



# MALI

## TECHNICAL ASSISTANCE REPORT—ANTI-CORRUPTION AND ANTI-MONEY LAUNDERING

July 2015

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**MALI**

**TECHNICAL ASSISTANCE REPORT  
LEGISLATIVE DRAFTING**

**ANTI-CORRUPTION AND ANTI-MONEY LAUNDERING**

**Gianluca Esposito and Charlotte Gunka**

**December 2014**

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**ABBREVIATIONS**

<b>AC</b>	Anti-corruption
<b>AML/CFT</b>	Anti-Money Laundering/Combating the Financing of Terrorism
<b>BC</b>	Banking Commission
<b>BCEAO</b>	Central Bank of West African States
<b>BICIM</b>	Banque Internationale pour le Commerce et l'Industrie du Mali
<b>BVG</b>	Office of the Auditor General
<b>CDD</b>	Customer Due Diligence
<b>CENTIF</b>	National Financial Intelligence Unit
<b>CFAF</b>	Franc of the African Financial Community
<b>CPM</b>	Penal Code of Mali
<b>CPPM</b>	Code of Penal Procedure of Mali
<b>DNFBP</b>	Designated Non-Financial Businesses and Professions
<b>ECF</b>	Extended Credit Facility (IMF)
<b>FATF</b>	Financial Action Task Force
<b>FI</b>	Financial Institution
<b>FIU</b>	Financial Intelligence Unit
<b>GIABA</b>	Inter -Governmental Action Group against Money Laundering in West Africa
<b>MEFP</b>	Memorandum of Economic and Financial Policies
<b>MER</b>	Mutual Evaluation Report
<b>ML</b>	Money laundering
<b>NCCT</b>	Non-Cooperating Countries and Territories
<b>OCLEI</b>	Central Office for Combating Illicit Enrichment
<b>PE</b>	Public Establishment
<b>PEP</b>	Politically Exposed Person
<b>PREI</b>	Prevention and Repression of Illicit Enrichment
<b>STR</b>	Suspicious Transaction Report
<b>TA</b>	Technical Assistance
<b>TTF</b>	Topical Trust Fund
<b>UNCAC</b>	United Nations Convention against Corruption
<b>UNDP</b>	United Nations Development Programme
<b>UNODC</b>	United Nations Office on Drugs and Crime
<b>WAEMU</b>	West African Economic and Monetary Union

## PREFACE

In response to a request for technical assistance (TA) submitted by the Minister of Economy and Finance and the Minister of Justice and Human Rights, a “Legislative Drafting” TA project was approved by the Steering Committee of the Anti-Money Laundering/Combating Financing of Terrorism (AML/CFT) Topical Trust Fund (TTF). The purpose of this project is to help the authorities addressing the main risks of laundering of the proceeds of corruption, notably by strengthening Mali's AML/CFT and anticorruption (AC) legal and regulatory frameworks in line with international standards.

An IMF Legal Department mission visited Bamako from September 9 to 17, 2014, with a view to: (i) gaining a better understanding of the AML/CFT and AC legal and regulatory frameworks in place in Mali, and the status of their implementation; (ii) identifying the main money laundering and financing of terrorism risks, in particular those related to the proceeds of corruption; and (iii) formulating recommendations to mitigate these risks and support AC efforts.

The mission comprised Mr. Gianluca Esposito, head of mission, and Ms. Charlotte Gunka, from the IMF's Legal Department.

The mission was received by Mrs. BOUARE Fily Sissoko, Minister of Economy and Finance; Mr. Mohamed Ali Bathily, Minister of Justice and Human Rights; and Mr. Tiéman Hubert Coulibaly, Minister of State Domains, Land Affairs and Heritage. It was attended by Mrs. TOURE Aminata Dembélé, General Secretary of the National Financial Intelligence Unit (CENTIF), and Mr. Soulimane Traoré, Head of the Intelligence and Strategy Service of the CENTIF.

The mission held meetings with officials and staff members of various ministries and institutions (see Annex 3). Meetings were also held with representatives of the Professional Association of Banking and Financial Institutions, and also with the Insurance Committee, private banks, real estate promoters, jewelers, a notary, magistrates, senior officials of the police and the *gendarmérie*, and the customs service. In addition, the mission met with Mr. Jean-Luc Stalon, Assistant Director of the United Nations Development Programme (UNDP).

The members of the mission wish to express their sincere gratitude to the Malian authorities for their availability and for the quality and transparency of the discussions.

The mission would like to thank Mr. Anton Op de Beke, Resident Representative of the IMF, and Mr. Bakary Traoré, resident economist, for their availability and assistance in the organization of the mission. The mission is also grateful to Mr. Christian Jozs, head of the IMF African Department team for Mali, as well as the members of the team, Mr. Milan Cuc, senior economist, Mr. John Hooley, economist, and Mr. Salvatore Dell'Erba, economist with the IMF's Fiscal Affairs Department, for their cooperation throughout the mission.

## EXECUTIVE SUMMARY

1. **Strengthening the Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) framework would support the fight against corruption.** The strengthening and effective enforcement of certain AML measures would help preventing and detecting criminal conduct, and identifying and recovering the proceeds of corruption. Implementation of a sound AML/CFT framework would also contribute to combat fraud (i.e. forgery or overbilling, etc.), tax evasion, terrorism, and organized crime. The AML/CFT tools and means that can support anti-corruption (AC) efforts are the following:

- **AML/CFT policies and coordination:** these measures are intended to assess AML/CFT risks and to apply an approach based on the specific risks related to the laundering of the proceeds of corruption. They also serve to reinforce domestic cooperation and coordination in order to ensure effective enforcement of a criminal policy focused on AML/CFT, and in particular on the proceeds of corruption.
- **Criminalization of money laundering and confiscation:** the crime of money laundering (ML) must be properly defined, and the associated penalties must be dissuasive, in order to encourage the authorities to prosecute for ML, and allow the strengthening and effective enforcement of provisional measures (freezing and seizure of assets) and confiscation. Such measures would help to prevent and detect acts of corruption, and also to identify and recover the proceeds of corruption.
- **Preventive measures:** the introduction and application of specific AML/CFT preventive measures—enhanced customer due diligence (CDD) toward domestic politically exposed persons (PEPs), and regulation of designated nonfinancial businesses and professions (DNFBPs)—would help to prevent the laundering and the use of the proceeds of corruption.
- **Transparency and beneficial ownership of legal persons:** companies can be used to disguise the financial transactions of one or several other companies, and those of their beneficial owners, and to facilitate laundering of the proceeds of corruption. In order to avoid the use of such companies for ML purposes, measures must be introduced to ensure transparency of information on these companies and their beneficial owners.
- **Powers and responsibilities of competent authorities and other institutional measures:** strengthening the powers and the responsibilities of the authorities in charge of the functioning of the “AML chain” would make it possible to block the flow of proceeds from corruption, identify more effectively the perpetrators of crimes, and recover illicit assets.
- **International cooperation:** the evidence needed to prove corruption and the laundering of the proceeds thereof, as well as the perpetrators of the deeds and the illicit assets themselves, are often located abroad. Effective international cooperation in the AML/CFT field can make it easier to prosecute and convict the perpetrators of corrupt activities and recover the proceeds of corruption.

**Table 1. Indicative Time Schedule for the TA Project**

<b>Date</b>	<b>Action</b>
June 2014	Request for technical assistance
September 9–17, 2014	First mission: Diagnostic
November 3, 2014	Submission of the report to the authorities
November–December 2014	Feedback from the authorities
December 2014	Finalization of the TA project proposal
February 28, 2015	Action plan of the authorities
March–April 2015	Second mission: Follow-up on immediate actions
December 2015	Third mission: Immediate actions adopted and implemented
March 2016	Follow-up on short and medium terms recommendations / End of the project

## I. OVERVIEW OF THE EXISTING AML/CFT AND AC FRAMEWORKS

2. **Strengthening the synergies between the AML/CFT and AC frameworks would make the fight against corruption more effective.** Corruption and ML are intrinsically linked.<sup>1</sup> ML is the process of disguising the illicit gains generated through criminal activity. Crimes of corruption, such as the embezzlement of public funds, are generally committed in order to obtain private gains. The proceeds of corruption need then to be laundered in order to be introduced into the financial system and the formal economy, and/or enable the perpetrators or the beneficiaries of the crime to enjoy the proceeds without fear of detection or confiscation.

### A. The AML/CFT framework

3. **Mali is expected to comply with the Financial Action Task Force (FATF) Recommendations.** Mali is a member of the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA). The GIABA is a specialized institution of the Economic Community of West African States, tasked with reinforcing the AML/CFT and prevention capacities of its Member States. The GIABA became a FATF-style regional body in June 2010.<sup>2</sup> The AML/CFT standard of the GIABA is therefore the FATF Recommendations. The GIABA evaluates the compliance of the AML/CFT frameworks of its Member States, including Mali, with the FATF Recommendations. The FATF adopted revised recommendations in February 2012.<sup>3</sup> A number of measures introduced by the revised standard aim directly at reinforcing the fight against corruption.<sup>4</sup>

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<sup>1</sup> See: "Laundering the Proceeds of Corruption," FATF Report, July 2011: <http://www.fatf-gafi.org/topics/methodsandtrends/documents/landeringtheproceedsofcorruption.html> .

<sup>2</sup> See: <http://www.fatf-gafi.org/pages/intergovernmentalactiongroupagainstmoneylaunderinginwestafricagiaba.htm>.

<sup>3</sup> "International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation"—The FATF Recommendations," FATF, February 2012: <http://www.fatf-gafi.org/topics/fatfrecommendations/documents/fatf-recommendations.html> .

<sup>4</sup> They relate in particular to the following measures: (i) risk assessment and risk-based approach; (ii) corruption as a predicate offense to money laundering; (iii) enhanced due diligence with respect to national PEPs; (iv) confiscation of the proceeds of corruption; (v) implementation of the United Nations Convention against Corruption; (vi) international cooperation. See also: "The Use of the FATF Recommendations to Combat Corruption," FATF Best Practices Paper, October 2013: <http://www.fatf-gafi.org/documents/documents/bpp-fatfrecs-corruption.html>.

4. **Mali is also subject to the AML/CFT framework adopted at the regional level.** The West African Economic and Monetary Union (WAEMU) aims at harmonizing<sup>5</sup> AML/CFT legislation within the Member States of the Union,<sup>6</sup> in line with the FATF Recommendations.<sup>7</sup> The WAEMU's AML system is based on the uniform AML law (WAEMU AML law), approved by the WAEMU Council of Ministers on March 20, 2003. That law represents a transposition of the directive No. 07/2002/CM/WAEMU related to AML measures in WAEMU Member States, adopted on September 19, 2002. The mechanism for combating the financing of terrorism was introduced in 2007 by the directive No. 04/2007/CM/WAEMU concerning CFT in WAEMU Member States and the uniform law on CFT (WAEMU CFT Law). Mali has transposed the WAEMU AML and CFT laws by adopting the law No. 06-066, constituting the uniform AML law of December 29, 2006 (AML law No. 06-066), and law No. 10-062 constituting the uniform law on CFT of December 30, 2010 (CFT law No. 10-062). The AML legal framework in Mali, which is an exact transposition of the WAEMU AML law, was evaluated for the last time in February 2008 by the World Bank. The mutual evaluation report (MER), published in September 2008 by the GIABA,<sup>8</sup> had identified a number of shortcomings.<sup>9</sup> According to the information provided by the authorities to the GIABA since 2008, most of these shortcomings have not been addressed.<sup>10</sup>

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<sup>5</sup> WAMU Treaty, Title V, "Harmonization of Legislation," Article 34 (amended version of 2010): "The governments of the Member States of the WAMU agreed to adopt a uniform regulation, the provisions of which are decided by the Council of Ministers, with a view to permitting full application of the principles of monetary union defined below. This uniform regulation concerns in particular: [...] - the repression of money laundering." From the Latin *harmonia*, harmonization means "a simple reconciliation between two or more legal systems," in order to reduce or eliminate certain contradictions ("*Vocabulaire juridique*," G. Cornu, PUF, 10th edition, 2014). Thus, harmonization is a means of establishing the broad lines of a legal framework (first-degree legislative unity), while leaving to the various parties involved in the integration to supplement the common skeletal structure with provisions that best reflect their values, preferences, or level of development.

<sup>6</sup> The members of the WAEMU are Benin, Burkina Faso, Côte d'Ivoire, Guinea Bissau, Mali, Niger, Senegal, and Togo.

<sup>7</sup> The uniform laws of the WAEMU relating to AML/CFT contain the following mention: "with a view to implementing the international recommendations related to the fight against money laundering and the financing of terrorism, in particular those arising under the United Nations Convention for the Suppression of the Financing of Terrorism, of December 9, 1999, and the FATF recommendations."

<sup>8</sup> Mutual Evaluation Report: Anti-Money Laundering and Combating the Financing of Terrorism, Mali, GIABA, prepared by the World Bank, September 2008: <http://www.giaba.org/reports/mutual-evaluation/Mali.html>. The next mutual evaluation of Mali's AML/CFT framework is scheduled in 2017. The purpose of that evaluation will be to assess the compliance of Mali's AML/CFT regime with the 2012 FATF Recommendations, and its effective implementation.

<sup>9</sup> In 2008, the World Bank rated Mali as "partially compliant" (PC) for 9 Recommendations, and "noncompliant" (NC) for 29 Recommendations. These outcomes reflected the compliance of the Malian AML/CFT framework with the 40+9 Recommendations, adopted by the FATF in 2003 and in force until 2012. The ratings attributed to Mali were lower than the average scores obtained by other GIABA Member States. See in this regard: "Improving Compliance

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5. **Mali can improve the compliance of its AML/CFT framework with the FATF Recommendations by taking internal measures consistent with the WAEMU directive.** The Malian authorities and the representatives of the Central Bank of West African States (BCEAO) confirmed that the WAEMU AML law establishes a "minimum" legal framework for AML within the Union, but leave it up to the Member States to flesh out the common "skeleton" structure with provisions that would best reflect their specific ML risks, vulnerabilities and threats. Consequently, the WAEMU AML law must be transposed by each Member State into its domestic law, but it can be reinforced at the national level, provided the amended law does not conflict with the WAEMU directive. Member States may therefore adopt domestic measures that are complementary to the uniform law, with a view to strengthening the compliance of the law with the 2012 FATF Recommendations.

6. **Mali can also work for the adoption of a regional AML/CFT framework consistent with the requirements of the FATF.** A preliminary draft of a uniform law on AML/CFT and the proliferation of weapons of mass destruction in WAEMU Member States was prepared by the BCEAO (BCEAO AML/CFT draft law) in December 2013, and was updated in August and December 2014. The BCEAO AML/CFT draft law is intended to transpose the 2012 FATF Recommendations. Malian representatives from the National Financial Intelligence Unit (CENTIF), the Ministry of Justice and Human Rights (Ministry of Justice), the Ministry of Homeland Security and Public Safety, and the Directorate General of the Treasury participated in drafting the proposed law and in the subsequent discussions. The Malian authorities, like those of the other WAEMU Member States, can influence the adoption of certain AML/CFT measures at the regional level in order to ensure their conformity with the FATF standard. In September 2014, the authorities indicated to the mission that the BCEAO AML/CFT draft law should be completed and adopted by the WAEMU Council of Ministers by the end of 2014. From 2015, Mali will be expected to transpose into Malian law the new uniform AML/CFT law of the WAEMU, resulting from the BCEAO draft. In any case, the Malian authorities will have to ensure that their AML/CFT legal framework is in conformity with the FATF Recommendations of 2012.

7. **The adoption and effective implementation of an AML/CFT framework compliant with the FATF Recommendations would support the fight against corruption in Mali.** The 2008 MER highlighted a particularly vulnerable situation with respect to corruption and recommended that greater attention be paid to achieving better articulation between the AC and AML frameworks, in order to reinforce synergies and mutual support.<sup>11</sup> Certain provisions of the

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with International AML/CFT Standards: Report on the Strategic Review of the First Round of Mutual Evaluations of GIABA Member States (2007–2012),” GIABA, January 2014: [http://www.giaba.org/press/view\\_741.html](http://www.giaba.org/press/view_741.html).

