



Anti-money laundering and counter-terrorist financing measures

Burkina Faso

4th Enhanced Follow-up Report & Technical Compliance Re-Rating

Follow-up Report



JUNE 2023

Burkina Faso's 4th Enhanced Follow-up Report

I. INTRODUCTION

1. The mutual evaluation report (MER) of Burkina Faso was adopted in May 2019. Based on the MER results, Burkina Faso was placed on the enhanced Follow Up process. Burkina Faso's 1st Enhanced Follow-up Report (FUR) with technical compliance re-ratings was adopted in April 2021 and, based on the results, Burkina Faso was maintained on the enhanced follow-up. The 2nd and 3rd FURs were adopted for information purposes only, in May 2021 and May 2022, respectively.
2. This 4th enhanced FUR analyses Burkina Faso's progress in addressing some of the technical compliance deficiencies identified in its MER and 1st FUR. Re-ratings are given where progress has been made.
3. Overall, the expectation is that countries will have addressed most if not all technical compliance deficiencies by the end of the third year from the adoption of their MER. This report does not address the progress Burkina Faso has made to improve its effectiveness.
4. The following experts assessed Burkina Faso's request for technical compliance re-ratings: Mr. Goua Koffi (Côte d'Ivoire) and Ms Madina Adam Sere (Côte d'Ivoire). The experts were supported by Mr. Karnon LOFIGUE of the GIABA Secretariat.
5. Section 3 of this report summarises Burkina Faso's progress in improving technical compliance. Section 4 sets out the conclusion and includes a table showing Burkina Faso's MER ratings and updated ratings based on this and previous FURs.

II. FINDINGS OF THE MUTUAL EVALUATION REPORT

6. Burkina Faso's and 1st FUR ratings are as follows:

Table 1 : TC rating¹, April 2021

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

Note: There are four possible levels of technical compliance: Compliant (C), Largely Compliant (LC), Partially Compliant (PC), and Non-Compliant (NC)

III. OVERVIEW OF PROGRESS TO IMPROVE TECHNICAL COMPLIANCE

7. In keeping with the GIABA Mutual Evaluation Process and Procedures, this FUR considers progress made up until 15 November. In line with the ME Procedures and the FATF Methodology, the Experts' analysis has considered progress to address the deficiencies identified in the MER and the entirety (all criteria) of each Recommendation under

¹ The new ratings following the adoption of the 1st FUR are in brackets.

review, noting that this is not detailed where the legal, institutional or operational framework is unchanged since the MER and 1st FUR.

8. This section² summarises the progress made by Burkina Faso to improve its technical compliance by addressing the technical compliance deficiencies identified in the MER and 1st FUR.

4.1. Progress made in addressing technical compliance deficiencies identified in the MER

9. Burkina Faso has made progress to address the technical compliance deficiencies identified in the MER in relation to R. 2, 28 and 34. Because of this progress, Burkina Faso has been re-rated on these Recommendations.

10. GIABA welcomes the progress achieved by Burkina Faso in order to improve its technical compliance with R6, R.7, R.22, R.24, R.25 and R.26. However, insufficient progress has been made to justify upgrades of the ratings of these Recommendations at this stage.

Recommendation 2 [Originally rated PC]

11. In its 2nd MER (2019), Burkina Faso was rated PC on Rec.2. The technical deficiencies were: lack of cooperation and coordination mechanisms in the fight against the financing of proliferation of weapons of mass destruction and lack of national ML/TF policies informed by the risks identified.

12. **Criterion 2.1-** Based on the risks identified in the NRA, the country has developed and is implementing its national Anti-Money Laundering and Combating the Financing of Terrorism and the Proliferation of Weapons of Mass Destruction (AML/CFT &P strategy) based on the risks identified in the NRA report. The said strategy, which covers the period spanning 2021-2025, entered into force on May 25, 2021. The strategy is mainly developed around five strategic goals which are the improvement of the national policy and strengthening of the AML/CFT legal and institutional framework, the implementation of the obligations of reporting entities and AML/CFT supervisory and monitoring authorities; strengthening coordination and cooperation, strengthening the operational capacities of the FIU, the bodies for the detection, repression and prosecution of ML/TF and the adaptation of the means of combating developments in the technological environment. Thus, in connection with this national AML/CFT/PF strategy, the country conducted the sectoral assessment of ML/TF risks in the livestock trade sector. The final report is available. Assessments of the gold panning sectors, legal persons, as well as NPOs are in progress. A functional mechanism for monitoring the implementation of its AML/CFT/PF policy has been put in place through Order No. 2021-0424/MINEFID/CAB of July 29, 2021, which creates various functional thematic groups for monitoring the actions of each pillar. Led by the National Committee for the Coordination of Anti-Money Laundering and Counter Financing of Terrorism Activities (CNCA-LBC/FT), the monitoring mechanism is functional and reports regularly to the competent authorities for decision-making on AML/CFT issues. A mid-term evaluation of the national strategy (in 2023) and a final evaluation in 2025 are envisaged.

13. **Criterion 2.2-** The National Committee for the Coordination of Anti-Money Laundering and Counter-Terrorist Financing Activities and proliferation of weapons of mass destruction (CNCA-LBC/FT) created in 2019 by DECREE N°2019- 1236 /PRES/FM/MINEFID/ MSECU/MJ is the authority in charge of coordinating national AML/CFT policies. This Decree gives the CNCA a national scope, by placing it under the chairmanship of the Minister of Finance.

14. **Criterion 2.3-** Apart from the creation of a new National Coordinating Committee in charge of Anti-money Laundering and Counter Financing of Terrorism Activities (see c2.2), mechanisms for cooperation and coordination between competent authorities, both at the operational and policy-making level, remain as mentioned in the 2019 MER

² The FATF Recommendations have not been amended since adoption of Burkina Faso's 1st FUR in April 2021.

(see MER 2019, c.2.3). These mechanisms are also applicable to ML, TF and PF. Besides, the composition of the CNCA-AML/CFT/PF has been expanded to include all relevant actors and stakeholders in the country.

15. **Criterion 2.4** - Burkina Faso has extended the prerogatives of the National Coordination Committee for AML/TF (CNCA) to the fight against the financing of proliferation of weapons of mass destruction through Decree No. 2019-1236 /PRES/FM/MINEFID /MSECU/MJ of 10/12/2019. The Decree provides for the powers, composition, and operation of the National Committee for the Coordination of AML/CFT/FP Activities. It gives CNCA a national scope, by placing it under the Minister in charge of finance. CNCA functions as the framework for cooperation and coordination against PF. The composition of the CNCA-AML/CFT/PF has been expanded to include all relevant actors and stakeholders in the country such as the National Counter Proliferation of Weapons of Mass Destruction Agency (ANALPAL) and the National Pharmaceutical Regulatory Agency (ANRP).

16. **Criterion 2.5** - Burkina Faso has texts on the protection of personal data, in particular law n°001-2021/AN on the protection of persons regarding the processing of personal data. This law establishes the national body responsible for this subject (Commission de l'informatique et des libertés -CIL), however, the country did not provide information on whether there is cooperation and, where appropriate, coordination, whether formal or informal, between the relevant competent AML/CFT authorities to ensure the compatibility of AML/CFT requirements with Data Protection and Privacy rules. Also, the coordination mechanism CNCA does not have a CIL representative.

Weighting and conclusion

17. Burkina Faso has developed and rolled out its national strategy to take corrective measures related to the risks and deficiencies identified in the NRA. Henceforth, the CNCA-AML/CFT's mission is to ensure cooperation and coordination between the competent authorities involved and to promote consultation with all reporting entities, in terms of AML/CFT/P. However, there is no information regarding cooperation and coordination between the relevant authorities to ensure the compatibility of AML/CFT requirements with Data Protection and Privacy rules. This deficiency is considered a minor shortcoming within the framework of implementation of R.2.

