions provided for are not implemented in a deterring way.</p>

### 3. - PREVENTIVE MEASURES – FINANCIAL INSTITUTIONS

#### Customer-due Diligence and Record-keeping

#### 3.1 - Risk of money laundering or terrorist financing

**325.** The mission noted an overall awareness among public authorities but could not notice the existence of an overall national strategy unveiled in policy and programmes with clearly defined precedence orders.

**326.** Senegal did not provide for a risk-based approach on LBC according to the definition accepted by the FATF. However requirements for enhanced due diligence are provided for some types of operations or customers by the Law and the BCEAO Directive.

**327.** On top of that, prescriptions mainly on internal control require some financial organizations on identification, assessment, prevention and control of various specific risks other than those related to money laundering (counterpart, market, operational, legal among others.). Circular No. 10-200/CB of 23 June 2000 of the Banking Commission is very clear on this issue regarding credit institutions.

**328.** Senegal should assess the ML/FT-related risks and vulnerabilities it faces and work out an action plan to mitigate them.

#### 3.2 - Customer-due diligence including enhanced or reduced identification measures (R.5 à 8)

##### 3.2.1 Description and Analysis

**329.** The 6 February 2004 law (referred hereafter as “the Law”) subjects to the money laundering prevention and detection requirements (Titles II and III of the Law) individuals or legal persons who, as part of their profession, conduct, control or advise operations causing deposits, exchanges, placements, conversions or any other flows of capitals or other assets. The Law expressly cites the subject institutions with respect to professions conducting financial operations:

- The Public Treasury
- BCEAO
- Financial bodies defined as “Banks and financial institutions, Financial postal services, Deposits and Consignment Funds and relevant organizations, insurance and reinsurance companies, insurance and reinsurance brokers, Mutual benefit companies or Savings and Credit Cooperatives as the Structures or Organizations non constituted in the mutual benefit form or cooperative aimed at collecting savings and/or granting credit, the Regional Securities Exchange, the Central Depository/Payment Bank, Management and Broker Companies, wealth

management companies, OPCVM, fixed assets investment companies and authorized manual foreign exchange operators.”

**330.** There is still a doubt as to the comprehensiveness of the list in relation to the criteria set by the Law since the latter states that individuals and legal persons “advising” some financial operations should be subjected. However, there is a regional financial market set up among the WAEMU eight member countries including the organization, running and control as well as actors authorized to intervene, are defined by the general Regulation of 28 November 1997, its annexes and the directions issued by the Regional Council for Public savings and Financial markets (CREPMF). Under this general Regulation, “market players” allowed to intervene on the regional market, must be authorized by the CREPMF. Authorized trade participants are the Management and Broker Companies (SGI), Wealth Management Companies (SGP), Stock market investment Councils, Business introducers and the brokers.

**331.** All market players are subject to the requirements to combat money laundering under the 2004 law except for Stock market investment Councils and brokers.

**332.** Some Senegalese authorities deem that these professions are nonetheless subjected because Article 5 of the Law provides that besides the professions explicitly designed as financial institutions, there are other professions for which there is an unlimited list. As Stock market investment Councils provide for the former advice to their customers on stock market investment (see article 93 of the general Rule), and, for the latter, advice on subscription, purchase, exchange, sale of securities or shares in operations on these securities (see article 101 of the general rule). Yet, even though these professions are not specifically designated, the above-mentioned authorities think that they are bound by the Law.

**333.** Nonetheless, other Senegalese authorities (CREPMF) and other market stakeholders (Bourse Régionale des Valeurs Mobilières—BRVM) have not confirmed the interpretation.

**334.** Besides, Regulation No.15/2002/CM/WAEMU of 19 September 2002 on payment systems in WAEMU member countries provides in article 131 that banks, Postal cheque services, the public Treasury and any other organization duly set up by the Law as well as bodies reporting to decentralized financial systems mainly mutual funds and savings and credit cooperatives are allowed to promote the use of payment and withdrawal cards, electronic purse and electronic payment as well as any other modern payment means or instrument mainly through the establishment of groupings in a bid to set up national or regional electronic transfer mechanisms and instruments.

**335.** Directive No. 01/2006SP of 31 July 2006 on the issuance of electronic currency and electronic currency institutions specifies some provisions of Regulation n°15/2002 mainly by providing the possibility for “issuing institutions” and for “electronic currency institutions” the possibility to issue payment means under the form of electronic currency and for “distributing institutions” the possibility to provide an electronic currency loading, reloading or payment. Directive 01/2006 defines the three categories of institutions:

**336.** “Issuing institutions” are banks according to article 3 of the banking and postal cheque services, the Public Treasury or any other body authorized by the Law to issue electronic currency, decentralized financial systems pursuant to the Law governing Mutual benefit companies and savings and Credit Cooperatives, debtors of incorporated debt in the electronic instrument. Issuing and managing payment means (including electronic currency) is mentioned by the FAFT as an activity which exercise places the body trading in the scope of the definition of financial Institutions.

**337.** Relevant institutions must therefore be subject to the requirements in combating money laundering and terrorist financing provided for in the FATF which is the case on the suppression of money laundering, of the issuing institutions mentioned and subject to the Law. Nevertheless, there is still uncertainty on the other issuing institutions that would be authorized by the Law to issue electronic currency as the assessors were not able to check whether this category exists and if it belongs to the professions subject to the Law. Moreover, Directive 01/2006 makes provisions on combating money laundering that are less demanding than those of the Law and not compliant with the FATF recommendations (see articles 6 and 7 – retention period of the customers’ identity and the possibility to track only two-year operations);

**338.** “Distributing institutions” are businesses providing customers with electronic currency loading, reloading or payment services. So long as these institutions make “payments” as part of payment means, it should be considered that their activity falls within the FATF definition on financial institutions subject to the requirements to fight against money laundering and terrorist financing ;

**339.** “Electronic cash institutions” are businesses or other legal persons authorized to issue electronic payment means under the form of electronic currency and whose activities are limited to electronic currency issuing, making it available to the public and the electronic currency management. Because of their activities, these institutions fall under the financial institutions subjected by the FATF to due diligence procedures.

**340.** Under article 3 of Directive 01/2006, the prudential provisions of this directive (defined at chapter II and mainly including the requirement to secure a license from the BCEAO, the free establishment and provision of service within the WAEMU, sanctions, the requirements for minimum social capital and constant shareholders’ equity, the requirements for a healthy and prudent management, among others) do not apply to issuing institutions when their activity related to electronic currency does not exceed CFAF5,000,000 when the electronic currency issued is accepted as a payment means only within a group, when the electronic currency issued by the institution is accepted only by a limited number of businesses within the same offices or in a restricted local area and which have close relationships with the issuer. Under these possibilities, the instruction provides that the full capacity of the electronic support loading available should not exceed CFAF100,000.

**341.** Therefore, all people or entities conducting one of several activities or operations mentioned by FATF., are apparently not subject to the requirements to combat money laundering as Senegal moreover has no prevention rule on terrorist financing.

**342.** Besides, Directive n°1/2007/RB of 2 July 2007 of the BCEAO on the suppression of money laundering (following “Direction”), specifies some provisions applicable to financial bodies reporting to the BCEAO regulatory powers or under its article 3 :

- Banks and Financial institutions,
- Financial postal services, Deposits and Consignment Fund and relevant bodies,
- Mutual funds or savings and Credit Cooperatives as well as structures or organizations non constituted under the mutual fund or cooperative model and aimed at collecting savings and/or granting credit,
- Authorized manual foreign change operators.

**343.** Nevertheless, there is still doubt on the compliance of this directive with law 90-06 of 26 June 2006 called “banking law” and on its qualification with respect to FATF rules.

**344.** In fact, under its article 3, the directive applies to various financial bodies including the Financial Services of the Posts, The Deposits and Consignment Fund and the relevant bodies. Yet, a BCEAO directive can only target institutions falling under its jurisdiction in line with the banking law, which is not the case for Financial Services of the Posts, the Deposits and Consignment Fund and the relevant bodies (see Article 2 of this law). Only information requirements are imposed in accordance with articles 42 and 43 of the banking law to its bodies.

**345.** Furthermore, FATF requires that all or part of some of its recommendations should be adopted by countries under the form of “legislative or regulatory law” emanating from a legislative body of a text passed or approved by a legislative body imposing requirements with effective, proportionate and deterrent sanctions if they are not observed. Considering the available information, the directive is apparently not taken as a “legislative or regulatory law” according to the FATF. On the other hand, it can be accepted as “another binding means” as it emanates from a competent authority and is punishable in case of failure. On top of that, if this law, into force from the date of its signature, was well taken into account by the assessors, its implementation could not be measured due to its very recent nature which is not always known to organizations to which it applies, on the one hand, and the impossibility to directly meet with the supervisory authority of some of these organizations (particularly the banking Commission which is a WAEMU community body headquartered in Abidjan - Côte d’Ivoire), on the other hand.

**346.** Indeed, the assessors could not directly meet with the supervisory authorities in most of the subject financial bodies and mainly the WAEMU banking Commission supervising banks and financial institutions, the Regional Council on Insurance Supervision controlling insurance companies, the CREPMF supervising actors on the regional financial market and generally ascertaining the regularity of stock market operations. As the latter are WAEMU community bodies headquarter in Abidjan (Côte d’Ivoire).

**347.** CREPMF which replied in writing to some questions by the assessors, deemed it was in a position to monitor the observance of the rules on combating money laundering but noted that specific rules applicable to authorized actors were being established and that inspectors should ensure during on-site visits the implementation of the general provisions on customers’ knowledge and account keeping. CREPMF also said that over the past three years it had assessed the six market shareholders and applied no sanction.

**348.** These answers as well as the analysis of the management and Broker company inspection guide which provisions for suppressing money laundering among market shareholders have so far not been monitored according to FATF.

## **Recommendation 5**

**349.** **5.1\*:** Assessors were told that the banks were not keeping anonymous accounts or under fictitious names and that for those keeping numbered accounts, there were customer identification due diligence. Nevertheless there are no legislative or regulatory provision barring financial institutions from keeping anonymous accounts or under fictitious names or regulating the numbered accounts. Besides, the provisions on customer identification are not compliant with FATF recommendations (mainly no identification of the effective account holder).

**350. 5.2 a)\*:** Article 7 of the Law makes a clear provision on the customer identification requirement “before” establishing business dealings for professions subject to the Law. Nevertheless it exempts the economic owner from all identification requirements, the financial bodies for which the direct customer is a financial body subject to the Law. This exemption also applies to electronic financial operations (see item 6 of Annex to the Law) while these activities are considered by the Basel Committee to involve greater risk of money laundering. In addition, the Senegalese law makes no provision for due diligence measure on terrorist financing.

**351. 5.2 b)\*:** Article 8 of the Law provides for the identification of occasional customers for any operation on amounts equal to or above CFAF5,000,000 (about €8,340) which hints that the Law does not require the identification of occasional customers that do not conduct cash operation. Moreover, Directive 01/2006 requires institutions making refunds against electronic currency cash exceeding CFAF10,000 (about €16) for a customer that is not identified by an issuing institution, to take the identity of that person and to make him available to the monetary and supervisory authorities as well as to CENTIF for a two year period, except, as provided for by paragraph 2, in case of a duplication of distinct operations for a single amount of less than CFAF5,000,000, or when the legal origin of funds is not proven.

**352.** But FATF requires the identification of occasional customers for any operation above €15,000 whether or not it is made in cash. In its article 8, the Directive requires financial bodies to ensure, pursuant to articles 7 and 8 of the Law, the identification of all customers requesting to make an operation on an amount equal to or above CFAF5,000,000.

**353.** The text thus amends the Law and on this issue makes it compliant with FATF requirements. Nevertheless, FATF requires that the obligations for occasional customer identification depend on a law or regulation meaning a law passed or authorized by a legislative body imposing effective, proportionate and deterrent sanctions. In line with article 27 of the BCEAO statutes that entitle it to apply in each WAEMU member state the legislative and regulatory provisions made by national authorities in line with Article 22 of the Treaty, the directive apparently does not meet FATF requirements.

**354.** In addition, if the directive amends a law or a superior norm, it contradicts the existing law and does not have any effect. Finally, this law applies only to some financial bodies and therefore people subject to the requirements to fight money laundering which mainly excluded the financial market stakeholders, fixed capital investment companies, electronic currency distributing institutions as well as designated non financial businesses and professions. For these various reasons, it seems that the Senegalese provisions on identifying occasional customers are not compliant with FATF requirements.

**355.** Besides, the Law notes that identification of occasional customers must also be done in cases of “repeated different operations” for any amount lower than CFAF5,000,000. This provision is not clear and the assessors could not ensure if it was consistent with that of FATF providing for due diligence for transactions carried out in one or several operations apparently related. In addition, if the directive clearly specifies (article 8 paragraph 2) that the interpretation should be considered, this law is neither an act nor a regulation according to FATF meaning (see 5.2 b above) and it only covers part of the people subject to due diligence requirements. It should be noted that this difficult interpretation did not occur on the rating of recommendation 5 particularly as criterion 5.2 b)\* was not met.

**356.** **5.2 c)\*:** The provisions of the Law and of Guideline 01/2006 on the identification of occasional transactions do only apply when the financial body makes cash operations or in case of a duplication of distinct operations for a single amount of less than CFAF5,000,000, or when the legal origin of funds is not proven (see 5.2 above). Therefore in case of occasional transactions under the form of wire transfers that do not look like smurfing or that do not raise doubts as to the legal origin of funds, no due diligence measure is required by the Law.

**357.** In addition, the insurance code (article 8 and 62) provides for specific identification measures less restrictive than the Law. It should be confirmed that the provisions of the Law prevail. The assessors were unable to verify this point, especially in the absence of direct encounter with the Regional Insurance Supervision Council (CRCA) based in Libreville, in Gabon, community organ of the Zone Franc area of which Senegal is a member state.

**358.** **5.2 d)\*:** The Law provides for two cases of customer identification exemption: when the customer is a financial institution subject to the Law (Article 9) and in case of non-face to face operation with a financial institution acting on behalf of a customer (Annex to the Law). The Law does not provide that in case of suspicion of money laundering, due diligence measures must be carried out and there is no provision in case of suspected terrorist financing.

**359.** **5.2 e)\*:** The Law includes no express provision providing for a constant due diligence, unlike the Instruction but it is not a law or regulation within the meaning of the FATF and only covers part of subject organisations (see 5.2 b) above).

**360.** **5.3\*:** The Law provides for the obligation to identify the customer, whether permanent or occasional, since he conducts transactions in cash of at least CFAF5,000,000 and that there is no suspicion of money laundering. The necessary measures consist in ensuring the customer's identity and address.

**361.** When it comes to an individual, the identity is verified through the production of an unexpired national ID card or any other official document in lieu of, and including a photocopy. The verification of the address is done by any documentary evidence. If the customer is a trader, he must also produce evidence of his Trade Register and Personal Property Loan.

**362.** If the customer is not physically present, the provisions of Section 5 of the Annex are applied. The customer must provide a copy of the official identity document or his official identity number and the address mentioned on these documents is verified. At this stage, the documents requested are not certified and there is no verification of the identity from a reliable source as required by FATF (risk of falsification of the ID copy); the first payment must be made through an account opened in the customer's name at the credit institution located in the WAEMU space, or if Senegal allows it – through renowned credit institutions located in third countries that implement equivalent anti-money laundering standards. The financial institution must verify that the identity of the account holder actually corresponds with that of the customer, as mentioned in the identity document (or made from the identification number). When in doubt on this point, it must confirm it through the making of intermediary credit. Only if doubt persists, it will require a certificate proving the identity of the account holder and confirming that he properly carried out identification and that the information has been registered in accordance with the Law.

**363.** The identification of a legal entity or a branch is made, on the one hand, through the production of the original or the certified copy of any act or extract from the Trade Register and Personal Property Loan attesting to its legal form, its head office and, on the

other, by the powers of people acting on behalf of the individual or branch. The liable people carry out, for officials, employees and agents acting on behalf of others, the same identification diligence as those applicable to individuals. The officials, employees and agents acting on behalf of others must also produce the documents proving on the one hand, the delegation of authority or the mandate granted to them, and on the other, the identity and address of the beneficial owner. According to the Law, the beneficial owner is the “originator, that is to say the person on behalf of whom the agent acts or on account of whom the transaction is performed”.

**364.** With regard to the identification of «legal arrangements», not recognised under Senegalese law, the Section requires its liable people to report transactions for their own account or on behalf of third parties with individuals or legal entities, including their subsidiaries or organisations, acting on behalf of trust fund or any other instrument of management of an trust estate the identity of whose constituents or beneficiaries is unknown. It is to be therefore concluded that through this provision – which adds to the Law an obligation to report, while the Instruction is a lower standard – some liable people are required to identify the constituents or beneficiaries of trusts and other legal arrangements.

**365.** In addition, the assessors were unable to obtain information on the reliability of information relating to the identification of individuals (reliability of ID cards or other official documents used to verify customer identity) or on the Trade and Personal Property Loan Record.

**366.** **5.4 (a)\* :** When customers are legal persons, the Law provides for an obligation to liable people to ensure that any person purporting to act on behalf of the customer is authorised to do so and to identify and verify the identity of this person.

**367.** **5.4 (b) :** The Law also requires to verify the legal status of the legal person through the production of the original or the certified copy of any act or extract of the Trade Register and Personal Property Loan giving evidence of its legal form and its head office. The credentials of the people acting on behalf of the legal person or branch must also be verified by documents attesting to the delegation of authority or the mandate given to them. These people must finally disclose the identity and address of the economic owner.

**368.** However, no specific provision is foreseen concerning “legal arrangement” but since the latter are not recognised under Senegalese law, the possibility of the presence of customers made up under this form seems to be marginal in Senegal and thus it did not have an influence on the assessment of Recommendation 5.

**369.** **5.5\*, 5.5.1\* et 5.5.2 (a)\* et (b)\* :** The professions subject to the Law are required to identify the economic owner of their client defined as the originator, that is to say the person on whose behalf the agent acts or on the account of whom the operation is conducted. They are however exempt from this obligation when the customer is a financial institution subject to the Law. Yet, according to the FATF, identification must focus on the individuals who ultimately own or control the customer and/or the person on whose behalf a transaction is conducted. This also includes people who eventually exert an effective control over a legal person or arrangement.

**370.** The enactment, as well as the practices described to the assessors, do not fully meet FAFT requirements, especially with regard to the customer’s capital control. Thus, it has been confirmed to assessors that with regard to legal persons, the identification of its shareholders did not go beyond the major shareholders.

**371.** The Instruction provides, in terms of declaration, the obligation for subject organizations to be able to provide at any time specific information, especially on the identity of the real originator and on that of the “real beneficiary” but these notions are not defined.

**372.** In addition, the Instruction does not apply to all financial institutions subject to due diligence. Thus, transmitters or issuers of electronic money are not concerned by the Instruction subsequent to the January 2006 one relating to the issuance of electronic money so much so that there is doubt on whether the Instruction applies to them.

**373.** In addition, the January 2006 Instruction does not provide for the obligation to identify the customer – except in specific cases of cash in recovery – and includes no provision relating to the identification of the economic owner or the beneficial owner.

**374.** Finally, the legislation of Senegal recognises the existence of bearer shares, without special provisions for the identification of the holders and, *a fortiori*, the beneficial owners. The existence of **an anonymous voucher** put into circulation in Senegal as well as open cheques and endorsable without any specific provision of identification and follow-up of the beneficiaries of possible successive transferees be specified, constitutes a shortcoming of the mechanism to combat money laundering and terrorist financing.

**375.** **5.6:** The Law provides for the obligation for liable people to obtain information on the source and destination of the funds involved, as well as on the object of the transaction and the identity of the people involved:

- for any payment in cash or by bearer deed of a sum of money, made under normal conditions, whose unit or total amount equals to or exceeds CFAF50,000,000 (about €76,225);

- for any transaction on an amount that equals or exceeds CFAF10,000,000 (about €15,245), made under unusual conditions of complexity and/or which does not seem to have an economic justification or a lawful purpose.

**376.** In the cases mentioned above, the main features of the transaction, the identity of the originator and the beneficiary, if any, that of the agents of the transaction, are confidentially recorded in order to make connections, if need be.

**377.** These obligations only concern some transactions limitedly listed by the Law while the FATF recommends them in all cases. The Instruction provides that the internal programme to combat money laundering must, at any time, help provide specific information, especially on the nature of transactions and their economic justification but these obligations are only required in the event of obligations to report, on the one hand, the Instruction only concerns part of the people subject to anti-money obligations, on the other hand.

**378.** **5.7\*, 5.7.1 and 5.7.2:** The Law does not provide for any obligation of constant due diligence with regard to business dealings. However, the Instruction states that the knowledge procedures of the customers must apply not only to new relations, but also to existing customers, especially those over whom there is doubt on the reliability of information previously collected. However, FATF recommends that the constant due diligence obligations come under a law or regulation, which is not the case of the Instruction, on the one hand, and on the other hand, this Instruction only applies to part of subject organisations. In addition, the impossibility for assessors to meet some supervisory authorities did not make it possible to ensure the existence and nature of the diligence effectively implemented by subject professions.

**379. 5.8:** The Law does not provide for an obligation to take enhanced due diligence measures for categories of customers with higher risk. However, the Instruction provides in its chapter II, several situations in which specific due diligence obligations must be adopted by organisations subject to these obligations. The Law cites (Article 7) the various transactions that are subject to a special attention. These transactions include those made with counterparts located in FATF non-cooperative countries and territories and with people affected by asset freezing measures for their alleged links with an organized criminal entity. The Instruction also requires enhanced diligence concerning occasional, electronic transactions, or with regard to FATF non-cooperative countries and territories and with people affected by asset freezing measures. On the other hand, Instruction No. 01/2006 provides in its article 7 that the issuers of electronic money put in place an automated system to supervise the unusual electronic transactions. However, the Instruction is not directed at higher risk categories of customers such as non-residents, companies whose capital is held by agents or issuing bearer shares, politically exposed people. In addition, this enhanced due diligence only concerns the professions subject to the Instruction and its implementation could not be verified because the Law is recent. Finally, the internal practices eventually adopted by people subject to anti-money laundering obligations could not be assessed because the assessors could not meet the supervisory authorities of most of the professions subject to the Instruction and Instruction No. 01/2006.

**380. 5.9 and 5.10:** The Law exempts liable people from the obligation to identify the beneficial owner when the customer is a financial institution subject to the Law. According to the definition of the Law, these are banks and financial institutions, postal financial services, general deposit office and organisations that serve the purpose of insurance and reinsurance companies, insurance and reinsurance brokers, mutual institutions or credit unions, as well as unincorporated structures or organisations and with the purpose of collecting savings and/or credit granting, the Regional Stock Exchange, the Central Depository/Settlement Bank, Management and Intermediation Companies, Heritage Management Companies, investment trust, fixed-capital investment companies.

**381.** Nevertheless, the interpretation made by the competent authorities interviewed by the assessors (BCEAO and CENTIF) confirms that the exemption is broader than the terms of the Law because according to these officials, the beneficial owner's identification exemption concerns all the financial institutions of the WAEMU and not only Senegal.

**382.** The Law also provides for specific provisions for remote financial transactions when the customer is an individual (see Section 5 of Annex). The customer must produce a copy of the official identity document or his official ID number and the address mentioned on these documents is verified. At this stage, the documents requested are not certified and there is no verification of the identity through a reliable source as required by the FATF (risk of falsification of the copy of the identity paper); the first payment must be made through an account opened in the customer's name at a credit institution located in the WAEMU space, or – if Senegal authorises it – through renowned credit institutions established in third countries that implement equivalent anti-money laundering standards.

**383.** The financial institution must ensure that the identity of the account holder actually corresponds to that of the client, as mentioned in the identity document (or made from the identification number). When in doubt on this point, it must be confirmed by the establishment of the intermediary credit. If doubt persists, he will ask the intermediary institution a certificate attesting to the identity of the account holder and confirming that he properly carried out the identification and that the information has been registered pursuant with the Law.

**384.** There is no provision relating to the identification and verification of the identity of the beneficiary of record of the client in these relations, while the client may be non-resident, which constitutes for the FATF a case of enhance diligence.

**385.** The Law finally provides for simplified steps for the identification of customers located in another country and which passes through an institution. If the latter is located in the WAEMU, the identification of this institution is not required. This is an extension to the exemption provided for in article 9 of the Law since this article only exempts the identification of the beneficial owner of the client financial institution rather than the identification of the financial institution itself. In addition, when the intermediary institution is located outside the WAEMU, the subject institution verifies the identity of the intermediary and takes “reasonable steps” in order to get information on the client of this institution. The Law specifies that these measures may be limited – when the country of the intermediary implements identification obligations equivalent to those provided for in the Law – to ask the for the customer’s name and address. When the country does not apply equivalent identification obligations, the subject institution “may” require the intermediary a certificate confirming that the identity of the client has been properly verified and registered.

**386.** Consequently, Senegal exempts financial institutions from some identification obligations when the customer is located in Senegal or in another WAEMU country but also when he is located in a country outside this area. It even helps to implement reduced or simplified measures when the intermediary is based in a country that does not implement equivalent measures.

**387.** Yet, on the one hand, the FATF enables countries to allow financial institutions to implement reduced or simplified measures but not suppressing any measure as provided for by the Law. On the other hand, the broad interpretation of this provision is problematic because the provisions in force in the WAEMU do not comply with FATF standards and that their implementation differs from one country to another. Other WAEMU countries have not yet set up Financial Intelligence Units (FIU) except for Niger and Senegal.

**388.** It also seems that in the field of life insurance, diligence is based on the amount of capital or bonuses or the existence of single premiums. However, no detail on the applicable laws in these situations has been provided to assessors.

**389.** **5.11:** As mentioned above, the Law (article 9) exempts the liable people from the obligation to identify the beneficial owner when the customer is a financial institution subject to the Law and it does not anticipate that in case of suspicion of money laundering and terrorist financing or in case of specific circumstances presenting a higher risk, all due diligence measures must be taken. Indeed, paragraph 2 of article 9 makes it clear that if, after scrutiny, doubt persists about the identity of the beneficial owner, the financial institution shall make a declaration of suspicion, but since paragraph 4 exempts the liable people from identifying the beneficial owner when the customer is a financial institution subject to the Law, paragraph 2 has no effect in this case.

**390.** **5.12:** The Law does not expressly allow liable people to assess the extent of the due diligence measures to apply to a customer according to the risks involved. Article 13 of the Law specifies, however, that the liable people are required to implement harmonised programmes to prevent money laundering and lists the elements that should in particular appear in these programmes. None of these elements deal with the possibility of adapting the due diligence measures according to the risk and, since the assessors could not meet the supervisory authorities, they could not know how they interpreted this article. Article 13 notes, however, that the supervisory authorities (and not liable people) can specify the content and modalities for the implementation of anti-money laundering programmes. That

is what the BCEAO did in its Instruction compelling liable people it covers to plan a mechanism to analyse transactions and the profile of customers, in order to track and monitor atypical movements and financial transactions, pay special attention to occasional financial transactions of an amount that is equal to or higher than CFAF500,000 and transactions over the Internet or any other electronic means and pays a special attention to non-cooperative countries and territories as well as people affected by fund freezing measures.

**391. 5.13:** The Law provides in its article 7 that liable people must verify their customer's identity and address prior to any business dealings and extends this obligation for occasional customers for any transaction involving a sum in cash of more than CFAF5,000,000. If the Instruction extends the identification obligation to any occasional customer requesting any transaction on a sum of more than CFAF5,000,000, this law amends it and only concerns liable people coming within the jurisdiction of the BCEAO. Moreover, it has been already indicated that the verification of the identity of the beneficial owner (whose definition does not fully comply with the FATF requirements) suffer from several exceptions, particularly towards customers that are financial institutions of WAEMU. Therefore, liable people are not required to systematically verify the identity of the client and beneficial owner (as defined by the FATF) before or at the time of the establishment of a business dealing or when carrying out transactions for occasional customers.

**392. 5.14:** Neither the Law nor the Instruction allows liable people to complete checks of the identity of the client and beneficial owner after the establishment of the business dealing. However, practices in force in insurance companies, life insurance or damage insurance, leading to the identification of the beneficiary at the time of payment and liquidation of the indemnity, were reported. However, it was pointed out to the assessors that the sector of life insurance was not well developed in Senegal and that the customers were mostly made up of companies contracting their employees. Consequently, the practices mentioned in this sector—even though they are not compliant—did not have an influence on the ratings of recommendation 5.

**393. 5.15:** The Law does not prohibit liable people to open account, establish business dealings or made a transaction if they fail to identify their client and the beneficial owner. It emerges from the practices described to the assessors that liable people do not give up any transaction in these situations, particularly if they fail to identify the beneficial owner. In this last hypothesis, the Law specifies (article 9 paragraph 2) that after verification, if doubt persists about the identity of the beneficial owner, the institution makes a suspicious report. However, this provision is limited because the same article also provides (paragraph 4) that liable people are exempt from identifying the beneficial owner when the customer is a financial institution subject to the Law. The Instruction, adding to the Law, specifies however (article 11) that any transaction the identity of whose originator or beneficiaries (concept also undefined) remains doubtful in spite of the steps taken, must be reported to the CENTIF. This is an important addition to the Law that however constitutes a standard higher to the Instruction, which casts doubt on the legality of this provision. In any event, this law is very recent and, at this point, liable people still fail to declare in the referred case. In addition, the Instruction governs only part of those subject to the Law and does not prohibit the completion of the transaction as required by the FATF.

**394. 5.16:** Although not provided for by the Laws, which stipulate that the client must be identified before establishing any business dealings, a practice seems to prevail in insurance companies consisting in identifying the beneficiary at the time of payment and the liquidation of the indemnity. The assessors are not aware of case of declaration in the event that this identification could not be made, because they were unable to meet the authority in charge of auditing insurance companies. In addition, the statistics provided by

the CENTIF show that the statements exclusively come from the banking system and financial administrations”.

**395. 5.17 :** The Law does not provide for obligation of due diligence for existing customers depending on the importance of the risks they represent or obligation to implement due diligence measures relating to these existing relations at the opportune time. On the other hand, the Instruction provides (article 4) that the procedures for the knowledge of customers must apply, not only to new relations, but also to existing customers, particularly those on whom there is doubt concerning the reliability of information previously collected. Nevertheless, this law – adding to legal provisions – is only applicable to some subject to the Law. In addition, Instruction No. 01/2006 stipulates in its article 7 that **transmitters or issuers of electronic money** install an automated system monitoring unusual electronic transactions. However, the internal practices eventually adopted by liable people could not be assessed because the assessors were unable to meet the supervisory authorities or most subject professions.

**396. 5.18:** Neither the Law nor the Instruction does mention the prohibition to hold anonymous accounts or under fictitious names. It was pointed out to assessors that some banks held numbered accounts but since they could not meet supervisory authorities, they could not verify if the customers were subjected to all due diligence measures required.

### **Recommendation 6**

**397. 6.1, 6.2, 6.2.1, 6.3, 6.4, 6.5:** Neither the Law nor the Instruction or any other law includes provisions relating to Politically Exposed Persons (PEPS). If the instruction provides for the adoption by the subject institutions of internal procedures that help to detect suspicious transactions, there is no reference in this law to the particular risk attached to the PEPS.

**398. 6.6:** Senegal has signed and ratified the 2003 UN Convention against Corruption. However, no information concerning its adaptation into domestic law was communicated to the assessors.

### **Recommendation 7**

**399. The annex to the Law** (hereinafter “Annex”) includes provisions on the identification of individuals by financial institutions in the case of remote financial transaction. These provisions are not applicable for in-cash transactions, or when the financial agency suspects that the customer avoids direct contact in order to conceal his real identity, or that the transaction covers money laundering. Apart from these cases, the annex makes the following provisions that apply to liable people located in Senegal, whether they act as financial agency making the transaction or as go-between:

**400. a)** If the counterpart of the financial agency is a customer (therefore an individual), the identification is done according to the following modalities:

- direct identification is made by the branch or the representative office of the concerned financial agency, the closest of the customer;

- if the identification must be made without direct contact with the client, the latter must produce the copy of the official identity document or his official identity number and the address mentioned in these documents must be verified; the first payment must be made through an account opened in the customer’s name at a credit institution located in the WAEMU space, or – if Senegal allows it – through renowned credit institutions located in

third countries that implement equivalent anti-money laundering standards. The financial agency must verify that the identity of the account holder actually matches that of the customer, as mentioned in the identity document (or on the basis of the identification number). When in doubt on this point, he must confirm it through the intermediary credit but if doubt persists, he must produce a certificate attesting to the identity of the account holder and confirming that he properly carried out identification and that the information was legally registered.

**401.** b) If the counterparty of the financial agency is another institution acting on behalf of the client:

- if this institution is located in the WAEMU, customer identification by the financial agency is not required pursuant to article 9 of the Law. Although this is not specified, it is clear that the customer identification comes within the competence of the institution acting on behalf of the customer and that no verification is made by the financial agency;

- if this institution is located outside the WAEMU, the financial agency must verify its identity by consulting a reliable financial directory. In case of doubt, the financial agency requests confirmation of the identity of the institution from supervisory authorities of the concerned country. The financial agency is also required to take “reasonable measures” to obtain information on the customer of its counterparty, considered by the Law as the “beneficial owner” of the transaction. These measures may be limited, when the country of the institution implements equivalent identification obligations, to asking the customer’s name and address, but it may be necessary, when these obligations are not equivalent, to require the institution a certificate confirming that the customer’s identity has been properly verified and recorded.

**402.** 7.1\*: When the customer is a financial agency located in the WAEMU, no diligence of identification concerning it is required and if he is located outside the WAEMU space, only his identity is verified. These provisions do not help to understand the nature of the Activities of the financial agency or assess on the basis of publicly available information, the reputation of the institution and the quality of supervision, including ascertaining whether it is the subject of an investigation or an intervention of the supervisory authority relating to money laundering or terrorist financing. The Senegalese authorities justify the general exemption for identifying financial institutions located in the WAEMU space by the fact that the authorization granted by BCEAO to financial institutions within its jurisdiction is valid for the entire WAEMU region (Unique Authorization). Nevertheless, the identification exemption is not compliant with FATF regulations and can be particularly problematic from this point of view, especially as all the countries of the area do not implement provisions equivalent to the Law (see above).

**403.** 7.2\*: The diligence required when the customer is a financial agency does not deal with the controls put in place by the financial agency in terms of combating money laundering and terrorist financing irrespective of the country in which the client financial agency is located.

**404.** 7.3\* and 7.4\* : No law, regulation or any other restrictive law provides for the necessity to obtain the permission of the senior management before establishing new correspondent banking relationships and specify in writing the respective responsibilities in combating money laundering and terrorist financing of each counterparty. In addition, since the assessors could not meet bank control authorities, they were unable to ensure that such provisions were put into practice, even in the absence of restrictive law.

**405. 7.5\* a) et b\*) :** There are no specific provisions in the Law or the Instruction concerning pending account operation in the correspondent bank relationships. However, the schedule envisages close situations when the customer is an individual with whom the financial agency must complete a transaction without direct contact, or when the transaction is made through another institution. In both cases, whether the financial agency makes the deal for the customer or as an intermediary of another institution, the schedule does not require them to ensure that their counterparty implements all the usual due diligence measures provided for in recommendation 5. Even though inside the WAEMU, financial institutions are subjected to due diligence obligations, they do not comply with the requirements of the FATF, especially when they act on behalf of an occasional customer (see point 5.5 above).

