

UNION OF COMOROS

DETAILED ASSESSMENT
REPORT ON ANTI-MONEY
LAUNDERING AND
COMBATING THE FINANCING
OF TERRORISM

MARCH 2010

INTERNATIONAL MONETARY FUND
LEGAL DEPARTMENT

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Acronyms

AFD	French Development Agency
AML/CFT	Anti-Money Laundering and Combating the Financing of Terrorism
BDC	Development Bank of the Comoros
BCC	Central Bank of the Comoros
BIC	Bank for Industry and Commerce
CC	Criminal Code
CCP	Code of Criminal Procedure
Decree 03-25	Decree No. 03-25/PR on the financial intelligence unit
DNDPE	National Directorate for Government Documentation and Protection
DNFPB	Designated Non-Financial Businesses and Professions
DNST	National Directorate of Territorial Surveillance
FATF	Financial Action Task Force
CF	Comorian Franc
FIU	Financial Intelligence Unit
FSRB	FATF Style Regional Body
FT	Financing of Terrorism
GDP	Gross Domestic Product
IBC	International Business Corporation
IFDs	Decentralization Financial Institutions
IMF	International Monetary Fund
INTERPOL	International Criminal Police Organization
LEG	IMF Legal Department
MFI	Microfinance Institution
MIREX	Ministry of Foreign Affairs and Cooperation
ML	Money Laundering
MVT	Money/Value Transfer Services
NGO	Non-governmental Organization
NPO	Non-profit Organization
OPJ	Judicial Police Officer
Ord. of 2003	Ordinance No. 3-002/PR of January 29, 2003 on Laundering, Confiscation, and International Cooperation in Relation to the Proceeds of Crime
Ord. of 2009	Ordinance No. 09-002/PR on Laundering, Financing of Terrorism, Confiscation, and International Cooperation in Relation to the Proceeds of Crime
PC	Penal Code
PEPs	Politically Exposed Persons
PR	Prosecutor of the Republic
ROSC	Report on the Observance of Standards and Codes
SC	Security Council

SNPSF	National Financial and Postal Services Company
STR	Suspicious Transaction Report
TCSPs	Trust and Company Service Providers
TPI	Court of First Instance
UC	Union of the Comoros
UN	United Nations
UNODC	United Nations Office on Drugs and Crime

Preface

1. The assessment of the anti-money laundering and combating the financing of terrorism (AML/CFT) system of the Union of the Comoros was based on the 2003 Forty Recommendations and the 2001 Nine Special Recommendations developed by the FATF (Financial Action Task Force). It was prepared according to the 2004 AML/CFT Methodology, as updated in October 2008. The assessment was based on laws, regulations, and other documents provided by the Union of the Comoros, as well as information gathered by the assessment team during its on-site visit of May 6-20, 2009 and following the mission. During the course of its visit, the assessment team met with leaders and representatives from competent governmental agencies and the private sector.
2. The assessment was performed by a team made up of International Monetary Fund (IMF) staff, an expert acting under the supervision of the IMF, and an expert acting under the supervision of the World Bank. The participants in this assessment were Emmanuel Mathias (LEG, mission chief), Chady El Khoury (LEG), Habib Hitti (expert under the supervision of the LEG), and André Cuisset (expert under the supervision of the World Bank). The experts analyzed the institutional framework, laws, regulations, guidelines, and obligations with respect to AML/CFT, as well as the regulatory system or other systems in effect to combat money laundering and terrorist financing within financial institutions and DNFPBs . The adequacy, implementation, and effectiveness of all these mechanisms were also evaluated.
3. This report provides a summary of the AML/CFT measures in effect in the Union of the Comoros on the date of or shortly after the on-site visit. It describes and analyzes these measures, indicates the level of the Union of the Comoros' compliance with the 40 + 9 FATF Recommendations (See Table 1), and makes recommendations on measures to be taken to strengthen certain aspects of the system (See Table 2).

Executive Summary

4. The 2003 Presidential ordinance that criminalizes money laundering has not been widely implemented. The implementation of an AML/CFT policy began in 2008 with the appointment of the members of the Financial Intelligence Unit (FIU), awareness-raising efforts with entities concerned in the public and private sectors, and the enactment of an ordinance in March 2009 that expanded the scope of the preventive measures and covered the financing of terrorism. However, there have been no investigations or convictions for money laundering or terrorist financing.

5. The limited capacity to absorb the proceeds of foreign offenses and the fact that the financial system is relatively underdeveloped minimize the risk of some money laundering activities. However, there are still specific vulnerabilities in the Comoros due to the limitations of the procedures for identifying legal and natural persons.¹ In addition to significant weaknesses in the administration of civil and commercial registries, the registration of offshore companies in Anjouan and the recent enactment of a law on economic citizenship might be attractive to criminals. The Anjouan authorities state that they have abandoned the development of the offshore sector since the summer of 2008. The creation of offshore banks in Anjouan was illegal as it was in violation of the provisions of the organic law which set out the respective competencies of the central government and the islands. However, the law creating offshore companies was legally adopted by the Parliament of Anjouan and, since it has not been repealed, continues to present a risk. As for economic citizenship, the authorities have indicated that they have implemented strict control measures² that are intended to prevent abuses, but concerns regarding the possible misuse of this arrangement for criminal purposes do remain.

LEGAL ARRANGEMENTS AND RELATED INSTITUTIONAL MEASURES

6. Money laundering is a criminal offense under Comorian law in accordance with the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) and the 2000 United Nations Convention against Transnational Organized Crime (Palermo Convention). All proceeds of crimes or offenses may constitute predicate offenses of money laundering and, consequently, Comorian legislation does not specify a threshold for offenses. However, some offenses included in FATF's designated category of offenses are not listed in the Criminal Code (CC) or special

¹ Deployment of a biometric system for the identification of natural persons has been under way since June 2008.

² The authorities indicate that they consult Interpol, UNODC, and the intelligence services of the country of origin of the applicant.

laws: e.g., trafficking in human beings and migrant smuggling, environmental crimes, and piracy.

7. The criminalization of the financing of terrorism is not in compliance with Article 2 of the 1999 United Nations Convention for the Suppression of the Financing of Terrorism (New York Convention). There are no provisions allowing the Comorian authorities to freeze the assets of terrorists and other persons designated by the United Nations Al-Qaida and Taliban Sanctions Committee in application of Resolution S/RES/1267 (1999) and subsequent resolutions, and Resolution S/RES/1373 (2001).

8. The authorities have established a financial intelligence unit, the members of which have been appointed, but the unit has not yet received any suspicious transaction reports. Moreover, the authorities responsible for prosecutions, which take place in an environment characterized by a lack of resources and some instances of corruption, have not yet had the opportunity to implement their powers in investigations of money laundering or terrorist financing. The physical cross-border transportation of currency is subject to general exchange control regulations and specific AML/CFT regulations, although the latter have not yet been implemented.

PREVENTIVE MEASURES

9. The 2009 ordinance makes the main financial institutions operating in the Comoros subject to AML/CFT measures, but does not cover insurance companies. However, currently insurance companies are not active in life insurance. Due diligence measures have been in place for financial institutions since 2003 and are laid out in the 2009 ordinance. However, the legal framework does not cover numbered accounts (which do not exist in practice), the updating of information collected under the customer diligence process, or adequate limits on the application of simplified measures, especially in cases of suspicion of ML/FT.

10. No provision establishes specific obligations regarding reliance third parties and intermediaries, non-face to face business relationships, and branches and subsidiaries abroad. However, the latter two situations do not exist in the Comoros at the present time. Moreover, the conditions for the licensing of insurance companies and the registration of exchange houses and money remitters should be specified. Thus far, most institutions subject to the law have not yet put in place an AML/CFT system. Although the central bank has begun to monitor implementation of the preventive measures, it does not have the necessary resources to perform its mission.

11. The 2009 ordinance covers all designated non-financial businesses and professions (DNFBPs), but the obligations laid out are very limited and have not been implemented to date. Monitoring and supervision of DNFBPs are generally weak or nonexistent for AML/CFT requirements.

LEGAL PERSONS AND ARRANGEMENTS, NONPROFIT ORGANIZATIONS

12. The legal regime applicable to corporations is based on French law. However, the Comorian authorities lack the necessary resources to ensure that information, which is recorded manually by the Registry of the Regional Court of each island, is up-to-date and accurate. Trusts and other similar legal arrangements are not used in the Comoros. In Comorian law, nonprofit organizations (NPO) come under the law on associations. However, the registration of foreign NPOs is subject to a separate regime, which is characterized by a lack of centralization and is based on agreements with the ministries concerned for given projects, including the obligation to provide limited identification data.

DOMESTIC AND INTERNATIONAL COOPERATION

13. The composition of the FIU, which is more like an intergovernmental coordination committee than an operational financial intelligence unit, could potentially be an effective mechanism for domestic coordination.

14. The Vienna, Palermo, and New York Conventions have been signed and ratified, but have not been transposed into domestic law.

15. The Comorian legal framework allows the authorities to cooperate broadly with foreign counterparts to exchange information, for investigations and proceedings aimed at implementing provisional measures and the confiscation of the proceeds of and instrumentalities used in money laundering, for extradition, and for mutual legal assistance. The weaknesses of the criminalization of the financing of terrorism in Comorian law and the lack of criminalization of some predicate offenses, coupled with the strict application of the principle of dual criminality, tend to limit the scope of the assistance that the authorities are able to provide to other countries. In the absence of requests for mutual legal assistance or extradition for ML/FT offenses, it is not possible to assess the capacity to respond to such requests in a timely fashion and in a constructive and effective way.

1. GENERAL INFORMATION

1.1. General description of the Union of the Comoros

16. The archipelago of the Comoros Islands consists of four islands (Grande Comore, Mohéli, Anjouan, and Mayotte) located at the entrance of the Mozambique Channel, northwest of Madagascar and across from Mozambique. The Union of the Comoros obtained its independence from France on July 6, 1975. The Union is comprised of three islands, as Mayotte remains under French administration. The total surface area of the Union of the Comoros is 2,170 square kilometers with an estimated population of 800,000 inhabitants, 42 percent of whom are under the age of 14. There has been a sizable diaspora and many Comorians reside in France. The capital, Moroni, is located on the largest island, Grande Comore. The official languages are Arabic, French, and Comorian, which belongs to the Bantu language family. Islam is the state religion.

17. Years of political instability have hindered the economic development of the Union of Comoros. Real GDP growth rates have remained weak and the country's social indicators have deteriorated. The Human Development Index ranked the Union of the Comoros 132nd among 177 countries in 2006. Per capita income is estimated to be US\$465 in 2005. This is slightly less than the average for sub-Saharan Africa (US\$510). In 2005, 60 percent of the population was living in poverty. The largest segment of the population is rural and subsists on food crops or fishing although the country is not self-sufficient in terms of its food. There are no growth sectors in the Comoros, as fishing and farming remain subsistence activities and tourism is still in an embryonic stage. Nonetheless, the islands export vanilla, ylang-ylang, and cloves.

18. The Union of the Comoros has a multi-party political system. There is a president who heads the executive branch and the office rotates among the islands. Until the institutional revision that occurred in May 2009, each island had significant autonomy as well as its own constitution, president, government, and legislature. The constitutional reform approved by referendum revised the institutional architecture. The islands' presidents became governors, the constitutions became statutory law, ministers became commissioners, and the legislatures became councils. Reform of the constitution should limit jurisdictional conflicts between the islands and the central government, determining which matters are exclusive to the islands, while leaving other matters as the domain of the Union.

19. According to Article 9 of the Constitution of the Union (as in effect during the separatist regime of Anjouan in 2005-2008), the following matters are from the exclusive competence of the Union: religion, nationality, money (or currency), foreign affairs, external security, and national symbols. In addition, Article 15 of the Organic Law No. 05-003/AU of March 1, 2005 clarify further Article 9 of the Constitution by explicitly determining the criminal and banking legislations as a sole competency of the Union. Therefore, it is clear

that the AML/CFT and Banking Laws can only be enacted at the Union level and that all contrary legislations should be considered without effect. Consequently, the legislations enacted by the separatist regime in these fields are without effect.

20. In addition and under the Constitution of the Union, the President of the Union, in its capacity as the highest executive organ, is empowered to issue Ordinance in the above mentioned matters that enter into force after 15 days. For the purpose of this assessment, the assessors considered that the Ordinance issued by the President of the Union constitute primary legislation that have the power of Law. The legal system shows the heritage of Islamic law, customary law, and French law. Village elders handle most disputes. The judicial branch is independent of the legislative and executive branches. The constitutional court sitting since September 2006 is responsible for monitoring the proper development of elections and for adjudicating cases of malfeasance on the part of government.

21. While the country is generally considered calm and safe compared to other African countries (in fifth place among 48 nations in 2006 according to the Ibrahim Foundation index³), corruption is very widespread. The Union of the Comoros was ranked 134th by Transparency International's indicator in 2008. Public records are weak and there is no registry to secure property rights, while justice is weakened by an obvious lack of resources.

1.2. General situation of money laundering and terrorist financing

Predicate offenses

22. Central and island authorities do not have criminal statistics that would enable the mission to estimate income gained from predicate offenses committed on the islands. Due to the level of development in the Comoros, income of this type seems to have been limited compared to the sums generated in other countries, although it may have relatively significant effects on the local economy. The principal income-producing predicate offenses seem to be narcotics trafficking, migrant smuggling, and corruption.

Narcotics trafficking

23. With respect to drugs, the Comoros are an ideal transit point based on their geographic location on the Mozambique Channel, at the juncture of maritime routes joining the Persian Gulf and the horn of Africa to the Cape of Good Hope, and the proximity of Madagascar.

24. In 2008, Comorian authorities seized a total of 532 kg of cannabis (marijuana and hashish) and 14 people from southern Africa were arrested for drug use and possession. According to the information gathered, this traffic is increasing rapidly and is largely led by

³ Ibrahim Index of African Governance - <http://www.moibrahimfoundation.org/en/section/the-ibrahim-index>

family groups, primarily from the island of Anjouan, who are also involved in irregular migration networks. According to estimates, about 70 percent of these narcotics comes from the ports of Zanzibar⁴ and Dar Es Salaam in Tanzania⁵ and 25 percent comes from Madagascar, headed to the port of Moroni and Anjouan. A large portion of the traffic supplies the island of Mayotte. According to the information gathered, several kilos of cocaine were seized in Mayotte in 2008, and came from the island of Anjouan. In early 2009, a Comorian national arriving from Moroni in possession of 700 grams of heroin was arrested on Maurice Island.

25. Cannabis is the principal drug used locally, primarily for financial reasons due to the population's low standard of living. However, deaths from undetermined causes were recently uncovered. These deaths involved young people, particularly around nightclubs. The authorities suspect a source connected to the absorption of drugs, but in the absence of forensic resources they are not in a position to prove it. In addition, law enforcement and administrative authorities are not trained to detect cocaine, heroin, or synthetic drugs (no antidrug kits or laboratories).

26. In the absence of an estimate of income generated by narcotics trafficking, it is interesting to note that marijuana purchased in Tanzania at €100 per kilo is resold for €200 in Anjouan and €700 in Mayotte. Hashish purchased at between €150 and €200 on the African continent is resold for €1,000 in Anjouan and €1,700 to €3,000 in Mayotte. Cocaine sold at retail for about US\$30 per gram in Tanzania is resold for €120 in Mayotte.

Smuggling of migrants

27. Illegal migration to France and Europe transiting through the island of Mayotte seems to represent another important criminal activity, as 14,000 persons were turned back from the island of Mayotte to Anjouan in 2006. Information gathered by the mission indicates that international networks supply this well-organized and well-equipped traffic, using the island of Anjouan in particular. Motor boats and other vessels travel daily between Anjouan and Mayotte, and prospective illegal migrants often were transferred from these Anjouan ships to sea. The Comorian authorities' lack of surveillance and intervention resources along the Comorian coastline, combined with the endemic corruption of the administration, allows international migration networks to use the Comoros as a turnstile for traffic while incurring little risk. However, some court proceedings have been filed against migrants and smugglers, in some cases resulting in prison terms and the seizure and destruction of vessels.

⁴ There is a strong Comorian community on Zanzibar, an island in Tanzania.

⁵ A portion of this traffic would be supplied by high-speed boats running between the port of Mahajanga and the Comoros archipelago, benefiting from the inadequacy of Comorian Custom's resources and personnel.

28. No estimate is available regarding the income generated from human trafficking. However, the mission learned that the amounts claimed by smugglers in Anjouan could be as much as €600 per migrant. Thus, annual proceeds from human trafficking would amount to millions of euros.

Corruption

29. Besides encouraging drug trafficking and human trafficking, public corruption can also generate significant illegal proceeds. For example, Anjouan authorities informed the mission of practices put in place by the autonomous island's prior administration, which was outside the control of the Union of the Comoros during the separatist crisis. The executive at the time gained considerable wealth by diverting international aid grants and projects; withdrawing from budgets for public infrastructure construction projects; selling judgments, academic degrees and offshore companies; diverting duties and taxes; and diverting civil servants' salaries and the funds of government enterprises. The current authorities have not provided an estimate of the amounts diverted and nothing has been recovered.

Other predicate offenses

30. Another activity of criminal networks involves the forging of administrative documents, as well as a significant amount of counterfeiting (Comorian francs and euros). In 2008, cooperation between French and Comorian authorities made possible the dismantling of an important network of forgers operating from Mayotte, as well as the seizure of hundreds of forged documents of all types. In 2008, the percentage of counterfeiting cases among the 143 criminal cases recorded by the National Directorate for Government Documentation and Protection (DNDPE) was four percent (11 cases, almost all of them connected to the island of Anjouan, led to the arrest of 23 individuals, the majority of whom were of African origin). These forged bills were generally produced in African countries. The mission also heard of many cases of fraud or breach of trust, some of which generated profits amounting to several million euros.

Money laundering

31. The FIU has still not received any STRs and no judicial inquiry has ever been opened on the subject of money laundering. Given the lack of statistics and still embryonic law enforcement activity, it was impossible to establish the amounts laundered or the precise typologies. Nonetheless, it seems that the most frequent practices involve direct consumption, real estate construction, furniture purchases, commercial activities,⁶ and foreign investments. The introduction of funds of illegal origin in the Comorian economy could be facilitated by a large degree of informality, corruption, and the predominance of cash in the population's financial day-to-day relationships.

⁶ According to the police authorities who met with the mission, some Tanzanian and Indian businesses are "surprisingly prosperous" in the Comoros.

32. The mission believes that three major risks of laundering can be found in the Comoros: the first involves using the domestic economic and financial system to absorb proceeds from local criminal activities (drug trafficking, human trafficking, fraud, and corruption in particular).

33. The second risk involves use of the archipelago by international organized crime for financial operations. In this respect, the above-mentioned general conditions of the economic, administrative, and financial situation seems to favor the investment of funds of doubtful origin, particularly for development projects on the islands by insufficiently identified foreign companies that can be used as a front for the investments of international criminal organizations.

34. The third risk involves the concealment of the true identity of a money launderer or criminal. This threat is specific to the Comoros and tied to particular vulnerabilities identified by the mission and analyzed below.

Terrorism

35. The Union of the Comoros has not had any terrorist acts on its soil. However, an investigation regarding terrorist acts was opened up several years ago. It involves a Comorian, Fazul Abdullah Mohammed, who is suspected of being a member of Al-Qaeda and sometimes considered the organization's representative in eastern Africa. He is suspected in particular of having participated in various attacks, including those on the American embassies in Tanzania and Kenya in 1998. However, it has not been established that he has maintained links with the archipelago.

36. The authorities agreed with the mission that the Comoros are a potential transit point for international terrorism, particularly due to limited resources and training in counter-terrorism and maritime security.

37. The mission was informed that an illegal migrant network of Iraqis traveling to Europe with counterfeit passports was recently dismantled. The risk of this network's being used by individuals belonging to terrorist groups is thus particularly high.

Financing of terrorism

38. No investigation has yet been initiated with respect to the financing of terrorism. However, the mission identified two principal risks. The first involves informal financial transfers of funds to the Comoros. It is very well developed due to the size of the Comorian diaspora. It primarily works through individual Comorians returning to the country. The presence of a traditional Hawala type system, operating through Indians and Madagascans, was also reported to the mission. However, no evidence has been obtained demonstrating the reality of this phenomenon, which is not known by the Central Bank. Lessons learned from

the 1998 attacks on the American embassies in Tanzania and Kenya showed that terrorists use these informal financial networks.⁷

39. In addition, the authorities see the gradual arrival in recent years of members of foreign religions as a risk, since the administrative authority's controls are not sufficiently strict.

Vulnerabilities specific to the Comoros

40. An underdeveloped financial system and limited capacity to absorb the proceeds of crime minimize the risk of some money laundering activities. However, there are vulnerabilities specific to the archipelago related to the identity of legal and natural persons. In addition to significant deficiencies in public records and the commercial registry, specific risks involve the offshore sector that has developed in Anjouan, as well as the recent promulgation of a law on economic citizenship.

Offshore sector

41. An offshore sector developed on the island of Anjouan in the late 1990s and has taken off since 2003. The offshore policy was supported by the executive of the island of Anjouan until March 2008 when the separatist government was overturned. The authorities of the Union supported this sector until 2005. Policies permitted low-cost incorporation of international corporations of the International Business Company (IBC) type, captive insurance companies, offshore banks, and the registration of ships and aircraft. The advantages included strong banking secrecy, no requirement to keep books, and protection of the identity of true beneficial owners. The mission was unable to gather statistics or registration documents to confirm information on about 300 offshore banks and more than 1,200 IBCs⁸ created on the islands of Anjouan and Mohéli.

42. The current authorities on the island of Anjouan recognize that offshore companies were created legally. A British company handled the intermediation and a general directorate of international finance was created within the Anjouan Ministry of Finance. Its director was in charge of certifying the articles of incorporation of offshore companies and banks. According to the legal system set up by the authorities at the time, companies had to be registered with the Anjouan central registry of international companies. However, the

⁷ "The Dark Side of Diaspora Networking Organised Crime and Terrorism: Diasporas, Remittances and Africa South of the Sahara – A Strategic Assessment" by Marc-Antoine Perouse de Montclos, March 2005 (at: <http://www.iss.co.za/pubs/Monographs/No112/Chap3.htm>).

⁸ International Narcotics Control Strategy Report (INCSR) 2008, Volume II "Money Laundering and Financial Crimes," page 168 et seq.

island's current government has not been able to confirm or deny the actual existence of this registry or the availability of the files.

43. At the initiative of the Central Bank of the Comoros, which alerted the international community in November 2005 regarding the illegality of banking licenses sold in the context of this offshore activity, a judicial proceeding was filed in 2008 before an examining magistrate of the Court of First Instance (TPI) of Moroni on charges of unlawful activity in offshore banks, finance companies, and financial institutions, and usurpation of the legal functions of the BCC. International letters rogatory were sent to British authorities but Comorian authorities say they have not been answered. The authorities in place since the summer of 2008 informed the mission that they have not issued any authorizations for offshore companies. Nonetheless, Comorian nationals implicated in these crimes have not been prosecuted, despite a complaint against X filed by the BCC.

44. It is established that offshore financial institutions were created in violation of the Union's law. They had no legal basis when they were created, but the problem of offshore banks no longer exists now since the island of Anjouan is again part of the Union of the Comoros. However, it also appears that the legal framework put in place in Anjouan permitted the creation of offshore companies by the island. This legal framework is still in effect and the non-financial companies created at the time still have a legal basis⁹ in the absence of any action taken to invalidate them. The Internet site¹⁰ created by the island's authorities was still operating at the time of the mission's visit. Anjouan authorities indicated they are in contact with the individuals who were in charge of the offshore sector so that this site will be shut down quickly.

Economic citizenship

45. On December 23, 2008, the parliament of the Union of the Comoros passed a law on economic citizenship. An initial version of the law was clearly intended to allow persons who don't have a nationality in the Persian Gulf region, most of them Bedouins, to benefit from nationality. The preamble to the law ultimately adopted in December states that it is not addressed to that population in particular, but rather to "businessmen with the experience to promote the development and construction of a strong and prosperous economy."

46. This legal framework applies to any adult "with the ability to be an economic partner to the Government of the Comoros," subject to submitting a petition with a view to investing a minimum amount of money. Economic citizenship is granted based on the opinion of a "national attribution commission," with no requirement to have a customary residence in the

⁹ International Business Companies Act 004 of 2005 adopted by the Anjouan parliament on February 5, 2005.

¹⁰ <http://www.anjouangov.com>.

Comoros or to complete the planned investment. During the on-site visit, the mission was informed that the authorities had already received payment of substantial amounts relating to the grant of economic citizenship, but the mission was unable to confirm the number of passports issued. According to the authorities, information regarding the number of passports issued and the funds collected, is part of state sovereignty on naturalization.

47. Under the terms of Article 6 of the law, no one may acquire citizenship status if he/she is a member of a terrorist group or has been convicted of certain listed crimes or offenses. This list does not include money laundering, narcotics trafficking, and most of the predicate offenses considered by the FATF. In the absence of more precise explanations regarding the work of the commission, the number of passports issued, and the population targeted by the authorities, the mission was not in a position to dispel concerns regarding the potential corruption of the new mechanism for criminal purposes.

1.3. Overview of the financial sector

48. Until 2006, the Comorian banking sector, besides the BCC, consisted of two banks. The first bank was the only local full-service bank, which held most savings and granted loans. This institution continues to offer these basic services with the government holding 33 percent of its capital. The second bank, which specializes in medium- and long-term transactions, draws its resources from external donors primarily to finance investment and the real estate sector. The government holds 50 percent of its capital and the remaining 50 percent is divided evenly among the BCC, the European Investment Bank, and the French Development Agency (AFD).

49. In 2006, the structure of the Comorian banking system grew when the Board of Directors of the BCC issued favorable opinions regarding the authorization of two new banks. One of them, with Tanzanian capital, began its operations in 2008, while the other, with primarily Kuwaiti capital, was not yet operational at the time of the on-site visit.¹¹

50. The banking system remains very limited and banking services are used by only a small segment of the population. The rate of use of banking services is low, at an estimated 20 percent. Banks operating in the Comoros are governed by Law 80-07, the Banking Law.

51. The National Financial and Postal Services Company (SNPSF) is another actor in the Comorian financial scene. It was created when the National Post and Telecommunications Company had broken up into two companies: Comores Telecom and the SNPSF. In addition to postal activities, the SNPSF directs the activities of the National Savings Fund. In February 2009, the SNPSF opened two representative offices in France (in Paris and Marseille) to help the Comorian diaspora in France to transfer funds to Comoros.

¹¹ This bank began its operations in July 2009.

52. In addition, the Union of the Comoros has a strong microfinance system based exclusively on mutual organizations, with two mutual savings and loan networks grouped into unions: the Sanduk Unions and the Meck Union. The Sanduk funds network is based primarily on the island of Anjouan and was created in 1993 with support from the AFD. Its primary aim has been to introduce campaigns to finance agricultural projects in very small amounts. Made up of several small funds, the network is now consolidated and consists of three regional unions grouping all the Sanduk funds on each island. These are the Anjouan network (the most important, with 39 funds and 40,000 clients), the Mohéli network (9 funds), and the Grande Comore network (26 funds). It should be noted that the last two networks carry out their activities without license from the BCC.

53. The Meck network was created in 1995 at the initiative of the government and the Support to Economic Grass Roots Initiatives project backed by the International Fund for Agricultural Development (IFAD). This network includes a total of seven mutuals on Grande Comore, four on Anjouan, and one on Mohéli. In August 2003, the central body (Union of Mecks) was created and made responsible, *inter alia*, for supervising the network, representing it before monetary authorities and financing organizations, managing excess liquidity, and granting credit to grass roots mutuals.

54. The two networks have shown significant growth both in the number of funds and participants and in the volume of transactions. They are established in the Comorian financial scene. In terms of market share, they now occupy second place with respect to collecting savings and distributing credit to the economy. These institutions have not specialized solely in microcredit for less advantaged populations. They have also developed a policy similar to that of traditional banking institutions. Their activities have been governed by Decree 04-069/PR of June 22, 2004.

55. The insurance sector is much under-developed and includes only six companies with activities primarily limited to vehicle insurance and travel insurance policies. The companies do not issue life insurance policies, but current law does prohibit them from doing so. The volume of activity of these companies is very limited to the extent that each company issues an average of between 15 and 25 insurance policies per month, charging premiums of between 50,000 and 100,000 CFs (100-200 euros).

56. There are no authorized foreign exchange offices in the Comoros. Exchange operations are carried out by commercial banks and, when exchanging against the euro, at the BCC counter. On the other hand, the mission was informed of an individual money changer operating without authorization. The BCC has sent him a warning advising him that exchange operations cannot be carried out without its authorization. The foreign exchange office sent a request of information to the BCC, but no formal authorization request.

57. There are three money transfer organizations in the Comoros. Two of them are backed by financial institutions and one operates as an independent entity.

58. There is no stock exchange sector in the Comoros.

Data on the Comorian Banking System

In millions of CFs (1 euro= 492 CF)

Table 1

Total Banking System Balance		
	2007	2008
Banks and financial institutions	30663	34907
IFDs	14821	17184
Total	45484	52091

Table 2

Total Banking System Credit		
	2007	2008
Banks and financial institutions	10676	15311
IFDs	4674	6287
Total	15350	21598

Table 3

Total Banking System Deposits		
	2007	2008
Banks and SNPSF	19230	24970
IFDs	12801	14320
Total	32031	39290

Table 4

Number of Banks and Financial Institutions

Type	Number
Banks	3
SNPSF	1
Mecks Union	11 funds
Sanduks Union	39 funds
Money transfer organizations	3

Table 5

FINANCIAL ACTIVITIES BY TYPE OF FINANCIAL INSTITUTION		
Type of financial activity (See Glossary of 40 Recommendations)	Type of financial institution performing this activity	AML/CFT regulation and control
1. Acceptance of deposits and other repayable funds from the public (including asset management)	Banks Microfinance institutions SNPSF	BCC BCC BCC
2. Lending (particularly consumer loans, mortgage loans, recourse or non-recourse factoring, financing of commercial transactions (including forfeiting))	Banks Microfinance institutions	BCC BCC
3. Money/value transfer (involving formal and informal sector financial activities, for example, alternative money remittance systems), but excluding natural or legal persons that send financial systems a message or use some other system to send funds)	Banks Money transfer organizations SNPSF	BCC BCC BCC
4. Issuing and managing means of payment (for example, credit and debit cards, checks, travelers' checks, money orders and bankers' drafts, electronic money)	Banks	BCC
5. Financial guarantees and commitments	Banks	BCC
6. Money and currency changing.	Banks & financial institutions Hotels	BCC -

1.4. Overview of the designated non-financial businesses and professions sector

59. Although casinos and real estate agents were already subject to AML/CFT due diligence requirements under the 2003 Ordinance, all DNFBPs are subject to them since promulgation of the 2009 Ordinance. Implementing regulations to make the mechanism effective are still pending with respect to casinos and dealers in precious metals and stones.

60. The DNFBP exist in the Comoros, but they are all characteristically undeveloped with little or no organization and control.

61. The legal profession is the most organized profession. Lawyers are appointed by the Minister of Justice and must take an oath before the Court of Appeals. A 2009 law organizes the profession and there is a national order. Lawyers on Grande Comore are organized in a bar. There is no lawyer on Mohéli. On Anjouan, there are four lawyers, but only two of them are recognized at the Union level. The other two are in an ambiguous situation as they took an oath before the Court of Appeals of Anjouan when it was not officially recognized by the Union. There are too few lawyers on Anjouan to organize a bar. The large majority of lawyers are defense lawyers, and legal counsel activity seems primarily associated with assisting and setting up foreign companies as well as providing legal advice on local taxation in particular.

62. There are three notaries on Grande Comore, two on Anjouan, and none on Mohéli. They are also appointed by the Minister of Justice and are not organized. On the island of Grande Comore, two of the three notaries are civil servants with the position of chief clerk.

63. There is only one casino located in Moroni. Another casino was located on Anjouan, but it is now closed. The casino in Moroni has only 15 slot machines in operation and its activity is limited, with daily turnover of less than €2,000.

64. The other professions are not organized or properly counted. Given that there is neither effective commercial registry nor any requirement to register with the Chamber of Commerce, the data collected by the mission are limited. Local advertising indicates that there are several firms providing accounting services; two companies providing real estate services in Moroni; and the mission found two company service providers. The precious stones and metals market does not include any wholesale traders. Various jewelers operate in the cities, but authorities do not consider them to be involved in cash transactions exceeding €15,000.

1.5. Overview of commercial law and mechanisms governing legal persons and arrangements

65. Comorian commercial law is broadly based on the French system. The provisions governing commercial obligations are provided by the Uniform Act on Commercial Law of April 17, 1987, which defines the rules and methods for registering the foreign and national commercial activities of natural and legal persons in a Commercial Registry, which also records entries for pledges and privileges. The Commercial Code also defines all commercial documents and contracts, as well as obligations relating to this commercial activity.

66. Legal entities are governed by the Uniform Act on the Law of Commercial Companies and Economic Interest Groups of April 17, 1997. The Companies Code defines the general, specific, and criminal provisions relating to commercial companies, classified into seven types of entities, as well as their respective requirements for creation, operation, and dissolution/liquidation: general partnerships (SNC), limited partnerships (SCS), limited liability companies (SARL), joint stock companies (SA), joint ventures, de facto companies, and economic interest groups (GIE).

67. Comorian legislation has no provisions regarding the creation of trusts or similar legal arrangements. However, in the context of the offshore sector developed on Anjouan up to 2008, the marketing of trusts established under the legal regime was indicated on the Internet site owned by the island's government (www.anjouangov.com).