<sup>10</sup> Since 2008, the Malian authorities have submitted six follow-up reports to the GIABA, the latest dating from November 2014. Certain measures seem to have been taken to remedy the shortcomings detected in 2008, including adoption of a national AML/CFT strategy and action plan for 2013–2015. Nevertheless there are still some important gaps. See: <http://www.giaba.org/reports/mutual-evaluation/Mali.html>.

<sup>11</sup> GIABA, MER, para. 20, p. 13.

(continued)

new AML/CFT uniform law could be adapted to the specific risks identified in Mali with respect to the laundering of proceeds of corruption. Indeed, before ML takes place, there is always a predicate offense that generates income regarded as the proceeds of crime. Article 1 of the AML law No. 06-066 defines the predicate offense as “any crime or offense within the meaning of the law, even if committed in the territory of another member state or a third state, that has allowed its perpetrator to obtain assets or income.” The crime of ML therefore applies to all types of assets derived from the commission of a crime or an offense.<sup>12</sup> The corrupt behaviors covered by the Penal Code of Mali (CPM) are all either crimes or felonies. In Mali, corruption is therefore a predicate offense to ML (see section III, B, below).

## B. The AC Framework

8. **Most of the offenses of corruption covered by the United Nations Convention against Corruption (UNCAC) are criminalized under the Malian law.**<sup>13</sup> The UNCAC does not define corruption, but it provides a list of offenses that must be criminalized by states’ parties. These offenses are criminalized and considered either crimes or felonies under the Malian legislation, with the exception of the bribery of foreign public officials and officials of public international organizations<sup>14</sup> and the bribery in the private sector (see Table 2). “Active corruption” (i.e. the fact of promising, offering, or giving an undue advantage) and “passive corruption” (i.e. the act of soliciting or accepting such an advantage) are both punished by the CPM.<sup>15</sup> However, indirect corrupt behaviors do not seem to be covered.<sup>16</sup> In addition, the term “public official” in the CPM<sup>17</sup>

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<sup>12</sup> The CPM classifies offenses in three groups depending on the severity of the penalty incurred (articles 1 and 2 CPM): (i) “*crimes*” are punishable by death, imprisonment for life, or imprisonment from 5 to 20 years (article 4 CPM); (ii) “*délits*” (felonies) are punishable by imprisonment from 11 days to 5 years, the penalty of work in the public interest, or a fine (article 7 CPM); and (iii) “*contraventions*” (misdemeanors) are punished by a “*peine de police*” (summary offense).

<sup>13</sup> Mali signed the UNCAC on December 9, 2003, and ratified it on April 18, 2008. See: <http://www.unodc.org/unodc/en/treaties/CAC/index.html#UNCACfulltext>.

<sup>14</sup> See also the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Organization for Economic Cooperation and Development: <http://www.oecd.org/corruption/oecdantibriberyconvention.htm> . Mali has neither signed nor ratified this Convention.

<sup>15</sup> See in particular Article 122 CPM: “any person who, in order to obtain the accomplishment or performance of an act, or one of the advantages or favors cited in the previous articles, has used threats, promises, offers, gifts or presents, or has yielded to solicitations tending to bribery, even if that person has not taken the initiative, shall be punished, whether or not the bribe has produced its intended effect, by the penalties stipulated by article 120 of this code against corrupt persons.”

<sup>16</sup> Articles 15 to 25 of the UNCAC define each offense of corruption (See table 2), and refer to the direct or indirect deeds. Offenses of bribery, for example, are defined as “the promise, offering or giving, directly or indirectly [...]” The CPM does not seem to cover indirect corrupt behaviors.

seems to be more restrictive than the UNCAC definition.<sup>18</sup> The criminalization of certain offenses is also too restrictive, particularly the abuse of functions (the offense of favoritism is limited to government procurement) and concealment (the concealing party is considered as an accomplice, and may be punished as the principal perpetrator only in the context of certain violations).

**Table 2. Offenses of Corruption Covered by the UNCAC and Criminalized in Mali**

UNCAC Offense <sup>19</sup>	Offense under Malian Law
Bribery of national public officials	Articles 120 and 122 CPM
Bribery of foreign public officials and officials of public international organizations	<i>Not criminalized</i>
Embezzlement, misappropriation or other diversion of property by a public official	Articles 106 and 107 CPM: Misuse of public property
Trading in influence	Article 121 CPM
Abuse of functions	Articles 110 to 111 CPM: Illegal acquisition of interests Articles 112 to 119 CPM: Offense of favoritism
Illicit enrichment	Prevention and Repression of Illicit Enrichment (PREI) law No. 14-015
Bribery in the private sector	Article 122 CPM
Embezzlement of property in the private sector	<i>Not criminalized</i>
Laundering of the proceeds of crime <sup>20</sup>	AML law No. 06-066 Articles 298 and 299 CPM <sup>21</sup>

<sup>17</sup> Article 120 CPM is aimed at public officials of administrative or judicial status, military and similar personnel, court advisors, agents or employees of a public administration or an administration placed under public control, and elected citizens responsible for administering public services.

<sup>18</sup> Article 2(a) of the UNCAC defines “public official” as: “i) any person holding a legislative, executive, administrative or judicial office of a State party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority; ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State party and as applied in the pertinent area of law of that State party; iii) any other person defined as a “public official” in the domestic law of the State party. [...]”

<sup>19</sup> UNCAC, Chapter III, articles 15 to 25.

<sup>20</sup> The UNCAC treats the laundering of the proceeds of crime as an offense of corruption.

<sup>21</sup> Article 298 CPM defines money laundering in the same terms as those used in the AML Law No. 06-066 to criminalize ML. There is however an inconsistency between the penalties for ML set by article 299 CPM and those stipulated in Chapter III of the AML law No. 06-066 (See section III, B, below).

Concealment	Article 24 CPM: Active complicity Article 43 CPM: Public affairs – Crimes and offenses against the external security of the State Article 177 CPM: Concealment of criminals Article 244 CPM: Child Trafficking Article 249 CPM: Counterfeited goods
Obstruction of justice	Article 84 CPM: Opposition to legitimate authority

9. **Illicit enrichment was recently criminalized, but the measures adopted are not consistent with best international practices.**<sup>22</sup> The law on the prevention and repression of illicit enrichment, No. 14-015 of May 27, 2014 (PREI law No. 14-015) made illicit enrichment a felony. However, that law contains a number of loopholes that limit its scope and are likely to reduce considerably the effectiveness of its implementation. These shortcomings concern, in particular,<sup>23</sup> the definition of the offense of illicit enrichment, which is not consistent with the UNCAC,<sup>24</sup> and the exclusion of parliamentarians and of adult children<sup>25</sup> from the obligation to report their assets and the possibility of being prosecuted for illicit enrichment.

<sup>22</sup> See in this respect: “On the Take: Criminalizing Illicit Enrichment to Fight Corruption,” L. Muzila, M. Morales, M. Mathias, T. Berger, Stolen Asset Recovery Initiative, World Bank and United Nations Office on Drugs and Crime (UNODC), 2012: <http://documents.worldbank.org/curated/en/2012/08/17559619/take-criminalizing-illicit-enrichment-fight-corruption>.

<sup>23</sup> The shortcomings also include: (i) criminalization of illicit enrichment as felony (*délit*) (article 1) as opposed to a crime, for which the statutory period of limitation is three years (whereas it is 10 years for crimes); (ii) lack of precision as to the period during which the offense of illicit enrichment can be constituted; (iii) the number of public officials subject to the assets declaration (article 9) is too large, thus posing a threat to the effective implementation of the law in a context of limited resources (the law includes persons of middle and lower rank, but not the parliamentarians— cf. definition of PEP); (iv) the declaration of assets is not made available to the public (article 11); (v) the obligation to file a declaration is confined solely to movable and immovable property (article 11), which does not seem to include the cases when the public officials is the beneficial owner of a legal person or arrangement, and (vi) to the married spouse under the regime of community of property and minor children (article 11), whereas it would be less restrictive to refer to all properties, and to the members of the family and persons who are closely associated with them (cf. definition of PEP); (vii) the limitation on the obligation to declare assets to one month after the person ceases his functions, or the end of his mandate (article 12), while some information could be kept confidential for the duration of the official's mandate, and revealed only after his departure; (viii) there is no specific criminal penalty for failing to file a declaration or for filing a false declaration (article 35); and (ix) the penalties defined by the law do not always take into account certain categories of agents (article 38), and specific sanctions should target persons who benefit from immunity, for example.

<sup>24</sup> Article 2 of the PREI law No. 14-015 refers to the “lifestyle” (“*train de vie*”) of a person without reference to his legitimate income. Lifestyle has less to do with the illicit enrichment than with the laundering of its proceeds. Article 20 of the UNCAC does not refer to the lifestyle in its definition of illicit enrichment.

<sup>25</sup> The offense of illicit enrichment should also be constituted when adult children are unable to offer a reasonable explanation for any significant increase in their wealth, as demonstrated by some recent examples: (i) the trial of Karim Wade, son of the former president of Senegal, Abdoulaye Wade, for illicit enrichment began in Dakar on

(continued)

10. **The Central Office against Illicit Enrichment (OCLEI) is not yet operational, and no declaration of assets was registered in 2014.** Title II of the PREI law No. 14-015 refers to the relevant agencies in charge of combating illicit enrichment. The authorities indicated to the mission that the law aimed at establishing the composition, organization, and functioning of the OCLEI had been adopted, but the mission was not given a copy of that law. According to article 6 of the PREI law No. 14-015, the task of the OCLEI is to implement the set of preventive, control, and repressive measures planned at the national, subregional, regional, and international levels, in order to fight effectively against illicit enrichment. Significant capacity resources will have to be mobilized as to allow the OCLEI carrying out its functions effectively and independently. In September 2014, the mission considered that these resources were not in place. Moreover, while the CENTIF is considered as one of the authorities involved in combating illicit enrichment (article 7, PREI law No. 14-015), the mission was given no indication as to the role of the CENTIF and the resources allocated for ensuring effective cooperation and coordination with the OCLEI (see section III, E, below).

## II. PRINCIPAL SECTORS AT SPECIFIC RISK OF LAUNDERING OF THE PROCEEDS OF CORRUPTION

11. **The proceeds of corruption in Mali are potentially laundered in the formal economy.** The Malian economy operates largely on a cash basis, which means that the proceeds of corruption are often laundered outside the financial system. The degree of banking penetration in Mali is low, accounting for only around six or seven percent of financial transactions,<sup>26</sup> on par with other WAEMU Member States. Thus, cases of petty corruption involving, for example, local officials, medium-sized enterprises, and small amounts of money, tend to feed into the informal economy and are hard to detect. Nevertheless, the proceeds of large-scale or “grand” corruption (embezzlement and diversion of public property by senior officials of the state, bribes paid to company directors, public and private, for the conclusion of a contract, etc.) can also be obtained in cash, and they can represent significant amounts. They are then introduced into the formal economy and are laundered in Mali or abroad.<sup>27</sup> The principal sectors at risk of laundering of proceeds of large-scale corruption, as identified in Mali, seem to involve real estate, banks, companies, and gold.<sup>28</sup>

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July 31, 2014; (ii) Teodoro Nguema Obiang Mangue, elder son of the president of Equatorial Guinea, Teodoro Obiang Nguema, was put under investigation on March 18, 2014 for money laundering of proceeds of corruption (“ill-gotten wealth”), by the Tribunal de Grande Instance of Paris.

<sup>26</sup> TA Report—Audit of the Expenditure Chain, B. Taiclet, M-L Berbach, C. Maurin, IMF, Fiscal Affairs Department, Report No. 14/122, May 2014, p. 47: <http://www.imf.org/external/pubs/cat/longres.aspx?sk=41561.0>.

<sup>27</sup> See: “Specific Risk Factors in the Laundering of Proceeds of Corruption,” FATF, Report, June 2012: <http://www.fatf-gafi.org/topics/corruption/documents/specificriskfactorsinthelaundryingofproceedsofcorruption-assistancetoreportinginstitutions.html>.

<sup>28</sup> This identification of sectors at risk is preliminary and based on simple observations, perceptions and interviews conducted by the mission in Mali. The authorities requested the IMF to provide technical assistance to conduct a

(continued)

## A. Real Estate

12. **The real estate and property sectors in Mali are not formally regulated or supervised.** The absence of any national legal and institutional mechanism regulating the real estate sector and access to real property, which is dominated by customary practices in the awarding of land titles,<sup>29</sup> encourages speculation and fraudulent practices that result in the arbitrary attribution of land and make possible for private individuals or officials to monopolize government properties. The supervision of the sector by the Ministry of Housing, Real Property and Urban Development (Housing Ministry) seems ineffective. On this point, there is some confusion between the role of the Housing Ministry and that of the Ministry of State Domains, Land Affairs and Heritage as to the conduct of such supervision, a situation that needs to be resolved (see section III, E, below).

13. **The real estate sector currently appears as the sector most at risk of laundering of the proceeds of corruption.** This risk—confirmed by the authorities—is due to many shortcomings and vulnerabilities inherent to the Malian AML framework. The AML law No. 06-066 submits real estate agents and notaries to AML obligations when they conduct transactions for their clients involving the purchase and sale of real properties. Nevertheless, it seems that real estate agents and notaries are not applying any AML preventive measure when they perform such transactions (see section III, C, below). Real estate developers, who are the main players in the construction industry in Mali, are not formally subject to the AML law No. 06-066 and they have no familiarity with due diligence measures. AML supervision of these professions is nonexistent. The AML/CFT mechanism is therefore ineffective.

14. **Despite the lack of jurisprudence, a number of ML typologies specific to the real estate sector could be identified.** The laundering of proceeds of corruption in this sector in Mali apparently combines several techniques, including the following ones:<sup>30</sup> (i) real properties can be used to disguise illegal activities (e.g. the numerous buildings that serve solely to conceal the proceeds of crime, and which remain uncompleted); (ii) the prices of lots and buildings can be over- or under-stated; (iii) real properties can be purchased or sold by companies, national or international, whose beneficial owners are unknown; and (iv) transactions involving the purchase and sale of lots and buildings are often conducted in cash, and such transactions are not registered. A reform of property management is now under way in Mali, with a plan to establish a property

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national ML/TF risk assessment. The mission indicated that it will advise its management to examine the feasibility of such a request (See section III, A, below).

<sup>29</sup> The principle of property ownership in Mali is based on customary law. For some years now, the national legislature has been attempting to adopt a real estate law that would replace customary law and institute better visibility and management of government properties and real estate.

<sup>30</sup> Some of these typologies were identified by the GIABIA in 2009. See: “Typologies of Money Laundering through the Real Estate Sector in West Africa,” GIABA, July 2009: <http://www.giaba.org/reports/typologies/reports.html>.

registry. This introduction of such registry should help to attenuate the ML/TF risks in the real estate sector, thanks to a system for reporting and recording transactions.

## **B. The Banking System**

15. **The banking system is a sector potentially at risk of criminal abuse and laundering of the proceeds of corruption.** The development of the banking system in Africa poses some major cross-border challenges in the areas of regulation, supervision and governance, and this is particularly the case within WAEMU, where regional and national interests must be reconciled. In Mali, the banks accounted for 96 percent of the assets of the financial sector in 2012.<sup>31</sup> The risks inherent to the banking sector are to be found primarily at two levels: (i) corrupt individuals, including senior officials and/or criminal organizations, may own or become beneficial owners of a significant share interest or outright control of the bank, or they may hold a management position (see section III, E, below), and (ii) the failure of the banks to implement effective CDD measures, particularly towards domestic PEPs (persons who are or have been entrusted with prominent public functions in the country), allows corrupt individuals to avoid being subject to enhanced "know your customer" rules, and to launder the proceeds of corruption by transferring money within Mali or abroad (see section III, C, below).