### **Recommendation 8**

**406. 8.1\*:** The schedule details the principles which the identification procedures must comply with in case of non-face to face relationship with an individual client but includes no specific provision on the misuse of new technologies. Such procedures shall not apply to the transactions involving the use of cash, or in cases where the taxpayer suspects that the customer avoids direct contact in order to conceal his true identity, or that the transaction relates to money laundering. Doubt remains on the interpretation of these limitations. Should we understand that in case of doubt on the intention of the customer or on the source of the funds, the taxpayer must give up the transaction?

**407.** The Instruction provides in its article 8 that its liable people, since they allow the execution of transaction over the Internet or any other electronic means, must have an appropriate system to monitor these transactions. It also requires them to centralise and analyse the unusual transactions through the Internet or any other electronic medium. Instruction No.01/2006 on automated banking provides in its Article 7 that automated teller machines set up an automated system to monitor unusual electronic transactions. Nevertheless, the internal practices eventually adopted by liable people could not be assessed because the assessors were unable to meet the supervisory authorities or most subject professions. As for the Instruction, it only applies to part of liable people which the FATF recommends to submit to anti-money laundering obligations, and it is too recent to enable the assessors to appreciate the effective implementation. Finally, since the assessors could not meet the supervisory authorities, they could not ascertain that the provisions of the Annex applied to new technologies, or appreciate its effective implementation.

**408. 8.2:** Pursuant to the Annex, identification procedures must comply with some principles relating to non-face to face relationships when the customer is an individual. These measures apply before establishing relationship with the customer is an individual but nothing in the Law or Annex provides for a constant due diligence. By contract, the Instruction commands its liable people to have specific risk management mechanisms for some transactions involving new technologies and requires that they apply customer knowledge procedures including existing customers. However, this very recent law concerns only part of those subject to anti-money laundering obligations.

**409. 8.2.1:** If identification is made without direct contact with the customer, the provisions of section 5 of the Annex are applied. The customer must provide the institution in charge of the transaction the copy of the official identity document or his official identity number and the address mentioned on these documents is verified.

**410.** At this stage, the documents requested are not certified; the first payment must be made through an account opened in the customer's name at the credit institution located in the WAEMU space, or – if Senegal allows it – through credit societies with a good

reputation located in third countries that implement equivalent anti-money laundering standards.

**411.** The financial agency must verify that the identity of the account holder actually corresponds to that of the customer, as mentioned in the identity document (or on the basis of the identification number). When on doubt on this point, he must confirm it through the intermediary credit but if doubt persists, he must produce a certificate attesting to the identity of the account holder and confirming that he properly carried out the identification and that the information was recorded in accordance with the Law.

**412.** These provisions which only apply to client individuals do not constitute specific and efficient procedures of due diligence applicable to remote customers as provided for by the FATF: they do not cover all types of customers (nothing is specified concerning non-face to face relationships with client legal entities), the authentication of documents is not systematically required; the first payment is not necessarily made in another bank subject to analogous diligence standards (in WAEMU area in particular, anti-money laundering provisions are not uniformly implemented).

### 3.2.2 Recommendations and Comments

#### Recommendation 5

**413.** In 2004, Senegal passed an Act to submit several professions to obligations to combat money laundering but no provision on due diligence measures on terrorist financing was adopted.

**414.** A National Financial Information Processing Unit (CENTIF) was set up in 2005 but the provisions of the Law were implemented only this CENTIF came into force in late 2005.

**415.** The Law was completed for some financial professions by an Instruction of 2 July 2007 of the BCEAO. The recent nature of this law, unknown by liable people met the assessors, did not make it possible to verify its implementation.

**416.** In addition, the BCEAO adopted an instruction on the coinage of electronic currency on 31 July 2006, pursuant to a regulation relating to law payment systems directly applicable in WAEMU countries. This instruction includes some restrictive provisions relating to anti-money laundering that are always consistent with the Law and Instruction.

**417.** Broadly speaking, it was not possible to directly meet financial professions supervisory authorities, which did not enable the assessors to question them on their interpretation of laws, or know the extent of the controls made. As for sanctions, it emerges from the elements communicated in writing by the bank commission following the on-site visit that some were taken against credit institutions but “not necessarily related to flaws relating anti-money laundering”. The CREPMF stated in writing following the on-site visit that the specific provisions relating to anti-money laundering are being developed and that no sanction was applied to the professions under its control.

**418.** It emerges from the interviews conducted by the assessors that except for banks, the other subject financial professions are unfamiliar with the provisions of the Law. These findings are corroborated by the statements made at the CENTIF coming from banks (about 92 percent of statements) and financial administrations (8 percent of statements). However, if banks are important stakeholders in anti-money laundering, their role is lower than in developed countries because only 6 percent of the population is **bancarised** in Senegal.

**419.** In addition, the informal sector is very important and cash payments are very common. Thus, the **authorized manual change operators** are subject to the anti-money laundering obligations. According to information provided to the assessors, their activity is governed by Regulation R09/98/CM of WAEMU of 20 December 1998 relating to the external financial relations of the WAEMU member states. This regulation includes in Annex I the list of intermediaries responsible for carrying out financial transaction with foreign countries. They include the BCEAO, the postal administration, approved intermediary banks, manual exchange office and other intermediaries who must receive authorisation from the minister of Finance. However, it was pointed out to the assessors that the exchange activities were widely practised by people with no approval.

**420.** No legislative, regulatory provision or any other restrictive means requires the identification of the customer's beneficial owner as defined by the FATF. No law prohibits opening an account, establishing business dealing or making a transaction if the taxpayer fails to identify the customer or the beneficial owner. Rather, the practices described to the assessors show that the transactions are made in these cases but no statement was made at the CENTIF for this reason. This should change, at least for those subject to the Instruction, because the latter – adding to the Law – requires the reporting at the CENTIF for any transaction the identity of whose originator or beneficiaries remains shady notwithstanding the identification due diligence made, including trust funds or any other instrument for the management of trust estate the identity of whose constituents or beneficiaries is not known. However, it does not prohibit the making of the operation in the cases mentioned.

**421.** The Law includes gaps that should be filled, particularly:

- Extending the scope of the subject to the stock exchange investment boards, salesmen, **transmitters and issuers of electronic money** that are not yet subject to its obligations,
- Prohibiting anonymous accounts or fictitious names,
- Defining the measures applicable to occasional customers whatever the transactions they make,
- Removing any form of identification exemption of the customer or the beneficial owner in case of suspicion of money laundering and terrorist financing,
- Anticipating the obligation to exercise a constant customer due diligence,
- Completing definition of the beneficial owner in order to make the identification obligations in keeping with the FATF requirements for the identification of the beneficial owner, particularly with regard to the ownership and control of legal entities,
- Requiring that liable people systematically receive information on the purpose and intended nature of the business dealing,

- Implementing policies requiring liable people to take due diligence measures for higher risk categories of customers,
- Removing any identification exemption of the customer and beneficial owner, including when it comes to financial institutions subject to the Law. As a general rule, given the apparent weakness of the implementation of the Law by all subject professions and lack of information on monitoring the implementation, it is not advised to Senegal to adopt simplified due diligence measures,
- Prohibiting liable people from opening an account, establishing business dealings or making a transaction if they fail to identify their customer and beneficial owner.

**422.** In addition, all supervisory authorities should be encouraged to specify the content and modalities for the implementation of money laundering programmes, in accordance with the possibility made by Article 13 of the Law and the Instruction adopted by the BCEAO.

### **Recommendation 6**

**423.** Senegal has no law compelling liable people to exercise particular due diligence on PEPS clients. Senegal is advised to quickly adopt provisions of this nature.

### **Recommendation 7**

**424.** The provisions of the Law on non-face to face relationships with financial institutions are insufficient as part of cross-border correspondent banking relationships. In particular, when the institution is located in a WAEMU country, no identification diligence is performed and identification of the beneficial owner is not required, while the WAEMU anti-money laundering mechanism does not comply with the FAFT standards, it does not cover the fight against terrorist financing and that even inside the WAEMU, all countries have not yet adopted and fully implemented the standards applicable in the area. In addition, obligations towards financial institutions established in countries outside the WAEMU area are also less demanding.

**425.** In any case, no verification of controls put in place by the client financial agency at the level of the fight against money-laundering and terrorist financing is required. No law provides for the need to get the consent of the senior management before establishing correspondent bank relationships or specify the respective responsibilities of institutions in combating money laundering and terrorist financing.

**426.** Senegal should adopt legislative and regulatory provisions in order to fill these shortcomings.

### **Recommendation 8**

**427.** The Law contains no specific provision relating to the misuse of new technologies, which constitutes weaknesses of the Senegalese mechanism. The Instruction addresses the issue for transactions over the Internet or other electronic means but this law concerns only part of liable people and it is too recent to assess its implementations.

**428.** Instruction No. 01/2006 relating to electronic money also contains provisions but they are incomplete and they must be harmonised with the provisions of the Law and the

Instruction. In addition, the Law includes provisions relating to non-face to face relationships but which do not comply with the FATF requirements.

**429.** Like the Instruction, provisions likely to avoid the misuse of new technologies must be adopted by Senegal – or strengthened with regard to electronic money – for all professions subject to anti-money laundering obligations.

### 3.2.3 Compliance with Recommendations 5 to 8

	<b>Compliance ratings</b>	<b>Summary of reasons for compliance assessments</b>
<b>R.5</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>- Financial institutions partially covered by anti-money laundering obligations.</li> <li>-The Senegalese legislation does not contain CDD-related provisions in terms of terrorist financing.</li> <li>-The texts do not explicitly prohibit the keeping of anonymous accounts under fictitious names and do not regulate secret coded bank accounts.</li> <li>- Measures applicable to too restrictive occasional customers,</li> <li>- Identification exemption of the customer and beneficial owner, including in case of money laundering suspicion.</li> <li>-Existence of bearer shares, anonymous bonds, and non crossed and cashable cheques without any specific identification measures.</li> <li>- No obligation, for some liable people, to exercise constant customer due diligence,</li> <li>- Definition of beneficial owner does not meet the FATF requirements,</li> <li>- No requirement to systematically obtain information on the purpose and intended nature of the business dealings,</li> <li>- No obligation, for some liable people, to take due diligence measures for higher risk categories of customers,</li> <li>- No prohibition from opening accounts, establishing business dealings or making a transaction in the absence of the identification of the customer or beneficial owner,</li> <li>- Poor knowledge of regulations by liable people other than banks,</li> <li>- Lack of information on controls by the competent authorities</li> </ul>
<b>R.6</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>- No law compels financial professions to pay special attention to PEPs, request senior management approval for establishing business dealings with a PEP, to identify the source of wealth and funds of PEP clients or perform enhanced due diligence on their business dealings with PEPs</li> </ul>
<b>R.7</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>-The Non-Identification of the beneficial owner is not required when the institution is established in a WAEMU country is not compliant with FATF Regulations.</li> <li>- No verification of the controls put in place by the client financial institution on the fight against money laundering and terrorist financing is required,</li> <li>- No law provides the need to obtain senior management approval before establishing correspondent banking relationships, or specify the respective responsibilities of institutions in combating money laundering and terrorist financing.</li> </ul>
<b>R.8</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>- The Law does not include any specific provisions on the misuse of new technologies,</li> <li>-The Law contains specific provisions related to distant relationships</li> </ul>

		<p>but with are not in conformity with FATF Requirements.</p> <ul style="list-style-type: none"> <li>- Instruction 01/2006 includes partial due diligence provisions and only applies to some stakeholders in the issue and distribution of electronic money. Its implementation could not be assessed.</li> <li>- Instruction provides for transactions over the Internet or other electronic means but this law concerns only part of liable people and it is too recent to assess its implementation.</li> </ul>
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### 3.3- **Third and business introducers (introduced business -R.9)**

#### 3.3.1 Description and Analysis

#### **Recommendation 9**

**430.** The Annex exempts customer identification when the **counterparty** is an institution located in the WAEMU (in this case, the institution acts on behalf of the customer who is responsible for the identification but no control measure by the other counterparty is required). When the counterparty is located outside WAEMU, the financial institution must take “reasonable measures” to obtain information on the customer of its counterparty, referred to as the “beneficial owner of the transaction”, which may range from the request of the name and address of this customer to a certificate confirming that the customer’s identity has been properly verified and recorded. These various situations note commercial relationships between financial institutions for their customers, not covered by Recommendation 9.

**431.** In addition, the Senegalese legislation allows the use of insurance intermediaries, general agents or brokers who are respectively agents of insurance companies (see draft proposal for internal programme on the fight against money laundering and terrorist financing in the sector of insurance and reinsurance in Senegal). However, in these situations, insurance companies as well as brokers are subject to the same anti-money laundering obligations and nothing indicates that insurance companies rely on their identification due diligence. As for general insurance agents, they intervene on behalf of insurance companies and their relations are therefore not covered by Recommendation 9.

**432.** The general regulation relating to the organisation, functioning and monitoring of the WAEMU regional financial market establishes the existence of various intermediaries: stock exchange investment councils, salesmen and **business introducers**. The first two categories are not subject to the Law. Nevertheless, there is no indication that liable people resort to intermediaries or third parties to carry out some due diligence elements.

**433.** Finally, Instruction No. 01/2006 provides in its article 7 that automatic teller machines must put in place an automated system to monitor unusual electronic transactions and that change institutions communicate to the card issuer the shortcomings noted. In addition, the Instruction provides that the issuer may take arrangements to ensure that institutions implement the defined security and due diligence requirements. This provision suggests that the distributor operates under contract provisions agreed with the issuer.

#### 3.3.2 **Recommendations and Comments**

**434.** In the Senegalese legislation, there are no provisions allowing the use of intermediaries or third parties to fulfil some due diligence elements as envisaged by the FATF.

#### 3.3.3 Compliance with Recommendation 9

	Compliance Assessment	Summary of reasons for compliance assessment
R.9	NA	

### 3.4 - Professional secrecy or confidentiality of financial institutions (R.4)

#### 3.4.1 Description and Analysis

##### **Recommendation 4**

**435. 4.1:** According to article 34 of the Law, professional secrecy cannot be invoked by liable people, notwithstanding all contrary legislative or regulatory provisions, for refusing to provide information to supervisory authorities, as well as the CENTIF or make statements provided by the Law. The same is true regarding information required as part of an investigation on money laundering facts, ordered by the investigating magistrate and carried out under his control, by state officials in charge of detecting and suppressing money laundering-related offences.

**436.** In addition, Article 12 of the Law provides an extensive right to discovery of documents relating to identification obligations, for the benefit of judicial authorities, government officials in charge of detecting and suppressing money laundering-related offences, acting as part of a judicial warrant, supervisory authorities as well as CENTIF.

**437.** Finally, Article 24 of the Law provides that the CENTIF may, subject to reciprocity, exchange information with financial intelligence services of third countries in charge of receiving and dealing with suspicious transaction reporting, when the latter are subjected to prohibition against divulging professional secrecy.

#### 3.4.2 **Recommendations and Comments**

**438.** In the absence of due diligence on the fight against money laundering and terrorist financing, this offence is not mentioned in the Laws above. In addition, no provision on the sharing of information either domestically or internationally among financial institutions is mentioned. However, no difficulty in obtaining information relating to professional secrecy has been reported to the assessors.

#### 3.4.3 Compliance with Recommendation 4

	Compliance assessments	Summary of reasons for compliance assessments
R.4	C	The recommendation is fully implemented

### 3.5 - Retention of documents and rules for electronic fund transfers (R.10 & RS.VII)

#### 3.5.1 Description and Analysis

##### **Recommendation 10**

**439. 10.1\*, 10.1.1, 10.2\*, 10.3\* :** The Law stipulates in Article 11 that, without prejudice to the provisions enacting more restrictive obligations, liable people retain for a 10-year duration, as from the closing of their accounts or the suspension of their relations

with their regular or occasional customers, documents relating to their identity. They must also keep records and documents relating to transactions they made for 10 years as from the end of the financial year during which the transactions were conducted.

**440.** The Law does not expressly provide for the preservations of account books and commercial correspondence but it may be supposed that the term “documents” covers these elements especially as no problem has been reported to the assessors concerning the implementation of document retention rules.

**441.** However, Instruction No. 01/2006 on electronic money provides that, when the refunding of electronic money is made in cash of an amount exceeding CFAF10,000, at the request of a person who is not a customer identified by an issuer, the institution making the refunding notes the identity of this person and makes it available to the monetary and supervisory authorities as well as the CENTIF for two years. The issuer institution must also ensure the traceability, for two years, of loadings and receipts of electronic money and make it available to the monetary and supervisory authorities. In those two cases, the period set by the Instruction is inferior to the five years required by the FATF. In addition, the Instruction does not expressly provide that the information relating to the traceability of loadings and receipts must be reported to the CENTIF. The assessors, who acquainted themselves with the instruction following the on-site visit, were unable to verify this point with the CENTIF.

### **Special recommendation VII**

**442.** The Law and Instruction contain elements relating to the obligation to identify customers of liable people. The Annex also contains specific provisions for transactions over the Internet with client individuals (see above).

**443.** According to Article 6 of the Law, foreign exchange transactions, capital movements and payments of every kind with a third state should be carried out in accordance with foreign exchange regulations. Regulation No. 09/98/CM/WAEMU relating to external financial relations of WAEMU member states (hereinafter “Regulation”) defines the rules applicable to foreign exchange transactions, capital movements and payments of every kind between a WAEMU member state and foreign countries, or in the WAEMU between a resident and a non-resident.

**444.** This Regulation recalls that the capital movements are free and without restriction among WAEMU member states. It also lists the intermediaries in charge of making financial operations with foreign countries. They include the BCEAO, the postal administration, an approved intermediary (banks specially approved for this purpose or any other category of intermediaries authorised by the Minister of Finance) or **an agréé de change manuel** (any person or entity based on the territory of an WAEMU member state and having received an approval from the minister of Finance for the execution of manual exchange transactions).

**445.** This law includes no specific provision relating to fund transfers. It simply mentions (article 4) that, for the execution of current payments abroad (countries other than those of WAEMU, ECOWAS, Central African Economic and Monetary Community (CEMAC) and France), transfers whose amount does not exceed CFAF300,000 (about €458) requires no supporting documents but that the approved intermediaries will verify the identity of the applicant and beneficiary so that this provision is not used to make split payments or build foreign assets. Nonetheless, according to Senegalese officials, this provision is not designed to combat money laundering.

**446. VII.1:** The identification obligations provided for by the Law are not enough, in particular when it comes to occasional customers (due to the threshold of CFAF5,000,000 and uncertainty about the extent of the concerned occasional transactions), information on the originator, his account number (or a unique reference number if there is no account number) and the address of the originator. Therefore, no provision imposes financial institutions of the originator to verify the identity of the originator, in accordance with Recommendation 5, for all transfers equal to or above €1,000.

**447. VII.2:** For cross-border wire transfers, there is no provision obligating financial institutions to provide full information on the originator in the message or payment form accompanying the transfer.

**448. VII.3:** For domestic transfers, there is no provision requiring financial institutions to include in the message or payment form accompanying the transfer, comprehensive information or only the account number or a unique way to identify the originator.

**449. VII.4:** There is no provision regulating non-routine transactions or prohibiting batch processing when this can generate a risk of money laundering or terrorist financing.

**450. VII.5:** There is no provision requiring intermediary financial institutions in the payment chain to keep all necessary information on the originator with the corresponding transfer.

**451. VII.6 and 7:** No restrictive information provision on the originator is provided concerning transfers, irrespective of the transfer amount. Consequently, no control by the competent authorities or sanction can be applied.

### 3.5.2 **Recommendations and Observations**

#### **Recommendation 10**

**452.** The provisions contained in Institution 01/2006, which provides for traceability of some operations for two years only and communication to certain competent authorities, do not comply with the FATF requirements. They should be modified and made consistent with the provisions set out in the Law.

#### **Special recommendation VII**

**453.** Except in cases of duplication of distinct operations for a single amount of less than CFAF5,000,000 (about €7,623), or when the legal origin of funds is not established, the Law exempts reporting entities from occasional customer due diligence identification for all cash transactions of less than CFAF5,000,000 and for all transactions in a different form regardless of the amount. The Instruction reduces the scope of this exemption that is recognised to liable people of the BCEAO only for transactions with occasional customers for amounts equal to or above CFAF5,000,000. Therefore, there is no provision requiring that the transfers equal to or above €1,000 give rise to obtaining comprehensive information on the originator in cross-border wire transfers, or in domestic transfers (notion that applies to the entire Franc Zone).

**454.** Senegal should adopt provisions to implement Recommendation VII, including for transfers between countries of the franc area.

### 3.5.3 **Compliance with Recommendation 10 and Special Recommendation VII**

	<b>Compliance assessments</b>	<b>Summary of the reasons justifying the compliance assessments</b>
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<b>R.10</b>	<b>LC</b>	<p>-The Law does not cover all the financial institutions bound by the FATF-defined reporting requirements.</p> <ul style="list-style-type: none"> <li>- two-year period for keeping information relating to loadings and shipments of electronic money units is not in conformity</li> <li>- provision of information relating to reloading and receipt of electronic money is possible only for some competent authorities</li> </ul>
<b>SR.VII</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>- absence of provision requiring that transfers equal to or above €1,000 give rise to obtaining comprehensive information on the originator</li> <li>- no obligation to include comprehensive information on the originator in cross-border transfers, or in domestic transfers (a notion that extends to the franc area)</li> <li>- no provision regulating non-routine transactions or prohibiting their batch processing when this can generate a risk of money laundering or terrorist financing</li> <li>- no providing requires intermediary financial institutions in the payment chain to keep all necessary information on the originator with the corresponding transfer</li> <li>- in the absence of restrictive information provision on the originator concerning transfers, no control by competent authorities or sanction can be applied.</li> </ul>

### **Unusual or suspicious transactions**

#### **3.6 - Monitoring transactions and business dealings (R.11 & 21)**

##### **3.6.1 Description and Analysis**

#### **Recommendation 11**

**455.** a) According to Article 10 of the Law, liable people must review:

- Any cash payment to the money bearer, made in normal conditions, whose unit or total amount is equal to or above CFA50,000,000 (about €76,225);

- Any transaction involving an amount equal to or above CFAF10,000,000 (about €15,245), made under complex unusual conditions and/or which does not seem to have economic justification or lawful purpose.

**456.** In the cases mentioned above, liable people are required to enquire from the customer and/or by any other means, about the source and destination of the sums of money involved, as well as on the purpose of the transaction and the identity of the people involved, in accordance with the provisions of the Law on customer identification. The main features of the transaction, the identity of the originator and beneficiary, where appropriate, that of the agents of the transaction are put in a confidential record in order to make reconciliations, if necessary.

**457.** The writing of Article 12 of the Instruction modifies the provisions above specifying that the transactions to be reviewed are:

- Any payment in cash or title to a money bearer, made under normal conditions, whose unit or total amount is equal to or above CFAF50,000,000,
- Any “significant” transaction involving an amount that is equal to or above CFAF10,000,000 and which, without falling within the application scope of Article

26 on declaration obligations, is made under unusual, complex conditions and/or which does not seem to have an economic justification or lawful purpose. All in all, the amount is not the only criterion for a transaction to be the subject of a special review, whereas the Law requires the review of any operation in excess of CFAF10,000,000.

**458.** The Instruction – which applies only to part of liable people – therefore modifies the terms of the Law by restricting the cases where a special review must be done. However, it is not fair that a lower standard could amend the Law, which can however pose difficulties for the smooth implementation of the Law since those subject to the Instruction would implement a legislative provision. In addition, disputes may arise in the event of sanctions by supervisory authorities implementing the Instruction.

**459.** b) Liable people or some of them must also pay special attention to some transactions. Article 14 of the Law provides that manual change operators must, like banks, pay greater attention to the transactions for which no regulatory limit is imposed and which could be made for money laundering purposes since their amount reaches CFAF5,000,000 (about €7,623).

**460.** Article 7 of the Instruction also states that its liable people must provide for a framework for the analysis of transactions and the customer's profile, making it possible to trace and monitor atypical financial movements and transactions and list some cases of atypical transactions.

**461.** However, neither the Law nor the Instruction contents itself with asking for due diligence to liable people without requiring them a special review, provision of information on the source and destination of the funds, on the purpose of the transaction and identity of the people involved. They do not ask for the writing, on the confidential record, of the main features of the transaction, the identity of the originator a beneficiary, where appropriate, that of agents of the transaction.

**462.** Article 11 of the Law requires the retention of record-keeping concerning customers and transactions for 10 years as from the end of the financial year in which the transactions were conducted.

**463.** Article 12 of the Law also requires liable people to communicate, at their request, to judicial authorities, officials in charge of detecting and suppressing money laundering-related offences, acting as part of a judicial mandate, to supervisory authorities as well as CENTIF, the documents relating to the obligations contained in Article 10 of the Law.

**464.** **11.1\*:** The Law does not require liable people to pay a special attention to all complex transactions, of an abnormally high amount, or all unusual types of transactions, when they have no apparent lawful purpose.

**465.** The obligations pertaining to the Law are based on an amount set by the Law, while the FATF recommends a special review when transactions present an anomaly compared to a business relation or are disproportionately high and inconsistent with the balance of account. Indeed, cash payment to the bearer of a sum of money whose unit or total amount is equal to or above CFAF50,000,000 might require a particular review. The same is true of any transaction involving an amount less than CFAF10,000,000 made under complex unusual conditions and/or seeming not to have economic justification or lawful purpose.

**466.** **11.2\*, 11.3\*:** The Law and Instruction provides for the obligation to study the context and purpose of the aforementioned transactions and put the results of these reviews

in writing. The Law requires that the results of these reviews be put at the disposal of competent authorities for a 10-year period. However, nothing in the Law or Instruction provides the possibility for auditors to have access to the result of these reviews.

**467.** Assessors were told that Circular No. 11-2001/CB of 9 January 2001 specifies the mission entrusted to auditors and requires that they appreciate the organisation and functioning of social organs, the exercise of internal control, risk management and compliance with prudential regulations. In addition, the auditors are compelled to report to the banking commission of any violation of the legal and regulatory provisions they would have noted. However, assessors did not know whether auditors had already reported to the banking commission any breach of anti-money laundering regulations.

### **Recommendation 21**

**468.** The Instruction provides (article 10) the need for its liable people to pay special attention to transactions with countries, territories and/or courts declared by the FATF as non-cooperative. It also requires that the list of these countries/territories and courts be regularly updated and declared to the personnel at the forefront of anti-money laundering within the financial institution.

**469.** It also requires (article 7) that the financial institutions have a system of analysis of transactions and the profile of customers, to track and monitor atypical financial movements and transactions including transactions made with **counterparts** located in countries, territories and/or courts declared by FATF as non-cooperative.

**470. 21.1 and 21.1.1\*:** The Law includes no provision asking financial institutions to pay special attention to their business dealings and their transactions with individuals and legal persons, particularly companies and financial institutions located in countries that do not implement FATF Recommendations. As for the Instruction, it includes provisions which only apply to its liable people. In addition, countries and territories to monitor are those “declared” by FATF as non-cooperative and not those which the financial institutions themselves have identified as having weaknesses in the light of the FATF Recommendations. In the absence of countries and territories included in the PTNC, this provision – that pertains to a very recent law and unknown to liable people as the assessors noted during the interviews – is not subjected to any practical application.

**471. 21.2:** The Instruction, which requires its liable people to pay special attention to transactions made with counterparts located in NCCTs, does not provide, if these transactions have no apparent economic or lawful purpose, that liable people examine the background and purpose of such transactions and maintain the written results of this review and put it at the disposal of competent authorities and auditors. On the other hand, the subject institutions must “trace and monitor the atypical movements and transactions” (see Article 7 of the Instruction) and keep for 10 years documents relating to transactions (see Article 11 of the Law).

**472. 21.3:** There is no legislative, regulatory or any other restrictive provision in Senegal envisaging to implement countermeasures in a country that fails to implement the FATF Recommendations.

### 3.6.2 **Recommendations and Observations**

#### **Recommendation 11**

**473.** The Law and the Instruction contain provisions compelling liable people to make special review for some transactions, according to the account set by the Law. The Instruction changes the conditions of the review requiring that it takes place when the amounts are reached and that transactions are made under unusual complex conditions and/or not seeming to have economic justification and lawful purpose.

**474.** Senegal should ensure that the provisions contained in the Law and Instruction are compatible.

**475.** In addition, the Laws should not set amount out of hand, because the amount of the operation or the transaction depending on the context should draw attention.

#### **Recommendation 21**

**476.** The Senegalese legislation should ask financial institutions to pay special attention to their business dealings and their transactions with persons or entities, particularly companies and financial institutions located in the countries which do not or insufficiently implement the FATF Recommendations.

**477.** It should also enable Senegal to implement countermeasures to countries which do not implement the FATF Recommendations.

**478.** In addition, it does not emerge from the interviews given by assessors that the people liable to the Law are not advised of concerns about weaknesses in the AML/CFT systems of other countries. Few of them even have internal rules assessing risks associated with countries that fail to comply with the FATF Recommendations.

### 3.6.3 **Compliance with Recommendations 11 & 21**

	<b>Compliance assessments</b>	<b>Summary of reasons for compliance assessments</b>
<b>R.11</b>	<b>LC</b>	-The Instruction restricts the review cases provided for by the Law when a minor standard that only concerns part of the reporting entities is at stake. - the amounts should not be set out of hand
<b>R.21</b>	<b>NC</b>	- no obligation for the financial institutions other than those subject to the Instruction to pay special attention to their business dealings and their transactions with persons or entities, particularly companies and financial institutions, located in countries that do not implement the FATF Recommendations, - insufficient provisions of the Instruction that limits due diligence to transactions and operations with PTNC - absence of law allowing Senegal to implement countermeasures for countries that do not comply with the FATF Recommendations

### 3.7.1 Description and Analysis

#### **Recommendation 13 and Special Recommendation IV**

**479. 1- Obligation to report on suspicious transactions:** The Law requires, in its articles 5 and 26, any person who, while on duty, makes, monitors or advises transactions involving deposits, exchanges, investments, conversions or any other capital movements or any other property, to make a suspicious report to the **National Financial Intelligence Processing Unit (CENTIF)**, under conditions it sets and according to a reporting format set by decree of the Minister of Finance, when:

- the money and other assets that are in their possession could come from money laundering;
- the asset-related transactions could be part of a money laundering process;
- the money and other assets that are in their possession, suspected of being intended for the financing of terrorism, seem to come from money laundering-related transactions.

**480.** The scope of the money laundering-related offence provided for by the provisions of the Law, application in Senegalese law is broad. However, it does not cover the list of designated categories of offences as defined in the Forty Recommendations of the FATF. Indeed, in the context of declaration of suspicion, the provisions of the Law do not apply to criminal operation-related products. The Instruction of the BCEAO partly completes this Law by providing in its article 11, the obligation to declare money that might come from drug trafficking or organized criminal activities. But these provisions only apply to financial institutions within the competence of the BCEAO regulatory powers. In addition, with regard to the FATF, the Instruction does not appear to be like a legislative or statutory instrument that imposes obligations with effective, proportionate and dissuasive sanctions unless they are enforced.

**481.** The Law also recommends for individuals and legal persons concerned, a special monitoring of any cash payment to the bearer of a sum of money made under normal conditions whose unit or total amount equals or exceeds 50,000,000 FCFA.

**482.** It is also about any transaction on an amount that equals or exceeds CFAF10,000,000 made under unusual complex conditions and/or appearing not to have an economic justification or lawful purpose

**483.** In case the customer does not act on his own account, the provisions of article 9 of the same Law provide that the financial institution enquires by all means about the identity of the person on behalf of whom he acts.

**484.** If doubt persists about the identity of the beneficial owner, the financial institution must make a suspicious transaction reporting to the CENTIF.

**485.** This is a system based on the subjective appreciation of financial institutions and not an automatic system **of suspicious transaction reporting** on the basis of objective criteria.

**486.** Officials of the above-mentioned people are compelled to immediately brief their managers on these same transactions as soon as they are aware of them.

**487.** Individuals and legal persons mentioned above are required to report to the CENTIF the transactions made, even if it was impossible to defer their implementation or if it appeared after the completion of the transaction, that this involved suspicious money and other assets.

**488.** No declaration made to an authority, in accordance with an instruction other than the Law, can have the effect of exempting individuals and legal persons, **from making suspicious transactions reporting** to the CENTIF.

**489.** Article 27 of the same Law also provides that reports on suspicious transactions must be sent by the affected people, by any means leaving **written form**. The statements made by telephone or through electronic means must be confirmed in writing in a 48-hour deadline. These statements indicate, according to the case, the reasons for which the transaction has already been performed or the time within which the suspicious transaction should be made.

**490.** With regard to provisions on electronic money, the BCEAO Instruction No. 01/2006/SP of 31 July 2006 also provides in its article 7, the obligation for **transmitters or issuers of electronic cash**, to report detected suspicious transactions and which may be of relevance to anti-money laundering.

## ***2.- Terrorist financing:***

**491.** The Law, in its article 26, provides for persons or entities and legal persons concerned, the obligation to report suspicions of money and other assets seeming to stem from money-laundering transactions and suspected of being intended for the financing of terrorism.

**492.** This obligation explicitly applies in the same way to suspected money laundering and terrorist financing. However, Senegal has no legislative instrument relating to the fight against terrorist financing, in accordance with the provisions of the International Convention for the Suppression of the Financing of Terrorism.

**493.** Thus, the financial institutions visited (Banks, Financial Institutions, Posts, Insurance and Reinsurance Companies, BRVM, Authorized Manual change Operators) have told the Mission that they made no suspicious transactions reporting to the CENTIF as part of the financing of terrorism. This information was confirmed at the CENTIF.

**494.** In the light of these considerations, the criterion on suspicious reporting relating to terrorism is not covered in Senegal.

## ***3.- Suspicion transactions reporting concerning operation with no specified amount:***

**495.** Article 3 of the Law provides money laundering offences, more particularly understanding, association, attempt, aid, inciting to commit the offence. However, article 26 of the same Act, concerning the obligation to report on suspicious transactions, in its current formulation, does not explicitly mention the obligation to report when the relation does not come off. In this case, the intermediary could give up establishing a business dealing that would lead him further and report **on suspicious transactions**.

## ***4.- Reporting of problems related to tax matters:***

**496.** The characterisation of the crime of money laundering offence covers a very broad field of underlying offences. Thus, the Criminal Code and specific repressive laws

incriminate and sanction tax fraud. However, this is not explicitly included in the field of offences that would generate a suspicious transaction report.

**497.** 5.- The provisions of article 26 of the Law allow financial institutions to report to the FIU when they suspect or have reasonable grounds to suspect that the funds are the product of criminal acts, constituting in the country a money laundering offence.

**498.** At the level of Banks: Banks visited noted that they were sensitised on the money laundering offences and that they report to the CENTIF when they suspect or have reasonable grounds to suspect that the funds are the product of criminal acts, constituting in the country a money laundering offence.

**499.** Unusual transactions are also subject to declaration of suspicion at the CENTIF.

**500.** In terms of other financial institutions (Post Office, Insurance and Reinsurance Companies...), no STR was made to the CENTIF as part of money laundering and terrorist financing.

**501.** On this point, sensitisation and training efforts are necessary to clarify their anti-money laundering and terrorist financing obligations.

