



Anti-money laundering and counter-terrorist financing measures

Democratic Republic of Congo (DRC)

Mutual Evaluation Report

April 2021



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LIST OF ACRONYMS

CBA:	Congolese Banking Association
ADF-NALU:	Allied Democratic Forces - National Army for the Liberation of Uganda
AML/CFT:	Anti-Money Laundering/Combating the Financing of Terrorism
AML/CFT:	Anti-Money Laundering/Combating the Financing of Terrorism
AMLO:	Anti-Money Laundering Office
ANIF:	National Financial Investigation Agency
ANIMF:	National Association of Microfinance Institutions
ANR:	National Intelligence Agency
APROCEC:	Professional Association of Savings and Credit Cooperatives
ARCA:	Insurance Regulatory and Supervisory Authority
ASBL:	Non-Profit Organisations
ASSIMO:	Association of Real Estate Agencies
BCC:	Central Bank of Congo
BCDC:	Commercial Bank of Congo
BIAC:	International Bank for Africa in Congo
BOA:	Bank of Africa
C:	Compliant
CADECO:	Savings Bank of Congo
CC:	Criminal Code
CCP:	Code of Criminal Procedure
CEEC:	Centre of Expertise for the Evaluation of Raw and Semi-Precious Materials
CEMAC:	Central African Economic and Monetary Community
CEN:	Customs Enforcement Network
CENAREF:	National Financial Intelligence Unit
CEPGL:	Economic Community of the Great Lakes Countries
CFT:	Combating the Financing of Terrorism
CNCLT:	National Coordination Committee to Combat International Terrorism
CNSS:	National Social Security Fund
COCAM:	Confederation of Foreign Exchange Dealers of the DRC

COLUB:	Consultative Committee to Combat Money Laundering and the Financing of Terrorism
COMESA:	Common Market for Eastern and Southern Africa
COOCEC:	Central Savings and Credit Cooperative
COOPEC:	Savings and Credit Cooperative
CPMF:	Professional Committee of Financial Couriers
CRF:	Financial Intelligence Unit
CTIF:	Financial Information Processing Unit
DGDA:	Directorate General of Customs and Excise
DGM:	Directorate-General for Migration
DNFBP:	Designated Non-Financial Businesses and Professions
DRC:	Democratic Republic of Congo
DSIF:	Supervisory Authority for Financial Intermediaries
ECCAS:	Economic Community of Central African States
FATF:	Financial Action Task Force
FI:	Financial Institution
FIDEF:	International Federation of French-speaking Chartered Accountants
FIU:	Financial Intelligence Unit
FOLUCCO:	Fund for the Fight against Organised Crime
FSRB:	FATF-Style Regional Body
FT:	Financing of Terrorism
GABAC:	Action Group against Money Laundering in Central Africa
GDP:	Gross Domestic Product
GIABA:	Intergovernmental Action Group against Money Laundering in West Africa
ICC:	International Criminal Court
ICCN:	Congolese Institute for the Conservation of Nature
ICPO-Interpol	International Criminal Police Organization

ICT:	Information and Communication Technology
IGF:	General Inspectorate of Finance
IMF:	International Monetary Fund
INTOSAI:	International Organisation of Supreme Audit Institutions
IO:	Immediate Outcome
IRC:	Institute of Auditors
JPO:	Judicial Police Officer
KfW:	German Development Bank
LC:	Largely Compliant
M:	Minutes
MASAK:	Financial Crimes Investigation Board in Turkey
MER:	Mutual Evaluation Report
MFI:	Microfinance Institution
MINDUH:	Ministry of Urban Development and Housing
ML/FT:	Money Laundering and the Financing of Terrorism
ML:	Money Laundering
NC:	Non-Compliant
NCB-INTERPOL:	Interpol National Central Bureau
NGO:	Non-Governmental Organisation
NPO:	Non-Profit Organisation
NRA:	National Risk Assessment
OCC:	Congolese Office of Control
OECD	Organisation for Economic Co-operation and Development
OHADA:	Organisation for the Harmonisation of Business Law in Africa
ONA:	National Bar Association
ONEC:	National Order of Chartered Accountants
OSCEP:	Observatory for Monitoring Corruption and Professional Ethics
PASMIF:	Microfinance Sector Support Programme
PC:	Partially Compliant
PEP:	Politically Exposed Persons
PNC:	Congolese National Police
PPO:	Public Prosecutor's Office

R:	Recommendation
RCCM:	Trade and Personal Property Credit Register
SA:	Public Limited Company
SADC:	Southern African Development Community
SARL:	Limited Liability Company
SARLU:	Single-Person Limited Liability Company
SIC:	Special Investigation Commission
SIDA:	Swedish International Development Cooperation Agency
SONAL:	National Lottery Company
SONAS:	National Insurance Company
STR:	Suspicious Transaction Report
TMB:	Trust Merchant Bank
TRACFIN:	France's Unit for Intelligence Processing and Action against Illicit Financial Networks
UAGCL:	Uniform Act on General Commercial Law
UBA:	United Bank for Africa
UNDCF:	United Nations Capital Development Fund
UNDP:	United Nations Development Programme
UNESCO:	United Nations Educational, Scientific and Cultural Organization
UNSCR:	United Nations Security Council Resolution
USD:	US Dollar
UTRF:	Financial Intelligence Processing Unit of Morocco
WCO:	World Customs Organization

PREAMBLE

The Action Group against Money Laundering in Central Africa (GABAC) is a Specialised Institution of the Central African Economic and Monetary Community (CEMAC) and an FATF-Style Regional Body (FSRB) that promotes policies to protect the financial system of member states against money laundering and the financing of terrorism and the proliferation of weapons of mass destruction.

States within the jurisdiction of GABAC have formally recognised the FATF standards as the reference standards in the fight against money laundering, the financing of terrorism and the proliferation of weapons of mass destruction.

GABAC was admitted as an FSRB in 2015. Among other things, its mission is to evaluate the anti-money laundering/combating the financing of terrorism (AML/CFT) systems of the states under its jurisdiction in order to assess their compliance with international standards and the effectiveness of the measures taken.

Having successfully conducted the first round of mutual evaluations of its member states, GABAC started its second round with the evaluation of the Democratic Republic of Congo (DRC).

This Report, as well as any data and maps included herein, are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area. It has been prepared on the basis of the FATF 2013 Methodology updated in February 2018 and the GABAC 2nd round procedures manual. It incorporates the new requirements introduced in the 2012 revision of the FATF Recommendations and contains provisions on technical compliance and effectiveness.

This Report was reviewed by Mr **Francesco POSITANO** of the FATF Secretariat.

The Evaluation Report was adopted by the 13th Plenary of the GABAC Technical Commission by videoconference on 16 October 2020.

EXECUTIVE SUMMARY

1. This part of the report provides a summary of AML/CFT measures in place in the Democratic Republic of Congo as at the date of the on-site visit, 13-24 August 2018. It analyses the level of compliance with the 40 FATF Recommendations and the effectiveness of the DRC's AML/CFT system, and makes priority recommendations for strengthening the system.

A-KEY FINDINGS

- The competent authorities in the DRC generally have a poor understanding of the ML/FT risks to which the country is exposed. However, they have adopted Law No. 04/016 of 19 July 2004 to provide a framework to combat money laundering and the financing of terrorism. They have also taken institutional initiatives to strengthen this fight, including the creation of the National Financial Intelligence Unit (CENAREF), the Consultative Committee to Combat Money Laundering and the Financing of Terrorism (COLUB), the National Coordination Committee to Combat International Terrorism (CNCLT), the Fund for the Fight against Organised Crime (FOLUCCO) and the Observatory for Monitoring Corruption and Professional Ethics (OSCEP). However, this legal framework is not in line with the FATF Recommendations, as revised in 2012, and the resources mobilised do not allow the institutional framework to produce satisfactory results.
- The DRC is particularly exposed to ML risks related to the integration into the financial system of the proceeds of corruption; misappropriation of public funds; customs and tax fraud; poaching; trafficking in protected wildlife and forest species; and mineral trafficking. These risks are accentuated by vulnerabilities inherent in the size of the informal sector, the widespread use of cash in financial transactions, the low level of financial inclusion, and the inadequacy of the legislative and regulatory framework governing DNFBPs and NPOs.
- The FT risk is also significant because of the security situation, marked by the activism of armed groups and gangs, the instability of some neighbouring countries in the eastern part of the country and the porous nature of borders.
- The DRC has not yet determined procedures and mechanisms for dealing with the lists established under UN Resolutions 1267 and 1373, making it difficult to implement targeted financial sanctions against listed individuals. Procedures for freezing and confiscating terrorist assets and other property are neither determined nor implemented.
- The DRC has a financial intelligence unit (CENAREF) that processes, analyses

and disseminates reports it receives from regulated entities on suspicions of ML/FT. The number of STRs received by this unit remains very low in view of the demographics and potential for criminality in the country. Twenty (20) reports were referred to the judicial authorities, but only one resulted in a judgment following a re-characterisation of the facts. The Congolese FIU has limited operational capabilities. It does not have a reliable information security system. The protection of information submitted to this organisation is often questioned by some of those subject to regulations, which explains the low number of STRs submitted despite the crime-conducive environment.

- The Congolese AML/CFT system is weakened by the rather limited capacity and moral integrity of investigators and magistrates in the context of legal proceedings on money laundering and the financing of terrorism.
- Weaknesses in the legislative and regulatory framework leave some FIs and DNFBPs outside the scope of the overall AML/CFT preventive measures. With regard to Customer Due Diligence, instructions have been issued by the Central Bank of Congo (BCC) to complement and facilitate the application of the Anti-Money Laundering Act, with a view to the efficient implementation of due diligence requirements. However, these only apply to Credit Institutions (banks, MFIs, COOPEC, savings banks, specialised financial institutions and financial companies), excluding other financial institutions from the scope of application, including the insurance sector, electronic money institutions and Post Office financial services.
- The banking sector in the DRC generally has a basic understanding of ML/FT risks and implements Customer Due Diligence measures and constant monitoring of transactions, albeit unsatisfactorily. However, the microfinance, savings and credit cooperatives, cash exchange, funds and securities transfer, electronic money and insurance sectors have no understanding of the ML/FT risks posed by their customers, products or services. This results in poor implementation of preventive measures by actors in these sectors, some of which nevertheless face high ML/FT risks. Generally speaking, satisfactory implementation of the duty of care is hampered by the lack of secure identification documents in the DRC, which makes it difficult to know who the customer is.
- At the regulatory and supervisory level, the BCC has some understanding of the risks of ML/FT. It has put in place mechanisms for regular prudential supervision, including on-site checks; however, their effectiveness is limited. This supervisory approach is not based on ML/FT risks, since no study to establish sectoral risks has yet been carried out and the sanctions imposed do not relate to the AML/CFT component, even though FIs are weak in this area.

ARCA, which was created recently, does not yet have an appropriate methodology and tools for AML/CFT supervision in the insurance sector. The DNFBP sector lacks designated AML/CFT supervisory authorities, despite the high ML/FT risks it poses in an economy characterised by a strong informal sector and abundant cash flow.

- The DRC has a satisfactory legal framework for mutual legal assistance and extradition. However, the effectiveness of its implementation remains very limited in the area of AML/CFT due to the lack of requests received and requests issued. The cooperation of AML/CFT authorities is relatively active at the level of CENAREF which, although not a member of the Egmont Group, shares information on a reactive basis with foreign counterparts with whom it has signed Memoranda of Understanding. However, it is less visible at the level of the regulatory and supervisory authorities of FIs, customs and police, which nevertheless have the legal and regulatory powers to enter into cooperation agreements giving them the general ability to share information with foreign counterparts in the course of their duties. In addition, Congolese customs is a member of the WCO and the police force is a member of ICPO-Interpol (International Criminal Police Organization). These two international bodies provide platforms for information sharing.

B - RISKS AND GENERAL SITUATION

2. The DRC faces a range of factors that expose it to the criminal activities of ML/FT. The structure of its economy with a strong informal sector, the extensive use of cash due to the low level of financial inclusion, the high dollarization of the economy due to weak operational exchange control, the lack of a reliable identification system and widespread corruption create an environment conducive to crime and money laundering activities. These risks are accentuated by the perpetration of economic and environmental crimes that generate proceeds that may be incorporated into the laundering process, such as misappropriation of public funds; customs and tax fraud; illegal exploitation of natural resources; and wildlife and timber crime.

3. The country is also exposed to the threats of terrorism and its financing due to the presence of armed groups and gangs that can exploit various illicit trafficking activities and its immediate geographical and security environment, including the instability of some neighbouring countries accentuated by the porous nature of its borders.

C - OVERALL LEVEL OF EFFECTIVENESS AND TECHNICAL COMPLIANCE

4. The DRC has put in place an AML/CFT system that is still relatively ineffective, despite the unequivocal commitment of the political authorities to combat these scourges. There are notable shortcomings in the implementation of certain key mechanisms such as national coordination, the definition of a supervision policy emphasising the risk-based approach and the supervision of financial institutions and DNFBPs.

5. With regard to technical compliance, the legal framework developed in 2004 has mostly not been updated to keep pace with developments in international standards, including the 2012 FATF Recommendations.

C1 - National policy and coordination on money laundering and the financing of terrorism (*Chapter 2 - IO.1; R.1, R.2, R.33*)

6. The DRC poses enormous risks of ML/FT. A national risk assessment was conducted in 2013 but the report was not approved, so the identification of risks was not a formal process. Another NRA exercise was underway at the time of the site visit. Nevertheless, some competent authorities understand some of the ML/FT risks to which the country is exposed, particularly those related to corruption affecting all areas of business and public administration, and the illegal exploitation of natural resources used to finance armed groups and gangs.

7. The DRC does not have a comprehensive AML/CFT strategy. However, the country has adopted a sectoral anti-corruption policy and created a strategic body for this purpose: The Observatory for Monitoring Corruption and Professional Ethics (OSCEP). The effectiveness of its action is, nevertheless, limited and does not cover the laundering of the proceeds of corruption.

8. In terms of coordination, the DRC has created the Committee to Combat Money Laundering and the Financing of Terrorism (COLUB), a platform bringing together various competent administrations that can establish a synergy of actions in the context of the development of appropriate national policies to combat money laundering. However, the Committee's lack of resources is a weakness that prevents it from holding meetings and adopting measures to refine a coherent national AML/CFT strategy. The coordination framework in the field of counter-terrorism is provided by the National Coordination Committee to Combat International Terrorism (CNCLT). The Committee meets regularly to share and review intelligence and information on the terrorist threat. However, aspects related to the financing of terrorism do not fall within its remit.

C2 - Legal system and operational issues (*Chapter 3 - IO.6-8; R.3, R.4, R.29-32*)

9. CENAREF is an administrative financial intelligence unit set up by Article 17 of Law No. 04/016 of 19 July 2004 on the fight against money laundering and the financing of terrorism.

10. It analyses and submits to the competent judicial authorities information that may give rise to legal proceedings for money laundering and the financing of terrorism. It is made up of the Board and the Executive Secretariat. Members of the Board work on a part-time basis.

11. For their investigations, the criminal prosecuting authorities have a wide range of measures at their disposal to obtain all relevant information in order to seize assets and identify the perpetrators of offences with a view to bringing them before the courts. However, they do not make optimal use of all the data made available to them.

12. At the operational level, the existence of the Office of the Special Adviser to the Head of State on Good Governance and the Fight against Corruption, Money Laundering and the Financing of Terrorism is a major strategic and high-level response to combat these scourges. Unfortunately, however, most of the cases referred to the judicial authorities have not been prosecuted.

13. Magistrates and judicial police officers focus their actions on the underlying offences, even though they generate profits. There are no concurrent or parallel prosecutions for money laundering, as this offence is still perceived as falling within the exclusive competence of CENAREF, which raises a real need for training.

14. The number of Suspicious Transaction Reports (STRs) from Designated Non-Financial Businesses and Professions (DNFBPs) is absolutely insignificant in view of the vulnerability of sectors such as real estate, natural resource exploitation and foreign exchange flows. Action is still concentrated on credit institutions in a country with very few banks.

15. Under a Memorandum of Understanding signed on 9 September 2010 between CENAREF and the Congolese Banking Association, banks are exempted from making automatic reports to CENAREF regarding Politically Exposed Persons, except in cases of suspicion of ML/FT or express requests from CENAREF, which reduces the use of financial intelligence and is not consistent with the country's risk profile.

16. Cross-border cash movements are subject to seizure and confiscation by customs. There is no synergy of action between border and judicial authorities.

17. There have been no seizures or confiscations under AML/CFT. There is, however, a specialised organisation to manage these assets, FOLUCCO, which is the recipient of confiscated resources and property vested in the state, but the prosecuting authorities do not include this aspect in their investigations.

18. The lack of implementation of legal provisions providing for dissuasive sanctions by the prosecuting authorities substantially weakens the effectiveness of the system. The prosecution of legal persons is adequately provided for by law and only one of them has been subject to sanctions. Convictions are, however, virtually non-existent, which contrasts with the risks identified.

C3 - Investigation and prosecution of the financing of terrorism and proliferation (Chapter 4 - IO. 9-11; R. 5-8)

19. The country's authorities have made a firm commitment to address the terrorist threat resulting from the actions of armed groups and gangs operating in the country by setting up the CNCLT, but remain on the side-lines when it comes to the issue of the financing of terrorism, since no risk assessment in this area has yet been carried out.

20. The DRC has not determined formal procedures and mechanisms for the implementation of UN Resolutions 1267 and 1373. Formal arrangements for the freezing of funds and other assets of targeted terrorists do not yet exist.

21. The DRC has not yet conducted a study to identify NPOs which, because of their nature and activities, are vulnerable to exploitation for the purposes of the financing of terrorism. There are no mechanisms or checks in place for NPOs to prevent terrorist groups from using these entities for criminal purposes in general and for the financing of terrorism in particular.

22. With regard to the financing of proliferation, no regulations exist to give immediate effect to UN financial sanctions.

C4 - Preventive measures (Chapter 5 - IO. 4; R. 9-23)

23. The risk-based approach is not a legal requirement for all categories of those subject to regulations in the management of their customers. As a result, banking sector actors have a fairly limited understanding of the ML/FT risks to which their profession is exposed. There is some categorisation of customers based on risk, but this is not the result of any prior study of the vulnerabilities of proposed products or the threats posed by certain customers. For customers empirically classified as 'high risk', there is little or no special due diligence to effectively mitigate the identified threats and vulnerabilities.

24. Several authorities with whom we met during the mission clearly questioned the effectiveness of the due diligence system put in place at the level of the banks and the BCC. It does not seem to have fully understood its status as an institution subject to regulations under the provisions of Law No. 04/016.

25. Cash exchangers have a very limited understanding of the concept of money laundering and the financing of terrorism, despite all the vulnerabilities of this sector in a heavily cash-dominated economy with widespread dollarization of transactions.

26. Notwithstanding the considerable vulnerabilities inherent in their transactions, actors in the money transfer sector do not fully appreciate the risks to which they are exposed with regard to money laundering and the financing of terrorism.

27. With regard to DNFBPs, understanding of ML/FT risks is still in its infancy, despite the huge volume of cash transactions and the risky nature of the transactions carried out.

C5 - Supervision (*Chapter 6 - IO. 3; R. 26-28, 34-35*)

28. The BCC's understanding of the ML/FT risks to which Congolese financial sector institutions are exposed is very limited in the absence of a sectoral risk assessment. There is no legal requirement for the BCC or other financial institutions to effectively implement a risk-based approach to money laundering and the financing of terrorism.

29. BCC supervision does not focus on aspects of money laundering and the financing of terrorism because of their general scope of prudential supervision. Also, documentary checks are carried out within this prudential supervision framework, with on-site supervision missions taking place once every 3 to 4 years.

30. The Insurance Regulatory and Supervisory Authority (ARCA) is the regulator of the insurance sector. However, it is not yet operational.

31. As far as the supervisory authorities of DNFBPs (lawyers, chartered accountants, casinos, precious metal dealers, real estate agents) are concerned, the AML/CFT issue is not at all a priority in their respective actions, despite the enormous risks posed by certain sectors in an economy characterised by informality and cash flow. At the time of the on-site visit, the AML/CFT supervisory authorities for these various sectors had not yet been designated.

C6 - Transparency of legal persons and legal arrangements (*Chapter 7 - IO. 5; R. 24-25*)

32. The competent authorities' understanding of ML/FT risks from misuse by legal persons is limited and no sectoral risk assessment has been carried out.

33. The DRC's membership of OHADA became effective in 2012. However, the deployment of OHADA's Trade and Personal Property Credit Register (RCCM) software is not yet effective there. The creation of legal persons, although based on the Uniform Acts of OHADA, does not provide an accurate picture of the properties and beneficial owners of the companies.

34. The law does not provide for the creation of legal arrangements, but nor does it prevent legal arrangements from operating in the country.

35. The use of front companies is a potential risk for the use of legal persons for money laundering purposes.

36. Basic information on legal entities is available to the public on the “Guichet Unique” (one-stop shop for business creation) website created by decree No. 14/014 of 8 May 2014. However, this information is not verified or updated.

37. There is no obligation to identify the beneficial owners, either when legal persons are created or when a legal person has a relationship with a financial institution, as the latter is not obliged to identify the beneficial owners. Also, no provision has been made for a sanctions regime.

C7 - International cooperation (Chapter 8 - IO. 2; R. 36-40)

38. Existing law generally allows the DRC to provide appropriate mutual legal assistance, but no requests have yet been received or sought in relation to AML/CFT.

39. The competent authorities (customs, police, Court of Auditors, CENAREF) share information with their foreign counterparts, in the areas of their specific competences, through several channels, including membership of international bodies and the signing of cooperation agreements. Only CENAREF shares information on AML/CFT. However, it is not yet a member of the Egmont Group.

40. The sharing of information on beneficial owners is a major challenge because of the virtual unavailability of this information both at the level of the one-stop shop for business creation and from regulated entities that do not have a legal obligation to identify the beneficial owner within the meaning of the FATF definition.

D - PRIORITY MEASURES

On the basis of these general conclusions, the priority actions recommended to the DRC authorities are as follows:

- i. Adopt a comprehensive ML/FT risk assessment in the DRC to improve understanding of ML/FT threats, vulnerabilities and risks in the country. The NRA should include an assessment of all threats that generate the most profits in the DRC, including embezzlement of public funds, illegal taking of interests, and trafficking in mining, wildlife and forest products. The NRA should be updated regularly to ensure a continuous understanding of the risks and its relevant findings should be disseminated to all state and non-state AML/CFT actors to ensure a consistent understanding of the risks;
- ii. Adopt a comprehensive AML/CFT strategy building on the results of the NRA to establish coordinated and coherent policies by prioritising high-risk sectors and establish sectoral action plans;
- iii. Revise Law No. 04/016 and other organic texts to bring them in line with international AML/CFT norms and standards, in particular regarding preventive measures related to customer identification, submission of STRs and PEPs, and extend the scope of the obligations to all entities covered by the FATF standards;
- iv. Revoke the 2010 protocol signed between CENAREF and the CBA and adopt

- measures to require banks to submit to CENAREF automatic reports related to PEPs;
- v. Improve collaboration at the political level, by strengthening the capacity of COLUB to act as a coordinating organisation, and at the operational level, by establishing formal information-sharing platforms between stakeholders;
 - vi. Develop and conduct awareness and training programmes for those subject to AML/CFT regulations to increase their understanding of risks, strengthen the integration of a risk-based approach in their activities and raise awareness of their respective roles and obligations within the AML/CFT system;
 - vii. Strengthen the capacity of the BCC and other supervisory bodies to conduct sectoral risk assessments and develop an ML/FT risk-based approach to their activities, in particular for documentary and on-site checks;
 - viii. Identify and designate AML/CFT supervisory bodies for the DNFBP sectors and require all relevant parties to integrate the risk-based approach into their AML/CFT arrangements;
 - ix. Strengthen the operational analysis capacity of CENAREF by providing the necessary training for analysts, equipping it with IT resources and reviewing decision-making processes to enable independent and autonomous operational analysis;
 - x. Strengthen the capacity of the judicial and prosecuting authorities in the detection, investigation and suppression of ML/FT activities;
 - xi. Establish a mechanism for collecting information on the beneficial owners of legal persons and legal arrangements;
 - xii. Develop interim guidelines, based on the identification schemes currently in place, to create requirements with which those subject to regulations must comply for the implementation of CDD measures and other reports;
 - xiii. Strengthen financial inclusion efforts by developing and implementing, with the support of the AML/CFT authorities, the financial inclusion roadmap, taking the necessary steps to facilitate customer identification and identity verification, e.g. through the introduction of uniform identity documents in the DRC and/or based on identity digitalisation, providing for simplified due diligence measures and encouraging their implementation where appropriate;
 - xiv. Take measures to require the representative offices of international money transfer companies to constitute themselves as legally responsible entities in the DRC, subject to formal approval prior to any activity, and to establish a supervisory authority responsible for identifying unlicensed money transfer service providers and developing and implementing a proportionate, dissuasive

- and effective sanctions regime for unlicensed money transfer service providers;
- xv. Establish a special department within the Ministry of Justice responsible for international cooperation to provide a link between the Public Prosecutor's Office at the Court of Cassation, the Ministry of Justice, the Ministry of Foreign Affairs and foreign authorities receiving or issuing requests for cooperation;
 - xvi. Integrate the FT aspect into the mandate of the CNCLT and the counter-terrorism strategy and train operational officers in FT-related financial investigations;
 - xvii. Establish formal mechanisms for the implementation of UNSCRs 1267 and 1373 as well as UNSCRs implementing targeted financial sanctions related to the financing of WMD proliferation and produce statistics on the freezing of funds pursuant to these Resolutions;
 - xviii. Establish a centralised system for the production of statistics on investigations, convictions, freezing and confiscations in relation to ML/FT.

E - EFFECTIVENESS AND TECHNICAL COMPLIANCE RATINGS

TABLE ON THE LEVEL OF EFFECTIVENESS

IO.1 - Risk, policy and coordination	IO.2 - International cooperation	IO.3 - Supervision	IO.4 - Preventive measures	IO.5 - Legal persons and legal arrangements	IO.6 - Financial intelligence
Low	Low	Low	Low	Low	Low

IO.7 - Money laundering investigations and prosecutions	IO.8 - Confiscation	IO.9 - Investigation and prosecution of the financing of terrorism	IO.10 - Preventive measures and financial sanctions against the financing of terrorism	IO.11 - Financial sanctions for the financing of proliferation
Low	Low	Low	Low	Low

TABLE ON COMPLIANCE WITH FATF RECOMMENDATIONS¹

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

¹ C = Compliant; LC = Largely Compliant; PC = Partially Compliant; and NC = Non-Compliant

MUTUAL EVALUATION REPORT OF THE DEMOCRATIC REPUBLIC OF CONGO

PREAMBLE

This Report summarises the AML/CFT measures in place in the Democratic Republic of Congo as at the date of the on-site visit, 13-24 August 2018. It analyses the level of compliance with the 40 FATF Recommendations and the level of effectiveness of the DRC's AML/CFT system, and makes recommendations for improving the AML/CFT system in the DRC.

This evaluation was based on the FATF standards from the 2012 review and was prepared on the basis of the FATF 2013 methodology and in accordance with the evaluation procedures manual for the 2nd round of GABAC. The evaluation was based on information provided by the DRC authorities before and during the on-site visit from 13 to 24 August 2018.

The evaluation was conducted by an evaluation team made up of: **Didier Maurice MINLEND NOUMA** (Cameroon); **Salomon NDJE** (Cameroon); **Aigongue DJINGUEBAYE** (Chad); **Anges-Maier LOCKO** (Gabon); **Selley-Wann THEYOKO-BATA** (CAR); **Boniface YOMBO** (CAR); **Arsène SENDE** (CAR); **Magencio Nguema OWONO BINDANG** (Equatorial Guinea); **Frank-Régis TOUNDA OUAMBA** (Congo); **Max Henri MONKA** (Congo); and **Saturnin BITSY** (GABAC Permanent Secretariat).

The report was reviewed by Mr. **Francesco POSITANO** of the FATF Secretariat.

The DRC's AML/CFT system was previously evaluated by the World Bank in 2014. However, the Report produced by the World Bank evaluation mission was not approved by the DRC authorities and therefore not published.

CHAPTER 1: ML/FT RISK AND CONTEXT

1. A country located in Central Africa with a surface area of 2,345,409 km² and a population of over 70 million inhabitants, the DRC borders nine (9) countries including CAR and Sudan from the south to the north; Uganda, Rwanda, Burundi and Tanzania to the east; Zambia to the south; Angola to the southwest; and the Republic of Congo to the west. Some of these border countries are in conflict or post-conflict situations. The capital of the DRC is Kinshasa. It is a member state of the Economic Community of Central African States (ECCAS) and the Economic Community of the Great Lakes Countries (CEPGL). The DRC is party to the Treaty of Port Louis establishing the Organisation for the Harmonisation of Business Law in Africa (OHADA) and the Rome Statute of the ICC. It is an associate member of the Action Group against Money Laundering in Central Africa (GABAC).
2. At the political level, the constitution of 18 February 2006 makes the DRC an independent, sovereign, united and indivisible, social, democratic and secular state governed by the rule of law. The DRC is made up of the city of Kinshasa and 25 provinces with legal personality. The multiparty system, which has been in place since April 1990, remains in force. Power is exercised by various bodies: the President of the Republic, Parliament, the Government, and the Courts and Tribunals.
3. The President of the Republic is elected by direct universal suffrage for a term of five years, renewable once. The Government is accountable to the National Assembly. Parliament is made up of the National Assembly and the Senate. Members of Parliament are elected for a renewable term of five (5) years. They have immunity and may be prosecuted only with the authorisation of the bureau of the chamber to which they belong.
4. The judiciary is independent of the executive and legislative branches. Court decisions are issued in the name of the President of the Republic. There is a dualist judicial system, comprising both judicial and administrative courts. In addition to these so-called ordinary law courts, there are also military courts. The Constitutional Court has jurisdiction to review the constitutionality of laws and acts that have the force of law.
5. The equality of all Congolese before the law and the administration is enshrined in the Constitution and subsequent texts.
6. The country is experiencing sporadic tensions in the east with the recurrence of armed groups. A political crisis arose in 2016, following the decision of the

Constitutional Court to postpone the date of the elections and to keep the incumbent president in power until the next elections².

7. With a gross domestic product (GDP) estimated at USD 24.2 billion in 2017³ and a GDP per capita of USD 385 in 2015, the economy of the DRC is based mainly on mining and forestry resources. The percentage of people with bank accounts is very low and the informal sector plays a predominant role in economic activities. Transactions are mainly cash-based due to the low level of financial inclusion, with very high dollarization of the economy.

8. On the security front, some armed groups occupy parts of North and South Kivu, where they illegally exploit natural resources.

1.1 - ML/FT risks and preliminary identification of higher risk areas

9. This section gives a summary of the evaluation team's understanding of the risks of money laundering and the financing of terrorism in the DRC. This understanding is the result of information gathered from a variety of sources, including the document review, interviews and findings during the site visit.

ML/FT risks

10. The DRC faces various risk factors in terms of ML/FT, due to the structure of its economy dominated by the informal sector and the widespread use of cash, which acts as a constraint on the traceability of transactions that may fuel the informal economy.

11. Endemic corruption in the DRC generates huge illicit profits that increase the risk of money laundering in the country. The value of losses to the country from fraud and corruption is estimated by the government at USD 9 billion a year, almost double the national budget. The DRC's exposure to the risk of money laundering also results from the recurrence of other underlying offences, including misappropriation of public funds; illegal taking of interests; trafficking in mining products; poaching; and trafficking in wildlife and timber products.

12. The threat of the financing of terrorism in the DRC is linked, on the one hand, to the security situation marked by the activism of gangs and armed groups with hidden sources of financing and, on the other hand, to the geographical environment of this vast country sharing nine, albeit porous, borders with certain unstable countries to the east.

² This situation changed significantly after the organisation of the elections and the choice of the new President of the Republic

³ Source: BCC

13. These risks are subtle according to the level of vulnerability of the sector under consideration. In this respect, the most exposed sectors are mining, real estate, cash exchange and money transfer.

14. The mining sector lacks transparency and is a vulnerability and risk factor for ML/FT. Indeed, the supervision mechanisms of the mining sector, although provided for in national texts, not only do not take into account the problem of money laundering, but are also not implemented.

15. The real estate sector is flourishing in the DRC, although the legality of the origin of the funds behind real estate acquisitions is not always verified, which means that the real estate sector remains very vulnerable to ML. Nevertheless, in terms of public revenues, formalities for the acquisition of real estate are put in place, involving real estate agents and lawyers, subject to prudential due diligence related to the prevention and detection of ML. However, these professions have not yet understood the full extent of their AML/CFT obligations.

16. The pursuit of activities related to cash exchange and money transfer is subject to approval by the competent authority. However, it should be noted that ‘exchange points’ are flourishing, where foreign exchange transactions are not subject either to the presentation of an identity document or to a statement of origin of the funds. Moreover, the lack of a single, secure identity document does not facilitate the implementation of prudential due diligence in these areas. All of these aspects constitute vulnerabilities to ML/FT.

Country risk assessment and identification of higher risk areas.

17. The DRC conducted a national risk assessment in 2013, under the overall coordination of CENAREF. This assessment was carried out using a qualitative methodological approach with quantitative elements, based on the World Bank's national risk assessment tool. Only the report produced at the end of this assessment, which was not approved by the authorities, notes major shortcomings in terms of assessing the scale of the threats identified and the importance of the vulnerabilities identified, due to a lack of statistics making it possible to estimate the real impacts of the problems identified and the measures to be taken.

18. Nevertheless, this exercise made it possible to identify certain underlying offences committed in the DRC that generate illicit gains that can be laundered: drug trafficking; counterfeiting; smuggling; tax evasion; customs fraud; people trafficking; arms trafficking; trafficking in stolen goods; corruption; extortion; and counterfeit currency. However, in the opinion of the assessors, major offences likely to be significant vectors of money laundering in the DRC were not reported. In this category, we can cite misappropriation of public funds; illegal taking of interests; trafficking in mining products; and trafficking in wildlife and timber products.

19. During the on-site visit, the mission was able to observe that the Congolese authorities understand certain risks and vulnerabilities such as those related to corruption, real estate transactions, the informal nature of the economy and weak financial inclusion.

20. Based on the analysis of the information provided by the DRC authorities on both technical compliance and effectiveness, the assessment team identified the following issues of concern, which were discussed in detail during the on-site visit, taking into account their impact on the Congolese AML/CFT system:

- **Identification of risks and application of the RBA:** a technically limited NRA was conducted in 2013, without involving all stakeholders and whose report was not approved, nor the results disseminated. Another NRA is underway as the country faces real threats from ML/FT. The assessors focused on other processes or mechanisms used by the competent authorities to identify the country's ML/FT risks. The assessors also assessed the level of understanding of the risks by the authorities as well as the capacity of the measures adopted or actions taken to mitigate them.
- **National coordination:** The DRC has created the Consultative Committee to Combat Money Laundering and the Financing of Terrorism (COLUB), an AML/CFT policy coordination organisation, as well as a National Coordination Committee to Combat International Terrorism (CNCLT). The assessors were concerned about the effectiveness of the work of these Committees, the quantitative and qualitative level of resources allocated to them and the scope of their missions.
- **Customer Due Diligence and supervision of financial institutions:** the focus of the assessment team's interest was on the implementation of prudential due diligence by FIs, particularly those relating to the business relationship with PEPs, correspondent banking and cooperation with high-risk countries. The issues of promoting understanding of ML/FT risks, monitoring and the application of sanctions by FI regulatory and supervisory authorities were also of concern to the assessors.
- **Supervision and regulation of DNFBPs:** given the significant ML/FT risks observed in the real estate and mining sectors, the assessors' attention was focused on assessing the level of understanding of risks by actors in the DNFBP sector in general, and those in the above-mentioned sectors identified as the most vulnerable in particular. Emphasis was also placed on knowledge of the legal framework of the DNFBP sector and the effectiveness of supervision.
- **Transparency of legal persons:** emphasis was placed on the procedure for the creation of legal persons, the collection of information on beneficial owners, the availability of such information and its accessibility by the competent authorities.
- **Financial intelligence:** in view of the lack of a completed file submitted by CENAREF to the judicial authorities, the assessment team examined issues

related to composition and procedures for processing STRs within this FIU, including the availability and quality of human resources and existing guarantees of confidentiality.

- **Underlying offence category:** given the extent of the criminal environment in the DRC and the recurrence of certain environmental crimes and trafficking of all kinds, the assessors questioned the level of compliance of the existing law enforcement legal framework with the FATF list of designated offence categories.
- **Investigation and prosecution:** given the extent of environmental crime and corruption identified as prevalent in the country, the assessors focused on how these and other recurring underlying offences are investigated and prosecuted, in particular how ML investigations are prioritised, and the confiscation of proceeds generated by underlying crimes.
- **Financing of terrorism and implementation of targeted financial sanctions:** The assessors assessed the extent to which FT risks are understood and mitigated and the capacity of the institutional and legal measures taken to mitigate them. In this area, the assessment team also looked at the legal framework of NPOs, their level of awareness of CFT, and the capacity of their monitoring and supervisory authorities. Finally, attention was paid to procedures and mechanisms for freezing and confiscating terrorist assets and other property pursuant to UNSCRs 1267 and 1373.
- **Mutual legal assistance and extradition:** despite a conducive legal framework, the level of international cooperation in the judicial field is limited in AML/CFT matters. The assessment team focused on the statistics and procedures for processing requests received and issued to identify potential obstacles to the provision of timely and satisfactory cooperation.
- **Other forms of cooperation:** the assessors discussed the conditions required to enable the competent authorities (CENAREF, customs, police, regulatory and supervisory authorities of regulated entities) to share information and intelligence with their foreign counterparts, the number of agreements entered into and concrete examples of cooperation provided.

1.2- Elements of specific importance (materiality)

21. Economically, DRC has two-thirds of Africa's tropical forest and 135 million ha of forest with a wide variety of ecosystems and an important ecological heritage, including protected species of fauna and flora. There are eight national parks and 63 reserves, including five UNESCO World Heritage sites. The country has abundant mining resources (copper, cobalt, diamonds, gold, tin, uranium, bauxite, etc.) as well as significant hydroelectric potential. The fall in the price of raw materials, particularly copper, has caused an economic crisis in the DRC, which has worsened with the devaluation of the Congolese Franc, resulting in inflation that reached a rate of 9.72% in 2016.

22. The country's GDP is estimated at USD 24.2 billion in 2017⁴. In 2015, GDP per capita was USD 385. The DRC is ranked 176th out of 189 countries on the Human Development Index (source: http://hdr.undp.org/sites/default/files/2018_human_development_statistical_update_fr.pdf), with 70% of the population living below the poverty line.

23. In financial terms, the percentage of people with bank accounts is very low. The informal sector plays an important role. Financial inclusion is quite low, resulting in the widespread use of cash in transactions.

24. The main feature of the DRC's financial system is the dollarization of the economy. According to officials of the Central Bank of Congo, about 90% of the assets held by the banking system are denominated in dollars. This dollarization is exacerbated by the promulgation of Decree-Law No. 004/2001 of 31 January 2001 on the system for transactions in national and foreign currencies in the DRC, which enshrines the free settlement of transactions in foreign currencies.

25. One of the major challenges in the restructuring of the financial system is reducing underground financial activities by improving and simplifying the conditions for accessing basic financial products. This simplification should also be accompanied by a strengthening of the geographical coverage of financial services.

26. As at 31 December 2017, the banking system in the DRC had 17 banks in operation. As at that date, the total balance sheet of the banking system stood at USD 5,522.86 million (or 22.8% of GDP⁵) against USD 4,837.93 million in 2016. The rate of increase in the total balance sheet of the banking system between 2012 and 2017 was 52.12%, reflecting the outcome of the various reforms undertaken in the sector and the arrival of new actors.

27. Despite all this, the banking sector remains very embryonic in terms of the real potential for development of the DRC's economy, with a very low percentage of around 0.5% of the population having bank accounts, a lack of resources in the long term and the uncontrolled emergence of non-bank financial intermediaries. The products and services offered are simple. They are limited to the management of current accounts, savings accounts and time deposit accounts, with the option to view account balances remotely. Electronic banking products are new and very limited.

28. The performance of the banking sector has been affected by the drop in economic activity since the end of 2015. Although customer deposits grew by 10.63% between 2016 and 2017, gross loans declined by 33.56% over the same period to USD 2,213.7 million at the end of 2017. Uncertainty related to the persistence of the political and security crisis caused a 34.82% decline in long-term loans at the end of 2017

⁴ Source: BCC

⁵ DRC GDP in 2017: USD 24,185.7 million (source: BCC)

compared to 2016. The banks' portfolio continued to deteriorate and net default loans stood at USD 241.54 million at the end of 2017, an increase of 13.15% compared to 2016.

29. The volume of customer deposits increased from USD 3,367.73 million in 2016 to USD 3,725.27 million in 2017 (or 15.4% of GDP). In 2017, 89.84% of these deposits, or USD 3,346.61 million, were denominated in foreign currencies. 78.79% of registered deposits are sight deposits, which explains the banks' difficulty in effectively financing the economy.

30. The banking sector remains fragile, despite apparently high solvency ratios⁶. Out of 17 banks actually in operation, eight have excess liquidity and nine are not very viable given the fragility of their balance sheets. The level of financial intermediation is low: consumer credit is mainly informal and formal bank credit to the private sector accounts for less than 5% of GDP. Service to individuals is generally poorly developed. Banks find it difficult to transform customer deposits into term credit, since the bulk of bank deposits are sight deposits. In addition, the commercial credit portfolio of the banking system in the DRC is mainly allocated to the mining sector

31. In December 2017, the percentage of the population with a bank account was 5.59% according to BCC data (compared to 4.72% a year earlier), with 3.911 million bank accounts for an estimated population at that time of 70 million⁷ inhabitants.