68. The purpose of the Law on the Investment Code of August 31, 2007 is to promote jobs creation by setting up companies throughout the country, as well as to foster innovation and development in existing companies. This investment code provides an attractive legal framework, allowing unfettered foreign private investment in the country, as well as legal protection ensuring the right to transfer capital and income without any currency restriction and to countries freely chosen by the foreign investor. The respective legal provisions offer

special tax incentives for setting up in rural areas in order to promote the country's economic development.

69. A law on economic citizenship of November 27, 2008 supports and promotes foreign investment projects in the Union of the Comoros, allowing foreign investor applicants to seek Comorian citizenship by meeting the stipulated conditions, in addition to the advantages under the Investment Code.

1.6. Overview of strategy to prevent money laundering and terrorist financing

Strategies and priorities in the area of AML/CFT

70. Like any other country that is starting to set up a complete AML/CFT system, the Union of the Comoros needs training and strengthened capabilities for more rigorous implementation of the laws it has adopted. It should also be noted that the political situation among the islands of the Comoros meant that a different AML/CFT legal framework prevailed until recently. While the Union of the Comoros published its first AML/CFT Ordinance in 2003, the islands of Anjouan and Mohéli had introduced their own laws. In some aspects, this ran counters to the sharing of jurisdiction between the Union and the autonomous islands. The same applies to the island laws included criminal provisions and provisions referring to the regulation of financial institutions, although these areas fell within the jurisdiction of the Union. However, the 2009 Ordinance is in practice applicable throughout the Union of the Comoros and is the only AML/CFT legislation to which both the Union's authorities and the islands' authorities should refer from this point on.

71. The overall strategy of the Comoros for combating the financial aspects of organized crime remains to be established. The FIU steering committee seems to be the appropriate structure for defining the general guidelines for AML/CFT policy. This committee consists of the Ministers of Finance, Justice, Interior, and the Armed Forces.

Institutional framework for combating money laundering and terrorist financing

72. **The Financial Intelligence Unit (FIU)** is the principal body for combating money laundering and terrorist financing in the Comoros. It was created by the 2003 Ordinance but did not actually begin to operate until the second half of 2008 after the appointment of its members. The FIU is a single structure with three levels: a steering committee at the level of the Ministers of Finance, Justice, the Interior, and the Armed Forces; an operational division currently consisting of the directors of Customs, the National Directorate of Territorial Surveillance (DNST), the Gendarmerie, and the Prosecutor of the Republic; and a general secretariat provided by the BCC. The 2009 Ordinance expanded the tasks of the FIU which now seems to be simultaneously the national strategic guidelines body, the financial intelligence unit, and a judicial investigations unit empowered to use specific investigative techniques.

73. **The Central Bank of the Comoros (BCC)** is historically the major player in Comorian AML/CFT policy. It is the BCC that provided the language for the various laws, that appoints the general secretary of the FIU, and that is responsible for regulating and supervising a large segment of the professions subject to preventive measures.

74. **The National Directorate of Territorial Surveillance (DNST)**, under the authority of the Director of the Cabinet of the President of the Union, is divided into a directorate for combating terrorism and organized crime, a general intelligence directorate, the Interpol national central bureau, an immigration/emigration directorate, as well as administrative, financial, and logistical units, plus the secretariat. It has a total of 75 employees whose principal functions are to combat terrorism and organized crime. For this mission, the DNST has a Combined Anti-Drug Brigade (BRIMAD) consisting of personnel from the DNST, gendarmes, and customs agents; an Economic and Financial Brigade (BEF); and an Anti-Terrorism Unit (SLCT).

75. **The National Directorate for Government Documentation and Protection (DNDPE)** was created in 2005. Under the authority of the Director of the Cabinet of the President of the Union, the DNDPE is led by a police commissioner and is a combined entity that includes 35 members of the police and the gendarmerie, as well as civilian personnel. Its tasks are to search for and utilize intelligence relating to the security of the Union of the Comoros, to provide intelligence summaries to the authorities, and to prevent any national and transnational terrorist or criminal organization and enterprise.

76. **The Gendarmerie** is a component of the army, reporting to the Minister of Defense and the Director of the Cabinet of the President of the Union. It is responsible for public security and judicial police missions. With 600 military status gendarmes at the Union level, it is divided into three companies, one for each island, including ten judicial police brigades, four special brigades, and four squadrons, two of which are for the island of Grande Comores alone. Each of the special brigades has a specialized mission in a particular area: highway police, airport police, port police, and investigations police. On the island of Anjouan, there are about 180 gendarmes, and 120 of these are in the mobile squadron responsible for maintaining order, while the remaining 60 are divided into eight brigades, including the Judicial Police Officers (OPJ) for judicial investigations. On Mohéli, there are 80 gendarmes, divided between the judicial police and a mobile squadron.

77. Comorian **Customs** reports to the Ministry of Finance. There are 362 employees and an investigations unit but must call upon a police or gendarmerie OPJ to carry out certain actions, particularly searches. Customs agents work closely with the police and the gendarmerie, also present at airports, and within the Combined Anti-Drug Brigade. They are particularly concerned with AML/CFT provisions on the control of cross-border transfers of currency and bearer instruments.

78. **The Ministry of Foreign Affairs and Cooperation (MIREX)** is also active in the area of AML/CFT. It is an observer member of the operational division of the FIU.

Approach to risks

79. The approach to implementing the FATF Recommendations in financial institutions incorporates the idea of risk since promulgation of the Ordinance of March 6, 2009. Risk considerations have been incorporated in customer due diligence requirements. However, subject institutions in the financial and non-financial sector have work to do in incorporating the idea of risk as it is currently neither generally understood nor mastered.

80. In addition, the Comorian legal framework does not make provision for excluding or exempting certain financial institutions totally or partially from supervisory measures on the basis of low ML/FT risk.

Progress made since the last assessment

81. Prior to this mission, the Union of the Comoros has not been the subject of any assessment regarding AML/CFT performed by either the World Bank or the IMF, nor by an FSRB.

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and regulations

2.1. Criminalization of money laundering (R.1, R.2 and 32)

2.1.1. Description and analysis

Legal framework:

- Money laundering has been defined as a criminal offense since 2003. In effect, it was Ordinance No. 3-002/PR of January 29, 2003 on money laundering, confiscation, and international cooperation in relation to the proceeds of crime that first defined the offense of money laundering.
- A new and more comprehensive legal framework in the area of money laundering and the FT was established by Ordinance No. 09-002/PR on money laundering, financing of terrorism, confiscation, and international cooperation in relation to the proceeds of crime. Article 64 of this Ordinance provides that all earlier provisions not contrary to the current Ordinance, particularly Ordinance No. 03-002/PR of January 23, 2003, remain in effect. The Ordinance entered into effect 15 days after the signature by the

President of the Union. Comorian authorities informed the mission that a law containing the same provisions as the 2009 Ordinance was adopted by the Union parliament on April 28, 2009. This law had not yet been published in the Official Gazette at the time of the on-site visit. (For more details about the adoption of laws process, please refer to paragraph 19).

Criminalization of money laundering (c.1.1 Physical and material elements of the offense)

82. The criminalization and penalization of money laundering were introduced by Ordinance No. 3-002/PR of January 29, 2003 on money laundering, confiscation, and international cooperation in relation to the proceeds of crime. This Ordinance covers the material elements of conversion, transfer, concealing, disguising, acquisition, possession, and use.

83. Ordinance No. 09-002/PR on money laundering, financing of terrorism, confiscation, and international cooperation in relation to the proceeds of crime is more explicit, adding the terms funds and funds resulting from predicate criminal offense.

84. Thus, Article 1 of the 2009 Ordinance defines money laundering as:

- (a) the conversion or transfer of property or funds for the purpose of concealing or disguising the illegal origin of said property or funds or assisting any person involved in the commission of a predicate offense to evade the legal consequences of his actions;
- (b) the concealment or disguising of the nature, origin, location, disposition, movement, or actual ownership of property or funds resulting from a predicate criminal offense;
- (c) the acquisition, possession, or use of property by anyone who knows, suspects, or should have known that said property or funds constitute the proceeds of crime in the sense of this Ordinance.

85. Money laundering is criminalized in accordance with the Vienna and Palermo Conventions with respect to the material elements of the offense.

Types of property to which the offense of money laundering is applicable (c.1.2 and c.1.2.1)

86. The offense of money laundering applies to all types of property or funds regardless of their value. In effect, Article 2(B) of the 2009 Ordinance, broader than Article 1-1-2(B) of the 2003 Ordinance, defines the terms property and funds as “all types of assets, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in,

such property, including, but not limited to, bank credits, travelers checks, bank checks, money orders, shares, securities, bonds, drafts, or letters of credit.

87. As this definition is sufficiently broad, according to Article 2(A) the offense of money laundering applies to all types of property or economic benefits that may be directly or indirectly drawn from any crime or offense.

88. According to Ordinance No. 09-002/ PR, it is not necessary for someone to have been convicted of a predicate offense in order to prove that property constitutes the proceeds of a crime or an offense. In effect, Article 37 titled “The predicate offense” provides that “the provisions of Title IV apply even when the perpetrator of the predicate offense is unknown and would not be prosecuted or convicted, or in the absence of a condition for taking legal action to prosecute said money laundering offense, or even in the case of self-laundering.”

Scope of predicate offenses (c.1.3) threshold approach for predicate offenses (c.1.4)

89. Article 1-1-1(c) of the 2003 Ordinance referred to “the proceeds of crime” and Article 1-1-2(A) defined the latter as “any property or economic advantage drawn directly or indirectly from any crime or offense.” Article 1(c) of Ordinance 09- 002/PR is clear and refers to crimes and offenses without limitation. This qualification of crime or offense makes it possible to cover a very broad range of predicate offenses.

90. Analysis of the compliance of Ordinance 09-002/PR with FATF Recommendation 1 on this point requires an analysis of Law No. 082 P/A.F- Law 95012/AF of the Penal Code (crimes and offenses) and Law No. 81/007 of the Code of Minor Offenses, in order to determine whether the 20 categories of serious offenses designated by the FATF constitute “crimes or offenses” under Comorian law and are, as such, predicate offenses to money laundering.

91. The PC and the Minor Offenses Code adopt a tripartite division of offenses based on the seriousness of the penalty incurred: crimes, offenses, and minor offenses.

92. Article 1 of the PC provides that “violations punished by law with *peines de police* (misdemeanor: imprisonment for short periods, fines, confiscation) are minor offenses; violations punished by law with *peines correctionnelles* (imprisonment for up to five years, fines) are offenses; and violations punished by law with *peines afflictives et infamantes* (penalties involving corporal punishment and loss of civil rights) are crimes.”

93. Penalties in criminal matters involve corporal punishment and loss of civil rights, and loss of civil rights only. These penalties include death, penal servitude for life, penal servitude for a specific period, and criminal detention (Article 7 of the PC). The penalty that involves the loss of civil rights only is called *degradation civique* (Article 8 of the PC). Correctional penalties are imprisonment for a specific period in a correctional facility, a prohibition on the exercise of certain civic, civil, and family rights, and fines (Article 9 of the

PC). An injunction banning the convicted person from specific places, fines, special confiscation whether of the body of the crime when the convicted person is the owner, or things produced by the crime, or things used or intended to be used in the commission of the crime are penalties common to criminal and correctional matters (Article 11 of PC). *Peines de police* include imprisonment, fines, and confiscation of certain items, although imprisonment may not be for less than one day or more than one month, except in the case of a repeat offense (Articles 1 and 2 of the Code of Minor Offenses).

94. The following table shows the list of serious predicate offenses to money laundering designated by the FATF and lists the violations and penalties incurred under Comorian criminal law.

Table 6

FATF Serious Offenses	Criminal Law of the Union of the Comoros: “Crimes and Offenses” and Penalty Incurred in Length of Prison Term
Participation in an organized criminal group and racketeering	Criminal association Article 236 of the PC, penal servitude for 10 to 20 years
Terrorism, including terrorism financing	Ordinance 09-002/PR – Not a predicate offense to money laundering, 3-20 years in prison.
Trafficking in human beings	Not criminalized.
Migrant smuggling	Not criminalized.
Sexual exploitation	Articles 322 to 327 of the PC: promotion of debauchery – procuring, 6 months to 3 years
Narcotics trafficking	Article 328 of the PC, 1-10 years in prison. This definition is not consistent with that in the 1988 Vienna Convention.
Weapons trafficking	Article 301 of the PC, 3 months to 1 year in prison. “anyone who has manufactured or sold any weapon of whatever kind that is prohibited by law and regulation, shall be punished...”
Trafficking in stolen goods	Theft (without trafficking) Article 363 to 373 of the PC, penal servitude for 5 to 20 years.
Corruption	Article 158 et seq. of the PC; 2-10 years in prison.
Fraud and swindling	Article 374 et seq. of the PC; 1-5 years in prison.
Counterfeiting of currency	Article 118 et seq. of the PC; 1-5 years in prison.
Counterfeiting and piracy of products	Article 124 et seq. of the PC; 2-5 years and penal servitude for life.
Environmental crimes	Not criminalized.
Murder	Article 308 et seq. of the PC, 5-10 years of penal

	servitude – life sentence, death sentence.
Kidnapping, illegal restraint, and hostage taking	Article 345 et seq. of the PC; kidnapping of minors; penal servitude for 5-10 years. Article 333 et seq. of the PC; penal servitude for 10-20 years – penal servitude for life. Abduction of adults and hostage taking not criminalized.
Robbery or theft	Theft (without trafficking) Article 363 to 373 of the PC, penal servitude for 5-20 years.
Smuggling	Not criminalized.
Extortion	Threats, Articles 289 to 292 of the PC; 2-5 years in prison.
Forgery	Article 136 et seq. of the PC; 5-10 years in prison.
Piracy	Not criminalized.
Insider trading and market manipulation	Not criminalized.

95. Certain essential predicate offenses to money laundering designated by the FATF are not cited in the Penal Code or in special texts. These include human trafficking and smuggling of migrants, trafficking in stolen goods, environmental crimes, abduction of adults and hostage taking, smuggling, piracy, as well as insider trade and market manipulation offenses (given that there is no financial market in the Comoros at present).

96. It should be noted that other offenses are criminalized, but their definitions are very strict. This is particularly true of trafficking of narcotics and psychotropic substances, for which the definition is not consistent with the definition in the 1988 Vienna Convention, and participation in organized crime, for which the definition is not consistent with the Palermo Convention against Transnational Organized Crime.

97. These crimes occur frequently in the Comoros and the failure to criminalize them represents a significant weakness in the country's AML/CFT mechanism.

Crimes committed outside the country (c.1.5)

98. Criminalization covers crimes committed in another country that constitute a violation not only in that country but in the Comoros as well. The final paragraph of Article 1-1-2 of the 2003 Ordinance presents the principle in these terms: “in order to serve as grounds for money laundering proceedings, a predicate offense committed abroad must be characterized as a criminal offense in the country where it was committed and in the law of the Union of the Comoros, except as otherwise agreed.” This provision was not reiterated in the 2009 Ordinance but still remains in effect since Article 64 of the 2009 Ordinance provides that all earlier provisions not contrary to those of the 2009 Ordinance, particularly the 2003 Ordinance, remain in effect.

Application of the offense of money laundering to persons committing the predicate offense (c.1.6)

99. Under Article 37 of Ordinance 2009-002/PR, the perpetrator of the predicate offense may also be prosecuted for the offense of money laundering. In addition, Article 37 of the 2009 Ordinance goes further by introducing the idea of “self-laundering.”

Ancillary offenses (c.1.7)

100. Comorian law makes provision for appropriate ancillary offenses to the offense of money laundering. Article 1-1-2, item G of the 2003 Ordinance defines the perpetrator as anyone who has participated in the offense whether as the principal perpetrator, a co-perpetrator, or an accomplice. Complicity is thus punished in the same way as the primary offense.

101. In addition, Article 4-2-1 paragraph 2 and Article 4-2-2 of the 2003 Ordinance punish complicity through aiding, advising or inciting, associating or conspiring for the purpose of committing money laundering. This is also the sense of Articles 30 and 31 of the 2009 Ordinance, which provide that “Attempted money laundering or complicity by aiding, advising, inciting, or assisting are punished in the same way as the consummated offense (Article 30, paragraph 2); participation or association or conspiracy for the purpose of committing offenses covered under Article 30 shall be punished with the same penalties.”

102. However, no provision is made for offenses related to the offense of money laundering, particularly assisting (even though attempted assistance is criminalized), facilitating, and advising the commission of the offense.

Additional element - Money laundering nature of conduct occurring in another country that does not constitute an offense in that country (1.8)

103. Article 1-1-2 of the 2003 Ordinance provides that “In order to serve as grounds for money laundering proceedings, a predicate offense committed abroad must be characterized as a criminal offense in the country where it was committed and in the law of the Union of the Comoros, except as otherwise agreed.” This seems to exclude the possibility that the proceeds of crime obtained following conduct occurring in another country that does not constitute an offense in that other country, but that would constitute a predicate offense were it committed in the Comoros, would constitute a money laundering offense.

104. The authorities informed the mission that Article 689 of the French CCP of 1972, which is still in effect in the Comoros, covers this possibility. This article provides that “any *Comorian* citizen who outside of the territory of the Republic is deemed guilty of conduct characterized as a crime punishable under *Comorian* law may be prosecuted and judged by *Comorian* jurisdictions.” The aforementioned article adds that “any *Comorian* citizen who outside of the territory of the Republic is deemed guilty of conduct characterized as a crime

under *Comorian* law may be prosecuted and judged by *Comorian* jurisdictions if the conduct is punished by the law of the country where it was committed.”

105. It is obvious that the CCP does not cover this possibility. In addition, Article 50 of the 2009 Ordinance on extradition provides that it will only be carried out when provision is made for the offense leading to extradition or a similar offense in the legislation of the requesting state and the Union of the Comoros.

Criminal liability of natural persons (c.2.1)

106. The definition of the criminalization of money laundering takes into account the intentional element of the offense. Article 1 of the 2009 Ordinance specifies that the person must know, suspect, or should have known that the property or funds constitute the proceeds of a crime or an offense.

Intentional element (c.2.2)

107. The final paragraph of Article 1 cited above expressly provides that “the necessary knowledge, intention, or motivation as an element of the offense may be inferred from objective factual circumstances.”

108. The PR showed the mission a conviction for possession of stolen goods, a *délit de conséquence* [offense resulting from the commission of a predicate offense] where it is equally difficult to prove the element of intent. This decision demonstrates that judges may infer the intentional element from objective factual circumstances and on the basis of their innermost conviction.

Criminal liability of legal persons (c.2.3)

109. Under the terms of Article 32 of the 2009 Ordinance, “legal persons other than the State, on behalf of which or for the benefit of which a resulting offense was committed by one of their agencies or representatives shall be punished with a fine at a rate equal to five times the fines specified for natural persons, without prejudice to the conviction of the latter as perpetrators or accomplices in the crime.”

110. Legal persons may also receive a sentence of:

- A permanent prohibition or a prohibition of no more than five years on participating directly or indirectly in certain professional activities;
- Permanent shutdown or closing for no more than five years of their facilities when used in the commission of the crime;
- Dissolution when they were created to commit the crimes;

- Posting and publication of the decision in the print media or by any other audiovisual means of communication.”

Additional sanctions (c.2.4)

111. Making legal persons subject to criminal liability in the area of money laundering does not preclude the possibility of parallel criminal, civil, or administrative proceedings for criminally liable legal persons (Articles 32 to 34 of the 2009 Ordinance).

Sanctions with respect to money laundering (c.2.5)

112. The Ordinances provide suitable coercive measures, and criminal, civil, and administrative sanctions. Thus, natural persons guilty of a money laundering offense are punished with three to ten years in prison and a fine of up to five times the amount of the laundered sums. Attempted money laundering is subject to the same penalties (Article 30 of the 2009 Ordinance).

113. Article 31 of the 2009 Ordinance also imposes the same penalties on association and conspiracy for the purpose of committing money laundering offenses.

114. These penalties are doubled under Article 35 of the 2009 Ordinance, which stipulates that the penalties incurred under Articles 30 and 31 may be doubled when: (i) the predicate offense is punished by imprisonment for a term exceeding that provided under the aforementioned articles regarding money laundering; (ii) the offense is committed in the course of a professional activity (according to the authorities, this covered the designated professions); and (iii) the offense is committed in the context of an organized criminal activity. A criminal organization was defined under Article 1-1-2 item D of the 2003 Ordinance as “any conspiracy or association organized for the purpose of committing crimes or offenses.” The definition of a criminal organization was not repeated in the 2009 Ordinance but still remains in effect.

115. Penalties are provided for actions connected to money laundering. Additional optional penalties (such as bans on exercising a profession) and mandatory penalties (confiscation) are also provided.

116. Extenuating circumstances may also be applied to the perpetrator of a money laundering offense, but this follows the common law regime provided by national legislation.

117. Sanctions applicable to legal persons are also provided by the 2009 Ordinance (Articles 32 to 34) – see c.2.3. The criminal liability of legal persons does not preclude the criminal liability of natural persons and is not an obstacle to it (Article 32 of the 2009 Ordinance). Thus, cumulative convictions of natural persons and legal persons are possible since one does not exclude the other.

118. Finally, the different criminal sanctions provided seem proportionate. If they are imposed by Comorian jurisdictions, as provided in the legislation, these sanctions may prove to be effective and dissuasive.

Analysis of effectiveness

119. The criminalization of money laundering by Comorian legislation covers the elements constituting the offense of money laundering, namely and in particular the physical, material, and intentional elements of the offense, as provided in the Vienna Convention (Article 3-1 (b) and (c)) and the Palermo Convention (Article 6-1). However, certain predicate offenses to money laundering designated by the FATF are not cited in the Penal Code or in special legislation. These include human trafficking and smuggling of migrants, trafficking in stolen goods, environmental crimes, abduction of adults and hostage taking, smuggling, and piracy, as well as insider trading and market manipulation.

120. After completing their law studies, five or six Comorian judges, admitted on a competitive basis, are trained each year by the National School for Magistrates of Madagascar. Training lasts for two years, after which the judges return to the Comoros to be appointed and assigned to their posts by the President of the Republic. With the exception of a few judges who have benefited from training at the French National School for the Judiciary in Bordeaux, most judges have not pursued specialized training in the area of money laundering, terrorist financing, or financial investigation. The budgets allocated to the courts are inadequate, particularly on Anjouan and Mohéli. There is no budget for prison administration, which in most cases forces judges to release prisoners after they are convicted.

121. The provisions adopted in 2009 seem generally consistent with the standards, but there is a total lack of effective implementation, even for the provisions of the 2003 Ordinance. The absence of material elements associated with investigations and convictions in the area of money laundering since 2003 shows that the AML mechanism has not been introduced and is still not effective.

Statistics (application of R.32)

122. For the moment, no money laundering case has been handled in the Comoros. However, statistical data relating to investigations and proceedings for offenses and crimes for 2008 were provided by the PR before the TPI in Moroni. These statistics are not available for the islands of Anjouan and Mohéli.

123. Crimes and offenses reported (Grande Comore - 2008).

Table 7

Crimes and offenses	Number
Abuse of trust	75
Counterfeiting of bank bills	5
Holding counterfeit currency	1
Corruption	1
Diversion of funds	2
Diversion	70
Fraud	46
Extortion	1
Kidnapping of minors	3
Forgery	3
Forgery and use of forged documents	16
Use of counterfeit bills	1
Importing cannabis	19
Selling cannabis	4
Possessing and selling cannabis	5
Possession of stolen goods	11
Influence peddling	6
Identity theft	16
Theft	353

124. With the exception of the data provided by the PR in Moroni, statistical data relating to investigations, prosecutions, and convictions in criminal matters are not available.

2.1.2. Recommendations and comments

- Criminalize the predicate offenses to money laundering designated by the FATF such as human trafficking and smuggling of migrants, trafficking in stolen goods, environmental crimes, abduction of adults and hostage taking, smuggling, piracy, as well as insider trading and market manipulation, in the Penal Code or in special legislation.
- Expand the criminalization of trafficking in narcotics and psychotropic substances, and participation in organized crime to include all the material elements in accordance, respectively, with the 1988 Vienna Convention and the 2000 Palermo Convention against Transnational Organized Crime.
- Make provision for offenses related to money laundering not provided for in the 2009 Ordinance, particularly assisting, facilitating, and advising in the commission of the offense.
- Training for everyone involved in the AML/CFT mechanism seems necessary in order to better define the elements that constitute the offense and the conditions for establishing proof, particularly with respect to the intentional element. Such training should also address the questions of investigations, prosecutions, and the imposition of the various sanctions.
- Improve the resources of judges in order to give them greater autonomy and independence.

2.1.3. Compliance with Recommendations 1 and 2

	Rating	Summary of factors underlying rating
R.1	PC	• Some predicate offenses designated by the FATF are not criminalized under Comorian law and thus are not covered by the money laundering offense. Other predicate offenses are defined too strictly. • Some ancillary offenses to the offense of money laundering are not criminalized, particularly assisting, facilitating, and advising in the commission of the offense. • In the absence of specific cases, it is difficult to measure the effective application of the relevant provisions.
R.2	PC	• In the absence of specific cases, it is difficult to measure the effective application of the relevant provisions.

R.32	NC	• Statistical data are not available.
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2.2. Criminalization of terrorist financing (SR.II and R.32)

2.2.1. Description and analysis

125. Legal framework: The legal mechanism for combating money laundering and terrorist financing is based on Ordinance No. 3-002/PR of January 29, 2003 on money laundering, confiscation, and international cooperation in relation to the proceeds of crime (2003 Ordinance) and Ordinance No. 9-002/PR on money laundering, financing of terrorism, confiscation, and international cooperation in relation to the proceeds of crime (2009 Ordinance).

126. A national workshop for ratification and incorporation in legislation of universal instruments against terrorism and relevant SC resolutions was organized by the United Nations Office on Drugs and Crime (UNODC) and held from January 15 to 17, 2008. The authorities informed the mission that, following the workshop, they drew up a draft law designed to expand the scope of application of the definition of terrorism and to allow freezing without delay of terrorists' funds and other property, of those who finance terrorism, and terrorist organizations, consistent with the United Nations resolutions on the suppression and prevention of terrorism. The draft law was submitted to the National Assembly but has not been passed.

Offense of FT (c.II.1)

127. Article 1(d) of the 2009 Ordinance introduced the criminalization of terrorist financing as follows: "any conduct that constitutes an act of terrorist financing or the attempt to commit terrorist financing as defined below is akin to money laundering: financing a terrorist enterprise by providing, obtaining, managing funds, assets, or property of any kind or by providing advice to that end, with the intent that these funds, assets, or property will be used or knowing that they are meant to be used, in whole or in part, for the purpose of committing a terrorist act, regardless of whether such act occurs." This language likens terrorist financing to money laundering.

128. Again, Article 1-1-1 of the 2003 Ordinance defines a terrorist act as "any offense involving an enterprise, individual, or group which is committed for the purpose of seriously disrupting public order through intimidation or terror." This definition was reiterated and refined in Article 1, paragraph 1 of the 2009 Ordinance since it covers:

- "Any act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict (Article 1, paragraph 2); and

- Any act the context of which is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act. (Article 1, paragraph 3)

129. The second and third paragraphs of Article 1 mentioned above are consistent with Article 2.1.b of the 1999 International Convention for the Suppression of the Financing of Terrorism (New York Convention). In addition, the first paragraph defining a terrorist act as any offense relating to an enterprise, individual, or group that is committed for the purpose of seriously disrupting public order through intimidation or terror covers the acts constituting offenses in this regard, according to the definition of one of the treaties listed in the Annex to the Convention.

130. The criminalization of terrorist financing should be consistent with the New York Convention. This approach requires that the Union of the Comoros criminalize in its criminal law the terrorist offenses as defined in the treaties listed in the annex to the FT Convention. The Union of the Comoros has not signed and ratified all these conventions. The draft law mentioned above seeks to transpose the provisions of these conventions, particularly by criminalizing the indicated “terrorist acts.”

131. A summary of the 13 conventions and three amendments on combating terrorist financing, indicating the date of adherence of the Union of the Comoros, is shown below:

- 1963 Convention on Offenses and Certain Other Acts Committed on Board (Tokyo Convention) (aviation safety); Adherence 5/23/1991.
- 1970 Convention for the Suppression of the Unlawful Seizure of Aircraft (Hague Convention) (diversion of aircraft); Adherence 8/1/1991.
- 1971 Convention for the Suppression of Unlawful Acts Against the Safety of Civilian Aviation (Montreal Convention) (acts of sabotage such as bombing on board aircraft in flight); Adherence 8/1/1991.
- 1973 Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons (attacks on senior government officials and diplomats); Adherence 9/25/2003.
- 1979 International Convention Against the Taking of Hostages; Adherence 9/25/2003.
- 1980 Convention on the Physical Protection of Nuclear Material (unlawful acquisition and use of nuclear materials); Adherence 5/18/2007.
- Amendment to the Convention on the Physical Protection of Nuclear Material; Adherence 3/12/2007.

- 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementing the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation; Adherence 3/6/2008.
- 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (unlawful activities aboard ships); Adherence 3/6/2008.
 - o 2005 Protocol to the Convention for the Suppression of Unlawful Acts Against the Security of Maritime Navigation; *no adherence*.
- 1988 Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (unlawful activities targeting remote fixed platforms); Adherence 3/10/2008.
 - o 2005 Protocol to the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf; *no adherence*.
- 1991 Convention on the Marking of Plastic and Sheet Explosives for the Purposes of Detection (chemical marking to facilitate detection of plastic explosives, for example, to combat sabotage aboard an aircraft); *no adherence*.
- 1997 International Convention for the Suppression of Terrorist Bombings; Adherence 9/25/2003.
- 1999 International Convention for the Suppression of the Financing of Terrorism; Adherence 9/25/2003.
- 2005 International Convention for the Suppression of Acts of Nuclear Terrorism; *No adherence*.

132. Article 2(C) of the 2009 Ordinance defines the term “terrorist” as designating any person who attempts to commit terrorist acts by any means, directly or indirectly, unlawfully and willfully, who participates as an accomplice in terrorist acts, who organizes terrorist acts or instructs others to commit them, who contributes to the commission of terrorist acts by a group acting with a common purpose, when the contribution is intentional and aims to carry out the terrorist act or is provided with the knowledge of the group’s intention to commit a terrorist act.” This definition is consistent with Article 2, paragraph 1 of the 1999 International Convention for the Suppression of the Financing of Terrorism.

133. Thus, the definition of terrorist financing covers only the terrorist act to the exclusion of terrorist organizations and the terrorist even though this latter concept, as indicated above, was defined in Article 2 of the 2009 Ordinance within being included in the definition of financing. Thus, the term “terrorist” even if it is not expressly cited in the definition in

Article 1 on the financing of terrorism, is made explicit in Article 2 of the 2009 Ordinance. In addition, Article 1 does not clearly address the direct or indirect nature of the financing.

134. Terrorist financing offenses apply to all types of funds. In effect, under the terms of Article 1-1-2, item B: “‘asset’ indicates all types of assets, whether corporeal or incorporeal, movable or immovable, tangible or intangible, as well as the legal instruments or documents attesting to the ownership of these assets or the rights thereto.”

135. This definition has been supplemented by Article 2-B of the 2009 Ordinance. In effect, it provides that the term property and funds designates “all types of assets, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such property, including, but not limited to, bank credits, travelers checks, bank checks, money orders, shares, securities, bonds, drafts, or letters of credit.” This latter definition is more consistent with Article 1 of the International Convention for the Suppression of the Financing of Terrorism.

136. However, neither Article 1 on the definition of terrorist financing nor Article 2 on the definition of the terms “funds” and “property” mention the lawful or unlawful nature of the funds or property. The Ordinance remains silent on this question.

137. Under the terms of Article 1(d), it is not necessary that the funds were actually used to commit the offense since it is “independent of the occurrence” of the terrorist act. An attempt to commit terrorist financing is punishable in the same way as the actual offense.

138. Complicity, conspiracy, aiding, assisting, and association are not established as a criminal offense in the sense of the International Convention for the Suppression of the Financing of Terrorism. Nonetheless, in Article 1- 1- 2(D), a criminal organization is defined as being any conspiracy or association organized for the purpose of committing crimes or offenses.

Predicate offense to money laundering (c.II.2)

139. In Article 1 of the Ordinance, terrorist financing is not established as a predicate offense to money laundering. Rather it is likened to money laundering.

Territorial jurisdiction (c.II.3)

140. The last paragraph in Article 1-1-2 of the 2003 Ordinance establishes the following principle: “in order to serve as grounds for money laundering proceedings, a predicate offense committed abroad must be characterized as a criminal offense in the country where it was committed and in the law of the Union of the Comoros, except as otherwise agreed.”

141. In that the offense of terrorist financing is likened to money laundering by Comorian legislation, the same provisions should be considered applicable to both offenses under a single legal system.

142. Given that FT offenses are not criminalized in accordance with the New York Convention, and only terrorist acts to the exclusion of the terrorist organization and the terrorist are covered, FT offenses could not apply to a person accused of having committed these offenses, regardless of the nationality of that person or the country in which the terrorists or terrorist organizations are located or in which the terrorist acts occur or will occur.

Intentional element (application of c.2.2 of R.2)

143. The final paragraph of Article 1 of the 2009 Ordinance expressly provides that “the necessary knowledge, intention, or motivation as an element of the offense may be inferred from objective factual circumstances.”

Liability of legal persons (application of c.2.3 and c.2.4 of R.2)

144. Since the offense of terrorist financing is likened to money laundering by Comorian legislation, the same provisions should be considered applicable to both offenses under a single legal system. Thus, under the terms of Article 32 of the 2009 Ordinance “legal persons other than the State, on behalf of which or for the benefit of which a resulting offense was committed by one of their agencies or representatives, shall be punished with a fine at a rate equal to five times the fines specified for natural persons, without prejudice to the conviction of the latter as perpetrators or accomplices in the crime. (see c.2.3 and c.2.4 for more details).