#### ***RS IV***

**502.** Article 26 of the Law provides for financial institutions, the obligation to report suspicious money all other assets seeming to have stemmed from money laundering transactions or suspected of being intended for terrorist financing.

**503.** However, the provision of the Law seems to make the reporting of suspicious terrorist financing transactions dependent on the existence of money laundering offence. This restriction should be lifted. In addition, the Law does not require the reporting of funds related to terrorist acts, terrorist organisations or those who finance it.

**504.** The obligation to report on suspicious transactions broadly covers a wide range of offences, that is to say crimes, including terrorist financing.

**505.** In addition to the uniform law, article 10 of Directive No. 4/2007/CM/WAEMU adopted on 4 July 2007 extends the missions of the CENTIF to the collection of information relating to the financing of terrorism. Thus, natural and legal persons should immediately report suspicious transactions to the CENTIF, when they suspect or have reasonable grounds to suspect that funds are linked, associated or intended to be used for terrorist financing and/or terrorist acts purposes.

**506.** However, it is to be noted that the Directive has not yet been transposed into the Senegalese legislation.

**507.** Finally, financial institutions have so far made no report of suspicious transactions to the CENTIF in connection with the financing of terrorism. They stated that they are not very much exposed to the risk of being used for terrorist financing.

#### **Recommendation 14 – Protective measures for Suspicious Transactions Report (STR)**

**508.** 1. Financial institutions, their managers and employees are well protected by the Law against any action likely to call into question their responsibility for any Suspicious transaction reporting made in good faith.

**509.** In fact, article 30 of the Law, relating to “exemption from liability for reporting of suspicious transactions made in good faith”, stipulates, “People and managers referred to in article 7 and who, in good faith, sent information or made any declaration in accordance with the provisions of the present act, shall be immune from any sanctions for breach of professional secrecy.

**510.** No action in civil or criminal liability can be instituted, or any professional sanction pronounced against people or managers referred to in article 5 of the Uniform Law, which acted in the same conditions as those laid down in the previous paragraph, even if court decisions rendered on the basis of statements referred to in that paragraph did not result in conviction.

**511.** In addition, no action in civil or criminal liability can be instituted against people referred to in the previous paragraph in view of the property or psychological damage that could result from the blocking of an operation pursuant to the provisions of article 28.

**512.** The provisions of the present article shall apply as of right, even if evidence of the criminal nature of the facts giving rise to the statement is not reported or if these facts have been amnestied or led to dismissal of a charge, discharge or acquittal.

### **2.- Prohibition to disclose information communicated to the CENTIF:**

**513.** The provisions of the Law (paragraph 4 of article 26) specify that the **STR** are confidential and they cannot be communicated to the owners of the money or the author of the transactions.

**514.** These provisions prohibit persons or managers referred to in article 5 of the Law, to warn the customers when information concerning them is reported to the CENTIF as part of the suspicious transactions reporting.

Any violation of these provisions result in sanctions provided for by articles 35 and 40 of the Law.

On this aspect, the provisions of the Uniform Law seems to be more restrictive than the condition posed by the FATF criterion that simply refers to a statement made “in good faith”, even if the illegal activity which has been the subject of the suspicion was not really produced.

**515.** In addition, article 35 of the Law requires supervisory authorities with a discretionary power to inform the CENTIF, particularly for failing to report suspicious transactions to the FIU.

### **3.- Additional elements :**

**516.** The question of the confidentiality of names and personal information of financial institutions agents that carry out a STR, is addressed in article 29 of the Uniform Act. Indeed, article 29 stipulates: “When the transactions highlight facts likely to constitute money laundering offence, the CENTIF sends a report on these facts to the state prosecutor, who immediately seize the examining magistrate. This report is accompanied by all relevant documents, except for suspicious transaction reporting. The identity of the reporting officer should not be included in the report that is authentic until proven otherwise”.

### **Recommendation 19 – Data centralisation:**

**517.** The Authorities have not assessed the feasibility and utility of a system whereby financial institutions, in particular, should report all cash transactions in excess of a set amount to a national central agency having a computerized database that can be accessed by relevant bodies in terms of LBC/FT. The Senegalese officials have no plans to implement a system whereby reporting entities should systematically report to a central national agency having a computerised database, all cash transactions according to a fixed threshold, in connection with money laundering and terrorist financing.

## **Recommendation 25-2**

### ***2. Feedback to financial institutions***

**518.** General feedback: The CENTIF draws up a widely distributed annual report that presents, in addition to the Activities of the period (reports of suspicious transactions received and processed, awareness and training activities carried out, etc), the listed money laundering typologies.

This report is copied to liable people.

Specific background or case-by-case basis:

**519.** With regard to the obligations of confidentiality of its members, the CENTIF limits itself to acknowledgement of receipt of suspicious transactions reporting. Thus, in addition to the annual report, the people liable to suspicious transactions reporting are not notified in return, following investigation.

**520.** The FATF guidelines on the “best practices to follow for the feedback to financial institutions and other reporting persons” are not taken into account.

## **Recommendation 32**

### ***1- Effectiveness of anti-money laundering and terrorist financing systems***

**521.** The measures to combat money laundering and the terrorist financing are not yet subject to regular assessment in terms of effectiveness, given the recent nature of the 2004-09 Uniform Act, according to the authorities met.

**522.** Based on its own risk analysis system, the BCEAO carries out on-site controls in credit institutions in order to verify compliance with banking regulations, their administrative and accounting procedures as well as the reliability of their operation. Emphasis is also laid on the quality of the internal control system and on the functioning of the internal audit services of the institution. The assessors have no information concerning the on-site control carried out as far as anti-money laundering is concerned.

### ***2. Statistics***

**523.** The chart below shows the distribution of the number of statements per year and per sector.

Reports of suspicious transactions received

**524.** The number of reports of suspicious transactions received at the CENTIF from 1 March 2005 to 31 July 2007 is as follows:

YEAR :REPORTING LIABLE PEOPLE	2005	2006	2007 (1-31 July)	CUMUL
BANKS	11	55	37	103
FINANCIAL ADMINISTRATIONS	00	05	02	007
TOTAL	11	60	39	110

The CENTIF recorded from 1 March 2005 to late July 2007, a total of 110 reports of suspicious transactions, shared out as follows:

- 11 during 2005 that marked the early stages of the CENTIF;
- 60 reports of suspicious transactions in 2006;
- 39 reports of suspicious transactions from 1 January to 31 July 2007.

**525.** It is to be noted that on the reports of suspicious transactions received by the CENTIF in 2006, about 92 percent come from the banking system.

**526.** The important increase of suspicious transactions reports in 2006 (60) could continue in 2007 as 39 STRs have already been received during the first semester of the year.

**527.** In addition, 208 requisitions were initiated by the CENTIF in 2006, including 30 sent to foreign CRF, in order to collect additional information for the processing and enrichment of files. In 2005, 33 requisitions were made.

**528.** On a total of 22 files examined in 2006:

- ✓ Eight have been sent to judicial authorities, compared with three in 2005;
- ✓ Two have been the subject of further enquiry;
- ✓ Twelve have been classified.

### **Recommendations and Observations**

### **R.13**

**529.** The scope of the money laundering offence under the provisions of the Law, applicable in Senegalese law does not cover the list of designated categories of offences as defined in the Forty Recommendations of the FATF. Indeed, the Law only provides for the obligation to report suspicious transactions for money laundering-related operations. Products related to criminal operations have not been affected. However, the BCEAO Instruction partly completes this Law by providing in its article 11, the obligation to report on money that could come from drug trafficking and organized crime. But these provisions only apply to financial institutions under the regulatory powers of the BCEAO. Finally, with regard to the FATF, the Instruction does not appear to be like a legislative or regulatory instrument that imposes obligations with effective, proportionate and dissuasive sanctions unless they are respected.

**530.** The authorities should indicate in the Law that attempted transactions must be reported regardless of the amount of the transaction.

**531.** Despite the growing number of STR, concentrated on the banking sector, there is still a real problem of lack of perception of risks of money laundering and terrorist financing in other professions.

**532.** As a general rule, the system of reporting suspicious transactions does not seem to be effective in Senegal.

**533.** It is important that the Senegalese authorities continue information programmes towards all subject structures to ensure effective implementation of the obligation to report suspicious transactions.

**534.** For all these reasons, the appreciation of compliance with the system to report suspicious transactions is partial.

### **Recommendation 14**

**535.** Senegal has adopted appropriate measures in line with Recommendation 14. It is essential for the effectiveness of the preventive system, in practice, that Senegalese authorities take all the necessary measures to guarantee the confidentiality of names and information of people who report to the CENTIF.

### **Recommendation 19**

**536.** In a bid to enable Senegalese authorities to comply with this recommendation, the concerned authorities should consider the setting-up of a centralised computerised system whereby liable people must systematically report all cash transactions related to money laundering and terrorist financing according to a fixed threshold. The CENTIF would be the central national agency.

### **R.25-2**

**537.** Through its annual reports (statistics, typologies), seminars and training sessions, the CENTIF provides correct feedback.

**538.** In terms of specific feedback, the Financial Institutions have reported to the evaluation team the difficulty in obtaining specific feedback in a systematic manner.

**539.** Concerning to the feedback to liable people, the CENTIF only sends the acknowledgement of receipt mentioned above as well as the annual report containing

elements relating to statistics of received and processes statements as well as the money laundering typology as mentioned below.

**540.** This practice seems to be inadequate and does not comply with article 29 of the Law that stipulates that “the CENTIF will notify, at the proper time, the people liable to reports of suspicious transactions, of the findings of its investigations”. It does not take into account the best practices recommended by the FATF.

**SR. IV**

**541.** The drafting of the Law subordinates the report of suspicious transactions related to terrorist financing to the existence of an underlying money laundering offence. This restriction should be lifted. In addition, the Law does not require the reporting of funds related to the financing of terrorist acts, terrorist organizations or those who finance them.

**542.** The system of reporting of suspicious operations related to terrorist financing poses very serious problems of effectiveness.

**543.** The Senegalese authorities should take the necessary steps in order to transpose as soon as possible the WAEMU Directive relating to the fight against terrorist financing into the internal legal layout.

**Recommendation. 32**

**544.** A system assessment mechanism is to be implemented and measures should be taken to improve the rate of reports of suspicious transactions coming from liable people other than banks.

Compliance with Recommendations 13, 14, 19 and 25 (c.25.2) et RS IV

<b>R.13</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• The Law does not cover all the financial institutions bound by the reporting obligation as defined by FATF requirements.</li> <li>• The scope of the money laundering offence under the provisions of the Law does not cover the list of the designated categories of offences as defined in the Forty Recommendations of the FATF</li> <li>• The Law does not provide for the obligation to report suspicious transactions on funds from “a criminal activity”. In this instance, the Law only refers to money laundering and not the underlying offences</li> <li>• The Law does not explicitly provide an obligation to make reports of suspicious transactions in the case terrorist financing</li> <li>• The Law does not expressly require financial institutions to report any attempted operations, whatever the amount</li> </ul> <p>The system for reporting suspicious transactions poses very serious problems of effectiveness.</p>
<b>R.14</b>	<b>C</b>	<ul style="list-style-type: none"> <li>• Recommendation is fully respected</li> </ul>
<b>R.19</b>	<b>NC</b>	The Authorities have not assessed the feasibility and utility of a system whereby financial institutions, in particular, should report all cash transactions in excess of a set amount to a national central agency having a computerized database that can be accessed by relevant bodies in terms of LBC/FT.
<b>R.25</b>	<b>PC</b>	The competent authorities have not established guidelines in the area of Business and Financial Names No Trades, in the form

		<p>of assistance on issues covered by FATF corresponding recommendations</p> <ul style="list-style-type: none"> <li>• The CENTIF does not provide specific feedback or case-by-case basis, to the reporting entities, as recommended by FATF.</li> </ul>
<b>SR.IV</b>	<b>NC</b>	<p>The drafting of the Law subordinates the reporting of suspicious transactions related to terrorist financing to the existence of an underlying money laundering offence</p> <ul style="list-style-type: none"> <li>• The Law does not require the reporting of funds linked to the financing of terrorist acts, terrorist organizations or those who finance them.</li> <li>• Senegal does not have a law on the fight against terrorist financing in conformity with the Convention for the Suppression of Financing of Terrorism.</li> </ul>
<b>R.32</b>	<b>PC</b>	<p>Implementation of the obligation to report on suspicious transactions is not satisfactorily ensured. Indeed, the statistics available on the STR are not sufficient to assess the effectiveness of the STR mechanism</p>

### **3.8.- Internal controls, compliance and branches abroad (R.15 & 22)**

#### **3.8.1 Description and Analysis**

#### **Recommendation 15**

#### ***545. 1. Implementation and maintenance of political procedures and preventive internal control measures ML/FT :***

The Law stipulates in article 13 that “Financial organisations are required to implement harmonised programmes to prevent money laundering.

#### **546. These programmes include:**

- Designing internal officials in charge of implementing anti-money laundering programmes;
- Centralizing information on the identity of customers, originators, agents, beneficial owners;
- Handling suspicious transactions
- Staff training;
- Establishing an internal control mechanism of the implementation and effectiveness of the measures adopted under this act.

**547.** Supervisory Authorities can, in their respective spheres of competence, if necessary, specifies the content and modalities for implementation of programmes for the prevention of money laundering. They will carry out, as appropriate, on-site investigations to ensure the proper implementation of these programmes.

## **2. Implementation of an independent, richly endowed internal control mechanism**

**548.** The BCEAO Instruction No. 01/2007/RB of 2 July 2007 on combating money laundering within the financial organisations includes the recommendations of the supervisory authority in terms of internal control and audit.

**549.** The internal programme on the fight against money laundering must be submitted to the jurisdiction and investigation of an independent structure or body of the one responsible for its implementation. This structure or body is required to report periodically on its control to the legislative body.

**550.** The two (2) banks visited have confirmed the establishment of an independent internal control mechanism to ensure compliance with procedures, policies and control measures. However, the lack of information on the adequacy of resources made it impossible to appreciate the effectiveness of the measures adopted.

**551.** The representative of the authorized manual change operators has argued that manual foreign exchange transactions are carried out in accordance with Regulation R09/98/CM/WAEMU of 20 December 1998, on the Foreign Financial Relations of WAEMU Member States. Therefore, since the risk of money laundering is considered low and because of limited resources at their disposal, bureaux de change have not yet put in place appropriate mechanisms to combat money laundering, provided for by the Law.

**552.** At the level of the insurance sector, internal standards and procedures for customer identification and record-keeping exist, but these provisions have not been specifically designed as part of anti-money laundering. Following the talks, managers of the insurance companies encountered expressed to the Mission team the awareness of their role in the fight against money laundering and terrorist financing. To this end, a project for the development of the mechanism is planned in order to efficiently combat these plagues.

### **553. 3- Continuous training of employees on AML/CFT methods**

Pursuant to article 14 of Instruction No. 01/2007/RB of 2 July 2007, financial organizations should implement an information and specific training policy of all the staff in charge of transactions likely to be used in money laundering networks, including all categories of staff in contact with customers.

**554.** In this respect, one of the banks visited indicated that internal information sessions were held to ensure that the employees kept abreast of new developments, including information on techniques, methods and trends in money laundering and terrorist financing; and that they receive clear explanations on all aspects of laws and obligations to combat money laundering and terrorist financing, particularly customer due diligence obligations.

**555.** In addition, CENTIF has an anti-money laundering training centre, put at the disposal of agents in charge of the fight against money laundering.

**556.** According to CENTIF 2006 report of activities, the agents trained during the year under review are estimated at 103 and are as follows:

- 72 participants from banks and financial institutions;

- 13 participants from micro-finance institutions;

- 18 agents from the National Post Company.

These figures show a wide disparity in attendance at the Centre for trainees from the banking sector.

The regular attendance in the training sessions organized by CENTIF should enable beneficiaries to recognise transactions and facts that may be linked to money laundering and terrorist financing.

#### **4. Recruitment procedures for employees according to demanding criteria**

**557.** The Laws do not provide an explicit obligation for Financial Institutions to implement the appropriate procedures when hiring employees, to ensure that they are carried out according to demanding strict criteria.

#### **Additional elements – Independence of the official in charge of control**

**558.** In the visited structures where the control measures exist, particularly at the banking system, officials said they are able to act independently and directly report to senior management.

#### **Recommendation 22**

##### **1. Implementation of LBA/FT measures at foreign-based branches and subsidiaries:**

**559.** Some provisions of the Uniform Law address this issue indirectly.

**560.** In pursuance of the provisions of article 7, the Law specifies that, in the event of foreign financial transactions, financial institutions carry out the identification of individuals, in accordance with the principles set out in the Annex to this act.

**561.** Indeed, the provisions a) and b) of paragraph 6 of the Annex to the Law, deal with the identification conditions required when the counterparty is located or not in the Union and also when identification obligations are not equivalent.

**562.** When the counterparty is located in the Union, customer identification by the financial institution is not required, in accordance with article 9, paragraph 4 of the Uniform Law on combating money laundering in WAEMU member states.

**563.** When the counterparty is located outside the Union, the financial institution must verify his identity by consulting a reliable financial directory. In case of doubt, the financial institution must seek confirmation of the identity of its counterparty with the supervisory authorities of the third country. The financial institution is also required to take “reasonable measures” in order to obtain information on its counterparty’s customer, the beneficial owner of the transaction, in accordance with article 9, paragraph 1 of the Uniform Law. These “reasonable measures” may be limited, when the country of the counterparty implements equivalent identification obligations, to requesting the customer’s name and address, but when these obligations are not equivalent, they may require the counterparty a certificate confirming that the customer’s identity has been properly verified and registered.

**564.** Under the provisions of article 9 of the Uniform Act, in case the customer did not act on his own account, the financial institution enquires by all means about the identity of the person on the account of whom he acts.

**565.** Pursuant to the last paragraph of that article, financial institutions are not subject to the identification obligations provided for, when the customer is a financial institution subject to the Law.

**566.** One of the banks visited confirmed that in the relations with branches and subsidiaries abroad, the same due diligence measures are observed, in accordance with the obligations provided for in their countries of origin and with the FATF Recommendations.

**567.** Ultimately, even if the provisions of the Uniform Law are not clearly defined with regard to the application of this criterion, the aforementioned articles oblige financial institutions to implement the rules implicitly.

**2. Information of supervisory authorities**

**568.** The Law does not establish any obligation for financial institutions to inform supervisory authorities of their country of origin when a foreign branch or subsidiary is unable to comply with the appropriate LAB/CFT measures, because it is prohibited by the Laws and regulations or other local measures (ie the host country).

**569.** On the other hand, article 10 of the Law recommends continued due diligence towards non-cooperative countries and territories as well as people affected by **fund freezing measures**.

**570.** In practice, the implementation of these provisions is not effective.

**3. Additional elements**

**571.** The Financial Institutions subject to the Fundamental Principles should be required to implement customer due diligence measures, which are consistent at the group level, taking into account the transactions conducted by the customer in the various branches and subsidiaries mostly controlled worldwide.

**572.** No provision has been made on that matter. Nevertheless, the banks visited urged the Assessment Mission to ensure that the branches and companies of their group that carry out a financial activity in WAEMU non-member countries comply with the FATF Recommendations.

**Recommendations and comments**

**573.** The setting-up of an effective internal control mechanism as part of the fight against money laundering and terrorist financing involving the continuous training of employees, recruitment measures, the independence of the internal control official, should apply to all Financial Institutions.

**574.** The Law should formally extend to the branches and subsidiaries located abroad the implementation of all the obligations of financial institutions relating to AML/TF in force in Senegal, in accordance with the FATF requirements

**Compliance with Recommendations 15 & 22 of FATF**

<b>R.15</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• The Law does not cover all the financial institutions to be bound by the FATF reporting requirements</li> <li>• The obligation for financial institutions to adopt a</li> </ul>
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		<p>harmonised programme to combat money laundering is not effectively implemented by all financial institutions.</p> <ul style="list-style-type: none"> <li>• The Financial Institutions have not implemented an ongoing training programme of their employees as part of the fight against money laundering in order to keep them abreast of the new developments, including information on techniques, methods and trends of money laundering and terrorist financing.</li> </ul>
<b>R22</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• Lack of legal provisions governing the foreign-based branches and subsidiaries (22.2) and (22.3).</li> </ul>

### **3..9.- Shell banks (R.18)**

#### **- Description and Analysis**

#### **Recommendation 18**

##### **18.1- Shell banks:**

**575.** There is no special rule regarding shell banks in the anti-money laundering Uniform Act. The criteria relating to shell banks can be implemented in the Law on banking regulations.

**576.** Indeed, article 7 of the Law 90-06 of 26 June 1990 on banking regulations known as “Banking Law”, stipulates that “no person shall, without first being approved and registered on the list of banks, exercise the Lawivity defined in article 3, or take advantage of the status of bank or banker, or create the appearance of this quality, particularly by the use of terms such as bank, banker, in his name or corporate name, his business name, his advert or in any way in his activity.

None can, without first being approved and registered on the list of financial institutions, exercise one of the Activities defined in article 4, or take advantage of the status of financial institution, or create the appearance of this status, particularly by the use of terms mentioning one of the Activities provided for in article 4, in his name or corporate name, business name, advert or in any way in his activity.

**577.** In addition, under article 66 of the banking law, “any person or entity, except for banks and financial institutions, who professes, as principal or accessory activity, to bring business to banks and financial institutions or operate on their behalf, cannot be engaged in his activity without first obtaining the permission of the Minister of Finance. The application for leave is introduced by the Central Bank. The permission specifies the name that can be used by that person notwithstanding article 7, as well as the information it must provide to the Central Bank and their periodicity. Any suspension of activities is first notified to the Minister of Finance and the Central Bank”.

**578.** The same provision of the Law specifies that any person, who, acting on his account or on behalf of a third party, has infringed the provisions of the present article, shall be fined one million to 10 million FCFA.

In the event of a second offence, he will be sentenced to two months to two years’ imprisonment and fined CFAF2 million to CFAF20 million. Finally, article 67 prohibits any person or entity other than a bank to solicit or accept deposits of funds from the public whatever the time limit.

## **2 - Correspondence banking relationships with shell banks:**

**579.** There is no special rule relating to correspondence banking relationships with shell banks.

### **3 – Use of accounts by shell banks:**

**580.** No special rule obliges financial institutions to ensure that the Financial Institutions that are part of their customers abroad allow shell banks to use their accounts.

### **Recommendations and Observations**

**581.** The provisions of the banking law set strict conditions for market access accompanied with criminal sanctions. However, this law does not expressly prohibit shell banks.

**582.** Furthermore, there is no legal provision prohibiting financial institutions to establish correspondence banking relationships with shell banks.

**583.** Finally, the Law includes no provisions asking financial institutions to ensure that the financial institutions that are part of their customers abroad do not allow shell banks to use their accounts.

**584.** The ban on shell banks by the Law should be expressly stated.

**585.** In addition, it would be useful to forbid the financial institutions from establishing correspondence banking relationships with shell banks and ensure that financial institutions that are part of their customers abroad do not allow shell banks to use their accounts

### **Compliance with Recommendation 18.**

<b>R.18</b>	<b>NC</b>	<p>-Despite the rigour of the established system concerning notably official market entry conditions, shell banks are not explicitly prohibited by the current Senegalese legal provisions</p> <p>-There is no legal provision prohibiting correspondent banking relationships with shell banks.</p> <p>- The Law includes no provision requiring financial institutions to ensure that the Financial Institutions that are part of their customers abroad do not allow shell banks to use their accounts.</p>
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### **3.10 - Monitoring and control system – Competent authorities and self-regulation organisations - Role, functions, obligations and powers including sanctions) (R.23, 30, 29, 17, 32 et 25 25, 29, 30 & 32)**

### **Recommendation 23- Supervisory authorities, roles and functions**

**586.** In Senegal, like other WAEMU countries, financial institutions are subject to regulation and surveillance in the field of AML/CFT.

**587.** Indeed, the Law sets to Financial Institutions the following obligations:

- ✓ compliance with foreign exchange regulations;
- ✓ identification of their usual and occasional customers;
- ✓ record-keeping of the transactions conducted;
- ✓ implementation of internal prevention measures to better detect money laundering transactions;
- ✓ report of suspicious transactions to CENTIF .

**588.** Under the Law, are designated as Financial Institutions:

- ✓ Banks and Financial Institutions;
- ✓ Postal Financial Services;
- ✓ General Deposit Office or institutions in lieu thereof;
- ✓ Insurance and Reinsurance Companies, Insurance and Reinsurance Brokers;
- ✓ Mutual Institutions or Credit Unions as well as structures or unincorporated Organisations in the mutual or cooperative form for the collection of savings and/or credit granting;
- ✓ Regional Stock Exchange;
- ✓ Central Agent/Settlement Bank;
- ✓ Asset Management and intermediation Firms;
- ✓ Asset Management Firms;
- ✓ OPCVM ;
- ✓ Fixed-capital investment Companies;
- ✓ Authorized manual change operators.

**589.** It is to be noted that financial institutions covered by the Law do not represent all financial institutions within the meaning of the FATF. In other words, all financial institutions and/or some transactions are not subject to the AMT/FT obligations (see analysis of Recommendation 5 above).

**590.** In a bid to ensure the implementation by financial institutions of their AML obligations, the Law has designated as competent control organs, supervisory authorities whose role is to ensure the implementation of laws and regulations applicable to them. Indeed, article 35 stipulates “When, following either a serious lack of due diligence, or shortcomings in the organisation of internal control procedures, a person referred to in article 5 disregarded the obligations under Title II and articles 26 and 27 of this act, the supervisory authority with disciplinary power can act without consultation in the conditions set by the specific laws and regulations in force. It also notifies CENTIF as well as the state prosecutor”.

**591.** This approach could be described as repressive because it bases the intervention of supervisory authorities on the sanction, once the offence is consumed by liable people. Therefore, it does not include the idea of intervention of these authorities as a preventive measure in order to avoid the reprehensible breach commission.

**592.** This specific empowerment, generally given by the Law to supervisory authorities in the field of AMT adds to the one given to each of these authorities according to the sector controlled.

**593.** Indeed, there are rules subjecting each category of financial institution to the obligation to control and monitor a supervisory authority in order to verify compliance with all the regulations applicable to its jurisdiction. But these rules do not include monitoring obligation in terms of AMT.

594. Per sector, the designated supervisory authorities are the following:

- Banking Commission of WAMU, BCEAO and Ministry of Finance for Banks and financial institutions;
- National Audit Office for the National Post Company and *Caisse des Dépôts et Consignations*;
- Regional Insurance Supervision Council (CRCA) and Ministry of Finance (Department of Insurance Control (DCA) for Insurance and Reinsurance Companies, the Insurance and Reinsurance Brokers;
- Ministry of Finance (AT/CPEC Cell), BCEAO and Banking Commission for Mutual Institutions or Credit Unions, as well as structures or organisations unincorporated form mutual or cooperative for the purpose of collecting savings and/or the granting of credit;
- Regional Council for Public Savings and Financial Markets (CREPMF) for agents of the regional financial market;
- Ministry of Finance (Directorate of Currency, Credit and Savings) and BCEAO for Authorized manual change operators.

595. The main roles and functions assigned to supervisory authorities are described below.

\*WAMU BANKING COMMISSION

596. The Banking Commission of WAMU does not have Legal Personality. It was set up by an international Convention signed on 24 April 1990 by member states of the Union.

597. Under article 1 of the Convention, the Banking Commission is in charge of the organisation and supervision of **banks and financial institutions located in each of the Union's member states**. It ensures a uniform **supervision of the banking business** and an integration of the banking space in order to:

- preserve the smooth running of the financial system;
- allow the savings financing;
- promote the mobilisation of domestic savings and the influx of foreign capital;
- strengthen the currency community.

598. The approval of a bank or a financial institution on the territory of a member state of the Union is subject to the assent of the Commission. By assent, it must be understood that a credit institution cannot receive approval against the opinion of the Commission.

599. The Commission enacts «Circulars», in order to specify the conditions for the exercise of the function of auditor or organisation of the internal control function within credit institutions. None of the circulars in force addresses issues relating to the AMT.

600. The Banking Commission is also authorized to monitor the financial bodies of **Mutualist Institutions or Savings and Credit Cooperatives (IMCEC)**. Those financial bodies have a bank or financial institution status.

## \*WEST AFRICAN STATES CENTRAL BANK (BCEAO)

**601.** Under the provisions of article 6 of its statutes, the Central Bank has the privilege of issuing coins, banknotes and hard cash with legal tender and redeemability in WAMU member states. Its mission is to ensure that price stability is not explicit.

Regulation No. 15/2002/CM/WAEMU of 19 September relating to payment systems in WAEMU member states assigns it the role of supervision and securing of payment systems.

**602.** According to the combined provisions of its statutes and banking law, the Central Bank receives and processes the certification request of credit institutions which it sends to the Banking Commission and the Minister of Finance. In prudential terms, it proposes, as necessary, to the Council of Ministers of the Union, all provisions imposing banks and financial institutions the constitution of compulsory reserve, the respect of a report between the various elements of their resources and jobs or the respect of ceiling or minimum account of some jobs. It assures the implementation of the decisions of the Council of Ministers of the Union in these matters.

**603.** It assures in each state the implementation of legal and regulatory provisions by the authorities in accordance with article 22 of the Treaty to establish the Monetary Union and relating to the exercise of the banking industry and credit control. To this end, it enacts "Instructions" to specify the modalities for the implementation of decisions taken by the competent authorities. It is in this context that one must set the BCEAO Instruction No. 01/2007/RB of 2 July 2007 on anti-money laundering within financial institutions.

**604.** In addition, article 13 of the Schedule to establish the Banking Commission and article 46 of the banking Law empower it to monitor **banks and financial institutions**. The Central Bank also has monitors the activities of the **authorized manual change operators** and the IMCEC of a certain size.

## \*AUDIT OFFICE

**605.** In pursuance of Organic law No.99-700 dated 17 February 1999 on the audit office, the Office exercises a jurisdictional control on public accountants, the control and verification of accounts and the financial management of enterprises of the parapublic sector.

**606.** The audit office contributes, through its permanent action of verification, information and counselling, to the achievement of the following missions:

- safeguarding public heritage and controlling the reliability of public funds,
- improving management methods and techniques,
- streamlining administrative action.

**607.** It ensures the regularity of revenue and expenditure operations of controlled bodies and, if necessary, punishes any breach of the rules governing such operations.

**608.** It checks and appreciates the proper use of credits and management of all agencies under its control.

**609.** The Office establishes an annual general public report with the main observations it made during the year and the measures proposed to deal with it.

**610.** The controls devolved to the audit office are meant to:

- detect any irregularity or breach of the legal and management norms in force in order to make, in each case, the necessary corrections, pledge credit of the people involved, obtain compensation or decide what action to take to avoid the repetition of such acts in the future,
- encourage regular and effective use of resources and promote accountability and openness in the management of public funds.

**611.** The jurisdiction of the Auditing Commission on Public Enterprises Accounts referred to in article 38 of Law No.90-07 dated 26 July 1990 extends to the enterprises of the parapublic sector as defined in article 2 of the Law, private legal entities receiving financial assistance from the government and limited company with public minority participation pursuant to Title IV of the Law.

**612.** The Audit Office, through the Commission de Vérification des Comptes et de Contrôle des Entreprises Publiques (CVCCEP)—Public Companies Accounts Auditing and Monitoring Commission, verifies accounts and controls the management of enterprises of the public sector according to the following designated categories:

- ✓ public industrial and commercial institutions,
- ✓ public scientific and technological institutions;
- ✓ public professional institutions;
- ✓ public health institutions;
- ✓ other public institutions whose creation will be decided later;
- ✓ national companies;
- ✓ public limited companies

**613.** The audits of the Commission cover all the accounts of the ended fiscal years. In addition, the Commission ensures the proper use of the credits, funds and assets managed by the enterprises and institutions controlled.

**614.** Under decree No.2007-87 of 25 January 2007, the accounts of the *Caisse des Dépôts et Consignations* are subject to the control of the Audit Office which, through the Auditing Commission on Public Enterprises Accounts, can exercise controls during the year. The CDC is subject to a first level administrative control exercised by a Supervisory Commission in charge of implementing state control on the strategic orientations, equity participation, auditing of accounts and major decisions of the Fund. This commission has no power to impose sanctions. It is partly made up by parliamentarians and its reports are submitted to the National Assembly.

**615.** For its part, “**La Poste**”**National Company**—national post office company-- (and its subsidiaries) is subject to the same kind of control.

#### \*MINISTRY OF FINANCE

**616.** The banking law, in particular, gives the Minister of Finance the power to pronounce by decree the approval of Banks and Financial Institutions. The withdrawal of registration is made in the same manner.

**617.** There are many other powers with respect to authorization of some transactions (modification of the legal form, fusion, absorption, equity participation, early dissolution)

or exemptions from implementing certain provisions of the Banking Act, appointment of statutory trustee or liquidator and suspension of all or part of the overall activities of credit institutions.

**618.** These functions will be performed through the Department of Currency and Credit (DMC). Under Decree No. 95-040 MEFP of 10 January 1995 on the organization of the Ministry of Economy, Finance and Planning, the DMC is in charge of:

- ✓ participating in the development and ensuring the implementation of the regulations relating to the exercise of the banking industry and related professions;
- ✓ ensuring the exercise of guardianship and supervision of the Ministry on banks and financial institutions;

**619.** The Minister of Finance has enacted no instrument in the field of AMT for credit instruments.

**620.** As part of the monitoring of the monetary and financial relations with foreign countries, the DMC exercises, under the Ministry of Finance, a supervision on the Activities of **Authorized manual change operators** whose activity requires the approval of the Finance Minister.

**621.** The DMC also monitors activities in the sector of regional financial market.

**622.** In addition, the Ministry of Finance monitors the Community Mutual Association for Savings and Credit (IMCEC) through the *Cellule d'Assistance Technique aux Caisses Populaires d'Epargne et de Cr dit* (Cellule AT-CPEC)—Technical assistance unit for popular savings and credit banks .

**623.** Concerning insurance and reinsurance companies, insurance and reinsurance brokers, the Ministry controls their activities through its Insurance department. This control is exercised in conjunction with the Regional Commission on Insurance Control (CRCA), community supervisory body.

\*REGIONAL INSURANCE SUPERVISION COUNCIL (CRCA)

**624.** The Regional Insurance Supervision Council (CRCA) is the community body on the regulation of the insurance sector of the Inter-African Conference on Insurance Markets (CIMA). It is in charge of the monitoring, supervision and organisation of national markets and taking safeguard and remedial measures against insurance companies when their financial situation calls for it. It works closely with the Department of Insurance. The findings useful to the exercise of the control conducted by the National Insurance Administration as part of their own missions are communicated.

**625.** It should be noted that neither CIMA, nor CRCA enacted AMT-related laws.

\*REGIONAL COUNCIL FOR PUBLIC SAVINGS AND FINANCIAL MARKETS (CREPMF)

**626.** According to the Convention establishing the CREPM and its Annex, the regulations and supervision of operations and stakeholders on the regional financial market lie with the CREPMF. To this end, the Regional Council has operational control of all stakeholders, including the market management structure and approved stakeholders. It also verifies the respect, by securities issuers, of obligations to which they are subject in terms of public issue.