32. The insurance sector in the DRC, with a penetration rate of 0.5% for a turnover of about USD 75 million in 2017 and a market size estimated at about USD 500 million per year, is still embryonic. The insurance market is dominated by a single company, SONAS, which has a monopoly in the field.

33. As at 31 December 2017, MFIs in the DRC had 813,230 accounts, with a balance sheet total of USD 140.5 million. The volume of customer deposits as at that date was USD 71.2 million while outstanding loans granted amounted to USD 88.7 million. MFI customers come from all social classes, which increases the sector's vulnerability in terms of ML/FT. MFI managers have general knowledge of ML/FT threats. However, they do not have a real understanding of the risks associated with their activities, and there is little awareness of the vulnerabilities their sector represents in terms of ML/FT.

34. The volume of deposits of members of savings and credit cooperatives (COOPEC) as at 31 December 2017 was USD 94.34 million, while outstanding loans granted to members as at that date amounted to USD 32.01 million. Exclusively open to members, COOPECs offer savings, credit and money transfer services. Understanding of the risks of money laundering and the financing of terrorism by actors in this sector

⁶ IMF, 2014

⁷ That was the size of the population of the DRC in 2001

is incomplete, and the internal mechanisms for preventing and detecting suspicious transactions are still in their infancy. However, ML/FT risks are not negligible in this category of financial sector actors; indeed, there are active members in all strata of society and some of their contributions are very substantial, without there being an operational mechanism for verifying the origin of the funds. This situation may encourage the creation of niches for hiding funds of illicit origin.

35. With regard to cash exchange activities, the BCC estimates the volume of currency sales transactions carried out by accredited actors in this sector in 2017 at around USD 110 million. At the same time, COCAM, the confederation of accredited bureaux de change and foreign exchange dealers, estimates the volume of currency sales transactions at more than USD 2.5 billion⁸ in 2017 by actors, the majority of whom operate in the informal sector. The importance of the informal sector is accentuated by the more than weak supply of traditional financial services in most provinces of the DRC; thus, the use of informal operators in these regions is almost institutionalised. The cash foreign exchange sector poses a fairly considerable risk of ML/FT in a situation marked by the widespread dollarization of transactions, a considerable deficit in the banking presence in most of the country, the presence of armed gangs and illegal exploiters of precious metals and stones, and the free movement of people across borders with countries in which armed groups are active.

36. Money and value transfer companies occupy an important place in the financial sphere of the DRC. As at 31 December 2017, the volume of international transfers received by actors in this sector amounted to USD 1.097 billion (of which approximately 86% were received through the representative offices of large unaccredited international groups). At the same time, shipments abroad amounted to USD 209.149 million⁹. Due to the large volume of capital raised and the lack of operational supervision, with the presence of unaccredited actors, this sector poses very high risks of money laundering and the financing of terrorism, which are not always understood by the actors concerned.

37. Although new in the financial sphere of the DRC, the issuance of electronic money deserves special attention because of its very high penetration potential. It is a driver of financial inclusion with plenty of scope for progress, hence the urgent need for effective supervision. Indeed, the value of transactions recorded in this sector in August 2018 was USD 234.635 million compared to USD 148.1 million in December 2016 and USD 54.8 million in December 2015.

38. At the DNFBP level, lawyers and real estate agents play a central role in real estate transactions. Although data on the actual value of these transactions was not provided to the mission team, the fact remains that these are very high-risk areas for

⁸ The main currencies are the US dollar followed by the euro

⁹ Source: BCC

ML. These risks are exacerbated by the lack of awareness by actors in these sectors of due diligence and their AML obligations.

1.3 - Structural elements

39. The DRC is experiencing a period of relative stability while continuing to recover from a series of conflicts that erupted in the 1990s with a significant and ongoing impact on economic and social stability. There are still uprisings by armed groups causing significant violence, contributing to socio-economic and political instability and making access to certain parts of the country difficult for the Congolese authorities. In addition, as at July 2018, UNHCR counted more than 535,726 refugees in DRC from neighbouring countries, mostly living in rural areas, as well as 782,363 refugees from DRC who had fled to other countries in the region. The risk of further displacement remains high given the political and ethnic conflicts affecting the region (source: <https://data2.unhcr.org/en/documents/download/66130>). The United Nations Stabilisation Mission in the DRC (MONUSCO) has operated in the country since 1999.

40. According to the World Bank, 77% of the population lived in extreme poverty, with less than \$1.9 a day in 2012. The latest forecasts estimate the rate of extreme poverty at around 73% in 2018, placing the DRC among the sub-Saharan African countries with the highest poverty (source: <https://www.banquemondiale.org/fr/country/drc/overview>). Extreme poverty is concentrated in the north-western and Kasai regions.

41. The rule of law, although enshrined in the Constitution and subsequent texts, is a relative reality. In fact, despite the establishment of a National Committee to Combat Impunity, the equality of all citizens before the law and government and the independence of the judiciary formally enshrined in the country's Constitution, the actions of magistrates are often thwarted by the objective and subjective privileges enjoyed by some litigants. The limited capacity and moral integrity of investigators and magistrates in the context of legal proceedings are factors that weaken the Congolese AML/CFT system.

42. The Supreme Council of the Judiciary guarantees the independence of the judiciary and exercises disciplinary power within this profession. The irregularity of meetings held by this body, however, makes it impossible to punish in a timely manner members of the judiciary guilty of failures in the exercise of justice. No statistical data on sanctions imposed by this body on magistrates was produced in the course of the mission, despite the information received on the dismissal of a significant number of magistrates during the on-site visit.

1.4 Other contextual elements

43. The DRC has significant natural and mineral resource potential whose illegal exploitation, encouraged by the persistence of an unstable security situation in North and South Kivu, considerably affects the national economy. Corruption is an endemic phenomenon that affects all business sectors.

44. Despite this picture, the DRC has made the fight against corruption and misappropriation of public funds a priority by setting up an Observatory for Monitoring Corruption and Professional Ethics (OSCEP) and by appointing a Special Adviser to the Head of State on Good Governance and the Fight against Corruption, Money Laundering and the Financing of Terrorism.

45. The DRC joined the Action Group against Money Laundering in Central Africa on 5, September 2017, which is another de facto indication of the country's commitment to improving its governance.

AML/CFT strategy

46. The DRC authorities have not developed a comprehensive formal AML/CFT strategy. However, with the adoption in July 2004 of Law No. 04/016, which establishes a system for the prevention, detection and suppression of ML/FT, the country has joined the international AML/CFT dynamic by establishing an institutional framework inspired by international standards. This national AML/CFT policy was reaffirmed with the admission of the DRC as an associate member of GABAC and the commencement of its National Risk Assessment process in June 2018.

47. A sectoral anti-corruption strategy has been drawn up and has led to the adoption of an anti-corruption action plan, the implementation of which has not yet succeeded in eradicating or mitigating this widespread phenomenon in the DRC.

48. CNCLT is currently developing the national strategy to combat terrorism and violent extremism in the DRC. In order to be complete, it must include the specific aspect of the financing of terrorism.

Institutional framework

49. The main state administrations and authorities responsible for the formulation and implementation of AML/CFT policies in the DRC are as follows:

- The Ministry of Finance is mainly in charge of AML/CFT at the national level as the supervisory authority of CENAREF;
- The Ministry of Justice, which prepares criminal laws and is responsible for developing criminal policy on AML/CFT with the Government and the Prosecutor General of the Court of Cassation;

- The Ministry of Foreign Affairs, which deals with communications on mutual legal assistance and extradition;
- COLUB, responsible for the elaboration of national AML/CFT strategies and policies;
- CNCLT, the institution in charge of drawing up policy for combating and suppressing international terrorism;
- CENAREF, at the heart of the AML/CFT mechanism in the DRC, is responsible for receiving and analysing the STRs it receives from those subject to regulations and other notices and sending the results of its analyses to the public prosecutor's office;
- The BCC is responsible for the regulation and supervision of credit institutions;
- The investigating and prosecuting authorities include the Judicial Police Officers of the National Police and the Public Prosecutor's Office with general jurisdiction over all crimes, as well as specialised law enforcement bodies, namely: The Special Adviser to the Head of State on Good Governance and the Fight against Corruption, Money Laundering and the Financing of Terrorism; the General Inspectorate of Finance; CENAREF; the Department of Customs and Excise; the Congolese Institute for the Conservation of Nature; The Observatory for Monitoring Corruption and Professional Ethics; and the Department of Migration.

Financial Institutions and Designated Non-Financial Businesses and Professions

Financial Institutions

50. At the time of the assessment team's visit in August 2018, the financial sector in the DRC included 17 commercial banks; 19 microfinance institutions (MFIs); 79 savings and credit cooperatives (COOPECs); 78 financial courier companies (42 of which carry out international transactions); 32 accredited bureaux de change and individual foreign exchange dealers; four electronic money institutions; one insurance company; one postal savings bank; five specialised financial institutions; and a National Social Security Institute (INSS). The securities market sector is still non-existent in the DRC.

Banks

51. The banking sector is regulated in the DRC by Law No. 003/2002 of 2 February 2002 on the activity and supervision of credit institutions. Among financial institutions, the banking sector is the largest and best structured in the DRC. This sector accounted for 90% of the assets of the DRC's financial system as at August 2018. Of the 17 commercial banks in the DRC, fourteen (14) are subsidiaries or

branches of foreign banks, two (2) are privately-owned domestic banks and one (1) is a privately-owned foreign bank.

52. At the time of the mission, the following seventeen (17) banks were in operation in the DRC: Rawbank; Sofibanque; Bank of Africa (BOA); Commercial Bank of Congo (BCDC); Advans Banque; FBN Bank; Equity Bank; Afriland First Bank; United Bank for Africa (UBA); Standard Bank; Ecobank; Trust Merchant Bank (TMB); Access Bank RDC; BGFI Bank RDC SA; International Bank for Africa in Congo (BIAC); Citi Group; and Byblos Bank. In 2016, 49.5% of the sector's total assets were held by three (3) banks, which housed 50.46% of the total volume of customer deposits.

53. One of the main characteristics of the banking sector in the DRC is its poor coverage of the country. Almost all banks are located in large cities and/or major mining centres. There are a multitude of obstacles to the establishment of banks in the provinces, including a deficit in the supply of electricity, which requires high costs in terms of equipment for electricity substitutes.

Insurance

54. One of the major developments in the reform of the financial system undertaken by the DRC authorities is the adoption and promulgation of Law No. 15/005 of 17 March 2015 on the Insurance Code. This law repeals the provisions of Decree-Law No. 240 of 2 July 1967, which had created a monopoly situation in the insurance and reinsurance market in the DRC by making the National Insurance Company (SONAS) the sole operator in the sector. This Insurance Code enshrines the life and non-life branches, which cannot be combined within the same legal entity (Art. 509). However, at the time of the mission in August 2018, SONAS remained the only insurance company operating in the DRC, although it was not yet accredited by ARCA, the regulatory authority.

55. In accordance with the previous provisions of Decree-Law No. 240, SONAS was responsible for accrediting its brokers. These provisions were amended by Law No. 15/005, recognising ARCA's exclusive prerogative of accreditation for all actors in the sector. At the time of the mission, several active brokers had already submitted their applications for accreditation to the regulatory authority.

Microfinance

56. Given the low national coverage of banks, the microfinance sector, governed by Law No. 11/020 of 15 September 2011, is a good alternative to the development of financial inclusion, making it possible to open financial services to populations living outside the three major urban centres of Kinshasa, Lubumbashi and Goma. It is within this framework that a Microfinance Sector Support Programme (PASMIF) was set up in 2006 with the support of the United Nations Development Programme (UNDP) and the United Nations Capital Development Fund (UNDCF), in partnership with the

Swedish International Development Cooperation Agency (SIDA), the German Development Bank (KfW), the World Bank and Cooperation Belge. PASMIF aims to improve financial inclusion, with the objective of promoting access to viable and sustainable microfinance services to a majority of poor or low-income households and micro-entrepreneurs throughout the DRC, thanks to viable and integrated MFIs.

57. At the time of the mission in August 2018, there were nineteen (19) authorised microfinance sector institutions in operation, grouped under the National Association of Microfinance Institutions (ANIMF). Two were liquidated by the BCC in January 2018 (i-Finance) and April 2018 (MFI SOFIGL).

Savings and credit cooperatives (COOPEC)

58. These are, within the meaning of Law No. 002/2002, ‘groups of persons with legal personality, who mainly pursue a corporate purpose through services rendered to their members’. They are classified in three levels: At the basic level, there are primary COOPECs; then there are Central Savings and Credit Cooperatives (COOCECs) that group together at least seven primary COOPECs; and finally, there are COOCEC Federations that group together at least two COOCECs.

59. In August 2018, the DRC had eighty (80) COOPECs and two (2) COOCECs, grouped together under the Professional Association of Savings and Credit Cooperatives (APROCEC).

Cash exchangers

60. The activities of bureaux de change are governed by the provisions of BCC Instruction No. 007 of 13 July 2006. At the time of the mission, only 32 BCC-accredited bureaux de change and cash exchangers were in operation, mainly based in Kinshasa. This does not reflect the real volume of activity in this sector, which is marked by the widespread presence of informal, unaccredited actors¹⁰. According to the conclusions of discussions with actors in the sector, in particular members of the COCAM Board¹¹, there are more than 80,000 individuals and organisations working in the informal sector.

Money and value transfer company

61. Financial courier activities are governed by Administrative Instruction No. 006 of 13 July 2006. As at 31 December, 2017, seventy-one (71) financial courier establishments were accredited by the BCC. In addition to these establishments formally accredited by the BCC, there are representative offices of companies of large international groups, not formally established in the DRC, operating on a contractual basis with banks for the provision of rapid money transfer services. Since they are not accredited by the BCC, these companies, which account for more than half of the

¹⁰ cf. BCC Report 2016

¹¹¹¹ COCAM: Confederation of Foreign Exchange Dealers of the DRC

outstanding amount of rapid money transfers abroad, are not really subject to any supervision, especially with regard to AML/CFT due diligence. The contracting banks themselves exercise only superficial supervision of these transactions, as they do not generally have direct and centralised access to the data recorded by their partners.

Electronic money institutions

62. This sector is governed by Instruction No. 24 of 11 November 2011. As at 31 December 2017, four electronic money institutions, specifically geared towards mobile money, were already accredited in the DRC.

Postal bank

63. The Savings Bank of Congo (CADECO) is a public institution that is not subject to the accreditation or supervision of the BCC. As in most underbanked economies, CADECO is a tool for collecting savings and granting loans to the most disadvantaged sections of the population. No special AML/CFT arrangements are in place within this institution. However, in view of the type of customers and the products offered, the risks of money laundering and the financing of terrorism through this institution appear to be fairly low.

Financial market

64. At the time of the mission, the financial system of the DRC does not really have a financial market or operational financial market actors that could be used to raise capital through public offerings.

Designated Non-Financial Businesses and Professions (DNFBPs)

Lawyers

65. The legal profession in the DRC is governed by Decree-Law No. 79-028 of 28 September 1979 on the organisation of the Bar, the body of judicial defenders and the body of government officials. The legal profession is comprised of the National Bar Association and the regional Bars. The National Bar Association manages the accreditation process for lawyers in the DRC. At the time of the mission, there were 15,926 lawyers registered at the Bar. The National Council of the Order and provincial Councils of the Order ensure strict observance of the rules of the profession and the duties of lawyers. In the DRC, lawyers are involved in the incorporation of companies, in particular in the drafting of their incorporation documents, and in real estate transactions. It became clear during interviews with actors in this sector that the concept of money laundering is little known to them. The direct corollary is the failure to implement most of the AML/CFT due diligence requirements, in a context where the majority of transactions, especially real estate transactions, are settled in cash, outside the banking sector. This situation makes this profession one of the most risky in terms of ML in the DRC, and these risks are not identified by the main actors involved.

Notaries

66. In the DRC, notaries are civil servants, reporting to the Ministry of Justice. As such, this profession does not have customers within the meaning of the FATF. They are responsible for the legalisation and authentication of documents.

Accountants

67. The organisation of the profession of chartered accountant is recent in the DRC, through the adoption of law No. 15/002 of 12 February 2015 on the organisation and operation of the National Order of Chartered Accountants (ONEC). The practice of the profession of chartered accountant in the DRC is subject to the prior authorisation of ONEC. In August 2018, 465 individual chartered accountants and 36 firms were members of ONEC.

68. The only AML/CFT action taken is the organisation of a workshop in September 2017 by the International Federation of French-speaking Chartered Accountants (FIDEF) on the disclosure of Law 04/016.

Real estate agents

69. The profession of real estate agent is governed in the DRC by Law No. 15/025 of 31 December 2015 on non-professional leases and Ministerial Order No. 015/2015 of 10 August 2015 on the organisation of the functions of real estate agent and real estate broker. Real estate agents in the DRC are grouped within the Association of Real Estate Agencies (ASSIMO), founded in 1992. It was ASSIMO that accredited professionals in this sector before the adoption of the above-mentioned law, which established the Ministry of Urban Development and Housing (MINDUH) as the sole authority of accreditation and supervision of real estate intermediation activities. At the time of the mission, there were approximately 5,000 real estate agents and brokers, of whom only 216 were duly accredited by MINDUH. Within the meaning of the law on non-professional leases, agents, brokers and other real estate intermediaries are at the centre of real estate transactions in the DRC. To this end, they are involved in the sale, rental, advice, management (co-ownership) and valuation of real estate. They can act within the framework of a brokerage contract (putting the parties in contact and arranging the transaction) or a commission agent contract (acting on behalf of third parties).

Casinos

70. Gambling activities are governed in the DRC by Ministerial Order No. 29 of 15 December 2013. As at August 2018, five (5) licensed casinos were in operation, including three in Kinshasa and two in Lubumbashi. In addition to these formally established businesses, there are a number of small informal gambling establishments. Discussions with the competent authorities and actors have shown that the casino

sector is still in its infancy. Large bets are not recorded, as the maximum bet is usually less than USD 1,000.

Dealers in precious metals and stones

71. The Mining Code regulates the activities of this sector in the DRC. This text sets out the conditions for the allocation of research mining rights and mining exploitation rights to companies, as well as the terms and conditions for artisanal exploitation and the conditions for exercising the profession of precious metals dealer. The local sale and export of artisanal mining mineral substances is carried out through accredited agents. Authorisations for the activities of actors in the mining sector are granted by the Ministry of Mines, while the Centre of Expertise for the Evaluation of Raw and Semi-Precious Materials (CEEC) is responsible for ensuring the traceability of precious and semi-precious mineral substances, including their certification.

72. It was not possible to estimate the volume of business by type of precious metal or stone because the mission team was not provided with comprehensive and consolidated data on transactions. However, given the strong presence of armed gangs in areas rich in precious metals and stones, this sector poses considerable risks of money laundering and the financing of terrorism.

Trustees

73. These are the services provided in the DRC by lawyers and accountants. However, the provisions of Law No. 04/16 on AML/CFT do not include this category of services.

Preventive measures

74. The main AML/CFT legal instrument in the DRC is Law No. 04/016 of 19 July 2004 on the fight against money laundering and the financing of terrorism. This text sets out the scope of application of the AML/CFT standards to all categories of FATF-regulated entities. It contains AML/CFT due diligence obligations, including provisions on ‘knowing your customer’, the obligation to report suspicious transactions, and the keeping and storing of records. However, it does not contain any provisions regarding the ML/FT risk assessment.

75. At the level of the financial sector, this law is supplemented by BCC instructions, which are directly applicable by the financial professions concerned in accordance with the provisions of article 6 of Law No. 005/2002 of 7 May 2002 on the incorporation, organisation and operation of the Central Bank of Congo, supplemented by Instruction No. 23 on the exercise of disciplinary powers by the BCC.

76. Thus, BCC Instruction No. 15 sets out the standards relating to the fight against money laundering and the financing of terrorism. It applies to credit institutions, financial courier companies, bureaux de change and microfinance institutions. It

specifies, for these professionals, due diligence and supervision requirements, measures for identifying customers and specifically monitoring transactions, the requirement to keep and update documentation, internal supervision provisions, the obligation to report suspicious transactions, and the requirement to implement a risk-based approach to managing customer transactions.

77. Instruction 15 is supplemented by Instruction No. 007 (Art. (12) on bureaux de change, and Instruction 24 (Chapter IV) as regards issuers of electronic money, which sets out certain AML/CFT due diligence requirements.

78. However, the impact of this regulatory framework on the AML/CFT preventive mechanism in the DRC was still mixed at the time of the mission. The various actors in the financial sector do not yet seem to have integrated AML/CFT as a priority in their deployment plan.

79. With regard to DNFBDs, there are no specific provisions, apart from Act No. 04/016, that regulate the activities of these professionals.

80. With regard to specific due diligence in the fight against the financing of terrorism, the DRC authorities do not seem to have a sufficient understanding of the related risks with regard to financial transactions. These risks are related to the DRC's vast borders with countries where armed groups and gangs operate, the dollarization of the economy and the lack of supervision of cross-border cash movements, and the lack of guidelines on specific due diligence measures in relation to transactions that could cover cases of financing of terrorism.

Legal persons and legal arrangements

Legal entities

81. The DRC is one of the states party to the OHADA Treaty establishing the Uniform Acts, which are directly applicable in member states. As a result, company law consists mainly of the Uniform Act relating to Companies and Economic Interest Groups (GIEs).

82. Pursuant to the provisions of the OHADA Uniform Act, several types of companies may be created: public limited company (société anonyme/SA); simplified joint-stock company (société par action simplifiée); limited partnership (société en commandite simple); single or multi-person limited liability company (société à responsabilité limitée (SARL) unipersonnelle ou pluripersonnelle); cooperative company (société coopérative); and general partnership (société en noms collectifs/SNC).

83. The one-stop shop for business creation (GUCE) created by Decree No. 14/014 of 8 May 2014 is the centre for the rapid completion of all the formalities for setting up a company. It facilitates the process of setting up subsidiaries, representative offices or

branches of companies and of deregistering companies as well as other operations relating to the life of companies.

Legal arrangements

84. The law does not provide for the creation of legal arrangements in the DRC. However, there is no law preventing legal arrangements created in a third country from being managed in the DRC or from holding assets and using them in the country. The law does not provide for AML/CFT preventive measures with regard to legal arrangements. No information was brought to the assessors' attention on the existence of trusts or legal arrangements in accordance with FATF definitions and requirements.

Institutional monitoring and supervision arrangements

85. In the DRC, regulation and monitoring of compliance with AML/CFT requirements by financial institutions is carried out by the BCC (Laws No. 005 and 04/016). The BCC, through the DSIF, is responsible for the monitoring and supervision of credit institutions (Law No. 003/2002), microfinance institutions (Law No. 11/020), savings and credit cooperatives (Law No. 002/2002), financial couriers (Instruction No. 006), cash exchangers (Instruction No. 007) and electronic money institutions (Instruction No. 24). The Insurance Regulatory and Supervisory Authority (ARCA) is the designated body responsible for the regulation and supervision of the insurance sector (Decree No. 16/001 of 26 January 2016 on the creation, organisation and operation of ARCA).

Credit institutions

86. Credit institutions are governed by Law No. 003/2002 of 2 February 2002 on the activity and supervision of credit institutions. The activities of credit institutions are subject to the supervision of the DSIF.

Microfinance institutions

87. Microfinance institutions are subject to the supervision of the DSIF, which has the power to request from any natural or legal person any information deemed useful for the proper performance of the supervision it carries out.

Savings and credit cooperatives

88. In accordance with the provisions of articles 74 et seq. of Law No. 002:2002, the BCC monitors the supervision activities of COOPECs. To this end, it may carry out or have carried out, at least once a year, documentary and on-site inspections of COOPECs, COOCECs and Federations as well as of any company under their supervision.

Financial couriers

89. The provisions of the texts that confer supervisory powers on the BCC (Law No. 003/2002, Law No. 005/2002 and Law No. 04/016) and provide a framework for the exercise of these powers (Instruction No.15 modification 2 and Instruction 23) enable it to ensure compliance with AML/CFT obligations by companies in this sector.

Cash exchangers

90. Law No. 005/2002, Law No. 04/016 and Instruction No. 007, which govern the exercise of cash exchange activities, give the BCC the powers to require the production by bureaux de change of all relevant information for the purposes of monitoring compliance with their AML/CFT obligations and the obligations of the BCC itself to carry out documentary and on-site checks in this respect.

Electronic money institutions

91. The relevant provisions of Law No. 003/2002, Law No. 005/2002 and Instruction No. 24 give the BCC the powers to monitor and supervise electronic money institutions with regard to their AML/CFT obligations.

Post Office financial services

92. Post Office financial services do not have a supervisory authority in respect of AML/CFT.

Insurance sector

93. Regulation of the insurance sector is governed by the Insurance Code and Decree No. 16/001 of 26 January 2016 on the creation, organisation and operation of ARCA, which shall be responsible for its supervision. At the time of the site visit, ARCA was not yet operational.

DNFBPs

94. In the DRC, there are no designated authorities for the supervision and monitoring of the implementation of AML/CFT requirements by Designated Non-Financial Businesses and Professions.

International cooperation

95. The DRC is exposed to money laundering risks from underlying offences committed abroad because it shares borders with nine countries and foreign investors are attracted to its mining, forestry and wildlife operations. In addition, as the corruption index is very high in the country, capital generated by this activity can find its way into international financial circuits. International cooperation is therefore of great importance.

96. Moreover, the presence of armed groups in certain parts of the country, particularly in North Kivu, which borders unstable neighbouring countries, constitutes a risk in the area of the financing of terrorism, the fight against which also requires

international cooperation. The DRC is aware of this, being a member of several sub-regional organisations. However, the statistics provided do not reflect the extent of the phenomenon identified and call into question the effectiveness of this international cooperation.

97. The DRC does not have a central department dedicated to the processing of requests for mutual legal assistance and extradition. Cases received by the Ministry of Foreign Affairs are referred to the Ministry of Justice, which passes them on to the Prosecutor General of the Court of Cassation. The latter submits them to the public prosecutor's offices of the competent courts for implementation. There is no follow-up.

98. There is active international cooperation to a lesser extent within the Department of Customs and Excise, which is a member of the World Customs Organization; the Department of Migration; the Court of Auditors, which is a member of INTOSAI; and the national police, which is a member of Interpol. CENAREF also cooperates with other FIUs. However, it is not yet a member of the Egmont Group.

99. The DRC is an active member of the Kimberley Process Certification Scheme (KPCS). This is a tool for international cooperation in the fight against blood diamonds. In 2010, the International Conference of the Great Lakes Regions (ICGLR) developed a mechanism for the certification of minerals concerning the 3TG conflict minerals (tin, tantalum, tungsten and gold). The DRC was the first state to implement this system in its law. The Ministry of Mines is responsible for granting ICGLR certificates for the 3TGs.

CHAPTER 2: NATIONAL POLICIES AND COORDINATION ON AML/CFT

2.1 Key Findings and Recommended Actions

Key findings

- Overall, the DRC has a low level of understanding of its ML/FT risks. Some competent authorities, including CENAREF and the ICCN, have an acceptable level of understanding of ML/FT risks. However, this level is generally low among the investigating, prosecuting and supervisory authorities.
- The DRC carried out its ML/FT National Risk Assessment (NRA) in 2013¹², under the general coordination of CENAREF, but the conclusions of this work have not been approved by the authorities. It was indicated during the on-site visit that another assessment begun in June 2018 is being finalised for adoption and publication.
- The DRC has not devised a comprehensive risk-based AML/CFT strategy. It does, however, have a sectoral strategy for the fight against corruption drawn up following a survey carried out by the Observatory for Monitoring Corruption and Professional Ethics (OSCEP). However, this strategy does not contain viable operational measures to combat the laundering of the proceeds of corruption.
- With regard to FT, the Congolese authorities are fairly aware of the terrorist threats facing the country, particularly in the east. However, the assessors did not perceive there to be an acceptable understanding and awareness on the part of these authorities of the different mechanisms for the financing of terrorist groups in the DRC. Just as no particular action is being taken to prevent the DRC from being used as a transit point for funds destined for terrorists elsewhere in the world.
- The authorities have not communicated to the private sector the ML/FT risks of which they are aware, and these risks are not used to justify derogations from the due diligence measures.
- There is no national AML/CFT policy. The AML/CFT system in the DRC is based mainly on Law No. 04/016 of 19 July 2004 on the fight against money laundering and the financing of terrorism, the implementation of which has not yet achieved the expected results.
- The DRC has an AML/CFT coordination organisation: the Consultative Committee to Combat Money Laundering and the Financing of Terrorism (COLUB), which is

¹² However, the draft report reveals major shortcomings in terms of the assessment of high-risk threats (e.g. misappropriation of public funds, illegal taking of interests, trafficking in mining products, and trafficking in wildlife and timber products are not mentioned) and the importance of the vulnerabilities identified. These shortcomings are due, among other things, to the lack of statistics and the non-involvement of certain key professionals.

not yet operational. Counter-terrorism coordination is devolved to the National Coordination Committee to Combat International Terrorism (CNCLT). Its remit does not extend to FT. These organisations have just become operational and each is still working in isolation. Furthermore, there is no coordination and cooperation mechanism to combat the financing of proliferation.

Recommendations on national policies and coordination

The DRC authorities should:

- Finalise and approve their ML/FT NRA to improve understanding of ML/FT threats, vulnerabilities and risks in the country. The NRA should include an assessment of all threats that generate the most profits in the DRC, including embezzlement of public funds, illegal taking of interests, and trafficking in mining, wildlife and forest products. The NRA should be updated regularly to ensure a continuous understanding of the risks and its relevant findings should be disseminated to all state and non-state AML/CFT actors to ensure a consistent understanding of the risks;
- Adopt a comprehensive national AML/CFT strategy to establish coordinated and consistent policies, building on the ML/FT risks previously identified by the NRA reports, studies by GABAC, OSCEP or other key institutions and the findings of internal working groups, prioritising previously identified high-risk areas and reforming the AML/CFT legal framework in line with FATF standards;
- Include all state and non-state actors directly or indirectly involved in AML/CFT in future NRAs and strengthen the methodology to address the lack of quantitative data;
- On the basis of the NRA, develop a national and sectoral action plan and revise the national strategy to ensure effective resource allocation targeting the mitigation of the most significant risks;
- Develop and conduct awareness-raising and training programmes for the benefit of state and non-state AML/CFT actors in order to increase their understanding of the risks, strengthen the integration of a risk-based approach in their activities and raise their awareness of their respective roles within the AML/CFT system;
- Improve national coordination by providing COLUB with the necessary resources for its operationalisation to provide an effective coordination and information-sharing platform for the coherent implementation of AML/CFT efforts and a mechanism for evaluating the implementation of national policies by all stakeholders;
- Incorporate FT into the mandate of the CNCLT in order to identify and analyse

its risks and vulnerabilities so that they can be taken into account in the national strategy and the anti-terrorism law currently being drafted, and promote cooperation between the CNCLT and CENAREF;

- Promote the signing of Memoranda of Understanding between competent authorities in order to improve operational cooperation between them, in particular by facilitating the sharing of information and the implementation of joint operations or investigations;
- Allow the implementation of simplified measures in situations assessed as low risk in order to promote financial inclusion and contribute to the reduction of the informal economy;
- Establish up-to-date mechanisms for collecting information and data on the implementation of the policies and measures adopted, including statistics on investigations, prosecutions, confiscations, inspections of regulated entities, sanctions, and the use and dissemination of financial intelligence, in order to assess their effectiveness and inform the updating of the national risk assessment.

100. The relevant Immediate Outcome discussed and assessed in this chapter is IO.1. The Recommendations relevant to the technical compliance assessment under this Chapter are: R1, R2 and R33.

2.2 Effectiveness: Immediate Outcome 1 (risk, policy and coordination)

Country's understanding of ML/FT risks

101. From February 2013 to June 2014, under the general coordination of CENAREF and with the assistance and support of World Bank experts, the DRC conducted its National Risk Assessment (NRA) to identify, assess and understand all the ML/FT risks to which the country is exposed. This assessment was carried out using a qualitative methodological approach with quantitative elements, based on the World Bank's national risk assessment tool. Only the report produced at the end of this assessment, which was not approved by the authorities, notes major shortcomings in terms of assessing the scale of the threats identified and the importance of the vulnerabilities identified, due to a lack of statistics making it possible to estimate the real impact of the problems identified and the measures to be taken.

102. This exercise involved several actors AML/CFT actors, both from the state sector (the Central Bank of Congo (BCC); the Department of Customs and Excise (DGDA); OSCEP; the National Lottery Company (SONAL); the Congolese Institute for the Conservation of Nature (ICCN); the Congolese National Police (PNC); the judicial administration; and the National Intelligence Agency (ANR)) and the private sector (commercial banks; the National Insurance Company (SONAS; financial courier companies; casinos; cash exchangers; and some religious associations).

103. However, some professionals considered essential to the identification of threats and the assessment of vulnerabilities in relation to the economic and crime-conducive environment of the DRC were not involved in this study. These include real estate agents, car dealers, lawyers, chartered accountants, issuers of electronic money, sellers of precious metals and stones, and even at the state level, some important actors in investigations and prosecutions. Their absence from this work sows the seeds of bias and discredits their conclusions.

104. Through their participation in the NRA, the above-mentioned actors were able to share and strengthen their individual and sectoral understanding of the country's ML/FT risks. This exercise made it possible to identify certain underlying offences, committed in the DRC, that generate illicit gains that can be laundered: drug trafficking; counterfeiting; smuggling; tax evasion; customs fraud; people trafficking; arms trafficking; trafficking in stolen goods; corruption; extortion; and counterfeit currency. However, major offences that in the opinion of the assessors could be important drivers of money laundering in the DRC were not recorded in this report. These include misappropriation of public funds; illegal taking of interests; trafficking in mining products; and trafficking in wildlife and timber products.

105. The most vulnerable reporting sectors identified by this NRA include banks; money transfer services; bureaux de change; real estate agencies; dealers in precious metals and stones; used car dealers; and religious associations.

106. Leaving aside the NRA, at the end of the interviews, the DRC authorities are generally fairly well aware of the money laundering risks to which their country is exposed.

107. With regard to the risks of the financing of terrorism, at the national level terrorist threats are fairly well understood because of the activities of armed groups and gangs operating in the east of the country, whose sources of financing remain hidden. This led the authorities to set up the CNCLT, which has the capacity to assess the risks of terrorism. However, it should be noted that the problem of the risk of the financing of terrorism is not yet, in the opinion of the assessors, a concern for the DRC authorities. No types of financing of terrorism are brought to light and managed by these authorities. However, GABAC has produced reports on the financing of terrorism in Central Africa and NGOs have published detailed reports on the financing of terrorist groups in the DRC. However, the relevant conclusions of these reports have not been the subject of any consistent action in the DRC.

National policies to address identified ML/TF risks

108. The DRC authorities have not yet adopted a risk-based approach to the conduct of policies or AML/CFT activities based on identified risks. This is due in particular to the fact that the NRA, whose work started in February 2013 and ended in June 2014,

has never been approved, nor its conclusions disseminated, and that the current NRA is not yet finalised.

109. Independently of the NRA, some predominant risks have been the subject of analyses and strategic studies integrated into sectoral policies. This is the case with the national anti-corruption strategy that has been adopted and which aims to strengthen the institutional and legislative framework. To this end, measures to improve the effectiveness of the fight against corruption have been proposed by OSCEP, including the adoption of a new anti-corruption law, the creation of specialised chambers in national courts for the punishment of acts of corruption and the implementation of the obligation to declare assets.

110. With regard to the risk associated with terrorism, an institutional framework has been created to design counter-terrorism measures and policies and to coordinate their implementation: the CNCLT. However, the studies carried out and the measures taken do not include management of the sources of financing of potential terrorists which, according to the authorities, comes under the responsibility of CENAREF, with which discussions have taken place. The CNCLT has developed a national strategy and an anti-terrorist law that have not yet been adopted by the competent bodies.

111. Managing the risks of money laundering linked to the illegal exploitation of natural resources, particularly wildlife and forest resources, is the responsibility of the ICCN. This organisation has developed an internal strategy focused on two areas. The first is the success of law enforcement through the creation of a body of specialist officers for the protection of national parks responsible for investigations and the setting up of mobile court chambers. Secondly, ICCN relies on cooperation through the national task force made up of CENAREF, DGDA, NCB-INTERPOL, DGM, OCC, and the Armed and Security Forces. However, aspects related to the traceability of financial flows are not taken into account.

Exemptions and application of enhanced and simplified measures

112. No derogations from due diligence measures in low-risk situations are provided for, in particular due to the lack of a risk assessment. For the time being, supervisory authorities apply the existing legal framework without taking into account the analysis and level of risk associated with the sector under their jurisdiction.

113. However, some credit institutions apply enhanced due diligence measures depending on the category of certain customers identified as high risk, including PEPs, mining companies, embassies and foreign NGOs. This categorisation of customers, which results from the implementation of the internal policies of these institutions, is based on the nature of their activities and the volume of their transactions.

Objectives and activities of the competent authorities

114. The operational activities of the AML/CFT competent authorities (CENAREF, police, courts) and supervisory bodies (BCC) do not yet reflect the effective consideration of the risks identified in the absence of a national action plan.

115. Regardless of this shortcoming, the mission was able to note that, on a sectoral basis, the competent authorities' investigations and prosecutions already focus on certain underlying offences in connection with the ML/FT risks to which the country is exposed. However, they do not include the money laundering aspect. This is the case, *inter alia*, of the OSCEP, which has revealed that it has conducted investigations into corruption and referred cases to the courts. Misappropriation of public funds is investigated by the IGF and referred to the courts. Illegal exploitation of natural resources is prosecuted under the coordination of the ICCN. Major seizures and confiscations are regularly carried out by the DGDA and the DGM in connection with customs fraud, illegal trafficking in protected species, and the illegal exploitation and sale of minerals. The Congolese Police have an operational unit to combat drug trafficking.

116. Although the level of their success has not been assessed, due to a lack of available statistical data, and ML/FT crimes are not specifically taken into account, these prosecutions indicate the authorities' willingness to combat economic and financial crime, which is a breeding ground for ML/FT.

117. With regard to self-regulatory bodies, the supervision carried out by the BCC is general and does not take sufficient account of either the risks or the AML/CFT aspect.

National cooperation and coordination

118. The DRC has set up an institutional framework for the development of national policies and coordination on AML/CFT through the creation of COLUB, pursuant to Decree No. 08/21 of 24 September 2008. This framework does not take into account the aspect of the fight against the financing of proliferation. In its composition, COLUB brings together a sufficient number of relevant AML/CFT actors, making it a platform for discussion and cooperation between competent authorities. This body, which has held only one meeting since its creation and the recent appointment of its members, is slow to assert its operational effectiveness.

119. At the political level, COLUB's responsibilities relating to the development of national AML/CFT strategies and policies are shared with the duties of the Special Adviser to the Head of State on Good Governance and the Fight against Corruption, Money Laundering and the Financing of Terrorism. Although they share common responsibilities, these two entities do not work together. The coordinated implementation of these policies is the exclusive responsibility of COLUB.

120. The DRC also has an institution responsible for formulating policy on combating and suppressing international terrorism, and coordinating the relevant agencies and departments of which it is comprised and those dedicated to this fight: the CNCLT, created by Decree No. 070/2001 of 26 December 2001. This Committee, which regularly assesses the state of the terrorist threat in the DRC, has developed a national strategy and an anti-terrorism law that is in the process of being finalised and adopted. However, issues related to the financing of terrorism are not sufficiently considered by the Committee.

121. In order to enhance cooperation and coordination on AML/CFT, some competent authorities have signed formal agreements on cooperation and information sharing with CENAREF. These include the DGDA, the ICCN and the DGM. However, at the operational level, this still embryonic collaboration should be strengthened and diversified to include other actors such as the tax, police, justice, trade and mining resource administrations.

Private-sector knowledge of risks

122. Some private-sector actors subject to the AML/CFT law were involved in the DRC's 2013 NRA exercise. These include representatives of commercial banks, casinos, financial couriers and the voluntary sector, especially the revivalist churches. With regard to the ongoing NRA, the authorities have again involved the private sector with a view to obtaining its input.

123. However, these studies have not yet been communicated or disseminated to the private sector in order to provide it with a comprehensive understanding of the risks identified in the country. The risk-based internal policies laid down by certain credit institutions, met with by the assessment mission, are the result of their own initiatives.

124. In conclusion, the DRC has not yet completed a finalised NRA as a basis for a comprehensive and common understanding of the ML/FT risks identified. The authorities' understanding of risks remains weak, fragmented and variable. The country does not have a risk-based AML/CFT strategy. The recently operational framework for cooperation and coordination of the competent authorities is still in its infancy.