18. **On this basis, Burkina Faso is re-rated LC on Recommendation 2.**

Recommendation 6 [Originally rated PC]

19. In its 2nd MER (2019), Burkina Faso was rated PC on Rec.6. The following gaps were identified: (i) the legal basis for designation was not covered under the decree (ii), the scope of funds to be frozen did not include funds or other assets that are jointly owned or controlled, directly or indirectly by designated persons or entities, funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons and funds and other assets of persons and entities acting on behalf of or at the direction of designated persons (iii) only reporting entities were prohibited from providing or continuing to provide services to or for the benefit of designated persons or entities (iv) there were no measures to communicate designations to DNFBPs and (v) there were no detailed procedures to delist and unfreeze funds pursuant to designation made under 1267.

20. Since the adoption of its MER in 2019, Burkina Faso has issued Decree No. 2021-1378/ PRES/ PM/ MAAC/ MATDS/ MAECBE/ MEFP/ MJDHPC/ MDICAPM appointing the Competent Authority for targeted financial sanctions and creating the Advisory Commission on Administrative Freezing (CCGA) as well as Order No. 2022-0125/MDAC/MATDS/MAECRBE/MJDHRI/MEFP/MDICAPM of April 29, 2022 on the powers, composition and operation of the Advisory Commission on Administrative Freeze (CCGA) and procedures applicable before the Competent Authority for targeted financial sanctions. The CCGA is now functional.

21. **Criterion 6.1:**

- a) The provisions of the CCGA Order No. 20220125) are identical to those analysed in the MER. The Decree designates the Minister of Finance as the Competent Authority for proposing persons or entities to the UNSC 1267/1989 and 1988 Committees for designation. (Art 2.b)
- b) - As indicated in its MER and repeated in Order N0. 2022-0125, the CCGA is Burkina's mechanism that enables to identify targets for designation or for the purpose of inclusion on the United Nations Sanctions Lists. The provisions of Art 19 of Order No. 2022-0125 and the registration procedures allow Burkina Faso to ensure that the identification of targets is done based on the designation criteria established in United Nations Security Council Resolutions (UNSCR) 1267/1989 Al Qaeda) and 1988.
- c) - Burkina Faso applies the evidentiary standard of "reasonable grounds" when deciding whether to make a proposal for designation. (Art. 19 and 21). As noted in the 2019 MER, proposals for designations are still not conditional on the existence of a criminal proceeding (Art 22 of N°Order 2022-0125)
- d) - The measures in place will enable Burkina Faso to follow the procedures and the standard forms for proposing designations (in the case of United Nations sanction regimes) adopted by relevant committees (S Committee 1267/1989 and 1988) (Art 100(3), AML/CFT Law and Arts 21 and 22, Order No. 2022-0125).
- e) - Article 20 of the CCGA Decree (2022) repeats the previous provisions analysed in the MER and relating to the provision of relevant information as much as possible, and to the presentation of the rationale for registration. They make it possible to provide as much relevant information, enough to allow the precise and positive identification of the proposed persons, groups, organisations and entities. Burkina Faso will also indicate in its request whether it wishes to disclose its status as a designating State, provide any information that it deems necessary to maintain its confidentiality and not to publish it when filling the UN List (Art 21&22 Order No. 2022-0125). The country's mechanism does not require that a detailed statement of the reasons for designation be provided. This deficiency is considered as moderate given the country's context and risk profile.

22. **Criterion 6.2.-**

- a) - The provisions of Order No 2022-0125 recall the previous provisions analysed in the MER.
- b) - As indicated in its MER and repeated in the Order No.2022-0125 of 2022, the CCGA is Burkina Faso's mechanism for identifying targets for designation, based on the designation criteria established in UNSCR 1373. Articles 25 and 27 of Order No.2022-0125 allow the CCGA to consider and, where appropriate, give effect to actions taken by other countries under their freezing mechanisms in accordance with UNSCR 1373(2001).
- c) The Minister of Finance has the responsibility to give effect without delay to the freezing request of another country where there are "reasonable grounds to suspect or believe" that a person meets the (s) criteria for designation (Art 7, Decree no. 1378 -2021). However, Burkina Faso's mechanism does not specifically state that when receiving a request, the country should make a prompt determination of whether he is satisfied that the request is supported by reasonable grounds, or a reasonable basis to suspect or believe that the proposed designee meets the criteria for designation in UNSCR 1373. .
- d) - Burkina Faso applies the evidentiary standard of "reasonable grounds" when deciding whether to make a proposal for designation (Arts 19, 21 and 25.c, Order No.2022-0125. Designation proposals are not conditioned by the existence of any criminal procedure (Art 26, Decree n°2022-0125).
- e) - Burkina Faso can request any country to give effect to the actions it has taken under the freezing mechanisms relating to UNSCR 1373 (Art.21, Order No.2022-0125). As for 6.1.e, no specific provisions requiring the provision of information and supporting evidence to foreign competent authorities when Burkina Faso requests another country to give effect to freezing actions initiated at the national level. This deficiency is considered as moderate given the country's context and risk profile.

23. **Criterion 6.3-**

- a) - The CCGA has the requisite powers to gather or solicit information to identify persons and entities that meet the criteria for designation on reasonable grounds, or for which there is a reasonable basis to suspect or believe that they meet these criteria (Art 4.5, 7, 20 Order No. 2022-0125).
- b) The Minister of Finance, through the CCGA, may intervene ex parte against any person or entity that has been identified and whose designation (or proposal for designation) is being reviewed (Art 22- Order 2022 CCGA). Also, the CCGA members are required to respect the secrecy of all information they may have had when performing their function (Art 39- Decree n°2022-0125).

24. **Criterion 6.4**

UNSCR 1267

25. Deficiencies identified in the MER (2019) are still outstanding and have not been resolved by Decree No. 2021-1378 and Order No. 2022-0125. The country is unable to implement targeted financial sanctions under the United Nations sanctions regimes 1267/1989 and 1988 without delay, i.e. within 24 hours each time the list is updated.

26. As noted in the 2019 MER, UNSCR 1267/1989 and 1988 are not directly and immediately applicable in Burkina Faso. Each new designation and each update made must be internalised at the national level to be enforceable.

27. To remedy the slow pace of the UEMOA community internalisation framework relating to the freezing of funds and other financial resources as part of the fight against TF (see IO.10 MER, 2019), Burkina Faso has revised its national internalisation mechanism for the implementation of TFS which is now governed by:

- Decree N°2021-1378/ PRES/ PM/ MAAC/ MATDS/ MAECBE/ MEFP/ MJDHPC/ MDICAPM designating the competent authority for targeted financial sanctions and creating the Advisory Commission on Administrative Freezing (CCGA); and
- Order No. 2022-0125/MDAC/MATDS/MAECRBE/MJDHRI/MEFP/MDICAPM of 29 April 2022 on the powers, composition and operation of the Advisory Committee on Administrative Freezing (CCGA) and the procedures applicable before the competent authority in matters of targeted financial sanctions.

28. Art 14 of Order No.2022-0125 stipulates that the Minister of Foreign Affairs will take all the measures, upon receipt of the targeted financial sanctions from the United Nations Security Council, to transmit them without delay to the Minister of Finance.

29. Article 7 of Decree No. 2021-1378 stipulates that the authority in charge of targeted financial sanctions is responsible for giving effect without delay to targeted financial sanctions (TFS) emanating from the UN Security Council and without prior notification to the persons or entities targeted by the said measures. He makes the decision without first seeking the CCGA's opinion. The Minister's decision is effective as soon as it is signed. However, the country's procedures do not indicate by which process and administrative act the Minister of Finance proceeds to give effect to the said TFSs emanating from the UNSC in order to render them enforceable. Several measures must be taken to render the UNSC TFSs enforceable, including receipt of the lists by the Ministry of Foreign Affairs and transmission to the Minister of Finance for decision. This approach does not guarantee implementation of TFS without delay..