**627.** Specific rules applicable to approved stakeholders are being drafted and inspectors ensure during the on-site controls compliance with the general provisions relating to customer knowledge and accounts. The CREPMF also notes that it assessed over the past three years the six stakeholders on the market and imposed no sanction.

**628.** The **General Regulations** and the CREPMF Decisions applicable to stakeholders on the market include no provision relating to the AMT/FT. The analysis of the inspection guide of the *Sociétés de Gestion et d'Intermédiation* (SGI) has helped to note the absence of the AMT constituent.

**629.** All in all, it appears that at the current stage, the anti-money laundering mechanisms of stakeholders on the market are not controlled as required by the FATF;

**Recommendation 30 – Supervisory authorities - Structuring, resources, confidentiality and training standards**

**\*BANKING COMMISSION**

**630.** Chaired by the Governor of the BCEAO, the WAMU Banking Commission also includes, at parity, two colleges one of which is made up by one representative designated by each state participating in the management of the Central Bank and the other, with members appointed by the WAMU Council of Ministers, in view of their competence, for a period of three years renewable twice.

**631.** The Banking Commission has a General Secretariat whose functioning is assured by the Central Bank which provides the appropriate human, material and financial resources to carry out the tasks related to the approval and permanent monitoring of credit institutions in operation in the Union. Banking supervision is also based on the Activities of other structures of the Central Bank, including the Credit Branch and the National Departments present in each member state.

**632.** The organization of the General Secretariat is structured around the following organisations: the Department of Administration, Operations Control, Management Auditing, the Legal Advice, the Department of Supervision and Banking Studies (DSEB), Examination of Banks and Financial Institutions.

**633.** The staff of the General Secretariat, which usually comes from the BCEAO, is composed of senior officials with solid experience as far as law, banking and finance are concerned.

**634.** According to the 2006 annual report, the staff of the Secretariat General was estimated at 102 agents. In addition to the Secretary General and his Deputy, the staff was composed of 45 senior executives, 16 junior executives and 38 first-line managers. Amongst these, 15 inspectors are in charge of monitoring and 19 senior executives, split up into five teams under the responsibility of a head of mission, have conducted on-site controls in member states particularly in Senegal.

**635.** In a bid to keep the Banking Commission from influences and undue interferences, members of the Commission have a three-year term renewable twice.

**636.** Members of the Banking Commission cannot hold a position in a credit institution, or be subject to a legal ban from managing such an institution. In addition, they, and the people who work there are bound by professional secrecy and cannot be subjected to any civil or criminal proceeding for acts performed while on duty.

The staff of the Banking Commission is subject to the same statutory rules as the BCEAO staff, particularly in terms of integrity and conflict of interests (see below).

**637.** The Banking Commission has informed the mission of the FATF Secretariat that came in to collect information that the training of inspectors does include the AMT/FT constituent. In this respect, officials of the Commission attended, at regional level, in several seminars on this issue like those organized for the validation of the Directive on combating the financing of terrorism in the WAEMU countries, the adoption of the Framework Law on Combating the Financing of Terrorism in ECOWAS member states initiated by the FATF, and the role of the Financial Intelligence Units.

**638.** At the international level, the agents of the Commission attended seminars organized by the International Financial Institutions (IMF, World Bank, ADB, etc.), which focused on various topics including those relating to the fight against money laundering and terrorist financing.

**\*WEST AFRICAN STATES CENTRAL BANKS (BCEAO)**

**639.** The Central Bank has set up at the headquarters an Inspection Directorate whose duties extend to the control of credit institutions and micro-finance whose supervision also lies with the BCEAO (see above). Other Technical Directorates such as the Credit Branch and the Directorate of Decentralised Financial Systems (DSFD) and their local intermediaries (National Directorate Services) are involved in the monitoring of the banking system.

**640.** The Directorate of Decentralised Financial Systems, in particular, is meant to regulate and supervise the Activities of the decentralised financial systems. In this respect, the DSFD received remits, through its Department of Supervision of Decentralised Financial Systems, in particular the follow-up of the implementation of rules relating to decentralized financial systems as well as their control and monitoring.

**641.** At the behest of the Governor, the BCEAO can carry out on-site controls in credit and micro-finance institutions, after notifying the Banking Commission. Concerning credit institutions, such controls are generally on verification by these institutions of their obligations in terms of “foreign position” (Foreign Exchange Regulations), but may involve any other aspects of the banking and prudential regulations. It is a recipient of copies of reports of control missions made by the Banking Commission, chaired by the BCEAO Governor.

**642.** Controls on actual evidence are made on the basis of periodic documents which the institutions are required to submit.

**643.** The mission was unable to obtain figures on the level of human and financial resources allocated by the BCEAO to perform its task of monitoring and supervising credit and micro-finance institutions.

**644.** The Governor, Vice-Governors and the BCEAO staff are subject to the prohibition against divulging professional information. They should devote their activities exclusively to the Central Bank and cannot perform any other wage-earning employment. To avoid conflicts of interest, they cannot hold shares in any credit or micro-finance institution.

**645.** In a bid to guarantee their independence, they should receive no order from any government or be subject to civil or criminal proceeding for acts performed while on duty.

**646.** The situation of the staff in terms of AMT training is the same as that of the Banking Commission (see above). In particular, agents are involved in the AMT training seminars of the International Banking and Finance Institute (IBFI) created by the Bank of France.

**\*AUDIT OFFICE**

**647.** The audit office is organized in trainings from which the public ministry is represented by the Law Commissioner.

**648.** It includes a solemn plenary hearing, training in plenaries, three permanent chambers, a non-permanent market discipline chamber and two consultative chambers. The market discipline chamber may try any person vested with a public trust that has violated the obligation to respect and safeguard public benefit. It can be seized for any management fault.

**649.** The Office is endowed with resources which the Minister of Finance is legally required to put at its disposal.

**650.** The training sessions are run by judges (about forty) and the President of the Office assures the supervision, with the assistance of a staff falling under the administrative and technical services managed by a Secretary-General. Judges of the Audit Office have specific **duties** that justify a status different from that of judges in other jurisdictions. Judges of the Audit Office exercise, in full independence, duties devolved to them. They are irremovable. They are, in accordance with the provisions of the Criminal Code and other laws in force, protected from threats, attacks, insults, slander which they may be subjected to while on duty. During their first appointment and before they assume duty, judges of the Office are installed in a solemn plenary hearing during which they take an oath.

**651.** Members of the Office are bound by professional secrecy. They must, in all circumstances, show reserve, honesty and dignity resulting from their oath and duties. The duties of financial magistrate are incompatible with any other public or private activity or elective mandate. Any breach by a judge of the Office of its statutory obligations, honour and dignity of his duty constitutes a civil wrong subject to disciplinary action, without prejudice to any criminal charges that may be instituted when such breach constitutes an offence or a crime.

**652.** According to the statutory provisions, throughout their career, judges of the Audit Office must follow the training courses and seminars organized by the Office for them as part of the initial or continuing training. The upgrading of knowledge and professionalism are a duty of the financial magistrate. In the same way, they can be required, as part of the Office's work, to participate in any training session in order to share the knowledge acquired while on duty.

**653.** The training of judges of the Audit Office does not yet seem to include any AML component.

**\*MINISTRY OF FINANCE**

- DMC

**654.** The Monetary Relations and Credit Office is organized into three sections that respectively deal with Studies and Regulations, Guardianship and Currency Control. The staff dedicated to these activities includes about eight executives.

**655.** The General Obligations of Civil Servants and Government Officials, especially those relating to prohibition against divulging information are applicable to the DMC staff.

**656.** The Agents of the DMC attended training seminars at the AMT, organized by GIABA.

- INSURANCE DEPARTMENT

**657.** 1. The Insurance department is mainly subdivided into four Offices:

- Bureau of Control and Statistics;
- Bureau of Regulations, Legislation and Training;
- Bureau of Approval and visas;
- Financial Operations Bureau.

**658.** It has a staff of about twenty officers. Six agents in charge of training adjusters deal with the supervision of companies and insurance brokers. The financial resources come from the government but also from a fund approved by insurance companies (1.5 percent of sales) as provided by the CIMA Code.

**659.** The Agents take an oath before the Office before assuming duties and are bound to comply with strict professional standards including confidentiality.

**660.** The Agents attended, in 2007, from a training course on the AMT initiated by CENTIF and they sometimes participate in training sessions, as facilitators, alongside CENTIF.

\*TECHNICAL ASSISTANCE UNIT FOR SAVINGS AND LOAN COOPERATIVES (CELLULE AT-CPEC)

**661.** Placed under the authority of a National Coordinator appointed by order of the Minister of Economy and Finance, the Unit is organized as follows:

- Regulation Division;
- Inspection Division;
- Division of Statistics and Strategies;
- Administrative and Financial Office;
- Office in charge of the follow-up of inspections and recovery of organisations in trouble

**662.** At the end of 2006, the strength of the unit was estimated at 29 agents, 17 of whom are directly involved in monitoring.

**663.** In terms of material and financial resources, the unit has a fleet made up by six (6) vehicles, some of which are very old and have several mechanical problems, requiring significant maintenance costs. In addition, the Unit was provided in 2006 with new premises whose construction and equipment were fully funded by the Consolidated Investment Budget (BCI). In addition, in order to give greater autonomy to the Cell, it is in a process of being turned into a National Office.

**664.** Training: in a bid to train and sensitise the staff of the Unit on the fight against money laundering, some of its officers have attended seminars and meetings organized by CENTIF /Senegal. These meetings focused on: i) the AML/CFT internal mechanism; ii)

evaluation of the FIU. In addition, representatives of the unit took part in 2006 in the interactive anti-money laundering training session organized at CENTIF Training and Resource Centre with the support of the United Nations Office on Drugs and Crime (UNODC).

\*REGIONAL COUNCIL FOR PUBLIC SAVINGS AND FINANCIAL MARKETS (CREPMF)

**665.** The Regional Council is composed of the following members:

- A representative of each member state, appointed by the WAEMU Council of Ministers at the instigation of the state concerned, in view of its competence and experience in finance, accounting or law;
- The Governor of BCEAO or his representative;
- The Chairman of the WAEMU Commission or his representative;
- A competent judge with experience in financial matters appointed by the WAEMU Council of Ministers on a list proposed by the Chairman of the WAEMU Court of Justice;
- A renowned accountant, appointed by the WAEMU Council of Ministers on a list proposed by the Chairman of the WAEMU Audit Office.

**666.** The term of office of members appointed by the Council of Ministers is three years, renewable once.

**667.** The Regional Council meets either on the initiative of its Chairman appointed by the Cabinet among the representatives of states that exercise this duty, or at the request of one third of its members or Executive Committee.

**668.** Decisions are taken by the majority of the recorded votes. In the event of tie vote, the Chairman has the casting vote.

**669.** The Regional Council has a Secretariat headed by a Secretary General. The Secretary General, on delegation of authority from the President of Regional Council, recruits, appoints and dismisses staff.

**670.** General Regulations, issued by the WAMU Council of Ministers, lay down the practical modalities for the organization, operation and control of the regional financial market.

**671.** In terms of policy instruments, the Regional Council set up a Directorate of Market Control and Surveillance with a staff of three (3) executives whose jurisdiction extends to all stakeholders going public or operating on the basis of a permit issued by the Regional Council. This staff is being reinforced. Moreover, it has appropriate equipment for the conduct of inspection missions, including two (2) laptops during missions. The costs relating to the monitoring activities of the market agents are borne by the budget of the Regional Council.

**672.** The CREPMF staff can exercise no duty, whether paid or unpaid, within a structure involved directly or indirectly in the functioning of the market.

**673.** It is also subject to stringent professional obligations, including that of absolute discretion and professional secrecy. The ethical principles also require that all activities carried out by the market structures and commercial agents, either directly or through their subsidiaries, must be performed with diligence, loyalty, neutrality and impartiality.

**674.** The CREPMF informed the mission of the GIABA Secretariat that came in to collect information that the training of inspectors does not currently involve any AMT/FT component and that steps are being reviewed to correct this situation.

**\*REGIONAL INSURANCE SUPERVISION COUNCIL (CRCA)**

**675.** The CRCA is composed of the following members:

- A legal adviser with an experience in the field of insurance appointed by the Council;
- A person that assumed responsibilities in the insurance sector, chosen for his experience in the African insurance market and appointed by the Council;
- A person with experience in insurance supervision problems in Africa within the framework of the technical assistance provided by third states or international organizations, appointed by the Council;
- Six representatives from national insurance directorates appointed by the Council;
- The Director General of the CICARE-RE;
- A person qualified in the financial field appointed by mutual agreement by the Governor of the BEAC and Governor of the BCEAO.

**676.** As part of its mission, the Commission has a body of Controllers Commissioners whose strength had not been specified to the mission. The Commission has no specific law within the framework of the CPA. However, in a bid to enhance the effectiveness of the existing team, the Council of Ministers authorized, during its last meeting in October 2007, the recruitment, in the first quarter of 2008, of four (4) new Controllers Commissioners. The costs related to the monitoring activities of insurance companies are borne by the resources put at the disposal of the CIMA by member states as part of its overall mission.

**677.** In carrying out their duties, members of the Commission shall not seek or receive instructions from any government or any other body.

**678.** In addition, members of the Commission having the right to vote shall refrain from any action inconsistent with the duties of integrity and discretion attached to the exercise of their duties. With the exception of the Director General of the CICA-RE, they cannot, during their term of office and two years after it expires, receive compensation from an insurance company. Members of the commission, as well as personalities sitting there without a casting vote, are bound by professional secrecy.

The staff of the Commission is subject to stringent professional obligations.

**679.** The Commission informed the mission of the GIABA Secretariat that came in to collect information that the training of auditors currently includes no AMT/FT component and that steps are under counterparty to remedy this situation.

**\*BANKING COMMISSION**

**Recommendation 29 :**

**680.** The Banking Commission is in charge of the organization and monitoring of banks and financial institutions. To this end, it carries out, particularly through the Central Bank, checks from banks and financial institutions to ensure that they comply with the provisions applicable to them.

**681.** The on-site controls are carried out on all documents addressed to the General Secretariat of the Banking Commission and particularly on the periodic status of bank accounts as well as on fiscal year end documents: balance sheet, income statement, general information.

**682.** As for on-site checks, they help to ensure the accuracy of the information submitted to the General Secretariat of the Banking Commission and the effective observance of the regulations. These checks are also an opportunity for the Banking Commission to make an overall assessment on the credit institution, in terms of its organization and management as well as its financial situation.

**683.** Checks may be extended to subsidiaries, legal persons who are in charge of in law or in fact and the subsidiaries as well as their subsidiaries. Banks and financial institutions are required to provide, to any requisition of the Banking Commission, all documents, information, explanations and justifications necessary for the performance of its duties.

**684.** At the request of the Banking Commission, any registered auditor of a bank or a financial institution is required to submit all reports and other supporting documents, as well as to provide all information necessary for necessary for the performance of its duties.

**685.** The Administrative and Judicial Authorities of member states may be asked to provide assistance to the controls carried out. Professional secrecy is not enforceable against the Banking Commission.

**Recommendation 17 :**

**686.** Article 47 of the Banking Law stipulates that "Disciplinary sanctions for breach of banking regulations will be imposed by the Banking Commission, in accordance with the Convention on the establishment of the Commission".

**687.** Article 35 of the Law empowers the Banking Commission, in its capacity of supervisory authority with disciplinary power, to take against the liable people it supervises, administrative measures or impose disciplinary sanctions, in case of breach of obligations it provides in the field of money laundering and report of suspicious transactions and notify CENTIF as well as the state prosecutor.

**Administrative measures applicable by the Banking Commission**

**688.** Administrative measures include:

- Either a warning;
- or an injunction in order to take, within a specified period, the necessary recovery measures or any protective measure which it deems appropriate.

**689.** The Bank or Financial Institution that fails to comply with this injunction is deemed to have violated the banking regulations.

### **Disciplinary sanctions applicable to the Banking Commission**

**690.** When a breach of banking regulations is noted, the affected institution can, after being heard or properly convened or invited to submit its observations in writing, incur one or several of the following disciplinary sanctions:

- warning;
- blame;
- suspension or prohibition of all or part of operations;
- all other limitations in a pursuit of an occupation;
- suspension or resignation of officers;
- withdrawal of registration.

**691.** These sanctions are not exclusive of criminal sanctions provided for in article 40 of the Law and they seem to be proportionate and deterring..

**692.** When the Banking Commission decides to rule on disciplinary matters, it convenes, in a registered mail with acknowledgment of receipt, the person involved to be heard.

He must receive the letter at least eight days before the date of the meeting of the Commission in which he must be heard. The latter must inform the respondent about the alleged contravention in a period that may not exceed one month.

**693.** The respondent may seek the assistance of a representative of the Professional Association of Banks and Financial Institutions and eventually any other lawyer of his choice. The decisions of the Banking Commission taken on disciplinary matter must include a validity of grounds. They are notified to the persons concerned by registered letter with acknowledgment of receipt by the Secretary General of the Commission. A copy was also sent to the Minister of Finance and to the Central Bank.

**694.** The process for appeals against decisions of the Banking Commission is as follows:

**695.** The affected institution causes a request to be held in a two-month period to the Chairman of the Cabinet Meeting, through the General Secretariat of the Banking Commission, outlining the reasons for which the sanctions imposed against it seemed to be excessive or unfounded.

**696.** When, under Articles 24 and 31 of the Annex to the Convention, the Minister of Finance of the concerned state decides to lodge an appeal, he files a petition at the Chairman of the Union Cabinet Meeting, through the General Secretariat of the Banking Commission, within a period of one month as from the communication of the decision to withdraw approval, outlining the reasons why that decision seemed to be excessive or unfounded.

**697.** The decision of the Cabinet Meeting is sent to the people concerned through the General Secretariat of the Banking Commission. If the latter invalidates the sanction taken, under no circumstances, there would be damages.

**698.** Regarding IMCEC, disciplinary sanctions measures taken against financial institutions it creates are imposed by the Banking Commission.

**699.** No sanction has been imposed by the Banking Commission under the AMT legislation since the Law came into force.

#### \*CENTRAL BANK OF WEST AFRICAN STATES

##### **Recommendation 29** :

**700.** Article 13 of the Annex to the Convention establishing the WAEMU Banking Commission stipulates "The Banking Commission carries out, through the BCEAO, controls from banks and Institutions financial, in order to ensure compliance with the provisions applicable to them... The Central Bank may also perform such checks on its own initiative. It warns the Banking Commission about the on-site controls".

**701.** Under Article 24 of its statutes, the BCEAO enjoys from credit institutions a right to discovery of all documents necessary for the performance of its duties. It may also directly get in touch with companies and professional groups in order to carry out investigations necessary for its information and that of the Cabinet Meeting and states of the Union.

**702.** According to Article 42 of the banking law, professional secrecy is not enforceable against the BCEAO. As for Article 46 of the Law, it specifies that banks and Financial Institutions cannot object to controls carried out by the BCEAO.

**703.** Article 67 of the Law on regulation of IMCEC provides that the BCEAO may, on its own initiative or at the request of the Minister of Finance, audit their financial bodies and all companies controlled by these bodies.

##### **Recommendation 17** :

**704.** In the event of breach of the regulations relating to foreign financial relations of the WAEMU states, particularly the position of banks and financial institutions towards foreign countries, offending banks and financial institutions can be required by the BCEAO to make a non-interest bearing deposit under conditions laid down by the Law on banking regulations, in force in each WAEMU member state.

**705.** In the event of delay in the constitution of such deposit or transfer in the BCEAO of their assets in foreign currencies when they are required, the concerned banks and financial institutions will be compelled to pay an interest on arrears whose rate cannot exceed one percent day of default.

**706.** Moreover, except for cases of misconduct relating to the external position of banks and financial institutions mentioned above, breach of regulations will be noted, prosecuted and punished according to the Laws and regulations in force in each member state of the WAEMU, relating to litigation of breach of foreign exchange control.

**707.** Without prejudice to the penalties provided in the preceding paragraph, offences committed by an approved intermediary or an authorized manual change operator may lead to the withdrawal of his approval.

**708.** These sanctions are not exclusive of the criminal sanctions provided in article 40 of the Law and they seem to be proportionate and deterring .

**709.** According to information collected by the mission from the BCEAO National Directorate for Senegal, no sanction has been imposed by the BCEAO under the AMT legislation since the Law came into force.

\*AUDIT OFFICE

**Recommendation 29**

**710.** The Office is authorized to obtain any useful documents or information relating to the management subject to its control. Through the CVCCEP, the Office conducts on-site audits of subject companies.

Professional secrecy is not enforceable against the Office and its agents who have a direct and permanent right of access in the institutions under control.

**711.** The final conclusions of the CVCCEP relating to the management of audited companies and the reliability of their accounts are communicated to the President of the Republic in the form of a briefing note and a statement of the conclusions properly numbered, supported by the corresponding operating analytical sheets.

**712.** The Commission also sends its findings to the supervisory authorities, Financial Control, the General State Inspectorate, as well as managers and to legislative body of the institution concerned; the final conclusions of the Commission approved by the President of the Republic must be submitted to the Governing Board.

**Recommendation 17**

**713.** Any unjustified refusal to provide information or documents requested, or allow visiting the premises, or respond to a summons is liable to a fine of CFAF100,000 minimum and maximum of CFAF1,000,000, fixed in plenary sessions. When the refusal is persistent, the amounts of the fine shall be doubled. In case of blatant impediment, in addition to administrative or disciplinary sanctions as may be requested by the Office, the Chairman of the Office may designate an appointed by Court, in the place of the person responsible for the impediment and at his expense.

**714.** Any disposal of evidence or supporting documents is considered as a blatant hindrance and may also be subject to criminal proceeding.

**715.** The Office has a Market Discipline Chamber that has the competence to sanction mismanagement and impose fines in cases provided for by act.

**716.** The Office tries at first and last resort, and its judgments are, pain of nullity, justifiable. The remedies allowed against judgment absolute are review before the Audit Office and quashing before the Council of State.

**717.** The introduction of a revision procedure or appeal shall not obstruct the enforcement of the contested ruling, except for respite of execution ordered by the Chairman of the Office, after receiving the opinion of the Law Commissioner.

**718.** The final judgments of the Audit Office shall be enforced when they require the setting of a fine or the pronouncement of a **debit of balance due**.

In this case, their enforcement is sought through all possible legal means at the behest of the Minister of Finance.

**719.** The mission was unaware of sanctions imposed on members of the governing bodies or the staff of the National Post Company or the *Caisse des Dépôts et Consignations* under the AMT legislation.

\*MINISTRY OF FINANCE

**Recommendation 29:**

**720.** As part of the supervision and monitoring of micro-finance institutions, the Minister of Finance is authorized to require the production of any documents, statistical reports, reports and any other information necessary to carry out his mission. (Article 65, Law on the regulations of IMCEC) and section 66 of that Law states that the Minister may undertake any control of the IMCEC. Professional secrecy it is not enforceable. (Article 68 of the Law).

**Recommendation 17 :**

**721.** Any violation of the provisions of laws and regulations applicable to IMCEC shall be liable to disciplinary, financial and criminal sanctions, as appropriate. (Article 73, Law).

**722.** The Minister of Finance is authorized to impose the following sanctions depending on the nature and severity of the offences committed:

- warning;
- blame;
- suspension or prohibition of all or part of operations;
- all other limitations in a pursuit of an occupation;
- suspension or resignation of officers;
- withdrawal of approval

**723.** Sanctions must be justifiable. No disciplinary sanction can be imposed by the Minister without the person concerned or his representative, eventually assisted by any lawyer of his choice, having been heard or properly convened or invited to submit his remarks in writing. (Article 74, Law).

**724.** These sanctions are not exclusive criminal sanctions provided for in Article 40 of the Law.

**725.** According to the annual report of activities of the 2006 AT-CPEC Cell, the Minister has implemented two types of sanctions. They include revocation of authorization to practise and financial penalties.

**726.** Under revocation of authorization to practise, the Minister pronounced twelve (12) orders against credit unions. These withdrawals were motivated either by **termination** or by **non-transmission** of reports and financial statements for several years. Some institutions had no profitable activity and did not have the substantial financial resources to support their operations.

**727.** With regard to financial penalties, 130 IMCEC were concerned. Those sanctions were justified by failure to provide statistics and information intended for the Minister, the Central Bank and the Banking Commission.

**728.** It should be noted that the report does not mention the enforcement of sanctions for breaches of the rules relating to the AMT/FT.

\*REGIONAL COUNCIL FOR PUBLIC SAVINGS AND FINANCIAL MARKETS  
(CREPMF)

**Recommendation 29**

**729.** As part of its power to control the Lawivity of all agents of the regional financial market, the CREPMF can, either **on complaint** by third parties, or by foreign market authorities, or on automatic referral, carry out, in the interest of the market, surveys from agents, their shareholders, parent companies and subsidiaries, or any person or entity having with these agents a direct or indirect link.

**730.** The CREPMF can summon and question any person likely to provide information. The hearings are not public. As part of investigations, searches and seizures can be carried out by inspectors from CREPMF under the authority of the President of the competent Tribunal of the country concerned. The Board may also require this judicial authority, the deposit of money or the sequestration of funds, securities or rights belonging to the persons involved.

**731.** The Inspectors or any person authorized by the Council have, for the conduct of their investigations and controls, the right to obtain information and get a copy, whatever the medium. Professional secrecy is not enforceable against persons properly mandated by the board. The board may convey to the competent courts the evidence collected within the framework of a simple investigation initiated by its good offices.

**732.** Under the control power, the Council is authorized to request the production of regular information of which it lays down the content and conditions of transmission. In this respect, for a better understanding of the direct beneficiary, the CREPMF sent on 11 October 2007 a circular letter requesting information on investors located outside the WAEMU area to all agents of the market, whose copy was handed over to the mission of the GIABA Secretariat.

**Recommendation 17:**

**733.** Article 30 of the Annex to the Convention stipulates that "any action, omission or manoeuvres that prove to be contrary to the general interest of the Financial Market and its effective functioning, and/or detrimental to the rights of savers shall be subject to financial, administrative and disciplinary sanctions, as the case may require, without prejudice to any legal sanctions that could be imposed on their authors on the basis of an action for damages brought individually by the persons wronged as a result of activities".

**734.** **Financial penalties (Article 31):** The amount of financial penalties decided by the Regional Council varies according to the severity of mistakes, omissions and violations committed and in relation to the benefits and profits drawn from such acts.

**735.** **Administrative sanctions (Article 34):** When the Regional Council notes that a commercial agent has failed to comply with the rules of good conduct for the profession or no longer meets the requirements for approval, it can send to the agent concerned:

- either a warning;
- or an injunction in order to take, within a specified period, the necessary recovery measures  
or any protective measures which it considers appropriate;

**736. The shareholder**, who has not complied with that order, is deemed to have violated the regulations.

**737. Disciplinary measures (Article 35):** When the Regional Council notes a violation of the regulations, and without prejudice to criminal sanctions or other penalties incurred, it pronounces one of the following disciplinary sanctions:

- warning;
- blame;
- prohibition on temporary or definitive basis of all or part of the Activities;
- suspension or resignation of officers;
- temporary or definitive withdrawal of an approval or a visa granted grant or expulsion.

**738.** These sanctions are not exclusive of criminal sanctions provided for in Article 40 of the Law and they seem to be proportionate and deterring.

**739.** The CREPMF can take legal proceedings against authors of insider trading or manipulation of the market (article 36 to 38).

**740.** Over the past three (3) fiscal years, a number of shareholders located in Senegal, namely the three (3) SGI, the *Banque Teneur de Compte/Conservateur, OPCVM management Company* had been assessed.

No sanction has been imposed by the CREPMF under the AMT legislation since the Law came into force.

#### \*REGIONAL INSURANCE SUPERVISION COUNCIL

#### **Recommendation 29 :**

**741.** As part of the supervision of the Law of insurance companies, the Commission organises the auditing of the insurance and reinsurance companies operating on the territory of member states. The findings useful to the exercise of the control conducted by the National Insurance Directorates as part of their own missions are communicated.

**742.** The Commission may ask to companies to release reports of the auditors, and generally, of all accounting documents of which it may, as appropriate, ask for the certification. In addition, companies should put at its disposal all the documents mentioned in the preceding paragraph, as well as qualified staff to provide the information it deems necessary.

**743.** In connection with the exercise of its supervision mission and under conditions determined by the CIMA code, on-site monitoring can be extended to parent companies and subsidiaries and any intermediary or expert operating in the insurance sector. In the case of on-site monitoring, a contradictory report is prepared. When remarks are made by the auditor, it informs the company. The Commission took note of the comments made by the auditor and the answers given by the company. The results of the on-site checks were reported to the Minister in charge of the insurance activity and to the Governing Board of the controlled company and were submitted to the auditors.

#### **Recommendation 17 :**

**744.** When the Commission notes, on the part of a company subject to its control, the non-observance of the regulations of insurance or an attitude hindering the fulfilment of

obligations incurred towards savers, the Commission ordered the concerned company to take all remedial measures which it deems necessary. Lack of implementation of remedial measures in a timely manner is liable to the sanctions listed in Article 312 of the CIMA code.

**745.** Pursuant to article 312 aforementioned, when the Commission notes from a company under its control a breach of the insurance regulations, it imposes the following disciplinary sanctions:

- warning;
- blame;
- restriction or prohibition of all and part of operations;
- all other limitations in the practice of the profession;
- suspension or resignation of leaders,
- withdrawal of approval.

The Commission may also impose fines and pronounce the transfer of business in force.

**746.** These sanctions are not exclusive of criminal sanctions provided for in Article 40 of the Law and they seem to be proportionate and deterring.

**747.** Injunctions and sanctions imposed by the Commission take the form of decisions made following adversary procedure during which the managers were given the opportunity to submit their comments.

**748.** The decisions of the Control Commission are notified to the interested companies and the Minister in charge of the insurance activity in the concerned member state. The decisions are enforceable upon notification.

**749.** The Commission's decisions can be subject to appeal before the Council and within a two-month deadline as from their notification. The Council has the power to reverse the decisions of the Commission. The appeals have no suspensive nature.

**750.** According to the Insurance department and the information collected from the CIMA by the mission of the GIABA Secretary General, no sanction has been imposed by the CRCA under the AMT legislation since the Law came into force.

### **3- MARKET ENTRY**

**751.** Generally, the Law carried out by financial institutions are regulated, in view of their impact on the country's economy. The requirement of an approval and the conditions for its obtaining (source and appropriateness of funds, quality the providers of funds and their guarantors, integrity and experience of people likely to lead, administer and manage.) constitute due diligence measures to filter market access and to prevent criminals or their accomplices from controlling financial institutions, being the beneficial owners, acquiring a significant involvement or control, or holding an executive position, including within the committee or governing board .

**\*BANKS AND FINANCIAL INSTITUTIONS:**

**752.** The banking Law strictly regulates access to banker profession. Indeed, Article 7 of the Law provides that no person shall, without first being approved and registered on the list of banks or financial institutions, exercise banking or financial institution activities.

**753.** Under Article 8 of the Law, applications for certification are addressed to the Minister of Finance and filed at the Central Bank which processes them. It verifies if the legal persons or entities who apply for the accreditation meet the conditions and obligations provided for in Articles 14, 15, 18, 23, 24 and 26 relating to the managers and staff of banks and financial institutions as well as the composition of capital and special reserve. It ensures the adequacy of the legal structure of the company and the Law of bank or financial institution.

**754.** It examines the Law programme of this company and the technical and financial means it plans to implement. It also appreciates the ability of the claimant to achieve its development goals, in conditions compatible with the smooth running of the banking system.

**755.** It obtains all information on the quality of the people who assured equity contribution and where appropriate, on that of their guarantors as well as the integrity and experience of people likely to lead, administer or manage the bank or the financial institution of its agencies.

**756.** In accordance with Article 9 of the Banking Act, approval is given by the Minister of Finance, on the recommendations of the Commission.

**\*INSURANCE AND REINSURANCE COMPANIES, INSURANCE AND REINSURANCE BROKERS:**

**757.** Companies subject to control by Article 30 can start their operations only after obtaining an approval. However, concerning take note transactions, this approval is not required. The approval is granted, at the company's request, for the operations of one or several more lines of insurance. The company can perform only the operations for which it is approved.

**758.** As part of the processing of the approval file, the Control Commission takes into account:

1. technical and financial resources whose implementation is proposed and their appropriateness to the company's activity programme;
2. integrity and qualification of people in charge of leading it;
3. distribution of capital or, for the companies mentioned at article 330, the modalities for the accumulation of the initial capital
4. the general organisation of the market

**759.** Under article 20 A of the CIMA treaty, the approval is pronounced by the Minister in charge of the insurance activity of the member state where the company should exercise its activities

**\*MICRO-FINANCE INSTITUTIONS:**

**760.** Article 9 of Law No. 95-03 of 5 January 1995 governing credit unions provides that financial institutions or bodies whose purpose is to collect savings and grant credit, must be first recognised or approved under conditions provided for in Articles 13 and 46.

**761.** In accordance with the provisions of Article 13, basic institutions, affiliated with a network, cannot carry out their activities without having been previously approved or recognized by the Minister. A basic institution not affiliated with a network must seek approval from the Minister. The approval and recognition are delivered by Minister's order.

**762.** Applications for approval and recognition are addressed to the Minister accompanied by the following documents: names, addresses, professions of members of the administrative and management organs with excerpt of their criminal record, assessment of human, financial and technical resources with respect to the objectives and needs, accounting and financial rules of procedure, etc. (article 28, decree).

The review of these documents enables the Minister to appreciate the capacity of the institution to carry out a financial intermediation activity as well as the integrity of members of the policy-making bodies.

**\*STAKEHOLDERS OF THE FINANCIAL MARKET:**

**763.** The stakeholders of the regional financial market are approved by the Regional Council. Any company or person other than a structure or an agent approved by the Regional Council is prohibited to use a name, a company name, advertising or expressions purporting to be approved as a market management structure or stakeholders.

**764.** The company set up for the purpose of carrying out the Law of financial market agents must submit a file to the Regional Council to get its approval. This file must include:

1. the statutes of the company;
2. the distribution of its share ownership and the identity of shareholders;
3. any information which the Regional Council deems necessary.

**\*SERVICES OF TRANSMISSION OF FUNDS, SECURITIES OR FOREIGN EXCHANGE SERVICES:**

**765.** They are required to obtain licensing before starting their activities.

**\*AUTHORIZED MANUAL CHANGE OPERATORS :**

**766.** In accordance with the provisions of chapter iv of Regulation R09, any persons or entities having the status of trader, other than approved intermediary banks, established or located in WAEMU member states, can be authorized to carry out manual foreign exchange transactions.

**767.** Permits approving manual foreign exchange are issued by a decision of the Minister of Finance, on the recommendation of the BCEAO.

**768.** Any persons or entities seeking manual exchange approval must, for this purpose, file at the BCEAO National Direction, in charge of processing the file, the following documents accompanied by the filled questionnaire, whose sample is reproduced at Annex VIII of the said Regulation:

**769.** 1°) *For individuals:*

- Birth certificate;

- Police record under three (3) months;
- Date and number of entry in the Register of Trade and Chattel Loan.

**770.** 2°) For legal persons :

- Birth certificate;
- Police record under three (3) months of corporate executives;
- Date and number of entry in the Register of Trade and Chattel Loan.