125. The level of effectiveness achieved by the DRC for Immediate Outcome 1 is low.

3.1 Key Findings and Recommended Actions

Key findings :

IO. 6: Financial intelligence:

- CENAREF receives a very limited number of STRs due in part to the regulated entities' lack of knowledge of their obligations and the lack of a relationship of trust with CENAREF.
- CENAREF produces some dissemination reports resulting from its operational analysis; however, the use of this information by the investigating and prosecuting authorities seems limited and it is therefore not possible to assess the quality of the releases.
- The competent authorities do not involve CENAREF when undertaking investigations. Investigators focus on the original offence and pay very little attention to the laundering of its proceeds. They operate in a vacuum and are content with what is within their remit.
- CENAREF has the necessary powers to obtain information from other administrations and those subject to regulations. Many of them do not have a computerised database, which increases response time. The FIU itself does not have a computer system that could facilitate its own research. It does not receive automatic reports, cash transactions, automatic reports concerning PEPs or reports of cross-border currency transportation.
- The types of offences identified in the few FIU releases relate to illegal capital transfers, illegal logging, foreign exchange trafficking and the illegal purchase of real estate abroad, which do not seem to equate to the most lucrative underlying crimes in the DRC. No STRs or releases related to FT were submitted.
- All STRs received are considered by the CENAREF Board before being analysed. This organisation makes the operating mechanisms of the FIU more cumbersome in that the decision-making power does not come from collective competences but rather from structures, as members of the Board work at CENAREF on a part-time basis.
- CENAREF does not produce strategic analysis. The Office of the Special Adviser to the Head of State on Good Governance, the Fight against Corruption and Money Laundering, and the Consultative Committee to Combat Money Laundering and the Financing of Terrorism, which have this activity within their remit, have not yet produced a written report in this area.
- Insufficient financial and logistical resources and lack of training in financial analysis limit the actions of the FIU.
- Cooperation between CENAREF and the competent authorities is very limited. An

information-sharing agreement has been entered into between CENAREF and the Department of Customs and Excise, but no information-sharing practice has been implemented.

- Confidentiality issues in the processing of STRs were brought to the attention of the assessors.

IR 7: ML investigations and prosecutions:

- The DRC authorities affirm a political will to combat ML/FT, as evidenced by the adoption of a legal and institutional framework inspired by international standards.
- However, there is no clear criminal policy at the national level commensurate with the potential risks, nor do the prosecuting authorities have a comprehensive strategy to prioritise and ensure the success of money laundering investigations.
- To a lesser extent, the investigating and prosecuting authorities open files and conduct investigations into underlying offences such as corruption, customs fraud, trafficking in protected species, drugs and precious materials. However, they do not take into account the laundering of the proceeds of the offence. CENAREF has sent some cases to the Prosecutor General, yet no ML investigations have been conducted.
- The police prosecuting authorities and the judiciary lack the necessary AML/CFT training and special powers to successfully investigate and prosecute ML cases.
- An investigation resulted in a prosecution and conviction for money laundering. However, the lack of statistics makes it difficult to assess the consistency between investigative and prosecutorial activities and the country's risk profile.
- At the level of the prosecuting authorities, the obstacles identified by the authorities include the privileges and immunities provided for by law and enjoyed by certain accused persons, the prohibition on automatic referral for monitoring by financial institutions, difficulties in accessing information sources and the lack of expertise of some investigating officers who prefer to impose fines to the detriment of legal proceedings.
- No practice of using alternative measures was identified.

Confiscation

- The competent authorities have not prioritised the confiscation of proceeds and instrumentalities of crime and assets of equivalent value. In particular, the prosecuting authorities do not include it in their investigations, and therefore do not routinely seek the existence of assets associated with offences;
- No statistical data were provided to the assessors on the confiscation of cross-border transactions in order to assess the implementation of the relevant laws;
- The authorities have set up a Fund to Combat Organised Crime (FOLUCCO), which is responsible for the management of confiscated property and the instrumentalities of crime. However, FOLUCCO is not yet operational.

Recommendations on the legal system and operational issues

Financial Intelligence (IO.6)

The DRC authorities should:

- Develop and share with regulated entities typological studies and ML/FT risk indicators to facilitate the detection of suspicious transactions;
- Revise operational analysis procedures to allow for the analysis of each STR received independently and autonomously and establish prioritisation criteria;
- Ensure that staff sign confidentiality undertakings and enhance the security of CENAREF premises. State authorities should put in place measures to guarantee the confidentiality and management of the information collected, in particular the STRs received;
- Take steps to ensure the secure and timely receipt of STRs. These include the establishment of an electronic filing system for STRs, ensuring that CENAREF respects the confidentiality of STRs, and ensuring that cross-border reports of cash and negotiable instruments, as well as transactions over \$10,000, are received by CENAREF in a timely manner (directly or indirectly);
- Train CENAREF staff in operational and strategic analysis;
- Provide CENAREF with a computer system enabling it to store data for its analyses and open up the databases of other administrations through cooperation agreements, including reports of cross-border transport of cash and BNIs, other offences and suspicions of ML/FT collected by customs;
- Strengthen and stabilise the budget allocated to CENAREF in order to ensure better treatment of staff and the capacity to set up and then renew the secure IT infrastructure;
- Issue an instruction to entrust the reporting of cash or bearer securities transactions to CENAREF;
- Revoke the Memorandum of Understanding between CENAREF and the Congolese Banking Association on automatic reports related to PEPs and issue an instruction entrusting CENAREF with the exclusive right to receive STRs and automatic reports, regardless of the identity of the suspects;
- Create mechanisms for information sharing between CENAREF and the investigating and prosecuting authorities and customs in order to improve CENAREF's ability to produce quality financial intelligence;
- Establish operational cooperation mechanisms to facilitate and promote the use of financial intelligence by the investigating and prosecuting authorities and raise awareness among the competent authorities of the role and responsibilities of CENAREF;
- Train the investigating and prosecuting authorities in the use of financial intelligence in their activities.

Investigation and Prosecution of ML (IO.7)

It is recommended that the authorities:

- Strengthen the technical, human, material and financial capacity of the prosecuting authorities in the detection, investigation and suppression of ML activities, in particular through training in financial investigations and money laundering prosecution;
- Draw up a criminal policy aimed at the successful suppression of ML and underlying offences, including through the opening of parallel financial investigations, focusing on the most significant threats and building on the results of the NRA;
- Take the necessary legislative and structural measures to remove obstacles to the initiation of legal proceedings by investigating officers;
- Strengthen coordination and cooperation between the different actors in the criminal chain to ensure the success of investigations and prosecutions, in particular by establishing permanent and regular exchange platforms and by carrying out joint actions or activities;
- Develop and maintain statistical data related to ML/FT investigations, including the number and nature of investigations, prosecutions and convictions, including those for underlying offences.

Confiscation (IO.8)

The DRC should:

- Make the confiscation of proceeds and instrumentalities of crime and assets of equivalent value a priority for the competent authorities, including the prosecuting authorities;
- Train prosecuting authorities in the identification, detection and investigation of the existence of assets linked to offences, so that this component can be included more systematically in investigations;
- Operationalise FOLUCCO to enable it to fulfil its role of managing confiscated assets, and raise awareness among the judicial authorities of its existence and powers;
- Adopt the necessary legislative amendments to allow for the seizure and confiscation of falsely declared or undeclared currency at the border, provide the necessary training to customs officers for the implementation of relevant AML/CFT measures and establish a coordination mechanism between border services;
- Produce up-to-date statistics on seizures and confiscations.

The relevant Immediate Outcomes discussed and assessed in this chapter are: IO.6, IO.7 and IO.8. The Recommendations relevant to the technical compliance assessment under this Chapter are: R3, R4, R29, R30, R31 and R32.

3.2. Effectiveness: Immediate Outcome 6 (financial intelligence)

Use of financial intelligence and other information

126. The Congolese authorities have a wide range of financial intelligence that can be used in investigations into ML, underlying offences and the financing of terrorism. This intelligence is available from various administrations, including the Department of Tax, the Department of Customs and Excise and the one-stop shop for business creation. It can be complemented by exchanges between various administrations. Use of this information is not optimal.

127. CENAREF has access to the financial intelligence necessary for its analyses. Members of its Board, who are not permanent, act as facilitators in their relationships with administrations in possession of information required by CENAREF in the course of its investigations. The Board is made up of persons from the national police, who can provide information on the identity of individuals; the Border Police, who manage passports; the Department of Tax, which could provide information on cases of tax fraud; the Department of Customs and Excise, which provides information on customs offences in general, including the import of goods and protected animals; the Central Bank of Congo; the General Inspectorate of Finance; and the Court of Auditors. A high-ranking magistrate and an independent person should be added. CENAREF can access other financial intelligence from the financial sector, DNFBPs and its foreign counterparts.

128. Under a Memorandum of Understanding signed on 9 September 2010 between CENAREF and the Congolese Banking Association, banks are exempted from making automatic reports to CENAREF on Politically Exposed Persons, except in cases of proven suspicion of ML/FT or an express request from CENAREF, which reduces the use of financial intelligence.

129. Between 2014 and 2018, CENAREF referred 20 cases to the Prosecutor General at the Court of Cassation on potential money laundering offences, the financial impact of which has not been assessed, according to the table below:

Table 3.1: Reports referred to the Prosecutor General at the Court of Cassation by CENAREF (2014-2018) according to regulated entities

Type of reporting entity	2014	2015	2016	2017	Total	Offences
Financial Institutions	1	5	6	3	15	Illegal transfer, suspicious source of funds, counterfeiting of a deposit slip, counterfeiting of currency, illegal financial courier activity
DNFBPs		1		1	2	Illegal transfer, fraud
Others	1	1			2	Illegal logging, cheque fraud
FIU				1	1	Purchase of real estate abroad
Total	2	7	6	5	20	

130. At the time of the mission, 35 cases were still being processed.

Table 3.2: Number of STRs being processed

Year	2015	2016	2017	2018	TOTAL
Number of STRs	7	11	8	9	35

131. The prosecuting authorities have extensive powers to obtain financial information both in relation to money laundering, financing of terrorism and underlying offences. They do not use them in ML/FT because of insufficient training in this specific area.

132. It was not possible to meet with the criminal prosecuting authorities to find out the extent to which they seek and use financial intelligence in their investigations. Similarly, both the police and the justice system have statistics dedicated solely to ML/FT.

133. The services of the Special Adviser to the Head of State on Good Governance, the Fight against Corruption, Money Laundering and the Financing of Terrorism made good use of the information provided by CENAREF in the context of their investigations into the only case that came to the attention of the assessors, which resulted in the confiscation for the benefit of the Treasury of the sum of USD 2.6 million ordered by the courts against a bank and an administrative sanction of USD 50,000 applied to the said bank by the Central Bank of Congo for acts of cross-border currency transportation and money laundering. By contrast, the Office of the Prosecutor General at the Court of Cassation was unable to state whether the information provided by CENAREF in the cases received was actually used in the investigations and legal proceedings, since these cases were referred to the Prosecutor General, which has personal and territorial jurisdiction, and were not followed up. In

addition, cases of terrorism were investigated and tried before the military court of Kinshasa following investigations by the National Coordination Committee to Combat International Terrorism, but the committee took no interest in its financing. Collaboration between this organisation and CENAREF would undoubtedly be beneficial.

134. This finding suggests that financial intelligence is not being used in an adequate and systematic manner.

STRs received and requested by competent authorities

135. The Anti-Money-Laundering Act gives CENAREF the role of central body responsible for receiving, analysing and passing on suspicious transaction reports from reporting companies and professions. It also gives it the jurisdiction to conduct strategic studies in accordance with FATF standards. CENAREF may also receive disclosures from any other non-reporting natural or legal persons. CENAREF does not receive automatic reports based on the threshold. These are rather intended for the BCC, starting at \$10,000.

136. CENAREF does not have the exclusive right to receive suspicious transaction reports. This task is also devolved to the BCC, which is subject to suspicious transaction reporting. However, this bank does not have staff dedicated to analysing suspicious transaction reports, which raises questions about the effectiveness of this system. Article 4 of the Anti-Money Laundering Act contains an extended list of professions subject to suspicious transaction reporting. However, during the on-site visit, chartered accountants claimed that they were not covered by this law with regard to the provisions of supranational laws, in particular the OHADA Treaty. They wanted this Treaty to be reformed so that an internal directive from their corporation could incorporate these data. However, their findings on suspicious transactions are reported to the competent judicial bodies under the Treaty. This situation has a significant impact on AML/CFT since the Prosecutor General and CENAREF shall not be informed of these dubious activities and shall be unable to seek information from accountants.

137. Real estate agents and dealers in precious metals and stones, although subject to suspicious transaction reporting, cited a lack of awareness in the area of AML/CFT, which is a major shortcoming given that the real estate and precious metals and stones sectors have been identified as particularly vulnerable. Cross-border reports of cash and negotiable instruments shall not be submitted to CENAREF. Although there is a cooperation agreement between CENAREF and the Department of Customs and Excise, seizures of cash are instead reported only to the BCC.

138. CENAREF receives suspicious transaction reports (STRs) from the businesses and professions subject to its jurisdiction, as well as any other information, in particular from the judicial authorities. The latter provision under Article 17 (3) (2)

expands the list of persons who can make disclosures to this FIU. On this basis, CENAREF receives cases from other public administrations and even from private individuals, although these are still marginal.

139. From 2015 to 2018, CENAREF received 88 suspicious transaction reports, the majority (63%) of which came from the banking sector. Other public administrations and individuals, sometimes anonymous, account for 15% of the STRs received.

Table 3.3: Origin of Suspicious Transaction Reports (STRs) received by CENAREF (2015-2018)

Type of reporting entity	2015	2016	2017	2018	Total
Financial Institutions	16	21	11	8	56
Designated Non-Financial Institutions and Professions	1	1	1	1	4
Partners and others ³			1		1
Counterpart FIUs	7	8	6	6	27
Total	24	30	19	15	88

140. Requests for information received from other FIUs alone account for 30% of the STRs.

141. CENAREF does not receive automatic reports based on the threshold. These are received by the Central Bank of Congo. After analysis, the BCC can make an STR to CENAREF; from 2015 to 2018, four (4) STRs were made.

142. The suspicious transaction reports relate to suspected cases of money laundering; there were no cases of financing of terrorism. The low number of STRs received by the FIU contrasts with the country's population density and its potential for crime. Indeed, as already noted in the previous table, no ML reports were received on environmental crimes, tax evasion, corruption or mining trafficking, even though the Congolese authorities identify these as common. As a result, the black number remains important.

Operational needs supported by FIU analysis and dissemination

143. CENAREF has the power to request any useful information from any public or private administration. In the course of its analyses, it asks much more of the credit institutions it meets with than it does of certain public administrations, such as the one-stop shop for business creation and bureaux de change. These requests relate to documents that may assist in the analysis of the reported suspicious transaction. CENAREF does not have a computer system linked to the databases of other administrations, most of which are not computerised. Given the vast surface area of the DRC, it is difficult to participate in real time in an ML/FT operation taking place outside the city of Kinshasa, where the CENAREF premises are located.

144. In addition, a Memorandum of Understanding was signed on 6 September 2013 with the Department of Customs and Excise to ‘share intelligence and information to enable the detection of suspicious cases in order to facilitate the performance of their respective tasks and the coordination of their respective activities on the ground, to combat money laundering resulting from customs fraud and to combat the financing of terrorism’. However, examples of this collaboration were not brought to the mission's attention.

145. Reporting institutions and public administrations provide additional information requested by CENAREF within a reasonable period of time.

Operational analysis process

146. The system for processing suspicious transaction reports is rather unusual.

147. STRs are delivered in person in paper format by the reporting entity to the Executive Secretary of CENAREF. The latter immediately informs the Chairman of the Board, who convenes the Board to consider the STRs and provide guidance. If the decision is made to conduct further investigations, the Board instructs the Executive Secretary to do so and one or more analysts are appointed to develop the suspicion. At the end of the investigations, the same procedure is initiated to present the results of the analyses to the Board. A final decision is made to report, classify or analyse further. In the event of a decision to disclose, the Executive Secretary may refer the case to the Prosecutor General at the Court of Cassation. This procedure does not allow for expeditious action in the AML/CFT area where it may be necessary to block a transaction, especially since according to Article 12 of Decree No. 08/20 of 24 September 2008 on the organisation and operation of CENAREF, the Board meets at least once every quarter. In case of emergency, the Executive Secretary may take appropriate measures upon the authorisation of at least three members of the Board, including the Chairman, who must inform the Board within five days. This organisation makes the operating mechanisms of an FIU more cumbersome in that the decision-making power does not come from collective competences but rather from structures, with Board members working at CENAREF on a part-time basis. Ultimately, it is not appropriate for each member of the Board to examine a particular aspect of the suspicious transaction on the basis of his or her expertise, but for a general discussion to be conducted by persons with different expertise. This procedure is all the more cumbersome in that urgent action is sometimes necessary in the area of financing of terrorism. The Anti-Money Laundering Act allows the Executive Secretary to act in case of emergency, but this is only a temporary devolution of competence.

Results of the operational analysis of CENAREF

148. When the Board approves the conclusions of the analysis, it instructs the Executive Secretary to submit a report to the Prosecutor General at the Court of Cassation, formerly known as the Prosecutor General of the Republic.

149. The assessment team was not able to review a CENAREF report to assess its relevance. Nor was it able to obtain this assessment from the Prosecutor General's Office at the Court of Cassation, which claimed that cases are referred to the competent Prosecutors General and that the follow-up or assessment should be carried out at that level. This shows a lack of interest in AML/CFT at the judicial level¹³.

150. On the day of the mission, 35 cases were still being processed, i.e. 39% of the STRs received since 2014¹⁴, which indicates a certain slowness in the analysis.

151. There appears to be enough staff (32 in total, including ten financial analysts) to analyse the STRs received. However, there is a lack of training in financial analysis, having not yet participated in the many training modules in this area. Moreover, CENAREF does not have file processing software that would probably have facilitated the analysts' task. Finally, the budget does not allow for the optimal deployment of staff to compensate for the lack of computerisation of the administration, in order to retrieve intelligence for operational analysis purposes.

Strategic analyses

152. CENAREF has not yet carried out a strategic analysis, although this remit is provided for in the Anti-Money Laundering Act. Officials spoke of a real need for training in this area. The services of the Special Adviser to the Head of State on Good Governance, the Fight against Corruption, Money Laundering and the Financing of Terrorism, as well as COLUB, include strategic analysis in their respective organic texts. Interviews conducted with the managers of these departments during the on-site visit made it possible to assess their level of competence and understanding of the subject. However, they have not published their findings for the attention of other jurisdictions and the public.

Operational needs supported by FIU analysis and disclosure

153. The mission was unable to assess the analytical work of CENAREF in relation to cases referred to the courts. The Prosecutor General's Office at the Court of Cassation, the legal recipient of the cases, was unable to confirm the number or outcome of cases received from CENAREF. There is no particular follow-up on cases referred by

¹³ See Summary Table 3.1, page 55, paragraph 128, of reports referred to the Prosecutor General by CENAREF from 2014 to 2018.

¹⁴ See Summary Table 3.2, page 55, paragraph 129, of the number of STRs being processed.

CENAREF; the Prosecutor General's office at the Court of Cassation merely refers cases to lower public prosecutors' offices, without knowing the outcome.

154. The National Police did not attend the planned meeting with the assessment mission. In so doing, it did not give its assessment of any cases received from CENAREF via the Prosecutor General at the Court of Cassation. The departments of the Special Adviser who dealt with the only case in which a conviction was handed down assessed the work of CENAREF, but this assessment on the basis of a single case is not considered objective.

Autonomy and independence

155. Although CENAREF's budget has been reduced, it has never been able to meet the organisation's multiple needs, including the need for adequate staff support, computerisation of the FIU, creation of a database and electronic submission of suspicious transaction reports.

Table 3.4: CENAREF 2016 budget forecast

	2016 budget forecast (in Congolese francs)	
	2015 allocation	Funding requested for 2016
Salaries	120,000,0000	3,632,000,000
Operation	1,215,046,281	4,819,361,321
Investment from own resources	0.00	204,100,000
Grand total	2,415,046,281	8,655,461,321

Table 3.5: CENAREF 2017 budget forecast

	2017 budget forecast (in Congolese francs)	
	2016 allocation	Funding requested for 2017
Salaries	1,200,000,000	1,900,000,000
Operation	1,004,188,470	2,321,726,340
Investment from own resources	0.00	196,700,000
Grand total	2,204,188,470	4,418,426,340

156. The funds allocated to CENAREF are far less than the funds requested. Like any administration operating on the basis of state subsidies, this method of financing could be used by politicians as a means of exerting pressure. However, CENAREF's leadership did not draw the mission's attention to this state of affairs.

Cooperation and sharing of information and financial intelligence; confidentiality

157. CENAREF receives few requests for information from other competent authorities. The departments of the Special Adviser have requested them in the course of investigations as an investigating officer. An agreement has been signed between the Department for Customs and Excise and CENAREF on the spontaneous sharing of information or on request on AML/CFT and customs fraud. Its implementation was not demonstrated at the mission; no statistics were produced. However, this agreement gives CENAREF a high profile in terms of revenue-generating customs offences, environmental offences and even violations of foreign exchange regulations. Similarly, specialised organisations for combating income-generating offences could also conclude Memoranda of Understanding with CENAREF with a view to identifying the source of criminal funds, but also tracking and possibly seizing and confiscating their proceeds, even abroad.

Information security

158. CENAREF occupies one floor in the building of the Central Bank of Congo. Guards secure access to the premises every day and a video surveillance system is in place. CENAREF does not, however, have its own guard for its premises. This suggests that a visitor or employee of the Central Bank of Congo could easily access the departments of the FIU. CENAREF is not equipped with STR processing software or a data protection system. It is therefore difficult to identify who has accessed a file. CENAREF must be provided with a real IT system in its project to become part of the Egmont Group. The protection of information is a key issue in this Group. Members of the CENAREF Board have signed a confidentiality undertaking provided for in the law and the CENAREF organic decree. Staff are bound by the commitments of civil servants and government officials. However, it was reported to the mission that there is a serious problem of confidentiality at CENAREF. Regulated entities have been subjected to various pressures as a result of the STRs submitted and some have even been called on to justify their actions. CENAREF officials claim that this situation dates back to 2014, when unethical behaviour by CENAREF staff was identified. The government had then taken measures to clean up this administrative organisation by dismissing about twenty people, including the Executive Secretary. Since the installation of the new team, no cases of malfeasance or threats have been reported. They also blame the regulated entities themselves for not sufficiently managing their officials and not being zealous in reporting their customers. Nevertheless, information security, which is not at all reassuring, should be reviewed and a relationship of trust, or even complicity, should be re-established between CENAREF and regulated entities.

159. In conclusion, CENAREF and the criminal prosecuting authorities do not receive sufficient financial information to carry out their investigations into money laundering

and underlying offences. An awareness-raising campaign is essential to reassure regulated entities and then train them to detect unusual transactions that should give rise to systematic reporting. Reports of transactions in cash or bearer securities should be made to CENAREF to enable it to set up its data bank, even if a copy is sent to the BCC at the same time. The Prosecutor General's Office at the Court of Cassation could take issues related to ML/FT more to heart and monitor with greater interest reports and disclosures from both CENAREF and the prosecuting authorities. The latter could collaborate more with CENAREF to monitor the money-laundering aspect of their investigations. This particularly concerns Customs with regard to cross-border reports of species, environmental services and precious metals and stones.

160. In the authorities' own view, the risk of terrorism is increasingly high in the east of the country; however, the focus of action is on the offence of terrorism and not on its financing. No STRs on the financing of terrorism have been submitted to CENAREF, which implies the urgent need for collaboration between the National Coordination Committee to Combat International Terrorism, the judicial authorities and CENAREF.

161. The procedure for processing STRs is particularly cumbersome and partly explains the high number of cases still being processed, some of which date from 2015. A reform could be envisaged along these lines, first of all to give more autonomy to permanent staff.

162. The lack of financial resources granted to CENAREF and their management by non-permanent staff is a vulnerability for this FIU. In addition, training must be provided to all actors involved in AML/CFT. This need has already been expressed by all actors in their recommendations, but is also reflected in the findings of the mission.

163. CENAREF nevertheless referred a number of reports to the Prosecutor General at the Court of Cassation, one of which resulted in a conviction. The age of this case (2015) confirms to the assessors that the system of analysis, prosecution and conviction as a whole is not yet operating properly.

164. The assessment team believes that financial intelligence is insufficiently used by the competent authorities in money laundering and financing of terrorism investigations and that major improvements need to be made.

165. The level of effectiveness achieved by the DRC for Immediate Outcome 6 is low.

3.3. Effectiveness: Immediate Outcome 7 (ML investigations and prosecutions)

ML case identification and investigations

166. The legislative and regulatory framework in force in the DRC confers jurisdiction on law enforcement agencies, particularly investigating officers (OPJ) and public prosecutors (OMP), to investigate and prosecute all crimes.

167. The investigation and prosecution of money laundering and underlying profit-generating offences fall within the scope of these prosecuting authorities.

168. Specifically, but without being exclusive, Law No. 04/016 of 19 July 2004 on the fight against money laundering and financing of terrorism sets the starting point for a money laundering investigation in a CENAREF communication and establishes collaboration between this unit and the Public Prosecutor's Office. Article 23 of the Law unequivocally states that *'as soon as there is strong evidence of a nature that may constitute the offence of money laundering, the Financial Intelligence Unit shall submit a report on the facts, together with its opinion, to the Public Prosecutor's Office, which shall assess the action to be taken...'*

169. Within the Congolese National Police, money laundering investigations are entrusted to investigating officers working in the Anti-Money Laundering Office of the Department for Combating Economic and Financial Crime. The department also has other units responsible for investigating certain underlying money laundering, including the Anti-Corruption and Embezzlement Unit and the Illegal Trade Unit. A Drugs Department is dedicated to investigating crime in this particular area.

170. Other competent authorities also have investigating officers with either general or limited jurisdiction to investigate money laundering and related offences, including:

- The Special Adviser to the Head of State on Good Governance and the Fight against Corruption, Money Laundering and the Financing of Terrorism who, under the terms of Order No. 16/065 of 14 July 2016, is responsible for conducting all investigations, inquiries and legal proceedings that may identify, apprehend and sanction any person or group of persons, organisations, bodies, companies or other departments involved in acts of corruption, money laundering and the financing of terrorism;
- The General Inspectorate of Finance (IGF) which, in its supervisory and monitoring role, has special jurisdiction in cases of tax and customs fraud, in accordance with Article 6 bis of Order No. 83-323 of September 15 1987, as amended and supplemented by Order No. 91-018 of 6 March 1991;
- The Department of Customs and Excise (DGDA), created by Prime Ministerial Decree No. 09/43 of 3 December 2009, whose duties include the fight against

cross-border crime and the fight against money laundering, has anti-fraud brigades spread throughout the country;

- The Congolese Institute for the Conservation of Nature (ICCN) which, through the investigating officers (eco-guards) at its disposal, ensures the punishment of offences arising from breaches of wildlife and forest law and, more generally, the punishment of any breach of environmental protection law;
- The OSCEP is tasked with receiving and investigating reports of immorality and complaints of corruption and other related practices, and cooperating with courts and tribunals in the follow-up of referred cases. The observatory, which has investigative and prosecutorial powers in corruption matters, currently has 21 investigating officers with general jurisdiction;
- The Department of Migration (DGM), whose duties include collaboration in the search for criminals and wrongdoers or suspects reported by the International Criminal Police Organization;

171. Investigations and inquiries are carried out by the competent authorities on the basis of the general concepts learned at the various training schools in the field of criminal investigation techniques. There are no investigating officers specifically trained in money laundering investigations.

172. The judicial actors met by the mission made it clear that there was a lack of training and specific expertise in this area.

173. The number of cases investigated for money laundering does not in any way reflect the scale of the phenomenon in the DRC. Only one case of seizure and confiscation resulting in a conviction was mentioned by the actors interviewed.

174. Partial statistics for the period from January 2014 to June 2018, produced by the Anti-Corruption Unit of the Ministry of Justice, show that four (4) cases of corruption were registered with the Kinshasa Matete Public Prosecutor's Office out of a total of 44,738 cases and six (6) cases with the Kinshasa Gombe Public Prosecutor's Office out of a total of 23,843 cases. However, none of these ten (10) cases were prosecuted. They have all been dismissed by the Public Prosecutor's Office. These cases were referred by the criminal investigation departments of the two major courts in the capital.

175. According to the authorities met by the mission, a wide range of offences underlying money laundering are being investigated and prosecuted, including: misappropriation of public funds, currency trafficking, corruption, counterfeiting of pharmaceuticals, trafficking in drugs and protected cash, and customs and tax fraud. However, due to the lack of statistics available in the various administrations, it was not possible to collect details on the outcome of these proceedings.

176. Nevertheless, from 2017 to 2018, the PNC’s Department for Combating Economic and Financial Crime recorded the economic and financial offences listed in the table below.

Table 3.6: Offences of an economic and financial nature recorded by the PNC's Department for Combating Economic and Financial Crime.

Offences	Complaints in 2017	Reports submitted	Complaints in 2018	Reports submitted
Money Laundering	2	0	1	0
Corruption	7	2	2	1
Misappropriation of public funds	130	32	49	18
Customs fraud	14	3	3	1
Tax fraud	29	6	10	1
TOTAL	182	43	65	11

177. In view of the demographic context and potential risks identified in the country, this table shows a low rate of prosecutions and referral of proceedings to the Public Prosecutor's Office, with no details on the judicial follow-up.

Consistency between the types of ML activities being investigated and prosecuted and the threats and risk profile of the country

178. As the overall risk profile of the country has not been determined through a comprehensive and approved RNA, and subsequently no national AML/CFT policy has been established or adopted, it was not possible, in the absence of successful ML legal proceedings, for the mission to establish the overall match between risks and proceedings.

179. Nevertheless, all the data collected and provided indicate that, to some extent, the prosecuting authorities have proven knowledge of the sectoral ML risks identified in the country and of the underlying offences generating illicit profits that could be incorporated into the money laundering process, including corruption, misappropriation of public funds, customs fraud, and the illegal exploitation of natural resources. However, the actions taken do not seem to target or prioritise those offences considered high risk and the relatively low level of enforcement in this area hampers the implementation of the law on money laundering.

180. Significant shortcomings in the judicial system hamper the efforts of investigators whose cases do not reach judgement. The prosecutors we met in this regard mentioned, among other obstacles to prosecution:

- ✓ the privileges and immunities granted by law to a number of senior government officials and public servants who are usually the subject of investigations;
- ✓ the prohibition on automatic referral for monitoring by the financial authorities;
- ✓ difficulties in accessing sources of information;
- ✓ and the independence displayed by some investigating officers with limited jurisdiction, who prefer to impose fines to the detriment of legal proceedings.

181. In addition, these magistrates from the lower public prosecutor's offices stressed the complexity of money laundering investigations and acknowledged the limits of their expertise and experience in conducting such investigations. Finally, they pointed out that the partnership and exchanges with CENAREF, which has expertise in this area, are limited to the higher public prosecutor's offices and benefit only these authorities.

Types of ML cases pursued

182. Apart from the only case mentioned by almost all the authorities we met with, relating to the conviction of a bank for money laundering, no other money laundering prosecution was brought to the mission's attention. Furthermore, the facts of this case have not been described in such a way as to determine the type of money laundering examined.

Effectiveness, proportionality and dissuasiveness of sanctions for ML

183. The only case reported by the DRC authorities concerns the confiscation for the benefit of the Treasury of the sum of USD 2.6 million ordered by the courts against a bank and an administrative sanction of USD 50,000 applied to the said bank by the Central Bank of Congo for cross-border currency transportation and money laundering.

184. In the absence of more complete data and because of the number of cases, the level of sanctions and their dissuasive nature cannot be objectively assessed.

Implementation of alternative measures

185. The Code of Criminal Procedure applicable in the DRC allows, under certain conditions, law enforcement agencies (investigating officers and public prosecutors), for any offence within their jurisdiction, to set court fines and confiscate items if they believe that, due to the circumstances, the trial court would merely impose a fine and possibly a confiscation (art. 9).

186. The customs and tax laws in force in the DRC also authorise the customs and tax departments to enter into transactions with the perpetrators of customs or tax offences or persons who have organised the evasion of customs or tax duties.

187. No details on the practice of such measures as an alternative to a criminal conviction for money laundering was provided to the assessment mission.

188. The level of effectiveness achieved by the DRC for Immediate Outcome 7 is low.

3.4. Effectiveness: Immediate Outcome 8 (confiscation)

Priority given to the confiscation of proceeds and instrumentalities of crime and assets of equivalent value

189. The DRC has an adequate legal basis for the confiscation of the proceeds of crime and the application of protective measures. Articles 22, 30, 31 and 32 of the DRC's Anti-Money-Laundering Act provide mechanisms for the implementation of interim measures such as the freezing and seizure of financial transactions. According to article 22, for example, at the request of CENAREF, the Public Prosecutor's Office may seize funds or accounts for a period not exceeding eight (8) days. Articles 30 and 31 provide for the possibility for judicial authorities and competent officials to seize assets. The Code of Procedure also provides for seizure and confiscation, which may be ordered by the criminal prosecuting authorities. In practice, these measures are not implemented. There are virtually no prosecutions for ML/FT.

190. However, it should be noted that some organisations such as the Department of Customs and Excise, the Department of Migration and the Congolese Institute for the Conservation of Nature (ICCN) carry out seizures and confiscations at the borders for DGDA and DGM and in the forest for the ICCN. However, these seizures and confiscations are not related to ML/FT investigations.

Confiscation of proceeds and instrumentalities of crime, and assets of equivalent value, in connection with underlying offences committed domestically and abroad and proceeds transferred to other countries

191. The Anti-Money-Laundering Act provides that the Government has the power to dispose of confiscated assets. In this respect, in the DRC, confiscations of proceeds derived from offences committed abroad but whose related assets are located in the DRC cannot be subject to repatriation or sharing, unless there is an agreement with a third State. The DRC was unable to provide the assessment team with statistics on confiscations

Confiscation relating to cross-border movements of cash and bearer negotiable instruments subject to false/undeclared reports or false disclosures

192. The DRC's Anti-Money Laundering Act does not contain provisions on the seizure and confiscation of falsely declared or undeclared cross-border currency transactions. However, this issue is addressed in Article 5 of BCC Circular No. 282

and Article 3, paragraphs 1 and 2 of the DRC exchange regulation of 28/03/2014. According to the Congolese system, people with more than USD 10,000 should declare it at Congolese customs border posts. However, no statistics on the confiscation of cross-border transactions were provided to the assessors so that they could assess the implementation of these texts, despite the fact that some Congolese authorities stated that these declarations are most often made at Ndjili airport. The vast size of the DRC makes it difficult for this system to be set up in conflict zones.

Consistency between confiscation results and national AML/CFT policies and priorities.

193. The DRC's 2013 RNA has not been adopted. This could pose a problem in terms of identifying risk areas. In spite of this, the assessors were able to identify certain risk areas during the site visit, such as mining, environment, wildlife, real estate, etc. In view of the lack of relevant statistics, the assessors were unable to assess the consistency of confiscation results with the ML/FT risks and national AML/CFT policies and priorities.

194. The level of effectiveness achieved by the DRC for Immediate Outcome 8 is low.

CHAPTER 4: FINANCING OF TERRORISM AND PROLIFERATION

4.1. Key Findings and Recommended Actions

Key findings:

IO. 9: Offence of financing of terrorism

- Despite the high risk of FT, no information was provided regarding investigations or prosecutions for FT. There were no convictions for FT either.
- Prosecuting authorities do not seem to take financial aspects into account in terrorism investigations.
- The DRC authorities seem to focus solely on the security aspect of terrorist threats and do not take into consideration the potential risk of FT.
- The FT aspect is not part of the counter-terrorism strategy currently being developed.
- Despite the proportionality of the sanctions provided for in the FT law, their effectiveness or deterrent effect cannot be assessed in the absence of convictions.
- Apart from counter-terrorist activities which could not be assessed due to the lack of available information, no other criminal or regulatory measures are used to disrupt FT activities.

IO. 10: Preventive measures and financial sanctions in respect of FT

- The DRC is exposed to risks of financing of terrorism because of the presence of armed groups and gangs in the country and the porous nature of its borders, which it shares with certain countries in an unstable security situation.
- The DRC has not put in place formal procedures and mechanisms for the implementation of UN Resolutions 1267 and 1373.
- The DRC authorities have neither identified the scope of NPOs and other entities that meet the FATF definition, nor determined which NPOs pose higher and/or lower risks that could expose them to exploitation for the purposes of financing of terrorism.
- The supervisory authority for NPOs does not carry out any supervision or monitoring of their activities.

IO. 11: Financial sanctions in the area of the financing of proliferation

- There is not yet a legal framework for the immediate implementation of targeted UN financial sanctions on the financing of proliferation in the DRC.
- FIs and DNFBPs do not implement TFS related to the financing of proliferation.

- The DRC authorities have failed to raise awareness among FIs and DNFBPs of TFS obligations related to the financing of proliferation. Only FIs appear to have some knowledge of these obligations, which is the result of internal initiatives.
- The supervisory authorities do not carry out targeted monitoring of compliance by FIs and DNFBPs with their obligations relating to the implementation of TFS linked to the financing of proliferation.

Recommendations on the financing of terrorism and proliferation

IO. 9 Offence of financing of terrorism:

The DRC authorities should:

- Conduct an analysis of the risks of FT to which the country is exposed and disseminate the results to all AML/CFT actors;
- Include the FT component in the national strategy being developed by CNCLT to combat terrorism and violent extremism;
- Revise Law No. 04/016 in accordance with FATF standards to include the criminalisation of the financing of a terrorist, terrorist group or organisation (even if there is no link to a specific terrorist act or acts) and remove the requirement that a terrorist act be characterised on the basis of achieving a result that ‘seriously disrupts public order through intimidation or terror’;
- Strengthen the technical, human, material and financial capacities of the prosecuting authorities with regard to the detection, investigation and suppression of FT activities;
- Improve operational cooperation between prosecuting authorities by strengthening information sharing and implementing mechanisms for joint operations or investigations;
- Take the necessary enforcement actions to prosecute FT and apply effective, proportionate and dissuasive sanctions;
- Produce statistics on investigations, convictions and confiscations in relation to FT.

IO. 10: Preventive measures and financial sanctions in respect of FT

The DRC authorities should:

- Establish formal mechanisms for the implementation of UNSCR 1267 and 1373;
- Produce statistics on the freezing of funds under UNSCR 1267 and 1373;
- Carry out a study to identify NPOs which, by virtue of their characteristics and activities, may be exploited for the purposes of financing of terrorism and protect them by applying targeted and proportionate measures;

- Raise awareness among NPOs of the risks of their use for the purposes of financing of terrorism;
- Strengthen the capacity of the supervisory and monitoring authorities of NPOs to provide them with the proper tools for the successful performance of their duties.

IO. 11: Financial sanctions in the area of the financing of proliferation

The DRC authorities should:

- Provide a legal framework for the prevention, suppression and disruption of the proliferation of weapons of mass destruction and its financing for the effective implementation of all existing UNSCRs that apply targeted financial sanctions related to the financing of proliferation.

195. The relevant Immediate Outcomes discussed and assessed in this chapter are: IO.9, IO.10 and IO.11. The Recommendations relevant to the technical compliance assessment under this Chapter are: R5, R6, R7 and R8.

4.2 Effectiveness: Immediate Outcome 9 (FT investigations and prosecutions)

Types of FT activities prosecuted and convictions; consistency with the country's risk profile

196. No cases of prosecution or conviction for the financing of terrorism were reported by the Congolese authorities to the mission.

197. However, due to the presence and actions of armed groups and gangs scattered throughout the country, there are terrorist risks and potential vulnerabilities for the financing of terrorist activities, particularly through the illegal exploitation of natural resources in the DRC.

198. The authorities have taken the measure of the terrorist threat and are demonstrating, through counter-measures, a commitment to the fight against terrorism. The creation by Decree No. 070/2001 of 26 December 2001 of CNCLT, the body responsible for designing and implementing counter-terrorism strategies and measures, is a significant response. However, this organisation does not integrate FT aspects.

199. In addition, there is no synergy of actions with other bodies working in the fight against the financing of terrorism in the DRC, such as CENAREF, the Office of the Special Adviser to the Head of State on Good Governance and the Fight against Corruption, Money Laundering and the Financing of Terrorism, the National Police, and the investigating and prosecuting authorities in general.

Identification and investigation of cases of financing of terrorism

200. The DRC has a legal framework and, at all levels, competent departments and authorities to combat crime in general. However, they do not have sufficient experience and expertise in the detection and suppression of the financing of terrorism.

201. The CNCLT, a specialised department dedicated to the fight against terrorism, has indicated that investigations have been opened into terrorists from the ADF-Nalu group, without any evidence that the financing of terrorism aspect was taken into account.

Integration of financing of terrorism investigations into national counter-terrorism strategies and investigations

202. CNCLT has prepared a draft national strategy to combat terrorism and violent extremism, which has not yet been finalised or adopted by the national authorities and which does not take into account the financing of terrorism.

203. In the meantime, action for the suppression of terrorism is the responsibility of the Military Prosecutor's Office, the competent court in this area which, according to the CNCLT authorities we met, has already tried 42 proven cases of terrorism with other similar proceedings under way.

204. However, the on-site mission was unable to meet with the Military Prosecutor's Office to confirm its allegations and to verify the inclusion of the financing component in these terrorism proceedings.

Effectiveness, proportionality and dissuasiveness of the sanctions applied to FT

205. Article 41 of Law No. 04/016 of 19 July 2004 on the fight against money laundering and the financing of terrorism punishes any natural person who is the perpetrator, co-perpetrator or accomplice of an FT offence with a prison sentence of 5 to 10 years and a fine in Congolese francs equivalent to USD 50,000. These sanctions, which are identical to those applied for serious offences, are proportionate to the seriousness of acts of FT. However, in the absence of proven convictions, their effectiveness and deterrent effect cannot be objectively assessed.

Implementation of targeted financial sanctions for TF without delay

206. The Congolese authorities have not yet grasped the reality of financing of terrorism activities and offences, and have not yet undertaken any criminal investigations or implemented any alternative sanctions.

207. In conclusion, while the potential risk of financing of terrorism in the DRC does not appear to be non-existent, no measures have been implemented by the authorities to effectively detect and sanction the financing of terrorism.

208. **The level of effectiveness achieved by the DRC for Immediate Outcome 9 is low.**

4.3 Effectiveness: Immediate Outcome 10 (preventive measures and financial sanctions in respect of FT)

Immediate implementation of relevant targeted financial sanctions

209. The combined provisions of Articles 28 and 46 of Law No. 04/016 of 19 July 2004 on the fight against money laundering and the financing of terrorism provide for the freezing, as soon as possible, of funds and other financial resources belonging to any natural or legal person, entity or body whose name or corporate name appears on the list drawn up in accordance with United Nations Security Council Resolution 1267 and its successor Resolutions.