30. In practice, no case of TFS implementation (1267) has been provided by the country, which makes it impossible to determine the timeline within which the TFSs have been implemented.

31. This criterion is relatively important in the overall assessment of Recommendation 6. Failure to implement TFSs (1267) without delay will have a strong impact on the rating of Rec 6.

For UNSCR 1373

32. According to Art. 28 of Order 2022-0125 on the CCGA, the decision on TFSs enters into force from the date of its signature and publication through any of the channels provided for to this effect. The decision is published in the Official Gazette, as well as in a journal legal announcements newspaper and on the website of the Ministry of Finance. The freezing order is also disseminated without delay (c to d within hours following the order) to all reporting entities or other implementing entities. Art. 28, Order No. 2022-0125. This process applies both to registration procedures at the initiative of Burkina Faso and to those that flow from the processing of third country requests.

33. In practice, the analysis of two cases of designation provided by the country indicates a timeline of less than 24 hours between the freezing decision taken by the competent authority and the transmission to the reporting entities and their respective supervisory authorities. The same timeline was also observed for the publication of same in the official Gazette. Based on this observation, it is concluded that TFSs (UNSCR 1373) are implemented without delay in Burkina Faso.

34. **Criterion 6.5 –**

- a. The MER analysis is still relevant. Also, the provisions of Order No. 2022-0125 require reporting entities, any other person or entity in the country to freeze, without delay and without prior notification, all funds and other property belonging to designated persons and entities.
- b. The shortcoming identified in the MER was that the scope of funds to be frozen was limited to all funds or other assets owned or controlled by the designated person or entity and did not cover all other types of funds or assets cited in this sub-criterion. (Items ii, ii, and iv). This gap is still not addressed.
- c. Order No. 2022-0125 requires the Ministers of territorial administration, Security and Trade; services and structures under the Ministry of finance; reporting entities or other persons and implementing parties to refrain from making funds, economic resources, financial services or other services, directly or indirectly, in any capacity whatsoever, available to a registered person, organization or entity individually or with third parties, or entities owned or controlled by them, directly or indirectly, or any person acting in their name or on their behalf or at their request, unless otherwise authorized by the Minister of Finance. This obligation applies to all citizens of Burkina Faso or any other persons/entities residing in Burkina Faso (Art.29.d). Art.2. f), g) and m) Order No. 2022-0125, specify the scope of the funds, assets, resources, services subject to the prohibition and cover those provided for by the criterion.
- d. The Official Gazette of Faso, newspapers and the website of Ministry of Finance are the mechanisms for communicating designations to the financial sector and DNFBPs” (art. 28, 14, 17 of Order No. 2022-0125. Upon decision of designation is taken. There is also a direct dissemination of designations to FIs & DNFBPs and all others other implementing persons and bodies/entities likely to hold the funds and other assets concerned. Burkina Faso has developed guidelines/manuals for all reporting entities including DNFBPs regarding their obligations under the freezing mechanisms.
- e. Reporting entities are required to report to competent authorities any assets frozen or actions taken in compliance with the prohibition requirements of the relevant UNSCRs, including attempted transactions (Art.29 of the Order (2022) on the CCGA).
- f. Burkina Faso has adopted measures to protect the rights of third bona fide parties in the implementation of the obligations under Recommendation 6. Indeed, appeals are provided for to protect third bona fide parties (including FIs and DNFBPs) from the harmful effects of the implementation of TFS linked to PF (Article 105 of

Law No. 2016-33). The criteria and procedures protecting their rights are provided for in Article 29 of Order No.2022-0125.

35. **Criterion 6.6 –**

- a. The procedures for delisting requests under the UNSCRs are provided for by Order No. 2022-0125. They are in addition to the provisions of Articles 101, s. 2, s. 107, AML/CFT Law 016). Indeed, the provisions of Article 35 of Order No.2022-0125 specifies the procedures relating to the delisting and the release of funds and other assets of persons who do not meet the designation criteria The Minister of Economy and Finance coordinates delisting requests made by persons or entities of Burkinabe nationality or resident in Burkina Faso listed based on the UNSCRs. The country does not have specific procedures for submitting de-listing requests to the 1988 Committee. Furthermore, in addition to a possible request for delisting due to death or termination of an entity, there is no explicit procedure allowing any natural or legal person no longer meeting the designation criteria to submit a de-listing request to the competent United Nations Sanctions Committee. The CCGA has produced a manual of procedures on the implementation of TFS which contain public indications on the procedures to be followed for the implementation of TFSs.
- b. & c)- No deficiency was identified in the MER (2019) and the situation remains unchanged.
- d. - Regarding designations made pursuant to UNSCR 1988, there are no procedures to facilitate review by the 1988 Committee in accordance with any applicable guidelines or procedures adopted by the 1988 Committee, including those relating to the Focal Point mechanism established by UNSCR 1730. The MER findings remain.
- e. - The provisions of Article 35 of Order No.2022-0125 cited above define the standard procedures provided by Burkina Faso for delisting requests relating to persons or entities of Burkinabe nationality or residing in Burkina Faso. However, the country does not have specific procedures for informing designated persons and entities that the Office of the United Nations Ombudsperson may receive de-listing requests in accordance with Resolutions 1904, 1989 and 2083.
- f. - No deficiency was identified in the MER (2019) and the situation remains unchanged.
- g. - The Official Gazette of Faso, newspapers and the website of Ministry of Finance are the mechanisms for communicating de-listings and unfreezings to the financial sector and the DNFBPs immediately upon taking such action. (art. 35, order 2022 on the CCGA). Burkina Faso has developed guidelines/manual for all reporting entities including DNFBPs regarding their obligations to implement de-listing or unfreezing decisions (Art 35- Order No.2022-0125. The other provisions cited in the MER remain unchanged.

36. **Criterion 6.7-** Procedures are in place to authorise access to frozen funds or other property which have been determined to be necessary for basic expenses, the payment of certain types of expenses, or for extraordinary expenses as per the sanction's regimes listed in Article 32.b of Order No. 2022), including resolutions 1267/1989 and 1373 and successor resolutions.

Weighting and conclusion

37. Burkina Faso has taken steps to fill the gaps noted in its MER. However, moderate gaps continue to exist in Burkina Faso's system, namely: The lack of specific provisions requiring the provision of information and supporting evidence to foreign competent authorities when Burkina Faso requests another country to give effect to freezing actions initiated at the national level, the same is true also for applications for registration on the UN lists. More particularly the impossibility for Burkina Faso to implement without delay the TFS under the United Nations sanctions regimes 1267/1989 (Al Qaeda) and 1988. The Scope of funds to be frozen is limited to all funds or other assets owned or controlled by the designated person or entity and does not cover all other types of funds or assets referred to in this

sub-criteria (point ii, ii, and iv). Finally, it is noted the lack a specific procedure for delisting requests to the 1988 Committee and for contacting the office of the Ombudsman directly by the designated person or entity.

38. Due to the risk in the country's context and the relatively heavy weighting of Criterion 6.4, Burkina Faso has moderate deficiencies in relation to Recommendation 6.

39. **Burkina Faso is still rated PC on R.6.**

Recommendation 7 [Originally rated PC]

40. In its 2nd MER (2019), Burkina Faso was rated PC on Rec.7. The following gaps were noticed: no provisions relating to the conditions on the exemption set by Resolution 2231, the scope of funds to be frozen is limited. The mechanism in place for applying targeted financial sanctions targets only TF and not PF.