**771.** The BCEAO may require the provision of any other document or information relevant to the processing of the file

**STATISTICS ON ON-SITE VISITS AND SANCTIONS IMPOSED**

**\*BANKING COMMISSION**

**772.** Over the past three years (2004-2006), there were in Senegal respectively 14, 16 and 19 credit institutions. During the period under review, there were respectively 7, 4 and 7 credit institutions. In some cases, the audits resulted in administrative sanctions (injunctions) or disciplinary ones (warning).

**773.** According to information collected from the Banking Commission by the Secretariat mission, none of these sanctions was related to deficiencies or money laundering offences.

**\*CENTRAL BANK OF THE WEST AFRICAN STATES**

**774.** The Central Bank undertook, in September 2006, seven (7) joint audit engagements with the Ministry of Finance (AT-CPEC Cell).

**775.** No sanction was imposed for failure to comply with the AMT legislation.

**\*AUDIT OFFICE**

**776.** The *Caisse des Dépôts et Consignations*, which launched its activities in 2007, is yet to be audited.

**\*MINISTRY OF FINANCE**

- DMC

**777.** According to figures from the Currency and Credit Directorate (DMC) of the Ministry of Economy and Finance, as of 20 July 2007, 241 exchange offices have been authorized to exercise but only 68 offices were operational. The same source indicates that 205 offices were audited in 2005, the most recent control year. The mission was unable to ensure that these controls include a AMT/FT component. Withdrawals of registration performed as a sanction (10 in 2006) were based on default of transmission of report or the late start-up of activities.

- INSURANCE DEPARTMENT

**778.** According to its progress report, the Insurance department audited in 2006 three life insurance companies compared with nine damage insurance companies and a life insurance company in 2005. In addition, at the request of the CIMA and on its behalf, the Branch audited two other companies.

**779.** The same year, two broking firms have been audited as well as all the decentralized production offices compared with two broking firms in 2005.

**780.** No sanction has been taken under the legislation relating to the AMT.

- AT-CPEC UNIT

**781.** During the year 2006, the AT-CPEC Unit has made twelve (12) controls at the IMF including seven (7) joint missions with the BCEAO. The reports prepared as part of these inspections do not mention that the aspects relating to the fight against money laundering had been discussed. Sanctions were imposed, either for lack of transmission of activity reports, or for failure to communicate statistics.

**782.** In any case, no sanction has been taken under the legislation relating to AMT.

\*CREPMF

**783.** Over the past three (3) years, it was recorded the creation in Senegal of three (3) management and intermediation companies (SGI), one (1) management company (OPCVM) and two (2) OPCVM. The accreditation of a Bank, *Teneur de Compte/Conservateur*, was withdrawn at its own request in 2006.

**784.** During the period under review, three (3) management and intervention companies (SGI), the Bank *Teneur de Compte/Conservateur*, Management Company OPCVM and a FCP had been reviewed.

It is to be noted that no sanction has been imposed under the legislation relating to the AMT.

## 5. GUIDELINES FOR FINANCIAL INSTITUTIONS ON TOPICS OTHER THAN STR

### Recommendation 25-1

#### \*CENTRAL BANK OF THE WEST AFRICAN STATES

**785.** The BCEAO has published an additional Instruction for the attention of financial institutions which it supervises. Indeed, it has enacted Instruction No. 01/2007/RB of 2 July 2007 relating to anti-money laundering within financial institutions. It is meant to specify the modalities for the implementation of the uniform law relating to the fight against money laundering in the WAEMU states, particularly the provisions of article 13 of this Act, by financial institutions laid down in article 3 of the instruction. That instruction specifies certain provisions of the Law (see above legal analyses thereto) including:

- accurate information to be provided by the AMT internal programme implemented by institutions;
- atypical financial transactions;
- setting-up of an anti-money laundering cell;

- content of the report to be provided by banks and financial institutions within two months following the end of the fiscal year at the Banking Commission and the Central Bank, etc.

**786.** In accordance with the provisions of article 3 of the Instruction, the latter applies to the following financial institutions:

- Banks and Financial Institutions;
- Financial Post Services as well as *caisses de dépôts et consignations* or institutions in lieu thereof;
- Mutual benefit Institutions or credit unions, as well as structures or organisations with the purpose of collecting savings and/or credit granting;
- **les Agréés de change manuel.**

#### \*INSURANCE DEPARTMENT

**787.** The Insurance department has developed Circular No. 05782/ME/F/DA signed by the Minister of Economy and Finance asking directors of insurance companies and broking firms located in Senegal to comply with the Law relating to the AMT as soon as possible. In addition, it implemented a programme to prevent and combat money laundering in the insurance sector. This document was submitted to insurance companies for their comments and remarks before its approval by the authorities. It was not in effect at the time of the on-site visit.

#### \*REGIONAL COUNCIL FOR PUBLIC SAVINGS AND FINANCIAL MARKETS (CREPMF)

**788.** In a bid to complete and strengthen the mechanism on the fight against transnational crime in force in the Union, and in particular anti-money laundering by the approved agents of the regional financial market, the CREPMF has prepared a policy statement relating to the fight against money laundering within the agents of the regional financial market. The policy statement is composed of 18 articles divided into four titles.

**Title I**, on the "General Provisions" (articles 1 to 3) determines the object of the instruction and defines money laundering as well as the approved agents on the regional financial market.

**Title II**, entitled "Provisions relating to due diligence of Chartered Financial Institutions of the Regional Financial Market" (articles 4 to 10) provides for the implementation of obligations imposed on people subject to the Instruction.

**Title III**, entitled "specific obligations" (articles 11 to 18) provides for provisions relating to the obligation to report on suspicious transactions, the establishment of appropriate internal control mechanisms and the training of staff. It also defines the AMT internal programme and its control as well as the obligations that are necessary to the approved agents in terms of information to send to the **Regional Council for Public Savings and Financial Markets**.

**Title IV** relating to "Various and final provisions" (article 19) concerns the effective date of the instruction and its publication.

**789.** According to the CREPMF, the adoption of this Instruction will enable the **agréés** of the regional financial market to implement the recommendations of the WAMU related

to the AMT, more particularly Directive No. 07/2002/CM/WAEMU of 19 September 2002 and those relating to the uniform law on the fight against money laundering.

**790.** It should be noted that the policy statement has been subjected to the decision of the members of the Regional Council during the November 2007 budget session but that due to the busy agenda and the importance of the topic, its review has been postponed until the next session.

### **3.10.2 Recommendations and Observations:**

**791.** In view of the shortcomings noted in the observation of the recommendations aforementioned, the mission recommends the competent authorities:

- to continue advocacy and training towards all the agents participating in the AMT/FT;
- to make guidelines for financial institutions that are not concerned by Instruction No. 01/2007/RB of 2 July 2007 of the BCEAO in order to help them implement and comply with their AMT obligations;
- to sensitize the supervisory authorities of financial institutions so that they verify compliance with the implementation of the uniform law relating to the AMT during their supervision missions;
- to transform the ministerial structure in charge of monitoring micro-finance institutions into a fully-fledged department so that it has more autonomy and provides substantial resources (human and material) in view of its mission;

	<b>Compliance assessments</b>	<b>Summary of reasons (peculiar to section 3.10) justifying the global compliance assessments</b>
<b>R.17</b>	<b>PC</b>	Globally, sanctions provided for do not theoretically seem to be proportionate and deterring. No sanction has been taken against financial institutions by the respective supervisory authorities for failure to implement the provisions relating to anti-money laundering and terrorist financing
<b>R.23</b>	<b>PC</b>	- The Law does not cover all the financial institutions to be bound to report in compliance with FATF definitions. No sanction has been taken against financial institutions by the respective supervisory authorities for failure to implement the provisions relating to anti-money laundering and terrorist financing - Follow-up of compliance with the implementation of the uniform law on money laundering is inadequately performed during on-site inspections of financial institutions by their respective supervisory body
<b>R.25</b>	<b>PC</b>	Only the BCEAO adopted guidelines likely to help financial institutions under their supervision to implement and comply with their obligations in the field of AML.
<b>R.29</b>	<b>LC</b>	The power of sanction of certain monitoring authorities is not sufficiently determined.

### **3.11 - Fund or securities transmission services (RS.VI)**

#### **3.11.1 Description and Analysis**

**792.** With regard to money transfer activities, they are exclusively devolved to the BCEAO, the administration of posts and banks. Money transfer companies are backed by banks with which they sign conventions and take full responsibility for these transactions. Companies operating in Senegal are Western Union, Money Gram, Ria Envira, Money Express, BHD Corporation.

**793.** Concerning monitoring as part of anti-money laundering, Instruction No. 01/2007/RB of 2 July asks banks and financial institutions to submit to the Central Bank and the Banking Commission a report on the AML system at the end of each fiscal year and the authorized manual change operators to communicate to the BCEAO the report of their anti-money laundering unit one month after the end of the fiscal year.

**794.** During exhibit controls, if it is noted breaches of AML obligations by fund transfer companies, sanctions will be imposed by the Banking Commission and the BCEAO in accordance with the Laws and regulations in force.

**795.** It should be noted that the mission had not been informed of the results of checks, either by the duping of financial institutions, or by the Banking Commission or any other competent authority, or any sanctions eventually imposed on fund transfer companies for failure to comply with the uniform law relating to anti-money laundering.

**796.** In addition, the mission was informed about the existence of fund transfer activities, such as Hawala, performed without prior authorization by persons in the informal sector. In order to list and regulate them, the police informed the mission about its plans to carry out investigations in the near future.

#### **3.11.2 Recommendations and Observations**

**797.** In view of the above findings, the competent authorities must:

Identify and regulate the fund transfer activities exercised without prior authorisation by people from the informal sector.

#### **3.11.3 Compliance with Special Recommendation VI**

	<b>Compliance assessments</b>	<b>Summary of reasons justifying the compliance assessments</b>
<b>RS.VI</b>	<b>PC</b>	Existence of a hawala-type fund transfer activities performed without prior authorisation by agents of the informal sector and which are beyond control

### **4-PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS**

#### **4.1 - Customer due diligence and record-keeping (R.12) (in accordance with R.5, 6 & 8 to 11)**

##### **4.1.1 Description and Analysis**

**798.** The Law (Section 5) subjects to the obligations of prevention and detection of money laundering (Titles II and III of the Law) any persons or entities who, as part of their profession, conduct, monitor or advise on transactions involving deposits, exchanges, investments, conversions or any other capital movement or property. Without being exhaustive, it cites the following non-financial businesses and professions:

- members of independent legal professionals, when they represent or assist customers outside any legal, particularly in the following activities:
  - Purchase and sale of property, business ventures or good will,
  - Manipulation of money, securities or other assets belonging to the customer,
  - Opening or management of bank accounts, savings or securities,
  - Constitution and management of companies, trusts or similar structures, implementation of other financial transactions
- Business introducers to Financial Institutions,
- Auditors,
- Real estate agents,
- General merchants such as artworks (paintings, masks), precious metals and stones,
- Security companies,
- Owners, Directors and Managers of casinos and gambling houses, including National Lotteries,
- Travel agencies,
- Non-Governmental Organisations (NGO).

**799.** The list of subject professions poses the following difficulties:

- it clearly cites the subject professions and organizations (see section 3.2.1 and above), but it seems to be only indicative since it mentions in paragraph e) of Article 5: "The other liable people, in particular (...). But this lack of precision poses various difficulties including lack of information of other possible professions and the inability to ensure compliance with their obligations,
- despite this lack of precision, the Law does not fully cover non-financial professions identified by the FATF:
  - It does not expressly subject chartered accountants: only auditors are designated. According to information provided to the assessors, all chartered accountants can auditors, but few of them hold this position. Accordingly, the chartered accountants are subject to the obligations to combat money laundering only in their activities of auditors, which are uncommon. In addition, there is a doubt as to whether other persons exercise the accounting profession independently (which could be the case of chartered accountants) in which case, they should be subject but not expressly,
  - It does include service providers in companies and trusts: nevertheless, the assessors were unable to have confirmation of the existence of these professions in Senegal. In addition, the country does not recognise the possibility of creating trusts, or other legal arrangements. In such circumstances, that gap did not impact on the rating of this recommendation.
  - The Law does not cover expressly bailiffs.

**800.** Although the Law stipulates that the businesses and professions mentioned above are to the same preventive measures and detection of money laundering as the subject financial institutions, article 15 provides special rules for casinos and gambling businesses.

That seems to add to the provisions applicable to other liable people. Indeed, the managers, owners and directors of casinos and gaming houses are required to:

- justify to the public authority, from the date of application for an opening authorisation, the source of the funds needed for the setting-up of the institution,
- ascertain the identity, on production of an unexpired national identity card or any original document in lieu thereof, and including a photograph, of the agents who buy provide, exchange chips and counters for an amount equal to or above 1,000,000 CFA
- (about €1,525), or whose exchange value is equal to or above this amount,
- record in a special register, in chronological order, all the transactions referred to in the preceding paragraph, their nature and amount indicating the names of agents, as well as number of the identity document presented, and retain the register for ten years after the last transaction recorded,
- record in chronological order all fund transfers made between casinos and gaming houses in a special register and retain the register for ten years after the last operation recorded.

**801.** In case the casino or gambling business is controlled by a corporate body with several subsidiaries, poker chips must identify the subsidiary through which they are issued. In no case, should the poker chips issued by a subsidiary be reimbursed by another subsidiary, whether the latter is located in the national territory, in another member state of the Union or in a third country.

**802.** The assessors were unable to determine whether the internet casinos existed in Senegal

**803.** As part of this assessment, the professions that are not on the list of designated non-financial businesses and professions of the FATF will not be analysed. These are business introducers to financial institutions, merchants of high-value goods other than precious metal and stone dealers, security companies, travel agencies and NGOs.

#### **R12.1: Implementation of Recommendation 5 to designated non-financial businesses and professions (DNFBP) :**

**804.** All DNFBP covered by the Law, except for the casinos that are subject to specific provisions provided for in article 15, must identify their customers in the same circumstances as those applicable to financial professions (see Part II of the Law ). The members of independent legal professions are also subject to them but only when they represent or assist customers and outside any legal procedure. None of the supervisory authorities identifiable for these professions has not yet, as the Law allows them, specified the content and modalities for the implementation of prevention programmes to combat anti-money laundering which the DNFBP should develop.

#### ***Identification obligations applicable to casinos***

**805.** The Law includes customer identification measures, which relate to certain transactions (when customers buy, give, exchange chips or chips). The assessors were told that the casinos did not carry out other related activities such as foreign exchange. The measures provided by the Law do not require casinos to verify whether the customer acts on behalf of another person. In addition, it was pointed out to the assessors that the customer identification measures were not systematically enforced. In addition, the casinos

do not seem to be aware of their obligations. They indicate that chips and counters are purchased at 80 percent in cash and 20 percent by payment card. Repayment of chips and counters is systematically done in cash and never in another form, especially through cheques.

Customer identification obligation among the DNFBP

**806.** The provisions of the Law are more demanding toward lawyers, notaries and other independent legal professions than those of the FATF since they apply when these professions represent or assist their customers, outside any legal procedure.

**807.** Lawyers seem to be reluctant, because of their professional secrecy, to implement the STR obligations. In addition, they have not yet begun implementing the provisions of the Law concerning customer identification.

**808.** Notaries, who were reluctant to enforce the Law, have begun taking it into account for a few months on the occasion of an awareness day organized by CENTIF (March 2007). Several notaries included in their anti-money laundering internal procedures and their actions, deliberative clauses on the source of funds. It should be noted that according to information provided to the assessors by notaries, only 20 percent of building sales should pass through a notary. These are buildings whose lands are registered. For other sales, they operate under private signature in return for simplified formalities.

**809.** Despite the fact that their sole activity of auditor seems to be subject to anti-money laundering obligations, chartered accountants were not hostile towards a device which they were unfamiliar with since they did not benefit from any sensitisation.

**810.** In addition, doubts persist on the status of the two independent legal professions: bailiffs and legal advisors.

**811.** Indeed, the assessors received no information to ascertain that the bailiffs are subject to the Law that should however apply to them since they constitute an independent legal profession and that they represent or assist their customers, beyond any legal procedure.

**812.** With regard to legal advisors, Law No. 94-69 of 22 August 2004 ended the requirement to obtain a licence before practising certain professions. Its implementing order No. 95-132 of 1 February 1995 made a list of professions that no longer require pre-authorization to exercise. Legal advisors are among the professions listed. It was not possible for assessors to know the number of legal advisors, or whether special rules governed the profession. Therefore, they could not know if members of the profession are aware of their anti-money laundering obligations, or if their activity is subject to a control by any authority in this area. Like bailiffs, the Law should also apply to them since they constitute an independent legal profession and they represent or assist their customers, outside any legal procedure.

**813.** The same situation affects precious metal brokers whose exercise no longer require authorisation. However, the Law applies to dealers of useful goods including precious metals and stones. FATF requires that precious metals and stones dealers, while performing transactions of an amount that is equal to or above €15,000 with a customer, they implement identification obligations. The Law goes further, since it sets no threshold and limit to the type of transaction, which should result in the implementation of identification measures.

**814.** Real estate agents are also subject to the obligations of the Law without restriction concerning the Law they carry out, which is more demanding than the FATF. Since the abrogation of Law No. 82-07 of 30 June 1982 relating to the Law of promotion, transaction and property management, and consultancy in corporate organization, company management and legal counsel, the real estate Agent activity no longer seems to require any permission before exercising. However, Decree No. 95-132 of 1 February 1995 issued pursuant to Law No. 94-67 of 22 August 1994, which repealed the Law of 30 June 1982 and which lists the professions exempt from pre-authorization, does not cite the Law of transaction property management. Therefore, the Ministry of Trade himself was unable to clarify from assessors the need or not to obtain permission to practise the profession of estate agents, their number and the supervisory authority in charge of ensuring the implementation by this profession of the obligations of the Law.

**R12.2: Implementation of Recommendations 6, 8, 9, 10 and 11 to the designated non-financial businesses and professions (DNFBP):**

**815.** As indicated above, the same obligations as those on financial institutions are applicable to the DNFBP concerning Recommendations 6, 8, 9, 10 and 11. Therefore, the assessment made on these recommendations for financial institutions can also be used for the DNFBP with a necessary degradation due to a lack of knowledge by these professions of their obligations, and above all to absence of implementation.

**4.1.2 Recommendations and Observations**

**816.** Senegal should complete the list of designated non-financial businesses and professions (DNFBP) subject to the obligations to combat money laundering by including chartered accountants and accountants. It should also make an exhaustive list of these professions so that they are aware of their obligations and that each has a supervisory authority that may exercise its prerogatives and impose sanctions.

**817.** Senegal should clarify the situation of bailiffs, legal advisors, real estate agents and precious metal brokers with regard to anti-money laundering obligations. The supervisory authorities should immediately specify the content and modalities for the implementation of preventive programmes to combat money laundering.

**818.** Senegal should take steps to suppress the possibility that buildings be sold by private signature and that the price be paid without the presence of the notary.

**819.** The assessors noted a lack of knowledge and appropriation of anti-money laundering provisions by the DNFBP, in spite of awareness by the CENTIF. None of these professions has confirmed having been the subject of an audit by a competent authority with regard to their anti-money laundering obligations.

**820.** Casinos, which are not more sensitised than the other DNFBP, declare that they have adopted practices limiting the risks of money laundering by paying winnings and reimbursing chips only in cash. The Senegalese authorities should consider making this practice, an obligation for the profession.

**4.1.3 Compliance with Recommendation 12**

	<b>Compliance assessments</b>	<b>Summary of reasons (peculiar to section 4.1) justifying the overall compliance assessments</b>
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<b>R.12</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>- Chartered accountants and accountants are not subject to anti-money laundering obligations and doubt persists concerning the subjection of bailiffs and legal advisors</li>   <li>- The conditions for the exercise of the profession of legal advisor, precious metal dealers and real estate agents should be clarified</li>   <li>- Pursuant to recommendation 5: the DNFBP are not fully aware of the anti-money laundering obligations that they sparingly comply with despite the fact that they are similar to those of financial institutions (to the exception of independent legal professions where legal procedures are excluded, and casinos). These provisions are not in keeping with the reasons indicated at recommendation 5</li>   <li>- Pursuant to recommendation 6: Like in the financial professions, there are no provisions for due diligence concerning PEPS</li>   <li>- Pursuant to recommendation 8: There is no specific provision relating to the abusive use of new technologies; as regards distant relations, the provisions of the Law are not compliant with FATF requirements;</li>   <li>- Pursuant to recommendation 9: Not applicable</li>   <li>- In accordance with recommendation 10: The provisions of the Law are in line with the FATF standards but the DNFBP ignore them, which poses a problem of effectiveness.</li>   <li>- In accordance with recommendation 11: The Law should not contain any applicable threshold. In addition, the DNFBP are unfamiliar to it and hardly implement it.</li> </ul>
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**4.2 - Monitoring of transactions and other stakes (R.16) (pursuant to R.13 to 15 ; 17 & 21)**

Description and analysis

Implementing Recommendation 13 to non financial businesses and professions

**821.** Based on Article 26 of the Uniform Law, non financial businesses and professions mentioned at article 5 must immediately report to CENTIF all facts they know as part of their professional activities that could be a sign of money laundering or terrorist financing.

**822.** The abovementioned Article 5 subject to the laundering prevention and detection requirements (Titles II and III of the Law) individuals or legal persons who as part of their profession, conduct, check or advise operations involving deposits, exchanges, investments, conversions or any other flow of capitals or assets. Although not restrictive, this list cites the following non financial businesses and professions:

- Members of independent legal professions when representing or assisting clients outside any legal procedure mainly in the following activities :
  - Purchase and sale of assets, trade companies or businesses,
  - Handling of client money, securities or other assets,
  - Opening and managing bank, savings or securities accounts,
  - Setting up, managing and leading companies, trust or similar structures, implementing other financial operations
- Business introducers to financial bodies,
- Auditors,
- Estate agents,
- Dealers of big value items such as art objects (paintings, masks mainly), precious stones and metals,
- Security companies,
- Owners, heads and managers of casinos and gambling houses including national lotteries,
- Travel agencies,
- Non Governmental Organisations (NGOs).

**823.** The list of subject professions is not fully consistent with the FATF requirements as indicated below at recommendation 12 (non liability of experts, chartered accountants, service providers to companies and trusts; doubts about the liability of bailiffs).

**824.** Article 26 of the Law requires its liable people to report to CENTIF in the conditions set by the Law and according to the declaration pattern set by a decision by the Finance Minister, all these operations focus on goods or sums of money and any other assets when those may arise from money laundering or terrorist financing operations.

**825.** In practice, notaries but particularly lawyers try to keep the right mix between the requirements related to the fight against money laundering and terrorist financing and those related to the respect for confidentiality.

**826.** On this issue, Article 34 on the removal of confidentiality notes that despite all contrary legal or regulatory provisions, confidentiality cannot be invoked by people mentioned in Article 5 to refuse providing information to the Supervisory authorities as well as to the CENTIF or to make the report provided by the Law. Likewise, for information needed in connection with an enquiry on laundering charges ordered by the examining judge or conducted under his supervision by state agents in charge of detecting and suppressing money laundering-related crimes.

**827.** On statistics, no reporting of suspicion by the Designated Non Financial Businesses and Professions has been recorded by CENTIF.

*Applying Recommendations 14, 15, 17 21 to designated non financial businesses and professions*

**828.** Under the circumstances described in criterion 16.1, designated non financial businesses and professions must be subject to the criteria mentioned under Recommendations 14, 15, 17 and 21.

**829.** The provisions of the anti-money laundering uniform law in Article 30 related to the exemption of duties because of *bona fide* suspicious transactions reporting, also apply to designated non financial businesses and professions.

**830.** Indeed, people or leaders and officials mentioned in Article 5 of the Law who honestly provided information or made any report in line with the provisions of the current law, are free from any sanction for violating confidentiality.

**831.** No action in civil or criminal liability can be taken nor any professional sanction issued against people, leaders and officials mentioned in Article 5 who acted in the same conditions than those set forth in the previous paragraph although court decisions delivered on the basis of the declarations mentioned in the same paragraph led to no sentence.

**832.** Besides, no action in civil or criminal liability can be taken against people mentioned in the previous paragraph due to property or moral damage that may arise from a suspended operation pursuant to the provisions of Article 28 on handling reports made to the CENTIF against operation executions.

**833.** On implementing recommendation 15, the provisions of article 13 of the Law requiring the setting up of internal programmers to check and detect money laundering seem to target only financial bodies. But article 5 of the Law states that Titles II and III of the Law (article 13 is part of Title II) can be applied to all liable people which excludes Designated Non financial Businesses and Professions.

**834.** Finally, the criminal Code and specific repressive laws criminalize and punish tax fraud. However, that is not clearly integrated among offences that should require a reporting of suspicion.

Additional elements:

**835.** The Law targets auditors (public accountants invested with that mandate) and not public or chartered accountants (see supra).

**836.** Pursuant to the provisions of article 26, paragraph 1 item 2, designated non financial professions are required to report to the FIU assets operations when those may be part of a money laundering process.

### **Recommendations and Observations**

**837.** All DNFBPs under the FATF are not subject to the LCB requirements laid out in the Law.

**838.** In implementing recommendation 13, one must note that Designated Non Financial Businesses and Professions do not meet their requirement to report suspicious operations. This notice reflects a genuine problem of an effective application of the requirement for a reporting of suspicion. It's important for these sensitization efforts to be maintained and even extended in these categories of liable people mainly with respect to the risk attached to exerting this profession.

**839.** Furthermore, the Senegalese authorities should ensure that the DNFBPs implement AML/CFT internal programmes and give a particular attention to their business relations and transactions with individuals or legal persons living in countries that do not or insufficiently implement the FATF Recommendations.

<b>Compliance with Recommendation 16.</b>		
<b>R.16</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• All DNFbps of the FATF are not covered by requirements of reporting</li> <li>• On statistics, no reporting of suspicion by Designated Non Financial Businesses and Professions has been made with the CENTIF.</li> <li>• No AML/CFT internal programmes have been implemented by the DNFbps.</li> <li>• No requirement for DNFbps to give particular attention to their business relations and to their transactions with individuals or legal persons living in countries that do not or insufficiently implement the FATF Recommendations.</li> </ul>

### **4.3 - Regulation, monitoring and supervision (R. 24 & 25)**

**840.** Pursuant to article 5 of the Law, casinos and other designated non financial businesses and professions (DNFBPS) just as financial institutions are subject to the requirements on combating money laundering under the reserves mentioned at recommendations 12 and 16.

**841.** The Law is not clear on the relevant supervisory authorities to act in prevention. Indeed, it cites these authorities in its article 35 only to punish possible breaches in addition to the sanctions provided.

#### **4.3.1 Description and Analysis**

##### **Recommendation 24**

**842.** Consonant with the provisions of Law N°66-58 of 30 June 1996 organizing and governing gambling houses, the opening of gambling houses subject to a prior authorization notified through a decree jointly made by the Interior and Finance ministers.

**843.** The request for operation license is sent to the Interior minister along with the following documents:

i) As for a plaintiff company, the statutes of the company with either the list of the partners with the number of their respective interests (limited company, limited or collective partnerships, or a statement showing the composition of the board of directors (limited company) ;

ii) Individual files of the director in charge and members of the committee with an individual note and the documents provided for by article 13;

iii) Documents of the administrative enquiry containing the report of the enquiry. Under title v of the abovementioned law, agents in the Interior and Finance ministries are in charge of conducting an on-site monitoring and supervision. Agents in the Interior ministry are tasked to conduct checks mainly regarding the conditions of entry into gambling

houses, the control of suspicious gamblers. Agents in the Finance ministry for their part have to check the commercial accounting, the games' special accounting and to make deductions for the Treasury.

**844.** Article 15 of law N°65-58 makes provision for sentences laid down in article 388 of the criminal code stating that "Shall be punished anyone:

- i) Who acts as the head or a member of the management committee without approval by a decree ;
- ii) Or runs a gambling house in breach of one of the provisions of the license decree or conceals or tries to conceal all or part of the games proceeds used to make deduction provided for by the Law". Offences to such law other than those mentioned in 'Article 15, will be punished by no further than two-months jail sentence and a CFAF200,000-fine pursuant to article 16 of the Law.

**845.** Besides, Article 9 of the Law stipulates that, without prejudice to criminal penalties, the mere report of the secret existence or a defeasance-letter intended either to violate the provisions of the Law, rules, orders or instructions on games regulation, or just to study them, immediately causes the withdrawal of the license.

**846.** These sanctions do not exclude penalties provided for in Article 40 of the Law.

#### \*LAWYERS

**847.** The Bar Council sitting as a disciplinary committee prosecutes and disciplinarily punishes offences committed mainly on LBC by registered lawyers or on training course. It is enforced either immediately or at the request of the State Prosecutor at the Appeal Court or at the instance of the Bar president. Under article 45 of the Law N°0409 of 4 January 2004 on the Lawyers' governing body, disciplinary penalties are: warning, reprimand, temporary ban which should not exceed three years, expulsion from the Lawyers' Register or the training courses lists.

**848.** The State Prosecutor at the Appeal Court ensures and supervises the enforcement of applicable sentences.

**849.** These sanctions do not exclude penalties provided for in article 40 of the Law.

#### \*TRAVEL AGENCIES

**850.** Under article 2 of decree N°2005-144 governing travel, tourism and tourist transport agencies, no one can set up and run a travel agency if he has no licence issued by the Tourism ministry.

**851.** Any one applying for a license must show he meets the following conditions mainly:

- 1) Show a copy of criminal record under three months for individuals and a copy of the trade register and the personal property loans for companies ;
- 2) Known to have good morality. In addition, article 6 stipulates that individuals and legal persons sentenced for personal bankruptcy or in the process of a legal liquidation cannot run travel, tourism and tourist transport agencies : ;

- 3) People sentenced for crime, offence punished by unsuspended imprisonment exceeding three months or a six months suspended jail sentence, mainly fraud on customs, tax or foreign currency check regulation.

**852.** Consonant with Article 15 of such Law, in the case of gross misconduct mainly failure to respect the Law, of sentence for offence or crime, the licence can be temporarily withdrawn by the Tourism minister from three to twelve months. The definitive withdrawal occurs after a notice from the National licence delivery Commission. It should be noted that the Law makes provision for intermediary sanctions such as a mandatory order, a formal demand.

**853.** These sanctions do not exclude penalties provided for in article 40 of the Law.

#### \*NOTARIES

**854.** Under decree n°2002-1032 of 15 October 2002 amending decree n°79-1029 of November 1979 setting the statute of notaries, no one can be a notary without meeting the conditions to hold the post of notary mainly:

- 1) Enjoy one's civic and civil rights, never been sentenced for actions contrary to honour, probity and good customs, never done things likely to result in the immediate retirement or a disciplinary or administrative sanction of destitution, suspension, dismissal, withdrawal of licence or authorization, never been declared in personal bankruptcy, legal redress or assets liquidation ;
- 2) Have completed successfully the training aptitude test ;
- 3) In line with article 27 of the abovementioned decree, anyone who without meeting the conditions required, uses or claims the quality of notary or honorary notary shall be subject to the penalties provided for in article 227 paragraph 2 of the criminal Code. Notaries are appointed by decree at the proposal of the Justice Minister.

**855.** The Notaries' Chamber is in charge of recording offences and irregularities committed by notaries on duty.

**856.** Under Article 106 of the decree, any violation of the Laws and rules, any offence to the professional rules and the imperative provisions, any fact contrary to the integrity, honour or delicacy committed by a notary even related to extraprofessional facts, will be prosecuted even though there was no plaintiff, by the state prosecutor to the relevant Appeal Court without prejudice to the prosecutions before the relevant jurisdictions.

**857.** Any notary facing a criminal or disciplinary prosecution may be suspended from his duty through an order by the Justice Minister until a final decision on the criminal or disciplinary action is made.

**858.** Pursuant to Article 107 of the decree, disciplinary sanctions facing notaries and trainee notaries are:

- An Informal disciplinary action ;
- A Censure ;
- A definite term suspension ;
- Expulsion from the training course list ;
- Destitution.

**859.** An informal disciplinary action, censure and expulsion from the training course list falls within the authority of the disciplinary Committee. Regarding other penalties, it sends proposals it deems necessary to the justice minister. Suspension and destitution are respectively pronounced through an order or decree by the Justice Minister.

**860.** These sanctions do not exclude the penalties provided for in Article 40 of the Law.

#### \*AUDITORS

**861.** Under the Law, the chartered accountant is the one usually in charge of reviewing, assessing, checking and redressing accounts for companies and bodies with which he is not bound by a working contract. **He is only authorized to fulfil the mandate of an auditor and** property commissioner.

**862.** Under articles 25 and 26 of the Law organising the profession, “No one can any way without prior registration to the Register run the profession of chartered accountant or purport this capacity. Is illegally exercising the profession of chartered accountant anyone who, without prior registration to the Register or who was suspended from it, usually exerts in his name and responsibility the abovementioned activities or who leads it.

Is illegally exerting the profession of chartered accountant any member of the Association who after suspension continues exerting his profession”

**863.** The penalty incurred is between six months to two years in jail and/or a fine of between two to five millions CFA francs.

**864.** The chartered accountant usually keeps, opens, supervises, centralizes, settles and in line with his duty, redresses the accounts of companies and bodies with which he is not bound by a working contract. He is authorized to certify the regularity and sincerity of the financial summary statements for companies and bodies for which he himself settles the accounts.

**865.** Some members of the Association participated in sensitization and training workshops in LBA/CFT. A code of ethics taking into account the LBA/CFT component is being prepared.

**866.** The Bar Council supervises the profession and is widely powered to take sanctions.

**867.** An external audit of the Association is conducted by a Government auditor representing the minister of Economy and Finance sitting within the Bar Council.

**868.** It should be noted that the Law mentions as people subject to this category only auditor meaning chartered accountants invested with the mandate of auditors.

#### \*ESTATE AGENTS

**869.** Since the adoption of law N°82-07 of 30 June 1982 on property promotion, transaction and management, study and advice in organizing and running companies and advice, property agencies and agents seem to evade any regulation while they form a sector involving high risk of money laundering in Senegal.

**AS THE DNFBPs ARE NOT UNDER A LEGALLY CONSTITUTED ASSOCIATION OR A SCOPE OF ACTIVITIES GOVERNED BY A SPECIFIC LAW:**

**870.** They are legal advisors, service providers to companies and trusts (if this profession exists in Senegal), dealers in precious metals, property agents (subject to the above uncertainties).

**871.** In line with law N°94-69 of 22 August 1994 setting the regulation for exerting economic activities, professionals not subject to the prior authorization procedure report their activities in line with the provisions organizing the trade or profession register. Specific formalities can be set through an order to get a professional card. However, holding a professional card cannot be a condition for running the profession.

**872.** Exercising without a prior reporting of activities subject to this regulation is punished by a fine of between CFAF10,000 to CFAF1,000,000 with a constraint of payment or cessation of activities that should not exceed three months.

**873.** These sanctions do not exclude penalties provided for in article 40 of the Law.

**Recommendation 25** (Directive for Designated Non Financial Businesses and Professions other than those related to the STR)

**874.** Supervising or self-regulatory authorities for Designated Non Financial Businesses and Professions have not issued guidelines to help them apply and meet their respective AML/CFT requirements.

**875.** However, the mission was informed about circular CDN/N°023 of 4 April 2007 the Notaries' Chamber sent to its members to draw their attention on their requirements for due diligence set out in the uniform law N°2004-09 of 6 February 2004 on the fight mainly ; i) to identity checks ; ii) measures to be taken towards occasional clients ; iii) the need to adopt procedures at the level of the company and the profession ; iv) particular review in the case of important and unusual operations.