210. However, the DRC authorities have not enacted any measures or adopted any formal mechanism or legal framework to implement these financial sanctions. The same applies to the application of the freezing of funds on the basis of UNSCR 1373.

211. Some bank officials met by the on-site mission stated that their institutions have applications or software that directly integrate the United Nations Security Council lists as well as American and European lists.

212. Under this mechanism, a bank froze funds amounting to USD one million belonging to a natural person subject to financial sanctions on the basis of a United Nations list.

213. In addition, an empirical mechanism for distributing the lists was described by Foreign Ministry officials. According to the latter, targeted financial sanctions lists reach this Ministry through the Permanent Mission of the DRC to the United Nations. These lists are sent to the Ministry of Finance, which has jurisdiction to freeze assets, with information also sent to the Department of Migration. In practice, it is generally the Prosecutor General's Office at the Court of Cassation that sends requisitions for freezing to financial institutions.

214. However, this procedure, which is unclear, has not only not been formalised but, as described, does not allow financial sanctions to be implemented without delay. Moreover, no statistical data on requisitions already made and the freezing of funds was provided to the assessment mission to assess the effectiveness of this mechanism.

215. In addition, the DRC has not yet, as at the date of the on-site visit, either proposed a designation on the basis of Resolution 1267 and subsequent Resolutions, or made a national designation in accordance with Resolution 1373.

Targeted approach, outreach and oversight of at-risk non-profit organisations

216. The legal framework of NPOs in the DRC is provided by law No. 004/2001 of 20 July 2001, laying down general provisions applicable to Non-Profit Organisations and public interest institutions. This law sets out the types and categories of organisations,

and determines the conditions and procedures for their creation, accreditation and operation, as well as the supervision and monitoring procedures applicable to them.

217. However, the DRC has not conducted any specific study of the NPO sector to measure their vulnerability to the risks of financing of terrorism. The competent authorities we met with are nevertheless aware of this potential risk, but do not undertake any awareness-raising or training activities to make organisations aware of the risks of their use for the financing of terrorism and the means and measures available to protect themselves against them.

218. Despite the provisions of the law, no monitoring or supervisory activities have been implemented to detect abuses and potential financing of terrorism activities involving NPOs.

219. There is no computerised database on NPOs. The Ministry of Justice, which grants accreditation, does not verify the source of the funds intended to finance NPOs in the DRC. Only a partial census of organisations working in Kinshasa and a few other large cities has been undertaken in order to draw up an inventory.

Deprivation of financing of terrorism assets and instrumentalities

220. The Congolese authorities did not report to the assessment mission any statistical evidence of police investigations or legal proceedings initiated or concluded, or of administrative measures taken in connection with the deprivation of assets and instruments related to financing of terrorism activities.

Consistency of measures with the overall risk profile of financing of terrorism

221. The internal security situation of the DRC, marked by the presence of armed groups and gangs, as well as its geographical environment, due to the instability of certain neighbouring countries and the porous nature of its borders, constitute risk factors for the financing of terrorism in that country.

222. The law on the fight against money laundering and the financing of terrorism adopted by the DRC provides for freezing measures pursuant to UN Resolutions on targeted financial sanctions for the financing of terrorism. However, this legal framework is incomplete because the formal mechanisms for disseminating the lists to regulated entities have not been identified, with the result that no concrete measures to freeze terrorist funds have yet been implemented in the DRC. This is in contrast to the country's overall financing of terrorism risk profile.

223. In conclusion, the DRC does not have a formal mechanism for implementing targeted financial sanctions for the financing of terrorism, based on Resolution 1267 and subsequent Resolutions and UN Security Council Resolution 1373. With regard to preventive measures to ensure the integrity of NPOs and protect them against the risks associated with their use for the purposes of financing of terrorism, no study has been conducted by the Congolese authorities to identify and understand the risks in the

sector. Awareness-raising, monitoring and surveillance of the NPO sector are also non-existent.

224. The level of effectiveness achieved by the DRC for Immediate Outcome 10 is low

4.4 Effectiveness: Immediate Outcome 11 (financial sanctions on the financing of proliferation)

Implementation of targeted financial sanctions related to proliferation financing without delay

225. Following the example of the mechanism relating to the implementation of UNSCR 1267 and subsequent Resolutions and Resolution 1373, the DRC does not have a system that can give immediate effect to targeted financial sanctions decided by the UN Security Council to combat the financing of the proliferation of weapons of mass destruction.

Identification of funds or other assets of designated persons and entities; measures taken in respect of such persons and entities

226. Interviews with financial intermediaries have revealed that some banks have filtering software that automatically identifies and blocks the assets or any transactions of potential customers designated by the United Nations Security Council in the fight against the financing of proliferation. However, no statistical data on the implementation of this sectoral mechanism were provided to the assessment mission.

Compliance and understanding of obligations by financial institutions and DNFBPs

227. Knowledge and understanding of their obligations in relation to combating the financing of proliferation are the result of internal initiatives, particularly for financial institutions.

Monitoring and verification of compliance with obligations

228. In the fight against the financing of proliferation in the DRC, compliance by the institutions concerned with their obligations in relation to targeted financial sanctions is not subject to any particular supervision or oversight beyond the general and ordinary monitoring of compliance with prudential standards.

229. In conclusion, there is no regulation or mechanism allowing the DRC to implement the UN Security Council Resolutions on targeted financial sanctions in the fight against the financing of proliferation.

230. The level of effectiveness achieved by the DRC for Immediate Outcome 11 is low.

CHAPTER 5: PREVENTIVE MEASURES

5.1. Key Findings and Recommended Actions

Key findings:

- Shortcomings in the legislative and regulatory framework leave a majority of financial institutions and DNFBPs outside the scope of AML/CFT preventive measures. Although the vast majority of financial institutions and DNFBPs are subject to Law No. 04/16, most of the obligations laid down apply only to credit institutions. The regulations subsequently adopted broadened the scope of those subject to the regulations, but are still far from sufficient.
- The banks in the DRC have each established a categorisation of customers, but this is not based on an objective assessment of the risks posed by these customers or their transactions; rather, it is based much more on the various reports produced by the specialised institutions (FATF) on high-risk transactions and products. As a result, the specific measures taken for the management of high-risk customers are either insufficient or non-existent.
- The microfinance, savings and credit cooperative, cash exchange, money and values transfer and insurance sectors have no understanding of the ML/FT risks posed by their customers, products or services. With regard to new products, the issuance of electronic money has not been subject to a prior study by the competent authorities to measure the extent and depth of the related risks.
- While at the level of the banks, Customer Due Diligence and ongoing operational due diligence measures seem to be understood even if their implementation is not satisfactory, other financial institutions have not yet fully grasped their obligations in this area. There is also the problem, for all categories of financial institutions, of defining and applying enhanced due diligence measures for certain categories of customers or high-risk transactions such as PEPs or wire transfers. Due diligence obligations generally come up against the lack of a single national identity card in the DRC. This results in difficulties in identifying customers, even if some alternative documents are accepted.
- With regard to Designated Non-Financial Businesses and Professions (DNFBPs), there is evidence that the risks of money laundering and financing of terrorism are not understood by these actors. No legal obligations or specific measures are taken to assess, understand and manage ML/FT risks in the activities of the sectors concerned.
- The implementation of basic due diligence measures is very unsatisfactory at the level of DNFBPs. The basic obligations to identify customers, principals and beneficial owners are neither understood nor enforced by professionals at the

heart of high-value cash transactions, such as real estate agents.

- Banks fully understand their obligations to report suspicious transactions. At the level of bureaux de change and money transfer companies, BCC instructions require these actors to submit suspicious transaction reports to BCC and CENAREF. In addition, with regard to the financing of terrorism, the law requires regulated entities to submit reports jointly to CENAREF and the Public Prosecutor's Office. At the level of DNFBPs, many actors in this sector are not at all aware of their obligations under Law No. 04/016 to report transactions deemed suspicious or unusual to CENAREF. Finally, and generally speaking for all regulated entities, there appears to be a confusion between due diligence obligations with regard to transactions whose amounts exceed certain thresholds and the detection of suspicious transactions based on the knowledge that these professionals have of their customers.
- Article 2 of the Memorandum of Understanding signed in 2010 between the CBA and CENAREF removes any legal obligation (Instruction 15 bis Amendment 2) for banks to automatically report to CENAREF all cash transactions above USD 10,000, as far as PEPs are concerned.

Recommendations on preventive measures

The following recommendations are made to the DRC authorities:

- Revise Law No. 04/16 to: (i) fill the gaps regarding the technical compliance of preventive measures with FATF standards, in particular regarding customer identification, measures relating to PEPs and the submission of STRs to CENAREF; (ii) extend the scope of due diligence obligations beyond credit institutions, covering all categories of financial institutions
- Adopt necessary regulations or guidelines and strengthen training and awareness efforts to improve understanding of the AML/CFT requirements of financial institutions and DNFBPs, prioritising the most at-risk entities such as financial courier companies, cash exchange dealers, dealers in precious metals and stones, lawyers and real estate agents.
- Strengthen regulated entities' level of understanding of ML/FT risks by disseminating the results of the NRA, conducting training and awareness activities and publishing reports on ML/FT risk typologies and indicators in order to improve mechanisms for detecting suspicious transactions.
- Take adequate measures to strengthen regulated entities' trust in CENAREF by setting up secure channels for the transfer of STRs by AML/CFT-subject professions to CENAREF and clarify the obligation to report suspicious

transactions, regardless of the amount of the transaction.

- CENAREF should be given priority as the single point of contact for all regulated entities for the submission of STRs, and CENAREF should send a copy of the STR immediately upon receipt to the Public Prosecutor's Office or the BCC, as appropriate.
- Take appropriate measures to enhance regulated entities' understanding of the simplified due diligence requirements and encourage their implementation where appropriate, in order to promote financial inclusion.
- Put in place measures, including regulatory measures and ongoing training, to ensure that the required internal supervision is established in entities subject to AML/CFT obligations and provide for the issuance of guidance and training on the submission of STRs and the provision of feedback on the quality of STRs to regulated entities.
- Make customer management based on a risk-based approach a legal obligation for all categories of regulated entities and apply proportionate measures to mitigate the risks identified.
- Clarify the concept of beneficial owner in accordance with the required standards and take the necessary measures to require their identification in the management of customer relationships of regulated identities, including those in the insurance sector.
- Specify, through regulatory provisions, arrangements for the performance and processing of electronic transfers, together with specific procedures for identifying principals and beneficial owners.
- Take appropriate regulatory measures to ensure that the BCC, together with the other actors involved in the financial sector, conduct a national study on the vulnerabilities and threats inherent in new financial products, including electronic money, which has a very high penetration in the DRC market.
- Formally draw up and publish for the attention of all actors the secure official documents that can be considered by regulated entities as customer identification in the absence of a uniform national identity card.

231. The relevant Immediate Outcome discussed and assessed in this chapter is IO.4. The Recommendations relevant to the technical compliance assessment under this Chapter are: R.9 to R.23.

5.2. Effectiveness: Immediate Outcome 4 (preventive measures)

232. The weighting of the different sectors (risk weighting) in relation to the volume of financial flows, the nature of products and distribution channels is as follows: Very significant: Banks; financial courier companies; cash exchange; sellers of precious metals and stones; lawyers; real estate agents. Significant: Microfinance institutions; e-money institutions; chartered accountants. Low: Insurance: Financial market; casinos.

233. The DRC has a legal framework governing AML/CFT. These include Act No. 04/016 of 19 July 2004 on the fight against money laundering and the financing of terrorism, which is a general law. This Act is supplemented by BCC instructions numbers 006, 007, 008, 15, 17 and 24 for financial institutions. DNFBPs have no specific regulatory standards for AML/CFT.

234. In terms of prevention, Law No. 04/016 does not require the actors concerned to implement a risk-based approach in the management of their clientele. All financial actors designated by the FATF are covered by Law No. 04/016. However, the majority of the obligations to take preventive measures apply only to credit institutions; other financial institutions are only affected by a minority of the procedures. With regard to DNFBPs, casinos, real estate agents, lawyers, notaries, accountants and dealers in precious metals and stones are designated as being subject to the provisions of Act No. 04/16; however, this does not require them to clearly set out the procedures for implementing special due diligence measures. Only the obligation to report suspicious transactions to CENAREF is imposed on them, with no consideration of how these so-called suspicious transactions could be understood and detected.

Understanding by FIs and DNFBPs of ML/FT risks and relevant obligations

235. Banks in the DRC have an understanding of the risks of ML/FT, but this does not result from any prior assessment of the vulnerabilities of the products offered or the threats posed by certain customers. It is thus apparent from the various interviews with those in charge of this sector that the categories of transactions or customers known as 'high risk' (PPE, electronic transfers) are clearly based solely on the various reports of studies conducted by competent bodies (FATF, GABAC, etc.) and not on an effective analysis of the economic environment of the DRC and scientifically established vulnerabilities and threats. Politically Exposed Persons, for example, are de facto classified as 'high-risk' customers by all the banks visited. However, the procedures for establishing and updating lists for this category of customers are not clearly established. Similarly, the enhanced due diligence measures put in place by banks to manage the risks inherent in transactions with this category of customer are, to say the least, deficient. Other non-bank actors in the financial sector have no understanding of the ML/FT risks inherent in their customers, products and services. In general, in terms

of prevention, the regulatory system in force in the DRC does not require the actors concerned to implement a risk-based approach in the management of their customers.

236. With respect to DNFBPs, these professionals generally have a limited understanding of the ML/FT risks associated with their activities. Casinos, real estate agents, lawyers, notaries, accountants, and dealers in precious metals and stones are designated as subject to Law No. 04/16; however, this does not impose on them a clear definition of arrangements for the implementation of special due diligence measures. Lawyers and real estate agents, who are at the centre of money laundering risks in the real estate sector, do not seem inclined to carry out the necessary AML/CFT due diligence. Dealers in precious metals and stones and casinos have only a superficial knowledge of the concept of money laundering and their due diligence in this area. They did not take any action of their own or receive any assistance from an authority enabling them to understand the ML/FT risks inherent in their business sectors.

237. In collaboration with the World Bank, the DRC has undertaken a National Risk Assessment (NRA) which should make it possible to draw up a mapping of ML/FT risks in the country. However, the report of this assessment has not been approved by the public authorities. Moreover, it emerged during the interviews that the various private sector actors interviewed had limited knowledge of the ML/FT risks inherent in their respective sectors. The latter are not informed of the findings of the DRC-led NRA, which limits their understanding of the ML/FT risks to which they are exposed.

Implementation of proportionate measures to mitigate risks

238. In the absence of risk mapping resulting from a prior study conducted at the level of banking institutions, other financial sector actors and DNFBPs, the definition of proportionate risk management and mitigation measures is not possible for all categories of regulated entities.

239. Banks: The mission team met with a panel of financial sector actors and various authorities and asked them a range of questions on all AML/CFT obligations and the level of understanding of the risks. The responses indicate that banks conduct basic due diligence in terms of understanding the risks associated with customers or products and transactions. None of the banks we met with had formally conducted an internal assessment of the risks associated with their activities, together with the appropriate related measures. The categorisation of customers and transactions by risk level is therefore based here on the conclusions of the various studies carried out by specialised institutions, such as the FATF.

240. Insurance: At the time of the mission, the insurance sector in the DRC still consisted of a single publicly-owned company, SONAS, and a few brokers licensed by SONAS. No due diligence is carried out by these actors to gain an understanding of the risks surrounding their activities. However, industry officials pointed out to the

assessors the presence on the market of clandestine actors, who collect premiums on behalf of foreign companies. It is an embryonic market, in which no specific risk management measures are taken.

241. Microfinance and COOPEC: The microfinance sector and savings and credit cooperatives (COOPECs) are suitable alternatives for financial inclusion in a context of low coverage of the banking sector. During interviews with the heads of these sectors, it emerged that they have very limited knowledge of the ML/FT risks to which they are exposed, even though their portfolios include customers with high risk potential from all social classes. With total balance sheets of more than USD 140 million in 2017 and approximately 813,230 accounts, microfinance has significant ML/FT vulnerabilities, while no specific measures are taken for risk management.

242. Accredited cash exchangers: The DRC has 32 accredited bureaux de change and more than 80,000 non-accredited natural and legal persons offering the same services. With a volume of USD 2.5 billion in foreign exchange sales in 2017 according to COCAM, cash exchange activities pose significant ML risks in the DRC, in a context of widespread dollarization of the economy, very poor bank cover, a marked presence of armed gangs in part of the country and the illegal exploitation of precious metals and stones. However, actors in this sector do not have a risk assessment framework or internal procedures for assessing the risks associated with their activities. The result is a very limited understanding of their AML/CFT requirements.

243. Financial courier companies: Providers of money and value transfer services seem to have a basic understanding of their AML/CFT obligations. With 71 establishments in operation as of 31 December 2017, the volume of transfers received, according to the BCC, amounted to 1.09 billion USD, while remittances stood at 209.015 million USD. Interviews with CPMF officials revealed a very limited understanding of the ML/FT risks related to their activities, resulting in the total lack of a risk management policy.

244. Electronic money institutions: At the time of the mission, four operators were active in this sector, with BCC accreditation. EMIs are also obvious vectors of financial inclusion whose activities pose certain ML/FT risks, with a transaction volume of USD 234.64 million in August 2018, according to the BCC. However, interviews with industry actors revealed that there is no framework for the ML/FT risks to which they are exposed, which explains the lack of internal risk management procedures.

245. Financial market: At the time of the on-site visit, the financial system in the DRC did not have operational financial market actors.

246. DNFBPs: With regard to the non-financial sector, the actors concerned generally have a very limited understanding of the ML/FT risks to which their sectors are

exposed and do not implement the primary due diligence obligations. There is no framework for managing customer or product risk.

Application of CDD and record-keeping requirements

247. Due diligence requirements in the financial sector are unsatisfactory to say the least. The effectiveness of the due diligence system is severely mitigated by problems relating to customer identification. In the absence of a unique identification document (no national identity card in the DRC) and an instruction from the Central Bank of Congo, each bank sets out internally what it intends to consider as an identification document. In an environment marked by widespread and systemic corruption, the reliability of these identification documents, which are very easy to forge, is a matter of great concern. During a meeting with a bank, for example, officials were not able to give an accurate list of the identification documents required for new customers at the start of the relationship. Some banking sector actors even told the mission that they agree to carry out transactions on behalf of customers on the basis of the presentation of a simple business card. The driving licence is also accepted in several banks, although this document is far from secure in the DRC context.

248. Where customers act on behalf of third parties, due diligence to identify the beneficial owner or principal is not satisfactorily implemented at the level of banks and other financial sector actors. Some of the managers we met also pointed out the risks to their security in the event of very thorough verification of the source of the funds or the identification of certain customers on whose behalf a third party carries out the transaction. At the level of DNFBPs, no due diligence is carried out to identify the beneficial owners of transactions when a customer, whether a natural or legal person, is acting on behalf of a third party.

249. No arrangements are laid down to enable regulated entities who use third parties to be sure that identification documents are actually available. Just as no details are given on the nature and form of the practical transfer of data and documents from the third party to the reporting entity. Similarly, no details are given on the criteria applicable to determine whether the third party complies with the identification standards when it is part of a group.

250. Although time periods for document retention are set out in the texts, the nature of the documents to be retained is not determined, and the procedures for submitting these documents in the event of a request by an authority are not specified. One example is the vast expanse of the DRC and the difficulties of communication between the main cities and others inland. This poses an enormous challenge for the delivery of documents from bank branches inland to the authorities in Kinshasa. None of the banks we met with that had branches inland was able to provide the mission team with accurate information on how documents requested from the branches would be

forwarded to Kinshasa in the event of a request from the authorities and in the event that the accounts of the customers concerned are located inland.

251. Several authorities with whom we met during the mission clearly questioned the effectiveness of the due diligence system put in place at the level of the banks and the BCC. On analysis of the statements of these officials, the measures taken by the banks and the BCC are insufficient and do not prevent the DRC's financial system from being used with complete peace of mind to recycle the proceeds of corruption and misappropriation of public funds.

252. The BCC, as the Central Bank, does not seem to have taken the full measure of its status as a reporting entity in accordance with the provisions of Law No. 04/016. A so-called 'AML/CFT officer' had just been appointed at the time of the mission. However, this officer's daily duties and actions in terms of due diligence with regard to transactions and reporting to CENAREF did not seem to be fully understood.

253. For DNFBPs, despite the sensitivity of their tasks, some sensitive professions such as real estate agents do not have a reliable system for storing and reconstructing bundles of documents in the event of a request by an authority.

Implementation of reinforced or specific measures

254. Enhanced due diligence measures for transactions performed on behalf of PEPs are not clearly established and put in place by FIs and DNFBPs. Although, at the level of the banks, PEPs are classified as high-risk customers, even though there are no clearly established procedures for updating the relevant lists, the particular due diligence to be put in place is not made explicit. For other financial institutions and DNFBPs, there are no formal enhanced due diligence measures for these customers.

255. With regard to the management of correspondent banking, only Instruction 15 in Article 21 sets out the relevant procedures. However, this provision does not require financial institutions to ensure that the correspondent institution has verified the identity of customers with direct access to its accounts and has implemented appropriate due diligence measures with respect to them. There is no formal prohibition on performing a transaction, or establishing or continuing the business relationship, when identification procedures cannot be carried out by the correspondent.

256. With regard to new technologies, neither the DRC authorities nor financial institutions have undertaken any studies to identify and assess the ML/FT risks that may result from the development of new products and the use of new technologies. This would have made it possible to determine specific due diligence measures relating to their use.

257. With regard to wire transfers, there is no text setting out arrangements for the performance and processing of wire transfers, with detailed requirements for the

identification of principals and beneficial owners. Article 11 of Law No. 04/16 states only that special due diligence must be exercised with regard to electronic transfers of funds, whether international or domestic. Instruction 15 requires persons subject to section 22 to obtain and retain information on the principal. The professionals we met had rather limited knowledge of the basic due diligence measures to be implemented with regard to this category of transaction, and were not fully aware of the related risks.

258. The implementation of targeted sanctions on financing of terrorism by financial institutions in the DRC remains highly unsatisfactory. There is no mechanism for the dissemination of sanctions lists. Subsidiaries of international groups have lists provided by the parent companies, with no specific procedures for local implementation. Other institutions seem to lack reliable sources for collecting lists.

259. With regard to due diligence in relation to the high-risk countries identified by the FATF, each of the banks we met with has an internal list of countries deemed to be high risk, although not necessarily on the basis of FATF analyses. However, there are no specific binding provisions for the introduction of enhanced due diligence measures in relationships with these countries.

Compliance with reporting obligations in case of suspicion; prevention of ‘tipping off’

260. From 2015 to 2018, CENAREF received 88 suspicious transaction reports, of which approximately 63% came from the banking sector. However, the concept of ‘suspicion’ to be reported to CENAREF at the level of banks and other financial sector actors does not seem to be clearly understood. While some professionals make automatic reports to be submitted to CENAREF for cash transactions above the USD 10,000 threshold for suspicious transaction reports, others believe that they should first conduct all financial investigations and only report evidence of money laundering or financing of terrorism to CENAREF. As a result, many unusual or suspicious financial transactions are not reported to the financial intelligence unit.

261. Because of a lack of trust in CENAREF (reported cases of information leaks), bank officials admitted that they had difficulty submitting all suspicious transaction reports to the FIU, reflecting a weakness in the national AML/CFT system. During the meeting with the CBA office, for example, the officials met expressed their reservations about the degree of trust placed in CENAREF on the management and confidentiality of STRs.

262. In general, the system for detecting and reporting suspicious transactions in the DRC has certain weaknesses. By way of illustration, at the time of the mission, only banks and the BCC had already made STRs and submitted them to CENAREF, while other financial and non-financial sector actors (such as MFIs, COOPECs, money

transfer companies, real estate agents, etc.), which capture a significant share of financial flows whose lawful origin is not certain, did not make any.

263. In addition, there are several STR recipients in the Congolese system. For bureaux de change and money and value transfer companies, their STRs must be submitted to both the BCC and CENAREF. In financing of terrorism cases, the Public Prosecutor's Office and CENAREF both receive STRs. This has led to confusion among actors, who told the mission team that they were unsure of what action to take to comply with the reporting requirement. Moreover, if not properly managed, having multiple recipients could weaken the confidentiality that must surround STRs. Finally, questions were asked about the final destination of STRs submitted to the BCC.

264. The reporting system also has a definite weakness due to certain provisions of the Memorandum of Understanding signed on 9 September 2010 between the CBA and CENAREF. Under this Protocol, banks may not disclose to CENAREF cash or bearer securities transactions in excess of USD 10,000 made by PEPs, in violation of the provisions of Instruction 15 bis (Amendment 2). In the opinion of the assessors, this constitutes a significant vulnerability of the DRC's AML/CFT system. Moreover, during interviews with chartered accountants, these professionals claimed that they were not covered by AML/CFT obligations, in particular the requirement to report suspicious transactions, with regard to the provisions of supranational laws, in particular the OHADA treaty.

Internal Controls and legal/regulatory requirements;

265. The regulations governing the activities of the financial sector (Instruction 17 for credit institutions and Instruction 008 for COOPECs and MFIs) require the institutions concerned to set up internal supervision and procedures. However, the scope of the prerogatives of this internal supervision in its work and independence of action are not clearly determined at the level of banks and other financial sector actors. The heads of the financial institutions interviewed stated that they have internal supervision policies and procedures. These procedures, especially in the banking sector, broadly correspond to the guidelines of Instruction 17. However, the interviews with some of the managers of these FIs did not enable them to highlight internal supervision procedures, especially with regard to customer profiling, customer risk management or the application of targeted sanctions.

266. At the level of the banks, the BCC sent the mission team copies of a few observation letters on the shortcomings observed in internal supervision systems, but did not clearly specify the corrective measures to be taken.

267. With regard to other non-bank financial sector actors, the effectiveness of internal supervision procedures and mechanisms has not been established, and not even an observation letter has been sent by the BCC to an actor, even though the effectiveness of internal supervision systems within these institutions shows major weaknesses.

268. In the case of the DNFBPs, such arrangements are virtually non-existent.

269. The level of effectiveness achieved by the DRC for Immediate Outcome 4 is low.

CHAPTER 6: SUPERVISION

6.1. Key Findings and Recommended Actions

Key findings:

- The BCC has, to some extent, put in place mechanisms to prevent criminals and their accomplices from participating in the ownership, control or management of financial institutions. However, these measures remain insufficient, in particular as they do not involve the verification of beneficial owners, and limit the effectiveness of operational measures to prevent criminals from taking over the ownership or management of financial institutions.
- DNFBPs (lawyers, accountants, casinos, precious metal dealers, real estate agents) do not have a designated supervisory authority for AML/CFT despite the high risks they pose in an economy marked by informality and abundant cash circulation. Procedures for granting their accreditation or authorisation are implemented by the supervisory authorities or self-regulatory bodies without taking into account AML/CFT aspects to effectively protect these professions from control or management by criminals and their accomplices.
- The BCC regularly establishes a plan for the supervision of the institutions under its supervision, which includes on-site checks. However, the approach of this supervision is not based on the risks of ML/FT since it has not yet conducted studies to establish the sectoral risks and to determine which of these institutions poses higher risks. In addition, the AML/CFT component is not sufficiently supervised, so sanctions imposed were essentially only imposed as a result of general supervision, while there are failures in FIs. Moreover, the few on-site missions relating to AML/CFT issues were carried out following the submission of an STR by the credit institution, which is a major obstacle to the effectiveness of the reporting mechanism.
- BCC supervision does not cover all bank branches scattered throughout the country, so those established in conflict zones and/or near borders, which may pose high risks, are generally not subject to any form of supervision. Some FIs are weakly supervised by the BCC while others are not covered at all (Post Office financial services).
- The BCC has developed a general handbook dealing with AML/CFT issues, but it needs to be updated to incorporate recent developments in order to better inform regulated entities. Moreover, the obligations of the entities included in this handbook are not followed by actions to effectively monitor their implementation.
- Although the texts grant broad powers to the BCC to impose sanctions on the entities subject to its supervision, the insufficient implementation of supervision in the area of ML/FT and the lack of statistics on the sanctions imposed make it impossible to

demonstrate their dissuasive and proportionate nature.

- Although the insurance sector appears to pose limited risks, it operates without a regulator; ARCA is still in the establishment stage.

Supervision recommendations

The Congolese authorities should implement the following actions:

- Develop and document an ML/FT risk analysis methodology, with priority for high-risk sectors such as banks, financial messaging companies and cash exchange, and conduct sector-wide studies to map ML/FT risks by sector, reporting entity or product;
- Establish a risk-based AML/CFT supervision manual for document and on-site inspections as well as a supervision guide for inspectors, prioritising high-risk areas;
- Reconsider the usefulness and consistency with AML/CFT objectives of BCC's practice of conducting inspection missions to banks that have submitted STRs in order to avoid discouraging the submission of STRs by the private sector;
- Designate the competent AML/CFT supervisory authorities for DNFBNs, provide them with sufficient supervisory and sanctioning powers and implement a risk-based supervisory programme;
- Provide the supervisory authorities with sufficient means, strengthen their human resource capacity and improve their understanding of the obligations arising from AML/CFT law to ensure effective supervision of those subject to AML/CFT requirements;
- Issue thematic guidelines to further explain AML/CFT obligations and due diligence to regulated entities;
- Strengthen supervision at the accreditation level of financial institutions and DNFBNs to ensure that the information provided and the analyses performed are adequate to prevent criminals and their accomplices from owning or becoming the beneficial owners of a significant interest in or control of financial institutions or DNFBNs;
- Make ARCA effectively operational;
- Put in place specific due diligence for the monitoring of new ICT-based products, such as e-money, with regard to the vulnerabilities they pose in relation to ML/FT;
- Extend the scope of AML/CFT supervision to Post Office financial services.

270. The relevant Immediate Outcome discussed and assessed in this chapter is IO.3. The Recommendations relevant to the technical compliance assessment under this chapter are Recommendations 26, 27, 28, 34 and 35.

6.2. Effectiveness: Immediate Outcome 3 (supervision)

Implementation of measures to prevent criminals and their accomplices from owning or becoming the beneficial owners or beneficial owners of a significant interest in, or control of, financial institutions or Designated Non-Financial Businesses and Professions

271. The exercise of financial activity in the DRC is subject, in the majority of cases, to obtaining accreditation from the BCC. There are laws and regulations making various categories of regulated entities subject to prior accreditation before engaging in any financial activity. These include AML Law No. 04/016 (Articles 16 and 55 paragraph 2); Law No. 002/2002 on COOPECs (Articles 14 to 19); Law No. 003/2002 on credit institutions (Articles 10 to 16); Administrative Instruction No. 006 Amendment No. 1 on financial couriers (Articles 3 to 8); Administrative Instruction No. 007 for bureaux de change (Articles. 3 to 7); Instruction No. 1 for micro-finance institutions following Amendment No. 1 (Articles 12 to 15); Instruction No. 18 for banks (Articles 2 to 9); and Instruction No. 24 on the issuance of electronic money and electronic money institutions (Articles 5 to 13). Accreditation application forms are submitted to the Supervisory Authority for Financial Intermediaries (DSIF) for approval. DSIF also receives and assesses applications for accreditation from microfinance institutions, financial courier companies, bureaux de change and individual foreign exchange dealers. These applications, examined by its Accreditation and Regulations Department, contain information that may enable BCC to assess the good character and experience of managers and auditors. A list of shareholders is also provided to the BCC. In the process of assessing these applications, the BCC, through its competent departments, verifies the profile and activities of equity providers. For foreign investors, the BCC requests information from its foreign counterparts. However, the provisions on market access are not satisfactory as they do not ensure throughout the activity of financial institutions that they are not owned, controlled or directed by criminals or their accomplices. Furthermore, there is no provision for the examination of beneficial owners when applying for accreditation or significant transfers of ownership.

272. Nevertheless, and in practice, the use of documents alone cannot guarantee that criminals and their accomplices cannot take control of FIs in any way, especially in the absence of a single national identification system. The analysis of documents submitted for examination for the accreditation application is supplemented by research and the collection of additional information on the Internet. The BCC did not mention the effectiveness or otherwise of the character investigations it carries out on

the managers of these institutions and/or their beneficial owners. Under these conditions, it becomes difficult to assess the effectiveness of the process.

273. With regard to cash exchange in particular, many individual foreign exchange dealers are exempt from the requirement to obtain membership/accreditation before carrying out any activity. Indeed, COCAM, the self-regulating body for cash exchangers, is in the process of organising individual foreign exchange dealers through awareness-raising and identification activities with a view to grouping them together in order to comply with the provisions in force, in particular as regards obtaining accreditation. This situation reveals the existence of a significant number of actors in the sector who are not accredited to date but who continue to engage in cash exchange activities. In addition, the source of the funds invested in cash exchange is not always a concern during the process of setting up a bureau de change.

274. For insurance, ARCA has not granted any accreditations to date and has no visibility on the sector for the moment. Created in 2016, ARCA is still in the operationalisation phase. SONAS has a monopoly on the insurance market so far, although other actors are beginning to show interest in entering the Congolese insurance market. In addition, insurance brokers were accredited by SONAS without special AML/CFT supervision.

275. With respect to DNFBPs, while access to some of these professions is well regulated so that the procedures in place can prevent criminals from accessing them, it is still useful to point out that major gaps¹⁵ remain, hence the need to legislate in this area. This need is all the more pressing as most professionals in the sector do not believe that ML/FT issues affect them, a situation exacerbated by a lack of knowledge of the AML/CFT texts. The mission was unable to obtain satisfactory information demonstrating that the accreditation process in certain branches of the sector (e.g. estate agencies and casinos) protects them from criminals and their accomplices.

276. Chartered accountants are required to be accredited by the National Order of Chartered Accountants (ONEC). However, accreditation procedures do not take into account AML/CFT requirements so as to effectively shield this profession from control or management by criminals and/or their accomplices.

Verification of an ongoing understanding of ML/FT risks in the financial and all other sectors

277. The BCC provides broad-based supervision of FIs within its sphere of supervision, so it is oriented much more towards compliance with prudential standards rather than an assessment of the level of understanding of the ML/FT risks to which these institutions are exposed. The lack of studies to establish sectoral risks, to

¹⁵ Major shortcomings include the lack of AML/CFT supervisory authorities, the failure to take AML/CFT requirements into account in the authorisation or accreditation process and the existence (for some of these professions) of actors who are not recognised either by their corporations or by the supervisory authorities.

determine which of the reporting institutions are most exposed and which instruments and/or products are high risk, largely explains the lack of an adequate strategy for monitoring the compliance of FIs with their ML/FT obligations on the basis of their risks. From the above, it should be noted that the BCC does not have enough information to verify and ensure that the institutions subject to it understand the risks to which they are exposed.

278. More generally, the failure to identify the ML/FT risks to which categories of institutions or individual institutions are exposed results in the lack of implementation of a risk-based approach.

279. The ML/FT issue is barely perceptible in the BCC's supervision process; it is not a major concern. Furthermore, the lack of archive checks during on-site inspections, to compare them with the information regularly provided to the BCC by regulated entities, may lead regulated entities to be complacent in collecting the documents required before carrying out any transaction; for example, taking copies of identification documents. This situation raises questions about the ability of inspectors to fully understand and manage the ML/FT issue.

280. For the insurance sector, as the supervisory authority (ARCA) is not yet operational, money laundering risks cannot be identified. Therefore, no studies are conducted to identify risks and determine their level. As a result, ARCA has no perception of ML/FT risks in the insurance sector.

281. Regarding the DNFBPs, most supervisory and self-regulatory authorities are totally unaware of the law on AML/CFT, so they do not understand the ML/FT risks to which actors in their respective sectors, taken in their categories or individually, could be exposed. As a result, the AML/CFT system, which remains almost non-existent, is not implemented by the DNFBPs and actors in these sectors do not understand their risks in terms of ML/FT. However, given the country's context, ML risks are significant and proven for certain categories, such as real estate agents, lawyers and dealers in precious metals and stones.

Risk-based monitoring of the extent to which financial institutions and DNFBPs are complying with their AML/CFT obligations

282. DSIF examines the accounting, financial, regulatory and prudential reports submitted to it regularly by institutions subject to BCC supervision. However, this so-called ongoing supervision is general in scope and is not specific to AML/CFT issues. Documentary inspections cover all financial intermediaries with departments dedicated to the ongoing supervision of banks (9 inspectors), other financial intermediaries (10 inspectors), COOPECs (10 inspectors) and MFIs (8 inspectors). These documentary inspections focus more on compliance with prudential standards than on aspects related to ML/FT. In addition, there is a lack of thematic supervision programmes in this area.

283. On-site inspections conducted by the BCC do not focus on the AML/CFT component; they are general in scope. The BCC informed the assessors that it carries out on average one general on-site inspection every 3 or 4 years with respect to the institutions within its sphere of supervision. However, no documentary information or statistics on the inspections carried out were provided to the assessors to support these claims, despite all the reminders made to the BCC. It appears from discussions that these inspections do not focus on the implementation of AML/CFT due diligence. In addition, the body dedicated to these inspections is made up of 21 multi-skilled inspectors who have no proven knowledge of AML/CFT issues.

284. For the insurance sector, it should be noted that there is a lack of effective supervision due to the fact that ARCA is not yet operational.

285. As for the DNFBPs, risk-based monitoring of the degree of compliance with their AML/CFT obligations is not yet one of the concerns of the supervisory and self-regulatory authorities of the various corporations. In general, DNFBPs do not have a designated supervisory authority, which is why there can be no risk-based AML/CFT supervision.

Effectiveness, proportionality and dissuasiveness of the corrective actions and/or sanctions applied

286. The BCC has broad disciplinary powers against all entities under its AML/CFT supervisory jurisdiction.

287. For banks, sanctions imposed by the BCC following its investigations of suspicious transaction reports are mainly financial, consisting of one fine of fifty thousand (50,000) USD. The inspections that led to these sanctions were carried out following suspicious transaction reports submitted by the financial institutions. Corrective actions recommended as a result of these inspections are set out in generic and uniform terms for all sanctioned banks. From 2016 to June 2018, the BCC imposed a total of three sanctions on three banks, including one financial and administrative sanction (2016) and two financial sanctions (2016 and 2018). The generic and vague explanation of the recommended corrective actions does not allow for a precise understanding of the actions to be taken to correct the shortcomings identified. The BCC did not provide the mission with evidence that it is properly monitoring the implementation of the recommended corrective actions. The actions and sanctions applied by the BCC are not effective, proportionate or dissuasive.

Box 6.1 - Cases of sanctions for AML/CFT failures

In 2016, two Congolese banks were subject to sanctions following breaches of their AML/CFT systems.

In the first case, it was found that bank B1 followed an order to transfer funds from an account opened with it by non-resident company A despite significant irregularities.

The second case concerns company in formation B that opened an account with bank B2. It was

found that bank B2 processed the payment of a credit note as a set-off, despite the following shortcomings: (1) the bank and its customer (in this case, company B) have not yet signed the KYC form (the bank's compliance department having detected inconsistencies and irregularities in the administrative and legal documents provided by the said company); (2) the failure to provide a copy of the lease agreement to prove the source of the funds; and (3) the previous making of two hasty and emergency payments outside working hours.

In both cases, the Central Bank of Congo (BCC), in the exercise of its disciplinary powers, automatically debited the sum of USD 50,000 from its accounts in accordance with the matrix of sanctions for credit institutions and called on the institutions in question to take corrective action, in particular:

- *comply strictly with the legal and regulatory texts in force governing the fight against money laundering and the financing of terrorism;*
- *increase due diligence with regard to unusual transactions;*
- *establish internal procedures to combat money laundering and the financing of terrorism and keep a copy for the Central Bank of Congo;*
- *take disciplinary action against your officials involved in the mismanagement of this case, particularly those in the transactions and compliance departments, and report on this to the Central Bank of Congo within a specified period;*
- *organising training in the fight against money laundering and the financing of terrorism for all bank staff, particularly sales and operational staff;*
- *and for bank B1, repatriate the transferred funds.*

In 2018, the BCC sanctioned a Congolese bank (Banque B3) following a mission to gather information on requisitions from the Office of the Attorney General of the Republic that revealed serious deficiencies and the ineffectiveness of its AML/CFT system. Indeed, the services of bank B3 executed various transactions of a fund management company C not approved by the BCC and of Lady X after having previously switched the latter to the "privilege" category. As in the previous cases, BCC proceeded to automatically debit the sum of USD 50,000 from its books in accordance with the credit institution sanction matrix and called on the bank to take the same corrective actions as before.

288. For the other regulated entities under the jurisdiction of the BCC, no sanctions for failures in the implementation of AML/CFT arrangements are taken. This speaks volumes about the weakness of AML/CFT checks in relation to the deficiencies identified.

289. For the insurance sector and the NFNPPEs, no sanctions are applied under AML/CFT, mainly because of the non-operationality of the AML/CFT supervisory and monitoring system.

Impact of the actions of supervisory authorities on the level of compliance of financial institutions and DNFbps

290. The impact of AML/CFT supervisory actions in the FI sector remains very mixed. The DRC was not able to provide the evaluators with any relevant evidence to measure the improvements in the national AML/CFT system that would result from the monitoring activities carried out by the competent authorities, especially as thematic monitoring on this issue has not yet been carried out.

291. Nevertheless, the mission noted a willingness at the level of the banks to improve their level of compliance by acquiring IT systems to migrate to the latest solutions in order to comply with international standards.