Sanctions for the FT (application of c.2.5 of R.2)

145. Since the offense of terrorist financing is likened to money laundering by Comorian legislation, the same provisions should be considered applicable to both offenses under a single legal system (see c.2.5).

Statistics (application of R.32)

146. There is apparently no mechanism for assessing the implementation of the legislation relating to the criminalization of terrorist financing. No investigation, proceeding, or conviction for cases of terrorist financing has been carried out in the Comoros.

2.2.2. Recommendations and comments

- The definition of terrorist financing covers only the terrorist act to the exclusion of the terrorist organization and the terrorist. In addition, Article 1 does not clearly indicate the direct or indirect nature of the financing. Comorian authorities should amend the 2009 Ordinance to criminalize FT offenses in accordance with SR.II of the

FATF and the 1999 United Nations Convention for the Suppression of the Financing of Terrorism.

- The definition of the terms “funds” and “property” should specify the legitimate or illegitimate nature of the funds or property.
- Complicity, conspiracy, aiding, assisting, and association should be established as such as criminal offenses in the sense of the International Convention for the Suppression of the Financing of Terrorism.
- Comorian authorities should, as quickly as possible, incorporate in domestic law the 13 conventions and protocols and the amendments relating to combating terrorism, in particular should establish as criminal offenses the terrorist acts defined by these conventions, and should provide the respective penalties by adopting draft laws on combating FT.
- Terrorist financing should be established as a predicate offense to money laundering.
- The 2009 Ordinance should expressly provide that FT offenses should apply, independently of the issue of knowing whether the person accused of having committed the offenses is a national of the Union of the Comoros or another country in which terrorists or terrorists organizations are located or in which terrorist acts occur or will occur.

2.2.3. Compliance with Special Recommendation II and R.32

	Rating	Summary of factors underlying rating
SR.II	PC	• FT offenses are not criminalized in accordance with the 1999 United Nations Convention for the Suppression of the Financing of Terrorism. The definition of terrorist financing covers only the terrorist act to the exclusion of the terrorist organization and the terrorist. • The definition of the terms “funds” and “property” are incomplete. • Complicity, conspiracy, aiding, assisting, and association are not established as such as a criminal offense. • Terrorist financing is not established as a predicate offense of money laundering. • No provision to define territorial jurisdiction. • In the absence of specific cases, it is difficult to measure the effective

		application of the relevant provisions.
R.32	NC	• No case of terrorist financing has been processed by law enforcement authorities.

2.3. Confiscation, freezing, and seizure of the proceeds of crime (R.3 and 32)

2.3.1. Description and analysis

147. Legal framework: The legal system on the confiscation, freezing, and seizure of the proceeds of crime in the area of money laundering is presented in the principal legislation below:

- Ordinance No. 3-002/PR of January 29, 2003 on money laundering, confiscation, and international cooperation in relation to the proceeds of crime.
- Decree No. 03-25/PR on the Financial Intelligence Unit.
- Ordinance No. 09-002/PR on money laundering, financing of terrorism, confiscation, and international cooperation in relation to the proceeds of crime.

Confiscation of property that constitutes proceeds generated by the commission of any ML, FT, or other predicate offense including property of corresponding value (c.3.1)

148. Article 38 of the 2009 Ordinance on confiscation establishes the confiscation regime as follows: “In the case of conviction for an actual or attempted money laundering offense, confiscation shall be ordered with respect to:

- Property involved in the offense, including income and other benefits derived therefrom, from anyone to whom they belong, unless the owner establishes that he has acquired them by actually paying a fair price or in return for providing services of equal value or in any other legal manner, and that he was unaware of the illegal origin thereof.
- Property used to commit the offense.
- Property belonging directly or indirectly to someone convicted of money laundering, his spouse, common-law partner, or children, unless the interested parties establish the lawful origin thereof.”

Confiscation of property deriving from the proceeds of crime (c.3.1.1 application of c.3.1)

149. The terms of the Ordinance indicate that confiscation is a mandatory additional penalty. Provision is made for confiscation of property of corresponding value when the property to be confiscated cannot be shown.

150. Confiscation from third parties and even from heirs and associates is possible, unless they establish that they were unaware of the illegal origin.

151. Article 328 of the Penal Code also gives courts the power to (i) confiscate and immediately and publicly destroy seized psychotropic substances; (ii) confiscate sums of money obtained from prohibited transactions, for the benefit of the public treasury; and (iii) confiscate the means of transport when the owner knowingly authorized or merely tolerated their use for prohibited purposes.

Provisional measures to prevent any transfer of property subject to confiscation (c.3.2)

152. Article 29 of the 2009 Ordinance on precautionary measures provides that “the judicial authority competent to order precautionary measures may order such measures, either *ex officio* or at the request of the Office of the Public Prosecutor or a competent administration, including the freezing of funds and financial transactions involving property, of whatever type, that is subject to seizure or confiscation.”

153. The examining magistrate and the court thus seem to have the power to prevent or invalidate any action that could prejudice the authorities’ ability to recover property subject to confiscation.

154. In addition, Article 4-2-11 declares void any legal instrument executed for a consideration or free of charge between living persons or due to death the purpose of which is to shield property from confiscation measures.

155. Article 13 of the 2009 Order allows the FIU, based on the gravity or urgency of the matter, to oppose the execution of an operation for a period of no more than 48 hours. The president of the territorially competent first instance jurisdiction may, at the request of the FIU, order the freezing of the operation and may issue an order to sequester funds, accounts, securities, or amounts for an additional period of no more than fifteen days, beyond which a criminal proceeding may be opened.

Initial application to freeze or seize property subject to confiscation to be made *ex parte* or without prior notice (c.3.3)

156. In addition, Article 29 of the 2009 Ordinance on precautionary measures provides that “the judicial authority competent to order protective measures may, *ex officio* or at the

request of the Office of the Public Prosecutor or a competent administration, order such measures, including the freezing of capital and financial transactions relating to property, regardless of its nature, that is subject to seizure or confiscation,” thus permitting seizure without prior notification.

Identifying and tracing the source of property that is or may be subject to confiscation (c.3.4)

157. Article 19 of the 2009 Ordinance provides that “the FIU may ask for and obtain from any public authority or natural or legal person indicated in Article 3 information and documents in accordance with Article 15, in the context of investigations undertaken following a report of suspicions. It may also exchange information with authorities responsible for imposing the disciplinary sanctions provided in Article 33.”

158. Article 14 of the Ordinance gives judicial authorities, officials responsible for detecting and suppressing money laundering related offenses, and the FIU the right to inform each other of information and documents needed for investigations. However, the aforementioned Article 19 refers incorrectly to Article 15 instead of Article 14, which makes the FIU’s right to inform ineffective.

159. In addition, the FIU may share information with foreign counterpart units, subject to reciprocity. Moreover, law enforcement authorities, besides the entire traditional procedural arsenal (searches, hearings) have, according to the 2009 Ordinance, new investigative techniques such as the monitoring of bank accounts, tapping of telephone lines, etc. (Article 25 of the 2009 Ordinance), undercover operations, and controlled deliveries (Article 26 of the 2009 Ordinance).

160. Finally, banking or professional secrecy, and even lawyer-client privilege, cannot be invoked in order to refuse to provide information sought in the context of an investigation. However, Article 27 of the 2009 Ordinance refers incorrectly to Article 15 (instead of Article 14) and makes the inability to invoke banking and professional secrecy ineffective.

161. Due to the erroneous references in Articles 19 and 27, law enforcement authorities and the FIU do not have adequate powers to detect and trace the source of property that is or may be subject to confiscation or is suspected of being the proceeds of a crime.

Protection for the rights of bona fide third parties (c.3.5)

162. Article 38 of the 2009 Ordinance on confiscation protects property when the lawful origin thereof is established. It also protects the property of spouses and children under the same conditions.

163. Article 42 of the 2009 Ordinance on the disposition of confiscated property provides that “it remains encumbered, up to its value, by legally constituted property rights in favor of third parties.”

Steps to prevent or void actions prejudicing the authorities’ ability to recover property subject to confiscation (c.3.6)

164. Article 41 of the 2009 Ordinance voids any legal instrument executed for a consideration or free of charge between living persons or due to death the purpose of which is to shield property from confiscation measures.

Additional element – Provisions on: a) confiscation of the property of criminal organizations; b) confiscation mechanism activated in the absence of a criminal conviction; and c) confiscation of property when the alleged offender bears the burden of proving the lawful origin of the property (c.3.7)

165. Under Article 4-2-11 of the 2003 Ordinance, property that an organized criminal activity has the power to dispose of should be confiscated when such property is linked to the offense.

166. Comorian authorities informed the mission that there is no legislation governing civil forfeiture and it cannot, therefore, be considered.

167. Thus, there is nothing to indicate that property could be subject to confiscation without someone’s conviction, or that anyone could be required to demonstrate the lawful origin of their property.

Statistics (application of R.32)

168. The authorities informed the mission that they have no statistics on confiscation or seizure, given the lack of cases requiring the use of these procedures. The judicial authorities do not have a centralized statistical tool that would allow them to know the amount of assets frozen, seized, or confiscated for reasons related to money laundering or the principal predicate offenses.

169. Similarly, the authorities have not put into effect a mechanism that would provide knowledge of (i) proceeds generated by the commission of any money laundering, terrorist financing, or a predicate offense; (ii) instruments used to commit these offenses; or (iii) instruments intended to be used to commit these offenses and the methods used to manage them.

170. In the absence of statistics, the mission was unable to measure the effectiveness of the mechanism for freezing, seizure, or confiscation. According to the authorities, this situation is due to the recent nature of the legislation on money laundering.

2.3.2. Recommendations and comments

- The 2003 and 2009 Ordinances put into place a Comorian mechanism for freezing, seizure, and confiscation for offenses related to money laundering that is generally consistent with international standards. Nonetheless, Comorian authorities are urged to implement these provisions as quickly as possible.
- Correct erroneous references to Article 14 (instead of Article 15) in Articles 19 and 27, so that law enforcement authorities and the FIU will have adequate powers to detect and trace the origin of property subject to confiscation or that may be subject to confiscation or may constitute the proceeds of crime.
- Comorian authorities should provide a mechanism allowing them to know the value of sums seized for money laundering and how they are managed in order to measure the effectiveness of judicial seizure and confiscation measures and to calculate the amounts.

2.3.3. Compliance with Recommendations 3 and 32

	Rating	Summary of factors underlying rating
R.3	PC	• Due to inconsistent cross references in the relevant provisions, it is unclear whether law enforcement authorities have the powers to identify, detect and trace the origin of property subject to confiscation or that may be subject to confiscation or may constitute the proceeds of a crime. • Failure to implement freezing, seizure, and confiscation measures for money laundering offenses, making it impossible to assess their effectiveness in practice.
R.32	NC	• No statistics on seizure or confiscation of proceeds generated by the commission of these offenses, the instruments used to commit these offenses, as well as the instruments intended to be used to commit these offenses, or any predicate offense to money laundering.

2.4. Freezing of assets used to finance terrorism (SR.III)

2.4.1. Description and analysis

Legal framework:

171. The authorities informed the mission that there is a draft law incorporating the universal instruments against terrorism and relevant SC resolutions. The draft law was submitted to the National Assembly but has not been adopted.

Freezing of funds targeted by S/RES/1267(1999) (c.III.1)

172. The Ministry of Foreign Affairs and Cooperation (MIREX) receives the terrorist lists from the United Nations SC Committee created under S/RES/1267 (1999). Prior to the assessment mission, the BCC had sent the banks the list of persons targeted by Resolution 1267 only once. However, there are no specific and clear provisions or procedures for communicating these lists to the competent authorities in order to freeze terrorist funds or other property of persons targeted by the United Nations Al-Qaida and Taliban Sanctions Committee under the terms of S/RES/1267(1999).

Freezing of funds targeted by S/RES/1373(2001) (c.III.2)

173. Pursuant to paragraph 6 of Resolution S/RES/1373(2001), the Union of the Comoros has submitted two reports providing a survey of measures introduced to combat and prevent terrorism. Before the assessment mission, the BCC had sent the banks the list of persons targeted by Resolution 1373 only once.

174. However, there are generally no administrative measures allowing for the temporary seizure of assets based on mere suspicion. The provisions of the PC do not regulate the conditions for freezing or seizing funds used or intended to be used to commit terrorist acts. In addition, there are no specific provisions or procedures for freezing the funds of terrorists or other property of persons targeted within the framework of Resolution 1373. Moreover, the Union of the Comoros has not designated persons and entities whose funds or other property should be frozen.

Freezing actions initiated by other countries (c.III.3)

175. The mission did not obtain information on how the Union of the Comoros has implemented the aforementioned resolution and particularly on ways to cooperate in response to requests from foreign countries. It seems that there is no procedures for reviewing initiatives taken under other countries' freezing mechanisms and that would allow for actually putting them into effect. The mission has little information on the Union of the Comoros' ability to effectively respond to freezing requests received from foreign countries.

Application of c.III.1 to III.3 to funds or other assets controlled by designated persons (c.III.4)

176. In the absence of provisions or procedures for freezing funds under the terms of Resolutions 1267 and 1373, the application of these resolutions to property held jointly by designated persons is not practicable.

Communication with the financial sector (c.III.5)

177. There are no systems to inform the financial sector and/or the public at large regarding freezing measures taken or to be taken.

Instructions to financial institutions and other persons or entities (c.III.6)

178. The authorities have not provided clear instructions to financial institutions and other persons or entities that may be holding designated funds or other property concerning their obligation to take measures under freezing mechanisms.

Requests for delisting and unfreezing of funds (c.III.7); Procedures for unfreezing the funds of persons inadvertently affected by a freezing mechanism (c.III.8); Access to frozen funds to cover basic expenses (c.III.9); Procedures for challenging freezing with a view to having it reviewed by a court (c.III.10)

179. There are no procedures allowing someone whose funds or other property were frozen to challenge this measure with a view to having it reviewed by a Comorian court, nor any procedures for reviewing delisting requests of designated persons, nor to unfreeze funds or other property belonging to individuals or entities, particularly when they have been removed from the lists. Procedures for unfreezing funds or other property of persons inadvertently affected by a freezing mechanism are also non-existent.

180. There is no procedure authorizing access to funds or other property frozen under the terms of Resolution 1267 in order to cover expenses for the delisting process, in accordance with Resolution S/RES/1452(2002).

Freezing, seizure, and confiscation under other circumstances (application of c.3.1 to 3.4 and 3.6 of R.3, c.III.11)

181. The provisions of the 2009 Ordinance in the area of freezing, seizure, and confiscation may be applied in the area of freezing, seizure, and confiscation of terrorist-related funds or other property.

Protection of third party rights (c.III.12)

182. The provisions of the 2009 Ordinance ensure the protection of third parties acting in good faith (see above), but these provisions do not apply in the context of implementing Resolutions 1267 and 1373.

Implementation of obligations under SR.III (c.III.13)

183. No measure has been taken to ensure monitoring of compliance with pertinent laws, rules, or regulations governing the obligations under SR.III and to impose civil, administrative, or criminal sanctions in the case of non-compliance.

Additional element – Implementation of measures recommended in the Best International Practices paper (c.III.14)

184. The authorities have not implemented the measures recommended in the International Best Practices paper applicable to SR.III.

Additional element – Implementation of procedures authorizing access to frozen funds (c.III.15)

185. No procedure has been implemented to authorize access to funds or other property frozen pursuant to Resolution S/RES/1373(2001).

Analysis of effectiveness

186. Among the financial institutions and designated non-financial persons and companies met by the mission, only banks have reported having knowledge of the lists distributed by the authorities with the names of persons whose funds should be frozen. Some banks indicated they had received such information from the BCC only once, two months before the assessment mission.

2.4.2. Recommendations and comments

187. There is no mechanism for freezing funds pursuant to Resolutions 1267 and 1373, and such a mechanism should be put in place in Ordinance to:

- Make subject to freezing measures pursuant to Resolutions 1267 and 1373 the funds or other property of persons who commit or attempt to commit terrorist acts or participate in or facilitate the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons and entities, including funds derived from property owned or controlled, directly or indirectly, by such persons and associated persons and entities.
- Extend the freezing measures to all “funds and other property,” which would make it possible, pursuant to the aforementioned resolutions, to cover all financial assets and property of any kind, whether corporeal or incorporeal, movable or immovable, as well as legal documents or instruments of any kind evidencing title to or interest in such property.
- Extend the regulations’ scope of application to cover all actors holding funds or other property belonging to persons and entities directly or indirectly involved in the commission of terrorist acts.

- Provide a clear and rapid mechanism for distributing the Sanctions Committee lists nationally.
- Provide a clear and rapid procedure for examining and giving effect to initiatives taken pursuant to other countries' freezing mechanisms under Resolution 1373.
- Introduce effective and publicly-known procedures for timely review of requests to delist designated persons and to unfreeze the funds or other property of persons or entities removed from the lists.
- Introduce effective and publicly-known procedures for unfreezing as promptly as possible the funds or other property of persons or entities inadvertently affected by a freezing mechanism, upon verification that the person or entity is not a designated person.
- Introduce appropriate procedures for authorizing access to funds or other property frozen pursuant to Resolution S/RES/1267(1999) and that have been determined to be necessary for basic expenses, the payment of certain types of fees, expenses, and service charges as well as extraordinary expenses.
- Introduce appropriate procedures allowing a person or entity whose funds or other property were frozen to challenge that measure with a view to having it reviewed by a court.
- Introduce a provision that would ensure protection for the rights of third parties acting in good faith.

2.4.3. Compliance with Special Recommendation III and R.32

	Rating	Summary of factors underlying rating
SR.III	NC	• No mechanism for freezing funds pursuant to Resolutions 1267 and 1373.
R.32	NC	• No data on implementation of the freezing mechanism.

2.5. The FIU and its functions (R.26, 30, & 32)

2.5.1. Description and analysis

Legal framework:

188. Provisions on the FIU are included in Ordinance No. 09-002/PR, Ordinance No. 03-002/PR, and Decree No. 03-025/PR on the financial intelligence unit. The anti-money

laundering law adopted by the Anjouan Parliament should be mentioned as well (Anjouan Money Laundering Act 008 of 2005). It was adopted by the separatist government and has not been repealed. However, it has never been implemented and most of its provisions, particularly those relating to criminal offenses, financial regulations and international cooperation, are not included in the powers that then devolved to the authorities of the autonomous island of Anjouan and are thus not applicable.

Establishment of an FIU serving as a national center (c.26.1)

189. The Union of the Comoros made provision for the establishment of a unit responsible for gathering, analyzing, and transmitting intelligence on clandestine financial circuits and money laundering starting in 2003. The creation of this unit was provided for under Article 3-1-1 of the 2003 Ordinance and its organization was spelled out in Decree No. 03-025. Provisions on the missions and operations of the FIU are also presented in the 2009 Ordinance.

190. The authorities have established a financial intelligence unit, the members of which have been appointed, but the unit has not yet received any STRs. A raising awareness program on the reporting of STR was conducted to the banks and the budget was allocated by the Ministry of Finance and managed by the BCC. However, this budget is not set regularly and is not specifically recorded in the finance law.

191. The FIU is organized into three levels described in Article 18 of the 2009 Ordinance: a steering committee, an operational division, and a general secretariat. The steering committee includes the competent ministers and basically organizes strategy missions. It is analyzed in particular with respect to Recommendation 31. It seems that the traditional function of an FIU should be carried out by the operational division. The operational division has the following tasks:

- to establish practical methods for gathering, processing, and disseminating intelligence in the area of combating clandestine financial circuits and money laundering;
- to provide for timely coordination of resources for the action of investigative or inspection units;
- to analyze the results of actions undertaken; and
- to implement the directives of the steering committee in the area of fines and ensure that such fines are paid to the public treasury.

192. Under the terms of Article 4 of the 2003 decree, the operational division consists of a police official, a customs official, and a prosecuting judge, all of whom are particularly qualified to conduct investigations and are appointed for three years by the ministers in

charge of their respective departments, upon the advice of the general secretariat. At the time of the on-site visit, the members of the operational division were the head of the DNST (assisted by the Commandant of the gendarmerie and the Director of the DNDPE), four customs officials (the general director and one collector for each island), and the PR. A representative of MIREX had also been designated as an observer by the operational division. Thus, the composition of the operational division exceeds what was provided for in the decree. The authorities explained that this was done for reasons of effectiveness.

193. A third level of the FIU consists of the general secretary, appointed by the Governor of the Central Bank from among central bank officers. The role of the general secretary is to lead the operational division and manage the operational resources of the FIU.

194. The FIU is an independent government agency. However, it is currently very tied to the BCC, which is responsible for appointing its general secretary, who is in charge of leading the operational division and managing the operational resources of the FIU. At the time of the mission's visit, the general secretary had not been appointed.

195. A juxtaposition of the relevant texts does not make the legal framework very intelligible. Some provisions appear with the same language in both orders and in the decree while others appear only partially in the decree, and some are found in only one instrument, most often the 2003 Ordinance.

196. Sometimes the juxtaposition of the texts is restrictive. Thus, Article 3-1-1 of the 2003 Ordinance indicates that the FIU is responsible for receiving, analyzing, and disseminating the reports required of the persons and bodies designated in Article 2-1-1 of the same Ordinance. The range of subject persons pursuant to Article 2-1-1 of the 2003 Ordinance is more restrictive than the range of subject persons pursuant to the 2009 Ordinance. Thus, all DNFBP are required to report suspicions since the 2009 Ordinance, but only the reports made by casinos and real estate agents, covered under Article 2-1-1 of the 2003 Ordinance, may be legally the subject of analysis by the FIU.

197. None of the relevant texts explicitly indicates the FIU's jurisdiction with respect to receiving, analyzing, and disseminating reports related to terrorist financing. The FIU seems competent with respect to clandestine financial circuits, which could cover the segment of terrorist financing associated with criminal activities but less obviously funds of unlawful origin about which there are suspicions of a connection with terrorist financing.

198. Besides the functions traditionally assigned to an FIU, note should be made of the specific powers of the FIU with respect to its ability to oppose the execution of operations. Under the terms of Article 23 of the 2009 Ordinance, if the unit deems it necessary based on the seriousness or urgency of the matter, it can oppose the execution of an operation before the execution period indicated by the person making the report. This opposition is reported to the latter immediately by any means. The FIU's opposition bars the execution of the operation for a period of no more than 48 hours. The president of the territorially competent

first instance jurisdiction, at the request of the FIU, may order a freeze on the operation and issue an order to sequester funds, accounts, securities, or amounts for an additional period of no more than 15 days, beyond which a criminal proceeding may be initiated. Article 24 provides that no action for civil, criminal, administrative, or professional liability may be filed against persons or managers and employees of subject entities because of material and/or non-material damages that would result from such a freeze. These provisions have never been used.

199. Another power that exceeds the traditional powers of an FIU is the ability to conduct criminal investigations on ML/FT and to use specific investigative methods. Article 25 of the 2009 Ordinance encourages the FIU to support and develop techniques such as monitored deliveries and undercover operations. The FIU is also encouraged to use other mechanisms such as the use of permanent or temporary specialized groups in investigations regarding property, and investigations conducted in cooperation with appropriate competent authorities in other countries. Such investigations would be ordered by the judicial authority. But the practical implementation of these provisions does not seem to be clearly contemplated by the authorities. The development of specific investigative methods by the FIU does not seem conceivable in view of the senior level of the members of the operational division. Under the terms of Article 4 of the 2003 FIU decree, the operational division should establish practical resources in the area of investigations, particularly competent personnel.

Guidance on the manner of reporting (c.26.2)

200. Article 3-1-5 of the 2003 Ordinance provides information on how to file STRs. STRs are sent to the FIU by any means. STRs made by telephone must be confirmed in writing as soon as possible. These reports must indicate, as appropriate, the description of the transactions, any useful indication regarding the persons participating therein, the reasons why a transaction was already carried out, and time period in which a suspicious transaction should be executed.

201. A model STR was sent to subject entities in 2005. It includes useful references to subsequent processing by the FIU, but no field is provided with respect to the client who is the subject of the STR. The model STR was accompanied by detailed guidelines including advice on the manner of reporting. However, since this model was distributed when the FIU was not yet in operation, it has not been used by the subject entities.

FIU access to information on a timely basis (c.26.3)

202. Article 19 of the 2009 Ordinance provides that the FIU may request and obtain from any government authority “communication regarding information and documents in accordance with Article 15,” in the context of investigations undertaken following an STR.

203. It should, however, be noted that Article 15 refers to internal programs to combat money laundering within credit and financial institutions. A cross-referencing error was

clearly made when Article 19 was written, making it ineffective. Article 3-1-1 of Ordinance No. 03-002 provides that the FIU also receives all useful information, particularly information communicated by judicial authorities. However, this refers only to a power to receive information and not a reporting power.

Obtaining additional information from reporting entities (c.26.4)

204. Article 19 of the 2009 Ordinance provides that the FIU can request and obtain from all persons subject to Article 3 “reports of information and document in accordance with Article 15,” in the context of investigations undertaken following a report of suspicions.

205. Again, it should be noted that Article 15 refers to internal programs to combat money laundering within credit and financial institutions. A cross-referencing error was obviously made when Article 19 was written, making it ineffective.

206. However, Article 3-1-2 of Ordinance No. 03-002 provides that the FIU may seek and obtain from any government authority information and documents in accordance with [Article] 2-2-7, in the context of investigations undertaken following a report of suspicions. Article 2-2-7 refers to the communication of documents. Thus, the FIU may obtain the information required under c.26.3 on the basis of the 2003 Ordinance.

Dissemination of financial information (c.26.5)

207. Article 3-1-7 of the 2003 Ordinance provides for follow-up of reports. As soon as there are serious indications of the sort that would constitute the elements of the offense of money laundering, the unit sends a report on the facts, accompanied with its opinion, to the competent judicial authority. This report is accompanied by all useful evidence, with the exception of the STRs themselves. The identity of the STR’s author does not appear in this report.

208. The authorities specified that the competent judicial authority was the prosecuting judge territorially competent to examine the facts. It should be noted that no provision is made for the dissemination of information in the area of terrorist financing.

Independence and operational autonomy (c.26.6)

209. It is difficult to assess the independence and operational autonomy of the FIU since it has not begun its activities with respect to receiving, analyzing, and disseminating STRs. However, certain factors indicate that its independence and autonomy could be limited. First of all, although an independent government agency, the FIU does in fact have close ties with the BCC. The BCC is responsible for appointing its general secretary, who is responsible for heading up the operational division and managing the FIU’s operational resources. At present, the budget envelope allocated by the Ministry of Finance is managed by the BCC. In addition, this budget is not set regularly and is no longer specifically recorded in the finance

law. The composition of the FIU does not allow for a conclusion regarding its independence and operational autonomy in the absence of practical experience. The members of the steering committee have, however, indicated that in the event of an STR, it would be advisable for the operational division alone to determine how to follow up. However, since the members of the operational division are full-time officials of other agencies, it would seem difficult to envision real operational autonomy for the FIU under these conditions.

Protection of information held by the FIU (c.26.7)

210. According to Article 3-1-1 of the 2003 Ordinance, the officials of the FIU are required to maintain secrecy regarding information thus collected, which cannot be used for purposes other than those provided under the legislation. According to Article 19 of the 2009 Ordinance, the use of information from any government authority or from natural or legal persons designated under Article 3 shall be strictly limited to ML/FT.

Publication of periodic reports (c.26.8)

211. Article 18 of the 2009 Ordinance and Article 6 of the 2003 Decree provide that the FIU must prepare a report each year on its activities for the President of the Union. However, no report has been published to date.

Membership in the Egmont Group and consideration of its principles (c.26.9-c.26.10)

212. The FIU has not yet begun the process of becoming a member of the Egmont group. The FIU has never had the occasion to establish relations with a foreign FIU and has never been contacted by a foreign FIU. Thus, the question of considering the principles of the Egmont Group has not arisen in practice. The authorities indicated that membership in the Egmont Group will only be considered after it becomes a member of the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG).

Analysis of effectiveness

213. Although the members of the FIU were appointed in 2008, it cannot be asserted that the unit is operational in terms of the functions that should normally be assigned to it with respect to receiving analyzing, and disseminating STRs. To date, the FIU has not received any STR, nor does it have any permanent staff, or an identified office. Its major activity involves intergovernmental coordination in the area of AML/CFT.

214. The lack of any STRs is not explained solely by the recent appointment of the members of the FIU. It seems that subject entities do not fully understand the purpose of this structure. Some identify it completely with the Central Bank, others believe that its inter-ministerial composition does not ensure the confidentiality of the information they would transmit regarding a customer. In addition, the processing of STRs requires an analysis that

must be performed by one or more persons specializing in the techniques of financial analysis.

Adequate FIU resources (c.30.1)

215. The FIU does not have premises or permanent members. Its budget is an allocation from the Ministry of Finance made available to the BCC. It currently amounts to 10 million Comorian francs and primarily covers activities associated with intergovernmental and international cooperation at the institutional level.

Integrity of FIU staff (c.30.2)

216. An employee of the BCC actually serves as the secretariat of the FIU. Trained abroad, he was hired as a BCC employee through competition and is required to respect the professional standards of the Central Bank, including the duty to maintain strict confidentiality, subject to criminal penalties.

Adequate training for FIU staff (c.30.3)

217. The person who acts as the secretariat for the FIU has received training on AML/CFT in the Comoros as well as abroad. Some members of the operational division have also been trained in AML/CFT, generally in the Comoros, but the PR has also been trained abroad.

Statistics (application of R.32)

218. Article 18 of the 2009 Ordinance provides that the annual report of the FIU should contain all necessary statistics and information. Regarding the activity of the FIU, the Ordinance provides that these statistics should cover STRs received and disseminated as well as international cooperation. However, in the absence of operational activities, the FIU has no statistics.

2.5.2. Recommendations and comments

219. First, the composition of the operational division seems surprising since it consists of senior officials from each competent administration. If this was understandable for reasons of effectiveness at the time of launching the unit, the performance of analyses on STRs should surely thereafter be entrusted to one or more operational employees specifically trained in AML/CFT. The introduction of a permanent structure is, moreover, recommended. This would provide an identifiable point for both subject entities and competent authorities.

220. The authorities should:

- Repeal the 2005 law of Anjouan.

- Allow the FIU to receive, analyze, and transmit STRs and other information concerning all actions suspected of being related to terrorist financing.
- Disseminate a new model STR and new guidelines.
- Fix the limitation on access to information due to incorrect cross-referencing in the Ordinance.
- Ensure the independence and operational autonomy of the FIU.
- Publish periodic reports including statistics.
- Consider seeking membership in the Egmont Group and take its principles into consideration.
- Appoint permanent staff, assign an office, and provide a budget line for the FIU.

2.5.3. Compliance with Recommendations 26, 30, and 32

	Rating	Summary of factors underlying rating
R.26	NC	• No legal basis for reception, analysis, and dissemination of information on the subject of terrorist financing. • Weakness of information provided to subject entities on how to prepare STRs. • Inconsistent cross references in the 2009 ordinance limit access to information. • No guarantees for independence and operational autonomy. • No periodic reports. • Membership in the Egmont Group will only be considered after it becomes a member of ESAAMLG. • Lack of effectiveness.
R.30	NC	• No premises, staff, and ongoing budget.
R.32	NC	• No statistics.

2.6. Authorities responsible for investigations, law enforcement, and other competent authorities – the framework for investigations and prosecutions of offenses and for confiscation and freezing (R.27, 28, 30 and 32)

2.6.1. Description and analysis

221. Article 28 of the Constitution of the Union of the Comoros states that the judicial branch is independent of the legislative and executive branches. Judges are subject, in the exercise of their functions, only to the authority of the law. Judges cannot be removed. The President of the Union guarantees the independence of justice. He is assisted by the Higher Council of the Judiciary.

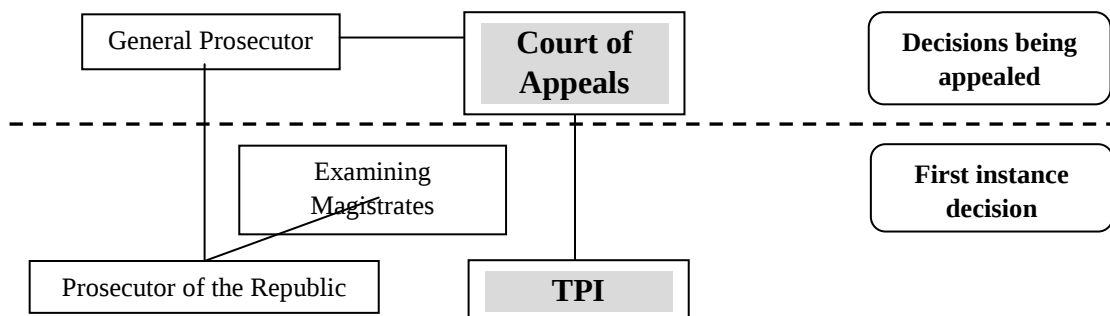
222. The Union of the Comoros has a Romano-Germanic legal system, inherited from the French colonial period. In criminal matters, the system is based on the PR who opens the proceedings of the Office of the Public Prosecutor, assisted by the Judicial Police Officers (OPJ) in the conduct of investigations. The organization of the Comorian criminal jurisdiction is based on the inquisitorial model, with a professional magistrate who represents the interests of society and is responsible for conducting the investigation to establish the truth regarding the commission of criminal offenses.

223. The Penal Code (PC) provided by Law No. 082 P/A.F. – Law No. 95-012/AF and the Code of Minor Offenses provided by Law No. 81/007 divide violations into three categories based on the seriousness of the penalty incurred: crimes, offenses, and minor offenses. The Comorian CCP is the French code and corresponds to the 1972 version, which predates the independence of the Comoros.