16. **In Mali, proceeds of corruption might be laundered through the banking system.** According to an audit performed by the IMF in January 2014,<sup>32</sup> there are many opportunities for corruption in the government expenditure chain, and they seem to involve "public spending stakeholders, at central and local government levels and in all public departments."<sup>33</sup> These findings confirm the conclusions of the 2012 annual report of the Office of the Auditor General (BVG),<sup>34</sup> which noted that public funds can be embezzled at the time of inventory, recovery and encashment, as well as during management and remittance of tax receipts.<sup>35</sup> In this respect, state revenues are not

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<sup>31</sup> In 2012, the size of the banking sector was estimated at \$4.2 million [sic], equal to around 40 percent of the GDP of Mali. Of the 13 banks present in Mali in 2012, 11 were foreign banks and held around 80 percent of the total assets of the financial sector. See: "Mali. Achieving Strong and Inclusive Growth with Macroeconomic Stability," C. Jozs, IMF, Africa Department, August 2013, pp. 20–33: <http://www.imf.org/external/pubs/ft/dp/2013/afr1308.pdf>.

<sup>32</sup> Technical Assistance Report—Audit of the Expenditure Chain, *op. cit.*, p. 7.

<sup>33</sup> *Ibid.*, p. 18.

<sup>34</sup> The BVG is an independent oversight institution introduced by law No. 12-009 of February 8, 2012. The BVG is responsible for overseeing the performance and the quality of public services and agencies, the regularity of the revenues and expenditures of government institutions, the management operations of enterprises in which the State or another public entity has a financial participation, exemptions from customs duties and taxes for the acquisition of companies. One of the objectives of the BVG strategic plan for 2012–2018, dating from December 2012, is to assist in the fight against corruption and fraud.

<sup>35</sup> BVG, Annual Report, 2012: <http://www.bvg-mali.org/article/categorie/categorie/14.html>.

always paid into the single treasury account,<sup>36</sup> but are held in various accounts with the primary banks<sup>37</sup> maintained by public establishments (PEs), which are financed for the most part by the state.<sup>38</sup> The AML law No. 06-066 does not provide for the application of any preventive measure to the accounts of public agencies (see section III, C, below). Thus, certain amounts of money that are disbursed and transferred, in particular to the control boards (“*régies*”) and the Malian embassies abroad, are abnormally large and are subject only to very cursory ex-post control.<sup>39</sup> Lastly, the regulations applicable to government procurement contracts can be easily ignored or circumvented,<sup>40</sup> and the proceeds from these fraudulent practices can potentially be laundered through the banks.

### C. Creation of Companies

17. **Companies can be created to launder the proceeds of corruption from various sectors.**<sup>41</sup> The lack of transparency in the conditions governing the creation of companies and record keeping, and the absence of supervision of the relevant agents, encourage the creation of “shell” companies in Mali (see section III, D, below). These companies, which conceal their true owners through the use of nominees, are created solely to impede the identification of the person actually ordering the transfer, or the beneficial owner of a company. According to the authorities,

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<sup>36</sup> Cash holdings of the Treasury were still recently spread among more than 3,000 accounts held in the commercial banks. At the present time, more than 100 public and administrative institutions still hold accounts in banks.

<sup>37</sup> According to the inventory of PE in Mali, prepared by the IMF Fiscal Affairs Department in January 2014, PEs were holding 485 accounts in primary banks as of January 31, 2011. Four banks accounted for 75 percent of the total cash holdings of the PEs surveyed, and nearly one PE account in four had a debit balance, lending support to the notion that the use of primary accounts allows the PEs to obtain overdrafts for financing their expenditures.

<sup>38</sup> In the Draft Budget Law for 2014, funds earmarked for the PEs represented 11.4 percent of the state budget. Three ministries (Ministry of Higher Education and Scientific Research, Ministry of Health and Public Hygiene, Ministry of Labor and Social and Humanitarian Affairs) accounted for 58.9 percent of all allocations for PEs.

<sup>39</sup> Technical Assistance Report—Audit of the Expenditure Chain, *op. cit.*, p. 29.

<sup>40</sup> The contracts concluded by the Ministry of Defense and Veterans’ Affairs (MDAC) and military outlays, in particular, are not subject to the procurement rules of the Public Procurement Code. Some military contracts recently revealed over-billing practices, analyzed by the Supreme Court of Mali and the BVG. See: “Audit of conformity and regularity in the acquisition of the aircraft and military equipment,” Supreme Court of Mali, September 2014: <http://www.primature.gov.ml/>; and “Acquisition of an aircraft and supply to the Malian Armed Forces of clothing, bedding, camping, and food materials (HCCA), as well as vehicles and spare parts,” BVG, October 2014: <http://www.bvg-mali.org/85-rapport-definitif-aeronef-et-fourniture-dequipements-aux-fama.html>.

<sup>41</sup> See on this point: “*Guidance on Transparency and Beneficial Ownership*,” FATF, Guide, October 2014: <http://www.fatf-FATF.org/fr/documents/alaune/transparency-and-beneficial-ownership.html>; “The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do about It,” E. van der Does de Willebois, E. Halter, R. Harrison, J. Won Park, J.C. Sharman, Stolen Asset Recovery Initiative, World Bank and UNODC, 2011: <http://star.worldbank.org/star/publication/puppet-masters>.

some companies are wound up on the day following their creation in order to prevent their transactions from being traced. Moreover, notaries and lawyers, who are responsible for the creation and management of these companies, are not supervised and do not apply their AML obligations, which increases the risk of ML (see section III, E, below). Companies and legal persons aimed at laundering money can also be created abroad, particularly in “offshore” jurisdictions, in order to enhance their anonymity and makes it even more difficult to monitor transactions.

#### **D. Gold and Precious Metals**

18. **The mining industry and gold mining in particular,**<sup>42</sup> **constitutes a sector at high risk of ML.**<sup>43</sup> First, the proceeds of crime, in particular of corruption, can be laundered through the purchase and sale of gold, which transactions are concluded most often in cash.<sup>44</sup> Second, gold can be used as an alternative currency for the purchase of goods that are banned or regulated, such as drugs, or it can be a means for stocking the wealth generated by illegal activity and avoiding seizure and confiscation (as gold can be readily melted and recast in any form). Lastly, gold can be used in money laundering systems based on commercial transactions. In this case, it may serve as cover for the laundering of illicit funds generated by other crimes, for example price manipulation or false invoices covering fictitious sales of gold, whereas in fact the money has been generated by various crimes. The creation of companies by multiple intermediaries, of Malian or foreign nationality, also facilitates ML during the distribution and marketing phases.

19. **The gold sector in Mali is complex.** The gold sector is divided between industrial operations, dominated by foreign firms (mainly South African), and small-scale artisanal operations (“*orpillage*” or gold washing). Industrial mining operations fall under the supervision of the National Directorate of Geology and Mines within the Ministry of Mines and Energy. Most industrial output is exported (essentially to Europe) and is managed by the purchase and export counters under the supervision of the National Directorate of Trade and Competition. Jewelers obtain their supplies exclusively from small-scale local producers, whose numbers have jumped sharply since 2012.<sup>45</sup> Agents of the industrial and artisanal sectors have no awareness of their

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<sup>42</sup> Gold is the primary source of exports in Mali.

<sup>43</sup> See: “Implementing AML/CFT Measures in the Precious Minerals Sector: Preventing Crime while Increasing Revenue,” E. Mathias and B. Feys, IMF, Legal Department, Technical Notes and Manuals, November 2014: <http://www.imf.org/external/pubs/cat/longres.aspx?sk=42441.0>.

<sup>44</sup> In 2008, the MER noted that a Malian bank had submitted a suspicious transaction report (STR) to the BCEAO relating to a case where a gold-washing client was seeking to withdraw US\$1.5 million in cash, of Russian origin, at the bank's teller window. As the BCEAO has no power to investigate such cases, the bank had no other choice but to execute the withdrawal transaction.

<sup>45</sup> According to the authorities, the number of small-scale gold operators has considerably increased since the coup d'état of March 2012, a phenomenon that has been encouraged by the growing rural exodus. It is impossible to estimate the size of the sector with the means currently at hand, as gold washing is an informal activity that follows “unofficial” rules most often laid down and enforced by the local police.

AML/CFT obligations, and they do not apply any preventive measures (see section III, C, below). As noted in the MER of 2008,<sup>46</sup> the very concept of money laundering is not understood by the units responsible for regulation and supervision of the sector.

### III. AML/CFT TOOLS FOR COMBATING CORRUPTION

#### A. AML/CFT Policies and Coordination

##### Assessing risks and applying a risk-based approach

20. **Justification.** The mission identified some significant ML/FT risks, in particular of laundering of proceeds of corruption, affecting a number of sectors, including real estate, banking, the creation of companies, and the gold sector (see section II, above). Certain activities such as the transfer of funds and payments via mobile phone also seem to pose a risk of ML (see section III, C, below).

21. **International standard.** FATF Recommendation 1 advises countries to identify, assess, and understand the ML/FT risks for the country, and to take action, including designating an authority or mechanism to coordinate actions to assess risks, and apply resources, aimed at ensuring the risks are mitigated effectively. Based on that assessment, countries should apply a risk-based approach (RBA) to ensure that measures to prevent or mitigate ML/FT are commensurate with the risks identified. This approach should be an essential foundation to efficient allocation of resources across the AML/CFT regime and the implementation of risk-based measures throughout the FATF Recommendations. Where countries identify higher risks, they should ensure that their AML/CFT regime adequately addresses such risks. Where countries identify lower risks, they may decide to allow simplified measures for some of the FATF Recommendations under certain conditions. Countries should require financial institutions (FIs) and DNFBPs<sup>47</sup> to identify, assess, and take effective action to mitigate their ML/FT risks.

22. **Current situation.** While some ML/FT risks have been identified by the authorities and by the mission, a number of uncertainties remain as to the scope of vulnerabilities and threats. The AML/CFT authorities do not have a very deep understanding of the various risks and have expressed, in particular the CENTIF, the need for a national risk assessment. The authorities recognize that the lack of means and resources has prevented them from conducting such a study in Mali. In this respect, a targeted risk identification exercise could lead to a better allocation of resources (recognizing in particular the low budget allocated to the Ministry of Justice), so that they can be allocated and targeted to the most vulnerable areas. Lastly, a national ML/TF risk assessment would help to make the various agents responsible for AML aware of the specific risks of

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<sup>46</sup> GIABA, MER, para. 717, p. 158.

<sup>47</sup> DNFBPs include, among others, (i) real estate agents; (ii) dealers in precious metals and stones; (iii) lawyers, notaries, other independent legal professions, and accountants; and (iv) trust and company service providers.

laundering of the proceeds of corruption (the majority of such agents now focus solely on drug trafficking, terrorism and fraud: see Figure 1). A TA request in this regard was made to the mission.

23. **Recommended measures:** (i) Introduce measures obliging FIs and DNFBPs to identify and evaluate their ML/FT risks and to take effective measures for mitigating them;<sup>48</sup> (ii) raise awareness of the FIs and DNFBPs to the specific risks of laundering the proceeds of corruption; and (iii) conduct a national ML/TF risk assessment, with TA support from the IMF (subject to agreement by the Steering Committee of the TTF on AML/CFT<sup>49</sup> and the availability of human and financial resources).<sup>50</sup>

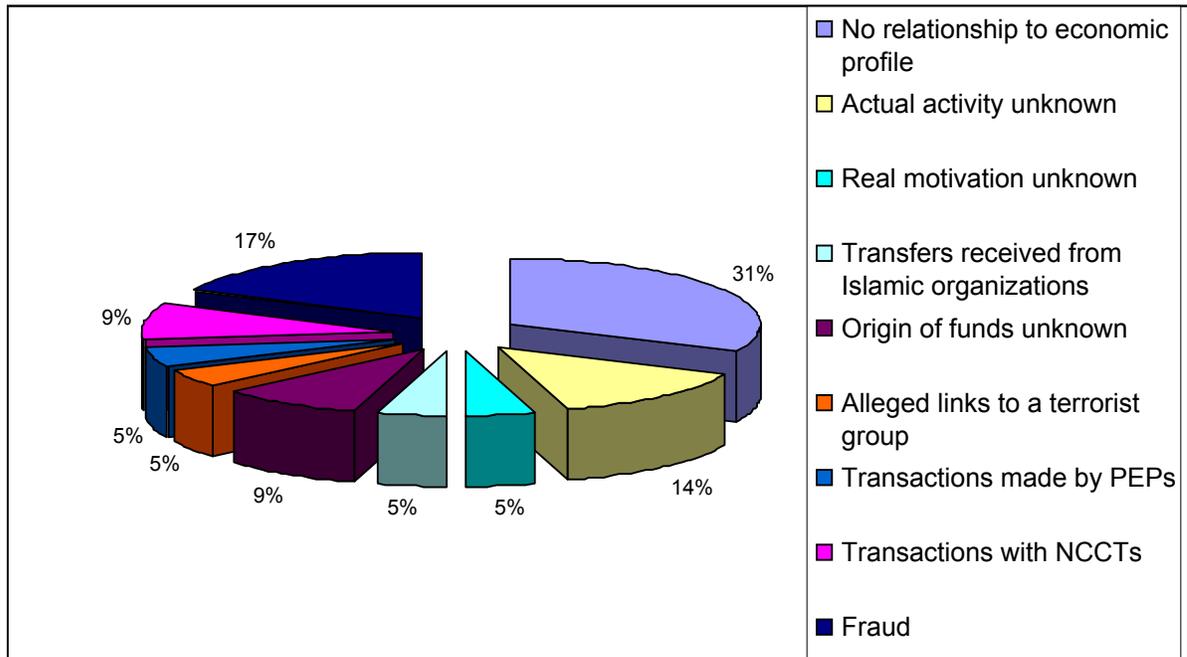
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<sup>48</sup> Chapter III, Title I, of the BCEAO AML/CFT draft law relates to the ML/FT risk assessment. The draft provides that the WAEMU control and supervisory authorities must render a joint opinion on the ML/FT risks within the WAEMU market (article 11), and that a competent authority must be designated to take appropriate measures to identify, evaluate, understand and mitigate national ML/FT risks (article 12). In addition, the draft requires that persons subject to the uniform law must take appropriate measures to identify, evaluate, mitigate and manage effectively the ML/FT risks to which they are exposed (article 13). Subject persons include financial institutions and DNFBPs (articles 5 and 6).

<sup>49</sup> See: <https://www.imf.org/external/np/leg/amlcft/eng/aml3.htm>.

<sup>50</sup> The IMF's Legal Department has prepared a method for assessing national ML/FT risks, for use as a TA tool in helping Member States to understand, evaluate, and mitigate these risks. The method is based on the application of international standards for risk management. It defines the risk as a function of threats, vulnerabilities, and consequences. Under this framework, an assessment of risk takes into account the likelihood of an event occurring and the consequences that will ensue if it occurs. In determining the likelihood of an event occurring, the framework examines the threat that derives from the pool of illegally acquired assets that need to be laundered, or assets that require treatment in order to be used by terrorists, and the vulnerabilities associated with a given jurisdiction, including those related to its financial markets and its AML/CFT controls. An assessment of the consequences examines the various social, economic, and political outcomes that result from the occurrence of ML or FT risk events in the jurisdiction in question. The approach involves gaining a better understanding and modeling of the ML and FT processes, disaggregating the overall process by identifying key events that increase the likelihood of substantial ML or FT being successful, and analyzing these events carefully. By generating scores for a series of objective and subjective indicators that are used to suggest the level of threats, vulnerabilities and consequences related to the drivers and enablers associated with the events, it is possible to assess the overall likelihood of substantial ML and FT being successful and its potential nature, magnitude and consequences. The analysis is used to create two proxy variables for ML and FT individually: (i) one for the likelihood of substantial ML or TF occurring; and (ii) one for the consequences. These two proxies are combined to measure the level of ML or FT risk.

**Figure 1. Grounds for the Submission of Suspicious Transaction Reports (STRs) in 2013**



Source: CENTIF, September 2014.

### National cooperation and coordination

24. **Justification.** The mission detected gaps in national cooperation and coordination affecting the “AML chain.” The AML/CFT framework cannot be effectively implemented unless the authorities in charge of its implementation<sup>51</sup> are able to systematically share pertinent and timely information among them.