41. Since the adoption of its MER in 2019, Burkina Faso has issued Decree No. 2021-1378/ PRES/ PM/ MAAC/ MATDS/ MAECBE/ MEFP/ MJDHPC/ MDICAPM designating the Competent Authority for targeted financial sanctions and establishing the Advisory Commission on Administrative Freezing (CCGA) as well as Order No. 2022-0125/MDAC/MATDS/MAECRBE/MJDHRI/MEFP/MDICAPM of 29 April 2022 on the powers, composition and functioning of the Consultative Commission on Administrative Freezing (CCGA) and procedures applicable before the competent authority in terms of targeted financial sanctions. The CCGA is now functional.

42. **Criterion 7.1.** - The mechanism for implementing TFSs related to the fight against financing the proliferation of weapons of mass destruction (FPWMD) is also governed by the provisions of Decree No. 2021-1378 (Art 7) and Order No. °2022-0125/ relating to the powers, composition and functioning of the Advisory Commission on Administrative Freezing (CCGA) and procedures applicable before the competent authority in the area of targeted financial sanctions (Art 4). It is identical to that provided for the implementation of TFSs related to the CFT. Based on this observation, the deficiencies identified in the analysis of 6.4 (UNCR 1267) apply here and do not allow Burkina Faso to implement without delay the TFSs related to the fight against FPWMD. This criterion has a heavy weight in this Recommendation.

43. **Criterion 7.2.**- The Minister of Finance is the authority responsible for implementing asset freezing measures in relation of PF (Art 2.b, Order No. 2022-0125).

- a. MER (2019) analysis is still relevant. See MER (2019, 7.2a). Also, Order No. 2022-0125 requires reporting entities, any other person or entity in the country to freeze, without delay and without prior notification, all funds and other assets owned by designated persons and entities. (Art 29.b)
- b. The shortcoming noted in the MER remains (See C.7.2.b).
- c. See analysis made in the MER (article 100 of Law 016 on AML/CFT). Similarly, Order No. 2022-0125 prohibits all natural and legal persons within the territory of Burkina Faso from placing funds or other property directly or indirectly at the disposal of a designated person or entity without contrary approval (Art.29). Order No. 2022-0125 provides for specific circumstances in which funds or other assets may be made available to designated persons and entities – (Art 32).
- d. The Official Gazette of Burkina Faso, the newspapers of legal announcements and the website of the Ministry of Finance are the mechanisms for communicating designations to the financial sector and to the DNFBPs as soon as the designation decision is taken (Art. 28, 14, 17 | 2022-0125). A direct dissemination is also made of designations to FIs and DNFBPs and all other implementing individuals and agencies/entities that may be holding the relevant funds and other assets as soon as the decision is made. Burkina Faso has developed guidelines for all reporting entities regarding their obligations under the freezing mechanisms.

e. Reporting entities are required to report to the Minister of Finance all assets frozen or all actions taken in accordance with the prohibition requirements of the relevant UNSCRs, including attempted transactions. Article 29, Order No. 2022-0125.

f.- Burkina Faso has adopted measures to protect the rights of bona fide third parties in the implementation of the obligations under Recommendation 7. Indeed, remedial measures are provided for to protect bona fide third parties (including FIs and DNFBPs), from the detrimental effects of the implementation of TFS related to PF (Article 105 of Law No. 2016-33). The criteria and procedures protecting their rights are provided for in Article 29 of Order No. 2022-0125.

44. **Criterion 7.3.-** All financial institutions' supervisory authorities are empowered to monitor and ensure compliance by the institutions subject to their supervision with AML/CFT/PF obligations, including TFSs related to the fight against FPWMD. There are criminal sanctions for complicit acts related to proliferation financing, and whose perpetrators are reporting entities (art. 121, AML/CFT Law 016-2026). Burkina Faso's system has designated control and supervisory authorities for all DNFBPs except chartered accountants/licensed accountants), with sanction powers to ensure that they properly implement their obligations, particularly in terms of administrative freezing (Decree 2019-1237). However, all DNFBP supervisory authorities have not defined the range of sanctions for non-compliance.

45. **Criterion 7.4-**

a. See the analyses made in 6.6.d and e. With regard to designations made pursuant to UNSCRs 1718 and 1737, Burkina Faso's system does not provide for procedures that include the possibility for listed persons and entities to send their delisting requests to the Focal Point established in accordance with UNSCR 1730 or informing designated persons and entities that they can contact the Focal Point directly. However, the Minister of Finance is empowered to receive and transmit appeals against sanctions related to these UNSCRs (Order No. 2022-0125, art. 35, al. 4 and 5).

b. This criterion is met under the AML/CFT Law, Art. 107, s. 1 and Order No. 2022-0125, Art 37.

c. Burkina Faso's system has provisions for authorizing access to frozen funds or other assets in accordance with the procedures and exemption requirements established by Resolutions 1718 and 2231. The Minister of Finance is required to consult "the 'competent United Nations body'. The request is only approved if the Minister receives no objection or negative decision from the authority under the conditions provided for by the UNSCRs (Order No. 2022-0125, Art 32.b). The relaxation of the freezing measures is also provided for by the AML/CFT Law, Art. 103, s. 1 and 2.

d. See analysis made on C6.6g.

46. **Criterion 7.5-**

a. Paragraph 3 of Art.30 of the CCGA Order (2022) stipulates that " the amounts resulting from any contract, agreement or commitment having been entered into or having occurred prior to the date the person, organization or entity is listed, including profits and interests shall be added to the frozen accounts. The said amounts must be frozen.

b. Funds or other financial resources due under contracts, agreements or obligations entered into or arising prior to the entry into force of the decision to freeze funds are deductible from frozen accounts with the authorization of the competent authority (art. 102 of AML/CFT Law No. 016,2016). However, the law is silent on the conditions of this exemption as described by UNSCRs 1737 and 2231. No information has been provided by

the country to indicate that the authorization is (or would be) subject to compliance with the conditions set out in c.7.5(b)(i)-(iii)

Weighting and conclusion

47. Burkina Faso has taken steps to address the deficiencies noted in its MER, with the adoption of Decree No. 2021-1378 and Order No.2022-0125. However, moderate deficiencies continue to exist in Burkina Faso's system in relation to: the scope of funds to be frozen; the range of sanctions to be applied by each supervisory authority of DNFBPs for non-compliance with the obligations set in Recommendation 7. More particularly, the impossibility for Burkina Faso to implement without delay the targeted financial sanctions pursuant to the United Nations sanctions regimes relating to the prevention, repression and interruption of the proliferation of weapons of mass destruction and their financing constitute a significant gap in the country's implementation of R.7. Finally, the conditions for debiting accounts frozen under contracts, agreements or obligations entered into or arising prior to the entry into force of the freezing order are not specified.

48. Due to the relatively heavy weight of Criterion 7.1 for which Burkina Faso has moderate deficiencies.

49. **The rating for Recommendation 7 is maintained at PC.**

Recommendation 22 [Originally rated PC]

50. In its 2nd MER (2019), Burkina Faso was rated PC on Rec.22. The following gaps were noticed: no requirement for lawyers and notaries to maintain all relevant records on transactions for at least five years following completion of the transaction, DNFBPs were not required to comply with the new technologies' requirements set out in Recommendation 15. DNFBPs were not required to comply with reliance on third party requirements set out in Recommendation 17.

51. **Criterion 22.1n-** The analysis in the 2019 MER remains unchanged (see MER 2019, c.22.1). In the MER, the deficiency identified in relation to c.10.3 was that although the FATF standards require beneficial owners to be identified in all circumstances, Article 29 of the AML/CFT Act 016 required FIs to identify their occasional customer and, where appropriate, the beneficial owner.. This deficiency had a cascading effect on c.22.1 (a).