224. The organization of the courts includes the TPI, the Assize Court, and the Court of Appeals (Organic Law No. 04/2004 of August 31, 2004 on the Organization of the Judiciary in the Union of the Comoros and in the Islands). These institutions are operational. In contrast, the Supreme Court and the Superior Court have not been set up as yet.

225. In practice, the Assize Court is not operational. Crimes are examined by the assize court while offenses are examined in the correctional chamber of the TPI.

226. The organizational chart below details the organization of the criminal courts:



227. Thus, there are currently three TPIs, and two Appeals Courts (on Grande Comores and Anjouan only), which include the following judges:

Table 8

	Grande Comore	Anjouan	Mohéli
TPI Judge	4	5	1
Appeals Judge	3 (collegial court)	3 (collegial court)	0
Examining magistrate	3	2	1
Prosecutor before the TPI	1 and three alternates	1 and one alternate	1
Prosecutor before the Court of Appeals	1	1	0

228. Each island has a TPI with a president, vice-president, a PR, an assistant prosecutor, judges, alternate, one or more examining magistrates, and chief clerk assisted by transcribing clerks (Article 27). The TPI is the common law court of first resort in all matters. It hears all offenses and minor offenses committed in its jurisdiction as provided by the law (Article 28). All its decisions may be appealed to the Court of Appeals. The decisions of the TPI are issued by a collegial body of at least three members, or a single judge when it is impossible for three judges to meet (Article 29 LO 04/04)

229. According to the law, each island should have a Court of Appeals (CA) consisting of a first president, chamber presidents, counselors, a general prosecutor, an advocate-general, general alternates, a chief clerk, and clerks. In practice there are only two CAs in operation, one on Grande Comore and the other on Anjouan. The court of appeals is the second and final jurisdiction. Comorian law provides for a third level, specifically the Court of Cassation. Despite the lack of a supreme court, some parties to proceedings draw up cassation appeals, no doubt anticipating the possibility of that court's becoming operational.

230. The TPI and the Court of Appeals have several chambers covering civil, commercial and corporate, administrative, indictment, criminal, and Islamic matters. In criminal matters, the criminal chamber handles minor offenses and offenses.

231. Investigative frameworks are defined by the CCP and include three types of investigations: the *flagrante delicto* investigation, the preliminary investigation (ordered and directed by the PR), and investigation in response to letters rogatory (ordered and directed by

the Examining Magistrate). Each investigative framework determines a different level of prerogatives on the part of the OPJ (Articles 53 to 78, 81, and 151-152 CCP).

232. The Comorian investigative authorities who assist the PR and the Examining Magistrate in their investigations or the administrative authorities involved in the prevention and detection of ML/FT are the DNST, the DNDPE, the Gendarmerie, the Police, and Customs.

Designation of competent law enforcement authorities (c.27.1)

233. Article 18-B of the 2009 Ordinance states that the operational division of the FIU is responsible, *inter alia*, for ensuring timely coordination of resources for the actions of investigative units, when referring to the conditions established by Decree No. 03-025/PR on the FIU.

234. According to Article 25 of the same Ordinance, investigations on money laundering and terrorist financing are entrusted to the operational division of the FIU, which is urged to support and develop, to the extent possible, the specific investigative techniques suitable for money laundering investigations such as controlled deliveries, undercover operations, and other relevant techniques (this provision is repeated in Article 26).

235. Article 4 of the decree creating the FIU stipulates that the operational division consists of a police official, a customs official, and a prosecuting judge, who are specifically qualified to conduct investigations and are appointed for three years by the ministers in charge of their respective departments, on the advice of the general secretariat.

236. Thus, despite a certain degree of ambiguity between Articles 18-B and 25 of the Ordinance of March 6, 2009, the FIU would be responsible for conducting judicial investigations in ML/FT cases. Comorian authorities seem not to have clearly defined the framework for the judicial investigations that the FIU would be called upon to conduct. Some indicated that since the unit has a Prosecutor, he would be responsible for coordinating investigations. Others believe that it will be better for the operational division to be responsible for defining the investigations unit (DNST, DNDPE, Gendarmerie, or Customs) and for conducting a specific investigation. Still others think that combined investigation teams could be created. The jurisdiction of these investigation units is justified by reference to the initial paragraphs of Article 25 of the 2009 Ordinance, which describe the powers of judicial authorities in the area of ML/FT. This lack of precision is exacerbated by the lack of human and financial resources, particularly if the FIU must be directed to conduct investigations itself and to use the specific investigation techniques indicated in the law. The current composition of the operational division of the FIU, at the level of agency directors, does not seem appropriate for conducting this type of mission. Finally, there is potential confusion between the missions of a FIU and an investigative unit. At this point, the country does not have an operational FIU while several units are already in a position to conduct

judicial investigations, including financial investigation, and the DNST in particular has an Economic and Financial Brigade (BEF).

Possibility of deferring or waiving some arrests and seizures for the sake of proper development of the investigation (c.27.2)

237. The 2009 Ordinance gives the operational division of the FIU the power to implement monitored delivery techniques (Article 25).

Additional element – Authorization of special investigative techniques (c.27.3)

238. Article 25 of the 2009 Ordinance gives the operational division of the FIU the power to utilize monitored delivery techniques, undercover operations, and other relevant techniques. The same article gives judicial authorities power for a specific period to:

- Monitor bank accounts and the like.
- Access computer systems, networks, and servers.
- Monitor or tap telephone lines, faxes, or electronic means for transmission or communication.
- Do audio and video recording of activities and conversations.
- Communicate notarized and private records, and banking, financial, and business documents.

239. These operations are only possible when there are serious indications justifying the suspicion that these accounts, telephone lines, computer systems and networks, or documents are being used or could be used by persons suspected of participating in ML/FT offenses.

Additional element – Context for using special investigative techniques (c.27.4)

240. Special investigative techniques have been specifically authorized for money laundering and terrorist financing investigations, in the context of the provisions of the Ordinance of March 6, 2009. The Ordinance assigns this task to the operational division of the FIU. However, the conditions for implementing this, particularly in the case of monitored delivery and undercover operations, are not specified nor are they covered by any specific legal framework that would legalize their implementation and provide sufficient legal and security guarantees for the investigating officers. Given the absence of investigations on ML/FT and the recent nature of the Ordinance, these techniques have never been used.

241. With respect to the ability to conduct special investigations regarding predicate offenses, the 1972 CCP makes no provision for the power of investigators to defer the arrest of suspects and/or the seizure of funds, in order to conduct undercover operations or use

other relevant techniques to identify the individuals involved in these activities or gather evidence. The CCP indicates the prerogatives of the OPJ in the context of the *flagrante delicto* investigation, the preliminary investigation, and the judicial inquest. However, although not specifically mentioned, these special investigative techniques are not legally prohibited and, in principle, the mission believes that they are not contrary to existing law, provided that the PR or the Examining Magistrate is informed and authorizes them. They involve techniques within the context of measures to be taken to establish the truth in a court case. However, the reservations expressed earlier with respect to the specific legal framework for implementing such special investigative techniques bear repeating.

242. Comorian law enforcement authorities indicated that these techniques, as well as monitored delivery, undercover operations, or electronic monitoring of communications, had never been carried out because there is no specific legal framework for their implementation, no appropriate training for Comorian investigators, and no resources and logistics. Thus, under current conditions, special investigative techniques could not be put into practice.

Additional element – Specialized groups and international cooperation on operations (c.27.5)

243. The DNST is a permanent investigatory inter-ministerial authority in that it brings together gendarmes, customs officials, and the unit's own officials, particularly within the BRIMAD (Combined Anti-Drug Brigade) and the BEF (Economic and Financial Brigade), making it possible to reduce problems of coordination among the various investigative units.

244. At the international level, Comorian authorities have not yet been called upon to conduct joint investigations, particularly with the use of special techniques. Law enforcement authorities conduct investigations in response to international letters rogatory, assisted by foreign investigators, when they come to the Comoros in the context of requests for international judicial assistance.

Additional element – Review of ML/FT trends by the authorities (c.27.6)

245. To date, because AML/CFT measures are still very embryonic, law enforcement authorities have not yet conducted a study of money laundering and terrorist financing methods, techniques, and trends.

Power to demand and search all documents and information (c.28.1)

246. Article 13 of the 2009 Ordinance provides that financial institutions, credit institutions, and legal persons and professions covered by anti-money laundering provisions must make identifying data and evidence relating to transactions available to competent national authorities to enable them to carry out their mission.

247. Article 14 states that this same information must be provided, upon request, to judicial authorities, to officials responsible for the detection and suppression of offenses related to money laundering, acting in the context of a judicial order, as well as to the FIU in the context of its prerogatives as defined in the same Ordinance, particularly in Article 19 on access to information. However, the law does not indicate the type of judicial order required for judicial authorities, whether this means a request from the prosecutor or letters rogatory from an examining magistrate. The law refers only to communication “upon request” from the judicial authorities and the FIU, without specifying possible conditions for requests and searches by investigative authorities in the event of a financial institution’s refusal, obvious delay, or obstruction in communicating such information.

248. Article 28 establishes the ability of judicial authorities and competent officials in charge of detecting and suppressing ML/FT to seize all property relating to an offense being investigated, and all evidence that could be used to identify such property.

249. Article 29 gives the competent judicial authority the power to order precautionary measures, either *ex officio* or at the request of the Office of the Public Prosecutor or a competent agency, including freezing funds and financial transactions involving property, of whatever kind, that is subject to being seized and confiscated.

Power to obtain and use witness statements (c.28.2)

250. The CCP establishes the use of witness statements at all stages of criminal proceedings. In the case of a judicial investigation, witness statements are governed by Articles 101 to 113 of the CCP. For the decision in the case, witness statements are governed by Articles 435 to 457 of the CCP.

Adequacy of authorities’ resources (c.30.1)

251. The material conditions for implementing the AML/CFT provisions, particularly for the creation and operations of the FIU, and for utilizing the respective investigative techniques, have not been defined as yet.

252. However, the mission could see that due to the lack of financial resources, the criminal judicial apparatus clearly suffers from inadequate material and human resources, which hampers the operations of some institutions.

253. Currently, only the Courts of Appeals on Anjouan and Grande Comore are operational. Despite the fact that the law on the organization of the judiciary made provision for a CA on each island, these jurisdictions are not fully operational.

254. The number of alternates who should assist each of the three prosecutors does not comply with the statutory number. Due to a lack of financial resources, prosecutors do not have enough staff. Thus, in the Court of Moroni, the Prosecutor’s Office has only two

judges. The Prosecutor's Offices on Anjouan and Mohéli have only one judge.¹² The Prosecutor's Office has no financial autonomy as it falls under the budget allocated to the Ministry of Justice.

255. The financial and logistical resources of the Gendarmerie and the Police are limited. Above all, they lack communications and transportation resources, even gasoline, and desktop computers for their files, compromising the quality and potential of their missions. Police officers are not armed. There is no scientific police laboratory, and administrative and judicial authorities do not have drug detection kits.

256. Customs officials are slightly better off in terms of office equipment since they receive an allocation of six percent of the amount of customs revenues, which is collected for this purpose.

257. However, Customs does not have naval resources to monitor the maritime area of the islands, nor do the police and gendarmerie authorities.

Integrity of authorities' staff (c.30.2)

258. The organic laws on the organization of the judiciary and on the status of judges require judges to maintain professional secrecy. They are subject to a strict confidentiality requirement. Judges are hired after a minimum level of education and two years of specialized training abroad (in France or Madagascar), since the Comoros do not yet have a training structure.

259. Law No. 04/04 of November 10, 2004 on the General Civil Service Statute of the Union of the Comoros establishes the rights and obligations of civil servants and states that they are required to serve the interests of the nation with effectiveness, loyalty, dignity, devotion, and integrity. They must at all times ensure the protection and promotion of the interests of the citizenry and avoid anything that could diminish the image of the Civil Service.

260. Gendarmerie officers are usually trained abroad. Some police officers also benefit from training abroad. Several cases of officers prosecuted for corruption were mentioned. General speaking, the salary schedule for police and gendarmerie officers ranges from 80 to 400 euros. However, their salaries are not paid on a regular basis.

¹² The authorities indicated that they have appointed new magistrates since the on-site assessment. Thus, the PR on Grande Comore is assisted by three alternates. Those on Anjouan and Moheli are also supported by alternates.

Appropriate training for authorities' staff (c.30.3)

261. So far there is no actual training on money laundering and the financing of terrorism. In 2007, a handful of police officers and some gendarmerie officers received six weeks of training on combating terrorism at the Federal Bureau of Investigation School in Botswana. This training included a small module on money laundering. Three customs agents received training in money laundering, one in Lusaka, and the other two in Brussels at the headquarters of the World Customs Organization in May 2009. Law enforcement authorities have completed a portion of their training requirements in the area of ML/FT and in finance, which is currently non-existent.

Additional element – Special training programs for judges (c.30.4)

262. Judges have not yet received any training on money laundering and terrorist financing offenses, or on seizure, freezing, and confiscation of property constituting the proceeds of criminal activities or that could be used to finance terrorism. Comorian authorities informed the mission that there are plans to provide this training, but no date has been set as yet.

Statistics (application of R.32)

263. Given that no AML/CFT measures are currently being implemented, there are no statistics on the basis of which to measure the effectiveness and proper operation of the Comorian system.

2.6.2. Recommendations and comments

264. The mission recommends that Comorian authorities:

- Update their CCP and adapt it to the country's judicial reality.
- Give in-depth consideration to the role and missions of the FIU and its interactions with existing investigative units.
- Ensure that the FIU has suitable human and logistical resources to carry out its missions and to protect information, particularly the operational unit, so that it can, when appropriate, utilize the recommended investigative techniques.
- Proceed with a suitable training program on the subject of financial investigation and AML/CFT techniques for FIU personnel.
- Develop, train, and professionalize the Economic and Financial Brigade of the DNST.
- Proceed with a suitable program on the subject of money laundering and the FT for judicial authorities and units involved in the prevention and suppression of ML/FT.

- Strengthen the logistical resources of investigative authorities, particularly the police and the gendarmerie.

2.6.3. Compliance with Recommendations 27, 28, 30, and 32

	Rating	Summary of factors underlying rating
R.27	PC	• Lack of precision regarding the specific framework for investigations and the appointment of competent investigative authorities to conduct ML/FT investigations. • Lack of effectiveness.
R.28	LC	• No ability to conduct searches to obtain financial documents or information. • Lack of effectiveness.
R.30	NC	• Notable inadequacy of financial and logistical resources of law enforcement and investigative authorities. • Inadequate training for law enforcement and investigative authorities. • No suitable and relevant AML/CFT training. • Failure to conduct special training programs for judges and courts on the subject of AML/CFT.
R.32	NC	• No statistics on the basis of which to measure the effectiveness of the AML/CFT system.

2.7. Cross-border declarations or disclosure (SR.IX)

2.7.1. Description and analysis

265. Article 24 of the Customs Code indicates that, independent of the provisions of the Code, importers and exporters must comply with foreign trade and exchange control regulations as well as legislation with respect to financial relationships with overseas entities.

266. The banking legislation covers the authorized amounts for export.

267. Ordinance No. 03-002/PR on money laundering, confiscation, and international cooperation in relation to the proceeds of crime of January 28, 2003 makes no provision with respect to physical cross-border transportation of funds.

268. The new Ordinance 09-002 of March 6, 2009 on the same subject, supplementing the 2003 Ordinance, includes Section 4, Article 6 on “physical transportation of funds, cash couriers.” Chapter I on general prevention provisions of Title II on Preventing Money Laundering and the Financing of Terrorism provides that:

- Physical cross-border transportation of currency and bearer instruments in amounts equal to or greater than five million CFs is subject to declaration.
- Physical cross-border transportation of currency and bearer instruments by cash couriers in higher amounts is subject to declaration starting with the first franc.
- All useful preventive measures may be used to detect cross-border transportation of funds.
- Currency or bearer instruments suspected of being connected to the terrorist financing or money laundering or that are the subject of missing or false declarations or reports will be subject to immediate seizure.
- Confidentiality of information is required.
- Persons who have made false declarations or reports directly or indirectly on their own behalf or for that of third parties shall be subject to prosecution based on the articles of the penal code regarding forgery and the use of forged documents and to the immediate seizure of the sums involved.

269. This recent law has not yet been reflected in implementing provisions.

270. Customs authorities informed the mission that provisions of the Customs Code apply to the transportation of currency. However, the mission did not find the corresponding articles in the Customs Code.

271. Travelers transporting currency are generally merchants departing from Moroni and traveling by air to the United Arab Emirates (Dubai), Tanzania, Zanzibar, or Madagascar to buy merchandise there that will be imported by sea. Currency amounts are very often in excess of €10,000. This is known and is not the subject of any particular measures, as customs authorities generally know the merchants.

272. In the other direction, Comorian passengers returning usually from Europe and Africa may also bring in lesser amounts that are generally below the threshold established by the new Ordinance.

System for control of physical cross-border transportation of currency (c.IX.1)

273. The mission noted the absence of provisions at the international airport in Moroni for the arrival of airline passengers entering the country. There is no information posted

regarding the requirement to declare amounts exceeding five million CFs (equal to about €10,000).

274. The Customs Service informed the mission that it was currently developing a suitable form to be distributed to passengers entering and leaving airports and ports. However, it was unable to provide an example of this draft to the assessment mission.

275. While awaiting the creation of this form, the second option Customs reported to the mission is the questions that Customs officials at the airport ask passengers departing for other countries. However, the official responsible for this recent measure is currently being trained abroad. According to the information provided to the mission, this official would back up verification by using scanners on passengers' baggage.

276. To date, Customs has not been able to provide confirmed examples of currency seized from travelers crossing borders.

Disclosure of information on the origin and use of currency (c.IX.2)

277. Article 6 of the 2009 Ordinance does not mention any power to request and obtain additional information from carriers regarding the origin of currency or bearer instruments or the intended use thereof.

278. It indicates only that funds will be seized immediately both in the case of a missing or false declaration and in the case of suspicions of money laundering or terrorist financing.

Retention of currency (c.IX.3)

279. The 2009 Ordinance stipulates that currency or bearer instruments suspected of being linked to terrorist financing or money laundering, or that are the subject of missing or false declarations or disclosures will be immediately seized. Thus, it seems that no consideration is given to a measure to stop or restrain currency or bearer instruments for a sufficient amount of time to ascertain whether there is any evidence of money laundering or terrorist financing. The mere finding of a failure to submit a declaration or the submission of a false declaration is sufficient to immediately impose this seizure measure.

Retention of information (c.IX.4)

280. The 2009 Ordinance makes no provision for retaining the declaration with information on the amount of currency and the identity of the bearer.

Communicating information to the FIU (c.IX.5):

281. The 2009 Ordinance makes no provision for informing the FIU of information obtained in the context of detecting cross-border currency.

282. The administrative units of Customs do not fall within the framework of professions and institutions subject to the requirement to report suspicious transactions (Article 3). Article 3 makes no reference to government officials.

283. Article 21 requires any natural or legal person, particularly accountants, examiners, and auditors, to report to the FIU the transactions indicated in Article 3 of the Ordinance when such transactions involve funds that seem to derive from conduct that could be suspected of constituting a crime or an offense. The transactions indicated in Article 3 do not mention cross-border transportation of currency exceeding a fixed threshold.

284. Article 19, on access to information, provides that the FIU may also request and obtain from any government authority and from any natural or legal person indicated in Article 3 information and documents in accordance with Article 15 in the context of investigations undertaken following a STR. However, Article 15 refers to financial institutions and credit institutions only and not to government authorities.

285. Thus, current Comorian legislation on money laundering does not require Customs authorities to report to the FIU in the context of discovering cross-border transportation of currency over the threshold of five million CFs.

Coordination among customs, immigration and other competent authorities (c.IX. 6)

286. Domestic cooperation among customs, the police, the gendarmerie, or other units such as the DNST already exists in the context of combined investigative units such as BRIMAD in the area of combating drugs. This is a division of the DNST and brings together officials from the Gendarmerie, Customs, and the DNST in a single unit.

287. The FIU now being set up to gather and analyze STRs will also be a combined unit. Decree 03-025/PR of February 18, 2005 on the FIU stipulates that the FIU steering committee is comprised of the Ministries of Finance, Justice, the Interior, and the Armed Forces. The operational division of the FIU is comprised of a police official, a customs official, and a prosecuting judge, all of whom are particularly qualified to conduct investigations and are appointed for three years.

International cooperation among competent authorities (c.IX.7)

288. Section III, Article 44 of the Customs Code on the customs administration's right of disclosure gives the customs administration the authority, subject to reciprocity, to provide qualified authorities in foreign countries with all information, certificates, reports, and other documents that could help to establish violations of laws and regulations applicable to persons entering and leaving their territory.

289. The police and the gendarmerie use Interpol channels to share information or use the information sharing provisions agreed to with neighboring countries (Mayotte, Madagascar,

Tanzania, and others) whether in the context of mutual legal assistance conventions or in the context of relations with liaison officers of countries with representation in the Comoros such as France and the United States.

290. These exchanges are also put into practice in the context of responding to international letters rogatory from foreign authorities on Comorian soil.

291. The assessment mission was not informed of any case where Comorian authorities refused to provide international cooperation.

Sanction of false statements/disclosures (application of c.17.1-17.4, c.IX. 8)

292. Article 6 of the Ordinance of March 6, 2009 stipulates that currency carriers who make false statements or reports directly or indirectly for themselves or for third parties shall be subject to prosecution based on articles of the PC relating to forgery and the use of forged documents and to immediate seizure of the sums in question.

293. No provision was found in the current penal code relating to the sanction for false statements with respect to an administrative document. The articles referring to forgery refer only to the voluntary alteration of administrative documents. However, the authorities reported that in this case the applicable articles are Articles 134 and 135 of the penal code penalizing the commission of or the attempt to commit forgery in a private, commercial, or banking document. The mission was not informed of the practical application of this criminal provision to the voluntary alteration of administrative documents and was thus unable to assess its implementation.

294. The criminal provisions for forgery and the use of forgeries for this specific sanction against cross-border currency carriers do not mention legal persons.

Sanction for physical cross-border transportation of currency related to an FT or ML operation (application of c.17.1-17.4, c.IX.9)

295. The funds transported by a carrier about whom there is suspicion of money laundering or terrorist financing will be seized. In the absence of specific information regarding the situation of such a carrier, Customs authorities reported that in this case the carrier is referred to the prosecutor for judicial follow-up. In the absence of any precedent to date, it is advisable to refer to the procedure provided by the 2009 Ordinance, that is, the opening of criminal proceedings against the carrier, who if actually convicted of money laundering or terrorist financing will be subject to the provisions of Article 30 of the 2009 Ordinance, which imposes a penalty of 3-10 years in prison and a fine of up to three times the amount of the amounts laundered (i.e., the amounts transported and seized).

296. Article 32 of the 2009 Ordinance also imposes penalties on legal entities on behalf of which or for the benefit of which a subsequent offense was committed by one of their

agencies or representatives, imposing a fine equal to five times the fines specified for natural persons, without prejudice to conviction of the latter as authors or perpetrators of the offense. In addition, legal persons may be sentenced to:

- A permanent prohibition or a prohibition for a period of no more than five years on participating directly or indirectly in certain professional activities.
- Permanent shutdown or closing for no more than five years of their facilities when used in the commission of the crime.
- Dissolution when they were created to commit the crimes.
- Posting and publication of the decision in the print media or by any other audiovisual means of communication.

Confiscation of currency linked to ML/FT (application of c.3.1-3.6, c.IX.10)

297. It is not only Article 6 that makes specific provision for the seizure of currency transported by cross-border carriers in the case of failure to make a declaration or the submission of a false declaration, or suspicion of money laundering or terrorist financing. Article 38 of the same 2009 Ordinance also provides for confiscation in the case of a conviction for the offense of money laundering or attempted money laundering of:

- Property involved in the offense, including income and other benefits derived therefrom, from anyone to whom the property belongs, unless the owner establishes that he has acquired it by actually paying a fair price or in return for providing services of equal value or in any other legal manner, and that he was unaware of the illegal origin.
- Property used to commit the offense.
- Property belonging directly or indirectly to someone convicted of money laundering, his spouse, common-law partner, or children, unless the interested parties establish the lawful origin thereof.

298. In addition, in the case of an offense confirmed by the court and when a conviction cannot be issued against the perpetrator or perpetrators, it is nonetheless possible to order the confiscation of property involved in the offense.

299. It is also possible to order the confiscation of a convicted person's property up to the amount he earned during the ten years prior to his conviction, unless he establishes that there is no link between those earnings and the offense.

300. The decision ordering confiscation designates the property involved and the information needed to identify and locate that property.

Confiscation of currency in the context of resolutions issued by the UNSC (application of c.III.1-III.10, c.IX.11)

301. Article 6 of the 2009 Ordinance provides for the immediate seizure of transported funds or instruments in the case of suspicions of terrorist financing and money laundering. The provisions of Article 30 on the penalty for money laundering do not expressly specify that those provisions extend to terrorist financing. However, Article 1 of the same Ordinance considers under the term money laundering, not just the conventional and characteristic conduct of money laundering deriving from a criminal predicate offense (proceeds of crime, principal offense), but also the offense or attempted offense of terrorist financing, defining it as financing a terrorist enterprise by providing or collecting funds or giving advice for this purpose, with the intention that this property or these funds will be used or knowing that they are intended to be used, in whole or in part, for the purpose of committing a terrorist act, regardless of whether this act occurs. The Ordinance makes no distinction regarding the lawful or unlawful nature of the funds. In practice, customs officials and immigration authorities do not receive the lists and consequently are not likely to confiscate these funds.

Notification of the discovery of an unusual cross-border movement of precious stones or metals (c.IX. 12)

302. The cross-border transportation of gold, precious metals, or precious stones is subject, like all exported or imported goods, to the respective customs declarations. The discovery of such physical transportation, when not covered by a declaration, will be subject to the corresponding customs penalties. In this context, the customs provisions of Article 44 authorize the exchange of information with counterpart foreign customs authorities.

303. However, the physical transportation mentioned in Article 6 of the 2009 Ordinance makes no mention of currency or bearer instruments in amounts equal to or greater than five million CFs.

304. It does not appear that the transportation of gold, precious metals, or precious stones falls legally within the framework of the Ordinance on money laundering, financing of terrorism, confiscation, and international cooperation in relation to the proceeds of crime.

Measures to protect the data collected (c.IX.13)

305. Comorian Customs authorities have no system for reporting information on cross-border transportation of currency.

306. In the absence of any precedent to date, there are still no specific measures established to save prepared reports in a computerized database so that they can be made available to the competent authorities for AML/CFT purposes.

Additional element – Implementation of best practices under SR.IX (c.IX. 14)

307. Comorian Customs authorities still have no specific declarations for cross-border transportation of currency or bearer instruments. Thus, it is impossible to prejudge the safeguards to be introduced to protect these data.

Additional element – Computerized database (c.IX. 15)

308. Comorian authorities have not yet implemented the measures recommended in the Best Practices Paper with respect to SR.IX. No current measure on this subject has been mentioned as yet.

2.7.2. Recommendations and comments

309. The mission believes that the two Ordinances, issued in 2003 and 2009, on money laundering and the FT contain legal inadequacies with respect to procedures and sanctions for the cross-border transportation of funds. They do not cover the legal fate of the carrier who is suspected of money laundering or terrorist financing. In addition, while the penalty for money laundering makes no reference to terrorist financing, implicitly the concept of money laundering was initially defined by Comorian legislation (2009 Ordinance) as also including the concept of terrorist financing. Article 6 of the same 2009 Ordinance on the carrier of funds makes a distinction between suspicions of terrorist financing or money laundering and in fact the issue of the transportation of funds of lawful origin for the FT could pose a legal problem.

310. The assessment mission recommends that Comorian authorities:

- Define procedural conditions with respect to the detection of currency carriers.
- Define the conditions for collaboration with the FIU and the Office of the Public Prosecutor.
- Introduce appropriate training on the subject for Customs personnel.
- Create a suitable form to be used by travelers at airports and ports for declaring currency.
- Raise the awareness of the traveling public at airports and ports by posting the requirements on declaring currency.

- Set up a specific database for recording and preserving the information on declarations.
- Incorporate in the legislation the distinction between money laundering and terrorist financing, and specify in the definition of terrorist financing the nature of lawful and unlawful funds that may fall within this definition.
- Expand in the legislation on money laundering and terrorist financing the concepts of currency and bearer instruments to include other valuables, particularly gold, precious metals, and precious stones.

2.7.3. Compliance with Special Recommendation IX

	Rating	Summary of factors underlying rating
SR.IX	NC	• No implementing provisions for declaring the transportation of cross-border currency. • No legal provisions for reporting information on the origin and use of currency transported. • No legal or procedural provisions on saving declarations providing information on the amount of currency and the identity of the carrier. • No legal obligation to report to the FIU in the context of discovering cross-border transportation in excess of the authorized threshold. • Lack of precision regarding sanction applicable to a person who fails to file a declaration or prepares a false declaration regarding the transportation of currency in excess of the authorized threshold. • No legal measures to include gold, precious metals, and precious stones in currency transportation requirements. • No computerized database to allow Customs to save prepared reports in a database.

3. PREVENTIVE MEASURES – FINANCIAL INSTITUTIONS

Customer due diligence and record-keeping

3.1. Risk of money laundering and terrorist financing

311. The Comorian legal framework makes no provision for excluding or exempting financial institutions from due diligence measures based on risk.

3.2. Customer due diligence, including enhanced or reduced identification measures (R.5 to R.8)

3.2.1. Description and analysis

312. Ordinance No. 09-002 adopted on March 6, 2009 on money laundering, financing of terrorism, confiscation, and international cooperation amended the Ordinance of January 28, 2003. Article 3 of the 2009 Ordinance applies to all natural or legal persons who, in the context of their profession, carry out, control, or advise on financial operations involving deposits, exchanges, investments, conversion, or any other movements of capital, particularly credit institutions and financial intermediaries. In addition, the second paragraph of the same article applies to all the transactions of decentralized financial institutions (IFDs or microfinance institutions) and foreign exchange offices.

313. The following general observations should be noted:

- The definition in Article 3 does not allow for a clear determination regarding the range of financial institutions covered by the Ordinance. On one hand, the Ordinance does not explicitly cover insurance companies and the first paragraph of Article 3 provides that “credit institutions, financial institutions, and financial intermediaries” are subject to preventive measures for combating money laundering and the financing of terrorism. On the other hand, the second paragraph of the same article makes foreign exchange offices and IFDs specifically subject to such measures. Since these two activities should fall within the scope of financial institutions as defined by the FATF (and are usually considered as financial institutions by the BCC), this distinction seems to set up a specific category under the 2009 Ordinance.
- The scope of application of the articles of the Ordinance to subject institutions is ambiguous. Most of the provisions apply to financial institutions without such institutions being defined by the Ordinance. In addition, the Banking Law, Law No. 80-07, does not define financial institutions, but under Article 2 considers as financial institutions all natural persons or legal entities habitually conducting credit transactions, for whatever term, especially loans, advances, guarantees, repurchase agreements or discounting of government securities or commercial paper, the

financing of sales on credit and leasing, or habitually receiving funds from the public in the form of deposits, loans, or other ways, with a responsibility to return them, as well as any natural or legal persons that customarily act as financial intermediaries, and decentralized financial institutions. In addition, Section 2, Article 8, paragraph one of the Ordinance, on “identification of clients by credit institutions, financial institutions,” refers to all persons subject to the law, while the second paragraph refers only to financial institution. This distinction has consequences in terms of the application of certain provisions in the Ordinance. When this subject was brought up to the BCC, the mission was informed that the laws in effect do not define financial institutions, but the BCC considers banks and financial establishments to be financial institutions. In this case, insurance companies are not subject to the requirements of Ordinance No. 009-02. Article 3 of the Ordinance makes the BCC explicitly subject to the AML/CFT law, which is particularly important in the context of the transactions it carries out in the area of foreign exchange and transfers on behalf of third parties.

314. The 2009 Ordinance expands the scope of financial institutions by making the IFDs subject to the Ordinance. In addition, the Ordinance provides new preventive measures not included in the 2003 Ordinance. The principal changes basically refer to:

- The prohibition on opening anonymous accounts and accounts under fictitious names.
- Ongoing monitoring of the business relationship.
- The introduction of enhanced and simplified due diligence measures.
- Identification of Politically Exposed Persons (PEP).
- Cross-border correspondent banking.
- New technologies.
- Business relationships with foreign countries.
- Necessary conditions for making wire transfers.

315. Finally, the provisions on the customer due diligence of foreign exchange offices are covered in a specific article (Article 16) detailing the applicable preventive measures.

Prohibition on anonymous accounts (c.5.1)

316. Under Article 8 of the 2009 Order, financial institutions are not authorized to hold anonymous accounts or accounts under fictitious names. On the other hand, there are no provisions governing numbered accounts.

317. Meetings with subject institutions indicate that there are no anonymous accounts, accounts under fictitious names, or numbered accounts. It is important to note that internal procedures at one of the banks met allows the opening of numbered accounts, so it can be concluded that this operation is possible, and hence the importance of regulating it.

Scope of application of due diligence (c.5.2)

318. Article 8 of the order provides that anyone covered under Article 3 is required to secure the identity and address of the other party to the contract before forming a business relationship. The same article requires financial institutions to use customer due diligence measures, in particular by identifying and verifying the identity of customers and their agents, when they enter into business relationships and make occasional transactions above a threshold determined by the Minister of Finance, or in the form of wire transfers. In addition, due diligence measures should be taken by financial institutions whenever there is any suspicion of money laundering or terrorist financing, and if they have any doubts regarding the accuracy or relevance of the customer identification data. Article 9 provides for the identification of occasional customers in the manner provided in Article 8 for any transaction exceeding 1.5 million CFs (about 3,050 euros). This identification is required when the lawful origin of funds is not certain even if the amount is less than the aforementioned threshold. In addition, identification is required in the case of repeated but separate transactions carried out over a limited period of time and for an amount below the established threshold. The authorities have not defined the duration of this period.