25. **International standard.** According to FATF Recommendation 2, countries should have national AML/CFT policies, informed by the risks identified, which should be regularly reviewed, and they should designate an authority or have a coordination framework or other mechanism that is responsible for such policies. Countries should ensure that policy makers, the financial intelligence unit (FIU), law enforcement authorities, supervisors, and other relevant competent authorities, at the policymaking and operational levels, have effective mechanisms in place which enable them to cooperate and, where appropriate, to coordinate domestically with each other concerning the development and implementation of policies and activities to combat ML and FT.

<sup>51</sup> The authorities responsible for AML/CFT are the following: (i) the FIU; (ii) the FI's supervisory authorities; (iii) the DNFBPs supervisory authorities; and (iv) the law enforcement, investigation and prosecution authorities. FIs and DNFBPs must also implement preventive measures.

26. **Current situation.** Following discussions with the various authorities in charge of implementing the AML/CFT framework, the mission found that cooperation among the relevant public and private bodies could be improved. The effectiveness of the “AML chain” is compromised by the fact that coordination among the various institutions responsible for AML/CFT (see Figure 2) is not always effective: (i) according to representatives of FIs interviewed during the mission, even though banks file STRs, the CENTIF does not systematically provide them with information on the follow-up action that has been taken;<sup>52</sup> the CENTIF insisted, however, that it does inform the reporting banks as soon as the STRs are passed on to the law enforcement authorities; (ii) the number of STRs transmitted by the CENTIF to the prosecution authorities is low;<sup>53</sup> (iii) the CENTIF also reported that it often gets no feedback from the prosecutors; and (iv) lastly, the investigative and law enforcement authorities, even when they receive STR analyses from the CENTIF, prefer to prosecute for “misuse of public property” (see part B below), rather than for ML, thereby reducing the effectiveness of the AML chain in terms of examining the crime of ML and the predicate offenses. As a result, corruption cases are often set aside without further actions.

27. **Recommended measures.** (i) Supplement the national AML/CFT strategy and its action plan for 2013–2015 with the TA recommendations set forth in this report, and implement them; (ii) implement the necessary provisions (training, budget, personnel) to ensure that the CENTIF is the central authority with regard to AML/CFT;<sup>54</sup> and (iii) reinforce training of the relevant agencies in charge of implementing the AML/CFT framework on AML/CFT matters and risks related to the proceeds of corruption, in order to rationalize coordination and cooperation among those agencies, particularly when it comes to legal proceedings.

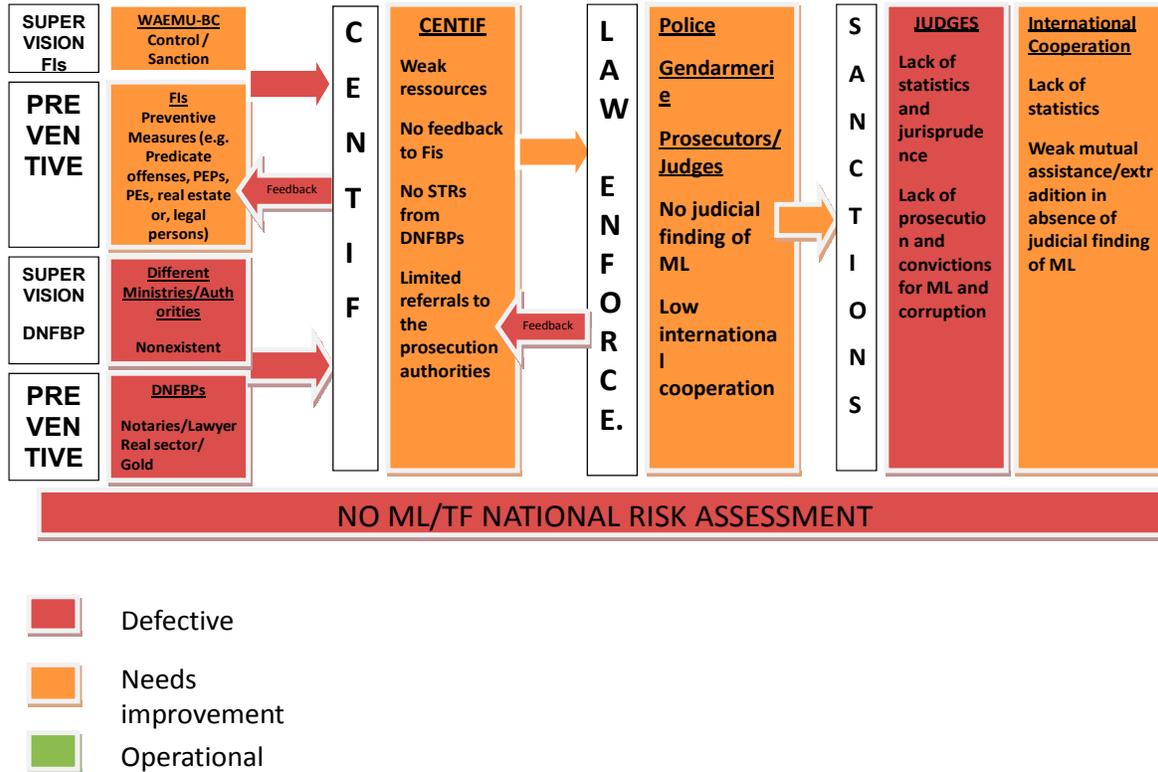
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<sup>52</sup> The banks indicated to the members of the mission that they are sometimes constrained to carry out an operation that they suspect involves money laundering, because the CENTIF has not taken any action on their STRs. In effect, article 28 of the AML law No. 06-066 provides that “in exceptional cases, the CENTIF may, on the basis of serious, consistent and reliable information in its possession, oppose execution of the operation before the expiry of the execution deadline mentioned by the declaring party. This opposition shall be notified to the declaring party in writing and shall suffice to block execution of the operation for a period that may not exceed 48 hours. In the absence of opposition or if, at the end of the 48-hour period, no decision by the investigating judge has been delivered to the declaring party, it may execute the operation.” During a meeting with the Professional Association of Banking and Financial Institutions, one of the banks represented indicated that it had executed an operation for CFAF 142 million which it had reported as suspicious to the CENTIF, and which was subsequently confirmed to be a ML operation.

<sup>53</sup> In 2013, of the 22 STRs received by the CENTIF, only one was forwarded to the prosecutor's office.

<sup>54</sup> Chapter II, Title III, of the BCEAO AML/CFT draft law calls for specific measures to ensure coordination at the national level (section 1), the intra-community level (section 2), and the international level (section 3). The CENTIF is described as the central authority in the processing and transmission of information with respect to AML/CFT (Chapter I, Title III).

**Figure 2. Status of Policies and Coordination within the AML Chain**



## B. Criminalization of Money Laundering and Confiscation

### The crime of money laundering

**28. Justification.** The authorities reported that they prefer to prosecute for “misuse of public property”<sup>55</sup> rather than for ML, because the penalties set forth in the former case are more severe.<sup>56</sup>

<sup>55</sup> Articles 106 and 107 of the CPM deal with misuse of public property (“*atteintes aux biens publics*”). Article 106 CPM: “Properties belonging to the following institutions and agencies are deemed to be public properties: the state and sub-national governments; state companies and enterprises; public establishments; cooperative organizations, unions, associations or federations of such organizations; associations recognized as being of public utility; organizations of an industrial or commercial nature in which the state or sub-national levels of government hold a portion of the corporate capital. The property indicated above includes: (a) monies, bank notes, coins, fiduciary instruments and in general any items with a monetary value that are entered in the vaults or are received for deposit in the vaults of the state, subnational governments, or organizations cited in the first paragraph above; (b) securities representing such monies; (c) cash and payment instruments, moveable valuables; (d) documents containing or establishing an obligation or discharge; (e) moveable effects, materials, weapons, munitions, merchandise, foodstuffs or any objects; (f) real property certificates.” Article 107 CPM: “1. Any civilian or military official, any agent or employee of the state, subnational governments or agencies mentioned in the preceding article who has misused public property by one of the following means: fraudulent appropriation, embezzlement or abuse of trust, false pretenses, forgery or uttering forged documents, or other misconduct in office, shall be punished by the penalties stipulated in this article. 2. The following persons shall

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The offense of ML needs to be properly defined and the penalties set at a dissuasive level, in order to encourage the authorities to prosecute for ML, and thereby allow effective implementation of the “AML chain.”

29. **International standard.** FATF Recommendation 3 calls upon countries to criminalize ML on the basis of the Vienna Convention (UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988) and the Palermo Convention (UN Convention on Transnational Organized Crime). Countries should apply the crime of ML to all serious offenses, with a view to including the widest range of predicate offenses. The interpretive note to Recommendation 3 specifies that the offense of ML should extend to any type of property, regardless of its value, that directly or indirectly represents the proceeds of crime. Notwithstanding the lack of a conviction for an offense of corruption, it should be possible to prosecute and convict a person for laundering the proceeds of corruption, and those proceeds must be treated as criminal assets. Lastly, effective, proportionate and dissuasive criminal sanctions should apply both to individuals and to legal persons convicted of ML.

30. **Current situation.** ML is defined at articles 2 and 3 of the AML law No. 06-066 in a manner consistent with the Vienna and Palermo conventions. The offense of ML applies to all types of assets derived from the commission of a crime or an offense (predicate offenses—see section I, A, above), including offenses of corruption. However, as indicated in the 2008 MER, the law provides no specifics on the question of whether the property deriving from the commission of a predicate offense includes property that *indirectly* represents the proceeds of the crime. Moreover, the offense of ML, as well as the various crimes of corruption precedent to the ML (included in the CPM, but also specified in other texts, such as the PREI law, the procurement codes,<sup>57</sup> the customs code,<sup>58</sup> etc.) are not being used by the authorities, who reported that they confine themselves to

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be deemed accomplices: managers of state companies and enterprises, officials and agents of the state or its enterprises responsible for control who, through failure to perform their duty, have facilitated or concealed the misuse of public property.”

<sup>56</sup> The authorities told members of the mission that there had been 11 arrest warrants issued by the Judicial Section, Criminal Chamber, of the Supreme Court of Mali for abuse of public property, between 2009 and 2011. No statistics on the number of convictions handed down for misuse of public property were supplied, and there seems to be no jurisprudence concerning money laundering.

<sup>57</sup> Article 24 of the new procurement code (decree No. 08-485/ P-RM of August 11, 2008 establishing procedures for the contracting, execution and regulation of procurement and the delegation of public service): “Commitment to combating corruption. Bids and submissions must contain the commitment of the candidate or bidder not to give or promise to give, to any person involved in any way in the procurement procedure, an undue advantage, pecuniary or other, directly or through an intermediary, in order to obtain the contract; to inform the contracting authority of the granting of any sum or advantage in this way; and in general to respect the legal provisions including the prohibition on acts of bribery or trading in influence or other violations of this nature.”

<sup>58</sup> Article 50, Customs Code (law No. 01-075 of July 18, 2001): “1. Customs agents are prohibited, under penalty of the sanctions stipulated by the Criminal Code in matters of corruption and bribery, from receiving directly or indirectly any gratification, compensation or present of whatever kind, and from receiving for their own account any portion of duties

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prosecuting for misuse of public property, because the penalties are more severe.<sup>59</sup> That offense is used as a “catch-all” for all forms of embezzlement and misappropriation. In addition, the bribery of foreign public officials and officials of international public organizations and the embezzlement of property in the private sector are not criminalized (see section I, B, above). Concealment is criminalized only to a limited extent. Lastly, there is some confusion between the penalties for ML stipulated by the AML law No. 06-066 and those established by the CPM.<sup>60</sup>

31. **Recommended measures.** Amend the AML law No. 06-066 so as to<sup>61</sup> (i) specify that the offense of ML applies to property indirectly representing the proceeds of a crime, (ii) indicate that it is not necessary for a person to be convicted for a predicate offense in order to be able to prove that an asset constitutes the proceeds of crime, and (iii) impose stiffer sanctions for ML, while clarifying the penalties, in order to encourage prosecution for ML, and allow effective implementation of the AML framework; (iv) amend the CPM to criminalize the bribery of foreign public officials and officials of international public organizations, the embezzlement of property in the private sector, and concealment, in a manner consistent with articles 16, 22 and 24 of the UNCAC; and (v) establish a complete list of crimes of corruption that are deemed to be predicate offenses to ML.

### **Confiscation and provisional measures**

32. **Justification.** To the mission's knowledge, no provisional measure or confiscation order has been imposed in relation to the laundering of proceeds of corruption.

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and taxes. 2. A guilty person who reports corruption or bribery may be absolved from penalties, fines and confiscation if the information supplied leads to confirmation of the accuracy of the report.”

<sup>59</sup> The penalties set forth in article 107 CPM are proportionate to the amount of the damage caused: “3. a) When the amount of damage is less than 10 million francs, the penalty shall be five years imprisonment. b) when the amount of damage is equal to 10 million but less than 20 million francs, the penalty shall be 5 to 10 years imprisonment. c) when the amount of damage is equal to or greater than 20 million but less than 50 million francs, the penalty shall be 5 to 20 years imprisonment. d) when the amount of damage is greater than 50 million francs, the penalty shall be imprisonment for life.. 4. In the cases stipulated above, the person convicted shall always be ordered to pay a fine ranging from 20 000 to 500 000 francs. Local banishment of 2 to 20 years may be ordered in the cases stipulated in 3-a and -b.” The bribery of officials and employees of private firms, and trading in influence are criminalized by articles 120 to 123 of the CPM, and are punished by a penalty of 5 to 10 years imprisonment and a fine double the value of the promises accepted or the things received or asked, but in no case shall the fine be less than 100 000 francs. The authorities indicated, however, that acts of bribery were most often prosecuted under the provisions pertaining to misuse of public property.

<sup>60</sup> Article 37 of the AML law No. 06-066 punishes natural persons found guilty of money laundering with imprisonment of three to seven years and a fine equal to three times the value of the goods or funds that were laundered. Article 299 CPM, for its part, provides that “any person convicted of money laundering shall be punished by 5 to 10 years imprisonment and a fine ranging from 5,000,000 to 50,000,000 francs”.

<sup>61</sup> The AML/CFT action plan for 2013–2015 also provides for (i) the insertion in the AML law No. 06-066 of a specific reference to the possibility of prosecuting “self-laundering,” and (ii) the insertion in the CPM of provisions concerning stock exchange violations. The criminalization of ML defined by the BCEAO AML/CFT draft law (article 8) also contains a section on self-laundering.

33. **International standard.** FATF Recommendation 4 calls upon countries to adopt measures similar to those set forth in the Vienna Convention, the Palermo Convention, and the Terrorist Financing Convention, including legislative measures, to enable the competent authorities to freeze or seize and confiscate the following, without prejudicing the rights of bona fide third parties: (i) property laundered; (ii) proceeds from, or instrumentalities used in or intended for use in ML or predicate offenses; (iii) property that is the proceeds of, or used in, or intended or allocated for use in, the FT, terrorist acts, or terrorist organizations; and (iv) property of corresponding value. Such measures should include the authority to: (i) identify, trace and evaluate property that is subject to confiscation; (ii) carry out provisional measures, such as freezing and seizing, to prevent any dealing, transfer or disposal of such property; (iii) take steps that will prevent or void actions that prejudice the country's ability to freeze or seize or recover property that is subject to confiscation; and (iv) take any appropriate investigative measures. Countries should consider adopting measures that allow such proceeds or instrumentalities to be confiscated without requiring a criminal conviction (non-conviction based confiscation), or which require an offender to demonstrate the lawful origin of the property alleged to be liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law.

34. **Current situation.** The AML law No. 06-066 provides that the investigating judge may prescribe conservation measures (article 36),<sup>62</sup> and that the courts may order the compulsory confiscation of the laundered criminal proceeds (article 45, and articles 41 and 42 for supplementary penalties). However, the prosecution authorities told the mission that all forms of "embezzlement" were prosecuted as misuse of public property (see Recommendation 3, above). Neither in CPM articles 106 and 107, nor in the Code of Penal Procedure (CPPM), is there any provision referring explicitly to the possibility of imposing provisional measures or confiscation in cases involving misuse of public property.<sup>63</sup> Consequently, these freeze and seize measures, which represent one of the key "values added" of the AML/CFT framework, are not being used by the Malian authorities, as they do not refer to the offense of ML. To date, no property relating to the laundering of proceeds of corruption has been frozen, seized or confiscated by the Malian authorities. Lastly, while certain real properties have been confiscated, there is no framework regulating their management. According to the Malian authorities, these properties are often appropriated by corrupt local officials.