292. Other financial institutions and NFBPs have not been subject to any real AML/CFT supervision per se, and the supervisory or self-regulatory authorities have not made any efforts to integrate the AML/CFT aspect into their supervisory actions. It should be noted that these professions continue to evade AML/CFT obligations while important transactions likely to induce money laundering are concluded with their assistance and sometimes in violation of AML/CFT regulations.

Promotion of a good understanding by financial institutions and DNFBPs of their AML/CFT obligations and ML/FT risks

293. The assessment mission found during the on-site visit that actors involved in AML/CFT, including CENAREF, supervisory authorities and self-regulatory bodies, have not issued guidelines for regulated entities to promote and ensure a proper understanding of their obligations in this area and the ML/FT risks to which they are exposed.

294. Moreover, the mission noted a weakness in the sharing of information, awareness-raising activities and discussions on AML/CFT issues between the various regulated entities and the competent authorities. At the time of the site visit, the seminar that preceded the national risk assessment remains the major awareness-raising activity carried out.

295. However, the beginnings of collaboration appear to be emerging with a new national risk assessment exercise. There is a real need for technical assistance at all levels to make the various actors understand ML/FT problems and issues in order to take adequate supervisory measures to mitigate this phenomenon. There is a need to strengthen the technical, financial and human capacities of supervisory and self-regulatory bodies to enable them to perform their roles effectively.

296. The level of effectiveness achieved by the DRC for Immediate Outcome 3 is low.

CHAPTER 7: LEGAL PERSONS AND LEGAL ARRANGEMENTS

7.1. Key Findings and Recommended Actions

Key findings:

- All companies incorporated under Congolese law are required to be registered in the Trade and Personal Property Credit Register (RCCM).
- The Congolese authorities do not have a broad understanding of the ML/FT vulnerabilities inherent to legal persons and legal arrangements.
- The DRC does not have a legal framework applicable to trusts, but nothing prevents the management of these legal arrangements in the country.
- No sanctions are foreseen for non-compliance by legal persons.
- No information is available on the identification of beneficial owners. There is no mechanism for the systematic collection of information on beneficial owners.

Recommendations on legal persons and legal arrangements

The DRC authorities should:

- Include, in the current NRA, an analysis of the ML/FT risks associated with all types of legal persons and legal arrangements operating in the DRC, disseminate the results and implement appropriate measures to mitigate the risks identified;
- Use a risk analysis of legal persons and legal arrangements to determine the most appropriate mechanisms for collecting information on beneficial ownership and preventing the misuse of legal persons and legal arrangements for the purpose of ML/FT.
- Make the competent authorities, particularly those involved in acts relating to the life of legal persons and legal arrangements, aware of the problem of the ML/FT risks associated with them, and increase their ability to obtain the widest range of information in accordance with R.24;
- Undertake a reform of the legal framework applicable to legal persons and legal arrangements with a view to extending the scope of the information collected by including the obligation to provide complete and verified information on their beneficial owners;
- Determine, at the national level, criminal sanctions to ensure the implementation of OHADA's Uniform Acts providing for criminal offences in the event of a failure to comply with information obligations;
- Implement mechanisms to ensure that the competent authorities have fast access to adequate, accurate and up-to-date information on the beneficial ownership of all legal persons and legal arrangements. The RCCM, as an existing mechanism,

should be enhanced and used in conjunction with a company and/or registry approach, depending on the particular risk and the legal, regulatory, economic and cultural characteristics of the DRC.

297. The relevant Immediate Outcome discussed and assessed in this chapter is IO 5. The recommendations relevant to the technical compliance assessment under this chapter are Recommendations 24 and 25.

7.2. Effectiveness: Immediate Outcome 5 (legal persons and legal arrangements)

*Public accessibility of information on the creation and types of legal persons and legal arrangements*¹⁶

298. In accordance with OHADA’s Uniform Act, companies in the DRC are created by notarial deed. In this specific case, the formalities relating to the creation of companies are carried out via the one-stop shop for business creation in accordance with the provisions of decree No. 12/045 of 1 November 2012. However, there is a problem regarding the reliability of the data and updates thereof. Moreover, the law does not provide for the creation of legal arrangements.

299. As a member of OHADA, company information is also published in OHADA’s Official Gazette. Also, once texts relating to the creation of companies are published in the Official Gazette of the DRC, anyone wishing to obtain information on these companies can do so via this public service. It is through these channels that information on the creation of companies can be accessed by the public.

300. In addition to the information that can be found at the one-stop shop for business creation, whose responsibilities include managing the RCCM, information about the different types of companies located in the province can also be obtained from commercial court registries.

301. Registration with the RCCM is completed by filling in a form at the “Guichet Unique” or the Commercial Court Registry, with a view to improving the retention of information obtained on the different forms of companies in the DRC (natural persons, legal persons and economic interest groups). Thus, the public can obtain company information via publication notices posted on the one-stop shop for business creation website (<https://guichetunique.cd>). This notice highlights all the necessary information about a company as well as its status.

302. With regard to legal arrangements, the legislative and regulatory framework of the DRC does not yet take this type of company into account.

¹⁶ The availability of accurate and up-to-date basic and beneficial owner information is also assessed by the OECD’s Global Forum on Transparency and Exchange of Information for Tax Purposes. In some cases, the conclusions may be different due to differences in the methodologies, objectives and scope of the respective FATF and Global Forum standards.

Identification, assessment and understanding of vulnerabilities and the extent to which legal persons established in the country are being or could be misappropriated for ML/FT purposes

303. The Uniform Acts of OHADA to which the DRC belongs do not take into account the obligation to identify the beneficial owner of legal persons and legal arrangements. The RCCM, which centralises information on legal and other persons and records it in the register of the Commercial Court Registry, does not enable the identification of the beneficial owner of these legal persons.

304. No risk assessment has enabled the Congolese authorities to understand the ML/FT vulnerabilities inherent to legal persons and legal arrangements. Notwithstanding the lack of an NRA, the authorities that we met, particularly at the level of the one-stop shop for business creation and the RCCM, did not have any real knowledge of the vulnerabilities of legal persons in terms of ML/FT. Indeed, there is no awareness at the one-stop shop for business creation, RCCM or competent authority level that legal persons created in the country can be misappropriated for ML/FT purposes.

Implementation of measures to prevent the misuse of legal persons and legal arrangements for ML/FT purposes

305. In the DRC, a Trade and Personal Property Credit Register (RCCM), instead of a New Companies Register (NRC), is kept at the registry of each Commercial Court or, failing that, at the registry of each District Court. The RCCM contains information on the situation of business people¹⁷.

306. In the DRC, the RCCM is easily accessible at each of its three levels: the Local Register (kept at the registry of each competent court, whether or not there are courts in lieu thereof); the National Register, which centralises the information recorded in each Trade and Personal Property Credit Register (RCCM); and the Regional Register, whose headquarters are located at the JCJA in Abidjan and which centralises the information recorded in each national file on all economic operators operating in the OHADA area.

307. Information included on the forms submitted to the registry or the competent body is public information. Any national or foreign entrepreneur wishing to invest in a company based in the DRC can obtain information on the legal and financial situation of its partner from the RCCM, at any of its three levels (local, national, regional).

308. It should be specified that registration gives rise to the opening of a file where the main information concerning a company is gathered: company name, acronym or logo, registered office, company form, lifespan, etc. The DRC has a

¹⁷ Definition of a business person within the meaning of the OHADA Uniform Act on Company Law and Economic Interest Groups

website(www.guichetunique.cd) and a system for calling and texting applicants and tracking files online (e-guce) guce@guichetunique.cd
guichetunique@lubumbashi@gmail.com

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

309. There is no legal and institutional framework in the DRC to identify and manage the list of beneficial owners of legal persons and legal arrangements. Access to this type of information request the use of various sources and seems tedious, which is not the case for basic information.

310. Indeed, in reality, the regulated entities we met did not require the identification of the beneficial owner to enter into or maintain a relationship.

311. The legal system does not take into account everything related to the identification of the beneficial owners of such legal arrangements. As a result, the competent authorities are not in a position to obtain information on beneficial owners.

Effectiveness, proportionality and dissuasiveness of the sanctions applied

312. The DRC has not taken any measures relating to the sanctions applicable to offences under OHADA's Uniform Acts. As such, no sanctions are provided for in the event of failure to comply with the obligations to register, provide information and retain documents, failure to update information or refusal to provide information to the competent authorities. In practice, if documents are missing at the time of registration, applications are rejected.

313. **The level of effectiveness achieved by the DRC for Immediate Outcome 5 is low.**

CHAPTER 8: INTERNATIONAL COOPERATION

8.1. Key Findings and Recommended Actions

Key findings:

- Despite the transnational nature of crimes in the DRC, international cooperation in the fight against ML/FT is limited. As yet, no requests for AML/CFT judicial cooperation have been sent or received.
- The legal framework for mutual assistance and extradition is provided for in national law and the various international conventions ratified by the DRC, as well as a limited number of bilateral agreements. However, the low rate of implementation and the lack of formal mechanisms and procedures make it impossible to assess the adequacy of the legal framework.
- The DRC does not have a centralised case management system for overseas cases. This means that there is no follow-up which would have provided information on processing times.
- Other forms of cooperation are used but are limited. CENAREF shares information with a limited number of foreign FIUs within a reasonable period of time. Other competent authorities, such as customs, the Court of Auditors, the BCC and the Department of Migration, have channels for cooperation with foreign authorities, but exchanges on AML/CFT are limited or non-existent. International cooperation is not practised by the competent authorities in their activities.
- There is no formal mechanism to share information for the identification of beneficial owners or on AML/CFT between Congolese supervisors and their foreign counterparts. The BCC only uses informal channels.

Recommendations on international cooperation

- The Congolese authorities should strengthen the capacity of the competent authorities by providing the necessary resources and training to equip them to make better use of international cooperation.
- The Congolese authorities should develop a manual of procedures for international cooperation to determine processes, priorities, time frames and the confidentiality of requests.
- The Congolese authorities should create a department within the Prosecutor General's Office at the Court of Cassation to follow up on international cooperation cases, particularly AML/CFT cases. A Department for Cooperation within the Ministry of Justice could be responsible for following up with this judicial

authority, as well as training, keeping statistics and relationships with the outside world;

- The DRC should conclude further bilateral agreements and formalise international cooperation with countries with which it has informal exchanges, prioritising countries where the risk of ML/FT is high;
- The Congolese authorities should improve mechanisms for collaboration and information sharing between customs and the WCO and between the Court of Auditors and INTOSAI.
- Investigating and prosecuting authorities should make greater use of international mutual legal assistance and other forms of international cooperation to prosecute transnational ML offences, underlying offences and FT.
- Supervisory and monitoring authorities should make greater use of international cooperation when performing their duties, particularly with those countries with which financial or commercial exchanges are most at risk;
- The Congolese government should establish mechanisms for managing statistics on international trade.
- The DRC authorities should revise the Anti-Money Laundering Act to include the sharing of confiscated assets with third States;
- The DRC should ensure that information on beneficial owners relating to legal persons is made available to foreign competent authorities upon request and that the competent authorities take the necessary measures to identify the beneficial owners of foreign legal persons in the context of their AML/CFT activities.

314. The related Immediate Outcome discussed and assessed in this chapter is IO 2. The Recommendations relevant to the technical compliance assessment under this chapter are Recommendations 36 to 40.

8.2. Effectiveness: Immediate Outcome 2 (international cooperation)

Timely and constructive mutual legal assistance and extradition

315. The DRC does not have a central department dedicated to international judicial cooperation on AML/CFT within the Ministry of Justice. Indeed, requests arrive at the Minister's Office, which refers them to the courts for jurisdiction. Also, no priority is given to the processing of ML/FT international cooperation cases. This is carried out in the usual way.

316. The DRC can grant mutual legal assistance and extradition in AML/CFT matters, but no requests have yet been made in this area. Between 2016 and 2018, 42 requests for judicial cooperation were received by the Congolese authorities. They relate to common-law offences that have little to do with financial matters. No information was provided during the mission on the adequacy or timeliness of responses to foreign country requests

317. The legal framework for mutual assistance and extradition is based on Section V of the Anti-Money Laundering Act, entitled 'International Cooperation', and Articles 51 to 62 thereof. The legal criteria for mutual legal assistance are largely in place, except for extradition. In the latter case, while it is stated peremptorily in Article 60 (7) that extradition may be refused when the subject is a DRC national, the law provides that prosecution may be carried out locally (Article 61). The DRC has not provided extradition case statistics.

318. The DRC has signed bilateral conventions with several countries and the agreement on cooperation and mutual legal assistance between ECCAS countries of 18 March 2006, but these were not produced by the authorities during the mission. It is also a party to several international conventions, including:

- Vienna Convention: signed on 20/12/1988, ratified on 28/10/2005;
- United Nations Convention for the Suppression of the Financing of Terrorism, signed on 28 October 2005, entered into force on 27 November 2005
- Palermo Convention: accepted on 28/10/2005;
- Merida Convention: accepted on 23/9/2010.

319. The DRC is also a member of several sub-regional organisations, namely the ECCAS, COMESA and SADC (South African Development Community). As part of the SADC, the DRC has signed protocols including:

- The Protocol on Legal Affairs, which establishes a tripartite structure to facilitate the adoption of appropriate policies for cooperation in criminal matters between Member States;
- The Protocol against Corruption adopted on 14 August 2001, which criminalises specific acts of corruption and provides for a means of judicial cooperation in criminal matters with a view to putting an end to it;
- The Protocol on Extradition adopted on 3 October 2002, which constitutes the general treaty on extradition between Member States;
- The Protocol on Mutual Legal Assistance in Criminal Matters, adopted on the same day.

- As part of the ECCAS, the Protocol relating to the Establishment of the Peace and Security Council of Central Africa was adopted on 24 February 2000, which provides for the enhancement of cooperation in the fight against cross-border crime, international terrorism, illicit arms trafficking and all related matters. The DRC has not submitted any cases in this regard.

Satisfactory and timely requests for mutual legal assistance and extradition with respect to ML, associated underlying offences and FT.

320. The DRC has not provided statistics on letters rogatory sent to foreign countries. It claimed that it has not sent any letters rogatory with regards to ML/FT.

Requests for other forms of international cooperation in relation to ML, associated underlying offences and FT

321. CENAREF has entered into international agreements with three FIUs: ANIF of Congo, CTIF of Belgium and UTRF of Morocco.

322. Requests for information were submitted to foreign FIUs, including FIUs where Memoranda of Understanding (MOUs) have not been established.

Table 8.1: Information requests sent to counterpart FIUs in 2015, 2016 and 2018

Counterpart FIUs	Number of requests sent			
	2015	2016	2017	2018
CTIF	5	6		1
TRACFIN	1	7		0
ANIF CONGO	1	1		0
FIU NIGERIA	0	1		0
Total	7	15		1

323. Information requests made by CENAREF between 2015 and 2018 to its foreign counterparts relate to suspicious financial transactions carried out in the DRC. Thus, during the on-site visit, CENAREF said that its counterparts' responses were often late to arrive, which would sometimes hamper the various investigations. Faced with this situation, CENAREF claims not to know the reasons for the delays caused by its counterparts. However, CENAREF did not provide the assessment team with cases for which it had received favourable responses. Also, from 2015 to 2018, CENAREF sent only 23 information requests. In terms of the threats faced by the country, CENAREF's international cooperation is limited.

324. Congolese customs is part of the World Customs Organization (WCO) and as such cooperates in this particular area. The same applies to the Department of Migration and the Court of Auditors, a member of INTOSAI. However, no collaborative mechanism has been established for AML/CFT.

325. There is no global strategy for cooperation. Each agency works with its own international partners; however, the existence of the departments of the Special Adviser to the Head of State on Good Governance, the Fight against Corruption and Money Laundering, in which all agencies working in these areas are represented, provides an opportunity for exchanges between these various departments. A report has not yet been published by these departments on the state of international cooperation in the DRC in their field of expertise.

Provision of other forms of international cooperation in relation to ML, associated underlying offences and FT

326. CENAREF received information requests from other FIUs between 2016 and 2018, according to the table below. It stated that the average response time is two weeks, in line with international standards, which set it at one month. The mission was unable to review files to confirm this claim.

Table 8.2: Requests received by foreign FIUs in 2015, 2016, 2017 and 2018

Foreign FIUs	Number of applications received			
	2015	2016	2017	2018
CTIF	1	5	5	4
TRACFIN	3	0	0	1
ANIF Cameroon	0	1	0	0
AMLO-THAILAND	0	1	0	0
SIC-LEBANON	0	0	1	0
MASAK-TURKEY	0	0	0	1
Total	4	7	6	6

327. The BCC is the only active supervisor in the DRC. It has reported cooperation with the US Treasury with regard to the banking sector. International cooperation with regards to AML/CFT supervision is therefore very limited.

Cooperation in the identification and sharing of basic and beneficial owner information on legal persons and legal arrangements

328. It is difficult to share information on identification and beneficial owners in the DRC, as citizens are yet to hold national identity cards. Some of them use voter cards, driver's licences and passports. The one-stop shop for business creation does not hold all the information concerning a company's beneficial shareholders.

329. The level of effectiveness achieved by the DRC for Immediate Outcome 2 is low.

TECHNICAL COMPLIANCE ANNEXE

INTRODUCTION

This annexe provides a detailed analysis of the Democratic Republic of Congo's level of compliance with the *FATF's 40 Recommendations*. It does not describe the country's situation or risks, but focuses on the analysis of the technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report (MER).

Recommendation 1: Risk assessment and application of a risk-based approach

Country obligations and decisions

Risk assessment

Criterion 1.1: The DRC carried out an NRA in 2013. This assessment, which was carried out using the World Bank's NRA tool, whose methodology combines a qualitative approach with quantitative elements, involved the presence of some public and private AML/CFT actors in the DRC. These include the Central Bank of Congo (BCC); the Department of Customs and Excise (DGDA); the Observatory for Monitoring Corruption and Professional Ethics (OSCEP); the National Lottery Company (SONAL); the Congolese Institute for the Conservation of Nature (ICCN), the Congolese National Police (PNC); the judicial administration; the National Intelligence Agency (ANR); and the private sector (commercial banks, the National Insurance Company (SONAS), financial courier companies, casinos, cash exchangers and some religious associations). However, the assessors noted a lack of statistical data in the report resulting from this assessment, which raises questions as to the relevance and scope of the threats identified and the vulnerabilities highlighted, and hence the objectivity of the resulting recommendations. In addition, several major actors from the public and private sectors did not take part in this exercise. These included real estate agents, car dealers, lawyers, chartered accountants, e-money issuers, sellers of precious metals and stones, and even at the state level, some important actors in investigations and prosecutions. Their absence raises questions as to the overall quality of the data analysed in the NRA report. The NRA report produced at the end of this work has not been approved by the authorities. However, the authorities have stated that an NRA is progress. In addition, the assessors were not aware of any other framework for reflection, outside of the NRA working group, that would enable the DRC authorities to improve their understanding of the ML/FT risks to which the country is subject. With regard to the financing of terrorism, the DRC authorities have not yet identified and assessed the related risks.

Criterion 1.2: CENAREF coordinated the DRC's NRA in 2013. However, this appointment was not formal since there is no identified mechanism at the national level.

Criterion 1.3: Not only has the NRA conducted in 2013 not been approved, nor its report published, but it has not been updated either. As a result, the Congolese authorities do not have a progressive risk-based approach. Therefore, it is not possible to match the current risks with the measures and resources to be mobilised. However, the current NRA could be included in an update cycle after its adoption.

Criterion 1.4: The DRC does not have a mechanism in place for providing information on the results of the risk assessment(s). No administrative or legal action has been taken by the Congolese authorities to determine the risk assessment procedure and the conditions for using the results of the risk assessments. The first NRA conducted in 2013 produced results that have not been approved or published, so their official use is compromised.

Risk mitigation measures

Criterion 1.5: The DRC authorities have not adopted a risk-based approach. Indeed, despite the creation of an anti-corruption observatory and an office of the Special Adviser to the Head of State on Good Governance, the Fight against Corruption and Money Laundering, it should be noted that the results of the NRA are inadequate, since the measures taken following to this NRA and the resources mobilised do not allow for the inference of a risk-based approach, both in quantity and quality.

Criterion 1.6: Because the NRA report has not been approved, it is not possible to identify areas of low risk for ML/FT. Therefore, as the mission has identified high risks in most sectors of activity in the DRC, it is likely that the Congolese authorities will decide to apply certain FATF recommendations to DNFBPs and FIs.

Criterion 1.7: The DRC authorities have not adopted a risk-based approach. Indeed, although the DRC has become aware of the high risk of ML posed by corruption, money transfers, cash exchange, etc., it has not adapted its measures and resources to the same magnitude as the risks identified. For example, no measures have been taken to publicise the AML/CFT system and thus dissuade potential economic criminals, even though it has been shown that the lack of implementation of the system is the result of a failure by actors at various levels to understand the AML/CFT problem.

Criterion 1.8: The lack of a risk-based approach makes it unlikely, if not impossible, for the Congolese authorities to decide to authorise simplified measures for certain FATF Recommendations as the risk is deemed low.

Criterion 1.9: The insurance sector regulator, ARCA, is not yet fully operational and has not yet carried out any supervision, so the DRC has not provided the mission with the means to ascertain whether or not the requirement of the risk-based approach by

SONAS, the country's sole insurance company, was taken into account during the inspection. As for DNFBBs, the National Order of Chartered Accountants (ONEC) and the National Bar Association (ONA), which were the only ones available to meet with the mission, have not taken any steps in this regard. Moreover, the issue of AML/CFT and related due diligence in terms of preventing ML/FT are not known. Hence the low level of involvement of actors in these sectors.

Obligations and decisions of FIs and DNFBBs

Risk assessment

Criterion 1.10: Articles 13 and 23 of BCC Instruction 15 (bis) require the relevant professions, including credit institutions, financial courier companies, bureaux de change and MFIs, to set out clear policies and procedures for accepting new customers, including a description of the different types of customers that may pose a significant risk, in particular in terms of previous transactions, countries of origin, source of funds or even links between accounts.

- (a) There is no requirement for financial institutions to document their risk assessments;
- (b) Factors are described in Instruction 15 bis to determine the overall level of risk relating to the operations of the professions subject to it. However, certain important factors such as distribution channels, the nature of operations and the quality of products and services are not taken into account in Instruction 15 Bis;
- (c) There is no requirement for financial institutions to keep their risk assessments up to date;
- (d) There is no obligation for financial institutions to have appropriate mechanisms in place to communicate information on their risk assessment to competent authorities and self-regulatory organisations.

Finally, no legal obligation is placed on other financial institutions not covered by Instruction 15 Bis (including e-money issuers, insurance companies, specialised financial institutions and Post Office financial services) with regard to risk assessment. With respect to DNFBBs, at the time of the mission, there were no legal provisions in place for conducting risk assessments.

Risk mitigation measures

Criterion 1.11: While it is accepted that most credit institutions belonging to large groups have written policies and procedures that include the identification of sectoral risks and provide for internal supervision mechanisms, this is not the case for other financial institutions and DNFBBs. Indeed, neither the insurance sector, nor the financial sector (chartered accountants), let alone the National Bar Association, have put in place policies,

procedures and supervision mechanisms to manage and mitigate the risks identified in their respective sectors.

- a) Although certain articles of Section IV of Instruction 15 require credit institutions, financial courier companies, bureaux de change and micro-finance institutions to establish written procedures for identifying and managing risks, there is no relevant provision requiring these institutions to have policies, supervision and procedures approved by senior management that enable them to manage or mitigate the risks identified. There is no provision for other FIs and DNFBPs in this regard.
- b) There is no provision requiring regulated entities (FIs and DNFBP) to provide for the monitoring of the implementation of controls approved by senior management and their reinforcement if necessary.
- c) There is no formal and express provision requiring regulated entities to take enhanced measures to manage and mitigate the highest risks identified.

Criterion 1.12: No FIs in the DRC other than credit institutions and DNFBPs have conducted a sector risk assessment. As a result, this criterion cannot be considered met.

Weighting and conclusion: An NRA was carried out in 2013, but significant shortcomings in the inclusiveness of the process and the rigour of the methodology have been noted. Moreover, the report relating thereto has not been approved. No sector risk assessment has been carried out, hence the lack of a risk-based approach that includes taking action and mobilising commensurate resources. Supervisory authorities do not have mechanisms in place to ensure that organisations under their supervision implement a risk-based approach. There is no mechanism for the public or those involved in AML/CFT to access the results of the NRA. **The DRC is not in compliance with Recommendation 1.**

Recommendation 2: National cooperation and coordination

Criterion 2.1: The DRC does not have national AML/CFT policies or a risk-based approach. This means that it is not able to adapt its means and measures to the risks, however real they may be.

Criterion 2.2: The DRC established COLUB, the body responsible for determining and implementing the national AML/CFT policy, by Decree 08/21 of 24 September 2008. However, upon reading Order No. 16/065, we have noted an overlapping of jurisdiction between COLUB and the Special Adviser to the Head of State on Good Governance, the Fight against Corruption and Money Laundering.

Criterion 2.3: COLUB is made up of representatives of the main state and non-state organisations involved in AML/CFT, including the National Financial Intelligence Unit (CENAREF), prosecuting and investigating authorities and supervisory bodies. However, COLUB has only had one meeting since its creation. This organisation clearly lacks the financial and material resources to carry out its ministry and to

propose solutions to the government in a timely manner to prevent ML/FT acts or to mitigate the effects of these phenomena.

At the operational level, some competent authorities have entered into formal cooperation and information-sharing agreements with CENAREF. These include the DGDA, the ICCN and the DGM. However, this collaboration, which is still in its infancy, should be strengthened and diversified to other actors such as the tax, police, justice, trade and mining resource administrations.

Criterion 2.4: There is no real policy of coordination between actors involved in AML/CFT. Similarly, there is no mechanism for cooperation and coordination in the fight against the financing of the proliferation of weapons of mass destruction.

Weighting and conclusion: COLUB is the national institution that should be responsible for AML/CFT policy coordination. However, there is no real policy for coordination between actors involved in AML/CFT. Similarly, there is no mechanism for cooperation and coordination in the fight against the financing of the proliferation of weapons of mass destruction. **The DRC is partially compliant with Recommendation 2.**

Recommendation 3: Offence of money laundering

Criterion 3: The DRC has adopted Law No. 04/016 of 19 July 2004 on the fight against money laundering and the financing of terrorism. This law provides for due diligence in the prevention, detection and suppression of money laundering. The criminalisation of money laundering is based on the relevant provisions of the Vienna and Palermo Conventions. Some of the material elements of ML listed by this law are included in Article 1: conversion, transfer, concealment, disguise, acquisition, possession or use.

Criterion 3.2: ML applies to any assets arising from an underlying offence, as provided by the law. Most, if not all, underlying offences are punishable by at least one year's imprisonment and are therefore serious offences. However, illicit migrant trafficking, drug trafficking, arms trafficking (except for export), piracy and stock exchange offences are not criminalised in the DRC and therefore do not constitute offences underlying money laundering.

Criterion 3.3: The DRC does not apply the threshold method.

Criterion 3.4: Article 3 of the Congolese law includes all types of assets within its punitive scope.

Criterion 3.5: Congolese law does not require the person committing the underlying offence to be convicted in order for ML to be established.

Criterion 3.6: By combining Articles 1 and 3(5), Congolese law specifies that acts may have been committed abroad.

Criterion 3.7: The law has not precluded self-laundering.

Criterion 3.8: The last paragraph of Article 1 provides that intention, knowledge and motivation can be inferred from objective factual circumstances.

Criterion 3.9: Article 34 of the above-mentioned law punishes the perpetrator of acts of money laundering with five to ten years' imprisonment and a fine of up to six times the amount of the laundered sum, while Article 43 of the same law provides for penalties of up to 20 years' imprisonment and a fine in Congolese francs equivalent to USD 100,000 if there is an aggravating factor. These sanctions are proportionate and dissuasive.

Criterion 3.10: Article 36 provides that legal persons who are perpetrators of money laundering are liable and may be sentenced to five times the fines provided for natural persons, without prejudice to the conviction of their natural person representatives. These sanctions are proportionate and dissuasive.

Criterion 3.11: Complicity (Article 34), participation, association and agreement (Article 35) are well provided for by the law. Attempt, help and assistance are provided for in the general provisions of the Congolese Criminal Code on attempt, collusion and complicity.

Weighting and conclusion: Illegal trafficking of migrants, drug trafficking, arms trafficking (except for export), piracy and stock exchange offences are not criminalised in the DRC and therefore do not constitute offences underlying money laundering.
The DRC is partially compliant with Recommendation 3.

Recommendation 4: Confiscation and provisional measures

Criterion 4.1: The Congolese legal system provides for confiscation and other measures in relation to the proceeds of money laundering offences. Article 47 of the Anti-Money Laundering Act provides the framework for the confiscation of assets in the event of a conviction for money laundering offences. This provision also provides for the possibility of confiscating assets belonging directly or indirectly to a person convicted of money laundering. Thus, if the convicted person shared the laundered assets with a third person, Congolese law provides for the possibility of confiscating assets derived from the proceeds of crime but which were in the possession of a person other than the convicted person themselves, unless the person in possession of such assets proves their lawful source.

The confiscation of assets of an equivalent value is also provided for (Article 47).

The Anti-Money Laundering Act is precise on the confiscation of:

- laundered goods;
- revenue and other benefits derived therefrom;
- products or goods intended to be used for money laundering; and
- assets of an equivalent value.

However, it does not refer to the confiscation of assets related to the financing of terrorism. In this regard, the Congolese authorities suggest that this issue is taken into account by Article 14 of the Criminal Code, which broadly provides for the confiscation of assets resulting from an offence. However, neither Article 14 of the Criminal Code nor any other provision of that Code provides for the confiscation of assets of an equivalent value required by R 4. This imprecision in criminal law, which is interpreted strictly, does not necessarily favour the consideration of the confiscation of assets linked to the financing of terrorism, terrorist acts or terrorist organisations.

Criterion 4.2: Articles 22, 30, 31 and 32 of the DRC's Anti-Money Laundering Act provides for mechanisms to implement interim measures such as the freezing and seizure of financial transactions. Thus, according to Article 22, at the request of CENAREF, the prosecution may seize funds or accounts for a period not exceeding eight (8) days. Articles 30 and 31 provide for the possibility for judicial authorities and competent officials to seize assets. The Code of Procedure also provides for seizure and confiscation, which may be ordered by the criminal prosecuting authorities.

Criterion 4.3: The Congolese legislative framework provides for the protection of the rights of bona fide third parties. Indeed, Article 50 of the Anti-Money Laundering Act provides, in essence, that confiscated assets belongs to the State. Such assets remain subject to the rights of third parties who have proved the lawfulness of their assets to the extent of their value.

Criterion 4.4: The DRC has established an authority for the management of confiscated assets. This is based on Article 50 of the Anti-Money Laundering Act. This creation is supported by Decree No. 008/22 of 24 September 2008 establishing the fund for the fight against organised crime (FOLUCCO). Article 3 of this decree provides that: ‘the fund for the fight against organised crime shall be financed by confiscated resources and assets devolved to the State, in accordance with the terms and conditions laid down by an interministerial order of the ministers responsible for finance and justice’. This article clearly states that FOLUCCO is responsible for the management of confiscated assets. However, during the on-site visit, the assessment team noted that FOLUCCO was not yet effectively operational and that it was not yet fully performing its tasks, as all the texts relating to its operationalisation were in the process of being adopted.

The management of seized or confiscated cash, in particular by customs and excise, is still the responsibility of the Central Bank of Congo. The lack of operationality of FOLUCCO partly explains why this practice has been maintained.

Weighting and conclusion: The DRC has not taken measures relating to the confiscation of assets linked to the financing of terrorism, nor legislative measures to identify, trace and value confiscated assets, nor measures to prevent or reverse actions that undermine the country's ability to freeze, seize or recover assets subject to a confiscation order. It should also be noted that the authority in charge of managing seized and frozen assets is not operational. **The DRC is partially compliant with Recommendation 4.**

Recommendation 5: Offence of financing of terrorism

Criterion 5.1: The financing of terrorism in the DRC is defined in Article 2 of Law No. 04/016 of 19 July 2004 on the fight against money laundering and the financing of terrorism.

This definition covers the intentional element and certain material elements required by Article 2 of the CFT. However, the approach adopted by Congolese lawmakers with regard to the listing of acts whose financing characterises the offence of financing of terrorism is somewhat simplistic and does not fully include the scope of acts constituting the said offence in light of and according to the definition of the treaties annexed to the CFT. Moreover, the characterisation by Congolese lawmakers of an act of terrorism is based on the achievement of a result: ‘...*serious disturbance of public order through intimidation or terror*’. This condition is not consistent with the purpose of the CFT.

The criminalisation of the financing of terrorism under Congolese positive law does not cover the requirements of paragraphs 4 and 5 of Article 2 of the CFT on the act of organising the commission of an offence of financing of terrorism, ordering other persons to commit it and contributing to the commission of this offence by a group of persons working together.

Criterion 5.2: Under Congolese AML/CFT law, the offence of FT applies only to a person who combines intent with certain material elements, in particular fundraising

- (a) for the purpose of committing an act of terrorism;
- (b) however, this law does not criminalise the financing of a terrorist group or organisation, nor the financing of a terrorist acting alone (even in there is no link to a specific terrorist act or acts).

Criterion 5.2 bis: Law No. 04/016 of 19 July 2004 on the fight against money laundering and the financing of terrorism does not criminalise the financing of travel by persons who travel to a State other than their State of residence or nationality with

the intention of committing, organising or preparing terrorist acts, or in order to participate in them or provide or receive terrorist training.

Criterion 5.3: The definition of funds covered by the offence of FT under Congolese law corresponds to that of the FATF glossary. When used, the expression ‘however acquired’ makes the origin of funding sources irrelevant, whether they are legitimate or not.

Criterion 5.4: Under Congolese law, FT is constituted ‘*independently of the occurrence of such an act*’ if the funds are knowingly collected to commit it.

Criterion 5.5: The provisions of Congolese law on FT do not expressly mention that proof of the intentional element may result from objective factual circumstances. However, by using the words ‘*with the intention of seeing them used or knowing that they will be used*’, Article 2 of this law states that material FT acts must be committed knowingly.

Criterion 5.6: Article 41 of Law No. 04/016 of 19 July 2004 on the fight against money laundering and the financing of terrorism punishes any natural person who is the perpetrator, co-perpetrator or accomplice of the offence of FT with five to ten years’ imprisonment and a fine in Congolese francs equivalent to USD 50,000. These sanctions applied to natural persons, in the light of the general nomenclature of punishments provided for in the Criminal Code for serious offences, are proportionate and dissuasive.

Criterion 5.7: Congolese lawmakers have provided for the criminal liability of legal persons for FT. The punishment incurred is a fine in Congolese francs that may range from the equivalent of USD 100,000 to USD 500,000 (Art. 42). It also involves the freezing of all funds and other financial resources belonging to such legal persons or any entity or organisation subject to the law (Art. 46). This criminal liability of legal persons does not exclude the individual criminal liability of directors or officers who may have been involved in the commission of the offence. These sanctions applied to legal persons are proportionate and dissuasive.

Criterion 5.8: The attempted financing of terrorism is covered in Congolese criminal law by the general definition of the concept of attempt as set out in the Criminal Code. Congolese law provides for and punishes participation as an accomplice in the offence of FT as regards natural persons (Art. 41). However, it does not take into account other offences related to FT, such as organising the commission or instructing others to commit or attempt to commit the offence of FT, or contributing to the commission of one or more offences or attempted offences of FT by a group of persons acting together.

Criterion 5.9: In Congolese positive law, FT constitutes an offence underlying ML insofar as the definition of this offence includes all proceeds from any criminal offence.

Criterion 5.10: Generally speaking, Congolese courts have jurisdiction over any offence committed in the country by any person, whether they are a national or a foreigner, and over any offence committed abroad against a Congolese person or the interests of the DRC, or by a Congolese person if the act also constitutes an offence under Congolese law. Therefore, it does not matter, with respect to the offence of FT, where the terrorists, terrorist organisations or terrorist acts are located.

Weighting and conclusion: The criminalisation of FT on the basis of the CFT has major shortcomings in Congolese law, including the limited scope of the terrorist acts whose financing is criminalised, the lack of criminalisation of the financing of a terrorist or terrorist organisation, and the lack of criminalisation of other offences related to FT. **The DRC is not in compliance with Recommendation 5.**

Recommendation 6: Targeted financial sanctions related to terrorism and the financing of terrorism.

Identification and designation

Criterion 6.1: The DRC has no mechanism in place for implementing the sanction regimes relating to UNSCR 1267/1989 (Al Qaeda) and 1988, in particular with regard to:

- (a) identifying a competent authority responsible for proposing the designation of persons or entities to the 1267/1989 Committee and for proposing the designation of persons or entities to the 1988 Committee;
- (b) identifying targets for designations;
- (c) applicable standards of proof;
- (d) the procedures to be followed; and
- (e) the information to be provided.

Criterion 6.2: The DRC does not have a mechanism in place to enforce the requirements of UNSCR 1373, in particular with regard to:

- (a) identifying a competent authority responsible for proposing the designation of persons or persons that meet the specific criteria for designation as described in UNSCR 1373;
- (b) identifying targets for designations on the basis of the designation criteria set out in UNSCR 1373;
- (c) verifying the reasons for the designation decision according to applicable criteria;

- (d) a statement of the procedures that need to be followed;
- (e) identifying information to be provided in support of the decision.

Criterion 6.3: The DRC has not designated competent authorities nor determined their powers and procedures for:

- (a) collecting or requesting information to identify persons or entities that meet the criteria for designation; and
- (b) acting ex parte against a person or entity that has been identified and whose designation or proposed designation is being investigated.

Freezing

Criterion 6.4: Combining the provisions of Articles 28 and 46 of Law No. 04/016 of 19 July 2004 on the fight against money laundering and the financing of terrorism makes it possible to implement the freezing measure in relation to funds and other resources of terrorists or associated persons or entities ‘as soon as possible’, therefore without delay, pursuant to United Nations Security Council Resolutions 1267 and 1373 and any subsequent Resolutions.

Criterion 6.5: The DRC does not have competent national authorities responsible for the implementation and enforcement of targeted financial sanctions for the purpose of:

- (a) requiring all natural or legal persons in the country to freeze the funds and other assets of designated persons and entities, without delay and without prior notification;
- (b) extending the freezing obligation to all funds or other assets owned or controlled by the designated entity or person, assets generated by such funds and assets held on behalf of sanctioned persons;
- (c) prohibiting the provision of funds and other assets, economic resources or financial and other related services for the benefit of the persons or entities concerned;
- (d) having mechanisms for communicating designations to financial institutions and DNFBPs and providing them with clear instructions as to their obligations regarding freezing mechanisms;
- (e) requiring financial institutions and DNFBPs to report to the competent authorities all frozen assets and measures taken in accordance with the prohibitions of the relevant UNSCRs, including attempted transactions;
- (f) adopting measures to protect the rights of bona fide third parties.

De-listing, releasing and accessing frozen funds and other frozen assets

Criterion 6.6: The DRC has not developed and implemented publicly known procedures for de-listing and unfreezing funds and other assets of persons and entities that do not or no longer meet the designation criteria:

- (a) in accordance with the procedures and criteria adopted by the 1267/1989 Committee or the 1988 Committee, as appropriate;
- (b) in accordance with UNSCR 1373;
- (c) by allowing a judicial or administrative appeal to review designation decisions for UNSCR 1373;
- (d) by facilitating a review by the 1988 Committee for designations pursuant to UNSCR 1988;
- (e) by informing individuals and persons on the Al Qaeda sanctions list of the option to refer the matter to the Office of the United Nations Ombudsman;
- (f) by offering this option to persons or entities with the same or similar names as designated persons or entities who are inadvertently affected by a freezing mechanism; and
- (g) by communicating de-listing decisions to the financial sector and DNFBPs.

Criterion 6.7: The DRC does not have mechanisms or procedures in place authorising access to frozen funds and other assets deemed necessary for covering basic expenses, the payment of certain types of charges and fees, payments for services and extraordinary expenses, in accordance with the procedures of UNSCR 1452 and any subsequent Resolution. The same applies to the designation made in accordance with UNSCR 1373.

Weighting and conclusion: The DRC's AML/CFT normative framework does not contain pertinent provisions for the implementation of targeted financial sanctions related to terrorism and the financing of terrorism under the relevant UNSCRs. **The DRC is not in compliance with Recommendation 6.**

Recommendation 7: Targeted financial sanctions related to proliferation

Criterion 7.1: The DRC does not have a normative framework for ensuring the implementation of UNSCRs relating to the prevention, suppression and disruption of the proliferation of weapons of mass destructions (WMD) and its financing.

Criterion 7.2: The DRC has not established the necessary powers or designated competent national authorities responsible for the implementation and enforcement of targeted financial sanctions for the purpose of:

- (a) requiring all natural or legal persons in the country to freeze the funds and other assets of designated persons and entities, without delay and without prior notification;

(b) extending the freezing obligation to all funds or other assets owned or controlled by the designated entity or person, assets generated by such funds and assets held on behalf of sanctioned persons;

(c) prohibiting the provision of funds and other assets, economic resources or financial and other related services for the benefit of the persons or entities concerned;

(d) having mechanisms for communicating designations to financial institutions and DNFBPs and providing them with clear instructions as to their obligations regarding freezing mechanisms;

(e) requiring financial institutions and DNFBPs to report to the competent authorities all frozen assets and measures taken in accordance with the prohibitions of the relevant UNSCRs, including attempted transactions;

(f) adopting measures to protect the rights of bona fide third parties.

Criterion 7.3: The DRC has not adopted any measures to monitor and ensure compliance by financial institutions and DNFBPs with applicable laws and binding means to implement obligations with respect to targeted financial sanctions related to proliferation. There are no sanctions for non-compliance with these laws.