319. Thus, the ambiguous language in Article 8 could lead to the belief that the requirement to take due diligence measures regarding new business relationships is subject to the existence of a threshold, a threshold that has not yet been defined. In addition, the thresholds mentioned in Article 8 remain applicable even in the case of suspicions of money laundering or terrorist financing.

320. Article 16 provides that foreign exchange offices must obtain the identity of their customers, based on presentation of a valid and original official document bearing a photograph, copy of which is made before handling any transaction involving more than five million CFs and any transaction carried out under unusually or unjustifiably complicated conditions. It should be noted that in terms of identification, this is the only requirement imposed on foreign exchange offices and does not cover the requirements in Recommendation 5.

Identification measures and verification sources (c.5.3)

321. The order requires the persons designated in Article 3 to obtain customers' identities and addresses. It adds that the identity of a natural person is verified on the basis of the presentation of an original and valid official document bearing a photograph, and copy is made of that document. The address is verified based on the presentation of a document that

constitutes proof. Verification must be made using documents, data, and information from reliable sources.

322. The system for identifying Comorian nationals does not seem appropriate. The authorities reported that it was a very widespread practice to obtain two different pieces of identification until biometrics were introduced in June 2008. The authorities also issued 20,000 to 25,000 biometric passports knowing that the regular passports remaining in circulation until 2012 could be falsified. This presents a problem regarding the verification of financial institutions' customers. In addition, the weakness of public records continues even with biometric documents since people with similar names are very common. Verifying identification documents for nationals of neighboring countries is also problematic. The authorities noted that people holding forged documents have entered the country.

323. In practice, customer identification varies from one institution to the next and one of the banks visited stated that it takes an identification document and a document verifying the customer's address whenever an account is opened. It showed the mission very complete account opening forms, with all the basic information required by the order. Another bank is content to take a form of identification or a driver's license without verifying the address. One of the institutions visited stated that the customer can provide a post office box as verification of the address. Another institution met does not verify identity when transferring money and sometimes relies on obsolete documents or unofficial documents such as loyalty cards that include only a name and can be used by several people. Consequently, customer identification measures are not applied consistently.

Verification regarding legal persons or legal arrangements (c.5.4)

324. With respect to legal persons, Article 8 of the order establishes identification based on presentation of the articles of incorporation and any document establishing that the person is legally registered and actually in existence at the time of identification. Copy is made of the document. In addition, the order provides for the identification and verification of directors, employees, and agents called upon to enter into relationships on behalf of others. Besides identification documents, they must produce documents attesting to the delegation of powers granted to them, as well as documents attesting to the identity and address of beneficial owners.

325. With respect to legal persons, the institutions met state that they ask for the commercial registration that is kept manually by the TPI (see R.33). The lack of a requirement to obtain information on directors is not compensated for in practice in the banking sector. In practice, most financial institutions met are content to take the articles of incorporation of the legal person without gathering information on the directors. For example, the account opening form at one of the institutions met does not require information on the directors of the legal person. Thus, legal persons are not adequately identified.

Identification and verification measures with respect to beneficial owners (c.5.5)

326. Again according to Article 8, financial institutions are required to identify the beneficial owner and to take reasonable measures to verify that identification so that the financial institution has satisfactory knowledge of the identity of the beneficial owner. In addition, with respect to legal persons and legal arrangements, financial institutions must take reasonable measures to understand the ownership and control structure.

327. The Ordinance does not define reasonable measures for verifying the identity of the beneficial owner based on relevant information or data obtained from a reliable source and for understanding the ownership and control structure.

328. In practice, most of the institutions met had no clear idea of the definition of the beneficial owner. Consequently, they seem incapable of identifying the beneficial owner. In addition, the customer forms adopted by some institutions for opening accounts do not contain fields for collecting information to understand the structure and ownership of legal persons.

Information on the purpose and intended nature of the business relationship (c.5.6)

329. Among the customer due diligence measures indicated in Article 8 of Ordinance No. 09-002, financial institutions must obtain information on the purpose and intended nature of the business relationship.

330. In practice, the account opening files of the institutions met do not contain the information required on this point.

Ongoing due diligence on the business relationship (c.5.7)

331. According to Article 8 on customer identification, due diligence measures require financial institutions to maintain ongoing due diligence regarding the business relationship and to carefully review transactions carried out for as long as the business relationship continues, in order to ensure that transactions are consistent with the institution's knowledge of its customer, its commercial activities, its risk profile and, when necessary, the origin of the funds.

332. The Comorian AML/CFT mechanism does not impose any requirements on financial institutions with respect to updating the information on their customers.

333. This was confirmed at one of the banks visited by a failure to update the customer profile despite a change in the customer's domicile and activity. Interviews also indicated that institutions apply different control measures. At one of the banks met, remarkable transactions are analyzed daily and the bank also has software that allows it to detect monthly those customers whose accounts record sensitive transactions involving currency movements

or transfers with characteristics that seem not to be in proportion to the customer's activities. In another bank, control is done through regular preparation and analysis of statements. However, most other institutions do not have software and do not compare transaction movements against the customer profile, making it impossible to verify whether the transactions carried out necessitate specific monitoring.

Risk – Enhanced due diligence measures (c.5.8)

334. The 2009 Ordinance introduced enhanced due diligence for high-risk customer categories. It is important to note that the Ordinance does not define a high-risk client nor has any implementing language been introduced in this regard.

335. In practice and following instructions from its parent company, only one institution has set up a classification for high-risk customers who are subject to enhanced due diligence measures carried out by a client manager. Other institutions do not classify their customers based on the risk they pose.

Risk – Reduced or simplified measures (c.5.9)

336. In contrast, financial institutions are authorized to apply reduced or simplified measures when risks are low.

337. The cases where reduced or simplified measures should be applied are not defined in the Ordinance nor in any implementing language.

Risk – Limits on simplified measures for customers resident in another country (c.5.10)

338. The Ordinance has no provisions establishing conditions for applying simplified measures with respect to customers residing in foreign countries. There are no longer specific measures regarding foreign customers established in the Comoros.

339. Risk – Unacceptability of simplified measures when there is suspicion of ML/FT (c.5.11)

340. The Ordinance does not specify that simplified measures may not be applied in cases where there is suspicion of money laundering or terrorist financing.

Risk – Compliance with guidelines issued by the authorities (c.5.12)

341. No guidelines have been issued by the authorities regarding risk-based due diligence measures to be applied.

Timing of verification – General rule (c.5.13)

342. The provisions of Article 8 of the 2009 Ordinance require financial institutions to verify the identity of the customer, agents, and the beneficial owner under the following circumstances:

- Before or when establishing a business relationship.
- When carrying out transactions for occasional customers.

343. In practice, the institutions met state that they apply customer identification and verification measures before entering into the business relationship.

Timing of verification – Special circumstances (c.5.14)

344. On the other hand, credit and financial institutions are authorized to verify customer identity as soon as possible after establishing the business relationship, provided that money laundering risks are managed effectively and that the normal development of the business relationship is not interrupted.

345. In practice, the institutions met stated that they form relationships with customers only if the identification requirements have been completed. However, during one meeting, it turned out that one institution did not identify the customer either when entering into the relationship or afterwards.

Failure to comply with due diligence requirements – Before establishing the relationship (c.5.15)

346. The Ordinance stipulates that when financial institutions are unable to satisfy customer due diligence requirements they should not open an account, form a business relationship, or carry out a transaction. Moreover, they should consider preparing a STR regarding the customer.

347. The institutions met stated that they do not open an account when there is any suspicion regarding the authenticity of documents. For example, one bank refused to open an account for a customer because it appeared that the photograph on the piece of identification was glued on. However, it did not consider making a STR regarding the customer. In contrast, the mission found one financial institution that accepts expired documents to identify the customer when carrying out a transaction.

Failure to comply with due diligence requirements – After establishing the relationship (c.5.16)

348. The law does not impose any requirement in the case of unsatisfactory compliance with customer due diligence requirements when: FI (i) have doubts about the veracity of

previously obtained customer identification data; and (ii) are permitted to complete the verification of the identity after the establishment of the business relationship.

Existing customers – Due diligence (c.5.17)

349. The Ordinance indicates that due diligence measures should be applied to existing customers based on the size of the risk they pose. Consequently, financial institutions should implement due diligence measures regarding these existing relationships at appropriate times. On the other hand, the Ordinance does not define “appropriate times.” Thus, financial institutions do not know precisely when to apply these due diligence measures.

350. Practice differs among the financial institutions visited, with some applying these provisions when the identity card expires and others when the flow of funds exceeds the income the customer declared when opening the account.

Existing customers - Anonymous accounts (c.5.18)

351. The Ordinance is silent on the question of applying due diligence measures to existing customers with anonymous accounts, under fictitious names, or numbered accounts. It should be pointed out that the provision prohibiting opening anonymous accounts and accounts under fictitious names was only adopted following adoption of the Ordinance of March 6, 2009. Consequently, it applies to new customers and not to existing customers.

Obligation to identify PEPs (c.6.1)

352. Preventive measures concerning PEPs are reiterated in Article 8 of the 2009 Ordinance. It does not define the concept of a PEP but refers to the FATF definition. In addition to implementing normal due diligence measures, financial institutions should have adequate risk management systems to determine whether the customer or the customer’s agent is a politically exposed person. However, Article 8 does not mention the enhanced due diligence requirement if a PEP is a potential customer or a beneficial owner.

Senior management approval for establishing business relationships with PEPs (c.6.2)

353. Financial institutions are required to obtain authorization from senior management before establishing business relationships with a PEP. Financial institutions are not required to obtain authorization from senior management in order to continue a business relationship with a customer who was accepted initially when it subsequently appears that the customer, or the beneficial owner, is a PEP or has become a PEP.

Identification of the source of wealth and funds of PEPs (c.6.3)

354. Article 8 requires financial institutions to take all reasonable measures to identify the source of the wealth and funds of PEPs.

Ongoing and enhanced monitoring of the relationship with a PEP (c.6.4)

355. Under Article 8, financial institutions must conduct ongoing and enhanced monitoring of business relationships with PEPs.

Additional element – Application of R.6 to national PEPs (c.6.5)

356. The Ordinance refers to the FATF's definition of a PEP. This does not extend to PEPs holding prominent public functions domestically.

Additional element – Transposition of the Merida Convention into national law (c.6.6)

357. The Merida Convention was signed but has not been transposed into national law because it has not been ratified yet.

Analysis of effectiveness (R.6)

358. The lack of a clear and precise definition of a PEP by national authorities and the lack of a requirement to determine whether the beneficial owner is a PEP prevent financial institutions from taking reasonable measures in this regard and the system is thus ineffective. Most financial institutions met had no clear idea of what a PEP is. In addition, they do not have the means to determine whether a customer or the beneficial owner is a PEP. On the other hand, one of the banks visited during the mission considers PEPs to be sensitive customers and does not establish a relationship with this type of customer before referring the matter to management for a final decision. All the financial institutions met believe that the definition of PEP includes domestic PEPs. Some institutions include local elected officials in the definition of a PEP. In fact, most financial institutions only have nationals as PEPs and are unable to identify foreign PEPs, having no access to that information.

Sufficient information on cross-border correspondent banking (c.7.1)

359. Concerning cross-border correspondent banking relationships, Article 10 of the 2009 Ordinance incorporates the entire text from the FATF methodology with respect to Recommendation 7. Thus, financial institutions are required to gather sufficient information about the respondent institution to fully understand the nature of its business and to determine from publicly available information the reputation of the institution and the quality of supervision, including whether it has been subject to a money laundering or terrorist financing investigation or regulatory action.

Evaluation of the controls put in place by respondent institutions (c.7.2)

360. Financial institutions are required to evaluate the controls put in place by the respondent institution with respect to combating money laundering and terrorist financing.

The Ordinance does not mention that financial institutions must ensure the adequacy and effectiveness of the respondent's controls.

Approval from senior management before establishing a correspondent relationship (c.7.3)

361. The 2009 Ordinance requires obtaining authorization from senior management before establishing new correspondent banking relationships.

Documenting the respective responsibilities of each institution (c.7.4)

362. Financial institutions must specify in writing the respective responsibilities of each institution before establishing new banking relationships.

Rules regarding “payable through accounts” (c.7.5)

363. With respect to “payable-through accounts,” financial institutions should satisfy themselves that the correspondent bank has verified customer identity and implemented ongoing customer due diligence measures with respect to customers that have direct access to the accounts of the correspondent bank, and that it is in a position to provide relevant customer identification data on these customers upon request to the correspondent bank.

Analysis of effectiveness (R.7)

364. The absence of any account opened directly by foreign banking institutions in the designated banks and institutions makes it impossible to measure the effectiveness of this recommendation.

Preventing the misuse of new technologies (c.8.1)

365. Article 8 of the 2009 Ordinance requires financial institutions that allow transactions via the Internet or any other electronic means to have an appropriate system to monitor these transactions. They are also required to centralize and analyze unusual transactions effected via the Internet or any other electronic means.

Management of risks associated with non-face to face business relationships or transactions (c.8.2)

366. The legal framework includes no provisions requiring financial institutions to put in place specific risk management systems directed to all business relationships, identification procedures, and customer due diligence for customers with whom financial institutions have non-face to face business relationships.

Analysis of effectiveness (R.8)

367. Meetings the mission held with financial institutions indicate that they do not conduct operations using new technologies. None of the financial institutions met conducts operations via the Internet, or has telephone banking services. There are only two ATMs that work only with the local card of their respective banks. There are no prepaid reloadable cards or account linked value cards. Transactions are limited to traditional transactions such as cash deposits and withdrawals, exchange transactions, and finally checks, which admittedly are still rarely used.

3.2.2. Recommendations and comments

368. Comorian authorities should regulate insurance companies. Their current activity does not cover life insurance, but current law does not prohibit them from engaging in this line of business.

Recommendation 5:

369. The two Ordinances have already introduced criteria related to due diligence but the authorities should ensure their application in order to ensure that the provisions are fully effective. In addition, they should improve the legislative and regulatory framework, which contains significant weaknesses.

370. Thus, the authorities should introduce the following requirements in the law:

- Provisions with respect to due diligence in insurance companies.
- Provisions governing numbered accounts.
- No threshold for implementing customer due diligence measures.
- Updating of information and documents collected for customer due diligence.

371. The authorities should introduce the following requirements, at least in the form of regulations:

- Limits on the application of simplified due diligence measures, whether with respect to customers residing in foreign countries or in the case of money laundering or terrorist financing.
- Customer monitoring after entering into the business relationship in the event of unsatisfactory compliance with the requirements indicated.

372. The authorities should also introduce implementing language governing certain aspects, such as the definition of:

- The duration of the period determined with respect to different transactions carried out by occasional customers.
- Reasonable measures for verifying the identity of the beneficial owner based on relevant information or data obtained from a reliable source and to understand the ownership and control structure.
- High-risk clients in order to allow financial institutions to classify their customers according to the risk they present.
- Cases where reduced or simplified measures should be applied.
- Appropriate times with respect to due diligence measures for existing clients in order to allow financial institutions to apply the measures appropriately.

373. Comorian authorities are urged to accelerate the issuance of biometric passports in order to halt the circulation of regular passports that can be falsified and used to open bank accounts and in order to improve the reliability of public records. In addition, it seems essential to update and computerize the files in the clerk's office at the TPI in order to ensure a reliable and accessible source for identifying legal persons.

Recommendation 6

374. Comorian authorities should:

- Apply the provisions relating to PEPs to insurance companies.
- Require financial institutions to obtain authorization from senior management in order to continue a business relationship with an existing client that subsequently seems to be a PEP.
- Include provisions to require financial institutions to determine whether the beneficial owner is a PEP.
- Introduce implementing language to define PEPs.

Recommendation 7:

375. Comorian authorities should:

- Introduce a provision so that financial institutions satisfy themselves regarding the relevance and effectiveness of the controls put in place by the correspondent bank.

Recommendation 8:

376. Comorian authorities should:

- Introduce provisions on non-face-to-face business relationships.

3.2.3. Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	NC	<u>Insurance companies:</u> • No preventive measures. <u>Other financial institutions:</u> • No provisions regulating the maintenance of numbered accounts in line with the FATF Recommendations. • No requirements on updating customer information. • Identification of natural and legal persons is difficult due to the unreliability of public records and the commercial registry as well as the circulation of identification documents that could be forged. • No limits on the application of simplified measures, particularly in the case of customers residing in foreign countries and cases where ML/FT is suspected. • No due diligence requirement in the case of unsatisfactory compliance with CDD after the establishment of the business relationship. • No due diligence measures for existing customers holding numbered accounts. • Limited effectiveness of existing provisions.
R.6	NC	• Failure to apply provisions on PEPs to insurance companies. • No requirement to obtain authorization from senior management in order to continue a business relationship with an existing client that subsequently appears to be a PEP. • No clear definition of PEPs.
R.7	LC	• No provision for ensuring the adequacy and effectiveness of controls

		put in place by the correspondent bank. • Lack of effectiveness.
R.8	PC	• No provisions on non-face to face business relationships.

3.3. Reliance on third parties and other intermediaries (R.9)

3.3.1. Description and analysis

377. Comorian legislation on preventing money laundering and terrorist financing does not include specific provisions on third parties and other intermediaries. The financial institutions met reported that they do not currently operate through intermediaries, with the exception of the SNPSF, which relies on its French partner to open accounts in France.

Analysis of effectiveness

378. Customers residing in France who want to open accounts with the SNPSF appear at representative offices to pay the first deposit and submit identification documents while the accounts are opened in advance at the SNPSF. Consequently, the necessary information regarding customer identification is not available to the SNPSF at the moment when the responsibility for identifying and verifying identity falls to the financial institution relying on third parties.

3.3.2. Recommendations and comments

379. It would be advisable for the BCC to distribute instructions establishing, in particular, the conditions under which financial institutions may rely on third parties or intermediaries, so that financial institutions would be required to:

- obtain immediately from this third party the necessary information on customer due diligence measures.
- take appropriate measures to satisfy themselves that the third party is in a position to provide, upon request and promptly, copies of identification data and other relevant documents relating to customer due diligence.
- satisfy themselves that the third party is subject to regulation and monitoring.

3.3.3. Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	NC	• No rules governing reliance on intermediaries or other third parties to

		perform the CDD process or to introduce business.
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3.4. Professional secrecy requirements of financial institutions (R.4)

3.4.1. Description and analysis

No obstacle to implementing FATF Recommendations due to professional secrecy applicable to financial institutions (c.4.1)

380. Article 27 of the Ordinance addresses the lifting of banking secrecy and provides that “banking or professional secrecy cannot be invoked to refuse to provide the information indicated in Article 15 or requested in the context of an investigation on money laundering ordered by or carried out at the direction of a judicial authority.” The reference to Article 15 is incorrect since that article relates to the requirements of domestic anti-money laundering programs. It is Article 14 on the disclosure of documents that should be referred to so that banking secrecy cannot be used to oppose competent authorities seeking access to the necessary information.¹³

381. Article 43 of Ordinance No. 09/002 states the general principal that the authorities of the Union of the Comoros are committed to cooperating as much as possible with authorities of other countries for purposes of information sharing, investigation, and procedures directed to precautionary measures and the confiscation of instruments and proceeds linked to money laundering, for purposes of extradition, as well as for mutual technical assistance.

382. It should be noted that Comorian legislation has no provisions allowing for information sharing among competent authorities nationally, or among financial institutions, in the context of cross-border correspondent banking relationships, reliance on intermediaries, and domestic and cross-border transfers.

Analysis of effectiveness (R.4)

383. The reference made in the provision regarding the prohibition on invoking banking secrecy to a provision unrelated to the disclosure of documents allows anyone to refuse to disclose documents to competent authorities and thus prevents the FIU and law enforcement authorities from investigating money laundering.

3.4.2. Recommendations and comments

384. Comorian authorities should:

¹³ The authorities indicate that legal provisions have been drawn up to correct the errata in the AML/CFT order.

- Put in place provisions eliminating obstacles to information sharing between competent national authorities and financial institutions.
- Take steps so that Article 27 regarding the prohibition on invoking banking secrecy refers to the article on the disclosure of documents.

3.4.3. Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	NC	• Ability to oppose the disclosure of documents. • No provisions ensuring that banking secrecy does not hamper information sharing among competent national authorities and among financial institutions.

3.5. Record-keeping and rules on money transfers (R.10 and SR.VII)

3.5.1. Description and analysis

Maintenance of all necessary records on transactions (c.10.1* & c.10.1.1*)

385. Provisions on the record-keeping appear in Article 13 of the 2009 Ordinance. Financial institutions must keep all necessary documents relating to both domestic and international transactions for a period of at least five years. The same article indicates that this documentation should make it possible to reconstruct individual transactions, including as applicable the amounts and types of foreign currencies involved, so as to provide evidence, if necessary, in the event of criminal prosecution.

386. The Ordinance does not mention that documents must be kept for five years after the transaction is completed. In addition, it should be noted that there are no legal provisions for keeping necessary documentation relating to transactions carried out, independent of any knowledge as to whether the business relationship is ongoing or closed.

Retention of identification data, account files, and business correspondence (c.10.2*)

387. Financial institutions are also required to keep a written track of identification data, account files, and correspondence for at least five years after the end of the business relationship. Regarding identification data, Article 13 stipulates that this involves, for example, copies or records of official documents such as passports, identity cards, driver's licenses, or similar documents. There is no definition of "similar documents."

388. Under the terms of Article 16, foreign exchange offices are also required to enter in a register all transactions, their nature, and their amount, indicating the name and surname of

the customer. The registry indicated above must be kept for ten years after the last transaction recorded.

Information made available to competent authorities (c.10.3*)

389. Article 13 of the 2009 Ordinance provides that identification data relating to transactions must be made available to competent national authorities so that they can carry out their mission. The Ordinance does not indicate that the documents must be made available to national authorities on a timely basis.

Analysis of effectiveness (R.10)

390. In practice, some institutions do not know what types of documents they should keep; others stated that they keep only accounting documents; and one financial institution said it keeps documents for three years. Moreover, one institution does not make a copy of the identification document. Consequently, compliance with the record-keeping requirement is not sufficient to make available to competent authorities documents and information relating to customs and transactions that could be essential when processing an STR, or used as evidence in the event of criminal prosecution.

Obtain Originator Information for Wire Transfers (c.VII.1)

391. Under Article 12, financial institutions, including money remitters, must take measures to collect and keep accurate and useful information regarding the originator (name, address, and account number), the transfer of funds, and the respective remittance, regardless of the amount of the transfer.

Inclusion of Originator Information in Transfers (c.VII.2 to c.VII.4)

392. The Ordinance makes no distinction between cross-border transfers and domestic transfers. Moreover, there is no provision regarding individual transfers abroad in batches. There does not seem to be any provision to ensure that complete information on the originator appears in the message accompanying cross-border transfers or the account number only for domestic transfers.

Keeping information on originators (c.VII.5)

393. Pursuant to Article 12, financial institutions, including money remitters, are required to implement in-depth monitoring and follow-up in order to detect suspicious money transfer activities not accompanied by complete information on the originator.

394. However, the articles do not mention what measures the beneficiary's financial institution should take in the event it does not obtain complete information on the originator.

Existence of effective measures to monitor implementation of SR.VII (c.VII.6)

395. There are no specific measures for monitoring implementation by financial institutions of the Ordinance's provisions on wire transfers.

Application of criteria 17.1 to 17.4 to SR.VII (c.VII.7)

396. Disciplinary or supervisory authorities may order sanctions under the conditions provided by professional and administrative regulations in cases where institutions subject to the law have ignored the order's requirements with respect to wire transfers. In addition, a fine of 30 million CFs will be imposed on all those who have violated the provisions of Article 5 on international money transfers.

Full and accurate information required regarding the originator of all incoming and outgoing transfers (c.VII.8 and c.VII.9 – Additional elements).

397. The Ordinance does not set a threshold with respect to wire transfers. Consequently, the information requirements on the originator under Article 12 apply to all wire transfers regardless of the amount of the transfer.

Analysis of effectiveness (SR.VII)

398. In general terms, banks only send transfers for their customers. However, the practice varies among the banks met by the mission. One of them is content with just the documentation submitted by the customer for making wire transfers, which does not comply with the requirements under the Ordinance. Another has a "stop list" filtering system that allows it not only to filter transfers that do not contain the name of the originator, his address, and his account number but also to filter transfers according to sensitive countries and then to freeze the transfer, which can only be unfrozen after the customer presents the documentation. These documents are kept by the bank for a period of five years. With respect to money transfer services, one local institution only makes transfers after it has obtained and verified the name of the originator while another asks the customer to provide his name but may base verification of identity on obsolete or inadequate documents, such as a loyalty card.

3.5.2. Recommendations and comments

399. The authorities should:

- Amend the provision on record-keeping to ensure that records are kept for five years after transactions are completed.
- Introduce a legal or regulatory requirement on keeping necessary documentation with respect to transactions if the account or the business relationship is closed.
- Impose record-keeping requirements on insurance companies.

- Correct weaknesses in effective record-keeping, providing more examples to subject institutions through on-site visits or training seminars.
- Introduce provisions for individual transfers that are part of a batch transmission. Thus, the financial institution of the originator can make do with mentioning the account number of the originator or a unique reference number for each separate transfer; to do this, it is necessary that the batch (including individual transfers) itself includes full information on the originator – information that could be obtained in the receiving country.
- Introduce provisions to ensure that full information regarding the originator appears on the message accompanying cross-border transfers, or the account number only for domestic transfers.
- Require the beneficiary's financial institution to adopt effective procedures based on a risk assessment in order to identify and deal with transfers that are not accompanied by full information on the originator. Obtaining incomplete information should be considered a factor in evaluating the suspicious nature of a transfer or any other related transaction, and should make it possible to evaluate the relevance of a report to the FIU or any other competent authority. In certain cases, the beneficiary's financial institution should consider the possibility of limiting, or putting an end to, the commercial relationship with another institution that is not in a position to comply with the above conditions.
- Put appropriate measures in place to allow effective monitoring of the implementation of regulations on wire transfers by financial institutions.
- Correct weaknesses in effectiveness.

3.5.3. Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	NC	• No clear obligation to keep records for five years after transactions are completed. • No record keeping requirements with respect to terminated accounts or business relationships. • Failure to apply record-keeping provisions to insurance companies. • Limited effectiveness of existing provisions.
SR.VII	NC	• No provisions on batched cross-border transfers.

		• No requirement to include information in the message accompanying the transfer. • No provisions on handling transfers that are not accompanied by complete information. • No effective measures to monitor financial institutions' compliance with rules and regulations. • Limited effectiveness of existing provisions.
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3.6. Monitoring of transactions (R.11 and 21)

3.6.1. Description and analysis

Obligation to pay particular attention to all complex, unusual large transactions, or all unusual patterns of transactions (c.11.1)

400. Article 11 of the 2009 Ordinance requires all financial institutions to obtain information about the origin and destination of funds, as well as on the purpose of the transaction and the identity of the economic agents of the transaction when it involves an amount over 1.5 million CFs (about 3,050 euros) and is carried out under unusually or unjustifiably complex conditions, or does not seem to have an economic justification or lawful purpose. The article establishes a threshold for paying particular attention to complex transactions, which is not consistent with the recommendation since the recommendation does not mention a threshold.

Examination as far as possible into the background and purpose of these transactions (c.11.2)

401. In addition, financial institutions must, when applicable, prepare a confidential written report including all useful information regarding methods, as well as the purpose of the transaction and the identity of the economic agents.

Keeping findings available for competent authorities and auditors (c.11.3)

402. These reports must be kept for at least five years and may be sent to the competent authorities upon their request. The Ordinance does not mention that reports should be made available to auditors.

Analysis of effectiveness (R.11)

403. One of the banks met by the assessors controls its transactions with approval power over sizeable transactions. This requires the bank to refer such transactions to the compliance

officer once the account manager has taken all of the customer's documentation and noted his comments in writing. In contrast, meetings with other financial institutions indicate that the results of the reviews of transactions are not kept in writing.

Special attention to countries that do not or insufficiently apply the FATF Recommendations (c.21.1)

404. Pursuant to Article 8 of the 2009 Ordinance, financial institutions must pay particular attention to their business relationships and transactions with natural and legal persons, particularly businesses and financial institutions domiciled in countries that do not or insufficiently apply the FATF Recommendations.

Effective measures put in place (c.21.1.1)

405. No measure has been taken to ensure that financial institutions are informed of concerns caused by weaknesses in the AML/CFT systems of other countries.

Examination of transactions that have no apparent economic or lawful purpose (c.21.2)

406. When transactions have no apparent economic or lawful purpose, their context and purpose must be examined and the results written down and made available to the competent authorities.

407. It should be noted that the results should also be made available to the auditors.

Ability to apply appropriate counter-measures to countries that continue not to apply or to insufficiently apply the FATF Recommendations (c.21.3)

408. Again, according to Article 8, when a country continues not to apply or to insufficiently apply the FATF Recommendations, financial institutions must themselves apply appropriate counter-measures.

409. The Ordinance indicates that financial institutions must apply counter-measures to a country that continues not to apply or to insufficiently apply the FATF Recommendations although, according to the recommendation, it is the country that must take these measures.

Analysis of effectiveness (R.21)

410. At the urging of the parent company, one of the banks met has developed a list of high-risk countries, by continent. The list is used for conducting enhanced monitoring with respect to incoming or outgoing transactions with these countries. On the other hand, in the absence of any guidelines issued on the subject by the BCC, several institutions have still not incorporated the idea of high-risk countries in their monitoring and have not set up a high-risk country classification.

3.6.2. Recommendations and comments

411. The authorities should:

- Apply the transaction monitoring provisions to insurance companies.
- Not limit the monitoring of specific transactions to a defined threshold.
- Require that the results of reviews of specific transactions and transactions with countries that do not comply with the FATF Recommendations be made available to the auditors.
- Inform financial institutions of concerns raised by weaknesses in the AML/CFT mechanisms of other countries.
- Replace “financial institution” with “country” in the provision on allowing counter-measures against a country that continues not to apply or to insufficiently apply the FATF Recommendations.
- Enforce the provisions on keeping written records of the results of reviewing complex transactions and transactions with high-risk countries.

3.6.3. Compliance with Recommendations 11 and 21

	Rating	Summary of factors underlying rating
R.11	NC	• Special attention to all complex, unusual large transactions, or unusual patterns of transactions is only required when a threshold condition is met. • Failure to apply provisions to insurance companies. • No requirements to keep findings available for auditors for at least five years. • Lack of effectiveness.
R.21	NC	• Failure to apply provisions to insurance companies. • No measures taken to inform financial institutions of high-risk countries. • No requirements to make results of reviews available to auditors. • The 2009 ordinance indicates that the financial institution, not the

		country, must take counter-measures.
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3.7. Suspicious transaction reports and other reports (R.13-14, 19, 25, SR.IV)

3.7.1. Description and analysis

Legal framework:

412. The relevant articles for analyzing compliance with Recommendation 13 are found in the 2009 Ordinance (Articles 21 and 22) and the 2003 Ordinance (Article 3-1-5). Some provisions relating to Recommendation 14 are included in Article 24 of the 2009 Ordinance. It should also be noted that the Anjouan anti-money laundering law dated January 10, 2005 has requirements on reporting suspicious transactions. Article 13 (2) of that law provides that, if there are sufficient reasons to suspect money laundering, complex, unusual, or sizeable transactions should be the subject of an STR sent to the supervisory authority. However, although this provision should be considered as being still in effect, neither the financial authorities nor the current authorities on Anjouan seem to know about it. In addition, the criminal penalties provided in the Anjouan law have no legal basis in that criminal matters fall under the jurisdiction of the Union of the Comoros and not the islands.

STR requirement in the case of suspicions of money laundering or terrorism financing (c.13.1* & SR.IV.1)

413. Article 21 of the 2009 Ordinance requires “all natural or legal persons, particularly accountants, examiners, and auditors to report to the FIU the transactions indicated in Article 3 when such transactions involve funds that seem to derive from conduct that could be suspected of constituting a crime or an offense.”

414. The language of Article 21 is not clear. Instead of focusing on the financial institution as the subject entity, it mentions any natural or legal person, emphasizing professions (accountants, examiners, and auditors) that are not all part of the AML/CFT framework set up by the FATF Recommendations. The authorities were unable to provide an explanation regarding the particular focus placed on these institutions rather than on financial institutions as in FATF Recommendation 13. In addition, Article 21 refers to transactions indicated in Article 3, while this article does not refer to transactions but to subject entities.

415. This report must be made even if the transactions were already carried out, or if it was impossible to defer their execution, or if the suspicious regarding the origin of the funds emerged afterwards. There is an additional requirement to report promptly any information tending to strengthen or weaken the suspicion.

416. Article 34.2.a of the 2009 Ordinance provides that persons who fail to make the STR under Article 21 will be punished with a fine of no more than 30 million CFs. Those who fail to submit the STR intentionally, when the circumstances of the transaction would lead to the deduction that the funds or amounts could derive from the indicated offenses, will be punished with imprisonment of 1-5 years and a fine in proportion to the size of the amount involved in the crime, which may in no case be less than 10 million CFs. Under the terms of Article 34.3, persons who fail to make an STR, voluntarily or not, could also be punished by being banned permanently or for no more than five years from engaging in the profession that provided the opportunity for the offense to be committed.

417. The scope of reporting is consistent with the FATF Recommendations and covers all funds that seem to derive from conduct that could constitute a crime or an offense.