35. **Recommended measures.** (i) Amend the AML law No. 06-066<sup>64</sup> and the CPPM so as to institute the systematic confiscation of property flowing from ML and corruption; (ii) create a legal

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<sup>62</sup> "[...] in accordance with the law ordering, at the cost of the state, the seizure or confiscation of property in relation to the violation subject of the investigation and all the conditions stipulated by the specific legislative and regulatory texts in force."

<sup>63</sup> According to the prosecution authorities, there are unwritten general principles that allow the ordering of such measures. Section II, of Title IV, Chapter 1, "Investigative jurisdiction of the first degree" of the CPPM, authorizes the investigating judge to conduct searches and seizures, but these are only general provisions.

<sup>64</sup> Title V of the BCEAO AML/CFT draft law includes details on provisional measures and confiscation.

framework and an appropriate structure for managing confiscated properties; (iii) sensitize the authorities to the use of AML/CFT tools for confiscation, and provide training to ensure that they are properly applied.

### C. Preventive Measures

#### Customer due diligence

36. **Justification.** One of the weak points in the country's fiscal management is the existence of thousands of accounts which public agencies maintain in Malian banks, rather than using a single treasury account (see section II, B, above). This situation makes it relatively easy to embezzle public funds and to launder the resulting proceeds. The authorities indicated that the accounts of the “public accountants” have been centralized in the BCEAO, but that the PEs continue to hold secondary accounts in primary banks. While bank accounts maintained by governments of FATF member countries are generally regarded as presenting a low risk, the situation in a country such as Mali is quite different.

37. **International standard.** According to FATF Recommendation 10, FIs should be required to undertake CDD measures when: (i) establishing business relations; (ii) carrying out occasional transactions (a) above the applicable designated threshold (USD/EUR 15,000) or (b) that are wire transfers in the circumstances covered by the interpretive note to Recommendation 16; (iii) there is a suspicion of ML or FT; and (iv) the FIs has doubts about the veracity or adequacy of previously obtained customer identification data. The principle that FIs should conduct CDD should be set out in law. Each country may determine how it imposes specific CDD obligations, either through law or enforceable means. [...] FIs should be required to apply each of the CDD measures under (i) to (iv) above, but should determine the extent of such measures using a RBA in accordance with the Interpretive Notes to this Recommendation and to Recommendation 1. [...] FATF Recommendation 1 calls for FIs to apply enhanced due diligence measures for business relationships that present a higher risk.

38. **Current situation.** In 2008, Mali's AML/CFT framework was deemed inconsistent with the FATF standard in the area of CDD. There has been no significant improvement in the legal framework since that last evaluation. The banking sector seems to have a better understanding of AML/CFT obligations, but the mission was unable to evaluate the implementation of CDD measures. With respect to PEs, the Malian and regional legal frameworks do not have any provision for particular due diligence measures concerning the accounts held by these PEs in the primary banks. Moreover, from discussions with the BCEAO, it emerged that there have been no STR filed concerning the operations of the PEs. The BCEAO told the mission, however, that a “Convention” was under discussion with the Treasury (in the context of creating a single treasury account) and that it would include specific measures relating to AML/CFT.

39. **Recommended measures.** (i) Introduce provisions requiring the implementation of enhanced CDD measures to the bank accounts of PEs and public bodies that present high risks; (ii) ensure the implementation of these measures through effective banking supervision;

(iii) conduct a typological analysis of cases involving the embezzlement of public funds from the accounts of PEs and relevant public bodies.

### **Politically exposed persons**

40. **Justification.** Business relationships established with individuals who are entrusted or have been entrusted with prominent public functions, especially in Mali, can present greater risks, particularly with respect to the laundering of the proceeds of corruption (see section II, B, above).<sup>65</sup>

41. **International standard.** According to FATF Recommendation 12, FIs should be required to take enhanced due diligence measures in relation to PEPs, whether they are foreigners, nationals, or representatives of international organizations. For example, reasonable steps should be taken to determine the source of wealth and source of funds of such persons. At the national level, these enhanced CDD should be applied to individuals who are or have been entrusted with important public functions in the country, for example heads of state and government, high ranking politicians, senior government officials, magistrates and senior military officers, the heads of public enterprises, and the leaders of political parties. The requirements for all types of PEPs should also apply to their family members or close associates.

42. **Current situation.** The AML law No. 06-066 contains no specific obligation relating to PEPs, whether foreign or national. Article 1 of the TF law No. 10-062 defines PEPs but excludes persons who have been entrusted with important public functions in Mali (domestic PEPs).

43. **Recommended measures.** (i) Ensure the compliance of the Malian legal and regulatory framework governing the financial sector with FATF Recommendation 12;<sup>66</sup> (ii) draw up a list of national PEPs; (iii) supervise implementation of the revised legal framework, based on the specific risks presented by PEPs, in particular domestic ones.<sup>67</sup>

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<sup>65</sup> The GIABA report on Typologies of Money-Laundering through the Real Estate Sector in West Africa (*op. cit.*) shows that PEPs are regularly involved in the acquisition of real properties in their countries or abroad, using the proceeds of corruption.

<sup>66</sup> The BCEAO AML/CFT draft law calls for specific measures concerning PEPs (article 57), including nationals, foreigners, and those involved with international organizations (article 1). However, the provisions are not compliant with FATF Recommendation 12 in that, among others: (i) they do not seem to include family members and persons closely associated with national PEPs and those with international organizations (who are lumped together with foreign PEPs); (ii) the definition of national PEPs seems needlessly limited to heads of state or government, ministers, acting ministers, secretaries of state, and leaders of political parties (without mentioning, for example, directors general, parliamentarians, and members of public enterprises); (iii) there is no distinction made between measures applicable to foreign PEPs and the risk-based measures applicable to national PEPs; and (iv) financial institutions are under no specific obligation to identify whether their customer is a national PEP.

<sup>67</sup> See: "FATF Guidance: Politically Exposed Persons," June 2013: <http://www.fatf-gafi.org/documents/guidance/peps-r12-r22.html>.

## Money or value transfer services and new technologies

44. **Justification.** Money transfer services, as well as money transfers via mobile phone, can be considered a good tool for reducing dependence on anonymous cash payments, especially in countries like Mali where the banking penetration rate is low. However, these transfers, and especially mobile payment transfers (for example “Orange Money,” see Figure 3), which are used by growing numbers of persons in Mali, can pose ML risks. Among other sources, these risks may derive from the absence of a direct relationship between the customer and the institution responsible for enforcing AML/CFT standards, and the lack of identification and verification, and controls over the sources of financing; the difficulty of identifying or aggregating transactions between the different agents; vast geographic coverage; access to liquidity through prepaid cards; involvement of nontraditional players (such as telecommunication firms) and their agents, who cannot be regulated for AML/CFT purposes, or are regulated at a level below that of FIs, and the absence of any obligation on suppliers and agents to detect and report suspicious transactions.<sup>68</sup>

45. **International standard.** FATF Recommendation 14 calls on countries to ensure that natural or legal persons who provide money or value transfer services (MVTs) are licensed or registered, and subject to effective systems for monitoring and ensuring compliance with the relevant measures called for in the FATF Recommendations. Countries should take action to identify the natural or legal persons who carry out MVT services without a license or registration, and to apply appropriate sanctions. Any natural or legal person working as an agent should also be licensed or registered by the competent authority, or the MVTs provider should maintain a current list of its agents accessible by competent authorities in the countries in which the provider and its agents operate. Countries should take measures to ensure that MVTs providers that use agents include them in their AML/CFT programs, and monitor them for compliance with these programs. FATF Recommendation 15, for its part, indicates that countries and FIs should identify and assess the money laundering or terrorist financing risk that may arise in relation to (i) the development of new products and new business practices, including new delivery mechanisms, and (ii) the use of new or developing technologies for both new and pre-existing products. In the case of FIs, such a risk assessment should take place prior to the launch of the new products, business practices or the use of new or developing technologies. They should take appropriate measures to manage and mitigate those risks.

46. **Current situation.** The mission considers that these payment and money transfer services using mobile phones may facilitate ML, including of proceeds related to corruption. In Mali, the “Orange Money” service may serve as an example. Orange, a telephone service company, purchases units of money at a bank, the *Banque Internationale pour le Commerce et l’Industrie du*

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<sup>68</sup> See especially: “Guidance for a Risk-Based Approach to Prepaid Cards, Mobile Payments and Internet Payment-Based Service,” FATF, June 2013: <http://www.fatf-gafi.org/documents/documents/rba-npps-2013.html>; and “Oversight Issues in Mobile Payment,” T. Khiaonarong, IMF, Working Paper (WP/14/123), July 2014: <https://www.imf.org/external/pubs/cat/longres.aspx?sk=41747.0>.

*Mali* (BICIM), and then resells them to intermediaries (travel agencies, kiosks) that in turn offers them to private parties in exchange for payments. In this respect, Orange, as well as its intermediaries, should be considered as money or MVTS within the FATF definition of FIs,<sup>69</sup> and they should be subject to the same AML/CFT obligations as the FIs. The mission notes that these intermediaries do not systematically apply due diligence measures, and they have no reliable means of identifying their customers and keeping track of their transactions. The BICIM, to which the BCEAO has in effect delegated supervision of the “Orange Money” service, informed the mission that it conducted no controls over the thousands of kiosks operating in Bamako (the mission did not have the opportunity to visit other cities in order to measure the scope of the phenomenon). The BICIM will only verify the names of the Orange customers electronically against the lists of designated potential terrorists and terrorist organizations established by the European Union, the UN and the United States if suspicious transactions are transmitted by intermediaries (for example, if the same client transfers several amounts within one day). However, the BICIM said that it does not manage the accounts of Orange customers.<sup>70</sup>

47. **Recommended measures.** (i) Amend the AML law No. 06-066 to make these services and their intermediaries subject to AML/CFT obligations, in the same way as FIs; (ii) place these services under the supervision of the WAEMU Banking Commission (BC); (iii) assess the ML/FT risks inherent to mobile payments, and in particular those related to the laundering of the proceeds of corruption.<sup>71</sup>

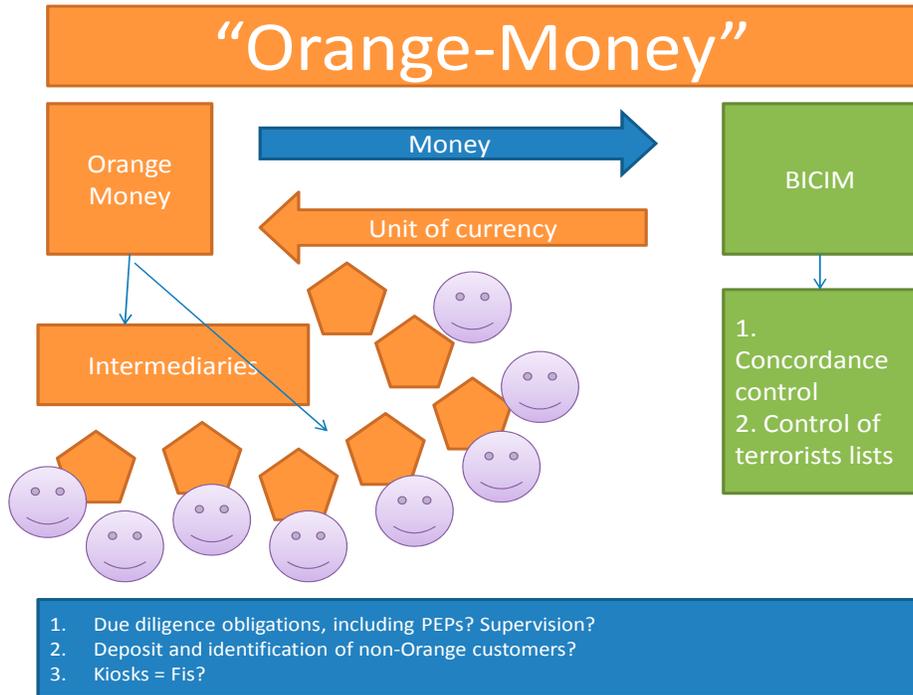
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<sup>69</sup> See: the FATF Recommendations, *op. cit.*, Glossary, p. 116. The BCEAO AML/CFT draft law defines FIs (article 1) in a manner that is overall consistent with the definition provided by the FATF. However, it excludes FIs that conduct activities or transactions for their own account (and not only for the account of their customer) and money or value transfer services are not mentioned as such (only activities and transactions are included).

<sup>70</sup> The BICIM said that it manages only (i) the cash counterparts of units of value in circulation, and (ii) databases and transaction flows, while implementing due diligence measures: in other words, according to the BICIM, verification of “terrorist lists.” According to the “Orange Money” website, users of the service can send and receive up to CFAF 400,000 in transactions between Cote d’Ivoire, Mali and Senegal. Very little additional information is available on transfers, invoicing and other payments.

<sup>71</sup> Article 40 of the BCEAO AML/CFT draft law concerns management of the risks linked to new technologies, and requires FIs to identify and assess the ML/TF risks that may ensue.

**Figure 3. An Example: “Orange Money”**



### Designated nonfinancial businesses and professions

48. **Justification.** The authorities as well as private agents (real estate promoters and jewelers, in particular) indicated to the mission that transactions involving real estate and precious metals, primarily gold (see section II, A and D, above), are often conducted in cash or through companies (see section II, C, above), and may allow for the inclusion of proceeds derived from corruption.

49. **International standard.** According to FATF Recommendations 22 and 23, professionals involved in the purchase and sale of real properties (real estate agents and promoters, notaries, lawyers) and in the precious metals sector (industrial and artisanal, “gold washing”) and dealers in precious metals and stones should be subject to CDD obligations and should be required to report to the FIU any suspicions of ML.

50. **Current situation.** Article 5 of the AML law No. 06-066 extends the obligations to prevent and detect ML (titles II and III of the law) to “all natural or legal persons who as part of their profession, perform, oversee or advise operations involving deposits, trading, investments, conversions or any other movements of capital or other assets.” This article includes members of the independent legal professions when they represent or assist clients apart from any judicial procedure (including for the purchase and sale of property, commercial businesses or goodwill), real estate agents, and merchants of high value items such as precious metals and stones. However, several obligations concerning FIs are not applicable, and are not applied, by these professions (customer identification, occasional customers, and economic beneficiary). When it comes to

implementing AML/CFT measures, real estate promoters, jewelers and the Directorate of Geology and Mines have admitted that they do not conduct any AML controls over their customers. Similarly, the President of the Chamber of Notaries told the mission of the difficulties the profession must face (for example, confidentiality of relationships with customers, the difficulty of suspecting ML and/or a predicate offense) in application of the AML framework. Moreover, Malian notaries have not filed any STRs with the CENTIF: this is of particular concern, as the real estate sector (where notaries play an important role) presents high risks. The mission was not able to meet with the lawyers, despite a specific request to this effect.

51. **Recommended measures.** (i) Revise the legal and regulatory framework to ensure conformity with FATF Recommendations 22 and 23;<sup>72</sup> (ii) prepare guidelines for the liberal professions, and in particular for notaries and lawyers, real estate agents and dealers in precious metals and stones (see Recommendation 34 below); (iii) provide training for these professions in implementing their CDD obligations using a RBA.

**Table 3. STRs Received from Reporting Entities since the Beginning of CENTIF Activities**

Reporting entities	Number of reports received						TOTAL
	2008	2009	2010	2011	2012	2013	
Banks	2	16	25	28	35	22	128
Financial institutions	0	0	0	0	0	0	0
Microfinance institutions	0	0	0	0	0	0	0
<b>Legal professions</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
Auditors	0	0	0	0	0	0	0
<b>Real estate agents</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Money carriers</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
Casino	0	0	0	0	0	0	0
Travel agencies	0	0	0	0	0	0	0
NGOs	0	0	0	0	0	0	0
<b>Others</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>TOTAL</b>	<b>2</b>	<b>16</b>	<b>25</b>	<b>28</b>	<b>35</b>	<b>22</b>	<b>128</b>

Source: CENTIF, September 2014.