Criterion 7.4: The DRC has not developed or implemented publicly known procedures in relation to de-listing designated persons and entities that do not or no longer meet designation criteria:

(a) to offer listed persons and entities the opportunity to send their request for withdrawal to the focal point established in accordance with UNSCR 1730, informing them that they may approach the focal point directly;

(b) to inform the public of the possibility, for persons or entities with the same or similar names as designated persons or entities who are inadvertently affected by a freezing mechanism, to unfreeze funds;

(c) to authorise access to funds or other assets where the conditions for exemptions established by UNSCR 1718 and 1737 are met; and

(d) by communicating delisting and unfreezing decisions to the financial sector and DNFBPs.

Criterion 7.5: The DRC has not adopted any regulations regarding contracts, agreements or obligations established prior to a targeted financial sanctions measure to:

(a) enable the addition to accounts frozen in accordance with UNSCR 1718 or 1737, subject to the reservations provided, of interest or other revenue due on those accounts or payments due under contracts, agreements or obligations on the date on which those accounts became subject to the provisions of those Resolutions; and

(b) enable a designated person or entity, subject to freezing measures taken in accordance with UNSCR 1737 and under the conditions provided for, to make any payment due under a contract entered into prior to the listing.

Weighting and conclusion: The DRC does not have a normative framework to ensure the implementation of targeted financial sanctions related to proliferation. **The DRC is not in compliance with Recommendation 7.**

Recommendation 8: Not-for-profit organisations

Adopting a risk-based approach

Criterion 8.1: The NPO sector is governed in the DRC by Law No. 004 of 20 July 2001 laying down provisions applicable to not for profit organisations (NPOs) and public interest institutions. However:

- (a) The DRC has not yet undertaken a formal identification and inventory of NPOs to determine which NPOs meet the FATF definition and which NPOs, by virtue of their activities or characteristics, are likely to be exploited for the purpose of financing of terrorism.
- (b) The DRC authorities have not identified the nature of the threats posed by terrorist organisations to NPOs or the way in which terrorists exploit these NPOs.
- (c) No review of the legal framework or the relevance of the measures has yet been undertaken in respect of NPOs that may be exploited for the purpose of ML in order to be able to take proportionate and effective measures to deal with the risks.
- (d) The DRC does not regularly reassess the NPO sector by examining new information on its potential vulnerabilities to terrorist activities in order to ensure effective implementation of the measures.

Ongoing awareness of FT issues

Criterion 8.2:

- (a) The establishment of NPOs in the DRC is subject to administrative formalities governed by Law No. 004 of 20 July 2001 on provisions applicable to not for profit organisations and public interest institutions. This law lays down certain obligations that help to promote transparency, integrity and public trust in the management and operation of NPOs. In general, the articles of association should mention:
 - the name, registered office, purpose and location of operations;
 - the various categories of membership, and the conditions for joining, leaving or expulsion;
 - the organisation of the administration or management;

- the method of appointing and dismissing the persons in charge of the administration, the duration of their term of office, the extent of their powers and the way in which the organisation is represented with regard to third parties;
- the method of drawing up the annual accounts;
- the rules to be followed when modifying the articles of association or allocating assets in the event of dissolution.

All this information must be accessible to the public through publication in the Official Gazette, as the articles of association are only binding on third parties from the time of their publication in the Official Gazette. Furthermore, these articles of association may not contain any provision contrary to law, morality or public order.

(b) To date, the DRC has not undertaken any awareness-raising and education campaigns to encourage and deepen knowledge among NPOs and the donor community on the potential vulnerabilities of NPOs to ML exploitation and the risks of financing of terrorism, and on the measures that NPOs can take to protect themselves from such exploitation;

(c) No initiatives have been undertaken to work with NPOs to develop best practices to address FT risks and vulnerabilities and to protect them from exploitation for the purpose of financing of terrorism;

(d) NPOs established in the DRC are required by law and encouraged to conduct their operations through regulated financial circuits whenever possible.

Targeted risk-based monitoring and supervision of NPOs

Criterion 8.3: The legislative provisions in force confer powers on the competent authorities supervising NPOs to monitor and supervise compliance by these entities with the obligations arising from the law and to impose sanctions for irregularities or breaches of these obligations. However, this supervision does not take into account the application of risk-based measures.

Criterion 8.4:

(a) The supervision of NPOs in the DRC does not take into account the requirements of Recommendation 8, including risk-based measures;

(b) The range of administrative sanctions is wide and variable: refusal of approval, suspension, fines, dissolution. They are applied without prejudice to judicial procedures and sanctions.

Effective investigation and information gathering

Criterion 8.5:

- (a) The Ministry of Justice, the Ministries in charge of the areas of activity of NPOs, the local governments of the place of operation, the tax authorities and any other authorities in the DRC that receive information in connection with the creation and operation of the activities of NPOs shall collaborate and may share information at the national level at the request of the investigating and prosecuting authorities within the context of an investigation. However, there is no ongoing formal coordination.
- (b) Investigating authorities established in the DRC have the power to investigate any NPO suspected of being exploited for the purpose of the financing of terrorism or by terrorist organisations, or of actively supporting terrorist activities or organisations;
- (c) By virtue of the general powers at their disposal when carrying out investigations, the investigating and prosecuting authorities of the DRC may have direct access to information relating to the administration and management of any NPO, including financial and programme information.
- (d) Apart from the general obligation incumbent on any person or administration to report to the competent authorities any criminal offence of which it is aware, there are no specific mechanisms in the DRC to ensure that relevant information on NPOs is rapidly communicated to the competent authorities so that they can take preventive measures or launch investigations when there is suspicion or proof of ML activities involving any NPO.

Effective capacity to respond to foreign requests for information about a suspect NPO

Criterion 8.6: The DRC has not designated or established a specific point of contact and has not determined appropriate procedures for responding to international requests for information concerning any NPO suspected of financing terrorism or otherwise supporting terrorism. In order to respond to requests from third countries in this specific area, the DRC uses traditional international cooperation mechanisms.

Weighting and conclusion: The legal system applicable to NPOs in the DRC does not take into account the risk-based approach to identify NPOs that are vulnerable to FT and ensure they have sufficient and appropriate protection against abuse by terrorists or terrorist organisations for FT purposes. Significant shortcomings are also noted in the awareness of NPOs of the FT issue. **The DRC is not in compliance with Recommendation 8.**

Recommendation 9: Financial Institution secrecy laws

Criterion 9.1: Article 27 of Law No. 04/016 deals with the lifting of professional secrecy in AML/CFT proceedings. This Article provides that ‘*professional secrecy may not be invoked to refuse, on the one hand, to provide information...in the context of an investigation into acts of money laundering or the financing of terrorism ordered by, or carried out under the supervision of, the judicial authority and, on the other hand, to make the suspicious transaction reports provided for by law*’. Thus,

professional secrecy cannot be invoked against the judicial authorities in the context of their AML/CFT duties.

In addition, Article 73 of Law No. 003/2002 of 2 February 2002 on the activity and supervision of credit institutions empowers the supervisory authority to have access to all information from credit institutions. In the insurance sector, Article 6 of Decree No. 16/001 of 26 January 2016 gives ARCA the necessary powers to access information within the context of AML/CFT. As regards Post Office financial services, there are no specific regulatory provisions governing the lifting of professional secrecy within the context of AML/CFT.

On the basis of the provisions of Article 17 of the above-mentioned Law No. 04/016, CENAREF has access, at its request, to all information held by financial institutions as part of its investigations. Similarly, the provisions of Article 13 of the same law make CENAREF one of the recipients of documents collected by credit institutions, However, Article 13 does not cover other categories of financial institutions.

With regard to exchanges between authorities, CENAREF may receive certain information held by the judicial authorities in accordance with Article 17 of Law No. 04/016. However, this article does not explicitly state that CENAREF may obtain, at its request, any useful information held by the judicial authorities. On the other hand, it has access, at its request, to information held by public authorities.

Likewise, the BCC may not invoke professional secrecy against the judicial authority in criminal proceedings, in accordance with the provisions of Article 45 of Law No. 005/2002.

As far as the BCC is concerned, its collaboration with CENAREF remains very ambiguous. Within the meaning of Article 4 of Law No. 04/016, the BCC is subject to the obligation to report suspicious transactions. However, the BCC is also the recipient of STRs from bureaux de change (Art. 12 of Instruction 007) and in connection with suspicions relating to the financing of terrorism (Art. 28 of Law No. 04/016). This situation appears to reduce CENAREF's rights of access to information held by the BCC.

In addition, there is no regulatory framework for sharing information and intelligence between supervisory, regulatory and self-regulatory authorities of financial institutions within the context of AML/CFT. This legal vacuum also concerns cooperation and information sharing between national supervisory authorities and their counterparts abroad within the context of AML/CFT.

At the CENAREF level, Article 18 of Law No. 04/016 provides that it may share information with counterpart FIUs, subject to reciprocity.

Finally, there is no regulatory provision that specifically allows for information sharing between financial institutions as part of their due diligence obligations on certain transactions or a category of customers, at the national level or within the context of international groups.

Weighting and conclusion: Although the lifting of professional secrecy is incorporated in the law on AML/CFT, there are significant shortcomings in the effective access to information by AML/CFT actors. **The DRC is partially compliant with recommendation 9.**

Recommendation 10: Customer Due Diligence obligation

Criterion 10.1: Articles 8 to 10 of Law No. 04/016 prescribes the general customer identification obligation; nevertheless, it does not explicitly prohibit the keeping of anonymous accounts or accounts under fictitious names. However, Article 8 of Instruction No. 15 requires credit institutions, financial courier companies, bureaux de change and microfinance institutions to take all appropriate measures to prohibit customers from opening accounts anonymously or under false names or pseudonyms. It follows from the above that savings and credit cooperatives, Post Office financial services and insurance companies are not subject to the prohibition on maintaining relationships with fictitious customers or those using assumed names, or on opening anonymous accounts.

Enforcement of the Customer Due Diligence obligation

Criterion 10.2: The Customer Due Diligence obligation for credit institutions is governed by Law No. 04/016. The scope of these obligations is extended by instruction 15 to financial courier companies, bureaux de change and microfinance institutions. More specifically, Law No. 04/016 and Instruction 15 contain the following provisions:

- (a) Article 8 of Law No. 04/016 specifies the conditions and procedures for implementing special due diligence obligations when establishing business relationships with natural and legal persons. These obligations are set out in detail in Article 6, for natural persons, and Article 7, for legal persons, of Instruction 15;
- (b) Due diligence obligations when customers carry out occasional transactions in excess of USD 10,000 are included in Article 9 of Law No. 04/016. These obligations also apply in the case of repeated separate transactions within a short period of time of unit amounts below this threshold, but for a total volume of more than USD 10,000;
- (c) Article 22 of Instruction 15 requires information to be obtained on the principal with regard to electronic transfers in general, but does not single out cases where the transaction is occasional and does not specify the information to be collected. Article 15 of the same instruction requires the FIs concerned to prepare written reports in the event that information provided in connection with a transfer proves to be inaccurate. There is no obligation for FIs to make an STR directly to CENAREF;

- (d) There are no specific due diligence obligations where there is a suspicion of money laundering or the financing of terrorism, irrespective of any exemption or threshold;
- (e) There are no specific provisions in the case of doubts about the truthfulness and relevance of previously obtained identification data.

Finally, the insurance sector and Post Office financial services do not have any regulatory obligations regarding the Customer Due Diligence obligation.

Due diligence measures required for all customers

Criterion 10.3: The obligations to identify customers who are natural persons, legal persons or other legal arrangements are clearly stated in Law No. 04/016 and Instruction 15, as regards credit institutions, microfinance institutions, financial courier companies and bureaux de change. However, these provisions do not explicitly specify the requirement for reliable and independent information sources. Instruction 24 applicable to e-money institutions requires electronic money to be incorporated only in instruments that enable the identification of the bearer. Moreover, some financial institutions such as the insurance sector and Post Office financial services are not covered by these texts.

Criterion 10.4: Article 10 of Law No. 04/016 and Article 9 of Instruction 15 establish the general principle of identification of persons acting on behalf of third parties. This article provides that when the customer is acting on behalf of a third party, the credit institution ‘has an obligation to ascertain the true identity of the beneficial owner by any means’. However, the obligation to ‘ascertain’ does not explicitly mean identifying and verifying the identity of the person; similarly, there is no requirement to ensure that persons acting on behalf of third parties have the appropriate authorisation to do so. Lastly, these provisions apply only to credit institutions; they do not cover other financial institutions, including insurance sector and Post Office financial services actors.

Criterion 10.5: Financial institutions are not required to identify the beneficial owner of transactions. The concept of beneficiary is not clearly defined and understood within the meaning of the FATF. Article 7 of Instruction 15 requires credit institutions, MFIs, financial courier companies and bureaux de change to have the information needed to determine the identity of natural persons who control or own legal persons or legal arrangements. However, no details are provided on the sources of information to be consulted, nor on the procedures for collecting this information, nor on the identification of the real beneficial owner, which may not be the person identified as having shares in a legal person.

Criterion 10.6: There is no text requiring financial institutions to understand and obtain information on the purpose and intended nature of the business relationship.

Criterion 10.7: With respect to ongoing due diligence regarding the business relationship:

(a) Law No. 04/016 does not establish an ongoing Customer Due Diligence obligation, nor specific verification requirements for transactions performed. It is limited, in Articles 5, 6, 9 and 11, to a supervision requirement with regard to certain transactions. On the other hand, Articles 12 to 15 and 26 of Instruction 15 require credit institutions, MFIs, financial courier companies and bureaux de change to exercise a general ongoing due diligence obligation and carefully examine transactions for the duration of the business relationship. There are no provisions for ongoing Customer Due Diligence in respect of the insurance sector and Post Office financial services;

(b) There is no regulatory requirement for financial institutions to ensure that documents, data or information obtained when exercising the due diligence obligation remain current and relevant.

There are no provisions for ongoing Customer Due Diligence in respect of the insurance sector and Post Office financial services.

Specific due diligence measures required for legal persons and legal arrangements

Criterion 10.8: There are no formal and express obligations in Law No. 04/016 requiring financial institutions to understand the nature of the activities and the ownership and control structure of customers who are legal persons or legal arrangements. However, the last paragraph of Article 7 of Instruction 15 states that credit institutions, MFIs, financial courier companies and bureaux de change must have the information needed to understand the ownership and control structure of legal persons and other legal structures and to determine the identity of the natural persons who own and control them. Nevertheless, these provisions do not apply to the insurance sector and Post Office financial services.

Criteria 10.9: Within the meaning of Article 8 of Law No. 04/016, the identification of customers who are legal persons is carried out at the level of credit institutions, on the basis of the production of the articles of association and any document establishing that it has been legally incorporated. Article 7 of Instruction 15 supplements these provisions by obliging FIs to require their customer to produce any document stating their name, legal form, registered office and the powers of persons acting on their behalf. There is no provision for the identification of persons holding management positions. Similarly, several FIs are not covered by these requirements.

Criteria 10.10: Article 7 of Instruction 15 requires regulated FIs to identify natural persons who ultimately own or control the legal person. However, there are no provisions in force governing:

- (a) due diligence in cases where there is a doubt as to whether the persons with shareholdings are the beneficial owners;
- (b) the application by other means of the identification of the natural person(s), if any, exercising control over the legal person or legal arrangement;
- (c) the identification of the relevant natural person who holds the position of chief executive officer.

Furthermore, the abovementioned provisions of Instruction 15 do not apply to the insurance sector and Post Office financial services.

Criteria 10.11: There is no requirement to identify the beneficial owners of legal arrangements within the meaning of the FATF, as FIs are merely required to demand the identity of natural persons who control or hold shares, without ensuring that they are the beneficial owners.

Due diligence obligation for beneficiaries of life insurance contracts

Criteria 10.12: There are no specific legal requirements for FIs to carry out due diligence on beneficiaries of insurance contracts or other insurance-related investment products. Article 4 of Law No. 04/016 does indeed refer to insurance sector actors as regulated entities. However, the due diligence measures relating to financial institutions do not cover insurance companies. Thus, no specific due diligence applicable to the beneficiaries of life insurance contracts is provided for in the texts, since Law No. 15/005 on the Insurance Code is not explicit in this regard.

Criteria 10.13: There is no obligation for financial institutions in the DRC to consider the beneficiary of a life insurance contract as a relevant risk factor in determining enhanced due diligence measures, let alone to implement reasonable measures to identify and verify the identity of the beneficial owner of the beneficiary.

Timing of verification

Criteria 10.14: Articles 8 and 9 of Law No. 04/016 and Articles 5 and 7 of Instruction 15 require the regulated entities concerned to complete the identification details of their customers and beneficial owners before entering into a contractual relationship or carrying out a transaction in the case of occasional customers. Article 5 of Instruction 15 requires the identification of existing customers ‘as soon as possible, but does not specify time frames. Moreover, Article 9 of Law No. 04/016 imposes an obligation to identify occasional customers, but does not provide details on when this verification should take place. Moreover, neither the provisions of Law No. 04/016 nor those of Instruction 15 cover beneficial owners. Lastly, insurance sector and Post Office financial services actors are not covered by these provisions.

Criteria 10.15: There is no provision for FIs to enter into business relationships without verification. Therefore, risk management procedures are not considered with

respect to the conditions under which a customer may enter into a business relationship prior to verification.

Existing customers

Criterion 10.16: There are no specific provisions for Customer Due Diligence with respect to existing customers based on the level of risk that they represent.

Risk-based approach

Criteria 10.17: Instruction 22 requires credit institutions to adapt their risk management system to the nature, volume and degree of complexity of the institution's activities and transactions, but there is no relevant evidence that the implementation of this requirement actually includes ML/FT risk management. Article 17 of Instruction 15 requires particular attention to be paid to transactions carried out on behalf of customers by lawyers, notaries, accountants, etc. Article 18 requires enhanced due diligence for customers whose post is sent to a third party. However, in general and in view of the silence of Law No. 04/016 on the risk-based approach, no additional due diligence measures are explicitly stated in the texts, so the strengthening of due diligence depends solely on the free assessment of the risk by regulated entities.

Criteria 10.18: There are no specific legal provisions for simplified due diligence measures where lower risks have been identified by FIs.

Inability to meet Customer Due Diligence obligations

Criterion 10.19:

(a) Article 16 of Instruction 15 states that credit institutions, MFIs, financial courier companies and bureaux de change may not enter into or maintain a business relationship when they have been unable to perform their due diligence obligations in respect of a counterparty. This provision does not cover the prohibition on trading in the same circumstances for occasional customers;

(b) There is no provision in Law No. 04/016 formally requiring the submission of an STR when FIs cannot comply with the due diligence obligations. Article 16 of Instruction 15 requires credit institutions, MFIs, financial courier companies and bureaux de change to 'assess' the need to complete an STR in the event that due diligence measures cannot be carried out. This wording does not exactly comply with the spirit of this criterion, as the completion of the STR is not an obligation here, but is left to the discretion of the institution concerned.

There are no such provisions for the insurance sector and Post Office financial services.

Customer Due Diligence and disclosure obligations

Criterion 10.20: There are no specific provisions providing for the possibility for a regulated entity to refrain from carrying out due diligence measures for transactions that are potentially related to ML/FT, at the risk of alerting the customer concerned, and to report a suspicious transaction directly.

Weighting and conclusion: There are significant shortcomings in the technical compliance of the legislative framework and in the implementation of the requirements of Recommendation 10, particularly those relating to the risk-based approach. Due diligence obligations generally come up against the lack of a single national identity card in the DRC. In the absence of any directive from the competent authorities, regulated entities are free to determine the nature of documents classified as identification documents; some professionals go so far as to consider and accept business cards as proof of ID. Moreover, these ongoing due diligence obligations, contained in Articles 8 et seq. of Law No. 04/016, are limited to credit institutions and do not cover insurance organisations and Post Office financial services. There are no special provisions for beneficiaries of life insurance contracts. The identification of the beneficial owner within the meaning of the FATF is not included in the regulatory texts, nor is it well understood by all financial sector actors. Therefore, professionals are free to determine internally the depth of the due diligence to be carried out. At a general level, the range of information required on the purpose and intended nature of the business relationship is not clear. Neither the ongoing due diligence obligations in respect of business relationships, nor the procedures for careful review of the transactions carried out, let alone the time of verification, are explicitly included in Law No. 04/016. Finally, the methods for strengthening the oversight of certain transactions where enhanced due diligence is required are not clearly set out by any authority, leaving financial institutions free to assess the risk and take corrective action. **The DRC is not in compliance with recommendation 10.**

Recommendation 11: Record-keeping

Criterion 11.1: Article 12 of Law No. 04/016 lays down the obligation for credit institutions to retain documents for at least 10 years after accounts are closed or relationships are terminated for those relating to identification and after the performance of the transaction for those relating to customer transactions; Article 15 of the same law outlines this obligation for cash exchangers. Articles 24 and 25 of Instruction 15 reiterate this obligation to retain documents for the same length of time for credit institutions, MFIs, financial courier companies and bureaux de change. However, these requirements do not apply to Post Office financial services or the insurance sector.

Criterion 11.2: Article 12 (paragraph 2) provides for a retention period of 10 years only for credit institutions with regards to reports written within the context of enhanced due diligence obligations. However, this paragraph outlines conditions for

derogation from the retention of documents without specifying the reasons for doing so. With regard to e-money institutions, Article 26 of Instruction 24 sets a 10-year time limit for the retention of documents enabling the traceability of transactions, without specifying the nature of the items to be retained. There are no regulatory provisions governing this obligation with regard to Post Office financial services or the insurance sector.

There is no legal requirement to retain accounts books or business correspondence.

Criterion 11.3: Article 13 of Law No. 04/016 provides that information and documents collected shall be provided at the request of CENAREF and the competent judicial authorities. In addition, Article 31 of the same text provides that the domiciliary credit institution of seized documents, in its capacity as custodian, may be entrusted with the responsibility of retaining the papers and documents for a period that is indirectly extended, even if this extension is not expressly provided for in the texts. Article 25 of Instruction 15 seems to be more in line with the standards, specifying that for credit institutions, MFIs, financial courier companies and bureaux de change, the documents retained must make it possible to reconstruct individual transactions and the amount and nature thereof. However, Post Office financial services, the insurance sector and e-money institutions are not covered by these provisions.

Criterion 11.4: Article 13 of Law No. 04/016 provides that the documents collected must be made available to CENAREF and other authorities responsible for the suppression of ML/FT offences. Article 25 of Instruction 15 reiterates these same provisions by introducing a penalty payment for non-compliance with the 'required time frames' for credit institutions, MFIs, financial courier companies and bureaux de change. No legal provision expressly stipulates that regulated entities must make collected documents and information 'readily' available to the authorised authorities if necessary.

Weighting and conclusion: Law No. 04/016 sets the time frame for the retention of documents relating to the identity of customers and the transactions carried out by them at 10 years for credit institutions. These provisions are explained in BCC Instruction No. 15. However, there is no obligation to provide these documents promptly to the competent authorities. Finally, there is no legal provision for the retention of documents for insurance sector and Post Office financial services actors. **The DRC is partially compliant with Recommendation 11.**

Recommendation 12: Politically Exposed Persons

Criterion 12.1: While Law No. 04/016 is silent on this issue, Article 10 of Instruction 15, which applies to credit institutions, MFIs, bureaux de change and financial courier companies, sets out the concept of PEPs and provides for specific due diligence in the management of this category of customers. The provisions of this article, which apply

equally to domestic and foreign PEPs, are not in line with the FATF's understanding of the concept of PEPs, as they do not cover senior members of the judiciary and the military, or persons who hold or have held important positions in an international organisation.

- (a) The first paragraph of this article states that FIs must have risk management systems in place to determine whether a potential customer, existing customer or beneficial owner is a PEP. There is no reference here to beneficial owners;
- (b) However, the authorisation of senior management is not explicitly required to enter into a relationship with this category of customers.
- (c) The second paragraph of Article 19 requires FIs to take measures to identify the source of the assets and funds of PEP customers and beneficial owners. However, there is no legal provision requiring financial institutions to determine the source of funds whose beneficial owners are foreign or even domestic PEPs.
- (d) FIs must then implement enhanced due diligence measures for transactions relating to this category of customers. However, the outline of this increased due diligence is not specified.

These provisions do not apply to MFIs, insurance companies or Post Office financial services.

Criterion 12.2: Article 19 of Instruction 19 requires financial institutions to take the necessary steps to determine whether a prospective or existing customer is a PEP. However, there is no specific provision forcing financial institutions to ensure that the beneficial owner of a transaction is a PEP, and this requirement does not cover persons who hold or have held important positions in an international organisation. Moreover, these provisions do not cover MFIs, the insurance sector or Post Office financial services.

Criterion 12.3: The last paragraph of Article 19 of Instruction 15 is rather vague and does not explicitly state that family members of PEPs and other persons associated with them are themselves subject to the same enhanced due diligence measures as PEPs. It is simply stated that these individuals pose reputational risks similar to those associated with PEPs, without making it clear that they are subject to the same enhanced due diligence measures as PEPs.

Criterion 12.4: There are no express provisions requiring financial institutions to take adequate measures to determine whether the customer or beneficial owner of an insurance contract is a PEP.

Weighting and conclusion: Law No. 04/016 does not contain any specific provisions on the identification and special management of customers who are Politically Exposed Persons. However, Article 19 of Instruction 15 requires credit institutions to

set up adequate risk management systems that enable them to detect PEPs as potential or former customers. Nevertheless, this due diligence does not extend to requiring the recognition of a PEP as a beneficial owner. Furthermore, the text does not specify the range of measures to be implemented for this category of customers, such as the express authorisation of senior management to enter into or continue the relationship, or special due diligence to determine the source of the funds. No provisions are specified with regard to life insurance contracts or transactions carried out with Post Office financial services related to PEPs. **The DRC is partially compliant with recommendation 12.**

Recommendation 13: Correspondent banking

Criterion 13.1: Law No.04/016 is silent on correspondent banking relationships. However, Article 21 of Instruction 15 requires credit institutions to take appropriate measures prior to entering into a correspondent banking relationship.

- (a) In this respect, credit institutions must gather sufficient information on the correspondent in order to fully understand the nature of its activities and to assess its reputation and the quality of the supervision carried out by the competent authorities, to verify whether the institution in question is the subject of an investigation or intervention by the supervisory authority relating to ML/FT;
- (b) Article 21, Paragraph 2 of this instruction requires an assessment of the AML/CFT supervision put in place by the AML/CFT correspondents. However, the documents to be collected by the regulated entity for this purpose are not specified;
- (c) Paragraph 3 of this article specifies that the authorisation of senior management is ‘necessary’ before entering into a correspondent relationship. The expression removes the binding nature of this prior authorisation from senior management;
- (d) There are no provisions requiring financial institutions to understand each institution's respective AML/CFT responsibilities.

Criterion 13.2: There is nothing to prevent the credit institution, when it has not been able to verify the correspondent's identity, from carrying out any transaction under any terms and conditions and from establishing or continuing the business relationship. For credit institutions hosting correspondent accounts used directly by independent third parties to carry out transactions on their own behalf, there is no requirement to ensure that the correspondent bank has verified the identity of customers with direct access to its accounts and has implemented adequate due diligence measures in respect thereof.

Criterion 13.3: Article 21 prohibits credit institutions from entering into or continuing correspondent banking relationships with shell banks that are incorporated and authorised in countries and territories where they have no effective supervision on a

consolidated basis in relation to ML/FT. This wording amounts to allowing banks in the DRC to have correspondent relationships with shell banks established in jurisdictions where there is effective AML/CFT supervision. Finally, the text is silent on the obligation to ensure that correspondents do not allow shell banks to use their accounts.

Weighting and conclusion: Neither the law governing the operation of credit institutions nor the law on money laundering, let alone the various implementing instructions, contain any specific provisions on the management of correspondent relationships. Article 21 of Instruction 15 sets out the basic terms and conditions of correspondent banking relationships. However, this provision does not require financial institutions to ensure that the correspondent institution has verified the identity of customers with direct access to its accounts and has implemented appropriate vigilance measures with respect thereto. There is no formal prohibition on performing a transaction, or establishing or continuing the business relationship, when identification procedures cannot be carried out by the correspondent. Finally, there is no formal prohibition for correspondents to allow shell banks to use their accounts. **The DRC is partially compliant with recommendation 13.**

Recommendation 14: Money or value transfer services

Criterion 14.1: Money and value transfer services are provided in the DRC by credit institutions and e-money institutions. According to Article 1 of Law No. 003/2002, credit institutions, which include banks, COOPECs, MFIs, financial companies and specialised financial institutions, are authorised to carry out, among other things, payment method management operations. Article 8 of this law specifies that ‘all instruments which, regardless of the medium or technical process used, enable any person to transfer funds’ are considered to be payment methods. Within the meaning of Article 10 et seq. of Law No. 003/2002, carrying out credit institution activities is subject to BCC accreditation. It is on the basis of this BCC accreditation that credit institutions may provide money transfer services with regard to Articles 1 and 8 of the above-mentioned law. In addition to the provisions of Law No. 003/2002, financial courier companies are also authorised to carry out money transfer operations. Article 1 of Instruction 006 defines financial courier companies as ‘legal persons other than credit institutions which, as a regular occupation, without physically moving the principal's funds, carry out transfer operations’. In the DRC, these companies are divided into two categories: category A operating on national territory and category B operating both on national and foreign territory. In accordance with Article 3 of Instruction No. 006, any legal person governed by ‘Congolese law’ wishing to carry out money transfer operations must be accredited by the BCC. The precision of this provision for legal persons under ‘Congolese law’ creates a legal vacuum for the case of representations of large international money transfer companies active in the DRC

that control a large share of the money transfer market. These representations are established on a contractual basis with partners in the DRC, without being incorporated under Congolese law.

Criterion 14.2: There is no legal or regulatory provision designating an authority responsible for identifying money transfer service providers operating without accreditation in the DRC. Moreover, neither Law No. 003/2002 nor Instruction 006 expressly provides for sanctions for natural or legal persons who provide money or value transfer services without being accredited or registered.

Criterion 14.3: In accordance with the provisions of Article 6 of Law No. 005/2002, the BCC is responsible, among other things, for ‘the *regulation and supervision of credit institutions, microfinance institutions and other financial intermediaries*’. Thus, money transfer service providers are subject to supervision by the BCC.

Criterion 14.4: There are no express regulatory provisions authorising financial courier companies to use agents or sub-agents, nor is there a requirement to keep an up-to-date list of their agents made available to the competent authorities. However, Article 9 of Instruction 006 paves the way for financial courier companies to sign cooperation agreements with other companies in order to carry out money transfer activities, subject to obtaining accreditation from the BCC. In this case, the partner company is accredited in advance. Nevertheless, credit institutions may have transactions carried out by intermediaries; the regulations in force do not require credit institution intermediaries to obtain accreditation prior to carrying out their activities.

Criterion 14.5: There are no legal provisions specifying the conditions or arrangements for the implementation of ML/FT obligations by the partners of financial courier companies.

Weighting and conclusion: Money and value transfer activities are governed by Law No. 04/016, Administrative Instruction No. 006 and Instruction No. 15. Within the meaning of these texts, actors in this sector are accredited and their activities are supervised by the BCC. However, there is a legal void on the local status of representations of large international money transfer companies that are not subject to any accreditation in the DRC because they are not incorporated under Congolese law. They only have simple partnership contracts with credit institutions, even though they control a large part of the Congolese transfer market. Moreover, although the regulation does not expressly refer to the use of agents, in Article 9 (para. 3) it does provide that money transfer services may sign cooperation agreements with other services and inform the BCC thereof. However, this provision does not contain any requirement for the contracting party to carry out AML/CFT due diligence. **The DRC is partially compliant with recommendation 14.**

Recommendation 15: New technologies

Criterion 15.1: Considerations, not concluded by formal reports, had been undertaken by the DRC authorities on the risks inherent to the development and use of new technologies, particularly financial services through mobile telephone networks. There is no text requiring financial institutions to adopt policies or take the necessary measures to identify and assess the ML/FT risks that may result from the development of new products or distribution channels. These institutions are therefore not required to assess risks prior to the launch of new products, practices or technologies, nor to take appropriate measures to prevent the misuse of new technologies for ML/FT purposes.

Criterion 15.2: Articles 27 and 35 of Instruction 24 provides that e-money institutions are required to set up an automated system to monitor unusual transactions involving electronic money and to ensure that their staff comply with the internal supervision framework. Apart from this text, there is no other provision requiring financial institutions to assess the risks associated with the development or use of certain products before they are launched.

Weighting and conclusion: Neither the DRC authorities nor financial institutions have undertaken any studies to identify and assess the ML/FT risks that may result from the development of new products and the use of new technologies. At the time of the mission, although e-money institutions had already been accredited, no risk assessment had been carried out prior to the launch of these new products. Article 28 of Instruction No. 24 stipulates that electronic money issuers must implement procedures to assess and monitor the financial and non-financial risks to which they are exposed. However, this requirement is not a conditionality preventing the start of activities; similarly, there is no provision obliging public authorities to assess the risks related to the use of these new financial products before they are put on the market. **The DRC is not in compliance with recommendation 15.**

Recommendation 16: Wire transfers

Financial institutions of the principal

Criterion 16.1:

- (a) Article 22 of Instruction 15 provides that credit institutions, MFIs, financial courier companies and bureaux de change must retain information on the principal of a wire transfer and verify the accuracy of that information. They must also include all such information in the payment message or form accompanying a wire transfer. There is no threshold for these due diligence obligations, which broadens the scope of these provisions compared to international standards. However, this text does not contain any details on the nature of the information to be collected about the customer, in particular the name, address or bank details;

(b) There is no provision for the collection of information on the beneficial owner of the wire transfer.

Criteria 16.2, 16.3, 16.4, 16.5, 16.6, 16.7, 16.13, 16.14, 16.15, 16.16, 16.17 & 16.18: There is no text in force in the DRC dealing with these obligations.

Criterion 16.8: Article 11 of Law No. 04/016 provides that financial institutions shall exercise particular due diligence with regard to electronic transfers, whether international or domestic, from institutions that are not subject to sufficient customer identification or transaction oversight obligations. However, there is no provision specifying the procedures for processing wire transfers where some of the required information on the principal is missing.

Intermediary financial institutions

Criterion 16.9: There is no provision requiring financial institutions acting as intermediaries to ensure that all information on the principal and beneficiary accompanying a cross-border electronic transfer is attached thereto.

Criterion 16.10: The texts in force in the DRC do not set a time limit for the retention of information received on the principal when technical limitations prevent the required information on the principal or beneficiary from being provided with the corresponding domestic transfer.

Criterion 16.11: There is no obligation for financial institutions to take reasonable steps to identify cross-border wire transfers when the required information on the principal or beneficiary is missing.

Criterion 16.12: There is no requirement for financial institutions to have a risk-based approach for deciding when to perform, reject or suspend wire transfers that do not include the required information on the principal or beneficiary.

Weighting and conclusion: Article 11 of Law No. 04/016 states only that special due diligence must be exercised with regard to electronic money transfers, whether international or domestic. As for Instruction 15, Article 22 requires credit institutions, MFIs, financial courier companies and bureaux de change to obtain and retain information on the principal. Apart from these two provisions, there are no texts defining the arrangements for performing and processing wire transfers, including detailed requirements for the identification of principals and beneficial owners. **The DRC is not in compliance with recommendation 16.**

Recommendation 17: Use of third parties

Criterion 17.1: Article 11 of Instruction 15 authorises credit institutions, MFIs, financial courier companies and bureaux de change to use third parties to identify their customers, while leaving them responsible for carrying out such due diligence.

- (a) This article requires financial institutions to be able to collect information immediately from third parties on the identification of each customer and beneficial owner, subject to the nature of each business relationship. However, it is not explicitly stated whether the collected identity information should be verified through independent and reliable sources. Moreover, the obligation to perform due diligence on the beneficial owner is not provided for by the laws in force, and is therefore not imposed on third parties;
- (b) The same Article 11 requires the financial institution to ensure that the third party can provide, upon request and as soon as possible, copies of identification data and other relevant documents related to the Customer Due Diligence obligation. The notion of ‘as soon as possible’ is not totally compliant with standards using the phrase ‘without delay’;
- (c) Finally, the last paragraph of Article 11 requires financial institutions to ensure that the third party is subject to AML/CFT regulation and supervision that is at least equivalent to its own, but there is still a loophole with regard to document retention.

Criteria 17.2 & 17.3: The texts in force in the DRC do not address these obligations.

Weighting and conclusion: Article 11 of Instruction 15 provides a framework for identification procedures when a regulated entity uses a third party. However, no method has been determined to reassure regulated entities using third parties that identification documents are actually available. Just as no details are given on the nature and form of the practical transfer of data and documents from the third party to the reporting entity. Similarly, no details are given on the criteria applicable to determine whether the third party complies with the identification standards when it is part of a group. The insurance sector is not covered by the provisions of Instruction 15. **The DRC is not in compliance with recommendation 17.**

Recommendation 18: Internal controls and foreign branches and subsidiaries

Criterion 18.1:

- (a) In accordance with the provisions of Article 27 of Instruction 15 and Article 2 of Instruction 17, credit institutions, bureaux de change, financial courier companies and MFIs are required to have an internal supervision system adapted to the nature and volume of their activities, their size, their location and the various risks to which they are exposed. Article 33 of Instruction 15 requires regulated entities to designate persons responsible for ensuring the effectiveness of the ML/FT prevention framework. Article 23 of Instruction 15 requires regulated entities to include provisions in their group policies and procedures that enable them to provide information that is necessary for the prevention of ML/FT to the registered office. In addition, Article 4 of

Instruction 17 states that the structuring of credit institutions' internal supervision framework must include final-level supervision performed by the internal audit department. Article 62 of Instruction 17 also states that the compliance function must be responsible for centralising information on problems and malfunctions in the 'interest group' to which a credit institution belongs, while Article 63 of the same Instruction provides that activities must be included within the scope of the internal audit intervention. Article 60 of Instruction 17 ensures the separation of incompatible functions for compliance officers at credit institutions by stating that the compliance function must exclude any other function within the institution. However, no details are given in this text on the position held by compliance officer at the management level of the financial institution. Apart from credit institutions, the provisions governing other financial institutions, where they exist, do not comply with the required standards;

- (b) Credit institutions are not required to have procedures in place to ensure that their future employees meet high character standards at the time of recruitment. Furthermore, no provision is made for financial institutions other than credit institutions;
- (c) Article 14 of Law No. 04/016 provides for the continuous training of staff within the framework of internal AML/CFT programmes. Articles 35 and 36 of Instruction 15 specify the scope of application of this obligation. The insurance sector and Post Office financial services are not included in these obligations;
- (d) Article 32 of Instruction 15 stipulates that all components of the ML/FT prevention framework must be subject to independent and regular audits. The operational independence of the internal audit function is set out in several texts; however, these do not require those responsible for internal audits to have an adequate position to perform their duties independently and effectively. Article 23 of Instruction 17 states that the internal audit must be assigned to the legislative body that appoints the person in charge of the audit, without specifying the extent of the powers that the internal auditor must benefit from in order to carry out their task effectively.

Criterion 18.2: Article 23 of Instruction 15 requires that policies and procedures are put in place at the parent company level to ensure that all subsidiaries and branches effectively protect themselves against ML/FT risks.

- (a) With regard to information sharing, only Article 62 of Instruction 17 sets out the arrangements for sharing information on problems and malfunctions observed by compliance functions. Aside from this article, which does not even meet the requirements of criterion 18.2(a), there is no text setting out which

elements of customer or transaction information need to be shared, which is necessary for the effective operation of an AML/CFT framework at the group level.

- (b) There are no regulatory provisions on the availability of information from branches and subsidiaries relating to customers, accounts and transactions, when required for AML/CFT purposes, to the audit functions at the Group level.
- (c) Finally, the texts are silent on the guarantees that the AML/CFT programme should contain regarding the confidentiality and use of information shared within the financial group.

Criterion 18.3: Article 23 of Instruction 15 states that where the minimum AML/CFT standards of host and home countries differ, branches and subsidiaries in the host country should be required to apply the higher standard. These policies and procedures are adapted to take into account the specificities of each entity. Branches and subsidiaries established abroad inform their registered office (which informs the BCC) of the provisions of the host country that oppose the implementation of all or some of the recommendations made by the registered office. It has emerged that other operators in the financial sector, in particular those in the insurance sector, are not required to inform their supervisory authorities if one of their foreign establishments is unable to comply with the appropriate AML/CFT measures.

Weighting and conclusion: Articles 23, 27 and 28 of Instruction 15, supported by Article 14 (para. 4) of Law No. 04/016, respectively govern relationships with foreign branches and subsidiaries and internal audits of credit institutions. In addition, training and information obligations are included in Article 35 of Instruction 15. However, no provision is made for the insurance sector. **The DRC is largely compliant with recommendation 18.**

Recommendation 19: Higher-risk countries

Criteria 19.1, 19.2 & 19.3: DRC law does not specifically provide for the application of appropriate and standard-compliant counter-measures to a country that continues to fail to adopt FATF Recommendations in a satisfactory manner. Furthermore, there is no system or operational procedure for reporting concerns about the AML/CFT shortcomings of third countries to financial institutions.

Weighting and conclusion: The texts in force in the DRC do not contain provisions for applying appropriate counter-measures to countries that do not satisfactorily implement FATF Recommendations. There is no framework for the dissemination of information on the shortcomings of third countries with regard to AML/CFT at the level of the DRC authorities. **The DRC is not in compliance with recommendation 19.**

Recommendation 20: Suspicious transaction report

Criterion 20.1: Article 20 of Law No. 04/016 stipulates that all regulated entities are required to report to CENAREF transactions that involve funds suspected of deriving from the commission of one or more offences or of being linked to the financing of terrorism. However, it is not explicitly stated in this text that the suspicious transaction report must be made ‘immediately’. Furthermore, the Protocol signed in 2010 between the CBA and CENAREF makes the BCC the recipient of STRs related to PEPs, without specifying how they are processed.