418. Article 22 of the 2009 Ordinance states that “STRs are sent to the foreign Financial Intelligence Unit” by any means. The authorities indicated that the language of the Ordinance contains an error. Article 22 should have read “STRs are sent to the financial intelligence unit”. This error could create ambiguity, limiting STRs to the FIU. However, the methods for sending STRs to the FIU of the Comoros are framed by Article 3-1-5 of the 2003 Ordinance.

419. The FIU has not received any STR since it was set up in September 2008. Previously, some information was received by the Central Bank in the context of the 2003 Ordinance, generally for verification when accounts were opened.

STR requirement for funds linked to terrorism (c.13.2*)

420. The STR requirement does not directly mention funds linked to terrorism. They are partially covered by the requirement to report funds that could appear to derive from conduct that could constitute a crime or an offense. However, funds coming from a legal source are not covered, even if they may later be used in connection with terrorism.

Requirement to report all suspicious transactions (c.13.3*)

421. Any suspicious transactions must be reported and there is no threshold. However, the reporting requirement defined by the 2009 Ordinance refers to transactions carried out by subject entities and does not explicitly cover attempted transactions.

Requirement to report suspicious transactions involving tax matters (c.13.4*)

422. All crimes and offenses, including tax violations, constitute predicate offenses to money laundering.

Requirement to report all criminal acts (c.13.5 – Additional element)

423. All crimes and offenses are predicate offenses to money laundering falling within the scope of STRs. However, the list of crimes and offenses in the Comoros is shorter than that established by the FATF (see R.1 above).

Analysis of effectiveness (R.13)

424. The mechanism in place is not effective as no STR has been recorded. Nonetheless, the STR mechanism has been required of financial institutions since the 2003 Ordinance. In addition, the members of the FIU were appointed in September 2008.

425. During interviews with the banks, it appeared that the practice of certain institutions was to refuse transactions about which they had suspicions but, notwithstanding their suspicions, they did not report these attempted transactions to the FIU. In addition, the structure and composition of the FIU is still not known and it seems obvious that the work of confidence building must continue. Despite the existence of training and awareness sessions organized by the BCC regarding the FIU since October 2008, a fear shared by various subject entities is that a report sent to FIU will not be treated with the necessary confidentiality.

426. With respect to c.13.4, including tax violations within the scope of STRs does not seem to be understood by some bankers who let the mission know that complex arrangements were clearly influenced by tax fraud considerations, but they did not consider it useful to report their suspicious on this subject.

Protection in the case of an STR (c.14.1)

427. Under the terms of Article 24 of the 2009 Ordinance, no civil, criminal, or administrative liability action may be filed nor any professional sanction ordered against persons or directors and employees of financial institutions who have, in good faith, made STRs as provided in the 2009 Ordinance.

428. The protection the law provides for the authors of STRs is broad in terms of its nature and purpose.

Prohibition against Tipping-Off (c.14.2)

429. Article 34 (a) of the 2009 Ordinance punishes persons and managers and employees of entities designated in Article 3 who knowingly reveal to the owner of sums or valuables, or the originator of transactions covered in that article, the STRs they are required to make or the follow-up to those reports. The penalties incurred are from 1 to 5 years in prison and a fine in an amount in proportion to the value of the offense, which may in no case be less than 10 million CFs.

430. The same penalty is provided in Article 34 (d) for those who, having learned of a money laundering investigation by reason of their profession, knowingly inform the targeted person or persons by any means.

Confidential nature of the identity of financial institution staff making STRs (c.14.3 – Additional element)

431. There is no legal, regulatory, or other measure ensuring that the FIU will keep confidential the names of and personal information regarding financial institution staff who files STRs.

Consideration of a system for reporting currency transactions (c.19.1 to c.19.3)

432. The authorities indicated that they have considered the feasibility and usefulness of implementing a system whereby financial institutions would report all currency transactions exceeding a certain amount to a central agency with a computerized database. They concluded that this measure is not foreseeable in the near future.

433. However, no feasibility study was presented to the assessors.

Reporting guidelines (c.25.1)

434. No guidelines have been prepared by the competent authorities to assist financial institutions in implementing and complying with their AML/CFT obligations.

Feedback of information on reporting (c.25.2)

435. In the absence of STRs received by the FIU and the unit's annual report, financial institutions do not currently receive feedback of general information.

436. Regarding feedback on a case by case basis, Article 3-1-5 of the 2003 Ordinance establishes that the FIU must acknowledge receipt of an STR.

Maintaining statistics (c.32.2)

437. In the absence of any STRs received by the FIU since it was set up in September 2008, no statistics are available.

Analysis of effectiveness (R.14, R.25)

438. Given the absence of any STRs and the operational nature of the FIU, the implementation of legal provisions in place is null.

3.7.2. Recommendations and comments

439. The authorities should:

Recommendation 13

- Clarify the framework for reporting suspicions in order to remove the ambiguities created by the wording of Article 21 of the 2009 Ordinance.
- Extend the requirement to report suspicious transactions to all funds linked or related to or to be used for terrorism, terrorist acts or by terrorist organizations or those who finance terrorism. Currently funds of lawful origin are not covered by the reporting requirement.
- Make reporting attempted transactions a requirement.
- Repeal the AML law of Anjouan dated January 10, 2005.
- Undertake actions to strengthen the knowledge that entities subject to anti-money laundering and counter-terrorism requirements have about their obligations to report suspicious transactions.

Recommendation 14

- Consider taking measures ensuring that the FIU will keep confidential the names of and personal information regarding financial institution staff who files STRs.

Recommendation 19

- Study the feasibility and usefulness of a system for reporting currency transactions.

Recommendation 25

- Develop and disseminate reporting guidelines and feedback of information on STRs.

Special Recommendation IV

- Introduce a direct requirement on reporting suspicions linked to terrorist financing.
- Make the requirement to report attempted transactions linked to terrorist financing mandatory.

3.7.3. Compliance with Recommendations 13, 14, 19, and 25 (c.25.2), and Special Recommendation IV

	Rating	Summary of factors underlying rating
R.13	NC	• Ambiguity of the framework for reporting suspicions which does not clearly requires financial institutions to report. • Terrorist financing is not explicitly covered by the reporting requirement, which does not cover funds of lawful origin. • No requirement to report attempted transactions. • Existence of a different reporting requirement in Anjouan. • No STRs reported.
R.14	LC	• Lack of effectiveness.
R.19	PC	• No study on feasibility and usefulness of a system for reporting currency transactions.
R.25	NC	• No reporting guidelines to help in the implementation of and compliance with AML/CFT requirements. • No information feedback.
SR.IV	NC	• No direct requirement to report suspicions of terrorist financing. • No requirement to report attempted transactions.

3.8. Internal controls, compliance, audit, and foreign branches (R.15 and 22)

3.8.1. Description and analysis

440. The major elements of the supervisory system are defined in Article 15 of the 2009 Ordinance. This article states that the system of controls must be developed for preventing money laundering and makes no mention of terrorist financing.

Obligation to establish internal controls (c.15.1)

441. Article 15 of the 2009 Ordinance does not require financial institutions to establish procedures and policies for preventing money laundering and terrorist financing.

Designation of a compliance officer (c.15.1.1)

442. Again according to Article 15, credit and financial institutions are required to “appoint officials in charge at the central management level and in each branch, agency, or local office.”

Right to access information (c.15.1.2)

443. The legal framework does not provide that compliance officers have timely access to customer identification data as well as other due diligence information.

Independence and internal control function (c.15.2)

444. Article 15 stipulates that credit and financial institutions must establish a system of internal controls for the implementation and effectiveness of measures adopted pursuant to the 2009 Ordinance. It should be noted that this article does not state that the internal controls must be independent and given the resources needed to verify compliance with procedures.

Ongoing employee training (c.15.3)

445. Article 15 requires credit and financial institutions to provide ongoing training for officers or employees. It does not specify the content of the training, which should address new developments, information on ML/FT techniques, methods, and trends, as well as all aspects of AML/CFT laws and obligations.

Employee Screening Procedures (c.15.4)

446. Article 15 requires credit and financial institutions to have strict requirements for hiring employees. It does not provide any specifics regarding the concept of strict requirements.

Analysis of effectiveness (R.15)

447. Meetings indicate that compliance officers have not been appointed in most of the financial institutions visited.

448. This is also true of internal policies, which generally have still not been put in place. In addition, only one institution has an independent internal control mechanism. Staff hiring procedures vary from one institution to the next. Some institutions require an abstract of the police record and conduct a character ethics investigation, while others have no hiring requirements. It should be noted that the BCC organized a few training sessions but meetings indicated that the training did not cover all the parties involved, insurance companies in particular. In addition, most institutions met stated that their staff had not had any specialized training in the area of AML/CFT. All these factors make the AML/CFT control mechanism ineffective within financial institutions.

Application of AML/CFT measures to foreign branches and subsidiaries (c.22.1 to c.22.3)

449. The 2009 Ordinance does not require financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT measures in accordance with the requirements provided in the law of the country of origin.

450. It is important to note that banks and financial institutions operating in the Comoros do not have foreign branches or subsidiaries.

3.8.2. Recommendations and comments

The authorities, particularly the BCC, should:

- Apply provisions on internal AML/CFT programs to insurance companies.
- Amend the text of Article 15 so that the internal control program covers terrorist financing as well.
- Introduce a regulatory provision requiring financial institutions to establish AML/CFT policies and procedures.
- Disseminate instructions to fill in some gaps with respect to timely access to information needed for the professional ethics and independence of the internal control mechanism.
- Introduce implementing language to define the content of ongoing employee training and the nature of strict hiring criteria.
- Have financial institution staff participate in AML/CFT training.
- Define the rules applicable to financial institutions with foreign branches or subsidiaries. When financial institutions have foreign branches and subsidiaries, they should be required to:
 - Ensure that their foreign branches and subsidiaries observe AML/CFT measures in accordance with those provided in their country of origin and the FATF Recommendations, to the extent allowed by local law and regulations (i.e., that of the host country);
 - Inform supervisory authorities in the home country when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures, because laws and regulations or other local measures (i.e., those of the host country) prohibit them from doing so.

3.8.3. Compliance with Recommendations 15 and 22

	Rating	Summary of factors underlying rating
R.15	NC	• No requirement to establish internal AML/CFT policies and procedures. • No requirement for financial institutions to ensure timely access to necessary information by the compliance officer. • Independence of internal control mechanisms is not ensured. • Limited application of the 2009 ordinance's provisions.
R.22	NC	• No requirements imposed on financial institutions to ensure that their foreign branches and subsidiaries apply AML/CFT measures in compliance with Comorian law and the FATF recommendations.

3.9. Shell banks (R.18)

3.9.1. Description and analysis

Prohibition on establishing shell banks (c.18.1)

451. Article 7 of Ordinance No. 09-002 provides that the government organizes the legal framework to ensure transparency in economic relationships, particularly by ensuring that corporate law and legal mechanisms do not allow the establishment of fictitious or front entities. Consequently, the licensing of shell banks is prohibited.

Prohibition on correspondent banking relationships with shell banks (c.18.2)

452. There are no provisions prohibiting financial institutions from maintaining relationships with shell banks.

Requirement to Satisfy Respondent Financial Institutions Prohibit of Use of Accounts by Shell Banks (c.18.3)

453. Financial institutions are no longer required to ensure that financial institutions that are foreign customers do not allow their accounts to be used by shell banks.

Analysis of effectiveness (R.18)

454. Offshore activity was developed on the island of Anjouan starting in the late 1990s and really took off after 2003. The offshore policy was supported by the executive of the

island of Anjouan until March 2008 when the separatist government was overturned. The authorities of the Union of the Comoros supported this sector until 2005. About 300 offshore banks were created. The authorities in place since the summer of 2008 informed the mission that they have not issued any authorizations for offshore companies. However, the Comorian nationals involved in this offense have apparently not been prosecuted. It is established that offshore financial institutions were created in violation of the law of the Union, but the Internet site that was created by the Anjouan authorities¹⁴ was still operating at the time of the on-site mission. Authorities on the island of Anjouan indicated they were in contact with those in charge of the offshore sector to have this site shut down quickly (see section 1.2 of the report).

455. A bank authorized in 2006 had never begun its operations at the time of the on-site visit.¹⁵ The Central Bank indicated that it asked the Ministry of Finance to withdraw authorization but the Minister did not respond favorably. This situation poses a problem in that an authorized but inactive bank could be considered a shell bank. Nothing prevents a bank so authorized in the Comoros from opening accounts in foreign banks.

3.9.2. Recommendations and comments

- A directive or other restrictive measure should prohibit financial institutions from forming or continuing correspondent banking relationships with shell banks. Along the same lines, financial institutions should ensure that financial institutions that are their foreign customers do not allow their accounts to be used by shell banks.
- It is recommended that the authorities conduct an investigation at the national level to punish local complicity in the creation of an offshore banking sector on Anjouan.
- The Central Bank and the Ministry of Finance should revise their procedures in order to respect the timeframe granted to a licensed bank to begin its activities.

3.9.3. Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	NC	• Weaknesses in the licensing process may lead to the establishment and operation of shell banks. • Failure to prohibit financial institutions from maintaining relationships

¹⁴ International Business Companies Act 004 of 2005 adopted by the Anjouan Parliament on February 5, 2005

¹⁵ The mission was informed after the on-site visit that the BCC issued a favorable opinion regarding the start-up of operations of the bank in question, which became operational in July 2009.

		with shell banks. • No requirement that financial institutions take reasonable measures to satisfy themselves that their correspondent banks do not themselves maintain relationships with shell banks.
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Regulation, supervision, control, and sanctions

3.10. Supervision and control system. Competent authorities, and self-regulatory organizations

3.10.1. Description and analysis

AML/CFT regulation and supervision & Designation of competent authorities (c.23.1 - 23.2)

456. Pursuant to Article 1 of Law No. No. 80-8 on currency and the role of the BCC in the oversight of banks and financial institutions, credit, and foreign exchange, the Central Bank must, *inter alia*, exercise surveillance and control over the activities of banks and financial institutions. The inspections performed by the BCC in the area of AML/CFT remain very weak, having started only in 2009, and are limited to three on-site visits.

457. In the case of insurance companies, no authority has been designated to verify their compliance with AML/CFT requirements. The BCC informed this mission that its new statutes, not yet approved, would allow it to accomplish this task.

Preventing the participation of criminals (c.23.3)

458. Article 33 of the Banking Law provides that no one can administer, direct, or manage a financial institution in any capacity if they have been convicted, particularly for fraudulent collapse, bankruptcy, or fraud.

Application of prudential regulation for AML/CFT (c.23.4)

459. In addition, Law No. 80-07, the banking law on regulation of banks and financial institutions, establishes the conditions for prior approval or authorization to engage in banking activities. Pursuant to Article 6 of the aforementioned banking law, financial institutions, other than those under public law, may not operate without prior approval from the Minister of Finance, based on the favorable view of the BCC. Approval is then confirmed through registration in the list of banks or the list of other financial institutions. This registration is made known to the public at the request of the BCC. When reviewing a request for approval, the BCC takes into consideration a series of criteria, particularly the legal status

and financial situation of the financial institution and the competence of those charged with its administration, direction, or management.

460. The Ministry of Finance of the Union considers that the approval of insurance companies is governed by the General Tax Code (a copy of which was requested but not provided by the Ministry), which indicates that the conditions for approval are the submission of a financial guarantee by the donor and the release of capital. The Ministry considers itself to be the competent authority for issuing approvals.

461. However, the mission found that one insurance company obtained the approval of the Ministry of Finance of the island of Anjouan in February 2009, merely by submitting a report signed by the general shareholders' meeting of the corporation and the articles of incorporation prepared by a notary.

Registration of money transfer services and currency exchange services (c.23.5)

462. Pursuant to Article 16 of Ordinance No. 09-002, natural or legal persons that professionally and customarily carry out foreign exchange offices are required, in order to begin their operations, to send a declaration of activity to the BCC for the purpose of obtaining authorization to open and operate as provided by the laws and regulations in effect, and to document in that declaration the lawful origin of the funds needed to create the entity. Besides this provision, Comorian banking laws do not provide precise approval conditions for foreign exchange offices and money transfer services. On the other hand, these conditions are mentioned in a data sheet prepared by the BCC but not made public since it is not dated, signed, or adopted by a competent authority and thus has no legal value.

Monitoring and supervision of money transfer services and currency exchange services (c.23.6)

463. The monitoring and supervision of money transfer services is provided by the BCC but the sector continues to be weakly controlled.

Prior authorization or registration, regulation, and supervision of other financial institutions (c.23.7)

464. Microfinance Sector and Decentralized Financial Institutions (IFDs): Given that the Union of the Comoros has a strong microfinance presence and given the rapidly acquired significance of IFDs, the Comorian government established a regulatory framework favorable to the development of the sector. At the same time, the BCC has distributed circulars concerning requests for approval for decentralized financial institutions. The regulatory framework is made up of several texts, notably:

- Decree No. 04-069/PR of June 22, 2004 regulating the activities of decentralized financial institutions.

- Circular No. 001/2004 on requests for approval of decentralized financial institutions.

465. Pursuant to Article 5 of Decree No. 04-069/PR, IFDs cannot carry out their activities without prior approval from the Minister of Finance, with the agreement of the Central Bank. Authorization may be granted to a single institution or to the Union,¹⁶ for itself and for affiliated institutions. Article 1 of Circular No. 001/2004 indicates that the request for approval of an IFD or a Union must be deposited with the BCC. The request for approval file must include several documents and items of information, in particular:

- The notarized articles of incorporation of the institution or the Union, approved by the constituent assembly, as well as the receipt for registration of the articles of incorporation filed with the clerk of the commercial court.
- The name, surname, and address of the directors, as well as their CV accompanied by documentation and an abstract of the police record for each of the directors.
- The address of secondary counters for individual approval, and the list of members accompanied by a declaration of activity for each establishment for collective approval.

Analysis of effectiveness (R.23)

466. Meetings indicate that there is a foreign exchange office carrying out its activities in Moroni without the approval of the BCC. The BCC sent the exchange office a warning informing it that exchange operations can only be carried out by intermediaries authorized by the BCC. An information request was sent in February 2009. At the time of the on-site visit, the situation had not changed and the foreign exchange office continued to operate. However, the BCC indicated that it reserved the right to refer the matter to the judicial authorities for unlawful financial intermediation activities.

467. The mission was informed of the existence of two microfinance networks in the Grande Comore and on Mohéli that have not been able to conform to the IFD legislation and obtain an authorization from the BCC. The BCC confirmed that it knew about these networks and is in contact, for two years, with the directors of these networks created in the 1990s, in order to correct the situation. The BCC thus has no power of control over these institutions. Comorian authorities informed the mission that this situation has been going on for two years. In an attempt to obtain authorization, these two networks carry out their activities based on the ministerial order that was the source for creation of MFIs in the early 1990s in the context of a project supported by the IFAD (International Fund for Agricultural Development).

¹⁶ Institution resulting from a group of IFDs endowed with legal status.

468. The conditions for the authorization of insurance companies are ambiguous and inadequate. The competent authority responsible for issuing approvals remains unclear. In addition, the conditions for authorizing foreign exchange operators and money transfer organizations are not specified by law.

Guidelines for financial institutions (c.25.1)

469. Comorian authorities have not disseminated guidelines to financial institutions. Also, neither the supervisor nor the FIU have issued information regarding, for example, money laundering methods and techniques to assist financial institutions in their work of detecting suspicious transactions.

Powers of supervisory authorities (c.29.1)

470. Pursuant to Title III, Article 6 on the supervision of banks and financial institutions, the BCC is responsible for monitoring the implementation of banking regulations. That being said, it is the BCC that provides monitoring of banks, MFIs, money transfer organizations, and foreign exchange offices. At the time of the onsite visit, no authority had oversight power with respect to insurance companies¹⁷.

Authority to conduct inspections (c.29.2)

471. The BCC takes its inspection powers from Law No. 80-8, since pursuant to Article 47 it can perform any verification it deems necessary at financial institutions. In addition, and pursuant to Title III, Article 8 of the banking law, Law No. 80-08, the BCC can carry out its controls. Thus, it can do documentary supervision of the activities and results of banks and financial institutions. It may also do on-site supervision through its inspectors. In addition, it is the BCC, pursuant to Article 50 of Decree No. 04-069/PR, that is responsible for the monitoring and supervision of IFDs.

Powers to access necessary documents (c.29.3 – 29.3.1)

472. Pursuant to Article 47 of Law No. 80-07, the BCC has a very expansive right of disclosure, since financial institutions are required to submit all documents for inspection and to provide to the BCC all information, clarifications, or explanations it deems necessary to the performance of its mission.

Enforcement and sanction powers (c.29.4)

473. With respect to sanction power, pursuant to Article 33 of the 2009 Ordinance, when due to a serious monitoring failure or an organization's lack of internal procedures for

¹⁷ Article 7 of the BCC new statutes, adopted after the onsite visit, have granted it this oversight power.

preventing money laundering, a credit institution, financial institution, or any other natural or legal person indicated in Article 3 ignores one of its obligations under the 2009 Ordinance, the disciplinary or supervisory authority may act *ex officio* under the conditions provided by professional and administrative regulations.

474. In the insurance sector, coercive power cannot be exercised in the absence of supervisory and monitoring authority.

Analysis of effectiveness (R.29)

475. Meetings held during the course of the mission indicate that only three institutions were inspected in April 2009 in Moroni. The purpose of these controls was to verify the implementation of recommendations made during the training sessions conducted by the BCC, which basically dealt with raising internal staff awareness, the appointment of an ethics officer, and the introduction of an AML/CFT mechanism. In addition, account opening procedures as well as controls in place were verified. It should be noted that the number of inspections continues to be very low. With respect to IFDs, only one was visited – a negligible number compared to the number of IFDs in the Comoros. In addition, the insurance sector continues to be unmonitored.

Existence of effective, proportional, and dissuasive sanctions (c.17.1)

476. Pursuant to the aforementioned Article 33 allowing the disciplinary or supervisory authority to act *ex officio* under the conditions provided by professional and administrative regulations, the BCC could impose, depending on the seriousness of the failure, one or more of the sanctions provided by Article 9. Disciplinary sanctions range from mere warnings to reprimand, to prohibition on carrying out certain transactions and suspension of responsible managers with or without appointment of a provisional administrator, to removal from the list of banks and financial institutions. The law also indicates that the BCC, in lieu of or in addition to the above-mentioned disciplinary sanctions, may order a fine of 10,000 CFs (20 euros), the proceeds of which is paid to the Public Treasury.

477. In addition, Decree No. 04-069/PR on IFDs allows the BCC to impose sanctions (Article 57) on any IFD that violates the rules of professional good conduct. These sanctions range from a warning, to suspension or removal of the responsible managers, to appointment of a provisional manager, to removal or a monetary penalty the amount of which is set by order of the Central Bank. It should be noted that this amount has not yet been set by the BCC. In addition, the decree does not specify that these sanctions are also applicable to IFDs in the event of a failure to comply with legal provisions in the area of AML/CFT.

478. In addition to the sanctions noted above, Article 34 of the 2009 Ordinance adds proportional and dissuasive criminal penalties imposing a prison term of one to five years and a fine in proportion to the value involved in the offense, which may not be less than ten million CFs on those who, for example, intentionally fail to make an STR, disclose

information regarding an STR, report abbreviated evidence to judicial authorities, or knowingly destroy documents the retention of which is mandatory.

479. No sanction may be ordered against insurance companies, since they are not explicitly subject to the provisions (see section 3.2.1).

Designation of an authority empowered to apply these sanctions (c.17.2)

480. In the banking sector, it is the BCC that makes the decision to impose sanctions on banks, financial institutions, and microfinance institutions. In contrast, in the insurance sector, no authority has been designated to monitor and supervise the sector and, consequently, no sanctions can be imposed.

Imposition of sanctions on directors (c.17.3)

481. Article 34 of the 2009 Ordinance provides that a fine of no more than thirty million Comorian francs will be imposed on managers and employees of foreign exchange offices, casinos, gaming establishments, credit institutions, and financial institutions that violate the provisions of Articles 8 to 17.

Broad and proportionate range of sanctions (c.17.4)

482. The Comorian legal framework provides a broad range of sanctions as described in c.17.1, but they cannot be imposed on insurance companies.

Analysis of effectiveness (R.17)

483. Despite the availability of a broad range of sanctions, some of them are not dissuasive or proportionate. The monetary sanctions that the BCC may impose are very negligible. In addition, disciplinary sanctions against microfinance institutions are not explicitly applicable in the event of a failure to observe legal provisions in the area of AML/CFT. Moreover, the insurance sector is not subject to these sanctions. In addition, following adoption of the 2003 Ordinance and then the 2009 Ordinance, the first on-site supervision occurred only in April 2009 and no sanction has been ordered as a follow-up.

Adequacy of the resources of supervisory authorities (c.30.1)

484. The banking supervision department within the BCC consists of two units. The major function of the first unit is to conduct studies and the second unit is responsible for banking supervision. Total staff is six people divided equally between the two units, but employees can be rotated between the two divisions when needed. The department is responsible for supervising banks and financial institutions on the three islands of the Union. It is obvious that the resources employed for controls are inadequate to the tasks to be performed in the area of AML/CFT supervision. This staff shortage is reflected in a very limited number of on-site controls and the absence of documentary controls.

Integrity of supervisory authority staff (c.30.2)

485. Personnel in the supervision department are subject to the statutes of the BCC. They are hired based on competitive qualification. The statutes include requirements as to character. To have his/her employment confirmed, an employee must provide a certain number of documents, including an abstract of the police record.

Training for personnel of supervisory authorities (c.30.3)

486. Staff met by the mission indicated they have not received specialized training in the area of AML/CFT. They mentioned having attended two seminars organized by the World Bank, but the subjects they mentioned dealt with supervision in general and did not specifically address the subject of AML/CFT. In addition, they stated that they did not have the necessary experience to conduct AML/CFT inspections. Faced with this situation, Comorian authorities submitted a request for technical assistance to the IMF in order to develop general knowledge in the area of supervision.

Existence of statistics (c.32.2)

487. There are no statistics due to the limited number of inspections, the absence of any sanctions imposed, and the absence of international cooperation.

3.10.2. Recommendations and comments

- Increase the monetary sanction imposed on banks and financial institutions.
- Specify whether the sanctions applicable to decentralized financial institutions are also applicable in the case of failure to comply with AML/CFT obligations.
- Establish the monetary sanctions applicable to decentralized financial institutions.
- Appoint a monitoring authority for insurance companies¹⁸.
- Introduce requirements for approval of insurance companies, money transfer organizations, and foreign exchange offices.
- Take measures with respect to all persons engaging in financial activities without authorization.
- It is imperative that the BCC strengthen on-site controls and design a methodological inspection guide in order to guide the work of on-site inspectors and ensure uniformity in their controls. This guide should be based on the provisions of orders

¹⁸ The BCC has been granted this power after the on-site visit.

and the regulatory provisions that the BCC plans to issue. It should regularly conduct inspections, monitor documentation, and use appropriate sanctions to ensure compliance with legal and regulatory provisions.

- Allocate the resources needed to implement documentary and on-site controls.
- Accelerate and provide adequate training in the area of AML/CFT for supervisors.
- Establish guidelines in the area of AML/CFT to help financial institutions and DNFPBs implement and comply with their respective AML/CFT obligations.
- Develop the statistical apparatus.

3.10.3. Compliance with Recommendations 17, 23 (criteria 23.2, 23.4, 23.6-23.7), 29 and 30

	Rating	Summary of factors underlying rating
R.17	NC	• Monetary sanctions for banks and financial institutions are not effective, proportionate and dissuasive. • Concerning IFDs, absence of monetary sanctions and unclear framework for other sanctions. • No sanctions for insurance companies. • Lack of effectiveness.
R.23	NC	• No licensing conditions for money transfer organizations, foreign exchange offices, and insurance companies. • Existence of an unauthorized foreign exchange office. • Existence of unauthorized microfinance networks. • Existence of a bank holding an unconditional authorization and continuing not to operate¹⁹. • No monitoring authority for insurance companies²⁰. • Weakness of on-site controls of financial institutions and absence of

¹⁹ This bank began its operations in July 2009.

²⁰ Insurance companies are now monitored by the BCC.

		documentary controls.
R.25	NC	• No guidelines.
R.29	NC	• Inadequacy of AML/CFT supervision. • Insurance company sector not monitored. • IFDs only partially monitored.
R.30	NC	• Insufficient supervisory staff. • Inadequate training for supervisory employees.
R.32	NC	• No statistics.

3.11. Money/value transfer (MVT) services (SR.VI)

3.11.1. Description and analysis

488. Registration or licensing (c.VI.1)

489. Pursuant to Article 2 of Decree No. 87-005 on foreign exchange, foreign exchange transactions and funds and payments movements of any kind between a resident and a non-resident, without prior authorization from the Central Bank representing the Minister of Finance, may only be performed by intermediaries licensed by the Central Bank. The license may be revoked at any time.

490. According to Comorian authorities, this provision governs the conditions for licensing or registration of money transfer services. However, this provision of the decree on the “regulation of foreign exchange” is open to confusion, as it does not also assume regulating money transfer activity. In addition, licensing or registration conditions are not specified in the decree.

491. In addition, Article 5 governs any transfer to or from foreign countries of funds, securities, or bonds in amounts exceeding 1.5 million CFs that could be revalued by a qualified credit or financial institution or its intermediary. Article 34, paragraph 2(b) of the Ordinance stipulates that “those who violate the provisions of Article 5 on international money transfers shall be punished with a fine of no more than 30 million CFs.” This provision is also open to confusion as it governs money transfer transactions by stipulating that they must be performed by qualified financial institutions or their intermediaries, which contradicts the provisions of the above-mentioned Decree 87-005.

492. In practice, two money transfer services are attached to institutions and a third carries out its activity as an independent entity. However, licensing or registration conditions are mentioned only in a data sheet prepared by BCC that is not dated, signed, or adopted by a competent authority and thus has no legal value.

493. In addition, the mission was informed of the existence of a traditional Hawala type system. This system seems to be used by Indians and Madagascans with stores in the Comoros. Transfers are sent to Tanzania and Madagascar for imported merchandise. The system is also used to send funds to Comorian students studying in France. The mission was informed that individuals use this informal system because it is less expensive than other money transfer systems available in the Comoros. In the same context, a memorandum issued by the BCC indicates the presence of an informal money transfer system called SSB (single side band), an alternative remittance system basically found on the islands of Anjouan, Madagascar, and Mayotte. This method was developed during the embargo of the island of Anjouan and relies on the use of SSB radios to communicate transactions to be carried out.

Application of FATF Forty Recommendations and Nine SR (R.4-11, 13-15, and 21-23 c.VI.2)

494. The BCC confirmed its competence to regulate licensing and registration conditions and monitor money transfer services. However, the various texts are confusing and open to interpretation, with major weaknesses in terms of customer due diligence requirements, record-keeping, monitoring, and regulation.

Monitoring of MVT & List of MVT operators - c.VI.3- c.VI.4)

495. So far, AML/CFT controls remain very weak in this area. Moreover, there is no requirement to maintain a list of operators to be made available to the competent authorities.

Sanctions (c.17.1-17.4 & c.VI.5)

496. Article 34 of the 2009 Ordinance imposes a fine of 30 million CFs on anyone who violates the provisions of Article 5 with respect to international transfers.

Analysis of effectiveness

497. Meetings indicate that preventive measures are poorly implemented in this sector. Customer identification may be based on obsolete documents or sometimes on customer loyalty cards that do not include a photograph and can be used by several people. During the assessors' visit to a money transfer service, a customer with a loyalty card came in to handle a transaction and when the card number was entered in the computer program, not even the date of birth belonged to the customer. Nonetheless, the transaction was put through. In addition, once the transaction is completed, the program does not let you know who

performed the transaction, which makes it impossible to control transactions. Additionally, the institution does not make a photocopy of the customer's identification document.

3.11.2. Recommendations and comments

- Establish licensing conditions specific to money transfer services.
- Fix the gaps with respect to customer due diligence, record-keeping, and supervision and regulation.
- Increase inspections of money transfer services.
- Establish a requirement to maintain an updated list of money transfer organization operators.
- Proceed to register services that use the SSB system and conduct a survey to identify the possibility of another informal channel. Take steps needed to control these activities when identified.

3.11.3. Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	NC	• No provisions on licensing conditions for alternative remittance service providers. • Gaps identified in the recommendations on customer due diligence, record-keeping, supervision, and regulation also apply with respect to alternative remittance service providers. • No requirements on maintaining a list of operators. • Insufficient controls. • Informal remittance service providers are said to be operating in the Comoros without registration.

4. PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

4.1. Due diligence and record keeping (R.12)

(application of R.5, 6, and 8 to 11)

4.1.1. Description and analysis

Legal framework:

498. The due diligence provisions for DNFPBs are reiterated in the 2009 Ordinance. Some provisions on casinos and real estate operations appeared in the 2003 Ordinance but are repeated in their entirety in the 2009 Ordinance.

Conditions for applying Recommendation 5 to DNFBP (c.12.1)

499. Article 3 of the 2009 Ordinance makes casinos subject to due diligence requirements when their customers have transactions equal to or more than an applicable threshold set by order of the Ministry of Finance. This also applies to real estate agents when they handle transactions for their clients for the purchase and sale of real estate properties. The provisions apply to traders in precious metals and precious stones when they engage in cash transactions with a customer and the amount involved is equal to or more than an applicable threshold set by order of the Minister of Finance. They also apply to lawyers, notaries, other independent legal professions and accountants, when they develop or carry out transactions for their clients in the context of the following activities:

- buying and selling real estate;
- managing client money, securities and other assets;
- managing bank, savings, or securities accounts;
- organizing of contributions for the creation, operation, or management of corporations;
- creating, operating, or managing of legal persons or arrangements, and buying and selling of business entities.