<sup>72</sup> The BCEAO AML/CFT draft law subjects DNFBPs to AML/CFT obligations (article 5) and stipulates additional obligations, relating in particular to real estate (article 48).

## D. Transparency and Beneficial Ownership of Legal Persons and Arrangements

### Transparency and beneficial ownership of legal persons

52. **Justification.** The authorities informed the mission that companies were being used to disguise the financial transactions of one or more other companies, and to facilitate laundering of proceeds of corruption (see section II, C, above).

53. **International standard.** FATF Recommendation 24 asks countries to take measures to prevent the misuse of legal persons for ML or TF. Countries should ensure that there is adequate, accurate, and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities. In particular, countries that have legal persons that are able to issue bearer shares or bearer share warrants, or which allow nominee shareholders or nominee directors, should take effective measures to ensure that they are not misused for ML/TF. Countries should consider measures to facilitate access to beneficial ownership and control information by FIs and DNFBPs undertaking the requirements set out in Recommendations 10 and 22.

54. **Current situation.** It is apparent that companies are created in Mali and then wound up within 24 hours following the receipt and transfer of money. The CENTIF reported that this practice seems to be widespread, not only in Bamako but also in other regions of the country. Notaries play a key role in the creation of companies. The 2008 MER noted that the scope of informal activity made it impossible to obtain adequate and pertinent information on all economic operators. In this regard, the authorities were encouraged to implement all the provisions in the texts of the Organization for the Harmonization of Business Law in Africa, in particular those relating to the record keeping, the registration of companies, and the updating of data, in a manner consistent with the FATF standard.<sup>73</sup> In theory, companies must be registered within a month of their constitution in the WAEMU Commercial and Credit Registry (“*Registre du Commerce et du Crédit Mobilier*”) of the jurisdiction in which their head office is located. Several authorities told the mission that “shell companies” were being used to launder the proceeds of corruption, particularly in the real estate sector (see section II, A, above).

55. **Recommended measures.** (i) Amend the AML law No. 06-066 to establish an obligation to identify the legal and effective beneficial owners of companies;<sup>74</sup> (ii) reinforce the documentation needed to create a company, in particular by establishing a specific circular on the obligation of notaries, and strengthening their supervision; (iii) establish a company registry in which certain

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<sup>73</sup> In particular, the Uniform Act relating to General Commercial Law and the Uniform Act relating to the Law of Commercial Companies and Economic Interest Groups, which establishes the legal regime for commercial companies and the conditions for their creation and registration in Member States of the WAEMU.

<sup>74</sup> The BCEAO AML/CFT draft law introduces an obligation to identify the beneficial owners (article 1, and articles 21 to 25).

information, such as that concerning the legal and effective beneficial owners and the company's business activity, will be available to the public; and (iv) exercise regular control over implementation of these provisions, and identify the authority responsible for supervision.

## **E. Powers and Responsibilities of Competent Authorities and Other Institutional Measures**

### **Regulation and supervision of financial institutions**

56. **Justification.** Control of an FI by criminals facilitates ML. In particular, corrupt PEPs may attempt to control FIs for laundering the proceeds of corruption (see section II, B, and section III, C, above). AML/CFT systems must be continuously supervised through an RBA.

57. **International standard.** According to FATF Recommendation 26, countries should ensure that FIs are subject to adequate regulation and supervision and are effectively implementing the FATF Recommendations. Competent authorities or financial supervisors should take the necessary legal or regulatory measures to prevent criminals or their associates from holding, or being the beneficial owner of, a significant or controlling interest, or holding a management function in, a FI. According to the Interpretive Note to Recommendation 26, adopting a RBA to supervising FIs' AML/CFT systems and controls allows the supervisory authorities to shift resources to those areas that are perceived to present higher risk. FATF Recommendation 40 and its interpretive note call for the introduction and implementation of systems for exchanging information (regulatory, prudential, and AML/CFT-related) among the financial sector authorities, and to grant the broadest possible range of international cooperation in relation to ML, associated predicate offenses, and TF.

58. **Current situation.** The WAEMU-BC is the institution responsible for regulating and supervising Malian banks. The BCEAO also has independent supervisory powers, and can carry out inspections at its own initiative.<sup>75</sup> The banking profession is covered by a regulation that restricts exercise of that profession to persons of guaranteed good character. Thus, article 8 of the framework law on banking regulation gives the BCEAO the task of obtaining all information on the quality of persons who have contributed capital, and on their guarantees as necessary, as well as the personal suitability and experience of the persons appointed to direct, administer or manage the bank or financial institution and its agencies. Article 15 bars from the banking profession any person who has been convicted of a crime or offense. In practice, applications for approval are submitted to the Minister of Finance of the country concerned and are deposited with the BCEAO, which examines them. Nevertheless, the MER noted that, when it comes to surveillance of the origin of capital, there is no particular procedure within the BCEAO, and the accrediting authorities do not systematically track back to the effective beneficiary when they are asked to process an authorization request. The mission is not aware of any additional measure taken in this respect since 2008. Moreover, the WAEMU-BC does not seem to take a RBA to its oversight. Lastly, while there does seem to be cooperation between the WAEMU-BC, the BCEAO and the national agencies of the BCEAO, there

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<sup>75</sup> Articles 13 and 2 of the annex to the Agreement Establishing the Banking Commission of WAEMU.

appears to be no sharing of information with the international supervisory authorities. With respect to insurance, this is a sector that is relatively underdeveloped in Mali, and it does not currently pose a major risk of ML.<sup>76</sup>

59. **Recommended measures.** (i) Introduce clear procedures for implementing measures to ensure the quality of bank managers and to prevent criminals from taking control of FIs; (ii) ensure that sufficient numbers of competent personnel are available to oversee implementation of the mechanism; (iii) introduce a RBA supervision, focusing in particular on the risks relating to laundering of the proceeds of corruption;<sup>77</sup> (iv) ensure that there is cooperation and effective information sharing between the WAEMU-BC and the other supervisory authorities within the WAEMU and at the international level (in particular, the possibility of seeking information on behalf of foreign counterparts).

### **Powers of supervisors**

60. **Justification.** The WAEMU-BC should satisfy itself that FIs are implementing preventive measures effectively, and it should conduct specific AML inspections of banks, off-site and on-site, and impose appropriate and dissuasive penalties in cases of noncompliance with AML/CFT standards.

61. **International standard.** According to FATF Recommendation 27, supervisors should have adequate powers to supervise or monitor, and ensure compliance by, FIs with requirements to combat ML and TF, including the authority to conduct inspections. They should be authorized to compel production of any information from FIs that is relevant to monitoring such compliance, and to impose sanctions, in line with Recommendation 35, for failure to comply with such requirements. Supervisors should have powers to impose a range of disciplinary and financial sanctions, including the power to withdraw, restrict or suspend the FIs' license, where applicable.

62. **Current situation.** The AML controls conducted by the WAEMU-BC in the banks are inadequate and do not appear to comply with international standards. The WAEMU-BC reported that it inspects each bank every two years, and this was confirmed by representatives of the Bankers' Association. However, the CB-WAEMU does not conduct any specific AML/CFT inspections, and

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<sup>76</sup> There are currently 11 insurance companies operating in Mali. Business turnover in the sector was around CFAF 30 billion in 2013, of which CFAF 6 billion related to life insurance. The Malian public has little familiarity with this sector. The National Directorate of Insurance is responsible for supervising insurance companies, including AML/CFT surveillance, but it is the Regional Insurance Supervisory Commission, part of the Inter-African Conference on Insurance Markets, that actually implements the controls. In fact, there has been no AML/CFT supervision, and insurance companies have filed no STRs with the CENTIF. Supervisors have had no training in AML/CFT.

<sup>77</sup> The BCEAO AML/CFT draft law introduces a risk-based approach by requiring persons subject to AML/CFT due diligence obligations to assess the ML/TF risk posed by their customer, and to gather and analyze the necessary items of information, including those contained in the lists drawn up for this purpose by a competent authority such as the BCEAO or the Ministry of Finance (article 22).

it does not actually punish banks for failure to observe AML/CFT rules (but merely invites the bank in question to strengthen its AML provisions). Moreover, on-site inspections are rare, and AML provisions are examined only by means of off-site controls. Consequently, no bank in Mali has ever been penalized for failure to observe AML/CFT rules. Lastly, banking supervisors have no particular expertise in AML/CFT, and they receive little training in this area.

63. **Recommended measures.** (i) Strengthen the AML-specific controls and inspections of banks by the WAEMU-BC, in a manner consistent with FATF Recommendation 27; (ii) amend the legal framework to provide for dissuasive sanctions and penalties, including financial penalties, against banks that violate their AML/CFT obligations (see Recommendation 35, below), and enforce those measures; and (iii) provide training for supervisors in AML/CFT matters and the risks relating to laundering the proceeds of corruption.

### **Regulation and supervision of designated nonfinancial businesses and professions**

64. **Justification.** The authorities and private agents (real estate developers and jewelers, primarily) told the mission that transactions involving real estate and precious metals, gold in particular, are often conducted in cash or through companies, and they may allow for the integration of the proceeds of corruption (see section II, and Recommendations 22 and 23, above).

65. **International standard.** FATF Recommendation 28 calls for these professions to be subject to regulatory and supervisory measures that will ensure their respect for their AML/CFT obligations. These measures should be performed on a risk-sensitive basis. They may be performed by (i) a supervisor or (ii) by an appropriate self regulatory body, provided that such a body can ensure that its members comply with their AML/CFT obligations. The supervisor or the self regulatory body should also (i) take the necessary measures to prevent criminals or their associates from being professionally accredited, or from holding or being the beneficial owner of a significant or controlling interest or holding a management function, for example through evaluating persons on the basis of a "fit and proper" test; and (ii) have effective, proportionate and dissuasive sanctions in line with Recommendation 35 available to deal with failure to comply with AML/CFT requirements.

66. **Current situation.** According to the 2008 MER, there was no effective supervision of the above cited sectors, despite provisions to this effect in certain texts. In September 2014, the authorities interviewed during the mission indicated that such supervision takes place as a function of the activity pursued, as follows: (i) *notaries* are supervised by the Chamber of Notaries;<sup>78</sup>

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<sup>78</sup> The notaries profession is governed by law No. 96-023 of February 21, 1996. All Malian notaries are members of the Chamber of Notaries, a professional organization with its own legal personality. It verifies the keeping of accounts, identifies and punishes irregularities, or proposes disciplinary penalties according to the severity of the infraction. Notwithstanding the right of oversight accorded the Government Properties Administration by the General Taxation Code, notaries are subject to supervision by the Minister of Justice. The public prosecutors have permanent powers of supervision over the offices of notaries and clerks throughout their area of territorial jurisdiction (article 42 of the above-mentioned law).

(continued)

(ii) *lawyers* are supervised by the College of Lawyers (*Ordre des avocats*);<sup>79</sup> (iii) *real estate agents and promoters* are (in theory) supervised by the Ministry of State Domains; (iv) *mining companies* are supervised by the National Directorate of Geology and Mines; (v) *jewelers* are not supervised; and (vi) artisanal gold-mining (“gold washing”) is not supervised. It should be noted that the Minister of State Domains indicated to the mission that real estate agents and promoters were supervised by the Ministry of Housing, although officials of the Ministry of Housing had previously told the mission that they were not responsible for such supervision. This situation testifies to the lack of clarity as to the authority responsible for supervision, and indicates that such supervision is in fact nonexistent.

67. **Recommended measures.** (i) Revise the legal and regulatory framework to ensure compliance with FATF Recommendation 28; (ii) put in place effective, qualified and competent personnel to supervise professionals in the real estate and precious metals and stones sectors, lawyers and notaries; and (iii) introduce a RBA supervision of the AML/CFT obligations of these professions.

### **The Financial Intelligence Unit**

68. **Justification.** The CENTIF should be the central authority for AML/CFT matters within the AML chain, and it should have the resources and the powers needed to carry out its functions independently and effectively, in terms of analyzing STRs and disseminating information. Synergies should be developed between the activities of the CENTIF and those of the OCLEI in order to ensure effective control over the laundering of proceeds of corruption.

69. **International standard.** FATF Recommendation 29 calls upon countries to establish a FIU that serves as a national center for the receipt and analysis of (i) STRs, and (ii) other information relevant to ML, associated predicate offenses and FT, and (iii) for the dissemination of the results of that analysis. The FIU should have operational independence and autonomy, which means that it must have adequate human and technical resources available. This autonomy must allow it to work with other competent authorities, national and foreign, so as to facilitate international cooperation and the exchange of information, either spontaneously or upon request. According to FATF Recommendation 40, the FIU should make its best efforts to provide its foreign counterparts with complete factual and, as appropriate, legal information, including the description of the case being analyzed and the potential link to the requested country. The interpretive note to Recommendation 40 points out that this also implies the ability to conduct inquiries on behalf of a foreign counterpart and exchange with foreign counterparts all the information that would be obtainable by them if such inquiries were being carried out domestically. The FIU should have the power to exchange (i) all information required to be accessible or obtainable directly or indirectly

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<sup>79</sup> Lawyers are subject to law No. 94-042 of October 13, 1994. The Board of the College of Lawyers is responsible for ensuring respect for the principles of ethics, probity, disinterestedness, moderation and fraternity on which the College of Lawyers is based, and for conducting the supervision that the honorability and interest of the College make necessary. A law governing the professions of property administrator and real estate agent was adopted in 2010.

by the FIU under the FATF Recommendations, and in particular under Recommendation 29;  
(ii) any other information which it has the power to obtain or access, directly or indirectly, at the domestic level, subject to the principle of reciprocity.

70. **Current situation.** The CENTIF began its activities in a formal way in July 2008, with six permanent appointed members. These members were however all replaced between 2013 and 2014, and the CENTIF today has only five permanent members, a situation that has considerably slowed its work. Four permanent members and eight other persons (analysts and investigators) are responsible for analyzing the STRs. The resources available to the CENTIF and to the other domestic AML authorities are very limited (see section III, A, above). In this respect, the time limits established in the AML law No. 06-066 (article 24) within which the CENTIF is to analyze and respond to its domestic counterparts are too short (see section III, A, above). Agents do not always have the necessary training in AML/CFT matters. Lastly, the CENTIF cooperates by exchanging information with its foreign counterparts, subject to reciprocity, but the AML law No. 06-066 makes no provision for the CENTIF to seek information on behalf of its foreign counterparts. When it comes to combating corruption, the CENTIF does not seem to be gathering statistics on the number of STRs relating to corruption as an offense predicate to ML, and laundering the proceeds of corruption. The role of the CENTIF in implementing the PREI law No. 14-015 is not specified, nor are the modalities for cooperation and coordination with the OCLEI (see section I, B, above).

71. **Recommended measures.** (i) Extend the time limit set at 48 hours by the AML law No. 06-066 so as to allow the CENTIF to analyze the STRs and respond to the various domestic bodies; (ii) amend the AML law No. 06-066 to give the CENTIF the power to conduct inquiries on behalf of its foreign counterparts; (iii) deploy adequate human and technical resources so that the CENTIF can perform its functions effectively and with full independence; (iv) provide training for agents of the CENTIF in the risks linked to the laundering of the proceeds of corruption ; and (v) ensure that there is an arrangement in place to protect and preserve the confidentiality of the information held by the CENTIF.

### **Powers of the law enforcement and investigative authorities**

72. **Justification.** Economic and financial crimes, in particular ML and corruption, demand special means of investigation in order to detect and recover the proceeds of crime. The law enforcement authorities must therefore have the necessary resources to carry out these investigations and also to classify the offenses correctly.