Criterion 20.2: The obligation to report attempted suspicious transactions is not clearly stated in the texts in force in the DRC.

Weighting and conclusion: Articles 20 and 21 of Law No. 04/016 provide a framework for the suspicious transaction report obligations to which regulated entities in the DRC are subject, without specifying the immediacy. In addition, there is a loophole on the obligation to report attempted transactions. **The DRC is partially compliant with recommendation 20.**

Recommendation 21: Tipping-off and confidentiality

Criterion 21.1: Article 24 of Law No 04/016 satisfactorily fulfils this criterion.

Criterion 21.2: Article 38 of Law No. 04/016 punishes provides for two to five years’ imprisonment for persons and managers or employees of the bodies referred to in Article 4 who knowingly make disclosures to the owner of the sums or the perpetrator of the offences referred to in that article concerning the report that they are required to make or the action taken on it. As worded, the prohibition applies only to persons covered by the report. This suggests that the provision of such information to persons other than those under investigation is not prohibited. In addition, there are no legal or regulatory exemptions that specifically allow for the sharing of information within a group about unusual or suspicious activities, or STRs.

Weighting and conclusion: Disclosure and confidentiality requirements are governed by Law No. 04/016. Under this law, no action may be taken against managers and employees for criminal or civil liability when they report suspicious transactions to CENAREF in good faith. This law also prohibits informing suspected persons that a report has been submitted to CENAREF. However, there is no express prohibition on financial institutions disclosing the fact that a suspicious transaction report has been submitted to CENAREF to any person other than the person under investigation. Finally, information sharing under recommendation 18 is not permitted. **The DRC is largely compliant with recommendation 21.**

Recommendation 22: DNFBPs: Customer Due Diligence obligation

Criterion 22.1:

- (a) Article 16 of Law No. 04/016 sets out the due diligence obligations to which casinos are subject. However, the obligation to verify the identity of the customer is limited to actors who purchase, bring in or exchange chips for all transactions over USD 2,000;
- (b) There are no specific provisions governing the activities of estate agents when they are involved in the purchase and sale of real estate;
- (c) With regard to traders in precious metals and stones, Circular Note No. 00009/CAB.MINES/01/2008 of 23 December 2008 provides that at the end of each month, the mineral buying office must send reports to the Ministry of Mines containing, among other things, the names and addresses of customers. While these provisions are draft customer identification measures, they are still far from meeting the criteria of R.10;
- (d) Article 6 of Decree-Law No. 66-334 requires notaries to verify the identity and status of the parties appearing in any notarial deed. With regard to lawyers, Decree-Law No. 79-028 of 28 September 1979 on the organisation of the bar, the body of judicial defenders and the body of government officials does not contain any due diligence obligations with regard to their customer relationships;
- (e) Trust service providers are not subject to any legal obligations regarding customer identification or due diligence.

Criterion 22.2: Casinos are required to keep records of accounting records and the characteristics of transactions over USD 2,000 with the names of players for at least 10 years. Other than this superficial provision, there is no record retention requirement for DNFBPs as set out in R.11.

Criterion 22.3: There are no obligations placed on DNFBPs with respect to PEPs.

Criterion 22.4: There are no obligations on DNFBPs regarding new technologies.

Criterion 22.5: There are no obligations for DNFBPs regarding the use of third parties.

Weighting and conclusion: Apart from casinos, for which regulatory due diligence is included in Article 16 of Law No. 04/016, there are no provisions relating to Customer Due Diligence with respect to the other categories of DNFBPs. No obligation to keep records is imposed on real estate agents, dealers in precious metals and stones, lawyers, notaries and other legal professions or accountants. There are no obligations imposed on DNFBPs with respect to PEPs, new technologies, or the use of third parties. There are no specific obligations on the careful review of certain unusual transactions, the implementation of enhanced due diligence measures if the risks of ML/FT are high or the duty to ensure that the information obtained can be made

available to the authorities without delay. **The DRC is not in compliance with Recommendation 22.**

Recommendation 23: DNFBPs: Other measures

Criterion 23.1: In accordance with Article 20 of Law No. 04/016, the obligation to report suspicious transactions applies to all categories of regulated entities, including DNFBPs. But as with FIs, there is a problem with the non-requirement of immediacy regarding STRs and the reporting of attempted suspicious transactions.

Moreover, it was apparent during the interviews that chartered accountants were reluctant to apply the obligation to make STRs to CENAREF in their profession, which causes a real problem of effectiveness of this criterion.

Criterion 23.2: There are no requirements applicable to DNFBPs with respect to internal supervision, foreign branches and subsidiaries.

Criterion 23.3: There is no requirement for DNFBPs to take enhanced due diligence measures for higher-risk countries.

Criterion 23.4: In accordance with Article 24 of Law No. 04/016, no civil or criminal action may be brought against DNFBPs referred to in Article 4 of the same law when they submit a suspicious transaction report in good faith. Article 38 of Law No. 04/016 prohibits DNFBPs from informing the customers concerned of the suspicious transaction reports sent to CENAREF or of the follow-up action taken on them. However, this provision only covers reports issued by the same DNFBP and does not cover information on other reports that these regulated entities may be aware of, in particular through CENAREF's right of communication during the operation of an STR submitted by another regulated entity.

Weighting and conclusion: The regulations in force in the DRC do not include trust and company service providers as being subject to the obligation to report suspicious transactions. With regard to precious metal and stone dealers, the law does not set the threshold for special due diligence. There is no provision for DNFBPs to comply with internal supervision obligations, high-risk country obligations, or disclosure and confidentiality obligations. **The DRC is partially compliant with Recommendation 23.**

Recommendation 24: Transparency and beneficial ownership of legal persons

Criterion 24.1 The DRC is an OHADA member state. Thus legal persons, i.e. companies including general partnerships (SNC), limited partnerships (SCS), limited liability companies (SARL), public limited companies (SA) and economic interest groups (GIEs) are subject to the relevant provisions of the Uniform Act relating to Commercial Companies and Economic Interest Groups.

Under the above-mentioned uniform act, such companies shall be created by notarial deed. In the specific case of the Democratic Republic of Congo, the formalities relating to the creation of companies are carried out at this country's one-stop shop for business creation in accordance with the provisions of decree No. 12/045 of 1 November 2012.

It should also be noted that all information on legal entities is published on the website C-guce.guichetunique.cd, which also has other branches in the cities of Kinshasa, Matete and Lubumbashi in Haut Katanga. However, we must point out that in the Democratic Republic of Congo, the exercise of commercial activities does not make it possible to determine the beneficial owner of these activities within the meaning of the definition given by the FATF.

Criterion 24.2: The DRC has not adopted the national risk assessment conducted by the World Bank. The prosecuting authorities have expressed concerns about the use of legal persons in money laundering schemes, in particular through the use of nominees. However, these concerns have not led to a specific risk analysis.

Basic information

Criterion 24.3: (*largely met*): Within the meaning of Article 1 of the Uniform Act on Company Law and Economic Interest Groups of 17 October 1997, any commercial company, including that in which a State or a legal person governed by public law is a partner, whose registered office is situated on the territory of one of the States party to the Treaty on the Harmonisation of Business Law in Africa (hereinafter referred to as 'the Signatory States') shall be subject to the provisions of this Uniform Act. Any economic interest group shall also be subject to the provisions of this Uniform Act. In addition, commercial companies and economic interest groups shall remain subject to laws not contrary to this Uniform Act applicable in the Signatory State where their registered office is located. By virtue of the provisions of the Uniform Act, the Trade and Companies Register shall be kept by the registry of each district court. There is also a national register at the Ministry of Justice that includes the information contained in the local registers. It has secure software and includes the following information: legal form and, where appropriate, special legal status; company name or business name; nature of the activity carried out, registered office address and, if that office is not located within the court's jurisdiction, the address of the principal place of business within the jurisdiction; capital; the names of the partners in partnerships; and the names of the company officers. For economic interest groups and other legal persons, the following information is recorded: name, purpose and registered office address. The act provides that entries shall be made in the register to be brought to the knowledge of the public. In addition, any registration shall give rise within one month to publication in a daily newspaper by the registrant. The national register is accessible on the Internet. Access to certain information is subject to a charge.

Criterion 24.4: Companies are not required to retain information such as the company name; proof of incorporation; legal form and status; registered office address; operating rules; and list of members of the board of directors. As regards their shareholders or members, the Uniform Act refers to a register of registered shares of a public limited company, but no obligation to keep a register is imposed.

Criterion 24.5: The OHADA text requires legal persons to request within one month of their occurrence the registration of any act or fact modifying a prior registration. It provides that the legal person must provide the necessary supporting documents to substantiate its application. In accordance with the provisions of the act, the registry in charge of the trade and companies register verifies the completeness and compliance of the applications. In addition, in accordance with the provisions of the act on the Trade and Companies Register and the Trade and Personal Property Credit Register, the court register may verify the continued accuracy of the information at any time. Any false declaration or inaccurate or incomplete information with a view to registration, delisting or modification of an entry shall be punishable with a fine. There is no obligation on the registry to meet deadlines.

Information on beneficial owners

Criterion 24.6: There is no mechanism for collecting information on the beneficial owners of the activities of legal persons.

Criterion 24.7: There is therefore no document relating to the updating of information on the beneficial owners of the activities of these companies, whereas the Uniform Act relating to General Commercial Law requires companies to provide the RCCM with all information relating to their situation with a view to updating it.

Criterion 24.8: At the DRC's one-stop shop for business creation, formalities have been reduced to three (3) days and an amount of USD 120 for companies and USD 40 for institutions, whereas previously USD 3,500 was required.

The DRC has not provided any documents relating to cooperation between the competent authorities in identifying the beneficial owner.

Criterion 24.9: The DRC has not made available specific texts on legal persons for the retention of supporting documents and records consisting of original documents or copies with similar probative value.

Other requirements

Criterion 24.10: The provisions of the Code of Criminal Procedure relating to the powers of OPJs (Articles 3 et seq.) and those of Article 25 of the AML act confer investigative powers on the prosecuting authorities allowing them to access any information in the course of an investigation.

Criterion 24.11: Congolese law allows bearer shares. However, Article 5 of the AML law prohibits bearer securities in excess of USD 10,000. Exceptions to this prohibition may be allowed.

Criteria 24.12: No information was provided to the mission regarding shares registered in the name of nominees or directors acting on behalf of another person, even though this practice exists in the DRC.

Criterion 24.13: There are no sanctions for failure to keep records or update information.

Criterion 24.14: Mechanisms for international cooperation and information sharing (administrative and judicial) apply to corporate information. However, no information was provided to the assessment mission on the implementation and quality of this international cooperation.

Criterion 24.15: The DRC did not provide the mission with any documents relating to the quality control of the assistance it receives from other countries in response to requests for basic information on beneficial owners in order to locate them.

Weighting and conclusion: All companies governed by Congolese law are registered in the Trade and Companies Register in the Trade and Personal Property Credit Register (RCCM) system. The national risk assessment report has not been adopted by the DRC authorities. The Trade and Companies Register does not include any information on beneficial owners. Companies are not required to keep a register of basic information and beneficial owners of the company. No sanctions are applicable in the event of false or incomplete declarations. **The DRC is not in compliance with recommendation 24.**

Recommendation 25: Transparency and beneficial Ownership of legal arrangements

Criteria 25.1:

(a): Not applicable

(b): Not applicable

(c): There is no legal obligation to retain information for professional trustees who may move to the DRC.

Criterion 25.2:

Criteria 25.3: There is no obligation for trustees (of foreign law trusts) to declare their status to financial institutions and non-designated financial businesses and professions when establishing a business relationship or carrying out an occasional transaction.

Criterion 25.4: No law appears to prevent trustees (of foreign law trusts) from providing the competent authorities or financial institutions and non-designated

financial businesses and professions with information on the beneficial owners and assets of the trust.

Criterion 25.5: In the absence of a specific obligation for trustees to declare their status to financial institutions and DNFBPs, information on the beneficial owners, the residence of the trustee and any assets held or managed by the financial institution or Designated Non-Financial Business or Profession may be obtained in the course of an investigation, if the existence of the trust is discovered by the prosecuting authorities, using their normal investigative powers (cf. Recommendation 31, *supra*).

Criterion 25.6: As the DRC does not have knowledge of trusts in its domestic law, requests for the provision of information by foreign authorities shall only cover foreign trusts active in the DRC. In this context, the Congolese authorities shall be able to provide the information they hold, but this information may be limited or even non-existent given the absence of a specific obligation to declare the existence of a foreign trust.

Criterion 25.7: There is no provision for the legal liability of trustees (of foreign law trusts). In the absence of obligations, no sanctions are applicable to trustees.

Criterion 25.8: There are no sanctions applicable to trustees (of foreign law trusts) in case of non-compliance with the obligation to make information on trusts available to the competent authorities.

Weighting and conclusion: The DRC does not have a legal framework applicable to trusts as these legal arrangements are not known. However, in the absence of an express prohibition, trusts under foreign law may nevertheless operate in the Congo. These situations are not subject to any regulation in order, among other things, to identify the beneficial owners and to ensure the transparency of transactions. **The DRC is not in compliance with recommendation 25.**

Recommendation 26: Regulation and supervision of financial institutions

Criterion 26.1: In the Democratic Republic of Congo, the laws and regulations establish two authorities (BCC and ARCA) responsible for regulating and supervising financial institutions as defined by the FATF Recommendations, with the exception of Post Office financial services. They also give them the powers to monitor compliance with AML/CFT requirements. The BCC is the body responsible for regulating and supervising compliance with AML/CFT requirements by financial institutions within its jurisdiction (Law No. 005 on the constitution, organisation and operation of the BCC, Law No. 04/016 of 19 July 2004 on AML/CFT and Instruction No. 23 to credit institutions on the exercise of the BCC's disciplinary power). To this end, it is responsible for supervising and monitoring credit institutions (Law No. 003/2002 of 2 February 2002 on the activity and supervision of credit institutions), banks (Instruction No. 18), microfinance institutions (Law No. 11/020 of 15 September 2011 laying

down the rules relating to microfinance activity in the DRC and Instruction No. 1 on MFIs), Savings and Credit Cooperatives (Law No. 002/2002 laying down provisions applicable to COOPECs), financial courier companies (Administrative Instruction No. 006), bureaux de change (Administrative Instruction No. 007) and e-money institutions (Instruction No. 24). ARCA is the designated body in charge of regulating and supervising the insurance sector (decree No. 16/001 of 26 January 2016 on the creation, organisation and operation of ARCA). It is responsible for ensuring that the companies under its supervision comply with AML/CFT laws. Post Office financial services are not subject to any AML/CFT supervisory authority.

Market entry

Criterion 26.2: Financial institutions subject to the Core Principles must be accredited before operating in the DRC. For credit institutions, Law No. 003/2002 and Instruction No. 18 designate the BCC as the only authority empowered to grant accreditation to credit institutions, their managers and auditors. Before operating on the national territory of the DRC, credit institutions must obtain BCC accreditation (Article 10 of Law No. 003/2002). Likewise, the BCC is the only competent authority to grant accreditation to Savings and Credit Cooperatives (Law No. 002/2002 of 2 February 2002), microfinance institutions (Law No. 11/020 of 15 September 2011 and Instruction No.1 on MFIs), financial courier companies (Instruction No. 6), cash exchangers (Instruction No. 7) and e-money institutions (Instruction No. 24). However, international transfer companies operating in the Democratic Republic of Congo are not accredited in the DRC. ARCA is the body empowered to grant accreditation to insurance and reinsurance companies and their managers (Decree No. 16/001 of 26 January 2016). Law No. 04/016 of 19 July 2004 provides that the State must organise the legal framework in such a way as to ensure the transparency of economic relationships, in particular by ensuring that company law and legal mechanisms for the protection of assets do not allow the creation of fictitious or front persons in the DRC. There is no other legal or regulatory text formally prohibiting the establishment or existence of shell banks in the DRC.

Criterion 26.3: The texts governing the activities of various financial institutions make an introductory remark on the requirement to provide the list of shareholders and officers when submitting the application for accreditation to the BCC. There is a prohibition on administering, directing or managing these institutions, directly or indirectly, in case of conviction for a number of crimes and offences. However, it should be noted that the regulations do not provide for the review of beneficial owners when applying for accreditation and/or significant transfers of ownership. After accreditation, the BCC has no mechanism to monitor changes affecting officers, directors or shareholders of corporations in a timely manner. Provision of the list alone in a context where there is no reliable and secure system for the identification of persons cannot allow the identification of beneficial owners and thus prevent criminals

and their accomplices from controlling financial institutions. Existing due diligence is limited. With regard to the insurance sector, the good repute of the persons responsible for leading the insurance or reinsurance company is one of the criteria mentioned by the Insurance Code that ARCA must take into account when giving its opinion on whether or not to grant accreditation. Article 463 of the Code establishes conditions of good character that exclude persons from exercising the profession of general agent or insurance or reinsurance broker if they have been the subject of (i) a final prison sentence for an intentional offence; (ii) a personal bankruptcy or other prohibition measure relating to the receivership and judicial liquidation of companies; or (iii) removal from the role of public prosecutor by virtue of a court decision. The texts in force make no mention of the conditions of integrity and professionalism, although ARCA is not operational in its role of supervising the insurance sector at the date of the on-site visit.

Risk-based approach to supervision and monitoring

Criterion. 26.4:

(a) Credit institutions are subject to AML/CFT regulation and supervision in accordance with the Core Principles. However, consolidated supervision is not applied at group level for AML/CFT purposes. Furthermore, no approach that takes into account the risks of ML/FT, either in regulation or supervision, is provided for in the texts. With regard to the insurance sector, the lack of AML/CFT supervision at the time of the on-site visit should be noted, as ARCA is still in its establishment phase and there are no legal or regulatory provisions imposing risk-based or principle-based supervision;

(b) Other types of financial institutions, including cash exchangers, financial courier companies, financial companies, microfinance institutions and COOPECs, are subject to AML/CFT regulations (Law 04/016). However, the effectiveness of the BCC's AML/CFT supervision of these other financial institutions is not certain. The on-site inspections that have taken place are general in scope and their relevance to AML/CFT issues is not certain. To date, there is no risk-based monitoring approach for ML/FT; unfortunately, these risks have not yet been identified.

Criterion 26.5: At the time of the on-site visit, the BCC did not conduct risk-based AML/CFT monitoring of financial institutions subject to its on-site and documentary inspections. There is no risk assessment or risk profiling to guide supervision activities.

Criterion 26.6: There is no provision for the ML/FT risk profiling of financial institutions or financial groups, and therefore no option to review the assessment of the ML/FT risk profile of these same institutions and groups.

Weighting and conclusion: Market access provisions are unsatisfactory as they do not ensure that financial institutions are not owned, controlled or managed by criminals or their accomplices whilst they are in operation. AML/CFT supervision is not based on an ML/FT risk-based approach. In addition, apart from banking institutions, there is a lack of effectiveness in the implementation of on-site monitoring of the AML/CFT framework of other financial institutions supervised by the BCC. The insurance sector is not yet subject to AML/CFT supervision due to the inoperability of ARCA at the time of the on-site visit. Moreover, Post Office financial services are not subject to any supervision in this respect. **The DRC is partially compliant with recommendation 26.**

Recommendation 27: Powers of supervisory authorities

Criterion 27.1: AML/CFT supervision is entrusted to the BCC with respect to institutions within its jurisdiction (Article 19 of Law No. 04/016). The BCC thus has extensive powers of monitoring and supervision over the institutions that are subject to it (credit institutions, microfinance institutions, financial couriers and bureaux de change) in the matters covered by it, including AML/CFT. With regard to the insurance sector, Decree No. 16/001 of 26 January 2016 on the creation, organisation and operation of the Insurance Regulatory and Supervisory Authority (ARCA) gives it the powers to ensure that companies under its supervision comply with laws on the fight against money laundering and the financing of terrorism (Article 6). This is not the case for Post Office financial services, which do not have an AML/CFT supervisor.

Criterion 27.2: Law No. 04/016 on AML/CFT in the DRC confers on the BCC responsibility for the supervision of AML/CFT under its jurisdiction. This supervision is more specifically ensured by the Supervisory Authority for Financial Intermediaries (DSIF). Service Order No. 122/09 of 30 September 2009 on the DSIF organisation chart sets up a Body of Multi-Skilled Supervisors in charge of carrying out on-site inspections at credit institutions, microfinance institutions, bureaux de change and financial courier companies. With regard to the insurance sector, although there is no explicit reference in the texts to on-site and documentary inspections, it is accepted that, in the exercise of its supervisory power, ARCA would be required to carry these out. Article 488 of the Insurance Code, in referring to the joint report, mentions the possibility of such inspections.

Criterion 27.3: Credit institutions - Article 38 of Law n°003/2002 of 2 February 2002 requires credit institutions to provide inspectors acting on behalf of the BCC with all the information and explanations it considers necessary. These institutions are required to submit their cash, securities and portfolio securities as well as their books, minutes, accounts, receipts and other documents to the inspectors. The BCC receives copies of the annual reports of the auditors on the annual accounts of the credit institution in accordance with professional standards in this field (Article 55 of Law No. 003/2002).

The BCC shall, on a regular basis or whenever it deems it necessary, have one or more persons, appointed by it for this purpose, carry out documentary and on-site inspections of any credit institution in order to establish whether it is sound and whether it complies with the legal and regulatory provisions governing the activity and supervision of credit institutions (Article 37).

Microfinance institutions - In its supervisory role, the BCC may carry out documentary and on-site inspections of microfinance institutions. It has the power to request, from any natural or legal person, any information deemed useful for the proper performance of the inspections it carries out (article 33 of law No. 11/020 of 15 September 15 2011 setting the rules relating to microfinance activity in the DRC).

Financial couriers - Instruction No. 006 regulating the activity of financial couriers does not take into account the provisions relating to supervisory powers, so it is not easy to decide on the possibility of authorising the BCC to require the production of relevant information for the monitoring of compliance with AML/CFT obligations.

Cash exchangers - No provision, whether legal or regulatory, expressly confers on the BCC the power to require the production by bureaux de change of any information relevant for the purposes of monitoring compliance with their AML/CFT obligations. There is also no obligation for the BCC to carry out documentary and on-site inspections in this respect.

Insurance sector - At the date of the on-site visit, ARCA was still in its implementation phase and was unable to produce texts organising documentary and on-site inspections of insurance and reinsurance companies so that it could make a valid assessment of whether or not its powers to require its regulated entities to produce all relevant information for monitoring compliance with AML/CFT obligations had been taken into account.

Criterion 27.4: The BCC has the power to impose sanctions up to and including withdrawal of accreditation for institutions under its supervision. However, it should be noted that in the absence of a supervisory authority for Post Office financial services, there were no sanctions applicable to them at the time of the on-site visit. Like the BCC, the Insurance Regulatory and Supervisory Authority (ARCA) also has the power to impose sanctions up to and including withdrawal of accreditation (see Recommendation 35 below).

Weighting and conclusion: Overall, the BCC has extensive powers to ensure the supervision of those under its jurisdiction. It has the power to carry out documentary and on-site inspections, and may require its regulated entities to produce any information deemed relevant in most cases. It also has the power to impose a range of disciplinary and financial sanctions. ARCA is the authority designated to ensure the supervision of activities in the insurance sector, but as it is still in the process of being set up, the texts that organise its supervisory activities have not yet been produced.

This made it difficult for the mission, during the on-site visit, to assess whether or not certain criteria have been taken into account, in particular the power to require the production of any relevant information at the time of an inspection. Nevertheless, ARCA has the power to impose a range of disciplinary and financial sanctions. As regards Post Office financial services, in the absence of a supervisory authority and explicitly written provisions on the subject, it was not possible for the mission to assess any supervisory over the sector. **The DRC is partially compliant with recommendation 27.**

Recommendation 28: Regulation and supervision of Designated Non-Financial Businesses and Professions

Casinos

Criterion 28.1:

(a) In the DRC, the provisions of Article 16 of Law No. 04/016 of 19 July 2004 on the fight against money laundering and the financing of terrorism require casinos, before starting their activity, to submit an application for accreditation to the Ministry in charge of the economy with a copy to the BCC in order to obtain the opening and operating authorisation provided for by the law in force;

(b) The above provisions require casinos, when applying for accreditation, to justify in the application the lawful source of the funds necessary for the establishment of the establishment. No other measures or clear procedures to ensure that criminals or their accomplices cannot take control of these gambling establishments are provided for;

(c) No AML/CFT supervisory authority for casinos is designated, so casinos are not subject to monitoring of compliance with their AML/CFT obligations.

Designated Non-Financial Businesses and Professions other than casinos

Criterion 28.2: Lawyers, notaries, chartered accountants, real estate agents and traders in precious metals and stones are regulated respectively by the National Bar Association, the Ministry of Justice, the National Order of Chartered Accountants, the Association of Real Estate Agencies of Congo and the Centre of Expertise for the Evaluation of Raw and Semi-Precious Materials. However, none of these authorities or self-regulatory bodies ensures that the companies and professions under its jurisdiction comply with their AML/CFT obligations. There are no legal or regulatory provisions conferring on these authorities or self-regulatory bodies a mandate to ensure that the professions under their supervision comply with their AML/CFT obligations.

Criteria 28.3: DNFBPs other than casinos are not subject to any monitoring arrangements to ensure that they meet their AML/CFT obligations.

Criteria 28.4: The professions of lawyer and accountant are regulated in such a way as to limit access to these professions to criminals and their accomplices. The relevant authorities and self-regulatory bodies also have the power to impose sanctions in accordance with the texts governing their profession. However, it should be noted that these powers are not exercised within the AML/CFT framework in the absence of specific obligations relating to compliance with the due diligence requirements to be implemented in this area. Real estate agents and dealers in precious metals and stones are not subject to the requirements under review.

Designated Non-Financial Businesses and Professions

Criterion 28.5: DNFBPs are not monitored for ML/FT risks.

Weighting and conclusion: In general, Designated Non-Financial Businesses and Professions are not subject to supervisory arrangements that can ensure that they comply with their AML/CFT obligations. **The DRC is not in compliance with recommendation 28.**

Recommendation 29: Financial Intelligence Unit (FIU)

Criterion 29.1: Article 17 of Law No. 04/016 of 19 July 2004 on the fight against money laundering and the financing of terrorism establishes a financial intelligence unit called CENAREF under the supervision of the Minister of Finance. Its role is to receive, analyse and process reports from regulated persons and organisations and to report to the Public Prosecutor's Office.

Criterion 29.2:

- (a) Article 20 of the Anti-Money Laundering Act makes CENAREF the sole recipient of suspicious transaction reports in relation to ML. In the case of financing of terrorism, Article 28 makes the Public Prosecutor's Office the co-recipient of STRs, at the same time as a copy must be submitted by credit institutions and other financial intermediaries to the BCC;
- (b) CENAREF does not receive reports based on the threshold. These are intended for the BCC. The BCC did not provide any indication on the subsequent submission of these data to CENAREF.

Criterion 29.3:

- (a) Article 17 of the Anti-Money Laundering Act allows CENAREF to obtain additional information and documents from reporting entities upon request;
- (b) Paragraph 2 of the same text allows CENAREF to receive information and documents from any public authority or natural or legal person in the course of its investigations. The article specifies that professional secrecy cannot be invoked against it.

Criterion 29.4: Article 17 of the Anti-Money Laundering Act allows CENAREF to carry out operational and strategic analyses. CENAREF thus receives and analyses reports submitted to it. This analysis is carried out at the operational level, i.e. by the CENAREF Executive Secretariat through analysts recruited in this regard and following Board guidelines. The report is then sent to the Prosecutor General at the Court of Cassation in case of suspicion. CENAREF has not yet carried out strategic analyses.

Criterion 29.5: Physical files are submitted by CENAREF to the Prosecutor General at the Court of Cassation or to the prosecuting authorities in general through dedicated officials. When submitting the file to the administrations, CENAREF ensures that they download the copy of the letter of transmittal. Thus, dissemination as carried out by CENAREF cannot guarantee the level of confidentiality, as the circuit used by CENAREF is not secured and protected.

Article 17 also allows CENAREF to receive any other relevant information provided by the judicial authorities. In its last paragraph, this article confers on CENAREF staff the status of investigating officers, which requires them to disseminate on simple request of the competent judicial authorities.

Criterion 29.6:

- (a) CENAREF does not have a manual of procedures for processing files. In practice, processing is done by an analyst appointed by the Executive Secretary following Board guidelines. Several people therefore have access to the files; the Executive Secretary who receives them, Board members who discuss them and the analyst who deals with them. Furthermore, there is no procedure for staff access to files. Dissemination as practised by CENAREF is not really secure, as there are no truly protected channels for the submission of STRs to the prosecuting authorities;
- (b) Article 17, paragraph 5 of the Anti-Money Laundering Act subjects CENAREF officials to professional secrecy. This provision is also included in Decree No. 08/24 of 24 September 2008 on the organisation and operation of a national financial intelligence unit;
- (c) CENAREF is currently housed on the premises of the BCC. These premises are secure. Indeed, you need an access card to access them. Nevertheless, no other provisions exist within the premises of the Central Bank of Congo to secure CENAREF's own facilities. This organisation does not have computer facilities and equipment that would be worth securing.

Criterion 29.7:

- (a) Article 17 of the Anti-Money Laundering Act provides for the creation of a CENAREF, under the supervision of the Minister of Finance, with financial autonomy and its own decision-making powers. The said article also provides that CENAREF shall process and disseminate all the STRs it receives. Article 1 of Decree 08/20 of 24 September 2008 on the organisation and operation of CENAREF confirms that this FIU is independent in the performance of its tasks;
- (b) Article 18 of the Anti-Money Laundering Act, Article 22 of which includes the decree establishing CENAREF, allows CENAREF to cooperate with its foreign counterparts. It has signed cooperation agreements with its counterparts in Belgium, Morocco and Congo-Brazzaville. This collaboration also takes place with the national administrations involved in AML/CFT. Cooperation agreements have been signed with the Department of Customs and Excise on the one hand and with the Congolese Banking Association on the other;
- (c) CENAREF is not established within another authority. It is placed under the administrative supervision of the Minister of Finance, but enjoys autonomy of decision at the operational level. CENAREF's operations are organised around two bodies, with a Board and an Executive Secretariat. The Board is the decision-making body. Its members come from different administrations and work part-time at CENAREF. The Executive Secretariat is the operational body of CENAREF. Its staff work there on a permanent basis. The processing of files is devolved to the operational body, which follows Board guidelines. The Board also decides on the dissemination of the report.
- (d) Article 5 of Decree 08/20 of 24 September 2008 provides that CENAREF's resources come from grants, loans, donations and legacies. To date, only the grants granted by the Minister of Finance allow it to operate.

Criterion 29.8: The DRC is not a member of the Egmont Group and CENAREF has not yet made an application for membership. However, it claims to have obtained Belgian sponsorship in this process.

Weighting and conclusion: CENAREF carries out the regular duties of FIUs. However, the lack of membership of the Egmont Group, the lack of strategic analysis and the lack of appropriate measures to secure and protect the dissemination of information somewhat limit its deployment. **The DRC is partially compliant with recommendation 29.**

Recommendation 30: Responsibilities of law enforcement and investigative authorities

Criterion 30.1: The Public Prosecutor's Office is responsible for investigating and prosecuting any criminal offence committed throughout the territory of the DRC, including money laundering and the financing of terrorism (Article 67 of the Judicial Code and Chapter II of the Code of Criminal Procedure). It may delegate its power to investigating officers, including those of CENAREF (end of Article 17 of the Anti-Money Laundering Act). The CNCLT, a specialised counter-terrorism department, has the powers of an investigating officer, enabling it to investigate facts linked to terrorism. Investigative prerogatives are also granted to the Special Adviser to the Head of State on Good Governance and the Fight against Corruption, Money Laundering and the Financing of Terrorism.

Criterion 30.2: No provision exists for parallel financial investigations.

Criterion 30.3: The search for seizable assets in the context of money laundering and the financing of terrorism is in principle within the jurisdiction of the police (Art. 3 CPP). The Public Prosecutor's Office is responsible for initiating criminal proceedings and requesting confiscation, which must always be ordered by a criminal court (Art. 53 CPP). In addition to its role as investigating officer, CENAREF also plays a role in the detection and freezing of assets suspected of being linked to money laundering or the financing of terrorism through its analysis of Suspicious Transaction Reports and its power of opposition (Article 22 of the AML/CFT Act).

Criterion 30.4: Applicable law in the DRC confers powers on other authorities, which are not traditional prosecuting authorities, to investigate underlying offences established in the course of their duties and to make seizures of proceeds in connection with such offences. This is the case of customs administration officials for offences related to exchange control, tax administration officials for tax fraud and ICCN officials with regard to the illegal exploitation of fauna and flora products.

Criterion 30.5: Ordinance No. 16/065 of 14 July 2016 on the organisation and operation of the services of the Special Adviser to the Head of State on Good Governance and the Fight against Corruption, Money Laundering and the Financing of Terrorism is aimed at fighting corruption. This body has sufficient investigative powers to identify, trace and seize property or instrumentalities of crime. Identical powers are also given to the OSCEP, the body in charge of receiving reports of immorality and complaints in cases of corruption and other related practices.

Weighting and conclusion: Criminal prosecuting authorities are designated by law to ensure that money laundering, underlying offences and the financing of terrorism are properly investigated, within the framework of national AML/CFT policies. CENAREF has powers to trigger the freezing or seizure of assets. Other non-judicial authorities also have these powers. However, there is no legal provision for parallel financial investigations. **The DRC is partially compliant with recommendation 30.**

Recommendation 31: Powers of law enforcement and investigative authorities

Criterion 31.1: The Code of Criminal Procedure in force in the DRC (Articles 3 et seq.) and the AML/CFT Act (Article 25) give the competent authorities in charge of ML/FT investigations and related underlying offences extensive powers to access the documents and information necessary to use them in their investigations or related actions. These powers allow them to:

- (a) obtain, even by coercive means, the production of documents held by any natural or legal person, including financial institutions and DNFBPs;
- (b) search persons or premises;
- (c) carry out interrogations and take evidence;
- (d) make seizures and obtain any other evidence.

Criterion 31.2: Article 25 of the AML/CFT Act allows the competent judicial authorities to use a wide range of specific investigative techniques in the investigation of ML/FT offences. The provisions of this Article do not incorporate: (a) hedging transactions. However, these provisions include (b) the interception of communications and (c) access to computer systems, networks and servers. Finally, c) use of the controlled delivery technique, provided for in the Customs Code, is limited to customs investigators.

Criterion 31.3:

- (a) The AML/CFT Act requires credit institutions to provide information and documents relating to their customers and financial transactions, upon request, to CENAREF, officials responsible for the detection and suppression of money laundering and related offences, acting under a court order, and the judicial authorities (Art. 8 to 13). In the course of its investigations and upon request, CENAREF may obtain relevant information and documents from any reporting entity to enable it to identify accounts held or controlled by natural or legal persons, as well as their assets (art. 17 § 2 AML/CFT Act). The Public Prosecutor's Office may also access bank information by reasoned order of a judge (Art. 25 § 5 AML/CFT Act). Time limits for access to this information are not specified and may depend on how long it takes to process the request and its nature;
- (b) There is no legal provision requiring the competent authorities to notify or inform the owner in advance before identifying property or assets as part of an investigation.

Criterion 31.4: Access by the criminal prosecuting and investigative authorities to information held by CENAREF, when conducting investigations into money laundering, related underlying offences and the financing of terrorism, is not expressly provided for in Congolese law. However, the AML/CFT Act, which requires CENAREF officials to maintain confidentiality, does not exclude the possibility of

sharing the information collected if the request is part of the AML/CFT framework or process (art. 17 AML/CFT Act). It should be added that CENAREF officials have the status of investigating officers and can in this context share information with other investigating authorities.

Weighting and conclusion: The main requirements of R.31 are met, but some minor shortcomings can be observed, particularly with regard to the non-use of hedge transactions and the limited use of the controlled delivery technique. **The DRC is largely compliant with recommendation 31.**

Recommendation 32: Cash couriers

Criterion 32.1: Article 3, paragraphs 1 and 2 of the DRC foreign exchange regulations of 28/03/2014 and Article 5 of Circular No. 282 of the Central Bank of Congo lay down the legal basis for the declaration of cross-border transport of cash and bearer negotiable instruments (BNIs) in and out of the DRC.

Criterion 32.2: BCC regulations require an exit declaration for funds exceeding USD 10,000. Article 3, paragraphs 1 and 2 of the DRC foreign exchange regulations of 28 March 2014 establishes the legal basis for the declaration of cross-border transport of cash and bearer negotiable instruments (BNIs) into and out of the DRC.

Criterion 32.3: The Congolese system provides for a written declaration.

Criterion 32.4: *There are no provisions in the DRC legal system for misrepresentation or false declaration of cash or BNIs.*

Criterion 32.5: The Congolese legal arsenal does not provide for punishment for misrepresentation or false declaration.

Criterion 32.6: The DRC does not provide for information collected under the declaration/communication system to be made available to CENAREF. The border departments (customs and migration) do not provide information directly to CENAREF in this type of case.

Criterion 32.7: Despite the fact that the customs and immigration departments are represented in CENAREF, there is no formal coordination between these departments and CENAREF. This coordination problem is also noted with all other AML/CFT actors, despite the creation of COLUB, which is not yet effectively operational.

Criterion 32.8: The provisions of Article 3 of the Code of Criminal Procedure and Articles 30 and 31 of the Anti-Money Laundering Act No. 04/016 confer powers on investigating officers, the judicial authorities and the competent authorities to seize assets relating to the offence under investigation, as well as any items that may enable them to be identified.

Criterion 32.9: The Congolese authorities state that the border departments (Customs and DGM) cooperate and use international assistance in the course of their duties, and

that mutual and administrative assistance agreements have been signed with all border countries. However, no documents on the agreements or statistics on the sharing of information were provided to the assessment team.

Criterion 32.10: No provision is made in the DRC to ensure that strict precautions exist to ensure the proper use of information collected through the declaration/communication systems and not to limit it in any way.

Criterion 32.11: The DRC's Anti-Money laundering Act allows for the prevention of ML/FT and the sanctioning as such of persons who carry out the physical cross-border transport of cash or BNIs in connection with ML/FT, and for the application of precautionary measures of seizure and confiscation.

Weighting and conclusion: Lack of coordination between different border departments is a vulnerability in AML/CFT. The lack of a legal provision providing for and sanctioning any misrepresentation or false declaration in terms of the physical cross-border transport of cash or BNIs is a legal loophole that weakens the Congolese system in this area. **The DRC is rated partially compliant for Recommendation 32.**

Recommendation 33: Statistics

Criterion 33.1:

- (a) CENAREF keeps empirical statistics on the STRs received and disseminated, as well as on cooperation with its foreign counterparts. However, the information it provides is limited and does not include the amounts involved, the underlying offences or the follow-up to legal proceedings;
- (b) Data on investigations, prosecutions and convictions related to ML/FT are non-existent;
- (c) Those relating to frozen, seized or confiscated assets are fragmented and unreliable. (d) Finally, statistical data on mutual legal assistance and other international requests for cooperation are imprecise.

Weighting and conclusion: The DRC does not have a system for producing consolidated, comprehensive and reliable statistical data on issues relating to the efficiency and effectiveness of its AML/CFT system. **The DRC is not in compliance with recommendation 33.**

Recommendation 34: Guidance and feedback

Criterion 34.1: As part of its efforts to raise awareness among financial intermediaries of the ML/FT risks to which they could be exposed, the BCC published a 'handbook' on the fight against money laundering and the financing of terrorism for the attention of the financial institutions under its supervision in a special issue of the Official Gazette of the Democratic Republic of Congo dated 20 January 2013. Indeed, this

'handbook' lists the minimum due diligence to be implemented to prevent and detect acts amounting to ML/FT with a view to helping them fulfil their obligations to report suspicious transactions. There is a lack of feedback mechanisms to assist those subject to AML/CFT measures in the DRC.

As ARCA is not yet operational with respect to AML/CFT supervision, it has not issued guidelines for insurance professionals. At this stage, there is no feedback mechanism to assist companies and other insurance and reinsurance professionals in the application of AML/CFT measures, in particular with regard to the detection and reporting of suspicious transactions.

For DNFBPs, no designated competent authority or self-regulatory body for professionals in the sector has issued guidelines. There is no provision for feedback during the on-site visit for DNFBPs, which are not involved in the national AML/CFT policy to detect and report suspicious transactions.

Weighting and conclusion: Apart from the 'handbook', which only focused on minimum AML/CFT requirements, the DRC's competent authorities, supervisory authorities and self-regulatory bodies have not implemented guidelines for financial institutions and Designated Non-Financial Businesses and Professions, nor provided feedback to assist them in the implementation of national AML/CFT measures and, in particular, in the detection and reporting of suspicious transactions. **The DRC is partially compliant with recommendation 34.**

Recommendation 35: Sanctions

Criterion 35.1: Article 37 of the AML/CFT Act No. 04/016 provides that: '*where, as a result of either a serious lack of due diligence or a failure to organise internal procedures to prevent money laundering, a credit institution, any other financial intermediary or any other natural or legal person referred to in Article 4 has failed to comply with any of its obligations under this act, the disciplinary or supervisory authority may act, ex officio, under the conditions provided for in the professional and administrative regulations*'.