500. Finally, TCSPs are subject to due diligence requirements when they develop or carry out transactions for a client in the context of activities “covered by the definitions appearing in the Glossary.” However, no explanation is given on the nature of this glossary. The reference is surely to the glossary in the FATF Recommendations, but the imprecise language would necessitate instructions to company and trust service providers in order to make the requirement effective.

501. Based on the wording of the 2009 Ordinance, not all of the requirements of Article 8 apply to DNFBP. The essential due diligence requirements apply to financial institutions. Thus, with respect to Recommendation 5, only the obligations under criteria 5.2 to 5.4 are partially applicable to DNFBP.

502. Article 8 of the 2009 Ordinance provides that all DNFBPs are required to satisfy themselves as to the identity and address of the other party before forming a business relationship. DNFBPs have no obligation to apply due diligence measures when they carry out occasional transactions, when there is suspicion of money laundering or terrorist financing regardless of any thresholds or exemptions, or when the DNFBP has doubts regarding the accuracy or relevance of customer data obtained previously (c.5.2.).

503. The Ordinance requires DNFBPs to satisfy themselves as to the identity and address of their customers. The identity of a natural person is verified through presentation of the original of a valid official document that bears a photograph and copy is made of the document. The address is verified through submission of a document proving it. Verification must be made on the basis of documents, data, and information from reliable sources. The weaknesses in the system for identifying Comorian nationals have already been highlighted in section 3 (c.5.3).

504. With respect to legal persons, Article 8 of the Ordinance provides for identifying them through the production of articles of incorporation and any document establishing that they are legally registered and are actually in existence at the time of identification. Copy is made of the documents. In addition, the Ordinance provides for the identification and verification of directors, employees, and agents called upon to enter into relationships on behalf of others. Besides identification documents, they must produce documents attesting to the delegation of powers granted to them, as well as documents attesting to the identity and address of beneficial owners. The law is silent on the question of obtaining information on directors when accounts are opened. In addition, the weaknesses of the system for registering legal persons are highlighted in section 5 (c.5.4).

505. The other due diligence requirements are not imposed on DNFBPs.

Application of Recommendations 6 and 8 to 11 to DNFBP (c.12.2)

Recommendation 6

506. DNFBPs are not covered by the requirements regarding PEPs. These requirements are partially reiterated in Article 8 of the 2009 Ordinance, but only for financial institutions.

Recommendation 8

507. DNFBPs are not covered by the requirements regarding new technologies and relationships not involving the physical presence of the parties. These requirements are partially reiterated in Article 8 of the 2009 Ordinance, but only for financial institutions.

Recommendation 9

508. The provisions relating to money laundering and terrorist financing do not include specific provisions with respect to third parties and intermediaries.

Recommendation 10

509. The record-keeping requirements in Article 13 of the 2009 Ordinance apply only to financial institutions. Thus, the AML/CFT law does not require DNFBPs to keep documents. Different professions must keep different documents based on the legal framework governing them. Thus, tax provisions require keeping accounting records for three years. However, other than the more restrictive time period, the information that must be obtained is limited and generally would not provide the necessary evidence in the event of criminal prosecution (c.10.1 and c.10.2).

510. Article 14 of the 2009 Ordinance provides that the information and documents indicated in Articles 8 to 13 must be sent, on request, to the judicial authorities, to officials responsible for detecting and suppressing money laundering related offenses when acting in the context of a court order, and to the FIU established in Article 18 and in the context of its powers as defined in Articles 18 to 23. However, this reporting requirement is subject to several limitations. First of all, only part of Article 8, Article 9, and part of Article 11 apply to DNFBPs. Only the latter article imposes a requirement to keep the report prepared in the case of transactions carried out under unusually and uncustomarily complex conditions or that do not seem to have an economic justification or lawful purpose. The applicability of the reporting requirement is thus limited on this point. However, it is further limited by the defective wording of Article 27 on professional secrecy, which raises it with reference to Article 15 (internal control) while it is clearly Article 14 (sending documents) to which reference should be made (c.10.3).

Recommendation 11

511. Article 11 of the 2009 Ordinance requires DNFBPs to obtain information on the origin and destination of funds as well as on the purpose of transactions and the identity of economic agents of transactions involving amounts exceeding 1.5 million CFs (about 3,050 euros) and carried out under unusually or unjustifiably complex conditions, or that do not seem to have an economic justification or lawful purpose. The article establishes a threshold for paying particular attention to complex transactions, which is not consistent with the

recommendation in that the recommendation does not mention a threshold. Implementing language has still not been prepared (c.11.1).

512. In addition, DNFBPs must, when applicable, prepare a confidential written report with all useful information on their methods, as well as on the purpose of the transaction and the identity of the economic agents of transactions (c.11.2).

513. Reports must be kept for at least five years and may be disclosed to competent authorities upon request. There is no indication that reports must be made available to auditors (c.11.3).

Analysis of effectiveness

514. The implementation of preventive measures by DNFBPs is currently non-existent, even by casinos and real estate agents, which have been partially subject to these measures since the 2003 Ordinance. Most of the businesses and professions met learned about the 2009 Ordinance during the on-site visit. Some professions, particularly notaries, already apply in-depth identification measures due to the specific nature of their profession. The concept of beneficial owner is generally not understood. Most of the professionals met keep documents relating to their customers for at least five years. It should also be added that Comorian DNFBPs clearly do not use new technologies or relationships not involving the physical presence of the parties.

4.1.2. Recommendations and comments

515. The authorities should publish the implementing regulations with respect to casinos and traders in precious stones and metals.

516. The authorities should write the following provisions into the law:

- Expand the range of situations in which due diligence requirements should be observed so as to include occasional transactions when there is suspicion of money laundering or terrorist financing independent of any thresholds or exemptions, or when the DNFBP has doubts as to the accuracy or relevance of customer data obtained previously.
- Require DNFBPs to identify the beneficial owner.
- Require DNFBPs to perform ongoing monitoring with respect to business relationships.
- Introduce measures on record-keeping.

517. The authorities should also impose the following requirements on DNFBPs:

- Obtain information regarding directors of legal persons when opening an account.
- Obtain information on the purpose and intended nature of the business relationship.
- Take enhanced due diligence measures for higher-risk categories.
- Implement measures for cases of unsatisfactory compliance with customer due diligence requirements.
- Due diligence with respect to PEPs.
- Due diligence with respect to new technologies and relationships not involving the physical presence of the parties.
- Introduce specific provisions with respect to third parties and intermediaries.
- Authorize making the results of the review of complex transactions available to auditors.

4.1.3. Compliance with Recommendation 12

	Rating	Summary of factors underlying rating
R.12	NC	• No implementing language, making the 2009 Ordinance inapplicable to casinos and traders in special stones and metals. • Limited scope of due diligence requirements. • No requirement to obtain information on directors when opening an account. • No information on the purpose and intended nature of the business relationship. • No enhanced due diligence measures for higher-risk categories. • No measures in the event of unsatisfactory compliance with customer due diligence requirements. • No measures with respect to PEPs. • No measures with respect to new technologies and relationships not involving the physical presence of the parties. • No measures with respect to record-keeping.

		• Results of reviews of complex transactions not available to auditors. • Lack of effectiveness of the applicable measures.
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4.2. Monitoring of suspicious transactions (R.16) (application of R.13 and 15 to 21)

4.2.1. Description and analysis

Legal framework:

518. The provisions on monitoring suspicious transactions for DNFBPs are reiterated in the 2009 Ordinance. Some provisions with respect to casinos and real estate operations appear in the 2003 Ordinance but are included in their entirety in the 2009 Ordinance.

Requirement to make STRs to the FIU (application of c.13.1 and IV.1 to DNFBP)

519. Article 21 of the 2009 Ordinance requires “all natural or legal persons, particularly accountants, examiners, and auditors to report to the FIU the transactions indicated in Article 3 when they involve funds that seem to derive from conduct that could be suspected of constituting a crime or an offense.”

520. This is generally identical to the provision applicable to financial institutions and reference should be made to the description and analysis done in section 3. The mechanism is identical on all points for casinos and real estate agents but slightly different with respect to the other DNFBPs. For these professions, Article 8 of the Ordinance reiterates the wording of the criteria in the FATF assessment methodology.

521. Thus, lawyers, notaries, other independent legal professions, and accountants are required to report suspicious transactions when they handle financial transactions for the account of or for a client in the context of the activities indicated in Article 8:

- buying and selling of real estate;
- managing client money, securities, or other assets;
- managing bank, savings, or securities accounts;
- organization of contributions for the creation, operations, or management of companies;
- creation, operation, or management of legal persons or arrangements, and buying and selling of business entities.

522. Traders in precious metals and precious stones are required to report suspicious transactions when they handle cash transactions with a customer in amounts equal to or greater than a threshold set by order of the Minister of Finance. The order was being written but had not been published at the time of the mission. The requirement is thus ineffective for these professions.

523. Company and trust service providers are required to report suspicious transactions when they handle transactions for the account of or for a client in the context of activities “covered by the definitions appearing in the Glossary.” However, no explanation is given on the nature of this glossary. The reference is surely to the glossary in the FATF Recommendations, but the imprecise language would necessitate instructions to company and trust service providers in order to make the requirement effective.

STR concerning terrorist and terrorist financing (application of c.13.2)

524. The STR requirement does not directly mention funds related to terrorism. They are partially covered by the requirement to report funds that seem to derive from actions that could constitute a crime or an offense. However, funds of lawful origin are not covered, even if they could later be related to terrorism.

Lack of reporting threshold for STRs (application of c.13.3)

525. Any suspicious transaction should be reported, without any threshold. However, the reporting requirement defined by the 2009 Ordinance refers to transactions carried out by subject entities in the context of their profession and does not explicitly cover attempted transactions. During interviews with the banks, it appeared that the practice at some institutions was to refuse to handle transactions about which they had suspicions but, notwithstanding their suspicions, they did not report these attempted transactions to the FIU.

Requirement to report suspicious transactions involving tax matters (application of c.13.4 and IV. 2)

526. Crimes and offenses, including tax crimes, constitute predicate offenses of money laundering.

Additional element – Requirement to report all criminal acts (application of c.13.5)

527. All crimes and offenses are predicate offenses to money laundering falling within the scope of suspicious transactions reports. However, the list of crimes and offenses in the Comoros is not as extensive as that established by the FATF (see above, R.1).

Protection in the case of an STR (application of c.14.1)

528. Under the terms of Article 24 of the 2009 Ordinance, no civil, criminal, or administrative liability action may be filed nor any professional sanction ordered against

persons or directors and employees of DNFBPs who have, in good faith, made STRs as provided in the 2009 Ordinance.

529. The protection the law provides for the authors of STRs is broad in terms of its nature and purpose.

Prohibition on disclosure (application of c.14.2)

530. Article 34(a) of the 2009 Ordinance punishes persons and managers or employees of DNFBPs who knowingly reveal to the owner of sums or valuables, or to the originator of transactions covered in that article, the STRs they are required to make or the follow-up to those reports. The penalties incurred are from 1 to 5 years in prison and a fine in proportion to the value of the offense, which may in no case be less than 10 million CFs.

531. The same penalty is provided in Article 34 (d) for those who, having learned of a money laundering investigation by reason of their profession, intentionally inform the targeted person or persons by any means.

Additional element – Confidentiality of staff making STRs (application of c.14.3)

532. There is no legal, regulatory, or other measure ensuring that the FIU will keep confidential the names of and personal information regarding financial institution staff who files STRs.

Internal controls to prevent ML/FT (application of c.15.1 to c.15.5.)

533. Since Article 15 of the 2009 Ordinance applies only to financial institutions, the requirements under Recommendation 15 cannot currently be applied to DNFBPs.

Special attention to countries that insufficiently apply the FATF Recommendations (application of c.21.1 to c.21.3)

534. The final paragraph of Article 8 of the 2009 Ordinance on measures to be taken with respect to countries that insufficiently apply the FATF Recommendations refers only to financial institutions. DNFBPs have no requirement in this area.

Analysis of effectiveness

535. The legal framework in place is not effective, as no STR has been recorded. However, the STR mechanism has been applicable to casinos and real estate agents since the 2003 Ordinance. For the other professions, the mechanism is recent since it has only been in effect since March 2009.

536. During interviews with representatives of DNFBPs, it appeared that the structure and composition of the FIU is generally unknown, and it seems obvious than confidence building

work among subject entities must be undertaken. A fear shared by various subject entities, and particular emphasized by lawyers, is that a report sent to FIU will not be treated with the necessary confidentiality.

4.2.2. Recommendations and comments

537. The authorities should publish the implementing regulations with respect to traders in precious stones and metals.

538. The authorities should:

- Clarify the framework for reporting suspicions to remove the ambiguities caused by the wording of Article 21 of the 2009 Ordinance.
- Expand the STR requirement to all funds linked or related to or that be will used for terrorism, terrorist acts, or terrorist organizations, or those that finance terrorism. At present funds of lawful origin are not covered by the reporting requirement.
- Make reporting of attempted transactions a requirement.
- Undertake actions to strengthen the knowledge of entities subject to AML/CFT requirements with respect to their STR obligations.
- Require DNFBPs to introduce and maintain internal control procedures, policies, and measures.
- Require DNFBPs to pay special attention to business relationships and transactions with countries that insufficiently apply the FATF Recommendations.

4.2.3. Compliance with Recommendation 16

	Rating	Summary of factors underlying rating
R.16	NC	• No implementing language, making the mechanism ineffective for traders in precious stones and metals. • Ambiguities in the STR framework which does not clearly requires all DNFBPs to report. • Terrorist financing is not explicitly covered by the reporting requirement, which does not cover funds of lawful origin. • No requirement to report attempted transactions.

		• No STRs sent to the FIU. • No requirement to put in place internal control mechanisms. • No requirement to pay special attention to relationships and transactions relating to countries that insufficiently apply the FATF Recommendations.
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4.3. Regulation, supervision, and monitoring (R.24-25)

4.3.1. Description and analysis

Legal framework:

539. The provisions on regulations, supervision, and monitoring of DNFBPs are reiterated in the 2009 Ordinance. The internal legal framework on the regulation and supervision of DNFBPs is generally non-existent. In theory, it would be possible to refer to the legal framework organizing the various professions prior to independence, since French laws on the subject are still in effect in the Comoros. However, such an approach would be theoretical only since these laws are neither known nor used.

Regulation and supervision of casinos (c.24.1)

540. Besides the provisions on customer identification, Article 17 of the 2009 Ordinance governs the activity of casinos. They are required to keep regular accounting records and retain them for at least ten years. The accounting principles defined by national legislation are applicable to casinos and gaming establishments. They must also record all transactions in chronological order, the nature and amount of those transactions, to indicate the customer's name and surname, as well as the nature and number of the document presented in a register numbered and initialed by the competent administrative authority, and to keep the register for at least ten years after the last transaction is recorded. In the case where the gaming establishment is held by a legal person with several subsidiaries, the chips must identify the subsidiary that issues them. In no case may chips issued by one subsidiary be cashed by another subsidiary, including subsidiaries abroad.

Designation of a competent authority (c.24.1.1)

541. No authority is specifically responsible for the AML/CFT regulation of casinos. General supervisory activity is carried out by the general intelligence directorate of the DNST. Article 34-2 of the 2009 Ordinance imposes a fine of no more than 30 million CFs on managers and employees of casinos who violate the article's provisions on preventive measures. Article 34-3 also provides for a permanent or a five-year prohibition on engaging in the profession that provided the opportunity for the offense to be committed. No

administrative sanction is imposed on casinos that fail to observe preventive measures in the area of AML/CFT.

Prior authorization (c.24.1.2.)

542. Under the terms of Article 17 of the 2009 Ordinance, prior authorization is required. Before beginning their operations, casinos must submit a declaration of activity to the BCC in order to obtain authorization to open and operate as provided by national legislation in effect, and to justify, in that declaration, the lawful origin of the funds needed to create the establishment.

Preventing criminals from taking control (c.24.1.3)

543. The Comorian legal framework provides no measure to prevent criminals or their accomplices from taking control of a casino, from becoming its beneficial owners, from acquiring significant participation or control, or from occupying a management or operational position.

Analysis of effectiveness (c.24.1)

544. There is a single casino operating in the Comoros. It is located in Moroni and has only 15 slot machines in operation. Another casino that used to operate in Anjouan is now closed. A plan to open a new casino in Moroni was mentioned to the mission. The single Comorian casino is not subject to AML/CFT supervision. However, its activity is very limited.

Monitoring and supervision of other DNFBP (c.24.2)

545. Article 33 provides that in the event of a serious lack of due diligence or inefficiency in the organization of internal procedures to prevent money laundering, “the disciplinary or supervisory authority can act *ex officio* under the conditions provided by professional and administrative regulations.”

546. The risk of money laundering or terrorist financing was not taken into account when introducing an appropriate mechanism for monitoring and ensuring compliance with requirements.

547. The 2009 Ordinance provides no specific administrative sanctions for failure to comply with AML/CFT measures. Only criminal penalties are provided. Article 34-2 of the 2009 Ordinance imposes a criminal fine of no more than 30 million CFs on managers and employees of casinos who violate the Ordinance’s provisions on preventive measures. Article 34-3 provides a permanent or a five-year prohibition on engaging in the profession that provided the opportunity for the offense to be committed.

Designated competent authority or self-regulatory organization (c.24.2.1)

548. Only lawyers on Grande Comore have a self-regulatory organization, the bar association, but it is not directly competent to ensure compliance with AML/CFT requirements. There are no lawyers on Mohéli and those on Anjouan are not organized. There is no Notaries Association in the Comoros. The other DNFBPs are not organized, specifically regulated, or controlled.

Guidelines for DNFBP (c.25.1)

549. No guidelines have been established by the competent authorities or self-regulatory organizations for DNFBPs to help them implement and satisfy their AML/CFT obligations.

Feedback by the FIU and the competent authorities (c.25.2)

550. In the absence of STRs received by the FIU and the unit's annual report, financial institutions do not currently receive feedback of general information. Regarding feedback on a case by case basis, Article 3-1-5 of the 2003 Ordinance establishes that the FIU must acknowledge receipt of an STR.

Analysis of effectiveness (c.24.2, R.25)

551. The few measures provided by the Ordinance regarding DNFBPs are not applied. Some provisions are recent and date only from the 2009 Ordinance; others have been in effect since 2003.

4.3.2. Recommendations and comments

Casinos

- The authorities should designate a regulatory authority for casinos on the subject of AML/CFT.
- There should be administrative sanctions for failure to comply with due diligence requirements.
- There should be measures to prevent criminals or their accomplices from taking control of a casino.

Other DNFBPs

- Provide administrative sanctions with respect to DNFBP failures to meet their obligations in the area of AML/CFT.

- Organize, regulate, and supervise accountants, traders in precious metals and stones, and real estate agents.
- Include AML/CFT powers in bar association advisory missions.
- Organize and supervise the activities of notaries with respect to AML/CFT.

552. In addition, the authorities should develop and distribute reporting guidelines and provide information feedback on STRs.

4.3.3. Compliance with Recommendations 24 and 25

	Rating	Summary of factors underlying rating
R.24	NC	Casinos: • No regulatory authority. • No administrative sanctions. • No measures to prevent control by criminals. Other DNFBPs • Risk not taken into account. • No administrative sanctions. • No organization, regulation, and supervision of accountants, traders in precious stones and metals, and real estate agents. • No AML/CFT powers for competent agencies with respect to notaries and lawyers.
R.25	NC	• No reporting guidelines to help in the implementation of and compliance with AML/CFT obligations. • No information feedback.

4.4. Other non-financial businesses and professions and modern and secure techniques of money management (R.20)

4.4.1. Description and analysis

Other NFBPs with ML/FT risks (c.20.1, application of R.5,6, 8–11, 13–15, 17, and 21)

553. The authorities have not studied the possibility of applying the relevant FATF Recommendations to other non-financial businesses and professions that present money laundering and terrorist financing risks.

Development of modern and secure techniques of money management (c.20.2)

554. In recent years, the authorities have taken a significant number of steps to encourage the development of modern and secure techniques of money management. Thus, promotion of microfinance activities has allowed for rapid increases in the population's rate of use of banking services, which at more than 30 percent is relatively high in comparison with the country's level of development. In addition, measures have been taken recently to centralize the clearance of checks and transfers. Since 2005, the open or uncrossed check (*cheque non-barré*) has been prohibited and civil service salaries must be paid from a bank account. Finally, Article 4 of the 2009 Ordinance prohibits any payment in cash or bearer securities. The highest denomination for Comorian bank bills is 10,000 francs (20 euros).

Analysis of effectiveness

555. Although important measures have been taken to reduce the use of cash, the Comorian economy is still largely based on bank money. Even the rapid development of the rate of use of banking services is limited due to the use of accounts as a store of value, without frequent use of instruments such as checks and transfers. Similarly, while bank cards do exist, for the moment they are used only to withdraw cash and are not accepted by businesses. In addition, the mission was told that for practical reasons large traders who go to Tanzania, Madagascar, Dubai, or China generally bring cash in with them and do not use international bank transfers. The prohibition on cash payment for transactions in amounts exceeding five million CFs is not currently applied and no penalty is provided in the event of failure to comply with this provision.

4.4.2. Recommendations and comments

- The authorities should consider whether other non-financial businesses or professions present a risk of money laundering or terrorist financing and, if so, should make them subject to preventive measures.
- The development of modern and secure techniques should be encouraged. In particular, a reduction in the use of cash could be achieved by enforcing the prohibition on cash transactions over the amount of five million CFs. The existence of a varied supply of banks and instruments such as checks and transfers makes the implementation of this provision realistic.

4.4.3. Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	PC	• Applying preventive measures to other NFBPs has not been considered. • Insufficient measures to encourage the development and use of modern and secure techniques.

5. LEGAL PERSONS AND ARRANGEMENTS

5.1. Legal persons—Access to Beneficial Ownership and Control of Information (R.33)

5.1.1. Description and analysis

556. The right of association and free enterprise, as well as the security of capital and investments, are guaranteed in the preamble to the Constitution of the Union of the Comoros.

557. Legal provisions on the regulation of legal persons in the Union of the Comoros are based on the following texts:

- The Uniform Act on Commercial Law of April 17, 1997.
- The Uniform Act on the Law of Commercial Companies and Economic Interest Groups of April 17, 1997.
- The Law on the Investment Code of August 31, 2007.
- The Law on Economic Nationality in the Union of the Comoros of November 27, 2008.
- Anjouan legislation on offshore companies (International Business Companies Act 004 of 2005 adopted by the Anjouan Parliament on February 5, 2005). This sector, the development of which was interrupted after the end of the secessionist period on the island of Anjouan in March 2008, is analyzed in section 1.2. This legal framework is still in effect and companies created at that time still have a legal basis unless the legislation is repealed.

Measures to prevent the unlawful use of legal persons (c.33.1)

558. Article 7 of the 2009 Ordinance establishes that the State organizes the legal framework so as to ensure transparency in economic relationships, particularly by ensuring that corporate law and legal mechanisms to protect property do not allow the establishment of fictitious or front entities.

559. Commercial activity is governed by the Uniform Act on the Commercial Code of April 17, 1997, which was published in the Official Journal on October 1 of the same year and defines the status of traders and commercial documents and contracts, as well as obligations relating thereto. According to the first article, the provisions of the commercial code are applicable to all traders, natural or legal persons, and economic interest groups.

560. A central registration system was created through a Commercial Registry (*Registre du Commerce et du Crédit Mobilier*–RCCM), which is responsible under Articles 19 to 43 of the Uniform Act on Commercial Law for registering:

- natural persons who are traders; and
- commercial companies and other legal persons subject to registration, as well as branches of foreign companies operating in the territory.

561. It also takes entries and notes indicating changes occurring since registration in the status and legal capacity of registered natural and legal persons.

562. It records entries regarding the pledging of corporate shares, the pledging of business assets, and the rights of those selling business assets, the pledging of professional equipment and vehicles, the pledging of stock, the prerogatives of the Treasury, Customs, and Social Institutions, retention of title, and leasing contracts.

563. The RCCM is maintained by the clerk of the competent jurisdiction TPI under the supervision of the President or a judge appointed for the purpose. Thus, each of the three islands has an RCCM. A national file centralizes the information recorded in each RCCM.

564. A regional file kept by the Common Court of Justice and Arbitration centralizes the information recorded in each national file. Every request for registration from a subject trader or commercial company or legal entity is recorded chronologically in an incoming registry. The individual files are kept in alphabetical order and these documents are retrieved either through the clerk of the competent jurisdiction, the national file, or the regional file (Article 22).

565. Commercial companies and legal entities subject to the commercial law must file their statements with the RCCM in the month of their establishment, indicating the following (Article 27):

- company name;
- when applicable, the trade name, initials, or signature;
- the activity or activities carried out;
- the form of the company or legal person;
- the amount of equity capital, indicating the amount of cash contributions and the valuation of contributions in kind;
- the address of company headquarters and, when applicable, addresses for the main location and all other locations;
- the life of the company or legal person as established in the articles of incorporation;
- names, surnames, and personal domicile of partners held indefinitely and personally responsible for company debts, indicating their date and place of birth, nationality, the date and place of their marriage, the matrimonial property scheme adopted and clauses applicable to third parties restricting their ability to freely dispose of the property of their spouse or the absence of such clauses as well as property settlement demands;
- names, surnames, date and place of birth and domicile of managers, administrators, or partners with general powers to bind the company or the legal person; and
- names, surnames, date and place of birth, and domicile of the auditors, when there is provision for their appointment in the Uniform Act on the Law of Commercial Companies and Economic Interest Groups.

566. Based on this statement, the respective documentation must be assembled, particularly abstracts of the police records of managers, administrators, or partners held indefinitely and personally responsible or who have the power to bind the company (Article 28). If the requesting party is not a national of a State Party, he must provide an abstract of his police record from the authorities of his native country, or in its absence, some other document in lieu thereof.

567. Registration of branches or establishments in the territory by a natural or legal person with a foreign headquarters is also required in the same manner as described above. (Article 29).

568. Any changes requiring correction or addition to the statements provided to the RCCM must be made known within thirty days, with a request for correction or addition (Article 33). This also includes the expulsion, dissolution, or liquidation of the company.

569. The specific regulations on commercial companies, broadly based on French law, are the subject of a Uniform Act on the Law of Commercial Companies and Economic Interest Groups dated April 17, 1997 and published on October 1 of the same year. It defines general, specific, and criminal provisions relating to commercial companies classified according to seven types, as well as the conditions for their respective creation, operation, and dissolution/liquidation: (i) general partnerships (SNC); (ii) limited partnerships (SCS); (iii) limited liability companies (SARL); (iv) joint stock companies (SA); (v) joint ventures; (vi) de facto companies; and (vii) economic interest groups (GIE).

570. The mission could observe that there was actually no regional or national file, due to a lack of resources to create it and because the files maintained by the clerks are not computerized. According to the clerk of the TPI in Moroni, 101 legal persons were registered in 2008. These were primarily SARL and, to a lesser extent, SA. This figure includes 20 companies based on mixed (foreign and Comorian) capital. The mission was not able to gather statistics from the RCCMs on the two other islands, Anjouan and Mohéli.

571. Comorian authorities did not give the mission an evaluation of statistics in terms of the number of legal persons by type of entity. According to the information gathered, SARLs and SAs are generally the only types of companies established, with SARLs being most common. The authorities were unable to provide the mission with statistics on the number of legal persons registered.

572. The following documents are needed to create companies in the form of SARLs and SAs: (i) copy of the articles of incorporation; (ii) statement of reliability and compliance; (iii) copies of partners' statements; (iv) copy of partners' identification documents; (v) partners' police records; (vi) capital payment statement; and (vii) lease or ownership contract.

573. The information gathered from the RCCM, as well as from notaries who might participate in drawing up the articles of incorporation when they are not prepared under a private agreement among the creators of the entity, indicates that they refer only to apparent partners who must provide copy of their identification and police record.

574. Apparently, this control goes no further and there are no steps taken at this stage to ensure that apparent partners are the real beneficiaries.

575. Any domestic or foreign commercial company that sets up in the Comoros must be registered with the RCCM, which controls the production of the required evidence and documents described above.

576. As regards commercial companies, the law requires an auditor for joint stock companies and, when applicable, for limited liability companies.²¹ The auditor must prepare

²¹ When their capital exceeds 10,000,000 CFs or their turnover exceeds 250,000,000 CFs, or when there are more than 50 permanent employees (Article 376 of the Law on Commercial Companies).

a management report and analyze the financial statements to be submitted to the company's regular annual general shareholders' meeting (Article 140 of the Law on Commercial Companies). The auditor certifies that the financial statements are reliable and accurate and provide a true and fair view of profit and loss from operations during the year (Article 710 et seq.). The auditor must point out at the next general shareholders' meeting any irregularities and inaccuracies he finds while performing his task. Above all, he must disclose to the public prosecutor any criminal actions he learns about in the performance of his task, without becoming liable based on his disclosures (Article 716 et seq.). In fact, the conditions for creating companies, the large majority of them as family owned SARLs, is not a matter included among the auditor's obligations.

577. The mission was able to determine that the role of the auditor is not actually being carried out. As a result, there is no supervision of joint stock companies, of accounting expertise in general, and potential reports of criminal actions to the Prosecutor. The accountants met during the assessment visit also mentioned that the simple accounting obligations of traders and commercial companies were generally not met in terms of the obligation to prepare a standardized presentation according to the provisions of the Chart of Accounts, which is virtually identical to that of France.

578. Foreigners who come to the Comoros to set up companies²² are subject to monitoring by the DNST to verify whether their activities are consistent with what they declared and these activities are not restricted by Comorian law. The DNDPE is also responsible for monitoring foreign companies opening up operations in the Comoros, which are required to be registered with the RCCM.

579. Access to information on beneficial owners (c.33.2)

580. Pursuant to Article 19 of the 2009 Order, the FIU may request and obtain information and documents from any public authority and any natural or legal person in accordance with Article 15, in the context of investigations conducted pursuant to an STR. However, it should be noted that Article 15 relates to internal control in financial institutions. There is clearly an incorrect reference in the wording of the Ordinance, which weakens the FIU's right of access to information.

581. Preventing the willful misuse of bearer shares (c.33.3)

²² For 2008, 460 long-term (work) visas were issued, divided among Madagascans (230–small business), Tanzanians (59–small business), French (38), Indians (35), Burmese (23–working for the company that manages the port of Moroni), Pakistanis (9–teaching religion), Lebanese (8); 86 short-term visas divided among Madagascans (29), Tanzanians (20) and French (10); 1,185 tourism visas for at least 45 days divided among French (530), Tanzanians (221), Madagascans (183) and various nationalities, including two Iraqis.

582. With respect to bearer shares, they may only be issued, according to the provisions of the commercial code, by joint stock companies issuing transferable securities consisting of shares and obligations in the form of bearer shares or registered securities whether issued in exchange for contributions in kind or cash contributions (Article 745 of the Law on Commercial Companies).

583. Shares are in principle freely transferable. Shares are transferred according to the following methods:

1. for companies not making a public offering:
 - through transfer on the company's records of registered securities, with the holder's rights resulting from the mere entry in the company's records; and
 - through simple transfer of bearer shares. The bearer of the share is deemed to be the owner.
2. for companies making a public offering:
 - besides the options above, whether for registered or bearer shares, shares may be represented by an entry in an account opened in the name of their owner and held either by the issuing company or by a financial intermediary authorized by the Minister of Economy and Finance; transfer is then effected through transfer from one account to another.

584. Thus, it appears that unless a bearer appears in person, there is no way to identify the bearer in the case of companies not making a public offer.

585. It should be noted that most commercial entities under Comorian law are SARLs, generally family-owned. According to information gathered by the assessors, the few joint stock companies are generally capital companies with registered shares.

586. However, there is the problem of identifying bearer shares in the case of Comorian representatives of foreign joint stock companies.

587. In fact, the mission estimates that with the legislation as it is, Comorian authorities are unable to identify the owners of bearer shares.

588. Additional element—Access to information on beneficial owners of legal persons by financial institutions (c.33.4)

589. Financial institutions have access to the clerk of the TPI to verify customer identification data. However, as indicated earlier, this access is to records that are not

computerized, centralized, exhaustive, or up to date. This limits interest in and the usefulness of accessing this information by financial institutions.

5.1.2. Recommendations and comments

590. The assessment mission recommends that Comorian authorities:

- Fully investigate the offshore sector developed from the island of Anjouan and possibly from the island of Mohéli and take appropriate legal measures to inform the international community of the end of these arrangements and clarify the illegality of offshore financial and nonfinancial entities (Internet casinos, IBCs, registration of ships and airplanes in particular) that would claim or continue to claim a Comorian reference.
- Clarify the provisions on the operations of legal persons in company form, particularly as regards accounting supervision and the expertise of auditors.
- Strictly enforce measures to identify managers, administrators, and partners of legal persons, and take into account the identification of real economic beneficiaries.
- Take the necessary steps to computerize the Commercial Registries (RCCM) and centralize the information referring to the three islands in the context of the national file, as provided in the commercial code, but which still has not been created.

5.1.3. Compliance with Recommendation 33

	Rating	Summary of factors underlying rating
R.33	NC	• Marketing of an offshore sector without adequate measures to ensure transparency and supervision in order to prevent potential use for criminal purposes. • No national file for registration of companies and other legal persons or other mechanism ensuring transparency. • No follow up on registration of changes in the management and equity capital of commercial companies. • Inadequate measures for timely identification of beneficial owners. • Inadequate measures to prevent the use of joint stock companies with bearer shares from being willfully misused.

5.2. Legal Arrangements—Access to Shareholders and Control of Information (R.34)

5.2.1. Description and analysis

591. Comorian legislation has no provisions on the creation of trusts and comparable legal entities.

592. However, the mission could see that in the context of the offshore sector developed on Anjouan up to 2008, the marketing of trusts established under the legal regime was indicated on the Internet site belonging to the island's government (www.anjouangov.com). The mission was unable to gather any information on this subject and it would seem that these instruments, although well publicized, were not publicized in the offshore context. No registration of such legal entities appears in the Anjouan RCCM.