**876.** Besides the CENTIF has devised draft procedures for subject people to ensure a better understanding of the money laundering phenomenon and the enactment of the Law.

**4.3.2 Recommendations and Observations**

**877.** Since the adoption of Law N°82-07 of 30 June 1982 on property development, transaction and management, study and advice in organizing and running companies and advice, property agencies and agents seem to evade any regulation while they form a sector involving high risk of money laundering in Senegal.

**878.** Exercising other professions under the DNFBPs also evades any requirement for operating license hence any control. These are legal advisers, service providers to companies and trusts, precious metal dealers possibly bailiffs, and property agents. Finally, chartered accountants and authorized accounts are not expressly subject to the Law.

**879.** Supervising or self-regulatory authorities for Designated Non Financial Businesses and Professions have not issued guidelines to help them apply and meet their respective AML/CFT requirements.

**880.** Assessors noted the lack of knowledge and ownership of anti-laundering arrangements by the DNFBPs mostly despite a sensitization by the CENTIF. None of these professions confirmed to have undergone an audit from a relevant authority with respect to their requirements to fight money laundering. Therefore, the competent authorities should:

- Set up a specific regulation related to the exercise of activities on property development, transaction and management to involve these professions in the AML/CFT and devise a supervising structure with genuine sanction powers.
- Pursue sensitization and training efforts for DNFBs ;
- Issue guidelines to help professions involved **understand** and implement their new requirements.
- Monitor and control the implementation by the DNFBs of the provisions on AML/CFT and sanction possible breaches

	<b>Compliance assessments</b>	<b>Summary of reasons for overall compliance assessments</b>
<b>R.24</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Since the adoption of law N°82-07 of 30 June 1982 on property development, transaction and management, study and advice in organizing and running companies and advice as well as its implementation decree, property agencies and agents seem to evade any regulation while they form a sector involving high risk of money laundering in Senegal.</li> <li>• Other DNFBs also evading any supervision</li> <li>• None of the subject DNFBPs has so far been checked (lack of effectiveness)</li> </ul>
<b>R.25</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• No guidelines issued for designated Non Financial Businesses and Professions in the form of assistance on issues covered by the FATF corresponding recommendations.</li> </ul>

#### **4.4 Other non financial businesses and professions –MODERN AND SECURE MANAGEMENT Techniques (R.20)**

##### 4.4.1 Description and Analysis

**881.** Senegal is implementing the anti-laundering requirements set forth in the Law to businesses and professions other than those designated by the FATF. They are the following professions:

- Dealers of high value item such as objet d’art (mainly paintings, masks),
- Security companies,
- Gambling houses (others than casinos) and national lottery,
- Travel agencies,
- NGOs

**882.** Besides, Senegal enacted law n°2004-15 of 4 June 2004 on measures on the development of banking services and the use of scriptural payment means. The combined provision of this law and directive n°01/2003 of 8 May 2003 by BCEAO on the development of scriptural payment means note that:

- Any financial operation on sums of CFAF100,000 (about €153) among on the one hand, individuals, companies and other private people and on the other, among public and parapublic people, are made by cheque or transfer to an account opened at the financial services of the Post office or a bank ;

- Salaries, allowances and other provisions in cash owed by the state, public administrations, companies or other public and parapublic people to civil servants, agents, other staff or to their families as well as to service providers equal to CFAF100,000 are paid by cheque or transfer on an account opened at the financial services of the Post office or a bank;

- Taxes and other provisions in cash owed to the state, public administrations, companies or other public and parapublic people on sums equal to or above CFAF100,000 are paid by cheque or transfer to an account opened at the financial services of the Post office, a bank or at the Public Treasury ;

- Payment of water, electricity, phone bills and carrying out of any requirement for sums of money are exempted from stamps when they are made through a scriptural payment instrument or process.

**883.** Regulation n°15/2002/CM/WAEMU of 19 September 2002 adopted by the WAEMU Ministers' Council on the payment systems in WAEMU member countries also provides that any tradesman has to open an account at the financial services of the Post office or a bank within a member state.

**884.** He must indicate the address and number of the account to the bills and other documents whereby he claims the payment and the interests on arrears are not owed as long as these indications are not communicated to the debtor.

**885.** In their dealings, salesman cannot refuse the payments or remittances of sums of money equal to or above the CFA100,000 threshold set by Order n°7486 of 11 November 2003 by the Minister of Economy and Finance transferred to an account opened at the financial services of the Post office or a bank unless there is another appropriate scriptural payment means. In addition, in dealing among them and with their customers, salesmen cannot refuse the payments or remittances of sums equal to or above the benchmark CFAF100,000 made through pre-crossed check or not.

**886. 20.1:** This list is not restrictive which may pose difficulties for professions that would ignore they were subject to the anti-laundering requirements. Moreover, in order to be effective, the provisions of the Law must be checked and appropriate sanctions taken by a relevant authority although the assessors have no information on the relevant supervisory authorities (if any), nor on the controls implemented and the sanctions taken.

**887. 20.2:** Senegal passed a law to foster the use of cheque and other cashless payment means. Regulation of 19 September 2002 goes along the same lines. Nevertheless, the Senegalese population is still using few banking services (6%) and the assessors did not get any information about the real implementation of these laws. The financial flows are still widely made in cash in an economy where the informal sector is very important and where there is no law limiting the amount of cash transactions. Assessors were unable to assess the full implementation of the enacted laws to foster the use of scriptural payment means.

#### 4.4.2 **Recommendations and Observations**

**888.** Senegal has rightly extended the list of the DNFBPs beyond the FATF requirements. Nevertheless, it sent a non restrictive list that does not favour knowledge and

ownership by people subject to anti-laundering requirements. It is also difficult to know the competent authorities in charge of monitoring these various professions. It is suggested that Senegal makes a complete list of additional subject professions, designates and attributes if necessary the control and sanction powers to the competent authorities.

**889.** On top of that, Senegal has taken measures to promote the use of scriptural payment means but these measures are still not enough regarding the proportion of cash payments. It would be advisable to ensure the full implementation of these laws. Senegal should pass wider and more binding measures (thresholds) to foster the development of modern and secure funds management techniques. It should for instance remove the possibility to use uncrossed and endorsable check.

#### 4.4.3 Compliance with Recommendation 20

	<b>Compliance assessments</b>	<b>Summary of reasons for compliance assessments</b>
<b>R.20</b>	<b>LC</b>	<ul style="list-style-type: none"> <li>- Inaccurate list of supplementary DNFBPs and doubts on the relevant supervisory authorities</li> <li>- Modern payment techniques are not developed and promoted enough</li> <li>- Uncrossed and endorsable cheques are used in Senegal</li> </ul>

## **5. - LEGAL PERSONS, LEGAL ARRANGEMENTS AND NON-PROFIT ORGANISATIONS**

### **5.1. Legal persons –Access to information on beneficial owners and Control (R.33)**

#### Description and Analysis :

**890.** The uniform Law on the General Commercial Law sets the legal regime of trade companies, the conditions for their establishment and registration (articles 25 and 27).

**891.** Any individual working as a salesman under the current Uniform Law must as early as the first months of running his business, request its registration from the Registry of the relevant jurisdiction under which responsibility this trade is run.

**892.** The registration application shows:

- 1) Names and personal addresses of the subject person;
- 2) Date and place of birth;
- 3) Nationality;
- 4) Where appropriate the name in which he runs the trade as well as the signpost used;
- 5) Activity (ies) exerted and the form of use;
- 6) Date and venue of wedding, agreed matrimonial regime, clauses opposable to third parties restrictive of the free disposal of spouses' assets or in the absence of such clauses, the request for separate assets ;
- 7) Names, dates and places of birth, addresses and nationalities of people who can commit themselves by their signature, the responsibility of the liable person;
- 8) Address of the main company and where appropriate, that of each of the other companies or branches run on the territory of the member state;

9) Where appropriate, the nature and place of practice of the Lawivity of the last companies previously run showing the registration number(s) with the Trade and Personal Property Loan Register for these companies ;

10) Date when the liable person started running the main company and where appropriate other companies.

**893.** In support of his declarations, the applicant is required to provide the following written proof:

1) A copy of his birth certificate or any administrative document showing his identity

2) A copy of his marriage certificate if necessary;

3) A copy of his criminal record or any other document used for that purpose, if the applicant was not born in the member state in which he is seeking his registration, he should also provide a copy of his criminal record delivered by the Authorities of his native country and failing, any other document used for that purpose ;

4) A certificate of residence;

5) A copy of the title deed or lease of the main company and where appropriate, of that of other companies;

6) In case of purchase of a business or a management agreement, a copy of the purchase statement or of the management agreement statement;

7) Where appropriate, a prior license to run the business.

**894.** Companies and other legal persons mentioned at the Uniform Law on the Right business companies and economic interest groupings must apply for their registration in the month of their establishment with the Trade and Personal Property Loan Register in the Jurisdiction under which responsibility their registered office depends.

**895.** This application should state:

1) The social denomination;

2) Where appropriate, the company name, the acronym or the signpost ;

3) Activity (ies) exercised ;

4) Type of company or legal person ;

5) Amount of the share capital with the amount of contributions in cash and their assessment in nature ;

6) Address of the registered office and where appropriate that of the main company and of each other companies ;

7) Duration of the company or legal person as laid out by its statutes ;

8) Names and personal addresses of the associates held indefinitely and personally responsible for social debts with their dates and places of birth, their nationalities, dates et places of their marriages, the agreed matrimonial regime and the clauses opposable to third parties restrictive to the free disposal of spouses' property or the absence of such clauses as well as the applications for separate property ;

9) Names, dates and places of birth, addresses of managers, administrators or associates empowered to commit the company or legal person ;

10) Names, dates and places of birth, addresses of Auditors when their designation is provided for in the Uniform Law on the right of trade companies and economic interest groupings.

**896.** Unless rejected, this application is attached with the following documents :

- 1) Two certified copies of the statutes ;
- 2) Two copies of the reporting of regularity and compliance or the notarized statement of payment subscription;
- 3) Two copies of the certified list of managers, administrators or associates held indefinitely and personally responsible or empowered to commit the company ;
- 4) Two copies of the criminal record of people mentioned in the above paragraph; if the applicant was not born in the member state in which he is making his application, he will also have to provide a copy of his criminal record delivered by authorities in his native country and failing, any other document used for that purpose.
- 5) Where appropriate, a prior authorization to run the business.

## **Article 29**

**897.** Any individual or legal person not liable to register with the Trade and Personal property Register due to the location of his registered office, must, in the month of establishing a branch of a company in the territory of one of the member parties apply for such registration.

**898.** This application, to be filed with the Registrar's office in the jurisdiction under which this branch or company will be based, must state:

- 1°) The social denomination of the branch or the company;
- 2°) Where appropriate its company name, acronym or signpost;
- 3°) Activity (ies) exerted;

4°) Social denomination of the foreign company that owns this branch or company; its company name, acronym or signpost ; activity (ies) exercised; form of company or legal person ; His nationality ; address of its registered office ; where appropriate names and personal addresses of associates indefinitely and personally responsible for the social debts;

5°) Names, dates places of birth of the individual based in the member state empowered to represent and lead the branch.

**899.** The registration is personal whether the salesman is an individual or a legal person.

**900.** No one can register on several registers or in the same register under several numbers.

**901.** As soon as the applicant's request is in order, the Registrar attributes a registration number and writes it on the form given to the applicant.

**902.** The Registrar then forwards a copy of the individual file and other documents provided by the applicant to the National File.

**903.** Regarding dispute, the Registrar in charge of the Trade and Personal Property Loan Register ensures under his responsibility that the applications are complete and checks the compliance of their statements with the documents provided. In case of inaccuracies or difficulties in carrying out his duty, he refers the matter to the relevant jurisdiction.

**904.** Contentions between the applicant and the Registrar can also be referred to this jurisdiction.

**905.** Pursuant to the provisions of article 42 of the OHADA Treaty, in case of a failure by a salesman, individual or legal person to seek registration in the allotted time, the relevant jurisdiction can, either immediately or at the request of the Registrar in charge of the Trade and Personal Property Loan Register or of any other applicant, issue a decision ordering the person involved to register.

**906.** In the same conditions, the relevant Jurisdiction can order any individual or legal person registered with the Trade and Personal Property Loan Register to ensure

- either the additional or correcting mentions he would omit,
- the necessary mentions or corrections necessary in the case of an accurate or incomplete statement,
- or its cancellation

**907.** Consonant with article 43, anyone who, having to carry out one of the prescribed formalities, fails to do so or makes a fraudulent formality, will be punished with the penalties provided for by the national criminal law or where appropriate by the special criminal law passed by the member state under the current Uniform Act.

**908.** However, this system does not allow knowing the beneficial owner defined by the FATF.

**909.** Besides, assessors could not assess the reliability of the Trade Register keeping and maintaining the updates.

**910.** Information access poses no difficulty. The Trade Register can be accessed by the public. Everyone can, consult all the registrations, registration requests and documents without justifying a particular interest.

**911.** The Senegalese Authorities did not mention any measures taken by Senegal to prevent legal persons that can issue bearer shares from being wisely used in money laundering.

**Recommendations and Observations**

**912.** The Senegalese Authorities should take efficient measures to prevent legal persons issuing bearer shares from being used in money laundering

<b>Compliance with Recommendation 33</b>		
<b>R 33</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Information provided to the RCS do does not allow to know the full pas the beneficial owner as defined by the FATF</li> <li>• Assessors could not ascertain the reliability of the information provided to the RCS</li> <li>• The Senegalese Authorities did not take appropriate measures to ensure to ensure that legal persons issuing bearer shares are not used to launder money</li> </ul>

**5.2 –Legal arrangements – Access to information about beneficial owners and control (R.34)**

**5.2.1. – Description and Analysis**

**913.** The creation of Trust and other similar legal companies is not possible under the Senegalese law. According to the information collected by the Mission, there is no foreign Trust in the country.

### **Recommendations and Observations**

<b>Compliance with Recommendation 34</b>		
<b>R.34</b>	<b>NA</b>	<ul style="list-style-type: none"> <li>• No Trusts in Senegal</li> </ul>

### **5.3 – Non-profit organisations (RS.VIII)**

#### ***RS VIII.1 Adequacy with the Laws and rules of NGOs***

**914.** *1-Pursuant to Decree n°96-103 amending Decree 89-775 of 30 June 1969 setting the conditions of operation for NGOs in its article 1, NGOs are private associations or organizations regularly declared, non profitable and seeking to provide their support to develop Senegal and authorized by the government.*

Provisions of Article 4 of decree 93-103 setting the conditions to grant licence to NGOs. By late July 2007, four hundred and sixty (460) NGOs were authorized.

The licence application, examined by an interministerial Committee, is sent to the supervising authority which is the ministry of Women, Child and Family Affairs. The current provisions provides for ensuring the identification of the founders and members of the NGOs. Authorized NGOs are subject to checks mainly to make sure they fulfill the requirements on keeping the annual accounts and financial statements and the use of the funds according to the goals.

**915.** *The uniform Law does not clearly no provide for specific measures to fight against the excessive use of nonprofit bodies for terrorist ends.*

However representatives of NGOs whom we met said that the control of activities conducted by the governing and monitoring authorities help reduce the risks of using NGO for terrorist ends.

Indeed, there is an umbrella NGO comprising 166 members, 120 of whom were controlled

**916.** *There are no specific measures provided for by the uniform Law to ensure the funds or other assets raised or transferred through the OBNOL are not diverted to foster terrorist activities or organizations.*

**917.** Checks cover the running of the profession and do not expressly target terrorist financing.

## **Additional information's**

**918.** Although in accordance with the International Convention on the suppression of terrorist financing, the special Law on the suppression of terrorist acts of 31 January 2007, targets the funding of terrorist organizations. The mission was informed about the dissolution of two charity NGOs in 2002 or well before the coming into force of this law yet to be implemented. The legal bases for these dissolutions were not specified to the mission.

## **Recommendations and Observations**

**919.** Laws applicable to NGOs allow the Authorities to verify the identity of members of Associations and to apply sanctions for failure to observe the rules. However, the Law makes no provision for specific measures on preventing the risk of the excessive use of non-profit organizations for terrorist ends

**920.** Furthermore, officers in the Interior ministry supervising the Associations are not sensitized enough on terrorist financing issues. Checks were not made in a bid to know whether these associations are not used for terrorist ends. The sector of NGOs must also be sensitized on the risks.

**921.** It should be noted on this issue that sensitizing the administrations involved has already begun with workshops organized by the CENTIF and is expected to continue in a more targeted way.

**922.** Authorities should take concrete measures to ensure the funds or other assets raised or transferred are not diverted to promote terrorist financing. The competent authorities should also carry out sensitization actions to work out clear policies for promoting transparency, integrity and trust among the public in any sector and encourage the NGOs to make their transactions through regulated financial Institutions.

## **Compliance with RS.VIII**

<b>SR VIII</b>	<b>NC</b>	<p>The Law makes no provision for preventing the excessive use of nonprofit organizations for terrorist ends</p> <p>No concrete sensitization measures to prevent funds or other assets raised or transferred from being diverted to finance terrorism.</p> <p>Inadequate checks made on the NGOs do not allow to ensure the effectiveness of the system</p>
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## **6 - COOPERATION AT NATIONAL AND INTERNATIONAL LEVELS**

### **6.1 Cooperation at national level and coordination (R.31)**

**923.** As part of the efficient mechanisms for cooperation, coordination of action to draft and implement AML/CFT policies and activities between government officials, FIU, prosecuting, monitoring Authorities and other competent authorities, at the national level, the CENTIF uses its network of correspondents both in the public and private sector to

forge efficient cooperation relationships in the search for information necessary for STR processing.

**924.** According to CENTIF, relations with the BCEAO are good and its role in processing reporting of suspicion is described as “efficient”.

**925.** However, there is apparently no systematic information exchange mechanism mainly statistical between the various AML/CFT players. It would be useful to set up such a mechanism and a systematic communication of the above information should be established at the CENTIF.

Besides, there is no official framework for cooperation grouping all AML/CFT institutional actors.

**926.** A project towards creating an ad hoc structure to ensure the coordination of actions would be prepared.

**927.** Once completed, a liaison committee bringing together all stakeholders in combating money laundering could be set up and placed under the supervision of the Finance ministry for which CENTIF would run the Secretariat with a view to making notices and proposals as part of the LML/FT.

**928.** One should report the existence within the CENTIF of an operational database with all the collected statistics. These data feed the periodical reports made for authorities provided for in the Law.

**Recommendation 32**

Apparently there is no regular assessment mechanism on the effectiveness of the AML/CFT systems

**Recommendations and Observations in R.31, R.32**

**929.** Senegal has well structured organizations and generally means within the framework of LML/FT.

**930.** CENTIF, in particular, is supported by correspondents designated both in the public and private sector.

One should however ensure a better information share and create a main coordination authority among all stakeholders (government authorities, CENTIF, prosecuting and monitoring authorities as well as other competent authorities at national level). This authority could set up a regular mechanism to assess the AML/CFT effectiveness.

**Compliance with Recommendation 31.**

	<b>Compliance assessments</b>	<b>Summary of reasons for compliance assessments</b>
<b>R.31</b>	<b>LC</b>	Non systematized information share. No main organization for AML/CFT cooperation and coordination

## **6.2 United Nations Special Conventions and Resolutions (R 35 and RS I)**

1- Signature, ratification and unrestricted implementation of the Vienna, Palermo and New York Conventions - R.35.

**931.** Senegal signed and ratified:

- ✓ The United Nations Convention against the Illicit Traffic of Narcotics and Psychotropic Substances (Vienna Convention of 20 December 1988) on 27 November 1989) ;
- ✓ The United Nations Convention against Organized Transnational Crime (Palermo Convention of 15 December 2000) on 27 October 2003) ;
- ✓ The United Nations Convention on the Suppression of Terrorist Financing (New York Convention of 9 December 1999) on 11 September 2004.

**932.** However the mission could not get the proof of the publication of these conventions in the official newspaper which is the necessary condition set by article 98 of the Constitution for opposability to their superiority to the Laws.

### **Recommendations and Observations**

**933.** In adopting the Law, Senegal implemented the Vienna and Palermo Conventions.

**934.** On the other hand the 1999 International Conventions on the suppression of terrorist financing is yet to be implemented. In this respect, the Law of 31 January 2007 on the suppression of terrorist acts is not consistent with the requirements of this Convention.

**935.** Regarding the WAEMU directive approved on 4 July 2007, its adaptation to the internal law should help Senegal meet the standards mainly on criminalizing terrorist financing.

### **2- Implementation of the Security Council Resolutions on the prevention and suppression of Terrorist financing – SR1.**

**936.** Implementing the Resolutions 1267/1999 of the United Nations Security Council and the subsequent Resolutions does not involve all the liable people. The list of people and entities targeted by the Security Council decisions to freeze assets and other property should be disseminated to the other liable people in addition to credit institutions.

**937.** Resolution 1373 is implemented only in part if one considers the provisions of the special law of 31 January 2007 on the suppression of terrorist acts even though the reports addressed by Senegal to the Security Council show the authorities' will to comply with the international law on the matter. In this respect, Senegal should ensure the adaptation in its internal legal order of the WAEMU Directive on combating terrorist financing in the WAEMU member countries.

### **Recommendations and Observations in R.35 and SR.1**

**938.** Senegal should provide the proof for the publication in the official newspaper following ratification, of the Vienna, New-York and Palermo Conventions as required by

article 98 of the Constitution. The already ratified International Convention on the suppression of terrorist financing, should be fully implemented by Senegal

**939.** The list of people and entities targeted by the Security Council decisions to freeze assets and other property as part of Resolution 1267/1999 and the subsequent Resolutions should be disseminated to the other liable people in addition to credit institutions.

**940.** Resolution 1373/2001 should be adequately implemented mainly through the adoption of the adaptation law of the WAEMU Directive on the fight against terrorist financing in WAEMU member countries.

### **Compliance with Recommendation 35 and RS1.**

	<b>Compliance assessments</b>	<b>Summary of reasons for compliance assessments</b>
<b>R.35</b>	<b>PC</b>	- Senegal did not provide the proof of the publication in the official newspaper of the Vienna, New-York and Palermo Conventions following ratification which is the condition necessary for their integration in the legal internal basis of their superiority to the Law.
<b>RS.1</b>	<b>PC</b>	- The International Convention for the suppression of terrorist financing is not adequately implemented.  -The implementation of Resolution 1267/1999 and subsequent Resolutions does not involve all the liable people ; - Resolution 1373/2001 is not adequately implemented.

### **6.3 Judicial Cooperation (R 36-37-38 RS V and R 32)**

#### **Recommendation 36**

**941.** Article 53 of the Law sets the modalities for judicial cooperation and provides a wide range of measures comprising all acts of enquiries mainly :

- The collection of testimonies and depositions ;
- Provision of an assistance for judicial authorities requiring detained people of others people for testimony or assistance in conducting the enquiry ;
- Delivery of judicial documents ;
- Searches and seizures ;
- Examining objects and places
- Delivery of information and exhibits ;
- Delivery of originals or certified copies of relevant files and documents including banking statements, accounting records, registers showing the running of a company or its commercial activities.

**942.** No restriction has been provided by the Law regarding the powers of the competent authorities carrying out a judicial cooperation request. Therefore judicial cooperation is neither prohibited nor subject to unreasonable, disproportionate or unduly restrictive conditions.

**943.** Article 54 of the Law mainly states that the applicant State must indicate the time it wishes to see the measure implemented.

**944.** Clear and efficient procedures are described in articles 54 and the following ones in the Law.

**945.** Article 55 of the Law restrictively lists the cases for which the applicant authority can refuse to follow-up on a judicial cooperation request.

Under article 55 paragraph 2 of the Law, confidentiality should not be invoked to refuse to carry out the judicial cooperation request

**946.** Article 57 of the Law stipulates that investigating and examining measures are conducted in accordance with the current law. Thus the competent authorities can use prerogatives conferred by the Law on enquiry to carry out a judicial cooperation request.

**947.** Article 46 of the Law has set up an international competence. It stipulates: “national jurisdictions are qualified to know offences provided for by the Law committed by any individual or legal person whether its nationality or location of its headquarters even outside the national territory provided the venue of commission is situated in one of the WAEMU member countries. They can also know the same offences committed in a third party State since an international convention allows them to do so”.

#### Additional elements

#### **Special Recommendation V**

**948.** The mission was not informed about information exchange on terrorist financing with other countries through judicial cooperation mechanisms.

#### **R 37 –Dual criminality on mutual assistance**

**949.** 1-The Law does not make clear provision for dual criminality as a condition for carrying out a judicial cooperation request.

**950.** In its articles 665, 666, 667, 668, 669, the Criminal Code mentions the crimes and offences committed abroad both by Senegalese and foreign nationals. Under article 665 : “Anyone who, in the territory of the Republic, made himself accomplice of a crime or an offence committed abroad, can be prosecuted and tried if the crime is provided for both by the Senegalese and the foreign laws”

**951.** This provision lays down the dual criminality principle. For crimes committed abroad to be prosecuted in Senegal, they need to be punishable by prosecution in Senegal and in the foreign country.

Thus, general provisions of the common law and the criminal code allow settling this issue.

**952.** As part of the mutual assistance on crime, Senegal signed on 1961 bilateral and multilateral agreements mainly with France and as member of international and regional organizations (ECOWAS for instance).

**953.** 2-Article 4 of law 71 -77 of 28 December 1977 on extradition stipulates that extraditable crimes are: ”all charges punished by criminal or penalties subject to the penalty incurred on magistrate’s court equal to or above two years. Extradition is not granted when the crime or offence is politically motivated when the offence committed outside Senegal was prosecuted and definitively tried in case of prescription of the public action prior to the request”.

#### **Recommendation 38**

**954.** As long as the measures of seizure or confiscation do not violate the rights of bona fide third parties, articles 62 and 63 of the Law stipulate that the relevant authority entitles the foreign countries' cooperation requests on the identification, freezing, seizure or confiscation of ML/FT –related assets.

**955.** The sole restriction on the confiscation request concerning the legally constituted rights of third parties, equivalent value assets should not evade freezing or confiscation measures.

**956.** Articles 65 and 66 of the Law provide the opportunity for coordinating seizure and confiscation initiatives with other countries

**957.** Assets are confiscated for the public Treasury (Art. 45 of the Law). There are no fund for seized assets in which all or part of the confiscated assets would be deposited and used for legal, health, teaching actions or other appropriate ends.

**958.** Article 66 of the Law states that States has powers over assets confiscated on its territory at the request of foreign authorities unless an agreement signed with the applicant government decides otherwise. The mission was not informed about the existence of such agreements.

**959.** Non criminal foreign confiscation decisions (civil confiscation mainly) are recognized but their implementation should comply with the current procedures. Due to non-compliance with the New York Convention on criminalizing terrorist financing by the Senegalese special law, the implementation of the judicial cooperation in case the offences related to terrorist financing face difficulties.

**Recommendation 32**

**960.** Statistics on implementing measures to combat money laundering on judicial cooperation are poorly documented. Between 1st January and 31 July 2007 one hundred and ninety-four (194) files on rogatory commissions, deliveries of judicial documents and arrest warrants were recorded.

**Recommendations and Observations in R.36, 37, 38 and RS.V**

**Compliance with Recommendations 36, 37, 38 and RS.V.**

	<b>Compliance assessments</b>	<b>Summary of reasons for compliance assessments</b>
<b>R.36</b>	<b>C</b>	Recommendation is fully observed
<b>R.37</b>	<b>C</b>	Recommendation is fully observed
<b>R.38</b>	<b>C</b>	Recommendation is fully observed
<b>RSV</b>	<b>PC</b>	Due to the non-compliance with the New York Convention on criminalizing terrorist financing by the Senegalese special law, the implementation of the judicial cooperation in case of offences related to terrorist financing may face difficulties.

<b>R 32</b>	<b>PC</b>	There is no mechanism to assess the effectiveness of the system Statistics on implementing the measures to combat money laundering on judicial cooperation are poorly documented
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#### **6.4 - Extradition (R 32, R 37 and 39, RS V)**

##### **Recommendation 39**

**961.** Money laundering is an extraditable offence. There are laws and procedures for extraditing individuals charged with money laundering offences.

Under article.71 of the Law, individuals charged with money laundering offence can be extradited.

Articles 72 to 75 of the Law describe the applicable procedure. But common law rules on extradition mainly those related to dual criminality are still applicable.

**962.** Article 5 of the Law N°71 – 77 of 28 February on extradition stipulates :

“Extradition is not granted when the concerned individuals is a Senegalese national, as the term national is considered at the time of the offence for which the extradition is required”.

In case of a denied extradition of a Senegalese national, the Senegalese law does not pose an obstacle for him to be brought before justice.

The Ministry of Justice mentioned a case pending before a trial chamber at the end of an initial procedure that was concluded by a refusal of extradition due to the fact that the person involved was a Senegalese national at the moment of the facts.

**963.** Where appropriate, nothing opposes cooperation between countries particularly for aspects covering the procedure and proof to ensure effective prosecutions.

**964.** Article 72 of the Law makes provision for a simplified procedure involving a request sent to the relevant State Prosecutor in the required state with certified copy to inform the Justice ministry.

**965.** In addition, article 74 of the Law stipulates that in case of emergency, the relevant authority of the applicant state can request the provisional arrest of the wanted individual pending the extradition request

##### **Additional elements**

**966.** 5-Under article 72 of the Law, the request is directly sent to the relevant State Prosecutor, with a certified copy to inform the Justice Minister.

People can be extradited following enforceable sentences, an arrest warrant or any other such act.

##### **R 37 (Dual criminality on extradition)**

**967.** 1 - The Law and specific laws mainly law 71-77 of 28 December 1977on extradition, sets the conditions for extradition.

**968.** 2 -The Law does not make the term of the sentence incurred or delivered a condition for extradition (article 71). The only exceptions on the matter are those related to it.

##### ***Special Recommendation V***

**969.** Due to the non-compliance with the New York Convention on criminalizing the terrorist financing by the Senegalese special law, the implementation of the judicial cooperation in case of offences related to terrorist financing may face difficulties.

**Recommendations and Observations in R.32, 37, 39, 32 and RS.V**

**Compliance with Recommendations 37, 39, 32 and RS.V**

	<b>Compliance assessments</b>	<b>Summary of reasons for compliance assessments</b>
<b>R.37</b>	<b>C</b>	The Recommendation is fully observed
<b>R.39</b>	<b>LC</b>	For lack of convincing elements, the full implementation of the “Extradite or try principle” could not be assessed.
<b>RSV</b>	<b>PC</b>	Due to the non-compliance with the New York Convention on criminalizing terrorist financing by the Senegalese special law, the implementation of the extradition in case of offences related to the terrorist financing may face difficulties.
<b>R.32</b>	<b>PC</b>	There is no mechanism to assess the effectiveness of the system and the production of statistics

**6.5 Other forms of international cooperation (R 40, RS V and R32)**

**Cooperation among CENTIF**

**970.** In compliance with article 23 of the uniform Law, CENTIF in Senegal has to :

- ✓ Communicate at the request of the duly motivated request of a CENTIF by a WAEMU member country in connection with an enquiry, any information and data on investigations undertaken following a reporting of suspicion at the national level ;
- ✓ File the detailed periodical reports (quarterly and annual) on its activities to the BCEAO headquarters in charge of summarizing the CENTIF reports for information to the WAEMU Ministers’ Council.

**971.** Thus, BCEAO, running the CENTIF secretariat at the national level, was tasked with fostering cooperation among the CENTIF. On this issue, it is charged to coordinate the CENTIF efforts in the fight against money laundering and summarizing information from reports drawn by the latter. BCEAO participates together with the CENTIF, to the meetings of international authorities dealing with issues on combating money laundering.

**972.** The summary made by the BCEAO headquarters is forwarded to the CENTIF in the Union member countries to feed their data bases. It serves as support to a periodical report meant to inform the Union’s Ministers’ Council on the progress of the fight against money laundering. A version of these periodical reports is made for information to people subject to the reporting of suspicion as well as to the public. The mission was not informed about the summary reports drawn up by the BCEAO.

**973.** It should be noted that due to the non creation or non functional CENTIF within other WAEMU member states except for Niger, there is no possibility for clear exchange

for the CENTIF in Senegal with authorities in other countries of the Union through that Unit.

**974.** Besides in line with article 24 of the Law, each CENTIF can, subject to reciprocity, exchange information with the financial information Services in third party states in charge of receiving and addressing reporting of suspicion, when the latter are subject to the similar requirements of confidentiality. It can sign agreements with an intelligence Service in a third party state, subject to prior authorization of the Finance minister.

**975.** Thus during the year 2006, three (03) cooperation agreements were signed between the CENTIF Senegal and the Financial Intelligence Units (following FIUs,) in states outside the WAEMU :

- The Financial Information Processing Unit – CTIF (Belgium),
- The Special Investigation Commission – SIC (Lebanon),
- The Nigeria Financial Intelligence Unit – NFIU (Nigeria).

Besides, the CENTIF has privileged relationships with the French financial information unit, TRACFIN (Processing of the Information and Action against Illegal Financial Circuits) which is sponsoring it for its adherence to the Egmont Group.

**976.** A delegation of the CENTIF led by its Chairman participated as observer to the 14th Plenary of the Egmont Group held 12-16 June 2006 in Cyprus and that of the BERMUDA in August 2007. On this occasion, the CENTIF bid to become member of the Egmont Group was considered by the FIU heads' meeting of the Group. It could not be accepted due to the new demands by the EGMONT Group requiring Senegal comply with combating terrorist financing obligations.

**977.** Under international cooperation, it should be noted the signing of a technical assistance agreement with the US Treasury Department mainly with the Office of Technical Assistance (OTA) whose representative continuously supported the Unit in training and sensitization of the various stakeholders involved in the fight against money laundering :

### **CUSTOMS AND POLICE COOPERATION.**

**978.** Some administrations such as the customs have signed cooperation agreements or mutual administrative assistance conventions with their counterparts in other countries.

**979.** The customs services exchange on the basis of reciprocity, computer files in combating trade fraud.

**980.** Police cooperation between the police services of various states is essentially organized by international agreements within institutions such as the International criminal Police Organization (OIPC-Interpol).

**981.** During the discussions, the Senegalese police services said they were communicating to the foreign police services, the information collected through the main bodies in charge of international police cooperation in each country. Furthermore, other forms of cooperation are possible through bilateral agreements between national police services (inter police agreements).

**982.** However, information exchange between police services in cases under consideration is done through rogatory commissions. The rogatory commissions addressed

to Senegal by a foreign state are enforced only with the consent of the Justice ministry at submission by the Foreign Affairs minister<sup>2</sup>.

## **COOPERATION AND INFORMATION EXCHANGES AMONG SUPERVISORY AUTHORITIES.**

**983.** Regarding cooperation at the national level, according to the information collected from it, the UMOA Banking Commission has no particular relation with CENTIF- Senegal nor the Senegalese banking sector self-regulatory bodies (mainly APBEF).

**984.** Besides, there are cooperation agreements with the Guinean Republic Central Bank, the French Banking Commission.

**985.** At the community level, the Banking Commission has signed a cooperation accord with the CREPMF and exchanges information on a case-to-case basis with the CIMA.