73. **International standard.** FATF Recommendation 31 indicates that, when conducting investigations of ML, associated predicate offenses and TF, the competent authorities should be able to obtain access to all necessary documents and information for use in those investigations, and in prosecutions and related actions. This should include powers to use compulsory measures for the production of records held by FIs, DNFBPs and other natural or legal persons, for the search of persons and premises, for taking witness statements, and for the seizure and obtaining of evidence. Countries should ensure that competent authorities conducting investigations are able to use a wide range of investigative techniques suitable for the investigation of ML, associated predicate offenses,

and FT. These investigative techniques include: undercover operations, intercepting communications, accessing computer systems, and controlled delivery. In addition, countries should have effective mechanisms in place to identify, in a timely manner, whether natural or legal persons hold or control accounts. They should also have mechanisms to ensure that competent authorities have a process to identify assets without prior notification to the owner. When conducting investigations of ML, associated predicate offenses, and FT, competent authorities should be able to ask for all relevant information held by the FIU. FATF Recommendation 40 and its interpretive note require that the law enforcement authorities must be able to exchange information and collaborate effectively with their foreign counterparts (including the ability to conduct inquiries and obtain information on their behalf), for purposes of information or investigation relating to cases of ML, associated predicate offenses, and FT, and for identifying and tracking the proceeds and the instrumentalities of the crime.

74. **Current situation.** The investigative authorities, and in particular the police, the gendarmerie and the customs service, do not seem to be making regular use of special investigative means, such as undercover agents and telephone taps, to investigate sophisticated economic and financial crimes. The investigative authorities explained to the mission that the Malian culture is based on cash transactions. The investigative authorities are not trained to recognize “white-collar criminals,” and they admitted that they lump such persons together with “respectable persons.” Their resources and their staffing levels are also very low (considering the geographic extent of Mali's territory and the sensitivity of the situation in the north of the country) and, according to the authorities, those means were cut back after the coup d'état of March 2012. Prosecutors, however, have an in-depth knowledge of economic crimes. They told the mission that they prosecute for the offense of misuse of public property rather than ML, because the penalties are more severe (see section III, B, above), and they do not have sufficient means to pursue ML investigations. The authorities also recognized that cases concerning misuse of public property were in many instances of long standing, dating back to “well before the events of March 2012.” The last case related to misuse of public property was ruled in December 2011.<sup>80</sup> No judgments are available, then, involving a conviction for ML or other crimes of corruption, and to the mission's knowledge, no one has ever been sentenced for money laundering. Finally, international cooperation with the law enforcement and investigative authorities of other countries is limited, particularly when it comes to exchanging information, a situation that is due in part to the lack of resort to AML tools.

75. **Recommended measures:**<sup>81</sup> (i) Amend the AML law No. 06-066 and the CPPM to ensure compliance with FATF Recommendations 31 and 40; (ii) equip the authorities with sufficient and

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<sup>80</sup> According to information supplied by the authorities in December 2014 (see also Section III, B, above).

<sup>81</sup> The UNDP has also prepared a 2015–2019 program for Mali with recommendations intended to reinforce governance and reform the justice and penal system. Some of these measures reflect the conclusions of the Committee for preparation of a strategic plan for the reform of justice under the Human Rights Program.

special means to carry out investigations of ML and corruption;<sup>82</sup> (iii) ensure effective cooperation with the investigative and law enforcement authorities of other countries; (iv) sensitize the investigative and law enforcement authorities to economic and financial crimes, in particular ML and corruption, and provide them with training.

### **Measures relating to the control of cross-border currency movements**

76. **Justification.** The porous borders of Mali facilitate cross-border flows of cash, including the proceeds of corruption. The improvement and intensification of controls could make it more difficult to launder the proceeds of corruption abroad.

77. **International standard.** According to FATF Recommendation 32, countries should have measures in place to detect the physical cross-border transportation of currency and bearer negotiable instruments, including through a declaration system and/or disclosure system. Countries should ensure that their competent authorities have the legal authority to stop or restrain currency or bearer negotiable instruments that are suspected to be related to FT, ML, or predicate offenses, or that are falsely declared or disclosed. Countries should ensure that effective, proportionate, and dissuasive sanctions are available to deal with persons who make false declarations or disclosures. In cases where the currency or bearer negotiable instruments are related to FT, ML, or predicate offenses, countries should also adopt measures, including legislative ones consistent with Recommendation 4, which would enable the confiscation of such currency or instruments.

78. **Current situation.** The 2008 MER found that the system for detecting the physical cross-border transportation of currency or bearer negotiable instruments is not in conformity with the FATF standard. An analysis of the follow-up reports shows no progress in this matter. In September 2014, public institutions (CENTIF, customs, gendarmerie, police) and private ones (banks, notaries, real estate promoters) indicated that the prevalence of cash transactions in Mali constituted a high risk of ML and made it very difficult to apply the measures needed to identify the origin of funds. The authorities also mentioned the *hawala* services as posing a high risk of ML.<sup>83</sup> Although the customs services have the technical means for identifying the large amounts transported in currency at the airport, the authorities reported that seizures had been carried out in France involving travelers from Mali who were carrying very large sums of money. These amounts had been declared not in Bamako but in Paris. In this respect, regulation No. 09/2010/CM/WAEMU of October 1, 2010 leaves residents of the WAEMU free to declare or not the carrying of currency, and requires domiciliation only after eight days.

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<sup>82</sup> The BCEAO AML/CFT draft calls for the implementation of special investigation measures, in particular with respect to communications and infiltrations (articles 95 and 96).

<sup>83</sup> *Hawala* and other similar service providers present heightened ML risks because they rely on settlement across multiple jurisdictions through value or cash, for the most part outside the banking system. See “The role of *hawala* and other similar service providers in money-laundering and terrorist financing,” FATF, Report, October 2013: <http://www.fatf-FATF.org/fr/themes/FATFengeneral/documents/resultats-pleniere-octobre-2013.html#hawala>.

79. **Recommended measures.** (i) Adopt a legal framework for controlling cross-border cash flows consistent with FATF Recommendation 32;<sup>84</sup> (ii) ensure the human and technical capacities needed to implement it; (iii) encourage the WAEMU-BC and the BCEAO to amend regulation No. 09/2010/CM/WAEMU to require that all persons, including residents of the WAEMU, must declare the transportation of currency immediately to the customs office.

### Statistics

80. **Justification.** The availability of accurate and up-to-date statistics makes it possible to define the major risks and prepare a strategy for mitigating them effectively in a timely manner. Statistics on ML and corruption (i.e. the number of STRs analyzed and transmitted concerning ML and corruption, the number of requests for mutual legal assistance with specific countries, etc.) would allow preparation of a more effective strategy and policy for combating the laundering of proceeds of corruption.

81. **International standard.** FATF Recommendation 33 stipulates that countries should maintain comprehensive statistics on matters relevant to the effectiveness and efficiency of their AML/CFT systems. This should include statistics on the STRs received and disseminated, on ML, FT investigations, prosecutions and convictions, on property frozen, seized and confiscated, and on mutual legal assistance or other international requests for cooperation.

82. **Current situation.** The majority of the authorities responsible for AML/CFT implementation have no statistics at all. The CENTIF provided the mission with statistics on the number of STRs received and disseminated. However, the law enforcement and investigative authorities rarely have statistical data available.<sup>85</sup>

83. **Recommended measures.** Increase the resources available to the AML/CFT authorities so that they can supply themselves with appropriate equipment, electronic in particular, for collecting and disseminating statistics on AML/CFT.

### Guidance and feedback

84. **Justification.** Guidelines are needed to help FIs and DNFBPs in their implementation of AML/CFT measures, and to ensure better cooperation between the CENTIF and the OCLEI.

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<sup>84</sup> Chapter I, Title II, of the BCEAO AML/CFT draft law introduces specific measures concerning currencies and bearer-negotiable instruments, including (i) a prohibition on payment in cash for debts of CFAF 5 million or more (article 15), (ii) the obligation to pay for real property by means of bank transfer or check if the amount is greater than CFAF 3 million (article 16), and (iii) the obligation of FIs and DNFBPs to report to the CENTIF any cash transactions of CFAF 15 million or more, whether they involve a single operation or several operations that appear to be linked (article 17).

<sup>85</sup> Despite an express request, members of the mission were not given any statistics on the number of sentences handed down for misuse of public property.

85. **International standard.** FATF Recommendation 34 calls for the competent authorities, supervisors, and self-regulatory bodies to establish guidelines and provide feedback which will assist FIs and DNFBPs in applying national measures to combat ML and TF, in particular, in detecting and reporting suspicious transactions.

86. **Current situation.** BCEAO instruction No. 01/2007/RB of July 2, 2007 on AML in FIs offers guidance to FIs in implementing their AML/CFT due diligence obligations, but it needs to be updated. No guidance has been provided to DNFBPs. The role of the CENTIF in implementing the PREI law No. 14-015 has not been defined.

87. **Recommended measures.** (i) Prepare circulars for each DNFBP; (ii) prepare a circular on cooperation between the CENTIF and the OCLEI; and (iii) encourage the BCEAO to revise its instruction relating to AML in FIs.<sup>86</sup>

## Sanctions

88. **Justification.** The application of proportionate penalties against natural and legal persons who have failed to fulfill their AML/CFT obligations, particularly banks and DNFBPs in the Malian context, would have a dissuasive effect and would encourage these persons and entities to implement the AML/CFT framework effectively. Such sanctions would also serve to prevent laundering of the proceeds of corruption, and would make it more difficult for criminals to disguise these proceeds.

89. **International standard.** According to FATF Recommendation 35, countries should ensure that there is a range of effective, proportionate, and dissuasive sanctions, whether criminal, civil, or administrative, available to deal with natural or legal persons covered by Recommendations 6 and 8 to 23 that fail to comply with AML/CFT requirements. Sanctions should be applicable not only to FIs and DNFBPs, but also to their directors and senior management.

90. **Current situation.** There is no provision for sanctions other than disciplinary ones in case of failure by banks and DNFBPs to comply with AML/CFT standards. Chapters III and IV, Title V, of the AML law No. 06-066 spell out the penalties applicable to natural and legal persons for ML and violation of the AML law. These provisions are identical to those of the WAEMU AML law. In the case of FIs, the framework law instituting banking regulation (article 68) provides that credit institutions may be held criminally liable under the conditions stipulated in article 42 of the uniform AML law. However, most of the penalties listed in the uniform law are not applicable to FIs (the only applicable ones being exclusion from public procurement and confiscation of property used to commit the offense).<sup>87</sup> The WAEMU-BC may also impose disciplinary<sup>88</sup> and monetary<sup>89</sup> penalties.

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<sup>86</sup> Section 2, Chapter IV, Title III, of the BCEAO AML/CFT draft law introduces specific measures relating to guidance and feedback, and requires financial institutions to implement a risk-based approach (article 92).

<sup>87</sup> The following sanctions are excluded: (i) placement under judicial surveillance for a period of at most five years; (ii) prohibition, permanent or for a period of five years at most, from exercising, directly or indirectly, one or more of

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However, BCEAO instruction No. 003-03-2014 setting the modalities for application of monetary sanctions ordered by the WAEMU-BC, which came into force on April 1, 2014, contains no reference to ML offenses.<sup>90</sup> As a result, no financial sanctions can be imposed on banks for ML and violation of AML/CFT rules.<sup>91</sup> In practice, no sanctions are imposed on banks or on DNFBPs for failure to respect AML/CFT standards. The BCEAO representatives interviewed during the mission confirmed that no coercive sanction had ever been ordered against a bank for violating AML/CFT rules, and that WAEMU-BC had confined itself to issuing "reminders" in the course of its inspection reports. Similarly, with respect to DNFBPs, no sanction has been imposed on notaries, real estate agents, lawyers or dealers in precious metals and stones.

91. **Recommended measures.** (i) Encourage the BCEAO to amend instruction No. 003-03-2014, or to adopt a new regulation introducing sanctions, including financial penalties, on FIs for failure to respect AML/CFT obligations; and (ii) introduce specific and dissuasive sanctions against DNFBPs, in particular notaries, lawyers, real estate agents and promoters, and dealers in precious metals and stones.

## F. International Cooperation

### Mutual legal assistance

92. **Justification.** The evidence needed to prove corruption and the laundering of its proceeds, as well as the illicit assets themselves, will often be located abroad. Effective international legal

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the professional or social activities in which the offense was committed; (iii) closure, permanent or for a period of at most five years, of the establishments or one of the establishments of the enterprise used to commit the offense; (iv) dissolution, when they were created for the purpose of committing the offense; and (v) publication or dissemination of the decision by means of the press or any means of audiovisual communication, with the costs to be borne by the legal entity convicted.

<sup>88</sup> Article 28 of the annex to the Agreement governing the WAEMU-BC lists the following disciplinary sanctions: (i) notification; (ii) warning; (iii) suspension or prohibition of all or a portion of operations; (iv) all other limitations on exercise of the profession; (v) suspension or outright dismissal of the responsible managers; and (vi) withdrawal of the license or authorization for establishment. Financial penalties are set by instruction from the BCEAO.

<sup>89</sup> Article 3 of instruction No. 003-03-2014 establishing the procedures for applying monetary sanctions ordered by the WAEMU-BC sets the maximum amount of financial penalties as follows: (i) CFAF 500 million for banks; (ii) CFAF 150 million for financial institutions of a banking nature; and (iii) 10 percent of the equity required in light of the capital adequacy rules for decentralized financial systems of the WAEMU, to a maximum amount of CFAF 100 million.

<sup>90</sup> Article 2 of instruction No. 003-03-2014 establishing the procedures for applying monetary sanctions ordered by the WAEMU-BC classifies violations of the regulations governing banking or decentralized financial systems into three categories, but it makes no mention of money laundering.

<sup>91</sup> Article 40 of the AML law No. 06-066 imposes penalties on the managers of legal persons (including banks). The preliminary draft of the uniform law contains similar measures.

cooperation can facilitate the prosecution and recovery of assets linked to corruption. As exchanges are often based on reciprocity, it is important for Mali to equip itself with a credible and effective system of mutual legal assistance.

93. **International standard.** According to FATF Recommendation 37, countries should rapidly, constructively, and effectively provide the widest possible range of mutual legal assistance in relation to ML, associated predicate offenses, and FT investigations, prosecutions, and related proceedings. Countries should have an adequate legal basis for providing assistance and, where appropriate, should have in place treaties, arrangements or other mechanisms to enhance cooperation. FATF Recommendation 38 relates to the freezing and confiscation of laundered property.

94. **Current situation.** Chapter III of the AML law No. 06-066 is devoted to mutual legal assistance (articles 53 to 70) in the AML area. The 2008 MER identified a number of weaknesses in the legal framework, in particular the absence of coordination mechanisms relating to seizure and confiscation, the lack of clarity concerning the requirement for dual criminality as a condition for granting mutual legal assistance, and limitations on the instruments available for taking conservation measures. To the mission's knowledge, no steps have been taken to remedy these weaknesses since 2008. The MER also pointed to the failure to implement the mutual legal assistance system, which seems not to have evolved, as only one request for mutual legal assistance has been formulated (to France, in 2013). The prosecutor responsible for the economic and financial *Pôle* of Bamako before the Court of first instance of Commune III and his alternate told the mission that international arrest warrants had recently been issued for two persons. However, those warrants concerned violations under common law and were not linked to corruption or ML. It was confirmed that instances of mutual legal assistance were rare.

95. **Recommended measures.** (i) Ensure compliance with FATF Recommendations 37 and 38 du FATF, in particular by clarifying the conditions of dual criminality; (ii) encourage resort to mutual legal assistance for ML; (iii) sensitize and train magistrates in mutual legal assistance procedures; and (iv) improve statistical data on the number of requests for mutual legal assistance formulated and received.

## **Extradition**

96. **Justification.** The perpetrators of crimes such as corruption and ML can be located abroad. A clear and effective extradition procedure would facilitate international legal cooperation for purposes of prosecuting those persons. As exchanges are often based on reciprocity, it is important for Mali to equip itself with a credible and prompt extradition system.