Credit institutions: Law No. 003/2002 of 2 February 2002 relating to the activity and supervision of credit institutions provides the BCC with a range of sanctions applicable to credit institutions that have infringed a legal or regulatory provision relating to their activity, failed to comply with an injunction or disregarded a warning. The first tier of sanctions allows the BCC, among others, to (Article 38): (i) issue a warning, after having given formal notice to the directors to present their explanations; (ii) issue an injunction to take all appropriate corrective measures within a given time limit; (iii) take any safeguard measure deemed necessary, in particular the appointment, for a period not exceeding six months, of a Provisional Representative of the Central Bank of Congo; (iv) appoint a Provisional Administrator or Provisional Manager at the head of the Credit Institution; (v) withdraw accreditation. The BCC

may also impose disciplinary sanctions in the following order of importance: warning; reprimand; ban on carrying out certain transactions or activities; suspension or automatic resignation of the managers responsible; dismissal of the statutory auditor(s); withdrawal of accreditation (Article 77). In addition to these sanctions, the BCC may also impose administrative fines in accordance with the Rates and Conditions of the Central Bank of Congo (Article 78). Credit institutions also incur criminal sanctions in accordance with the provisions of articles 88 et seq. of Law No. 003/2002. Despite the availability of a range of sanctions, it should be noted that the weak implementation of effective AML/CFT supervision has not ensured that the sanctions contained in the provisions of Congolese regulations are dissuasive and proportionate.

Microfinance institutions: According to the provisions of Articles 62 and 63 of Law No. 11/020 of 15 September 2011 setting the rules relating to microfinance activity in the DRC, MFIs shall incur, under the same conditions, the same administrative sanctions provided for by the Banking Law (Law No. 003/2002). Sentences ranging from one to two years' imprisonment and a fine of 500,000 to 5 million Congolese francs are also applicable.

Financial couriers: In accordance with the provisions of Administrative Instruction No. 006 regulating the activity of financial couriers, the BCC may impose one of the following disciplinary sanctions on couriers that have infringed the provisions regulating their activity: notice; reprimand; suspension of activities; withdrawal of accreditation (Article 19, paragraph 1). It may also, either instead of or in addition to these sanctions, impose a financial sanction in accordance with the Rates and Conditions of the Central Bank of Congo (Article 19, paragraph 2). There is a lack of additional provisions that allow these sanctions to produce dissuasive effects, such as a procedure for their publicity. Moreover, financial couriers are also liable for criminal sanctions in accordance with the provisions of articles 88 et seq. of law No. 003/2002 of 2 February 2002 on the activity and supervision of credit institutions.

Cash exchangers: Article 17, paragraph 1 of Administrative Instruction No. 007 regulating the activity of bureaux de change provides that if a bureau de change infringes one of its provisions, the BCC may impose one of the following disciplinary sanctions against it: notice; reprimand; suspension of activities; withdrawal of accreditation. In addition, either instead of or in addition to these sanctions, the BCC may impose a financial sanction in accordance with the Rates and Conditions of the Central Bank of Congo (Article 17, paragraph 2). As with financial couriers, there is a lack of complementary provisions that allow these sanctions to produce dissuasive effects. Cash exchangers also incur criminal sanctions in accordance with the provisions of articles 88 et seq. of law No. 003/2002 of 2 February 2002 on the activity and supervision of credit institutions.

Savings and credit cooperatives: According to the provisions of Article 97 et seq. of Law No. 002/2002 of 2 February 2002 on provisions applicable to savings and credit cooperatives, a range of disciplinary sanctions is provided for against COOPECs that have infringed a legal or regulatory provision relating to their activity. To this end, the BCC may impose the following disciplinary sanctions on any COOPEC that has put itself in this position: warning; reprimand; prohibition on carrying out certain transactions or activities; suspension or compulsory resignation of the directors responsible; dismissal of the auditor; or withdrawal of accreditation. These disciplinary sanctions are taken without prejudice to criminal sanctions under ordinary law, and the BCC may also be required to impose an administrative fine.

Electronic money institutions: In accordance with the provisions of Article 36 of Instruction No. 24 on the issuance of electronic money and electronic money institutions, any failure to comply with the provisions shall result in the application of the sanctions provided for in Articles 77 et seq. of Law No. 003/2002 of 2 February 2002 on the activity and supervision of credit institutions. Under the latter provisions, the CCB may impose administrative and disciplinary sanctions on electronic money institutions that have infringed a legal or regulatory provision relating to their activity, failed to comply with an injunction or disregarded a warning. The BCC may also impose administrative fines on them.

Post Office financial services: There are no legal or regulatory provisions to impose sanctions on the sector's regulated entities in the event of AML/CFT violations.

Insurance sector: Article 32 of Decree No. 16/001 on the creation, organisation and operation of ARCA sets up a '*Disciplinary Committee*' tasked with identifying breaches of the provisions of law No. 15/005 of 17 March 2015 on the Insurance Code and the regulations resulting therefrom, and to study and propose sanctions against companies in the insurance sector that fall within ARCA's remit. This Committee may propose the following disciplinary sanctions against insurance companies that have infringed the provisions of the texts regulating their activity: warning; reprimand; limitation or prohibition on all or part of their operations; any other limitations in the exercise of the profession; suspension or compulsory resignation of the directors responsible; withdrawal of accreditation. Articles 444 to 456 of Law No. 15/005 provide for a range of sanctions for various violations of the legal provisions contained in the Insurance Code. These sanctions range, depending on the case, from eight days' to five years' imprisonment for directors and a fine of 300,000 to 15 million Congolese francs, or one of these penalties on its own. Article 449 provides for the publicity of judgments and rulings by means of posters and publication in the Official Gazette, which has a deterrent effect.

DNFBPs: At the time of the on-site visit, there were no disciplinary sanctions yet in place with regard to DNFBPs for the simple reason that no legal or regulatory

provision designates AML/CFT supervisory authorities for the various professions subject to AML/CFT requirements. For this reason, there are no sanctions applicable in the event of possible breaches of AML/CFT obligations.

Criterion 35.2: For the sanctions provided for and noted above, whether for credit institutions, MFIs, financial couriers, cash exchangers or companies in the insurance sector, neither the banking law, nor the instructions, nor the insurance code provide that the sanctions applied should extend to the management, the board of directors and the persons composing them. DNFBPs are not subject to sanctions for possible breaches of AML/CFT obligations.

Weighting and conclusion: The BCC has broad powers to impose sanctions on financial institutions within its sphere of competence. However, the deterrent effect of these sanctions is not perceptible. Notwithstanding the lack of effective supervision of AML/CFT requirements by ARCA, the Insurance Code provides for a range of proportionate and dissuasive sanctions applicable to companies in the insurance sector. However, these sanctions do not extend to members of the board of directors or senior management of financial institutions. DNFBPs are not subject to sanctions for possible breaches of AML/CFT obligations. **The DRC is partially compliant with recommendation 35.**

Recommendation 36: International instruments

Criterion 36.1: The DRC signed the Vienna Convention on 20 December 1988 and ratified it on 28 October 2005. This ratification makes the DRC a Signatory State to the said Convention. The DRC signed the International Convention for the Suppression of the Financing of Terrorism on 11 November 2001 and ratified it on 28 October 2005. As regards the Palermo Convention, it was accepted by the DRC on 23 September 2010, which is equivalent to ratification under the Convention on the Rights of Treaties. This means that the DRC is a party to the Palermo Convention. The Merida Convention was also accepted by the DRC on 28 October 2005.

Criterion 36.2: The DRC has not yet taken steps to implement these Conventions. The DRC authorities have nevertheless specified that once ratified, a Convention is directly applicable in its legal system. However, no concrete measures are currently being taken by the DRC authorities to implement these Conventions.

Weighting and conclusion: The DRC has ratified the Palermo, Merida and Vienna Conventions and the Convention on the Suppression of the Financing of Terrorism. But it has not yet effectively implemented the said Conventions. **The DRC is partially compliant with recommendation 36.**

Recommendation 37: Mutual legal assistance

Criterion 37.1: The DRC has a legal basis for mutual legal assistance. Articles 51 to 56 of the Anti-Money Laundering Act are devoted to mutual legal assistance. It covers the

investigation and prosecution of money laundering and financing of terrorism offences, as well as underlying offences. However, the law does not specify time limits for processing extradition requests.

Criterion 37.2: Under Congolese law, the Ministry of Justice is the central authority responsible for executing requests for mutual legal assistance. However, there is no department dedicated to centralising these requests. The requests arrive at the minister's office, which then forwards them to the Public Prosecutor's Office. No clear procedure is in place to enable the efficient management of requests for mutual legal assistance.

Criterion 37.3: Article 52 of the Anti-Money Laundering Act lists a wide range of grounds for refusing mutual legal assistance and providing assistance with conditions. The conditions provided for in Congolese law for cases of refusal of mutual assistance do not appear to be globally restrictive and unreasonable. However, the law does not expressly state whether tax matters also constitute restrictions on mutual legal assistance.

Criterion 37.4: Article 52 of the Anti-Money Laundering Act also states that the confidentiality rules of a banking or financial institution may not be invoked to refuse a request for mutual legal assistance. This is not the case for tax issues

Criterion 37.5: Article 67 of the Anti-Money Laundering Act deals to a lesser extent with the issue of confidentiality of requests for mutual legal assistance.

Criterion 37.6: Article 52, point 4 of the Anti-Money Laundering Act expressly states that if a request for mutual legal assistance is made in respect of an offence that does not exist in its legislation, this constitutes grounds for refusal of mutual legal assistance even if the request does not involve coercive action.

Criterion 37.7: DRC law takes into account the requirement of dual criminality for requests for mutual legal assistance. Indeed, Article 52.4 of the AML/CFT Act provides that 'A request for mutual assistance may be refused only: if the offence referred to in the request is not provided for by law'. This provision highlights the fact that mutual legal assistance can only be granted if the incriminated act is foreseen and punished by the requesting State and the DRC.

Criterion 37. 8: The DRC's Anti-Money Laundering Act grants investigative powers and techniques to investigating authorities in the context of a request for mutual legal assistance (Article 53 of the Anti-Money Laundering Act). Indeed, in the context of investigations relating to ML/FT and underlying offences, the DRC's prosecuting and investigating authorities may obtain from any natural or legal person, including financial institutions and DNFBPs, the production of documents or any other evidence by means of searches, searches of premises, seizures or a reasoned order from the competent judge, at the request of the Public Prosecutor's Office. Body searches,

interrogations and the use of witnesses are also permitted under Congolese law. (Article 25 of the Code of Criminal Procedure).

Therefore, Article 53 of the Anti-Money Laundering Act provides in substance that in matters of mutual legal assistance, investigation measures shall be carried out in accordance with the law.

Weighting and conclusion: The DRC does not have a department for centralising requests for mutual legal assistance, despite the fact that the Ministry of Justice is responsible for its execution. Also, no measures are taken to ensure the confidentiality of requests for mutual legal assistance and their processing. **The DRC is partially compliant with recommendation 37.**

Recommendation 38: Mutual legal assistance: freezing and confiscation

Criterion 38.1: Articles 54 and 55 of the Anti-Money Laundering Act provide that the Congolese authorities can provide rapid responses to requests from foreign countries to identify, freeze, seize or confiscate laundered assets and proceeds, and to identify instruments used or intended to be used for ML/FT purposes. The same applies to assets of equivalent value. Article 55, paragraph 1 of the Anti-Money Laundering Act provides that ‘In the case of a request for mutual legal assistance with a view to issuing a confiscation order, the court shall rule on a referral from the Public Prosecutor's Office. The confiscation order must relate to assets constituting the proceeds or instrumentalities of an offence and located in the territory of the Democratic Republic of Congo, or consist of the obligation to pay a sum of money corresponding to the value of such assets’.

Criterion 38.2: Article 62 of the DRC's Anti-Money Laundering Act provides for confiscation procedures without prior conviction and associated interim measures in the event of a request for cooperation. In the event of a request by a State, assets may be handed over even if mutual assistance is not granted. Therefore, when these assets are liable to be seized or confiscated by the DRC, the Congolese authorities keep them temporarily.

Criterion 38.3: The DRC's legal system does not have agreements with other countries to coordinate seizure and confiscation actions. An organisation has also been set up for the management of confiscated assets: FOLUCCO. However, this is not yet effectively operational despite the two (2) meetings it held in April 2018. All the texts relating to its effective operationalisation were still in draft form at the time of the on-site visit. In this regard, mechanisms for managing the freezing, seizure and confiscation of assets are not yet well established. All confiscations, at the time of the on-site visit, are housed at the BCC. However, the mission was unable to obtain information from the Congolese authorities on the management of these assets by the BCC.

Criterion 38.4: Congolese law does not provide for mechanisms to share assets with other countries.

Weighting and conclusion: Congolese law has a legal basis that appears to be in line with issues of mutual legal assistance in freezing and confiscation. However, the implementation framework, i.e. coordination of seizure and confiscation actions with other countries, management of frozen, seized or confiscated assets and sharing of confiscated assets with other countries, is not in place. **The DRC is partially compliant with recommendation 38.**

Recommendation 39: Extradition

Criterion 39.1: The Congolese legal system does not provide clear procedures for the timely execution of requests determining extradition priorities.

- (a) ML/FT offences are part of the range of offences that can result in conviction. Article 57 provides for this by referring to Articles, 2, 34 and 35 of the AML/CFT Act, which determine extraditable offences, including laundered assets;
- (b) While the extradition procedure is provided for in DRC law, it does not determine clear procedures for the timely execution of extradition requests;
- (c) The conditions determined by the DRC for not granting or refusing extradition are not unreasonable or restrictive. Articles 59 and 60 of the AML/CFT Act list all these conditions.

Criterion 39.2: Congolese law does not provide for the possibility of extraditing a Congolese national.

- (a) Article 60 provides that the extradition request may be refused if it concerns a DRC national;
- (b) The Congolese mechanism (Article 31 of the AML/CFT Act) provides for the possibility of submitting the case to the competent authorities for prosecution if extradition is refused;

Criterion 39.3: Article 58 of the Anti-Money Laundering Act provides for dual criminality as an absolute principle in extradition matters. Indeed, Article 58 provides that ‘Under the terms of this Act, extradition shall only be carried out if the offence concerned is both provided for and punished by the law of the requesting State and that of the Democratic Republic of Congo’.

Criterion 39.4: In accordance with Article 63 of the Anti-Money Laundering Act, extradition requests must be submitted through diplomatic channels. However, the

same provision also provides for simplified extradition mechanisms in the case of an urgent request for extradition, which can be made through INTERPOL or CENAREF.

Weighting and conclusion: The processing of extradition requests is not established in such a way as to determine that extradition can be executed in a timely manner. **The DRC is largely compliant with recommendation 39.**

Recommendation 40: Other forms of international cooperation

General principles

Criterion 40.1: The Anti-Money Laundering Act provides for the possibility for CENAREF to be able to cooperate with its foreign counterparts through information sharing (Article 18). Therefore, Article 53, paragraph 2 of the said law has provided for a situation of urgency for the processing of requests for judicial cooperation in the express case of special agreements. The Anti-Money Laundering Act also contains the procedure for executing a request for judicial cooperation in money laundering and the financing of terrorism (Article 63). Congolese law is silent on issues relating to unsolicited information.

Criterion 40.2:

- (a) The DRC has a legal basis for cooperation, with Articles 18, 53 and 63 to 71 of the Anti-Money Laundering Act allowing Congolese authorities to cooperate with their foreign counterparts. In case of emergency, CENAREF has the option of communicating directly with its foreign counterparts;
- (b) Article 53 of the Anti-Money Laundering Act allows for investigative measures to be carried out in accordance with the law in matters of mutual legal assistance. In addition, Article 25 of the Code of Criminal Procedure authorises the investigating authorities to cooperate effectively with the requesting State;
- (c) The Congolese Police are members of Interpol. This body has a secure communication mechanism enabling all police forces in the Member States to submit and execute the various requests for information efficiently. Congolese Customs is a member of the WCO and communicates on this institution's network dedicated to information sharing. As CENAREF is not a member of the Egmont Group, it does not have a secure channel for information sharing;
- (d) The DRC does not have clear procedures for establishing and processing priorities in a timely manner in case of requests;
- (e) No mechanism is established to ensure the protection of information in individual requests for cooperation.

Criterion 40.3: CENAREF is entitled to share information with foreign counterparts, on request or of its own free will, subject to reciprocity or mutual agreement. CENAREF has signed 4 Memoranda of Understanding with foreign counterparts for cooperation. As regards the insurance sector, ARCA, which is the newly established insurance sector regulator, has signed a Memorandum of Understanding with its Moroccan counterpart. The DRC is a Signatory State to the Convention on Mutual Administrative Assistance, which allows the country to adopt a mechanism for the sharing of information aimed at reducing tax evasion. In the customs field, the DRC is a member of the World Customs Organization (WCO). The DRC customs authorities regularly share information with their foreign counterparts through the WCO channel.

Criterion 40.4: There is no legal requirement for the competent authorities of the DRC to provide feedback, upon request by the competent authorities from whom they received assistance, on the use and usefulness of the information obtained.

Criterion 40.5: Article 52 of the DRC's Anti-Money Laundering Act provides for conditions for refusal of mutual legal assistance. These conditions are in line with international standards, which can be found in most judicial cooperation conventions. As far as information sharing is concerned, CENAREF does so subject to reciprocity.

Criterion 40.6: The DRC does not have a system of supervision and safeguards to ensure that information shared by the competent authorities is used only for the purposes and by the authorities from whom it was requested.

Criterion 40.7: The Congolese legal system does not make provision for the authorities to maintain confidentiality in requests for cooperation on both mutual legal assistance and information sharing.

Criterion 40.8: There is no legal provision allowing the competent authorities of the DRC to make requests on behalf of a foreign counterpart and to share with their foreign counterparts any information that could be obtained if such requests were made internally.

Information sharing between FIUs

Criterion 40.9: CENAREF cooperates with its foreign counterparts and provides them with information when requested on money laundering and the financing of terrorism. This cooperation is based on Article 18 of the Anti-Money Laundering Act and Article 22 of Decree No. 08/20 of 24 September 2008 on the organisation and operation of a National Financial Intelligence Unit.

Criterion 40.10: There is no legal requirement for CENAREF to provide feedback, upon request from counterpart FIUs, on the use of the information provided and the results of the analysis conducted on the basis of that information.

Criterion 40.11:

- (a) Article 17, point 2 of the Anti-Money Laundering Act allows CENAREF to consult all information within the framework of investigations undertaken following a Suspicious Transaction Report;
- (b) According to Article 18 of the Anti-Money Laundering Act, CENAREF has the power to share all information in its possession, based on the principle of reciprocity.

Information sharing between financial sector supervisory authorities

Criterion 40.12: Law No. 005/2002 on the constitution, organisation and operation of the BCC does not contain any specific provisions on cooperation with foreign counterparts on the sharing of information relating to AML/CFT supervision. In the insurance sector, on the other hand, Article 4 of Decree 16/001 of 26 January 2016 on the creation, organisation and operation of ARCA allows this institution to cooperate with its foreign counterparts.

Criterion 40.13: The Congolese legal system provides for mechanisms for information sharing between the supervisory authorities and their foreign counterparts. Indeed, the BCC can sign cooperation agreements with its foreign counterparts. This is the case of the agreements it has signed with the Central Bank of Nigeria, the Central Bank of the Republic of Guinea, the Central African Banking Commission (COBAC) and the Banking Commission of the West African Monetary Union. However, these agreements do not contain specific provisions on the sharing of information obtained at the national level from the financial system. This failure also applies to the insurance sector.

Criterion 40.14: There are no legal provisions allowing financial sector supervisors to share all kinds of relevant information in the context of AML/CFT, in particular with other relevant supervisory authorities sharing a common responsibility vis-à-vis financial institutions operating within the same group. This includes:

- (a) Regulatory information, such as information on national regulations and general information on the financial sector;
- (b) Prudential information, in particular for supervisory authorities applying fundamental principles, such as information on the activities of financial institutions, their beneficial owners, their management, and their competence and good repute;
- (c) AML/CFT-related information, such as information on the internal AML/CFT procedures and policies of financial institutions on Customer Due Diligence and customer records.

Criterion 40.15: There are no legal provisions that allow or facilitate financial sector supervisors to seek information on behalf of their foreign counterparts and, where

appropriate, to authorise their foreign counterparts to seek information themselves in the country so as to promote effective group supervision.

Criterion 40.16: There are no legal or regulatory provisions that enable financial sector supervisors to ensure that they have the prior approval of the financial sector supervisor required for any dissemination of the information shared or any use of such information for supervisory or other purposes.

Information sharing between prosecuting authorities.

Criterion 40.17: The Congolese Police are members of Interpol and regularly share information with their foreign police counterparts via this channel. The DRC has an Interpol National Bureau whose primary purpose is police cooperation. This cooperation takes place at the regional level, as the DRC is a signatory to the Criminal Police Cooperation Agreement between Central African States.

Criterion 40.18: Article 53 of the Anti-Money Laundering Act is in line with criterion 40.18. The said Article provides that: ‘investigation measures are carried out in accordance with the law, unless the competent foreign authorities have requested that they be carried out in a particular way compatible with the law’. This provision of the Anti-Money Laundering Act allows the prosecuting authorities to use the powers required in the course of their investigations.

Criterion 40.19: The Criminal Police Cooperation Agreement between Central African States, to which the DRC is a party, provides for the opportunity for prosecuting authorities to set up joint investigation teams in order to conduct investigations in a cooperative manner.

Information sharing between non-counterpart authorities

Criterion 40.20: The DRC does not have mechanisms for sharing information from the competent authorities with non-counterpart authorities.

Weighting and conclusion: The DRC's legal arsenal provides a general framework for cooperation between the competent authorities and their foreign counterparts. Nevertheless, there are still shortcomings to be noted. It can thus be emphasised that the Congolese system has not provided for any mechanisms:

- for the timely processing of cooperation requests;
- allowing CENAREF to conduct investigations on behalf of its foreign counterparts;
- clear sharing of information related to money laundering and the financing of terrorism between the BCC and its foreign counterparts;
- sharing of information between competent authorities with non-counterpart authorities.

Moreover, there is no legal provision allowing the Congolese authorities to supervise the financial sector:

- to obtain the authorisation of its counterparts before any dissemination of the information shared or any use of this information for supervisory or other purposes;
- to share regulatory information, prudential information and AML/CFT information.

Finally, no provision is made for the confidentiality of the processing of judicial cooperation requests. **The DRC is partially compliant with recommendation 40.**

ANNEXE

Table on compliance with FATF Recommendations

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) justifying the rating
1. Risk assessment and application of a risk-based approach	NC	<ul style="list-style-type: none"> • Significant gaps were identified in the inclusiveness of the process and the rigour of the methodology used in the NRA conducted in 2013. Moreover, the report relating thereto has not been approved. • Lack of sectoral risk assessments; • AML/CFT strategy does not take into account multiple threats and vulnerabilities; • Non-existence of a mechanism to disseminate the results of the NRA; • Lack of a risk-based approach to AML/CFT; • Failure to take into account ML/FT risks at the level of DNFBPs
2. National cooperation and coordination	PC	<ul style="list-style-type: none"> • Lack of a coordination policy between the actors involved in AML/CFT; • Lack of a national policy for the prevention and management of ML/FT risks.
3. Offence of money laundering	PC	<ul style="list-style-type: none"> • Trafficking of migrants, drug trafficking, arms trafficking (except for export), piracy and stock exchange offences are not offences underlying ML.
4. Confiscation and interim measures	PC	<ul style="list-style-type: none"> • Lack of provisions on the confiscation of assets related to the financing of terrorism • Non-operationalisation of FOLUCCO
5. Offence of financing of terrorism	NC	<ul style="list-style-type: none"> • Non-criminalisation of organising the commission of an offence of financing of terrorism, instructing others to commit it and contributing to the commission of that offence by a group of persons acting together. • Non-criminalisation of the financing of a terrorist group or organisation or of a terrorist individual even in the absence of a link to a specific terrorist act or acts. • Non-criminalisation of the financing of foreign terrorist fighters. • However, it does not take into account other offences related to FT, such as organising the commission or instructing others to commit or attempt to commit an FT offence, and contributing to the commission of one or more FT offences or attempts to commit an FT offence by a group of persons acting together.
6. Targeted financial sanctions related to terrorism and the financing of terrorism.	NC	<ul style="list-style-type: none"> • Lack of mechanisms to implement the sanctions regimes relating to UNSCR 1267/1989 (Al Qaeda) and 1988; • Lack of mechanisms to enforce the requirements of UNSCR 1373; • Failure to designate competent authorities, or to determine their powers and procedures for (a) gathering or requesting information to identify persons or entities that meet the criteria for designation, and (b) taking ex parte action against a person or entity that has

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) justifying the rating
		<p>been identified and whose designation or proposed designation is under consideration;</p> <ul style="list-style-type: none"> • Lack of procedures for the prompt implementation of targeted financial sanctions; • Failure to designate competent national authorities responsible for the implementation and enforcement of targeted financial sanctions for CFT purposes; • Lack of mechanisms and procedures for de-listing and unfreezing; • Lack of mechanisms and procedures to allow access to frozen funds and other assets deemed necessary for basic expenses.
7. Targeted financial sanctions related to proliferation	NC	<ul style="list-style-type: none"> • Lack of a normative framework for ensuring the implementation of UNSCRs relating to the prevention, suppression and disruption of the proliferation of weapons of mass destructions (WMD) and its financing; • Lack of provisions establishing the necessary powers and designating competent national authorities responsible for the implementation and enforcement of targeted financial sanctions to combat the financing of proliferation; • No measures are adopted to monitor and ensure compliance by those subject to the applicable laws and binding means for the implementation of obligations with respect to targeted financial sanctions related to proliferation; • Lack of measures to monitor and ensure compliance by FIs and DNFBPs with laws and binding means to implement TFS related to proliferation. • Lack of clear procedures for de-listing or unfreezing; • No regulations regarding the processing of contracts, agreements or obligations established prior to a targeted financial sanctions measure in accordance with UNSCR 1718 or 1737.
8. Non-Profit Organisations	NC	<ul style="list-style-type: none"> • Lack of a review of the legal and regulatory framework with regard to AML/CFT risks and the possibility of misuse of the NPO sector for criminal purposes; • No specific study to identify the nature of the threats, the methods used and the characteristics of NPOs vulnerable to FT; • No regular re-assessment of the NPO sector; • No campaign to raise awareness among NPOs of the specific problem of the financing of terrorism; • Non-application of specific measures according to the categories of NPOs, differentiating according to the size of the financial resources controlled or the international activities carried out; • Lack of application of risk-based measures in supervision. • Lack of a specific point of contact and appropriate procedures to respond to international requests for information concerning any NPO suspected of financing terrorism.
9. Laws on the professional	PC	<ul style="list-style-type: none"> • The extended right of communication for CENAREF in

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) justifying the rating
secrecy of financial institutions		<p>the course of its investigations is not clearly established.</p> <ul style="list-style-type: none"> • Inaccessibility of information between AML/CFT actors
10. Customer Due Diligence obligation	NC	<ul style="list-style-type: none"> • Lack of prohibition on savings and credit cooperatives, Post Office financial services and insurance companies on maintaining relationships with fictitious customers or those using assumed names or on opening anonymous accounts; • Lack of specific due diligence obligations for credit institutions when there is a suspicion of ML/FT irrespective of any exemption or threshold; • No specific provision for credit institutions in case of doubt as to the veracity of the relevance of previously obtained identification data; • Lack of specific due diligence obligations for Post Office financial services and insurance companies; • Lack of an obligation for FIs to understand and obtain information on the purpose and intended nature of the business relationship; • Lack of an obligation to identify the beneficial owners of legal arrangements within the meaning of the FATF; • Lack of a single, secure and accessible identification document; • Lack of an obligation to keep identification documents of beneficial owners for transactions carried out by third parties; • Lack of an obligation to collect information on the purpose and nature of the envisaged business relationship; • There are no formal requirements for the insurance sector and Post Office financial services to understand the nature of their activities and the ownership and control structure of customers who are legal entities or legal arrangements; • There is no express obligation for FIs to collect the identities of persons holding senior management positions, and no express obligation for insurance companies and Post Office financial services to obtain information on the powers that govern a legal entity or to collect the identities of persons holding senior management positions; • Lack of specific due diligence for the beneficiaries of life insurance contracts; • Lack of Customer Due Diligence measures with respect to existing customers according to the significance of the risks they pose; • Lack of specific provisions for simplified due diligence measures where lower risks have been identified by FIs; • Failure to implement the Anti-Money Laundering Act with regard to Post Office financial services and the insurance sector; • Lack of provisions formally prohibiting the performance of a transaction for an occasional

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) justifying the rating
		<p>customer without the completion of identification procedures;</p> <ul style="list-style-type: none"> • The insurance sector and Post Office financial services are excluded from the scope of the legal due diligence measures.
11. Document retention	PC	<ul style="list-style-type: none"> • The obligation to retain documents does not clearly cover items relating to the beneficiaries and beneficial owners of the transactions carried out; • There is no legal obligation to retain account books, business correspondence or the results of any analysis; • Lack of a provision stipulating that regulated entities must ensure that the required documents are available within a short period of time; • The insurance sector and Post Office financial services are excluded from the scope of the document retention measures.
12. Politically Exposed Persons	PC	<ul style="list-style-type: none"> • Lack of clarity on the enhanced due diligence obligation for family members of PEPs and other persons associated with them; • Lack of any particular obligation on PEPs who are policyholders or effective beneficiaries of insurance contracts; • The insurance sector and Post Office financial services are excluded from the scope of the legal measures for due diligence with regard to PEPs.
13. Correspondent banking	PC	<ul style="list-style-type: none"> • Lack of a provision requiring institutions hosting correspondent accounts used by independent third parties on their own behalf to ensure that the correspondent bank has verified the identity of those customers with direct access to its accounts; • Lack of a formal prohibition on performing a transaction or establishing or continuing the business relationship when the correspondent was unable to carry out identification due diligence procedures. • There is no provision formally prohibiting correspondents from allowing shell banks to use their accounts.
14. Money or value transfer services	PC	<ul style="list-style-type: none"> • Lack of specific provisions for the registration and supervision of international money transfer companies in the DRC; • Lack of sanctions for persons providing money and value transfer services without accreditation or registration; • Lack of provisions specifying the conditions under which partners of financial courier companies implement AML/CFT obligations.
15. New technologies	NC	<ul style="list-style-type: none"> • Lack of a text requiring financial institutions to have policies or take the necessary measures to identify and assess ML/FT risks; • there is no provision requiring public authorities to assess the risks related to the use of these new financial products before they are put on the market; • The insurance sector and Post Office financial services are excluded from the scope of the legal measures for due diligence with regard to new technologies.

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16. Wire transfers	NC	<ul style="list-style-type: none"> • Lack of a legal threshold for the implementation of enhanced due diligence obligations on wire transfers; • Lack of detail on the information to be collected when implementing the due diligence measures; • Lack of provisions for the case of several cross-border electronic transfers from the same principal that are sent in batches to different beneficiaries; • Lack of obligation for the beneficiary FI to take measures to detect cross-border electronic transfers for which the required information on the principal or beneficiary is missing; • Lack of legal requirements for the FI to have risk-based policies and procedures in place to decide (a) when to perform, reject or suspend wire transfers that do not include the required information on the principal or beneficiary and (b) appropriate follow-up actions; • Lack of legal measures in the DRC to ensure that, in processing wire transfers, FIs take freezing measures and comply with prohibitions on transactions with designated persons and entities in accordance with the obligations set out in the relevant UN Security Council Resolutions on the prevention and suppression of terrorism and the financing of terrorism, such as Resolutions 1267 and 1373 and their subsequent Resolutions.
17. Use of third parties	NC	<ul style="list-style-type: none"> • Lack of clarity on the requirement for the collection of identity details to be accompanied by their verification by independent and reliable sources; • The obligation to perform due diligence on the beneficial owner is not provided for by the laws in force, and is therefore not imposed on third parties; • Lack of specific provisions regarding the retention of documents by third parties; • Lack of obligation for FIs to take into account available information on the level of country risk when determining countries in which third parties meeting the conditions can be established; • Lack of specific provisions when a financial institution uses a third party belonging to the same financial group; • The insurance sector and Post Office financial services are excluded from the scope of the legal due diligence measures imposed on third parties.
18. Internal supervision and foreign branches and subsidiaries	LC	<ul style="list-style-type: none"> • Lack of satisfactory arrangements for internal supervision and audit at other FIs outside credit institutions; • Lack of obligation for FIs to have procedures in place to ensure that their future employees meet high character standards at the time of recruitment; • Lack of provisions requiring those responsible for internal supervision to be adequately positioned to carry out their duties independently and effectively; • There are no provisions on the guarantees that the AML/CFT programme should contain regarding the confidentiality and use of information shared within the

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		<p>financial group;</p> <ul style="list-style-type: none"> • Training and information obligations are incomplete, as they do not cover all staff; • The insurance sector and Post Office financial services are excluded from the scope of application of the measures relating to internal supervision and foreign branches and subsidiaries.
19. Higher-risk countries	NC	<ul style="list-style-type: none"> • Lack of specific provisions for the application of appropriate and standard-compliant counter-measures to a country that continues to fail to adopt the FATF Recommendations in a satisfactory manner; • Lack of a system or operational procedure for reporting concerns about the AML/CFT shortcomings of third countries to financial institutions.
20. Suspicious Transaction Report	PC	<ul style="list-style-type: none"> • The provisions of Instructions 6 and 7 make the BCC the recipient of STRs submitted by cash exchangers and financial couriers; • Lack of a formal mechanism for processing STRs submitted to the BCC on PEPs; • Lack of details on the immediacy of STRs; • Lack of an obligation to report attempted suspicious transactions.
21. Disclosure and confidentiality	LC	<ul style="list-style-type: none"> • Confidentiality of STRs affected by their submission, in addition to CENAREF, to the BCC and the Public Prosecutor's Office by certain professionals and for certain transactions; • No express prohibition on the disclosure by financial institutions of the fact that a Suspicious Transaction Report has been submitted to CENAREF by another regulated entity.
22. Designated Non-Financial Businesses and Professions: Customer Due Diligence	NC	<ul style="list-style-type: none"> • With regard to casinos, the obligation to verify the identity of the customer is limited to players who purchase, bring in or exchange chips for all transactions over USD 2,000; • Lack of a legal obligation to identify customers or exercise due diligence for other DNFBPs; • Apart from casinos, there is no obligation to retain documents as mentioned in R.11. for other DNFBPs; • Lack of obligation on the part of DNFBPs with regard to PEPs, new technologies and the use of third parties.
23. Designated Non-Financial Businesses and Professions (<u>DNFBPs</u>)	PC	<ul style="list-style-type: none"> • There are no obligations applicable to DNFBPs with regard to internal supervision, branches and subsidiaries abroad, nor any provisions on enhanced due diligence measures for countries with higher risk; • Lack of an obligation with regard to trust and company service providers.
24. Transparency and beneficial owners of legal persons	NC	<ul style="list-style-type: none"> • Lack of a reliable mechanism that identifies and describes the different types, forms and basic characteristics of legal persons and the procedures for the creation of such legal persons; • Lack of a risk assessment on the misuse of legal persons for ML purposes;

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Recommendation	Rating	Factor(s) justifying the rating
		<ul style="list-style-type: none"> • Lack of an obligation to retain information such as the name of the company; proof of incorporation, legal form and status, registered office address, operating rules; and list of members of the board of directors. • Lack of a mechanism to ensure that information on the beneficial owners of a company is obtained by that company and is available, or that the beneficial owners can be identified in a timely manner by the competent authorities; • Lack of information concerning shares registered in the name of nominees or directors acting on behalf of another person; • Lack of specific provisions regarding the identification of beneficial owners of legal persons.
25. Transparency and effective beneficiaries of legal arrangements	NC	<ul style="list-style-type: none"> • No special measures are provided for to identify the beneficial owner and ensure transparency of transactions for foreign trusts with assets in the DRC, Congolese lawyers or any other person acting as 'trustee'; • Lack of specific obligation for trustees to declare their status to financial institutions and DNFBPs; • Lack of mechanisms to provide prompt international cooperation regarding information on trusts and other legal arrangements, including information on beneficial owners; • Lack of a provision requiring trustees to be legally liable for any breach of their duties and for proportionate and dissuasive sanctions to be applicable in the event of non-compliance with their duties; • Lack of proportionate and dissuasive sanctions for failure to comply with the obligation to make information on trusts available to the competent authorities in a timely manner
26. Regulation and supervision of financial institutions	PC	<ul style="list-style-type: none"> • Lack of an AML/CFT supervisory authority for Post Office financial services; • Lack of legal or regulatory provisions formally prohibiting the establishment or existence of shell banks in the DRC; • Lack of an obligation to examine beneficial owners when applying for accreditation and/or significant transfers of ownership of FIs; • Lack of provisions setting out the conditions of integrity and professionalism, although ARCA is not operational in its role of supervising the insurance sector at the date of the on-site visit. • Absence of consolidated supervision at the level of financial groups for AML/CFT purposes; • Lack of effective AML/CFT supervision by the BCC for bureaux de change, financial couriers, electronic money companies, MFIs and COOPECs; • Lack of organisation of supervision, monitoring and inspection by the BCC following a risk-based approach; • Lack of provisions relating to the ML/FT risk profiling of financial institutions or financial groups.

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27. Powers of supervisory authorities	PC	<ul style="list-style-type: none"> • Lack of effectiveness in the exercise of ARCA's powers; • Lack of a supervisory authority for Post Office financial services.
28. Regulation and supervision of Designated Non-Financial Businesses and Professions	NC	<ul style="list-style-type: none"> • There are no AML/CFT regulations governing the activities of DNFBPs, with the exception of casinos, so there is no designated authority empowered to monitor compliance with their AML/CFT obligations; • There are no supervisory authorities or self-regulatory bodies of DNFBPs to ensure that these professions comply with their AML/CFT obligations.
29. Financial Intelligence Units (FIUs)	PC	<ul style="list-style-type: none"> • Lack of specific provisions making CENAREF the central and sole recipient of STRs; • Lack of effectiveness of the strategic analyses carried out by CENAREF; • CENAREF does not have file processing software and a secure computer system; • Lack of a formal application for admission to the Egmont Group.
30. Responsibilities of the prosecuting and investigative authorities	PC	<ul style="list-style-type: none"> • There is no provision for parallel financial investigations; • Lack of statistics to assess the effectiveness of the actions of the prosecuting and investigative authorities; • Lack of synergy between the different actors involved in the fight against corruption, to the extent that the Public Prosecutor's Office routinely discontinues the few proceedings submitted to it.
31. Powers of the prosecuting and investigative authorities	LC	<ul style="list-style-type: none"> • Lack of a legal provision allowing the use of hedging transactions; • Limitation of the controlled delivery technique to customs investigators only.
32. Cash couriers	PC	<ul style="list-style-type: none"> • There are no legal provisions relating to the misrepresentation/false declaration of cash or BNIs; • Lack of provisions for the sanctioning of misrepresentation/false declaration; • Lack of provisions to make information collected under the declaration/communication system available to CENAREF; • Lack of coordination between the customs department, the immigration department and CENAREF; • Lack of statistics on the sharing of information between the DRC's customs department and foreign counterpart departments on customs investigations.
33. Statistics	NC	<ul style="list-style-type: none"> • Lack of data on ML/FT investigations, prosecutions and convictions; • Lack of reliable and consolidated statistics on frozen, seized or confiscated assets; • Inaccuracy of data relating to mutual legal assistance and other forms of international requests for cooperation.
34. Guidelines and feedback	PC	<ul style="list-style-type: none"> • Lack of guidelines issued by the DRC authorities (BCC, ARCA, CENAREF, etc.) to better explain the due diligence required in order to assist and bring financial

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		institutions and DNFBPs to a better understanding of the measures to be implemented to detect and report suspicious transactions.
35. Sanctions	PC	<ul style="list-style-type: none"> • Sanctions not sufficiently precise and dissuasive to induce FIs to implement AML/CFT due diligence; • There are no sanctions for DNFBPs for breaches of their AML/CFT obligations.
36. International instruments	PC	<ul style="list-style-type: none"> • No provisions are actually made relating to the implementation of the Vienna, Merida and Palermo Conventions, or the one on the fight against the financing of terrorism.
37. Mutual legal assistance	PC	<ul style="list-style-type: none"> • Lack of a department dedicated to the centralisation of requests for mutual legal assistance; • no measures are taken to ensure the confidentiality of requests for mutual legal assistance and their processing.
38. Mutual legal assistance: freezing and confiscation	PC	<ul style="list-style-type: none"> • Lack of legal provisions for agreements with other countries to coordinate actions for seizure and confiscation; • Lack of formal mechanisms for the management of frozen, seized or confiscated assets; • Lack of a legal basis for sharing confiscated assets with other countries.
39. Extradition	LC	<ul style="list-style-type: none"> • Lack of clear mechanisms and procedures for the timely execution of requests and determining priorities for extradition;
40. Other forms of international cooperation	PC	<ul style="list-style-type: none"> • Lack of clear procedures for establishing and processing priorities in a timely manner in the event of requests; • Lack of a mechanism to ensure that information in cooperation requests is protected; • There are no legal provisions for feedback; • Lack of a system of supervision and safeguards to ensure that information shared by the competent authorities is used only for the purposes and by the authorities by whom it was requested; • Absence of a legal obligation requiring authorities to maintain confidentiality in requests for cooperation both on mutual legal assistance and on information sharing; • There are no legal provisions for CENAREF to carry out investigations on behalf of its foreign counterparts; • Lack on an obligation for CENAREF to provide feedback to its foreign counterparts in the event of a request for information; • Lack of mechanisms for information sharing between supervisory authorities and their foreign counterparts; • Lack of authorisation of the BCC by the banking law to cooperate with its counterparts on other issues, such as ML/FT; • Lack of a cooperation mechanism between the BCC and its foreign counterparts; • Legal void on mechanisms for information sharing between judicial authorities;

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Recommendation	Rating	Factor(s) justifying the rating
		<ul style="list-style-type: none"> • Lack of information sharing mechanisms between competent authorities and non-counterpart authorities.