**986.** At the international level, the development of its cooperation relations with other supervisory authorities mainly with the West African sub-region with the signature care of the BCEAO, of a cooperation Convention with the Guinean Republic Central Bank. It also said that beyond the periodical information exchanges as part of the continuous supervision of credit institutions (prudential control), its cooperation with other supervisory authorities was reflected by the participation in the Law of the West and Central African Banks' Committee of supervisors. In this respect, a Charter is being prepared to officialize the relations among banking supervisors from West Africa, Central Africa and Madagascar.

**987.** A cooperation accord was also signed with the French banking Commission allowing information exchange and even joint checks or inspections for either parties.

**988.** The UMOA Banking Commission is also member of the Group of Francophone Banking Supervisors established in 2004 by the Central Bank Governors to develop close relations among its 34 members and the Basel Committee. The Banking Commission participates in the sessions of the Basel authorities (Basel Committee on Banking Supervision, Liaison Group on Core Principles, Task Force on Share Capital and Institute for Financial Stability).

**989.** For its part, BCEAO is mainly member of the CREPMF and the Association of African Central Banks (AACB).

**990.** CREPMF on its part has relationships with the Stock Exchange Supervisory authorities as member of the International Organization of Securities Commissions (IOSCO).

**991.** CIMA belongs to the International Association of Insurance Supervisors and has on this issue, cooperation relationships with other insurance supervisory authorities.

**992.** Apart from the BCEAO and the CREPMF, there is apparently no mechanism organizing formal relations among these various supranational supervisory authorities on the one hand and among these authorities and the CENTIF on the other.

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<sup>2</sup> On this specific issue, authorities in the Senegalese Foreign Affairs ministry widely directed the team of Assessors on the case of Husein Habré.

**993.** It would be very useful that appropriate formal mechanisms be set up to establish and develop relationships among supervisory authorities both at the national, community and international levels regarding the CENTIF if necessary, to gain synergy and effectiveness in the LML/FT.

### **Recommendation 32.**

#### **994. The Senegalese customs services and information exchange: mutual administrative assistance Convention.**

The Senegalese customs services have signed several bilateral information exchange accords with other countries:

#### **REGIONAL LIAISON AND INTELLIGENCE OFFICE (BRL)**

**995.** Based in Dakar, this office seeks to exchange (or provides/secures) information/intelligence on money laundering cases and/or major offences directly with the Law enforcement authorities others than the customs services.

**996.** The BRL has an institutional mechanism allowing information exchange among units in charge of the intelligence and the operational units (CEN).

**997.** The BRL is in charge of devising and disseminating “alert information” to draw the attention of officials in the units dealing with intelligence and operational units on the ground. The idea is to enhance the administrative and operational cooperation; that should involves introducing intelligence on foreign currency seizures on the CEN database to improve the quality of analyses which will help assess risk and set profiles in a more effective way.

**998.** However, this office has been non functional. Thus the CEN is not used in an efficient way mainly information exchanges on seizures are not always introduced and do not refer to any intelligence base for analysis. No enquiry has been setup on the basis of intelligence contained in the suspicious transaction reports collected from the CENTIF

**999.** Finally, there are no seizure reports (including analysis reports after seizure) regarding relevant money laundering cases and major offences.

**1000.** On foreign currency control, the customs services participate with the Treasury department and the BCEAO in joint operations on the search and report of offences in the foreign currency checks.

### **Recommendations and Observations in R.40, RS V and R32**

Compliance with Recommendations 40, RS.V and 32

**1001.** Cooperation between CENTIF and its foreign counterparts are apparently working well. The requests for assistance addressed to the Senegalese authorities are generally granted.

**1002.** Relations among supervisory authorities at the international level also seem to work well but there is no synergy for an effective AML/CFT system in the internal plan.

**1003.** In the absence of complete statistics, it's however difficult to assess the quality of the cooperation actions conducted by the various Senegalese competent authorities.

	<b>Compliance assessments</b>	<b>Summary of reasons for compliance assessments</b>
<b>R.40</b>	<b>LC</b>	No synergy around relations developed at the international level by supervisory authorities.
<b>RSV</b>	<b>PC</b>	See remarks in R36, 37,38 and 39

## **7. OTHER RELEVANT ISSUES**

### **7.1 Resources and statistics (R.30 & 32)**

**1004.** Observation: the description and analysis related to Recommendations 30 and 32 are contained in the relevant parts of the report (for instance see Section 2 for R1 R2 RSII R3 R26 R27 R28 and RS IX).

**1005.** Thus it's only a mere rating for each of these Recommendations although these two Recommendations are transversal and cover several parts of the report.

#### **7.1.1. – Resources – Compliance with Recommendation 30**

<b>R30</b>	<b>LC</b>	<p>Insufficient CENTIF financial resources, namely for supporting the costs related to the training of its staff.</p> <p>Generally limited, or even insufficient means put at the disposal of authorities in charge of criminal investigations and prosecutions.</p> <p>Inadequate means made available to the national supervising structures considering the high number of institutions to be supervised.</p> <p>The training programme offered to officials and customs officers does not adequately cover aspects linked to techniques for detecting money laundering and some underlying offences such as forgery and piracy.</p> <p>AML/CFT training does not seem to cover an important number of magistrates</p>
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#### **7.1.2. – Statistics – Compliance with Recommendation 32**

<p><b>R 32</b></p>	<p><b>PC</b></p>	<p>Absence of a global system to evaluate the efficiency of the AML/CFT Scheme.</p> <p><b>R1 et R2</b>  In the absence of effective sanctions pronounced by tribunals in the field of money laundering criminal offences, their efficiency cannot possibly be assessed.</p> <p>No mechanism to assess law enforcement on criminalizing money laundering.</p> <p><b>RS II</b>  No assessment mechanism and the mission could not obtain information on the effective enforcement of the special law on the suppression of terrorist acts. No statistic available, no penalty on the special law seems to have been delivered.</p> <p><b>R3</b>  No regular mechanism to assess the effectiveness of the system of freezing, seizure or confiscation.</p> <p>The mission could not obtain statistics on freezing, seizure or confiscation measures taken by the competent authorities nor on the fate of possibly confiscated assets</p> <p><b>R26</b>  However it should be noted that the CENTIF has set up no follow-up mechanism mainly in the statistic plan on oppositions to requests for carrying out suspicious operations, the fate of the reporting filed to the judicial authorities nor on the number of files transmitted in which freezing, seizure or confiscation were pronounced.</p> <p><b>RS IX</b>  No statistics on the declarations about the cross-border cash transportations. (Travellers, security companies).</p> <p><b>R 37</b>  Statistics on the implementation of the system on combating money laundering regarding judicial cooperation are poorly documented. In the absence of complete statistics, it's yet difficult to assess the quality of the cooperation actions conducted by the various Senegalese competent authorities.</p>
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❖ **TABLE I. COMPLIANCE ASSESSMENTS WITH FATF RECOMMENDATIONS**

<b>I. FORTY RECOMMENDATIONS</b>	<b>Compliance assessments</b>	<b>Summary of reasons for compliance assessments<sup>3</sup></b>
<b>1) Legal systems</b>		
1. Money laundering offence	<b>LC</b>	<p>The Law does not specify the direct or indirect character of the link between the good and the proceeds of the crime.</p> <p>The scope of measures on suppressing forgery and piracy seems limited.</p> <p>The provisions are not considered for penalty of offences on insider trading and market tampering committed in the regional financial market.</p>

		No effectiveness assessment mechanism. In the absence mainly of sanctions fully pronounced by courts as part of money laundering offences, no assessment of the effectiveness has been made
2. Money laundering offence – Intentional element and liability of legal persons	<b>LC</b>	The Law does not explicitly indicate the direct or indirect link between a property and a product of a crime. No effectiveness assessment mechanism. In the absence mainly of sanctions fully pronounced by courts as part of money laundering offences, no assessment of the effectiveness has been made
3. Confiscation and provisional measures	<b>LC</b>	No regular mechanism to assess the effectiveness of the system of freezing, seizure or confiscation. The mission could not obtain statistics on freezing, seizure or confiscation measures taken by the competent authorities.
<b>2) Preventive measures</b>		
4. Laws on confidentiality consistent with Recommendations	<b>C</b>	Recommendation is fully observed
5. Customer-due diligence	<b>NC</b>	Financial institutions that are partially covered by AML obligations. The Senegalese legislation does not contain provisions related to CDD in the field of Terrorist Financing. The texts do not explicitly prohibit the keeping of anonymous accounts or under fictitious names, nor do they regulate secret coded accounts. No provisions on combating terrorist financing. Too restrictive measures applicable to occasional customers. Exemption from identifying customers or economic beneficiary owner including in case of suspicious money laundering, Existence of bearer shares, anonymous bonds and uncrossed and cashable cheques without any

		<p>specific identification precaution.</p> <p>No requirement for some subject people to observe constant customer-due diligence,</p> <p>Definition of the beneficial owner inconsistent with the FATF requirements,</p> <p>No requirement of systematically get information on the reason and planned nature of the business dealing,</p> <p>No requirement for some subject people to take greater diligence measures for high-risk customers,</p> <p>No interdiction to open accounts, forge business dealings or conduct a transaction in the absence of identifying of the customer or the beneficial owner</p> <p>Poor understanding of the regulation by subject people others than banks</p> <p>No information on checks by the competent authorities</p>
6. Politically exposed persons	<b>NC</b>	<p>No law binds financial professions to give particular attention to the PEPs, to seek permission from the senior management to enter in contact with a PRP, to identify the origin of the inheritance and the PEP customers funds or to exert a greater diligence on their business relationships with the PEP</p>
7. Banking correspondence relationships	<b>NC</b>	<p>The exemption from identifying the real beneficial owner when the organization is based in a WAEMU member country is not compliant with the FATF requirements.</p> <p>No identification diligence has been made and the identification of the beneficial owner is not required when the organization is located in an WAEMU country,</p> <p>Requirements towards financial bodies set up in countries outside WAEMU are not demanding enough,</p> <p>Absence of obligations to check monitoring schemes set up by the financial customer body concerning AML/CFT.</p> <p>No law provides for the need to seek the approval of the senior</p>

		management before establishing banking correspondence relationships not to specify the respective responsibilities of the institutions in the fight against money laundering and terrorist financing.
8. New technologies & distant business dealings	<b>PC</b>	The Law has no specific provision on the excessive use of new technologies, The Law contains specific provisions related to distant relations, but they are not compliant with FATF requirements. The Instruction makes provisions for Internet transactions or any other electronic means but this law targets only part of subject people and is too recent to assess its implementation
9. Third parties and business introducers	<b>NA</b>	Under the Senegalese law there is no provision allowing the use of intermediaries or third parties to conduct some elements of the customer-due diligence as recommended by the FATF.
10. Record-keeping	<b>LC</b>	Duration of information keeping on the loading and collections of electronic currency units for only two years. Availability of information on the loading and collections of electronic currency units is possible only for some competent authorities which is inconsistent with the FATF requirements
11. Unusual transactions	<b>LC</b>	The instruction restricts review cases provided for by the Law in case of a minor standard concerning only a part of the reporting entities. Amounts should not be set out of hand
12. Designated non Financial businesses and professions – R.5, 6, 8-11	<b>NC</b>	Chartered accountants and authorized accountants are not bound by AML obligations, and the binding of bailiffs and legal advisers is still doubtful. The conditions set for the practice of the professions of legal advisers, brokers in precious metals, and real estate agents should be explicitly defined.

		<p>Pursuant to recommendation 5: DNFBPs are not fully aware of the AML requirements that they apply in a limited way despite the fact that they are similar to those of financial bodies (except for casinos and independent legal professions where judicial procedures are excluded).</p> <p>These provisions are therefore not consistent with the reasons mentioned at recommendation 5.</p> <p>In accordance with recommendation 6 : as for financial professions, there are no provisions for particular diligences on PEP</p> <p>In accordance with recommendation 8 : no specific provision on the excessive use of new technologies. As regards distant relations, the specific provisions of the Law are not compliant with FATF requirements.</p> <p>Consonant with recommendation 9 : non applicable</p> <p>In line with recommendation 10 : the provisions of the Law meet the FATF standards but the DNFBPs ignore them which poses a problem of effectiveness</p> <p>Pursuant to recommendation 11: the Law should not contain applicable threshold. In addition, the DNFBPs have little knowledge about them and poorly apply them.</p>
13. Suspicious Transaction Report	<b>PC</b>	<p>The Law makes no clear provision for the requirement to report suspicious operations on terrorist financing.</p> <p>The Law does not expressly require financial Institutions to report attempted operations regardless of the amount.</p> <p>The system for reporting suspicious operations poses serious problems of effectiveness.</p>
14. Protection & interdiction to warn customers	<b>C</b>	Recommendation is fully observed
15. Internal checks and compliance	<b>PC</b>	Requirement for financial Institutions to adopt common money laundering prevention

		<p>programme is not applied in an effective way by all financial Institutions.</p> <p>Financial Institutions have not set up a continuous training programme for their employees in combating money laundering to keep them informed about the new progress including information on money laundering and terrorist financing techniques, methods and trends.</p>
16. Designated non Financial businesses and professions – R.13-15 & 21	<b>PC</b>	<ul style="list-style-type: none"> <li>• According to the FATF, all DNFBPs, are not covered by reporting requirements</li> </ul> <p>No requirement for DNFBPs to give particular attention to their business dealings and transactions with individuals and legal persons living in countries that do not or insufficiently implement the FATF Recommendations.</p> <p>No requirement for DNFBPs to set up AML/CFT internal programmes.</p> <p>On statistics, no reporting of suspicion by Designated non Financial businesses and professions has been registered by the CENTIF.</p>
17. Sanctions	<b>PC</b>	No sanction has been taken against financial institutions by the respective supervisory authorities for failure to comply with the provisions on the fight against money laundering and terrorist financing
18. Shell Banks	<b>NC</b>	<p>The Law does not expressly ban Shell Banks.</p> <p>No legal provision banning banking correspondence relationships with Shell Banks.</p> <p>The Law makes no provision requiring financial institutions to ensure that the financial Institutions belonging to their overseas customers do not allow Shell Banks to use their accounts.</p>
19. Other forms of reporting	<b>NC</b>	Authorities have not assessed the possibility for systematic

		reporting for all cash transactions beyond a set limit.
20. Other secure & non financial and technical funds management businesses and professions	<b>LC</b>	<p>The list of additional DNFBPs is inaccurate and contain doubts on the relevant supervisory authorities</p> <p>Modern payment techniques are not developed enough and promoted</p> <p>Uncrossed and endorsable cheques are used in Senegal</p>
21. Particular attention for high risk countries	<b>NC</b>	<p>No requirement for Financial bodies others than those subject to the Instruction to give particular attention to their business dealings and transactions with individuals and legal persons mainly financial businesses and institutions living in countries that do not or insufficiently implement the FATF Recommendations,</p> <ul style="list-style-type: none"> <li>- Inadequate provisions of the Instruction limiting particular diligence in transactions or operations with the PTNC</li> <li>- No law allowing Senegal to apply counter measures to countries that do not or insufficiently implement the FATF recommendations</li> </ul>
22. Overseas branches and subsidiaries	<b>NC</b>	No legal provisions governing overseas branches and subsidiaries.
23. Regulation, supervision and monitoring	<b>PC</b>	<ul style="list-style-type: none"> <li>- No sanction has been taken against financial institutions by the respective supervision Authorities for failure to implement the provisions on combating money laundering and terrorist financing</li> <li>- Inadequate means availed to national supervising structures with respect to the high number of institutions to be supervised (i.e : In 2007, out of 862 micro finance institutions recorded, only 4 were supervised</li> <li>- The follow-up on uniform law enforcement on money laundering is inadequately made during on-site checks of financial institutions by their respective supervising body</li> </ul>

		--Inadequate training on the fight against money laundering and terrorist financing on the staff of supervising bodies
24. Designated non Financial businesses and professions - regulation, supervision and monitoring	<b>NC</b>	Since the adoption of law N°82-07 of 30 June 1982 on property development, transaction and management activities, studies and advice on business organization and management as well as its implementation decree, property agencies and agents evade any regulation while they are a sector involving a high risk of money laundering in Senegal. Other DNFBPs are not subjected to any control. Regarding DNFBPs that are subjected to controls, none of them has, as yet, been effectively controlled (problem of effectiveness)
25. Guidelines and feedback	<b>PC</b>	No guidelines against Designated Non Financial Businesses and Professions in the form of assistance on issues covered by the FATF corresponding recommendations.
<b>3) Institutional measures and other measures</b>		
26. FIU	<b>LC</b>	- The Law does not explicitly define the competence of CENTIF in CFT matters. CENTIF's financial resources are insufficient, particularly when it comes to supports the costs of the training of its staff
27. Prosecuting authorities	<b>LC</b>	- No specific measure allowing the competent authorities enquiring on money laundering cases to differ the arrest of suspicious people and/or funds seizure or to avoid making such arrests and seizures so as to identify people involved in these activities or to gather evidence  - Means allocated both to departments of prosecutions, police, military police and the customs services are apparently still not enough to enable them effectively carry out their

		<p>LAB/CFT duties.</p> <ul style="list-style-type: none"> <li>- No periodical mechanism for assessing the effectiveness of the Senegalese LAB-CFT system overall.</li> <li>- The Liaison Committee on effective Review has not been established yet</li> </ul>
28. Powers of competent authorities	<b>C</b>	The Recommendation is fully observed
29. Supervising Authorities	<b>LC</b>	The powers of sanction of supervisory authorities of some structures are not sufficiently determined.
30. Resources, integrity and training	<b>LC</b>	Inadequate means availed to national supervising structures with respect to the high number of institutions to be supervised (example : In 2007, out of 862 micro finance institutions recorded, only 4 were supervised )
31. Cooperation at national level	<b>LC</b>	No official cooperation framework grouping all the institutional stakeholders involved in LAB/FT
32. Statistics	<b>PC</b>	Follow-up on the enforcement of the uniform law on money laundering is insufficiently made during on-site checks of financial institutions by their respective supervising body
33. Legal persons –beneficial owners	<b>PC</b>	<p>The system does not allow knowing the beneficial owner according to the definition by the FATF.</p> <p>Assessors could not assess the reliability of the Trade Register keeping and mainly the updates made.</p> <p>The Senegalese Authorities have not taken appropriate measures to ensure that legal persons issuing bearer shares are not used in money laundering</p>
34. Legal arrangements –beneficial owners	<b>NA</b>	No possible legal existence for trusts and other similar legal arrangements

<b>4) International Cooperation's</b>		
35. Conventions	<b>PC</b>	Senegal has not effectively implemented the International Convention for the suppression of terrorist financing
36. Judicial cooperation	<b>C</b>	Recommendation is fully observed
37. Dual criminality	<b>C</b>	Recommendation is fully observed
38. Judicial cooperation on confiscation and freezing	<b>C</b>	Recommendation is fully observed
39. Extradition	<b>LC</b>	No information on the full implementation of the “extradite or try” principle
40. Other forms of cooperation	<b>LC</b>	No synergy in the relationships developed at the international level by supervisory authorities. No assessment of the effectiveness of the system and the statistical data.
<b>II. NINE SPECIAL RECOMMENDATIONS</b>	<b>Compliance assessments</b>	<b>Summary of reasons for compliance assessments</b>
RS.I Implementing the UN instruments	<b>PC</b>	The implementation of the UN Security Council Resolution 1267/1999 and the subsequent Resolutions does not involve all subject people. Resolution 1373/2001 is not effectively implemented
RS.II Criminalizing terrorist financing	<b>PC</b>	The special law on the suppression of terrorist acts does not establish terrorist financing as criminal offence in line with article 2 of the International Convention for the suppression of terrorist financing of 1999. Indeed, criminalizing is based on the notion of terrorist act and does not link the offence to the relevant international instruments. Besides, it does not specifically and clearly target the notions of “terrorist” and “terrorist organization” as stated by the abovementioned Convention. Finally the Law is silent on the location of the author of the terrorist financing offence against the terrorist act, the terrorist organization and against the terrorist

<p>RS.III Freezing and confiscation of terrorists assets</p>	<p>PC</p>	<p>The list of people and entities targeted by Resolution 1267(1999) and the subsequent Resolutions is not issued by the BCEAO to credit institutions. This practice does not meet the FATF requirements for countries to provide clear directives to financial institutions and to people or entities likely to hold funds or other assets subject to their requirement to take measures as part of the freezing mechanisms.</p> <p>Requirement to report assets held and frozen, seized or confiscated : Senegal has no efficient procedures known to the public to examine on a timely basis the requests for withdrawal from the list of people and release of funds or other assets of people or entities removed from the lists in line with international commitments.</p> <p>No efficient procedures have been set up and known to the public to release without delay the funds or other assets of entities inadvertently affected by a freezing mechanism after verification that the person or entity is not a subject person</p> <p>No adequate procedures to allow access to funds or other assets frozen under Resolution S/RES/1267(1999) and which were decided should be used to cover basic expenditures, payment of some types of commissions, fees and payments of services as well as extraordinary expenditures.</p> <p>Resolution 1373 (2001) is not implemented and the International Convention for the suppression of terrorist financing is not implemented to that effect.</p> <p>No mechanism to regularly assess the effectiveness of the system of freezing, seizure or confiscation of terrorist funds.</p> <p>Complete and regular statistics are not produced</p>
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RS.IV Suspicious Transaction Report	<b>NC</b>	The drafting of the Law subjects the Suspicious Transaction Report on terrorist financing to the existence of an underlying money laundering offence. This restriction should be lifted Senegal has no law on combating terrorist financing consistent with the Convention on the suppression of Terrorism Financing
RS.V International Cooperation	<b>PC</b>	No implementation of the international legal Instruments and elements for assessing the effectiveness of the cooperation
RS.VI LAB/CFT Requirements applicable to funds or securities transmission services	<b>PC</b>	Conduct of HAWALA-type funds transfer activities without prior authorization by people depending on the informal sector evading any control
RS.VII Rules applicable to wire transfers	<b>NC</b>	<ul style="list-style-type: none"> <li>- No provision demanding transfers equal to or above €1, 000 cause securing and keeping of complete information on the originator</li> <li>- No requirement to provide information on the originator in the cross-border transfers nor national transfers (notion applying to all the franc zone)</li> <li>- No provision regulates unusual transactions or bans their group processing when that generate a risk of money laundering or terrorist financing</li> <li>- No provision subjects intermediary financial institutions in the payment chain to keep all the necessary information on the originator with the corresponding transfer</li> <li>- In the absence of binding information provision on the originator on transfers, no supervision by the competent authorities or sanction can be implemented</li> </ul>
RS.VIII Non profit organisations	<b>NC</b>	The regulation makes no provision on preventing the risk of misuse of nonprofit organizations for terrorist ends No concrete sensitization

		measures to prevent funds or other assets collected or transferred from being diverted to finance terrorism. Inadequate checks on NGOs do not allow to assess the effectiveness of the system
RS IX Crossborder reporting or communications	<b>PC</b>	No reporting is required for cross-border physical transportations of cash in the WAEMU. area No statistics on the cross-border transportations of cash and instruments negotiable to the bearer

**TABLE 2: ACTION PLAN RECOMMENDED FOR IMPROVING THE LAB/CFT SYSTEM**

<b>LAB/CFT System</b>	<b>Recommended Action (by priority)</b>
<b>1. GENERAL</b>	No law required
<b>2. Legal system and other associated measures</b>	
2.1 Criminalizing money laundering (R.1 & 2)	The Law should make clear the direct or indirect nature of the link between the good and the proceeds of crime. A mechanism to assess the effectiveness should be set up and statistics produced.

	A mechanism to assess the effectiveness should be set up and statistics produced.
2.2 Criminalizing terrorist financing (RS.II)	Senegal should expedite the adoption of the WAEMU Community Directive on combating TF with a view to meeting the criteria criminalizing the terrorist financing. Structures and procedures provided for by the special law on the suppression of terrorist acts could inspire the said legislation for greater effectiveness.
2.3 Confiscation, freezing and seizure of crime proceeds (R.3)	A mechanism to regularly assess the effectiveness of the system of freezing, seizure of confiscation should be established and statistics produced.
2.4 Freezing of used funds to finance terrorism (RS.III)	<p>.</p> <p>The list of people and entities targeted by Resolution 1267(1999) and the subsequent Resolutions should be issued to each subject person likely to hold funds belonging to persons and entities targeted by the United Nations sanctions Committee. An organization of the information among competent authorities, subject people and the public should be set up pursuant to the FATF requirements. In this respect, Senegal must adopt :</p> <ul style="list-style-type: none"> <li>- Efficient procedures known to the public to examine on a timely basis the requests for withdrawal of subject people from the list and the release of funds or other assets of people or entities removed from the list in line with international commitments.</li> <li>- Efficient procedures known to the public to release without delay the funds or other assets of people or entities inadvertently affected by a freezing mechanism following verification that the person or entity is not a subject person</li> <li>- Appropriate procedures to allow access to funds or other assets frozen under Resolution S/RES/1267(1999) and for which it was decided they should be used to cover basic expenditure, the payment of some types of commissions, fees and payments of services as well as extraordinary expenditures</li> </ul> <p>Resolution 1373 should be implemented mainly through the adaptation of WAEMU Community Directive on the fight against TF.</p>
2.5 The Financial Intelligence Unit and its duties (R.26 & 30)	<p>CENTIF should use its entitlement by the Law to issue notices on the implementation of the state policy on combating money laundering and propose reforms necessary for strengthening the effectiveness of the fight mainly a comprehensive policy against money laundering and terrorist financing planned and incorporating all the stakeholders with a greater specialization within the police, military police, customs and judiciary corps.</p> <p>CENTIF should develop sensitization and training actions for the other subject people to further diversify the sources of reporting of suspicious still focusing too much on the banking sector.</p>

	<p>On information the CENTIF should be powered to connect to the data bases of other national administrations and monitoring and supervisory authorities both at national and international levels.</p> <p>Regarding files forwarded to the Department of prosecutions, CENTIF should ensure to establish a mechanism for a regular follow-up.</p> <p>On training, it seems necessary to devise and implement a continuous training programme for the CENTIF personnel with accurate assessment indicators despite the participation by agents in workshops and working visits to other FIU.</p>
2.6 Prosecuting, enquiry Authorities or other competent authorities (R.27 & 28)	<p>R.27 : No Recommendation is fully observed</p> <p>R.28: Following the Law on drug control, Senegal should adopt specific measures allowing the competent authorities investigating in cases of money laundering to differ the arrest of suspicious persons and/or funds seizure or to guard from making such arrests and seizures with a view to identifying people involved in these activities or to gathering evidence.</p>
2.7 Reporting/communication of cross-border transactions (RS. IX)	<p>Legal provisions should be taken to demand a reporting for the cross-border physical transportation of cash within the WAEMU area.</p> <p>Statistics on cross-border transportations of cash and instruments negotiable to the bearer should be kept.</p>
<b>3. Preventive measures</b> <b>Financial Institutions</b>	
3.1 Risk of money laundering and terrorist financing	Senegal should assess the risks and vulnerabilities to ML/FT facing it and define an action plan to reduce them.
3.2 Due-diligence including enhanced or reduced identification measures (R.5 to 8)	<p>The Law suffers some loopholes that should be addressed particularly :</p> <ul style="list-style-type: none"> <li>- extend the scope of the subject people to the Advice to Stock Investments and door-to-door salesman Conseils en Investissements Boursiers et aux Démarcheurs,</li> <li>- ban the keeping of anonymous accounts or in fictitious names,</li> <li>- State the measures applicable to occasional customers regardless of their operations,</li> <li>- Remove all sorts of exemption to identify customers or the economic beneficial owner in suspicion of money laundering and terrorist financing,</li> <li>- Provide for the requirement to conduct continuous customer-due diligence,</li> <li>- Complete the definition of the economic beneficial owner to make requirements according to the FATF</li> </ul>

	<p>requirements to identify the full beneficial owner particularly on property and supervision of legal persons and other legal arrangements,</p> <ul style="list-style-type: none"> <li>-Demand from subject people to get systematically information on the planned reason and nature of the business dealing,</li> <li>- Adopt measures requiring subject people to take greater diligence measures for higher risk customers,</li> <li>- Remove all exemption from identifying the customer and economic beneficial owner including when they are financial bodies subject to the Law. Generally, considering the apparent poor law enforcement by all subject professions and the lack of information on enforcement control, it is recommended that Senegal should adopt simplified diligence measures,</li> <li>- Ban subject people from opening an account, establishing business dealings or making transaction if they fail to identify their customer and the full beneficial owner.</li> </ul> <p>Besides, it would be advisable to encourage supervisory authorities to specify the content and conditions for implementing money laundering prevention programmes for all subject people in accordance with the possibility provided for by article 13 of the Law and the Instruction adopted by BCEAO.</p> <p>Senegal must enact a law binding subject people to conduct particular PEP customer-due diligence</p> <p>Senegal should adopt the legislative and regulatory provisions allowing completing the insufficient provisions of the Law on distant relationships with financial bodies as part of the cross-border banking correspondence relationships particularly the requirements towards financial bodies established outside the WAEMU area.</p> <p>It would be advisable that following the BCEAO Directive, Senegal should adopt proper dispositions for avoiding the misuse of new technologies for all professions subject to the requirements to fight money laundering</p>
3.3 Third parties and business introducers (R.9)	None. The recommendation is applicable
3.4 Secrecy or confidentiality of Financial institutions (R.4)	None. The Recommendation is fully observed
3.5 Record-keeping and rules applicable to wire transfers (R.10 & RS.VII)	<p>The provisions set out in Directive 01/2006 providing the tracking of some operations for only two years and communication to some competent authorities do not match the FATF requirements. They should be amended to match the provisions set out in the Law.</p> <p>Senegal should adopt the provisions demanding that transfers equal to or above €1,000 require the securing and keeping of complete information on the originator and to feature complete information on the originator in cross-border transfers including for transfers among franc Zone countries</p>

<p>3.6 Follow-up on transactions and business dealing (R.11 &amp; 21)</p>	<p>Senegal should ensure suitability of the provisions provided for in the Law and the Instruction. In addition, the Laws should not set the amount out of hand as the amount of the operation or the transaction according to the context should draw the attention.</p> <p>The Senegalese law should require financial institutions to give particular attention to their business dealings and to their transactions with individuals and legal persons mainly financial businesses and institutions living in countries that do not or insufficiently implement the FATF Recommendations.</p> <p>It should also allow Senegal to enforce counter measures to countries that do not or insufficiently implement the FATF recommendations.</p>
<p>3.7 Suspicious Transaction Report and other reporting (R.13-14, 19, 25 &amp; RS.IV)</p>	<p>The competent authorities should provide for the requirement to report suspicious operations on tax issues</p> <p>Authorities should set out in the Law that attempted operations must be reported regardless of the amount of the operation.</p> <p>The Senegalese authorities should provide the CENTIF with necessary means to continue and extend sensibilization and training programmes for all financial institutions so as to ensure an efficient implementation of the requirement to report</p> <p>The competent authorities should plan the setting up of a centralized computerized system where subject people shall systematically report all cash operations with respect to money laundering and terrorist financing according to a fixed threshold. The national centralizing agency should be the CENTIF</p> <p>The competent authorities through the CENTIF should provide to the Financial Institutions and to the DNFbps subject to report suspicious operations, a suitable and appropriate feedback taking into account the FATF guidelines on “the best practices to observe to ensure feedback to financial institutions and other reporting people”.</p> <p>The Senegalese Authorities should take the necessary measures to adapt without delay, the WAEMU Directive on combating terrorist financing in the internal legal layout.</p> <p>A mechanism for assessing the system should be set up and measures taken to improve the rate of reporting of suspicions emanating from subject people others than the banks.</p>
<p>3.8 Internal checks, compliance and overseas branches (R.15 &amp; 22)</p>	<p>The establishment of an efficient internal supervising system on combating money laundering and terrorist</p>

	<p>financing grouping the continuous training of employees, recruitment measures, independence of the external supervising officer should be applied at the level of all Financial Institutions</p> <p>The Law should officially extend to the foreign branches and subsidiaries the implementation of all the requirements for financial institutions on AML/CFT in accordance with the FATF demands on the matter.</p>
3.9 Shell Banks (R.18)	Senegal should introduce in its banking regulation a requirement for banks to ensure that the financial institutions belonging to their customers abroad do not allow Shell Banks to use their accounts.
3.10 Monitoring and supervising system – competent authorities and STR (role, duties, functions and powers mainly powers of sanction)) (R. 17, 23, 25 & 29).	<p>Competence on supervising some structures and power of sanction (Caisse des Dépôts et Consignations et de la Société Nationale la POSTE) should be better specified.</p> <p>Guidelines should be issued for Designated Non Financial Businesses and Professions in the form of assistance on issues covered by the FATF corresponding recommendations</p> <p>Supervisory authorities should provide appropriate administrative disciplinary sanctions and indicate in their procedural handbooks for supervising elements related to the LAB/FT.</p> <p>Follow-up on the enforcement of the uniform law on money laundering must be strengthened during on-site inspections of the financial institutions by their respective supervising body</p> <p>The means availed to some supervising structures should be reinforced with respect to the high number of institutions to supervise.</p> <p>Training on combating money laundering and terrorist financing of personnel of supervising bodies should be improved.</p>
3.11 Funds or securities transmission services (RS.VI)	It would be advisable to identify and regulate the funds transfer activities exerted without authorization (informal sector)
<b>4. Preventive measures undertaken and designated non financial businesses</b>	
4.1 Customer-due diligence and record-keeping (R.12)	<p>Senegal should :</p> <ul style="list-style-type: none"> <li>- complete the list of designated non financial businesses and professions (DNFBPs) subject to the requirements to fight money laundering by integrating chartered accountants. It should also make a complete list of these professions to ensure the latter are informed about their requirements and that each of them has a supervising authority capable of performing its duties and implement sanctions.</li> <li>- clarify the situation of legal counsels, property agents</li> </ul>

	<p>and dealers in precious metals with respect to the requirements on combating money laundering and particularly regarding the conditions for running these professions.</p> <ul style="list-style-type: none"> <li>- Make provisions to suppress the possibility for buildings to be sold under private agreement and that the price should be paid without notifying the notary.</li> <li>- Plan to require casinos to pay games proceeds and refund chips and other counters only in cash.</li> </ul> <p>Supervisory authorities should without delay specify the content and conditions for implementing programmes on preventing the fight against money laundering which the DNFBPs should draft.</p>
4.2 Suspicious Transaction Report(R.16)	<ul style="list-style-type: none"> <li>• According to the FATF, all the DNFBPs should be subject to the reporting requirements</li> </ul> <p>The Senegalese authorities should require DNFBPs to establish AML/CFT domestic programmes and give particular attention to their business dealings and their transactions with individuals and legal persons living in countries that do not or insufficiently implement the FATF Recommendations.</p>
4.3 Regulation, supervision and monitoring (R.24-25)	<p>Competent authorities should set up a specific regulation on exercising property development, transaction and management activities so as to involve these professions in the AML/CFT and establish a supervising structure with genuine powers of sanction.</p> <p>Pursue sensibilisation and training efforts for DNFBs ;</p> <p>Competent authorities should issue guidelines to help the concerned professions understand and implement their new requirements.</p>
4.4 Other non financial businesses and professions (R.20)	<p>It is recommended that Senegal makes a complete list of additional subject professions, designates and attributes if necessary the supervising and sanction powers to the competent authorities.</p> <p>Besides, Senegal should adopt larger and more binding measures (thresholds) to foster the development of modern and secure funds management techniques. It should for instance cancel the possibility to use uncrossed and endorsable cheques.</p>
<b>5. Legal persons and legal arrangements &amp; non profit organisations</b>	
5.1 Legal persons – Access to information on beneficial owner and supervising owners (R.33)	<p>The system should be improved to allow knowing the full beneficial owner according to the FTF definition.</p> <p>The Senegalese authorities should take efficient measures to prevent legal persons issuing bearer shares from being used in money laundering.</p>
5.2 Legal arrangements – Information access on beneficial owners and supervision (R.34)	<p>None. The Recommendation is not applicable.</p>

5.3 Non profit organisations (RS.VIII)	<p>Authorities should make appropriate legal provisions and take concrete measures to ensure that the funds or other assets collected or transferred are not diverted to foster terrorist activities or organizations.</p> <p>The competent authorities should also conduct sensitization actions to adopt clear policies to promote transparency, integrity and trust among the public in the whole sector and encourage the NGOs to make transactions through regulated financial Institutions</p>
<b>6. Cooperation at the national and international levels</b>	
6.1 Cooperation at the national level and coordination (R.31)	It would be advisable to establish a central coordinating authority among all stakeholders (government authorities, CENTIF, prosecuting, supervisory authorities and other competent authorities at the national level. This authority should set up a mechanism to regularly assess the AML/CFT effectiveness
6.2 UN Special conventions and resolutions (R.35 & RS.I)	<p>Senegal should fully implement the international Convention on the suppression of the terrorist financing that has already been ratified.</p> <p>The list of persons and entities affected by the Security Council decisions to freeze the assets and other property as part of Resolution 1267/1999 and the subsequent Resolutions should be disseminated to other subject people in addition to credit institutions.</p> <p>Resolution 1373/2001 should be effectively implemented mainly through the adoption of the Law on the adaptation of the WAEMU Directive on combating terrorist financing in the Union member states.</p>
6.3 Judicial cooperation (R.36-38, RS.V)	<p>R.36: None. The Recommendation is fully observed</p> <p>R.37: None. The Recommendation is fully observed</p> <p>RSV : Senegal should fully implement the international Convention on the suppression of the terrorist financing that has already been ratified</p>
6.4 Extradition (R.37 & 39, & RS.V)	<p>R.37: None. The Recommendation is fully observed</p> <p>R.39: Elements should be provided to allow assessing the full enforcement of the “extradite or try” principle.</p> <p>RSV : Senegal should fully implement the international Convention on the suppression of the terrorist financing which has already been ratified</p>



Governmental Organizations, Public Sector Structures, Private Sector Structures and others.