97. **International standard.** FATF Recommendation 39 provides that countries should constructively and effectively execute extradition requests in relation to ML and FT without undue delay. Countries should also take all possible measures to ensure that they do not provide safe havens for individuals charged with the financing of terrorism, terrorist acts, or terrorist organizations. In particular, countries should: (i) ensure that ML and FT are extraditable offenses;

(ii) ensure that they have clear and efficient processes for the timely execution of extradition requests including prioritization where appropriate;<sup>92</sup> (iii) not place unreasonable or unduly restrictive conditions on the execution of requests; and (iv) ensure that they have an adequate legal framework for extradition. Each country should either extradite its own nationals or, where a country does not do so solely on the grounds of nationality, that country should, at the request of the country seeking extradition, submit the case without undue delay to the competent authorities for the purpose of prosecution of the offenses set forth in the request. Those authorities should take their decision and conduct their proceedings in the same manner as in the case of any other offense of a serious nature under the domestic law of that country. The countries concerned should cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecutions. Where dual criminality is required for extradition, that requirement should be deemed to be satisfied regardless of whether both countries place the offense within the same category of offense, or denominate the offense by the same terminology, provided that both countries criminalize the conduct underlying the offense. Consistent with fundamental principles of domestic law, countries should have simplified extradition mechanisms, such as allowing direct transmission of requests for provisional arrests between appropriate authorities, extraditing persons based only on warrants of arrest or judgments, or introducing a simplified extradition of consenting persons who waive formal extradition proceedings. The authorities responsible for extradition should be provided with adequate financial, human, and technical resources. Countries should have in place processes to ensure that the staff of such authorities maintain high professional standards, including standards concerning confidentiality, and should be of high integrity and be appropriately skilled.

98. **Current situation.** Chapter IV of the AML law No. 06-066 deals with extradition (articles 71 to 75) and AML matters. The MER noted that the extradition of Malian nationals was not authorized and that article 72, which seemed to define a simplified procedure whereby extradition requests are sent directly to the public prosecutor, added to the general provisions of the CPPM. The evaluators had recommended that Mali should clarify whether the provisions of the CPPM were supplanted by the AML law and should provide clear rules to ensure that, at the request of a foreign country, Mali can prosecute its own nationals whom it cannot extradite because of their nationality. Moreover, the AML law No. 06-066 had no provisions to permit the countries involved in the extradition process to cooperate on matters related to investigation and prosecution. To the mission's knowledge, the Malian authorities have taken no steps to remedy these shortcomings. There are apparently no available statistics on extradition.

99. **Recommended measures.** (i) Clarify the AML extradition rules and provide for a simplified procedure;<sup>93</sup> (ii) establish clear rules to ensure that, at the request of a foreign country, Mali can prosecute its own nationals whom it cannot extradite because of their nationality; (iii) introduce provisions that will permit the countries involved in the extradition process to

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<sup>92</sup> To monitor progress of requests a case management system should be maintained.

<sup>93</sup> Article 158 of the BCEAO AML/CFT draft law makes it an obligation to establish such a simplified procedure.

cooperate on matters related to investigation and prosecution; and (iv) improve statistical data on the number of extradition requests formulated and received.

#### IV. CONCLUSIONS AND MAIN RECOMMENDATIONS

100. **Despite the progress that has been made since 2008, Mali's AML/CFT and AC frameworks are in need of major improvements to comply with international practices and standards.** Recent anomalies in the management of the public finances<sup>94</sup> testify once again to the need to improve the AML/CFT and AC legal and regulatory regimes. The authorities made some important commitments in this regard, in the context of Mali's program under the Extended Credit Facility (ECF) with the IMF, demonstrating their intention to combat corruption effectively.<sup>95</sup> In addition to the changes stipulated under the program supported by the IMF,<sup>96</sup> the AML/CFT and AC frameworks need to be improved in line with international standards and effectively implemented. In the absence of such expedited efforts to deal with ML/TF and corruption issues, the country's governance problems are bound to persist.

101. **The mission has formulated recommendations to strengthen the AML/CFT and AC legal frameworks in Mali and enhance their synergies.** A ranking of the recommendations by order of priority indicates the time line for their implementation. Box 1 below describes the actions to be taken immediately, while Table 4 lists the short- and medium-term priorities. The details of each recommendation are found in the corresponding sections of this report.

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<sup>94</sup> In particular the problems relating to off-budget expenses for the purchase of an aircraft in the amount of CFAF 20 billion (\$40 million), a contract for the supply of equipment and furnishings issued by the MDAC for an amount of CFAF 69 billion (\$138 million), and the issuance of a government guarantee for the amount of CFAF 100 billion (\$200 million) related to this and other contracts (see also Section II, B, above).

<sup>95</sup> These commitments were made in the wake of the decision by the IMF in May 2014 to delay the conclusion of the first review of the economic program supported by the ECF because of the transactions cited above, which were not included in the 2014 budget law.

<sup>96</sup> Especially those relating to government procurement contracts. See "First and Second Reviews under the Extended Credit Facility Arrangement," IMF report, November 2014, MEFP, paras. 36–39, pp. 49–51: <http://www.imf.org/external/pubs/cat/longres.aspx?sk=42505.0>.

### Box 1. Immediate Actions

- Amend Mali’s AML/CFT legal and regulatory framework to ensure compliance with the 2012 FATF Recommendations, as follows:
  - Criminalization of ML (R. 3): higher and clearly defined penalties, indirect proceeds;
  - Confiscation and provisional measures (R. 4): ML and corruption;
  - CDD measures (R. 10): public agencies;
  - Enhanced CDD measures towards domestic PEPs (R. 12);
  - Preventive measures for DNFBPs (R. 22 and 23): real estate, notaries, lawyers, precious metals and stones;
  - Transparency of legal and beneficial owners of legal persons—companies (R. 24);
  - Regulation and supervision of DNFBPs (R. 28): Supervision;
  - Powers of the law enforcement and investigative authorities (R. 31 and 40);
  - Cross-border currency movements (R. 32);
  - Mutual legal assistance (R. 37 and 38): Dual criminality;
  - Extradition (R. 39): simplified procedure, extradition of nationals, cooperation in investigation and prosecution
- Supplement the national AML/CFT strategy and its action plan for 2013–2015 with the TA recommendations set forth in this report, and implement them.
- Amend the CPM to criminalize (i) the bribery of foreign public officials and officials of international organizations, (ii) the embezzlement of property in the private sector, and (iii) concealment, in line with articles 16, 22 and 24 of the UNCAC.
- Amend the PREI law No. 14-015 to extend its field of application to adult children and to all parliamentarians.
- Give effect to article 10 of the PREI law No. 14-015, by requiring senior government figures to submit annual declarations of wealth to the Supreme Court.

**Table 4. Short and Medium-Term Priorities**

Short-term	Medium-term
<i>Evaluation of risks and application of a risk-based approach</i>	
<p>Introduce measures requiring FIs and DNFBP to identify and evaluate their ML/FT risks and to take effective mitigating measures.</p> <p>Make FIs and DNFBPs aware of the specific risks of laundering the proceeds of corruption.</p>	<p>Conduct a national ML/FT risk assessment, with TA support from the IMF (subject to agreement by the Steering Committee of the AML/CFT TTF and the availability of human and financial resources).</p>
<i>National cooperation and coordination</i>	
<p>Implement the necessary provisions (training, budget, personnel) to make the CENTIF the central authority for AML/CFT.</p>	<p>Reinforce training of the relevant agencies in charge of implementing the AML/CFT framework, in view to rationalizing coordination and cooperation among those bodies, particularly when it comes to legal proceedings.</p>
<i>Criminalization of money laundering</i>	
<p>Establish a complete list of offenses of corruption that are deemed to be predicate offenses to ML.</p>	
<i>Confiscation and provisional measures</i>	
<p>Sensitize the authorities to the use of AML/CFT tools for confiscation, and provide training to ensure that they are properly applied.</p>	<p>Create a legal framework and an appropriate structure for managing confiscated properties.</p>
<i>Customer due diligence</i>	
<p>Ensure the implementation of CDD measures, especially with respect to the accounts of PEs and public bodies, through effective banking supervision.</p>	<p>Conduct a typological analysis of cases involving the embezzlement of public funds from the accounts of PEs and public agencies.</p>

<i>Politically exposed persons</i>	
Establish a list of domestic PEPs.  Subject foreign PEPs to enhanced CDD measures, in compliance with FATF Recommendation 12.	Supervise implementation of the revised legal framework, based on the specific risk presented by PEPs, in particular domestic ones.
<i>Money or value transfer services and new technologies</i>	
Subject mobile phone payment services and their intermediaries to the same AML/CFT obligations as FIs.  Place these services under the supervision of the WAEMU-BC.	Assess the ML/TF risks inherent mobile payment services, in particular risks related to laundering of the proceeds of corruption.
<i>Designated non-financial businesses and professions</i>	
Prepare guidelines for notaries, lawyers, real estate agents and promoters, and dealers in precious metals and stones.  Ensure that effective, qualified, and competent supervisors are in place for DNFBPs, and in particular for notaries and lawyers, real estate agents, and dealers in precious metals and stones.	Provide training for DNFBPs in implementing their CDD obligations using a RBA.  Implement risk-based supervision of the AML/CFT obligations of these professions.
<i>Transparency and beneficial ownership of legal persons and arrangements</i>	
Reinforce the documentation needed to create a company, in particular by establishing a specific circular on the obligation of notaries, and strengthening their supervision.  Establish a company registry in which certain information, such as the legal and effective beneficial owners and the company's business activity, will be available to the public.	Exercise regular control over implementation of these provisions, and identify the authority responsible for supervision.

<i>Regulation and supervision of financial institutions</i>	
Institute clear procedures for implementing measures to ensure the quality of bank managers and to prevent criminals from taking control of FIs.	Ensure that sufficient numbers of competent personnel are available to oversee implementation of the mechanism.
Introduce a RBA to supervision, focusing in particular on the risks relating to laundering of the proceeds of corruption.	Ensure that there is cooperation and effective information sharing between the WAEMU-BC and the other supervisory authorities within the WAEMU and at the international level.
<i>Powers of supervisors</i>	
Strengthen the AML-specific controls and inspections of banks by the WAEMU-BC, in accordance with FATF Recommendation 27.	Provide training for supervisors in AML/CFT matters and the risks relating to laundering of the proceeds of corruption.
Amend the legal framework to include dissuasive sanctions and penalties, including financial penalties, against banks that violate their AML/CFT obligations.	
<i>The Financial Intelligence Unit (CENTIF)</i>	
Extend the time limit set at 48 hours by the AML law No. 06-066 so as to allow the CENTIF to analyze the STRs and respond to their domestic counterparts.	Provide training for CENTIF agents specific to the risks related to the laundering of the proceeds of corruption.
Amend the AML law No. 06-066 to give the CENTIF the power to conduct inquiries on behalf of its foreign counterparts.	Deploy adequate human and technical resources so that the CENTIF can perform its functions effectively and with full independence.
	Ensure that there is an arrangement in place to protect and preserve the confidentiality of the information held by the CENTIF.
<i>Powers of the law enforcement and investigative authorities</i>	
Equip the authorities with sufficient and special means to carry out investigations of ML and corruption, and ensure effective cooperation with their foreign counterparts.	Sensitize and train the investigative and law enforcement authorities with respect to economic and financial crimes, in particular ML and corruption.

<i>Measures relating to the control of cross-border currency movements</i>	
Ensure the human and technical capacities needed to implement these measures.	Encourage the WAEMU-BC and the BCEAO to amend regulation No. 09/2010/CM/WAEMU.
<i>Statistics</i>	
	Increase the resources available to the AML/CFT authorities so that they can supply themselves with appropriate equipment, electronic in particular, for collecting and disseminating statistics on AML/CFT.
<i>Guidance and feedback</i>	
Prepare circulars for each DNFBP.  Prepare a circular on cooperation between the CENTIF and the OCLEI.	Encourage the BCEAO to revise its instruction relating to AML obligations for FIs.
<i>Sanctions</i>	
Introduce specific and dissuasive sanctions against DNFBPs, in particular notaries, lawyers, real estate agents and promoters, and dealers in precious metals and stones.	Encourage the BCEAO to amend instruction No. 003-03-2014, or to adopt a new regulation introducing sanctions, including financial penalties, on FIs for failure to respect AML/CFT obligations.
<i>Mutual legal assistance</i>	
Encourage resort to mutual legal assistance for the crime of ML.  Sensitize and train magistrates in mutual legal assistance procedures.	Improve statistical data on the number of requests for mutual legal assistance formulated and received.
<i>Extradition</i>	
	Improve statistical data on the number of extradition requests formulated and received.

**Annex 1. Anticorruption Commitments Adopted by the Malian Authorities in  
December 2014 in the Context of the Memorandum of Economic and Financial Policies  
(MEFP) for the EFC<sup>97</sup>**

- Implement all the measures described in the MEFP in order to improve the management and transparency of public finances;
- Submit to the National Assembly an amendment to the law on illicit enrichment to extend the scope of application to all non-minors and legislators, and apply the law's provisions requiring annual financial disclosures by senior government officials to the Supreme Court by February 28, 2015;
- Address the problem of corruption in the judicial system by publishing the decisions of the commercial courts and other courts in cases involving corruption and economic and financial crimes, and by implementing other specific measures to combat corruption in the judiciary;
- Remedy the shortcomings in the administration brought to light by the oversight bodies, including the Office of the Auditor General in its annual and sector reports;
- Sanction corrupt employees through administrative or legal action, as appropriate; Publish an annual report by February 28, 2015, presenting the results of actions taken to remedy the shortcomings brought to light by the oversight bodies, with particular emphasis on the measures taken to discipline corrupt employees through administrative or legal measures;
- Prepare an action plan by February 28, 2015, to strengthen the AML/CFT and anti-corruption legal frameworks in line with international standards, guided by the recommendations of an IMF technical assistance mission that visited Bamako in September 2014.

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<sup>97</sup> MEFP, para. 59. See: "First and Second Reviews under the Extended Credit Facility Arrangement", *op. cit.*, pp. 57–58.

**Annex 2. Steps in the Malian Legislative Process<sup>98</sup>**

1. Formulation of the proposed law.
2. A magistrate examines the proposed text.
3. Other magistrates examine certain aspects of the proposed text.
4. A proposed text is sent to the Ministry of Justice.
5. The Ministry of Justice meets with lawyers, civil society, etc.
6. The draft is discussed in the Interministerial Council.
7. The draft law is submitted to the Coordination Committee of the Secretaries General.
8. The draft law is discussed at an interministerial meeting.
9. The draft law is sent to the Council of Ministers.
10. The draft law is sent to the Prime Minister.
11. The draft law is sent to the office of the President of the National Assembly.
12. The Law Commission examines the draft law.
13. The Ministry of Justice defends his draft in a plenary session of the National Assembly.
14. The law is adopted by Parliament.
15. The law is signed by the President of the Republic.

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<sup>98</sup> According to information communicated to the mission by the Directorate of Legal Affairs (responsible for drafting the PREI law No. 14-015 and the future AML/CFT law).

**Annex 3. Institutions Met by the Mission**

Ministry of Finance and Economy, including the minister's office

Ministry of Justice and Human Rights, including the minister's office

Ministry of State Domains, Land Affairs and Heritage, including the minister's office

Association of Real Estate Promoters of Mali

Central Bank of the West African States (BCEAO)

*Banque de Développement du Mali*

*Banque Internationale pour le Commerce et l'Industrie du Mali*

*Banque Nationale de Développement Agricole*

*Bureau du Vérificateur Général (Office of the Auditor General)*

*Cellule Nationale de Traitements des Informations Financières*

Insurance Commission

*Comité des Compagnies d'Assurances du Mali*

Directorate of Legal Affairs

General Directorate of Customs

Directorate of the Gendarmerie

National Directorate of Geology and Mines

Directorate of the Ministry of Housing, Real Property and Urban Development

National Directorate of the Treasury and Public Accounts

Directorate of the Police

Ecobank

*Maison des Artisans du Mali*

*Maison des Artisans de Bamako*

College of Notaries of Mali

Human Rights Program, Committee for preparation of a strategic plan for justice reform

United Nations Development Programme

National Prosecutor before the Court of First Instance of Commune III, Prosecutor responsible for the *Pôle Economique et Financier* of Bamako