52. **Criterion 22.2 -** The analysis made in the MER remains unchanged. The provisions of Article 602 of the General Tax Code, referred to by Burkina Faso, require all companies in Burkina Faso to keep relevant books and registers for a period of ten (10) years from the date of the last transaction or from the date on which the documents or vouchers were established. However, this requirement is limited to accounting documents (books, registers, documents or records of any kind) on which the right of communication to the tax authorities may be exercised. These records do not explicitly cover documents obtained in the context of customer due diligence measures (e.g. identification and verification of the identity of customers and beneficial owners, ongoing monitoring of the business relationship and examination of transactions carried out in the course of the business relationship, etc.) as well as the results of any analysis carried out. Also, the weaknesses identified in R.11, notably the lack of an explicit provision that transaction records should be sufficient to allow for the rearrangement of individual transactions, also have an impact on this criterion.

53. **Criterion 22.3 -** DNFBPs are required to have proper risk management systems in place to determine whether their customer is a Politically Exposed Person (Art. 22 &54 of AML/CFT Law No. 2018-004). And if so, they must implement specific measures in line with the obligations regarding PEPs as stipulated under Recommendation 12. However, the deficiencies identified under R12, which relate to the lack of a requirement for FIs to obtain senior management approval to continue a business relationship with an existing customer, also apply to DNFBPs. Furthermore, the definition of domestic PEPs and those of international organizations (Art. 54 AML/TF Law of 2016)

excludes family members as well as persons known to be closely associated with them, unlike foreign PEPs (Art.1, item 44, indent 2 and 3 of AML/CFT Law No. 016-2016). These deficiencies affect the rating of this criterion.

54. **Criterion 22.4&5** - The gaps identified in the MER (2019) are still outstanding.

Weighting and conclusion

55. Burkina Faso's AML/CFT system presents some deficiencies. Real estate agents and dealers in precious stones (two sectors considered as high risk for ML/TF) are not required to keep all relevant transaction records for at least five years after the completion of the transaction. As a result, DNFBNs are not obliged to maintain records obtained as part of customer due diligence measures and to ensure that the records and documents to be maintained on transactions should be enough to enable the reconstruction of individual transactions to provide evidence, where necessary, in the prosecution of any criminal activity. The provisions pertaining to the specific risk management and due diligence system to be implemented by DNFBNs are not applicable to family members as well as persons known to be closely associated with domestic PEPs and those of international organizations. Besides, DNFBNs are not explicitly required to identify beneficial owners among their customers who hold a trust or legal arrangement and to take reasonable steps to verify the identity of beneficial owners who are legal arrangements. DNFBNs are also not required to comply with the requirements of Recommendations 15 and 17. These deficiencies are moderate in the country's implementation of this Recommendation

56. **The rating of Recommendation 22 is maintained at PC.**

Recommendation 24 [Originally rated PC]

57. In its 2nd MER (2019), Burkina Faso was rated PC on Rec.24. The following gaps were noted: Burkina Faso has not assessed the ML/TF risks associated with all types of legal persons; no provision to ensure legal person that have nominee shares or nominee directors are not misused for ML or TF; no specific provisions requiring companies to maintain or provide competent authorities with beneficial ownership information; no requirement to ensure beneficial ownership information is accurate and as up to-date as possible; no mechanisms to monitor the quality of assistance received in relation to request for basic and beneficial ownership information from other countries.

58. **Criterion 24.1** - The provisions of Decree No. 2022-0234/PR of May 31, 2022 on the obligation to declare and keep a register of beneficial owners of legal persons, define the mechanism for identifying and describing the process of obtaining information on Ultimate Beneficial Owners (BO). The MER's analysis of other aspects of the criterion remains relevant.

59. **Criterion 24.2** - Burkina Faso has not assessed the ML/TF risks associated with all types of legal persons created in the country. The gap remains. This criterion carries a relatively heavy weighting in the assessment of this Recommendation.

60. **Criterion 24.3 to 5** - The 2019 MER analysis remains relevant.

61. **Criterion 24.6** - There is a mechanism in place to ensure that information on the beneficial owners of companies, foundations and associations is obtained by these entities and available in the registries of the courts of the country (Art. 4 to 6 Decree No. 2022-0234/PR), a national register of beneficial owners is kept within the Commercial Court of Ouagadougou that centralizes all the information contained in the other registers of beneficial owners (Bos) (Art. 6). Various forms are provided for this purpose. Legal persons have the obligation to create and keep up to date a register of Bos in the same format as that of the Registry of the Commercial Court of Ouagadougou (Art.9, Decree No. 2022-0234). In addition to the BO register, the competent authorities also have access to the information on the Bos that FIs and DNFBNs are required to collect as outlined in the 2019 MER. The definition of BO used by Decree No. 2022-0234 is compliant with the FATF requirements.

62. **Criterion 24.7-** Legal persons are required ensure that the BO information they maintain are accurate and up-to-date (Articles 9, 11, 26 Decree No. 2022-0234/PRES-TRANS/ PM/MATDS/ MJDHRI/MEFP).

63. **Criterion 24.8** There is no legal basis to require business companies to cooperate with competent authorities to determine who the beneficial owners are.

a)&b) Burkina Faso does not have specific measures that require legal entities to authorize individual(s) or DNFBPs residing in the country to provide all available basic and BO information and other assistance to the competent authorities and be accountable to those authorities.

c) As indicated in 24.6, the provisions of Article 15 of the Decree stipulate that any manager of any entity to which the Decree applies may where necessary, receive an injunction from the judge responsible for overseeing the BO Register, to issue the report, at the request of the competent authorities. Failure to comply with the obligation to issue the BO report shall be liable to sanctions. However, this provision is not enough to fully meet this criterion which requires the adoption of a more binding measure in appointing a person who will be accountable to the authorities to ensure full cooperation, particularly where there is no information in the register or the available information is inaccurate.

64. **Criterion 24.9** The deficiencies identified in MER (2019) are still outstanding.

65. **Criterion 24.10-** the analysis remains as indicated in the MER (2019). (See MER (2019), c.24.10). Also, the provisions of Decree No. 2022-0234 allow the competent authorities to have timely access to information on the BOs which are maintained at the national register of BOs as well as the register of BOs kept by the legal entity. Art.15&22 Decree n°2022-0234 63.67.

66. **Criterion 24.11-** No deficiencies were found in the MER (2019), and the situation remains unchanged.11).

67. **Criterion 24.12 -** The gaps identified in MER (2019) are still outstanding.

68. **Criterion 24.13 -** There is a set of sanctions for any legal or natural person that fails to comply with the requirements of Rec.24. In addition to the analysis carried out in the 2019 MER, the following facts constitute breaches of obligations (Art23 of Decree N° 2022-0234/PRES-TRANS/ PM/MATDS/ MJDHRI/MEFP of May 31, 2022):

- Late declarations in the event of rectification, modification or additional information;
- Concealment of information and refusal to declare beneficial owners;
- The non-keeping of the register of beneficial owners within legal persons; and
- False declarations.

69. Late declarations after the deadline in cases of rectification, amendment or additional information on the beneficial owners of legal persons and legal arrangements are each sanctionable by a fine of one million to three million CFAF. Legal persons and legal arrangements are sanctionable by an administrative fine of one million (1580 US\$) to three million FCF A (4 760 US\$). The concealment of information and the refusal to declare and keep the register of beneficial owners of legal persons and legal arrangements are sanctionable by an administrative fine of three million CFAF (4 760 US\$) to ten million FCF A (15 870 US\$). In case of recidivism, the natural person responsible for the breaches shall be suspended for a period of at least five years from being a manager or director of a legal person. The judge responsible for monitoring the Register of BOs of legal persons and legal arrangements may order, under penalty of a daily fine and within a time limit that he sets, the manager of any reporting entity, to declare the beneficial ownership of the legal arrangements to which the latter is answerable. False declarations of beneficial owners are sanctioned in accordance with the provisions of the Penal Code relating to the offense of forgery. This suggests that “a person who makes a false declaration will be prosecuted for committing “fraud”.