-  ANNEX 3 : List of legal texts and other documents examined
-  ANNEX 4 : List of Banks and Financial institution in Senegal
-  ANNEX 5 : Legal community framework in Senegal (WAMU, WAEMU, ECOWAS, FRANC ZONE area)

## ANNEX - 1

### LIST OF ABBREVIATIONS USED

<b>APBEF</b>	Professional Association of Banks and Financial Institutions
<b>BCEAO</b>	Central Bank of West African States
<b>BRVM</b>	Regional Securities Exchange
<b>C</b>	Compliant
<b>CAT/CPEC</b>	Cellule d'Assistance Technique aux Caisses Populaires d'Epargne et de Cr�dit
<b>CB</b>	Banking Commission
<b>ECOWAS</b>	Economic Community of West African States
<b>CENTIF</b>	National Financial Information Processing Unit
<b>CILD</b>	Interministerial Drug Control Committee

<b>CIMA</b>	Inter-African Conference on Insurance Markets
<b>CRCA</b>	Regional Insurance Supervision Council
<b>CREPMF</b>	Regional Council for Public Savings and Financial Markets
<b>FIU</b>	Financial Intelligence Unit
<b>CONGAD</b>	Council of Non Government Organizations for Development Support
<b>CVCCEP</b>	Commission of Accounts Audit and Control of Parastatals (Public Enterprises)
<b>DMCE:</b>	Department of Currency, Credit and Savings
<b>STR :</b>	Suspicious Transaction Report
<b>DNFBPs</b>	Designated Non Financial Businesses and Professions
<b>FSSA</b>	Federation of Senegalese Insurance Companies
<b>FATF :</b>	Financial Action Task Force
<b>GIABA</b>	Intergovernmental Action Group Against Money laundering in West Africa
<b>IFI</b>	International Financial Institutions
<b>LML/FT</b>	Suppressing Money Laundering and Terrorist Financing
<b>LC</b>	Largely compliant
<b>NA</b>	Not Applicable
<b>NC</b>	Not compliant
<b>OCRTIS</b>	Central Office for the Suppression of Illegal Drug-Trafficking
<b>OHADA</b>	Organisation for the Harmonisation of business Law in Africa
<b>IAIS</b>	International Association of Insurance Supervisors
<b>OICV</b>	International Organisation of Securities Supervisors
<b>ONECCA</b>	National Association of Chartered Accountants
<b>UN</b>	United Nations
<b>UNODC</b>	United Nations Office on Drug and Crime
<b>ORTG</b>	FATF-type Regional Bodies
<b>PC :</b>	Partially Conform
<b>PEP :</b>	Politically Exposed Persons
<b>NCCT</b>	Non-Cooperative Countries and Territories
<b>QEM</b>	Mutual Evaluation Questionnaire
<b>R</b>	Recommendation
<b>MER</b>	Mutual Evaluation Report
<b>SR</b>	Special Recommendation
<b>AU</b>	African Union
<b>WAMU</b>	West African Monetary Union
<b>WAEMU</b>	West African Economic and Monetary Union
<b>ZF</b>	Franc Zone



**LIST OF BODIES MET DURING ON-SITE VISIT**

**I- PUBLIC SECTOR AUTHORITIES AND STRUCTURES**

- **Senior Minister of Economy and Finance**
  - ✓ Customs Department
  - ✓ General Directorate of the Public Accounts and Treasury (DGCPT)
  - ✓ General Directorate of taxes and Property (DGID)
  - ✓ General Directorate of the Deposits and Consignments
  - ✓ Department of Currency, Credit and Savings
  - ✓ Department of Insurance
  - ✓ Cellule d'Assistance Technique aux Caisses Populaires d'Epargne et de Crédit
  - ✓ Managing Director of the Customs services and Technical departments involved in the fight against Money Laundering and Terrorist Financing
  
- **National Financial Information Processing Unit (CENTIF)**
  
- **Governor of the Central Bank of West African States (BCEAO HEAD OFFICE)**
  
- **BCEAO National Director for Senegal**
  
- **Senior Minister, Minister of Justice, Keeper of the Seals**
  - ✓ Private secretary
  - ✓ Head of Criminal Affairs and Pardons
  - ✓ Public Prosecutor at the Appeal Court
  - ✓ State Prosecutor and Deputy
  - ✓ Dean of Examining Judges
  
- **President of the National Audit Office**
  
- **Senior Minister, Minister of Home Affairs**
  - ✓ Head of the criminal Police
  - ✓ Head of the Economic and Financial Unit

Other ministry authorities involved in the fight against Money Laundering and Terrorist Financing  
(Various police Authorities-DIC (Criminal Investigation Department) - ... etc. and INTERPOL)
  
- **Major-General, Top Commander of the Military Police, head of the Military Law**
  - ✓ Technical and operational Structures involved in the fight against Money Laundering and Terrorist Financing.
  
- **Private secretary of the Trade Minister**

- **Private secretary of the Crafts and Tourism Minister and Technical Authorities involved in the Ministry**

## **II- PRIVATE SECTOR AUTHORITIES AND STRUCTURES**

- **Self-regulatory bodies**

- ✓ Professional Association of Banks and Financial Institutions (APBEF)
- ✓ Federation of Senegalese Insurance Companies (FSSA)
- ✓ Professional Association of Micro Finance, Savings and Credit Institutions
- ✓ Lawyers' governing body
- ✓ Notarial Association
- ✓ National Association of Chartered Accountants in Senegal (ONECCA)
- ✓ Confederation of Non Governmental Organisations (CONGAD)

- **Banks and financial institutions**

- ✓ Banque de l'Habitat du Sénégal (BHS-Senegal Housing Bank)
- ✓ BICIS
- ✓ SOCRES
- ✓ Mutuelle d'Epargne et de Crédit (Savings and Credit Fund)

- **Insurance companies**

- ✓ **AXA Regional financial Market Actors**
- ✓ **Regional financial Market Stakeholders**
- ✓ National Branch of the Regional Securities Exchange (B.R.V.M.)

- **Designated Non Financial Professional Businesses**

- ✓ Funds Transfer Service Western Union
- ✓ Casino du PORT
- ✓ Security Company SAGAM
- ✓ Manual Foreign Currency Authorized Persons

**LIST OF LEGAL TEXTS AND OTHER DOCUMENTS EXAMINED**

- I- **SUPRA NATIONAL OR COMMUNITY TEXTS (Treaties, Conventions, Supplementary acts, Conventions, Resolutions, Uniform Acts, Directives, Regulations, Decisions etc.)**
- UNITED NATIONS CONVENTION AGAINST THE ILLICIT TRAFFIC OF NARCOTICS AND PSYCHOTROPIC SUBSTANCES – VIENNA-1988-
  - UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME – PALERMO-2000
  - INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF TERRORIST FINANCING – NEW-YORK - 1999
  - RESOLUTION 1267 (1999) OF THE UNITED NATIONS SECURITY COUNCIL
  - RESOLUTION 1373 (2001) OF THE UNITED NATIONS SECURITY COUNCIL
  - TREATY OF 14 NOVEMBER 1973 ESTABLISHING THE WEST AFRICAN MONETARY UNION (WAMU)-
  - TREATY ESTABLISHING THE WEST AFRICAN ECONOMIC AND MONETARY UNION (WAEMU)
  - ECOWAS REVIEWED TREATY
  - GIABA REVIEWED STATUTES
  - STATUTES OF THE CENTRAL BANK OF WEST AFRICAN STATES (BCEAO) ANNEXED TO THE WAMU TREATY
  - CONVENTION ESTABLISHING THE WAMU BANKING COMMISSION AND ANNEX
  - CONVENTION SETTING UP THE REGIONAL COUNCIL OF PUBLIC SAVINGS AND FINANCIAL MARKETS AND ANNEX
  - CODE OF THE INTER-AFRICAN CONFERENCE OF INSURANCE MARKETS (CIMA)
  - OHADA TREATY
  - UNIFORM LAW ON THE RIGHT OF TRADE COMPANIES AND ECONOMIC INTEREST GROUPINGS (GIE)
  - UNIFORM LAW ON THE GENERAL COMMERCIAL LAW

- REGULATION n°09/1998/CM/WAEMU OF 20 DECEMBER 1998 ON THE EXTERNAL FINANCIAL RELATIONSHIPS OF WAEMU MEMBER COUNTRIES
- REGULATION n°15/2002/CM/WAEMU ON THE PAYMENT SYSTEMS IN WAEMU MEMBER COUNTRIES
- DIRECTIVE n°08/2002/CM/WAEMU OF 19 SEPTEMBER 2002 ON MEASURES FOR PROMOTING USE OF BANKING SERVICES AND SCRIPTURAL PAYMENT MEANS
- DIRECTIVE n°07/2002/CM/WAEMU OF 19 SEPTEMBER 2002 N COMBATING MONEY LAUNDERING IN WAEMU MEMBER COUNTRIES
- REGULATION n° 14/CM/WAEMU/ ON THE FREEZING OF FUNDS AND OTHER FINANCIAL RESOURCES IN THE FIGHT AGAINST TERRORIST FINANCING IN WAEMU MEMBER COUNTRIES
- WAEMU DRAFT COMMUNITY DIRECTIVE ON COMBATING TERRORIST FINANCING IN WAEMU MEMBER COUNTRIES
- BCEAO DIRECTIVES n°01/2006/SP OF 31 JULY 2006 ON ISSUING ELECTRONIC CURRENCY AND TO ELECTRONIC CURRENCY INSTITUTIONS
- BCEAO DIRECTIVES n°01 OF 8 MAY 2004 SETTING AT CFAF100,000 THE THRESHOLD FOR SETTLEMENTS
- WAMU BANKING COMMISSION CIRCULARS TO CREDIT INSTITUTIONS

## II- NATIONAL LAWS (Constitution, Law, Rulings, Decrees, Orders, Circular etc....)

- CONSTITUTION OF 7 JANUARY 2001
- LAW 90-06 OF 26 June 1990 on THE SENEGALESE BANKING REGULATION
- UNIFORM LAW n° 2004/09 ON COMBATING MONEY LAUNDERING IN WAEMU MEMBER COUNTRIES (SENEGAL)
- LAW n°94-69 OF 22 AUGUST 1994 SETTING THE OPERATING REGIME FOR ECONOMIC ACTIVITIES
- LAWS N°84-19 and 84-20 OF 2 FEBRUARY 1984 SETTING JUDICIAL ORGANISATION
- SENEGAL CRIMINAL CODE
- SENEGAL CODE OF CRIMINAL PROCEDURE
- LAW AMENDING THE SENEGALESE CRIMINAL CODE AND INTEGRATING A SECTION TITLED “TERRORIST ACTS”

- LAW AMENDING THE SENEGALESE CODE OF CRIMINAL PROCEDURE ON COMBATING TERRORIST ACTS
- LAW ON THE SENEGALESE DRUG CODE
- LAW 2004-15 ADAPTING THE DIRECTIVE n°08/2002/CM/WAEMU OF 19 SEPTEMBER 2002 ON MEASURES FOR PROMOTING USE OF BANKING SERVICES AND SCRIPTURAL PAYMENT MEANS
- LAW n° 95-03 of 5 January GOVERNING MUTUAL BENEFIT INSTITUTIONS OR SAVINGS AND CREDIT FUNDS
- ORDER REGARDING DISPUTES ON CURRENCY CONTROL OFFENCES
- LAW ESTABLISHING ORGANIC LAW ON FINANCE ACT
- LAW n°66-58 OF 30 JUNE 1966 ORGANISING AND REGULATING GAMBLING HOUSES
- LAW n°75-60 OF 2 JUNE 1975 AMENDING AND COMPLETING LAW n°66-58 OF 30 JUNE 1966 ORGANISING AND REGULATING GAMBLING HOUSES
- LAW n° 82-07 of 30 June 1982 ON ACTIVITIES OF PROMOTION, TRANSACTION AND MANAGEMENT OF PROPERTY, STUDY AND ADVICE IN BUSINESS ORGANISATION AND MANAGEMENT AND LEGAL ADVICE
- LAW 2006603 04 JANUARY 2006 ESTABLISHING A PUBLIC INSTITUTION WITH SPECIAL STATUTE DUBBED “DEPOSITS AND CONSIGNMENTS FUND”
- LAW N° 90-07 of 26 JUNE 1990 ON THE ORGANISATION, SUPERVISION OF PARAPUBLIC SECTOR BUSINESSES AND CONTROL OF PRIVATE LAW LEGAL PERSONS GETTING FINANCIAL SUPPORT FROM PUBLIC AUTHORITIES
- DECREE N° 92-1559 OF 12 NOVEMBER 1992 SETTING THE CVCCEP OPERATING RULES
- DECREE n° 2004-1150 of 18 August 2004 ESTABLISHING, ORGANISING AND RUNNING THE NATIONAL FINANCIAL INFORMATION PROCESSING UNIT (CENTIF)
- DECREE n°95-132 OF 1st FEBRUARY 1995 LIBERALISING ACCESS TO SOME PROFESSIONS
- DECREE REGULATING PUBLIC ACCOUNTS
- IMPLEMENTING DECREE n° 95-03 of 5 January 1995 OF LAW n° 95-03 of 5 January 1995 REGULATING MUTUAL BENEFIT INSTITUTIONS OR SAVINGS AND CREDIT COOPERATIVES.

- DECREE n°67-390 OF 13 APRIL 1967 SETTING CONDITIONS FOR IMPLEMENTING LAW n°66-58 OF 30 JUNE 1966 ORGANISING AND REGULATING GAMBLING HOUSES
- DECREE n°67-1019 OF 13 SEPTEMBER 1967 SETTING THE ALLOWANCE RATE ALLOCATED TO STATE AGENTS IN CHARGE OF SUPERVISING AND MONITORING GAMBLING HOUSES AS WELL AS THE RATE AND CONDITIONS FOR REFUNDING MONITORING FEES BY THESE INSTITUTIONS
- DECREE n°92-63 OF 6 JANUARY 1992 ESTABLISHING A COMMISSION IN CHARGE OF EXAMINING GAMBLING HOUSES PERMISSION REQUESTS
- DECREE n° 83-423 of 21 April 1983 ON PROPERTY, TRANSACTION and MANAGEMENT ACTIVITIES
- DECREE n°2005-144 OF 2 MARCH 2005 REGULATING TRAVEL, TOURISM AND TOURIST TRANSPORT AGENCIES
- DECREE REGULATING TOURIST ACCOMMODATION INSTITUTIONS
- DECREE AMENDING THE DECREE SETTING THE CONDITIONS OF INTERVENTION OF NON GOVERNMENTAL ORGANISATIONS (NGOs)
- DECREE N°2003.101 REGULATING PUBLIC ACCOUNTS
- DECREE N°83.423 OF 21 APRIL 1983 ON PROPERTY TRANSACTION, MANAGEMENT ACTIVITIES
- DECREE N°2007-87 OF 25 JANUARY 2007 SETTING CONDITIONS IN WHICH NATIONAL AUDIT OFFICE SUPERVISES OPERATIONS OF THE DEPOSITS AND CONSIGNMENTS FUND
- MINISTERIAL ORDER SETTING THE BENCHMARK AMOUNT FOR PAYMENTS OF SUMS OF MONEY THAT CAN BE MADE THROUGH CHEQUE OR TRANSFER

### **III- STANDARDS AND CODES**

- FATF RECOMMENDATIONS (40+9)
- CORE PRINCIPLES FOR EFFICIENT BANKING SUPERVISION  
CUSTOMER-DUE DILIGENCE FOR BANKS  
(BASEL COMMITTEE ON BANKING SUPERVISION)
- AFRICAN PEER REVIEW MECHANISM (APRM-AFRICAN UNION)

**LISTS OF BANKS AND FINANCIAL INSTITUTIONS IN SENEGAL**

**I. BANKS : 17**

<b>1</b>	Société Générale de Banques au Sénégal
<b>2</b>	Compagnie bancaire de l’Afrique de l’Ouest
<b>3</b>	Banque Internationale pour le commerce et l’Industrie du Sénégal (International Bank for Trade and Industry in Senegal)
<b>4</b>	Banque de l’Habitat du Sénégal (Senegal Housing Bank)
<b>5</b>	Crédit Lyonnais Sénégal
<b>6</b>	Banque Sénégal-Tunisienne (Senegalese-Tunisian Bank)
<b>7</b>	Caisse Nationale de Crédit Agricole du Sénégal
<b>8</b>	ECOBANK Sénégal
<b>9</b>	CITIBANK Sénégal
<b>10</b>	Banque Islamique du Sénégal (The Senegalese Islamic Bank)
<b>11</b>	Bank Of Africa Sénégal
<b>12</b>	Banque Sahélo- Saharienne pour l’Investissement et le Commerce- Sénégal (Sahelian-Saharan Bank for Investment and Trade-Senegal)
<b>13</b>	Banque Régionale de Solidarité- Sénégal (Regional Solidarity Bank- Senegal)
<b>14</b>	Banque des Institutions Mutualistes d’Afrique de l’Ouest
<b>15</b>	Banque Atlantique- Sénégal
<b>16</b>	Banque internationale de commerce-Sénégal (International Commercial Bank)
<b>17</b>	ATTIJARIBANK

**II. FINANCIAL INSTITUTIONS : 3**

<b>1</b>	Société de Crédit et d’Equipement du Sénégal
<b>2</b>	Sénégal Factoring
<b>3</b>	Compagnie Ouest Africaine de Crédit Bail

**SENEGAL COMMUNITY FRAMEWORK ON MONETARY, FINANCIAL,  
ECONOMIC, BUSINESS LAW AND INSURANCE**

West African Monetary Union (WAMU) – West African Economic and Monetary Union (WAEMU) – Economic Community of West African States (ECOWAS) – Inter-Governmental Action Group Against Money Laundering in West Africa (GIABA) – Organisation for the Harmonisation of Business law in Africa (OHADA) – Regional Insurance Monitoring Commission (CRCA – CIMA – ZONE FRANC)

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**For a better comprehension of the implementation of some provisions in the Monetary, Financial, Economic, Business Law and Insurance area, we should take into account the Senegalese community framework.**

**1. Monetary and Financial Area – West African Monetary Union (WAMU)**

In this area, Senegal belongs to the West African Monetary Union (WAMU) community framework regarding the currency issuing, banking supervision and the Regional Council on Public Savings and Financial Markets

a) Currency issuing entrusted to the *Central Bank of West African States - (BCEAO) – Head Office in Dakar - Senegal*

- Convinced that a Monetary Union is one of the vital means for a quick and harmonised development of their national economies
- Noting that it is in the own interest of their country and their common interest to remain in a Monetary Union and to maintain a Common Issuing Institute with a view to ensuring the running,

**Seven West African States including Senegal (Benin, Burkina Faso, Côte d’Ivoire, Mali, Niger, Togo, Senegal) signed a Treaty on 14 November 1973 recognizing a single monetary unit which issuing is entrusted to a common Issuing Institute supporting national economies under the supervision of Governments in the signatory countries and dubbed “Central Bank of West African States”**

To that end, articles 15, 16, 17 of the Treaty establishing the WAMU stipulate:

**Article 15 :** On the Territory of signatory states, the exclusive issuing power is entrusted to a common Issuing Institute, the Central Bank of West African States called ”Central Bank”.

**Article 16:** The Central Bank is governed by Statutes annexed to the Current Treaty.

**Article 17:** “To enable the Central Bank fulfil its mission, the immunities and privileges usually recognized to International Financial Institutions are entrusted on the Territory of each of the Union member stated in the conditions stated by its statutes”

Article 4 of the Central Bank Statutes confirms “to enable the Central Bank fulfil its mission, the immunities and privileges of the International Financial Institutions are entrusted to it on the Territory of each of the Union member stated in the conditions stated by the ancillary protocol to the current statutes which is full part of the above statutes”.

The BCEAO Head office is in Dakar, Senegal. A headquarters agreement was signed between BCEAO and Senegal to strengthen the privileges and immunities already recognized as a community Organ under the WAEMU Treaty.

**NB/ - It should be noted that in Senegal as in other member countries of the Union, there is a BCEAO National Directorate dubbed BCEAO –National Directorate Senegal or National Directorate Côte d’Ivoire for Côte d’Ivoire, etc..**

**b) Banking supervision entrusted to the WAMU Banking Commission (BC.WAMU) - Headquartered in Abidjan - Côte d’Ivoire-**

- Aware of their deep monetary solidarity and the need to strengthen further their cooperation in the banking area;
- Resolved to preserve a harmonious running of the banking system to ensure their economies the bases of a healthy funding and promote both the mobilization of domestic savings and contribution of foreign funds;
- Persuaded that to that end a community organization on the supervision of banks and financial institutions is the most appropriate means;
- Convinced that this community organization will help ensure a uniform and more efficient monitoring of the banking activity and an integration of the banking area in the West African Economic and Monetary Union while reinforcing their common currency,

**Signatory States to the WAMU Treaty including Senegal established through a convention dated 24 April 1990 a commission called “WAMU Banking Commission” mainly in charge of ensuring the community-like organization and supervision of banks and financial institutions.**

The WAMU Banking Commission has to provide its opinion for all licence of a Bank or financial institution as well as for any withdrawal of licence;

The Banking Commission makes or has some on-site checks made mainly by the Central Bank through documents at WAMU banks and financial institutions to ensure the implementation of the provisions applicable to it.

However, the Central Bank can conduct checks at its own initiative. For onsite checks, it has to inform the Banking Commission.

Banks and financial institutions are required to provide to any request from the Banking Commission and on the desired supports, all documents, information, clarifications and explanation necessary for performing its duties.

The Banking Commission can take disciplinary sanctions against the WAMU banks and financial institutions when it notes an offence subject to reporting it to the State Minister involved.

The Banking Commission enjoys the same privileges and immunities as the central Bank.

The Banking Commission has its headquarters in ABIDJAN, Côte d'Ivoire. It has signed a headquarters agreement with the Ivorian Authorities enhancing the privileges and immunities already recognized by the Convention.

**c) Regional Council for Public Savings and Financial Markets (CREPMF) - Head Office Abidjan, Côte d'Ivoire -**

- Aware of the need to strengthen their cooperation in the financial area
- Realizing that the establishment of a regional financial market is a means to mobilize domestic savings and attract foreign funds to finance their investments;
- Persuaded that the security of financial transactions requires the setting up of a supervising structure of the financial market within the community;
- Convinced that this community organization will contribute to the emergence of a coherent, efficient, financial market useful to economic development and reinforcement of their integration;

**WAMU member States including Senegal established on 3 July 1996 as part of the WAMU, a body dubbed Regional Council for Public Savings and Financial Markets (CREPMF) in charge on the one hand, of organizing and supervising the public call for Savings and on the other, to empowering and supervising stakeholders in the regional financial market.**

CREPMF is a WAMU body with legal personality.

International organizations' immunities and privileges are recognized to the Regional Council on the Territory of WAMU States.

CREPMF is headquartered in ABIDJAN, Côte d'Ivoire.

**d) Harmonizing Monetary and Financial laws in WAMU**

**To ensure a full implementation of a Monetary Union mentioned above , Governments in WAMU member countries have agreed to adopt a uniform regulation which provisions are laid out by the West African Monetary Union (WAMU) Ministers' Council (comprising two Ministers per member State necessarily with the Finance Minister) mainly :**

- Conducting and supervising their financial relationships with countries

outside the Union

- The overall organization of the credit distribution and supervision
- General rules for running the banking profession and related activities,
- Bill of exchange
- Suppression on forgery of monetary signs
- **Combating money laundering**
- **Combating terrorist financing**

Note/- It should be noted that the search for this harmonization requires within the WAMU taking community Directives and uniform laws applicable to all member States. For instance : Community Directive against Money laundering followed by a Uniform Law against Money laundering; Community Directive against Terrorist Financing to be followed by a Uniform Law against Terrorist Financing ; or a community regulation or community directives0.

## **2. Economic Area – WAEMU and ECOWAS**

In this area, Senegal is governed on the one hand by the West Africa Economic and Monetary Union and on the other, by the Economic Community of West African States

### ***a) West Africa Economic and Monetary Union (WAEMU) – WAEMU Commission Head Office in OUAGADOUGOU - Burkina Faso***

- Aware of their mutual benefits from their membership to the same Monetary Union and the need to reinforce its cohesion.
- Convinced of the need to consequently extend the solidarity binding them in the monetary plan to the economic area.
- Stating the need to foster economic and social development in member States through harmonized laws, unified domestic markets and implementation of common sector-based policies in the key sectors of their economies.
- Recognizing the interdependency of their economic policies and the need to ensure their convergence
- Noting that their policy is part of the ongoing regional integration efforts in Africa,

**Member States of the West African Monetary Union (WAMU) including Senegal have decided to complete their monetary system through new transfers of sovereignty in the Economic plan. Thus the West African Monetary Union (WAMU) was transformed into West African Economic and Monetary Union (WAEMU) through the signature of a treaty on 10 January 1994 dubbed “WAEMU Treaty”.**

Without prejudice to the goals defined in the WAMU Treaty pursues the achievement of the following goals:

- Increase the competitiveness of economic and financial actions in member States as part of an open and competitive market as well as a nationalized and harmonized legal environment.
- Ensure convergence between the performances and the economic policies in the member states through the establishment of a multilateral monitoring procedure.
- Create among member states a common market based on the free movement of people, goods, services, capitals and the right of people running an independent or salaried activity as well as on a common external tariff and a common trade policy.
- Set up coordinated national sector-based policies.
- Harmonize if necessary to the good running of the common market, member states laws and particularly the tax regime.

The WAEMU Commission has a legal personality. It enjoys rights, immunities and privileges conferred by a Treaty.

The WAEMU Commission has its Head Office in OUAGADOUGOU, Burkina Faso and has a headquarters agreement with the Government of Burkina Faso thus increasing the privileges and immunities conferred by treaty as a community body.

*b) The Economic Community of West African States -ECOWAS  
ECOWAS Commission in ABUJA – NIGERIA*

- Realizing the imperative need to encourage, boost and accelerate economic and social progress of their States to improve the standard of living of their peoples ;
- Convinced that promoting economic and harmonious development of heir States requires efficient cooperation and economic integration essentially depending on a steady and concerted self-sufficient policy ;
- Recognizing the need to establish community Institutions conferred with consequent powers ;
- Recognizing the need to face together the political, economic and social and cultural challenges and to pool the resources of their peoples in respect for their diversity to ensure a quick and full expansion of the production la capacity of the West Africa region.

**Eight (8) Francophone States-the seven (7) member States of the Monetary Union including Senegal plus Guinea, five (5) Anglophone States including The Gambia, Ghana, Liberia, Nigeria, Sierra Leone and two (2) Lusophone States including Guinea Bissau and Cape Verde Islands altogether fifteen (15) States**

signed a Treaty establishing the Economic Community of West African States (ECOWAS) on 18 May 1975 which was reviewed on 24 July 1993 in COTONOU.

**The ECOWAS Treaty seeks to foster cooperation and integration ahead of a West African Economic Union with a view to raising the living standards of its populations, maintaining and increasing economic stability, strengthening relations among its member States and contribute to the progress and development in the African Continent.**

The ECOWAS Executive Secretariat which has become the ECOWAS Commission headquartered in ABUJA, Nigeria, has immunities and privileges pursuant to the ECOWAS Treaty and the headquarters agreement between the Commission and the Nigerian Authorities.

**NB/- As an ECOWAS Specialised Institution, the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA) based in Dakar, enjoys the same privileges and immunities recognized by the ECOWAS Treaty and reinforced by a Headquarters agreement signed by the Senegalese Authorities.**

### **3 – Business Law – Organization for the Harmonization of Business Law in Africa (OHADA) – Head office in YAOUNDE, (Cameroon)**

**The fourteen (14) countries of the Franc Zone area including Senegal and the Comoros and Guinea Conakry or sixteen (16) States signed on 17 October 1993 in Port Louis (Mauritius) the Treaty on the Organization for the Harmonization of Business Law in Africa (OHADA).**

**In the economic plan, the Treaty on OHADA seeks to foster development and regional integration as well as legal and judicial security and particularly:**

- Give member states a single, simple, modern business law matching the situation of their economies.
- Promote arbitration as an instrument for settling contract disputes
- Contribute to the training and specialize magistrates and police representatives.

The Treaty sets the pre-eminence of Uniform Acts on the national law and their direct applicability.

Acts taken for the adoption of common rules provided for by the Treaty are described as deliberate uniform acts and adopted by the OHADA Ministers' Council comprising Justice and Finance Ministers in the member states.

These acts were mainly taken:

- ✓ The Uniform Law on the overall commercial right
- ✓ The Uniform Law on the right of trade companies and the GIE
- ✓ The Uniform Law organizing simplified recovery procedures and

implementation ways

- ✓ The Uniform Law organizing the collective liabilities payment procedures
- ✓ The Uniform Law on the right of Arbitration

OHADA has the full legal and international personality.

Performing its duties, OHADA enjoys immunities and privileges recognized to international organizations.

#### **4 –Insurance Regional Insurance Supervising Commission– CRCA – Head Office in Libreville, GABON**

**The fourteen (14) member States of the Franc Zone area including Senegal** in addition to the Comoros and Guinea Bissau in 2006 signed a Treaty dubbed **CIMA Treaty on 10 July 1992 in YAOUNDE.**

The goals of this Treaty are:

- ✓ To enhance cooperation in the area of insurance, in member States by putting in place an extended and integrated Market of the Insurance Industry that meets the conditions for a satisfactory balance in the technical, economic and financial plans.
- ✓ Favour the conditions for developing and sanitizing insurance business companies and increase the retentions of insurance allowances at the national and sub regional levels.
  
- ✓ Pursue the policy on the harmonization and unification of the legislative and regulatory provisions on technical insurance and reinsurance operations as well as supervision of insurance companies.
- ✓ Pursue the training of insurance executives and technicians for businesses and administrations in member States.

The CIMA are:

- The Insurance Ministers’ Council (CMA)
- Regional Insurance Supervision Council (CRCA) based in Libreville (GABON)
- The Secretariat General of the CIMA in Libreville, GABON.

The CIMA has set up a single law called “CIMA Insurance Code” applicable in all countries in the Zone which came into force on 15 February 1995.

CIMA mainly seeks to supervise insurance companies with the power of order and sanction.

**Note/- It should be noted that the Franc Zone (FZ) area which it refers regarding OHADA and CIMA groups fourteen (14) West African Sub-Saharan countries including Senegal (Benin, Burkina Faso, Côte d’Ivoire, Guinea Bissau, Mali, Niger, Senegal, Togo ; hence the WAEMU member States) and Central Africa (Cameroon, Central African Republic, Congo, Gabon, Equatorial Guinea, Chad ; hence all member States of the Central African Economic and Monetary Community (CAEMC) in addition to the Comoros and France.**

The Franc Zone area emerged from the evolution of the French Colonial Empire and the common will by these countries to maintain an institutional framework that contributed to a stable macroeconomic context.

Thus the Central Bank of West African States was established (BCEAO), the Central Bank of Central African States (BEAC) and the Central Bank of the Comoros.

These central banks have an “operations” account opened with the French Treasury ensuring the convertibility of their currency.

Until 1<sup>st</sup> January, the CFAF and Comorian CFAF were pegged to the French Franc. At the adoption of the Euro (€), the European currency replaced the franc as a monetary reference of the CFA and Comorian francs without affecting the monetary cooperation mechanisms between France and African countries in the franc zone area. This monetary cooperation is governed by four core principles:

- Indefinite guarantee of the French Treasury
- Fixed parities
- Free transferability
- Centralized foreign currency reserves (in return for the indefinite guarantee of the convertibility by the French Treasury, the three Central Banks are required to deposit one part of their foreign currency reserves at the French Treasury on their operations account).

The running of the operation account was formalized by conventions between the French Authorities and the representatives of franc zone Central Banks.

Cooperation between France and the franc Zone is mainly translated into the holding twice a year, of meetings of Finance Ministers from franc zone countries.

#### **IV. The legal regime of the Laws taken by the community bodies of the WAMU, the WAEMU, the ECOWAS and the FRANC ZONE**

- **The Heads of States and Government Conference** takes “Acts” also called “decisions” binding member states and Institutions in the Community
- **The Ministers’ Council enacts:**
  - “Rules” of general scope. They are compulsory in all their elements and

directly applicable in any member state.

- **“Directives”** binding any member State on the achievable result
- **Decisions compulsory in all their elements for relevant designated people**

The Ministers' Council can also make recommendations and /or non-binding advice

- **Authorities heads of Community Institutions** example BCEAO Governor takes Directives.

## V. HIERARCHY OF LEGAL TEXTS UNDER THE SENEGALESE LAW

1°) – **Treaties and International Conventions**



2°) – **The Senegalese Constitution**



3°) – **Laws**



4°) – **Rules** (decrees, orders, circulars, directives)