70. The President of the Commercial Court of Faso of Ouagadougou pronounces these sanctions in his capacity as administrative authority (Art.24). All the sanctions are deemed to be proportionate and dissuasive. However, the decree does not indicate whether these sanctions are applicable both to legal persons and to natural persons (Director for example). However, failure to keep information and documents after dissolution (ref.C24.9) is not covered.

71. **Criterion 24.14** - as stated on C24.6, all legal persons are required to create and keep up to date a register of BOs in the same format as that of the Registry of the Commercial Court of Ouagadougou (Art.8, Decree n°2022-0234). Information held at the BO Registry are transmitted without financial guarantee, at their request, to all administrative and judicial authorities in the exercise of their functions (Art.22, Decree n°2022-0234). The latter, including the FIU, can share the BO information obtained and information on shareholders, as they have powers of investigation, with their foreign counterparts, on request or on their own initiative, through the various international cooperation mechanisms available in the country.

72. **Criterion 24.15** -The FIU is the main requester of basic and BO information from third countries. The country reports that the FIU and the Mutual Assistance Office (Ministry of Justice) monitor the quality of the assistance they receive from other countries in response to requests for basic and beneficial ownership information or for assistance in locating beneficial owners residing abroad. However, no framework/procedure/mechanism has been provided by Burkina Faso to support this claim. It is concluded that the gap remains.

Weighting and conclusion

73. Burkina Faso has taken measures to strengthen its AML/CFT system in terms of transparency and beneficial owners of legal persons. These include the adoption of Decree No. 2022-0234/PR of May 31, 2022, on the obligation to declare and keep a register of the beneficial owners of legal persons, which specifies all the measures to be taken to ensure that information on the beneficial owners of companies, foundations and associations is obtained, available and accessible. However, there are moderate deficiencies, as Burkina Faso has still not assessed the ML/TF risks associated with all types of legal persons created in the country. The failure to retain information and documents remains. The country does not explicitly demonstrate the existence of a mechanism guaranteeing that nominee shareholding is not used for ML/TF purposes. There is also a lack of obligation to monitor the quality of assistance received from other countries in response to requests for basic information and BOs or requests for assistance in locating BOs residing abroad.

74. **The rating of Recommendation 24 is maintained at PC.**

Recommendation 25 [Originally rated PC]

75. In its 2nd MER (2019), Burkina Faso was rated PC on Rec.25. The following gaps were noted: no legal obligation on trustees to disclose their status to reporting entities, no explicit provisions requiring that trustees should provide competent authorities with any information relating to the trust and provide FI and DNFBPs with information on the beneficial ownership and the assets of the trust when forming a business relationship or carrying out an occasional transaction above the threshold entering a business relationship, no liability and therefore, sanctions for failure to perform the above requirements under Recommendation 25; the Professional trust providers' obligation to obtain information does not extend to the parties to the trust who are neither the customers nor the beneficial owners of the customer. This limitation impacts on several other criteria.

76. **Criterion 25.1** - It is not possible to establish trusts or other similar legal arrangements under the Burkinabé regime. However, nothing prevents foreign legal arrangements from operating or being administered in Burkina Faso. Decree N° 2022-0234/PRES-TRANS/PM/MATDS/MJDHRI/MEFP of May 31, 2022 on the obligation to declare and keep a register of beneficial owners of legal persons and legal arrangements provides an opportunity for Burkina Faso to comply with certain relevant obligations imposed on trusts, under Recommendation 25. It is not explicitly indicated

whether these obligations apply to foreign trusts which have assets in Burkina Faso or which are governed in Burkina Faso under a foreign regime.

a- [Not Applicable]

b- [Not Applicable]

c- Certain DNFBPs, in particular members of the independent legal professions who administer assets under the same conditions as trusts, as well as trustees and professional service providers are required to identify and verify the identity of certain actors involved in the operation, namely the customer and the beneficial owner of the business relationship. They must also keep this collected information up to date for at least 10 years (Article Articles 5, 6, 18, 19 and 36 of Law N° 016-2016 / AN). However, apart from the basic information on the client and the BO to be kept, the system does not require professional trustees to keep the other information listed in C.25.1(a) and (b).

77. **Criterion 25.2** - Independent legal professionals who intervene in the context of trusts are subject to the obligation to collect and update information relating to their clients (art. 19 and 20 of law n° 016-2016 / AN de AML / CFT). **See Analysis C.25.1.** The provisions of articles 9, 11, 26 enable to ensure the accuracy and updating of information on the BOs of Legal Arrangements. Administrative and penal sanctions (art 23 to 27) decree n°2022-0234/PRES-TRANS/ PM/MATDS/ MJDHRI/MEFP are provided for in the event of failure to comply with this requirement on the part of legal arrangements. An administrative fine of three million CFAF (4,840US\$) to ten million CFAF (16,130 US\$) is applied. These provisions do not cover all the other information to be obtained, in accordance with Recommendation 25. (See **analysis of criterion 25.1**).

78. **Criterion 25.3** -There is no provision requiring trusts to declare their status to FIs and DNFBPs when establishing a business relationship or carrying out an occasional transaction above the threshold. The gap identified in the MER remains.

79. **Criterion 25.4**- No deficiency was identified in the 2019 MER and therefore the situation remains unchanged.

80. **Criterion 25.5**- Generally, the powers granted to judicial police officers, including the investigating judge, guarantee timely access to information on the beneficial owner, the residence of the trustee and any assets held by the FI or the DNFBPs in a business relationship or when carrying out a transaction for a trustee. In addition, the provisions of decree n°2022-0234/PRES-TRANS/PM/MATDS/MJDHRI/MEFP of May 31, 2022, allow the competent authorities to access information on the BOs of legal arrangements and all information on the Trustee.

81. **Criterion 25.6**- Burkina Faso has in its judicial arsenal, agreements on international judicial cooperation (Law No. 016-2016/AN s has relevant measures on international cooperation. Access by all the competent authorities to the registers of Beneficial Owners of Legal Arrangements ensures the exchange of information available at the national level (Art 22 Decree n°2022-0234/PRES-TRANS/PM/MATDS/ MJDHRI/MEFP of 31st May 2022).

82. **Criterion 25.7** - No legal or regulatory provision explicitly provides that trusts are legally liable for any breach of their obligations. However, in the event of non-compliance with their obligations to declare and keep the register of their beneficial owners, a set of sanctions are provided for (Art 23 and 24 - Decree N° 2022-0234).

83. Late declarations in cases of rectification, modification or additional information on the beneficial ownership of legal persons and legal arrangements are sanctioned by a fine of one million (\$1,580) to three million CFAF (4,760 \$). Concealing information and refusing to declare and maintain the register of beneficial owners of legal persons and legal arrangements is liable to an administrative fine of three million CFAF (\$4,760). Ten million FCF A (\$15,870). In the event of a repeated offence, the natural person responsible for the offences is suspended for a period of at least five years from his/her functions as manager or director of a legal entity. The judge responsible for monitoring the Register of BOs of legal persons and legal arrangements may order, under penalty of a daily fine and within a time limit that he sets, the manager of any reporting entity, to declare the beneficial ownership of the legal arrangements to which the

latter is answerable. False declarations of beneficial ownership are sanctioned in accordance with the provisions of the Penal Code relating to the offense of forgery. All these sanctions are considered as proportionate and dissuasive.

84. No sanction is currently provided for failure to communicate the information provided for in criterion 25.1 and 2 other than that of the BO, and where a trustee fails to explicitly mention that he is acting on behalf of a trust.

85. Where FIs/DNFBS acting only as fiduciary have disregarded the obligations imposed on them by law, their respective supervisory authorities with disciplinary powers have the power to act ex officio (AML/CFT Law, Art. 112). However, not all DNFBP supervisory authorities have defined the range of applicable sanctions for non-compliance with reporting obligations.

86. **Criterion 25.8** - As mentioned in point 25.5, competent authorities have unrestricted and timely access to information on legal arrangements. The analysis made at 25.7 applies here. Where the information is not made available to the authorities in time, the judge responsible for monitoring the Register of BOs of legal persons and legal arrangements may order, under sanction and within a time limit that he sets, the manager of any reporting entity, to declare the beneficial ownership of the legal arrangements to which the latter is answerable.

Weighting and conclusion

87. Burkina Faso has taken measures to strengthen its AML/CFT system in terms of transparency and beneficial owners of legal arrangements through the adoption of Decree N° 2022-0234/PR of May 31, 2022 on the obligation to declare and keep a register of beneficial owners of legal persons and legal arrangements. This text specifies all the measures to be taken to ensure that information on the beneficial owners of legal arrangements is obtained, available and accessible. However, there are moderate deficiencies as the obligation to update information on trusts is limited to basic information on the client and the BO. Also, no provision of the Decree obliges trustees to declare their status to FIs and DNFBPs when they establish a business relationship or carry out an occasional transaction for an amount above the threshold. Sanctions for failure to comply with the obligations of R.25 does not cover failure to communicate the information provided for in criterion 25.1 and 2 other than that of BO and where a trustee fails to explicitly mention that he is acting on behalf of a trust).

88. **On this basis, Burkina Faso remains rated PC on R.25.**

Recommendation 26 [initially rated PC]

89. In its 2nd MER (2019), Burkina Faso was rated PC on Rec.26. The following gaps were noticed: no express provision requiring ML/TF risk in a sector to be considered for the purpose of regulation and supervision or monitoring, no requirement that the frequency and intensity of on-site and off-site AML/CFT supervision should be determined on the basis of the ML/TF risks, no provision requiring the supervisor to review the assessment of the ML/TF risk profile of a financial institution periodically, as well as when there are major events or developments in the management and operations of the financial institution or group.

90. **Criterion 26. 1 to 3-** No deficiency was identified in the 2019 MER and therefore the situation remains unchanged.

91. **Criterion 26.4**

- a- Supervision on a consolidated basis is established by Decision No. 014/24/06/CB/UMOA dated June 24, 2016 for parent credit institutions of FIs. This decision responds to Principle 12 “Supervision on a consolidated basis” of the Core Principles for Effective Banking Supervision. Indeed, the Banking Commission (BC) must carry out or have carried out, particularly through the BCEAO, off-site and on-site inspections on a corporate or consolidated basis, with the institutions accountable to the law in order to ensure compliance with the provisions applicable to them (Art. 21, paragraph 1 of the Annex to the convention governing the BC as

amended by Decision no. 010 of 29/09/2017/CM/UMOA). It defines the frequency and extent of the inspection and assessment of any accountable institution, taking into account its risk profile (Art. 21, al. 2 of the Appendix to the convention governing the BC). However, nothing indicates here that the ML/TF risk is specifically taken into account. The same obtains for the insurance sector. Directive 59/2019/CREPMF, Art. 30 provides for a risk-based approach to monitoring the AML/CFT systems and internal controls implemented by regional capital market participants.

b- The deficiencies identified in the MER remain.

92. Criterion **26.5-** Burkina Faso did not demonstrate that the frequency and extent of on-site and off-site AML/CFT controls exercised on financial institutions or financial groups should be determined on the basis of:

- a) ML/TF risks and the policies, internal controls and procedures of the institution or the group, as identified within the framework of the assessment of the risk profile of the institution or the group carried out by the supervisory authority.
- b) ML/TF risks present in the country; and the characteristics of financial institutions and financial groups, in particular the diversity and number of financial institutions and the degree of discretion granted to them under the risk-based approach.
- c) The characteristics of financial institutions and financial groups, in particular the diversity and number of financial institutions and the degree of discretion granted to them under the risk-based approach.

93. **Criterion 26.6** - The deficiencies identified in the MER are still outstanding.

Weighting and conclusion

94. All of the deficiencies identified in the 2019 MER are still outstanding.

95. **On this basis, Burkina Faso remains rated PC on R.26.**

Recommendation 28 [originally rated NC]

96. In its 2nd MER (2019), Burkina Faso was rated NC on Rec.28. The following gaps were noted : no specific provision for legislative and regulatory measures that prevent criminals or their accomplices from holding or becoming beneficial owners of a significant share in or control of a casino; no mention of any authority explicitly designated to monitor the compliance of Casinos with AML/CFT and other categories of DNFBPs are not subject to monitoring to ensure compliance with their AML/CFT obligations; no authority or SRB that has been designated to monitor and ensure the DNFBPs' compliance with AML/CFT requirements ; supervision of DNFBPs is not performed on a risk-sensitive basis. During the analysis of its 1st Follow-up report in 2021, Burkina Faso's rating for Rec.28 was maintained at NC.

97. **Criterion 28.1-**

- a. No deficiency was identified in the 2019 MER and therefore the situation remains unchanged
- b. Measures are in place to prevent criminals or their associates from owning, managing or operating a casino, managing or operating a casino. The provisions of Decree No. 2010-829 defining the operating requirements for casinos in Burkina prevent criminals or their accomplices from holding or becoming the beneficial owners of a significant stake in or control of a casino, from holding a management position or becoming the operator. The General Manager of the gaming establishment and the Technical Director are subject to a fit and proper test. Their respective accreditation files must, among other things, include a Curriculum Vitae and a police clearance (Art5. Decree No. 2010-829). The promoter's file consisting of the application and supporting documents (including the list of shareholders) is sent to the Minister of Security to be completed by a background investigation report carried out by the competent services of

the National Police (Art6. Decree No. 2010-829) . The provisions of Article 16 of Decree No. 2010-829 stipulate that a criminal offence resulting in a conviction is grounds for withdrawal/approval. In addition to the promoter, the members of the management of a casino, prior to their taking office, including staff, must be subjected to a background investigation carried out by the competent services of the National Police Headquarters for the purposes of their approval by the Minister of Security (Art 20. Decree No. 2010-829). Also, the provisions of Decree N° 2022-0234/PRES-TRANS/PM/MATDS/MJDHRI/MEFP of May 31, 2022 on the obligation to declare and keep the register of beneficial owners of legal persons and legal arrangements shall be applicable to the Casino. The free access to the BO register held at the Ouagadougou Trade Tribunal enables the competent authorities to carry out investigations to verify the credentials and ensure that criminals or their associates do not hold shares or become the beneficial owners of a significant or controlling interest of a casino, to hold a management position or to be the operator. The procedure for the licensing of casinos does not explicitly provide for supervisory/verification measures in respect of BOs before the license is issued and during the post-licensing phase. There is no measure concerning the verification of the integrity of casinos' Bos. Also, prior to the renewal of the operating license (every 5 years) , there is no provision that the members of the casino's management, namely the Director, the Operation Manager and Technical Manager must maintain their good reputation in order to remain in office.

- c. [Since 2019, the General Directorate of the Treasury and Public Accounting (DGTCP) is the regulatory and supervisory authority for casinos, lotteries including LONAB in matters of AML/CFT/PF- Art.3 of Decree N°2019-237/PRES/PM/MINEFID/MSECU/MJ of 10/12/2019. It has an AML/CFT supervision manual that enables it to be operational to a certain extent. However, during the reporting period, AML/CFT supervision of DNFBPs of casinos had not yet begun.

98. **Criterion 28.2-** All categories of DNFBPs have a designated AML/CFT supervisory and regulatory authority, except for chartered accountants and licensed accountants. (See analysis of follow-up report 01.). They are responsible for monitoring and ensuring compliance with AML/CFT obligations by DNFBPs.

99. **Criterion 28.3 -** All categories of DNFBPs are subject to AML/CFT monitoring systems (see criterion 28.2). During the reporting period, AML/CFT supervision of DNFBPs other than casinos had not yet begun.

100. **Criterion 28.4**

- a- No new provision has been made by the country. The deficiency noted in C.28.3 affects the compliance of this criterion. (**See analysis of follow-up report 01**).
- b- All DNFBPs are subject except the real estate agents (***The real estate sector is considered high risk in the NRA***), and must meet conditions for access to the profession, appointment or approval which imply not having been criminally convicted or not having been the author of acts contrary to good repute and probity. The provisions of Decree N° 2022-0234/PRES-TRANS/PM/MATDS/ MJDHRI/ MEFP of May 31, 2022 on the obligation to declare and keep a register of beneficial owners of legal persons and legal arrangements supplement the provisions analyzed in the 2019 MER make it possible to ensure control over the BOs by the SRBs, the competent authorities in terms of approvals or registration. There is no provision that requires the competent authorities or SROs to check the integrity of Bos before the license is issued and during the post-licensing phase.
- c- No indication on the range of administrative and disciplinary sanctions in case of non-compliance with AML/CFT obligations to be defined by the respective supervisory authorities is not available to date or has not been provided by the country. An assessment cannot be made on their effective, proportionate and dissuasive nature. The deficiency noted in C.28.3 affects the compliance aspect of this criterion.

101. **Criteria 28.5.a& b.-**All DNFBPs supervisory authorities have developed a methodological guide for AML/CFT supervision. However the requirements of sub-criteria (a) and 9b) are not met.

Weighting and Conclusion

102. The country has taken measures to strengthen its AML/CFT system in terms of regulation and supervision of designated non-financial businesses and professions, by designating AML/CFT control and supervisory authorities. These supervisory authorities or self-regulatory bodies have sanctioning powers and force them to ensure compliance with the implementation by DNFBPs of their AML/CFT obligations. They have developed a methodological guide for AML/CFT supervision. However, moderate deficiencies are still outstanding, including: the lack of AML/CFT/PF supervisory and control authority for Chartered Accountants and licensed Accountants, lack of measures to prevent criminals or their accomplices from attaining the status of approved professional, or from holding a significant or controlling participation, from becoming the beneficial owners of such participation, or from occupying a management position in the real estate sector. The range of administrative and disciplinary sanctions in the event of non-compliance with AML/CFT obligations to be defined by the respective supervisory authorities is unavailable to date, and finally, the lack of formalization of the application of the risk-based approach by all the supervisory authorities in terms of AML/CFT control and supervision.

103. **On this basis, Burkina Faso is re-rated PC on R.28.**

Recommendation 34 [Initially rated PC]

104. In its 2nd MER, Burkina Faso was rated PC on R.34. The technical deficiency was the lack of guidance for DNFBPs due to the lack of designated competent authorities, or self-regulatory bodies with empowered to carry out AML/CFT supervision and monitoring.

105. **Criterion 34.1** - Decree N° 2019-1237/PRES/PM/MINEFID/MSECU/MJ of 10/12/2019 designating and assigning authorities for the supervision and control of reporting entities in the non-financial sector in terms of AML/CFT fills the gap relating to the supervision of DNFBPs (see analysis Rec 28).

106. The supervisory and monitoring authorities of DNFBPs are required to prepare directives, guidelines or recommendations for reporting entities in this non-financial sector (art 4). Thus, in accordance with the provisions of Art 4 of the aforementioned Decree, each of the said DNFBP authorities, in close collaboration with the FIU, has prepared and delivered Guidelines for their respective reporting entities. Although there is no AML/CFT/PF supervisory authority for Chartered Accountants and licensed Accountants, the country, through the FIU, has produced guidelines for this sector. No indication has been provided by the country on the channels of publication of these guidelines.

107. Feedback: The FIU generally provides feedback on STRs and annually publishes a Progress Report that highlights statistics, methods, trends and case studies on STRs. It organizes exchanges with all reporting entities, which are supplemented by training activities. Similarly, training is organized by the various DNFBP/FI supervisory authorities for their respective reporting entities on measures to combat money laundering and the financing of terrorism. The supervisory and monitoring authorities particularly that of FIs, provide feedback to the reporting entities following on-site inspections and during periodic exchange meetings with their reporting entities.

108. Also, Order 2021/0424 on GT-SN-AML/TF established five (05) thematic groups including thematic group 2 for the implementation of AML/CFT (art 2 of Order 2021/0424-GT-SN-LBC/FT). Established within the CNCA-LBC/FT, these different thematic groups are channels for exchange and collaboration between the supervisory authorities and representatives of the associations/apex institutions of their reporting entities to update them on the status of implementation of AML/CFT preventive measures, to be informed of challenges encountered and make recommendations. These thematic groups are tasked with implementing and monitoring the activities of the National AML/CFT Strategy Action Plan. Quarterly reports and an annual one provide updates on their activities (Art3). This approach complements the exchange channels between the FIU and reporting entities, and between the supervisory authorities and reporting entities. These various actions have clearly demonstrated developments within the DNFBPs, which have started filing STRs to the FIU.

Weighting and Conclusion

109. Supervisors of FI&DNFBP have established guidelines and provides feedback, which assist financial institutions and DNFBPs in applying national AML/CFT measures, and in particular, in detecting and reporting suspicious transactions. However, Burkina Faso has minor deficiencies due to the lack of a designated AML/TF&P supervisory authority for Chartered Accountants/licensed Accountants to supervise them and help them fully comply with their relevant obligations.

110. **Burkina Faso is re-rated LC on Recommendation 34.**

IV. CONCLUSION

111. On the whole, Burkina Faso has made progress in addressing some of the technical compliance deficiencies identified in its MER and has been upgraded on R.2, R.28 and R.34. The rating for R6, R7, R22, R24, R25 and R26 are maintained at PC.

112. The table below shows Burkina Faso's MER ratings and reflects the progress it has made and all re-ratings based on this and previous FURs:

Table 2-Technical compliance ratings, June 2023

R.1	R.2	R.3	R.4	R.5
LC	LC (FUR 2023) PC (FUR 2021) PC	C	LC (FUR 2021) LC	C (FUR 2021) PC
R.6	R.7	R.8	R.9	R.10
PC (FUR 2023) PC	PC (FUR 2023) PC	PC	C	LC
R.11	R.12	R.13	R.14	R.15
LC	LC	LC	PC	PC (FUR 2021) C
R.16	R.17	R.18	R.19	R.20
LC	LC	LC	PC	LC
R.21	R.22	R.23	R.24	R.25
C	PC (FUR 2023) PC (FUR 2021) PC	LC	PC (FUR 2023) PC	PC (FUR 2023) PC
R.26	R.27	R.28	R.29	R.30
PC (FUR 2023) PC	C	PC (FUR 2023) NC (FUR 2021) NC	C	C
R.31	R.32	R.33	R.34	R.35
C	PC	LC	LC (FUR 2023) PC (FUR 2021) (PC)	LC
R.36	R.37	R.38	R.39	R.40
C	LC	LC	LC	LC

Note : There are four possible levels of Technical Compliance: Compliant (C), Largely Compliant (LC), Partially Compliant (PC), and Non-compliant (NC).

113. Burkina Faso has 12 Recommendations rated NC/PC. Burkina Faso will remain in enhanced follow-up regime and report back in May 2024 to inform GIABA of the progress made in improving the implementation of its AML/CFT measures.



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**Anti-money laundering and counter-terrorist
financing measures in Burkina Faso**

Follow-up Report & Technical Compliance Re-Rating

The report also looks at whether Burkina Faso measures meet the requirements of FATF Recommendations that have changed since their Mutual Evaluation in 2019.

Follow-up Report