5.2.2. Recommendations and comments

- The authorities should ensure that there is no longer a legal framework in effect on Anjouan for establishing trusts without adequate transparency requirements.

5.2.3. Compliance with Recommendation 34

	Rating	Summary of factors underlying rating
R.34	NC	• Possible existence of a legal framework for trusts on Anjouan in the absence of adequate transparency requirements.

5.3. Non-Profit organizations (SR.VIII)

5.3.1. Description and analysis

593. There is no specific Comorian legislation for non-profit organizations (NPOs). Associations are defined by Law No. 86-006/AF of May 30, 1986 on the articles of association.

Review of the adequacy of laws and regulations on NPOs (c.VIII.1)

594. Comorian authorities have not undertaken any review of the adequacy of laws and regulations on NPOs, which for the moment are not the subject of any legislation and regulation.

Outreach to the NPO Sector to protect it from terrorist financing abuse (c.VIII.2)

595. To date, the Comoros have not carried out an NPO awareness campaign to protect the sector from misuse for purposes of financing terrorism.

Monitoring and supervision of NPOs based on the significance of international resources or activities (c.VIII.3)

596. No measures have been taken to date to promote effective monitoring and supervision of NPOs.

Information kept by NPOs and public access (c.VIII.3.1)

597. Law No. 86-006/AF of May 30, 1986 on the articles of association stipulates in Article 1 that association is the agreement whereby two or more persons permanently combine their knowledge or activities for a purpose other than to share the profits therefrom. In terms of validity, it is governed by general legal principles applicable to contracts and obligations.

598. The statement must be made to the prefecture of the association's headquarters. It discloses the name and purpose of the association, the headquarters of its facilities, and the names, professions, and domiciles of those who are responsible in any capacity for the association's administration or management.

599. Article 3 of the law stipulates that associations must, based on their purpose, receive a prior technical opinion from the minister for their area of activity.

600. The statement is made public through insertion in the Official Journal. All changes occurring in association administration or management must be reported to the Prefecture (Ministry of the Interior).

601. No foreign association may be established or carry out its activities in the Union of the Comoros without prior authorization from the Ministry of the Interior. Foreign associations are those groups that, regardless of the form under which they may be concealed, have the characteristics of an association and have their headquarters abroad or, while having their headquarters in the Comoros, are actually directed by foreigners, or have foreign managers, or a membership that is at least one-fourth foreign (Article 9).

602. To be accepted, they must indicate the name and purpose of the association or establishment, the place of operation, the names, professions, domiciles, and nationality of foreign members, and of those who are responsible in any capacity for the administration or management of the association or establishment. The request must be accompanied by the technical opinion from the relevant ministry based on the association's area of activity.

Foreign residents in the Comoros who are part of the association must be in compliance with respect to immigration requirements.

603. If these conditions are not met, foreign associations are invalid as a matter of law, and declared so by the Ministry of the Interior.

604. While the various local, sports, social, neighborhood associations, etc., since they remain strictly national or local, are subject only to registration with the Ministry of the Interior, the assessment mission could see that in fact an unregulated system has been set up for foreign NPOs that come to operate in the Comoros in different areas: development, charitable, social, educational, agricultural, religious activities, etc.

605. Foreign NGOs send a letter to MIREX or to the respective Ministries based on the planned area of activity (Ministry of Health, Ministry of Education, for example). These letters seeking authorization to operate in the territory of the Comoros are accompanied by a detailed presentation on the NGO and the proposed project. The ministry in question reviews the request for authorization, taking into account the credibility and competence of the NGO as well as the Comoros' interest in the project being offered. The ministry may approve or deny the NGO authorization to enter.

606. Once accepted, an agreement is reached between the ministry that received the request, the Comorian government, and the NGO stipulating all duties and advantages of the foreign entity.

Introduction of sanctions for violation of oversight rules by NPOs (c.VIII.3.2)

607. There are no rules or specific and appropriate measures to sanction violations of the oversight mechanism and supervisory rules by NPOs. In the event of a violation, the usual step is to immediately withdraw authorization and ban the NPO from the country. This was the case with the NGO, Al Haramain, which was expelled from the Comoros in 2004. There do not appear to be criminal or civil prosecutions against NPOs or persons acting in their name.

Accreditation or registration of NPOs and availability of this information (c.VIII.3.3)

608. NPOs are accredited in the context of the provisions described above, for which there are still no regulations. There is no list of accredited NPOs available.

- Various foreign NPOs were mentioned to the assessment mission, but not on the basis of any available exhaustive and up-to-date list.

Recording of NPO transactions and availability of this information (c.VIII.3.4)

609. To date, there are no regulatory or legal provisions on requirements relating to the operations of NPOs, nor on record-keeping requirements with respect to their national and

international transactions. Generally speaking, there is no supervisory unit nor any control of the financial management of NPOs. The only items brought to the attention of supervisory authorities are annual or periodic project management reports, when stipulated by the provisions of the NPO's authorization. However, there does not seem to be any check on the accuracy of this information.

Measures to effectively assure investigations and information-sharing (c.VIII.4)

610. Decree No. 078 of August 12, 2003 on the organization of territorial security gives intelligence services the power to investigate and gather information on NPOs. However, there are no specific procedures and methods for conducting such investigations, particularly on financial matters, due to lack of training for the respective staff.

611. Regarding NGOs, control is exercised when visas are issued to the various foreign persons assigned to develop projects on site. These controls cover each person's identification document, which is produced with the request for authorization. The DNST conducts a systematic investigation on each foreigner in coordination with the local Interpol office.

612. Generally, MIREX is informed of the procedure at a specific time, when the request is made of some ministerial department, although this is not done systematically.

613. For this reason, the mission was informed that a special office was set up within MIREX at the request of the President of the Union. Its purpose will be to standardize and centralize requests for authorization submitted by foreign NGOs in order to anticipate risks with respect to terrorist financing. At the moment, this office is not yet operational and no specific regulations have been drawn up to systematically centralize requests for authorization at MIREX and not randomly at the respective ministries based on the sectors of planned activity by NGOs in the context of projects to provide assistance to the Comoros.

614. The NGOs that are currently registered are organizations that already enjoy international or regional recognition, and they thus present an appearance that is not suspect a priori, and very unlikely to be rejected.

615. There is no systematic monitoring and supervision of the activities of NGOs in the context of their activities in the Comoros. In principle, the agreements reached between the Comorian government and the NGOs provide for periodic reporting on the status of their activities. For some of them, this is the subject of an annual activities report, with financing in keeping with the status of the approved project.

616. In the context of its mission to monitor the activities of foreigners, the DNST has the power to set up surveillance of the members of these NGOs, or their actual activities, if suspicions arise. However, according to the MIREX authorities met, no suspicious activity has been noted or observed to date.

617. A single case led to expulsion from the country, around 2004-2005, of an NGO called El Haramain. This occurred at the request of U.S. authorities, based on suspicions of terrorist financing. This NGO operated in the Comoros to convey water to specific villages. This was a Saudi NGO with activities in Kenya as well. The Comorian authorities did not conduct an investigation to establish the authenticity of the suspicion but were content to immediately cancel the NGO's authorization.

Cooperation, coordination, and information sharing at the national level (c.VIII.4.1)

618. There are no specific measures relating to NPOs to guarantee effective cooperation, coordination, and information sharing, as much as possible, among all levels of competent national authorities or organizations that have relevant information on NPOs of potential terrorist financing concern.

619. Comorian authorities reminded the assessment mission of the current initiative to form a specialized office within MIREX to standardize and centralize authorizations and to ensure the proper implementation of the provisions and obligations of the agreements signed with foreign NGOs, noting the possibility of establishing specific regulatory provisions in this area in the near future.

Access to information on the administration and management of an NPO in the context of an investigation (c.VIII.4.2)

620. These measures fall within the jurisdiction of the intelligence services as provided by Decree No. 078 of August 12, 2003 on the organization of territorial security. However, there are no specific measures for NPOs.

Information sharing, preventive and investigative measures, ability to examine NPOs suspected of being exploited for purposes of terrorist financing (c VIII.4.3)

621. The DNST is responsible for monitoring the activities of foreigners in the Comoros and in this capacity may be concerned with the monitoring of NGOs. It is not yet possible to assess the effectiveness on this point of the provisions of the new order on money laundering, all the more so since Article 18 on the FIU indicates that the operational division is responsible for ensuring timely coordination of the operating resources of investigative units. However, Article 25 of the 2009 Ordinance states that money laundering and terrorist financing investigations are assigned to the operational division of the FIU.

622. As of the date of the assessment mission, no mechanism has yet been put in place that would make it possible to promptly open up an investigation against an NGO.

Response to international requests for information on NPOs (c.VIII.5)

623. To date, Comorian authorities have not defined specific points of contact and appropriate procedures for responding to international requests for information on NPOs suspected of terrorist financing. The only current provisions are those that give territorial surveillance powers and thus powers in this area to officers of the DNST. No case has yet presented itself that would provide an example of a procedure applied under these circumstances.

5.3.2. Recommendations and comments

624. The assessment mission recommends that Comorian authorities:

- Unify and centralize requests for authorization of foreign NPOs in a single ministerial department.
- Adopt a specific legal framework for NPOs that includes adequate regulatory provisions on the operational, administrative, and financial transparency of NPOs in national territory, on supervisory methods, and on access to accounting documents by Comorian supervisory authorities, and provide effective methods for implementing such administrative measures.
- Develop an information campaign for NPOs to raise the awareness of their management and employees regarding terrorist financing.

5.3.3. Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR. VIII	NC	• No laws on NPOs. • No in-depth study on the risks of the NPO sector with respect to potential TF. • No awareness campaign for NPOs on risks of misuse for purposes of TF or on the transparency of NPOs. • No NPO monitoring and surveillance mechanisms. • No measures to sanction violation of rules on monitoring by NPOs. • No regulatory provisions requiring NPOs to keep records of their national and international transactions for a period of at least five years. • No mechanism to verify the effectiveness of cooperation, coordination,

		and information sharing at the national level among all appropriate authorities on NPOs and questions of TF. • No mechanism for conducting rapid investigation or preventive action against suspected NPOs. • No mechanism for rapid information sharing among competent authorities to examine suspected NPOs. • No points of contact and procedures for responding to international requests for information on certain NPOs.
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6. NATIONAL AND INTERNATIONAL COOPERATION

6.1. National cooperation and coordination (R.31)

6.1.1. Description and analysis

Legal framework:

625. National cooperation is framed by Ordinance No. 09-002 of March 6, 2009 on money laundering, financing of terrorism, confiscation, and international cooperation in relation to the proceeds of crime and Decree No. 03-025/PR of February 28, 2003 on the Financial Intelligence Unit.

Mechanisms for cooperation and coordination on combating money laundering and terrorist financing (c.31.1)

626. Article 18 of the 2009 Ordinance provides that the FIU steering committee is made up of the Ministers of Finance, Justice, Interior, and the Armed Forces, or their representatives, other agencies as needed and, if appropriate, other persons selected on the basis of their expertise.

627. The mission of the steering committee, in the area of intelligence and combating financial channels and money laundering is to:

- Determine, under the authority of the competent minister, the general guidelines to be implemented by the FIU.
- Propose to the competent ministers any necessary legislative, regulatory, or administrative reform.

628. The Secretariat of the FIU is responsible for preparing the decisions of the steering committee and for ensuring their implementation, for leading the operational division, and managing the operational resources of the unit.

629. In effect, the operational division of the FIU is responsible for establishing the practical methods for gathering, processing, and disseminating information on combating money laundering and financial channels, and for ensuring timely coordination of the operational resources of the investigative units. Articles 25 and 26 on specific investigative techniques and undercover operations and monitored deliveries assign investigations on money laundering and terrorist financing to the operational division of the FIU, encouraging as much as possible the use of specific techniques suited to investigations as well as the use of permanent or temporary specialized groups to investigate property.

630. The legislation on money laundering and terrorist financing has been designed so as to introduce operational synergy among the various national actors involved, through the senior authority in their respective ministerial departments that make up the FIU steering committee, which is responsible, in particular, for determining the general guidelines to be implemented by the FIU and above all for proposing any necessary legislative, regulatory, or administrative reforms.

631. Under the terms of the 2003 decree on the methods for creating the FIU, the operational division consists of a police official, a customs official, and a member of the office of the public prosecutor. This confirms the interdisciplinary direction and characteristically criminal activation as close as possible to financial intelligence.

632. This multi-service investigative approach has already been implemented through the organization of the DNST, which covers anti-drug efforts within its combined division called BRIMAD (DNST-Gendarmerie and Customs), as well as the DNDPE which brings police and gendarmes together in particular.

633. The operational division of the FIU offers an appropriate framework for domestic cooperation among most of the relevant authorities on ML and TF issues, with the exception of coordination and implementation of UNSCR 1267 and 1373 and in developing and implementing policies and activities to combat ML and TF. Therefore, the operational cooperation in the implementation of the UNSCRs and in the development and implementation of policies and activities to combat ML and TF should be enhanced.

Additional element—Mechanisms for consultation between competent authorities, the financial sector, and other sectors (c.31.2)

634. The laws against money laundering and terrorist financing do not define any mechanism for consultation among the competent authorities, the financial sectors, and other sectors, including designated nonfinancial businesses and professions subject to AML/CFT provisions. The assessors have not been informed of any plan for such a mechanism.

Statistics (application of R.32):

635. The AML/CFT system is still embryonic and thus does not provide any statistics that would allow Comorian authorities to verify the effectiveness of the mechanism.

6.1.2. Recommendations and comments

- The operational division of the FIU should ensure as a matter of priority enhanced cooperation in the implementation of UNSCRs 1267 and 1373 (and their successor resolutions) and in the development and implementation of policies and activities to combat ML and TF.
- The mission recommends that Comorian authorities consider a mechanism for consultation among competent AML/CFT authorities, the financial sector, and nonfinancial businesses and professions governed by the legislation on preventing and detecting suspicious financial transactions.

6.1.3. Compliance with Recommendation 31

	Rating	Summary of factors underlying rating
R.31	LC	• Weaknesses in effective implementation of domestic cooperation.

6.2. United Nations Conventions and Special Resolutions (R.35 and SR.I)

6.2.1. Description and analysis

636. Pursuant to Article 10 of the Constitution of the UC, properly ratified or approved treaties or agreements, from the moment of their publication in the Official Journal, take precedence over the laws of the Union and the islands, subject, for each agreement or treaty, to their being applied by the other party.

Ratification of money laundering conventions (c.35.1)

637. The UC joined the United Nations Convention Against Illicit Traffic in Narcotics and Psychotropic Substances of December 20, 1988 on March 1, 2000. It joined the United Nations Convention Against Transnational Organized Crime on September 25, 2003 and ratified it by Decree No. 06-123/PR of August 2, 2006. The UC has not signed the Protocol Against the Smuggling of Migrants by Land, Air, and Sea supplementing this convention nor the additional Protocol to the United Nations Convention Against Organized Transnational Crime to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children adopted in New York on November 15, 2000, nor the Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components, supplementing

the United Nations Convention Against Organized Transnational Crime, adopted in New York on May 31, 2001.

Ratification of conventions on terrorist financing (c.I.1)

638. On January 14, 2000, the UC signed the International Convention for the Suppression of the Financing of Terrorism adopted in New York on December 9, 1999 and ratified it on September 25, 2003.

Implementation of the Vienna Convention (Articles 3 to 11, 15, 17, and 19, c.35.1)

639. The Vienna Convention has not been transposed into domestic law. Moreover, Article 328 of the Penal Code, which criminalizes drug trafficking, is not consistent with that convention. It imposes a prison term of one to ten years and a fine of 1,000,000 to 50,000,000 francs on those who, without authorization, have cultivated, purchased, imported, processed, transported, distributed even for free, sold, and ordered the purchase, importation, transportation, processing, distribution and sale of all products classified as narcotics, particularly hashish or Indian hemp. The same penalties apply to all those who have facilitated another's use of these substances, whether by procuring a site for this purpose or by any other means. Courts also order: (i) the confiscation and immediate and public destruction of seized substances; (ii) the confiscation of sums of money derived from prohibited transactions, for the benefit of the public treasury; and (iii) the confiscation of the means of transportation whose use the owner has knowingly authorized and simply tolerated for purposes prohibited by this article."

640. Law enforcement authorities have confirmed that this law is not sufficient to criminalize all types of narcotics trafficking. In addition, sums of money from such transactions have never been confiscated.

Implementation of the Terrorist Financing Convention (Articles 2 to 18, c.35.1 and c.I.1)

641. The Terrorist Financing Convention has not been fully transposed into domestic law. A national workshop on ratification and legislative incorporation of the CFT Convention, of universal instruments against terrorism and the relevant resolutions of the SC was organized on January 15–17, 2008. Two draft laws were drawn up and sent to the Assembly. These two bills have not yet been adopted by the National Assembly.

Implementation of the Palermo Convention (Articles 5 to 7, 10 to 16, 18 to 20, 24 to 27, 29 to 31, and 34, c.35.1)

642. The Palermo Convention has not been transposed into domestic law.

Implementation of United Nations SC resolutions on the prevention and suppression of the financing of terrorism (c I.2)

643. As indicated in the comment regarding SR.III, the UC has not yet implemented Resolutions 1267 and 1373.

Additional element—Ratification or implementation of other relevant international conventions (c.35.2)

644. On December 10, 2003, the UC signed the United Nations Convention Against Corruption of October 31, 2003. This convention has not yet been ratified.

645. The UC is a party to the Arab Convention on the Suppression of Terrorism of 1998 and the Organization of African Union Convention on the Prevention and Combating of Terrorism of July 1, 1999. These conventions have not been transposed into domestic law.

6.2.2. Recommendations and comments

- The authorities should ratify (i) the Protocol against the Smuggling of Migrants by Land, Air, and Sea (ii) the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, adopted in New York on November 15, 2000, as well as the (iii) Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components, supplementing the United Nations Convention against Organized Transnational Crime, adopted in New York on May 31, 2001.
- The authorities should accelerate the process of transposing into domestic law the provisions of the various conventions ratified in order to reconcile domestic legislation and international commitments.

Compliance with Recommendation 35 & Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	PC	• Failure to ratify additional protocols to the United Nations Convention Against Organized Transnational Crime. • Failure to transpose the provisions of the Vienna and Palermo Conventions into domestic law.
SR.I	PC	• Failure to transpose the provisions of the Terrorist Financial Convention and SC resolutions into domestic law.

6.3. International legal assistance (R.32, 36-38, SR.V)

6.3.1. Description and analysis

Legal framework:

646. The legal framework for international cooperation in combating money laundering and terrorist financing is based on the following principal texts:

- Ordinance No. 3-002/PR of January 29, 2003 on money laundering, confiscation, and international cooperation in relation to the proceeds of crime.
- Decree No. 03-25/PR on the Financial Intelligence Unit.
- Title 5 of Ordinance No. 09-002/PR on money laundering, the financing of terrorism, confiscation, and international cooperation in relation to the proceeds of crime.
- The UC concluded a bilateral cooperation agreement on legal assistance, extradition, and information sharing with Madagascar in 1976.

647. Scope of legal assistance measures in the area of AML/CFT (c.36. 1); Application of the powers of competent authorities (pursuant to R.28, c.36.6)

648. According to Article 43 of the 2009 Ordinance, the authorities of the UC are committed to cooperating as much as possible with authorities in other countries for the purpose of information sharing, investigations, and procedures involving precautionary measures and confiscations and proceeds linked to money laundering, for purposes of extradition, as well as for purposes of mutual technical assistance.

649. Article 55 of the same Ordinance adds that money laundering and terrorist financing offenses will not be considered political offenses.

650. At the request of a foreign country, requests for assistance relating to money laundering and terrorist financing offenses under the 2009 Ordinance are processed according to the principles defined by the title on international cooperation. Specifically, assistance may include: (i) gathering testimony or taking depositions; (ii) providing assistance to make available to the judicial authorities of the requesting country requiring detained persons or other persons for purposes of testimony or assistance in the conduct of the investigation; (iii) forwarding of all documents; (iv) searches and seizures; (v) examining objects and sites; (vi) providing information and evidence; (vii) providing originals or certified conforming copies of relevant files and documents including bank statements, accounting records, and records showing the operations of a company or its commercial activities (Article 44 of the 2009 Ordinance).

Providing assistance in a timely, constructive, and effective manner (c.36.1.1)

651. As a general rule, this assistance is provided to countries tied to the UC through legal assistance agreements, in accordance with the provisions of those agreements, and to other countries subject to reciprocity. The UC has a mutual legal assistance treaty with Madagascar only.

652. The mission was informed that Comorian authorities rarely receive requests for legal assistance (one a year) and make few such requests themselves.

653. In practice, requests for legal assistance are received by MIREX and then forwarded to the Ministry of Justice in less than three days. The Ministry of Justice, depending on the context of the request, and after consulting the Council of Ministers in some cases, may decide to refer the request to the territorially-competent general prosecutor or deny the request. The competent PR carries out the request and sends it back to the Minister of Justice who forwards it to MIREX.

654. The time needed to carry out a request may vary between one month and one year depending on each case. Comorian authorities informed the mission that they have not carried out some requests pursuant to the classification decision made by the Minister of Justice. However, the authorities indicated that the reasons for denying a request might be based on reasons of state, particularly the absence of bilateral agreements.

655. The competent authorities informed the mission that they are able to respond to such requests for assistance in a timely and constructive manner. The lack of information and statistics on requests for legal assistance prevented the mission from confirming this assertion.

Legal assistance not subject to unreasonable, disproportionate, or unduly restrictive conditions (c.36.2)

656. Article 45 of the 2009 Ordinance establishes the list of reasons for denying a request for assistance in the area of money laundering. These conditions are broadly consistent with the customary legal principles applicable in most countries. A request for assistance may only be refused if:

- its execution presents a risk of undermining public order, sovereignty, security or the fundamental principles of law of the UC;
- it does not emanate from a competent authority according to the legislation of the requesting country, or if it was not properly transmitted;
- the facts on which it bears are the subject of criminal proceedings or have already been the subject of a final judgment within the UC;

- there is no provision in the legislation of the UC for the offense covered in the request or the offense has no characteristics in common with an offense covered by the legislation of the UC;
- the measures sought, or any other measures with similar effects are not authorized by the legislation of the UC, or are not applicable to the offense covered in the request according to the legislation of the UC;
- the measures requested cannot be ordered or executed due to prescription of the moneylaundering offense according to the legislation of the UC or the laws of the requesting State;
- the decision which execution is requested is not enforceable according to the legislation of the UC;
- the foreign decision was issued under conditions that do not offer sufficient guarantees with respect to the rights of defense;
- there are serious reasons to believe that the measures requested or the order sought are directed to the person concerned solely for reasons of race, religion, nationality, ethnic origin, political opinion, sex, or status;
- the request bears on a political offense or is motivated by considerations of a political nature; and
- the importance of the matter does not justify the measures sought or the execution of the decision rendered abroad.

657. The Office of the Public Prosecutor may appeal the decision to refuse to execute issued by a jurisdiction within 10 days of that decision. The government of the UC informs the foreign government without delay of the reasons for refusing to execute its request.

658. As of the date of the mission, no request for judicial assistance in the area of money laundering and/or terrorist financing had been received.

659. These conditions are applicable in the area of legal assistance in most countries and do not seem unreasonable, disproportionate, or unduly restrictive.

Clear and effective procedures for executing requests for legal assistance (c.36.3)

660. Article 46 establishes that investigative and inquiry measures are executed according to the legislation of the UC unless the competent foreign authorities have asked that the Comoros proceed in a particular way that is compatible with the legislation of the UC.

661. A judge or official appointed by the foreign authority competent to order precautionary measures orders the requested measures according to that country's own legislation. He may also take measures the effects of which are most consistent with the measures being sought.

662. The lifting of precautionary measures, in the context of executing requests for assistance, may be ordered by the judicial authorities at any time at the request of the public prosecutor or following consultation with the latter, at the request of the competent administration or the owner.

663. Since the UC has not received any such requests and since the provisions of the 2009 Ordinance have not been implemented, the mission is unable to assess the effectiveness and speed with which requests for assistance are carried out in the area of money laundering and terrorist financing. For more information on requests for assistance in other areas, review the description under c.36.1.1.

Providing legal assistance on potentially fiscal matters (c.36.4)

664. The 2009 Ordinance contains no provisions allowing rejection of a request for assistance solely on the grounds that the offense is also regarded as bearing on fiscal matters. The authorities confirmed that a request for legal assistance may not be rejected on this basis.

Legal assistance despite laws imposing secrecy or confidentiality (c.36.5)

665. The 2009 Ordinance expressly provides in Article 45 that banking or commercial secrecy may not be invoked to deny a request for assistance. Moreover, this provision is limited to banking or commercial secrecy and does not include professional secrecy, which cannot be invoked to deny a request for assistance.

Conflicts of jurisdiction (c.36.7)

666. There are no specific mechanisms that would allow a determination as to the most appropriate venue for criminal prosecution. However, Comorian authorities have not yet had to deal with such cases. Nonetheless, according to the authorities, when offenses are already the subject of a legal proceeding in another country, they should agree to the transfer in order to avoid conflicts of jurisdiction.

Additional element—Application of the powers of competent authorities in the event of a direct request from foreign authorities (application of R.28, c.36.8)

667. The prosecutors informed the mission that in cases where they receive a request sent by their foreign counterparts, as in the case of some requests they have received from French authorities and from coastal countries, they can begin to execute the request after

consultation with the Minister of Justice and ask the foreign authority to present an official request to MIREX.

**International cooperation on SR.V (application of c.36.1-36.6 of R.36, c.V.1);
Additional element concerning SR.V (application of c.36.7 and 36.8 of R.36, c.V.6);
International cooperation on SR.V (application of c.37.1 and 37.2 of R.37, c.V.2)**

668. The 2009 Ordinance likens terrorist financing to money laundering. For this reason, all the provisions and mechanisms applicable in the area of combating money laundering as described earlier are applicable in the area of combating terrorist financing. However, the criminalization of terrorist financing is not entirely consistent with the 1999 Terrorist Financing Convention since it only covers the terrorist act and excludes the terrorist organization and the terrorist even though this concept, as noted earlier, was defined in Article 2 of the 2009 Ordinance. This could limit the scope of assistance that the authorities can provide to other countries.

Dual criminality and legal assistance (c.37.1 and 37.2)

669. Other than in the case of a request for extradition, Article 50 of the 2009 Ordinance does not establish a dual criminality requirement in order for legal assistance to be granted in the case of the offenses indicated in that Ordinance. In practice and according to the authorities, the most serious offense is kept in accordance with Comorian criminal law. However, the Minister of Justice has the power to ensure the decision's compliance with international law and conventions.

670. With respect to legal assistance concerning investigations, the applicable provisions are based on the international conventions to which the UC is a party. At present, the UC has only reached one bilateral agreement on cooperation concerning legal assistance, extradition, and information sharing, with Madagascar in 1976.

671. It is not clear whether practical differences between the laws of requesting and requested state could be an obstacle to granting legal assistance.

Appropriate procedures for providing an effective and timely response to mutual legal assistance requests by foreign countries related to provisional measures, including confiscation (c.38.1); Request relating to property of corresponding value (c.38.2)

672. Article 47 of the 2009 Ordinance stipulates that in the case of a request for legal assistance for purposes of issuing a confiscation order, the jurisdiction rules at the request of the authority responsible for prosecution. The confiscation order covers property constituting the proceeds or the instrument of an offense and found within the UC, or the obligation to pay a sum of money corresponding to the value of that property.

673. The jurisdiction that receives a request relating to execution of a confiscation order issued abroad is bound by the finding of facts on which the decision is based and can only refuse to honor the request for one of the aforementioned reasons listed in Article 45.

674. No provision of the 2009 Ordinance provides measures similar to that provided in Article 47 on the subject of precautionary measures such as identification, freezing, or seizure.

Coordination of seizure and confiscation with other countries (c.38.3)

675. There are no arrangements allowing the coordination of seizure and confiscation actions with other countries.

676. The UC enjoys the power to dispose of confiscated goods within its territory at the request of foreign authorities, unless determined otherwise in an agreement reached with the requesting state (Article 48 of the 2009 Ordinance).

International cooperation with respect to SR.V (application of c.38.1-38.3 of R.38, c.V.3) Additional element relating to SR.V (application of c.38.4-38.6 of R.38, c.V.7)

677. Terrorist financing covers only the terrorist act, excluding the terrorist organization and the terrorist. This may limit the scope of the assistance that the authorities can provide to other countries.

Funds for seized assets (c.38.4)

678. Article 42 provides that confiscated funds or property pass to the State, which can allocate them to a fund for combating organized crime or drug trafficking. They remain subject up to their value to real and lawfully constituted rights benefiting third parties. This fund has not been set up as yet.

Sharing of confiscated assets (c.38.5)

679. The UC has the power to dispose of property confiscated within its territory at the request of foreign authorities, unless determined otherwise in an agreement reached with the requesting state (Article 48 of the 2009 Ordinance).

680. Article 54 stipulates that subject to the limitations authorized by national legislation and without prejudice to the rights of third parties, all property found in the territory of the UC the acquisition of which is the result of the offense committed or that could be requested as evidence can be remitted to the requesting State, if that State so requests and if extradition is granted. The property in question may, if asked for by the requesting State, be remitted to that State even if the extradition granted cannot be carried out. (For more details, see section 6.4)

Additional element—Recognition of foreign non-criminal confiscation orders (as described in c.3.7) (c.38.6)

681. Foreign non-criminal confiscation orders (“civil confiscation”) may not be recognized and executed, since Comorian domestic law does not include provisions allowing for confiscation without a criminal conviction.

Statistics (application of R.32)

682. Comorian authorities have no statistics on the small number of requests for assistance received and sent.

6.3.2. Recommendations and comments

- Criminalize predicate offenses to money laundering in the penal code.
- Expand the criminalization of terrorist financing in accordance with the Terrorist Financing Convention.
- Introduce mechanisms so as to be able to provide assistance in a timely, constructive, and effective manner.
- Specify arrangements allowing the coordination of seizure and confiscation actions with other countries.
- Specify rules providing that professional secrecy cannot be invoked to deny a request for assistance.
- Allow for the delivery of mutual legal assistance on non-intrusive measures even in the absence of dual criminality.
- Include specific mechanisms so that determinations can be made as to the most appropriate venues for criminal prosecution.
- Set up a fund to combat organized crime or drug trafficking to which confiscated funds or property are allocated.
- Maintain statistics on each request for legal assistance, making it possible to analyze the effectiveness of this assistance.

6.3.3. Compliance with Recommendations 32, 36 to 38 and Special Recommendation V

	Rating	Summary of factors underlying rating
R.36	PC	• No mechanisms making it possible to grant assistance on a timely,

		constructive, and effective basis. • No legal cooperation rules allowing seizure of assets connected to proceedings conducted in foreign countries. • Absence of rules/mechanisms specifying that professional secrecy cannot be invoked to deny a request for assistance. • No specific mechanisms allowing for determinations as to the most appropriate venue for criminal prosecution. • The fund to combat organized crime or drug trafficking to which confiscated funds or property are allocated according to the Ordinance has not been established. • No concrete requests for assistance, making it impossible to determine the practical effectiveness of the Comorian mechanism in this area. • Application of the dual criminality entails that shortcomings identified with respect to the ML offense, in particular the limited number of predicates offenses, limit Comores ability to provide MLA.
R.37	PC	• Reliance on dual criminality even for less intrusive measures which, given the limited list of predicate offenses to money laundering under Comoros law, may considerably limit the scope of the assistance that may be provided.
R.38	PC	• No provision on precautionary measures such as identification, freezing, or seizure for responding effectively and in a timely manner to requests for assistance made by foreign countries. • No arrangements allowing the coordination of seizure and confiscation actions with other countries.
SR.V	PC	• Limited scope of the assistance that authorities are able to provide to other countries in the area of TF due to the nonconsistency of the TF definition with the 1999 Terrorist Financing Convention.
R.32	NC	• No statistics on the number of requests for assistance received and sent.

6.4. Extradition (R.32, 37 & 39, & SR.V)

6.4.1. Description and analysis

Legal framework:

683. The legal mechanism for international cooperation in the area of combating money laundering and terrorist financing is based on the following principal texts:

- Ordinance No. 3-002/PR of January 29, 2003 on money laundering, confiscation, and international cooperation in relation to the proceeds of crime;
- Title 5 of Ordinance No. 09-002/PR on money laundering, the financing of terrorism, confiscation, and international cooperation in relation to the proceeds of crime; and
- The UC has signed a bilateral cooperation agreement on extradition with Madagascar.

684. According to Article 49 of the 2009 Ordinance, requests for the extradition of persons sought for prosecution in a foreign country shall be executed for the offenses of money laundering and terrorist financing or to enforce a penalty relating to such offenses. The procedures and principles provided by the extradition treaty between the requesting country and the UC shall apply.

685. In the absence of an extradition treaty or legislative provisions, extradition shall be carried out according to the procedure and in adherence to the principles defined by the model treaty on extradition adopted by the United Nations General Assembly in Resolution No. 45/116.

686. Article 51 stipulates the mandatory grounds for refusal to extradite. Extradition shall not be granted if:

- the offense for which extradition is requested is regarded by the UC as an offense of a political nature or if the request is motivated by political considerations;
- there are substantial grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin, political opinions, sex, or status, or that that person's position may be prejudiced for any of those reasons;
- there has been a final judgment rendered against the person in the UC in respect of the offense for which the person's extradition is requested;

- the person whose extradition is requested has, under the law of either party, become immune from prosecution or punishment for any reason, including lapse of time or amnesty;
- the person whose extradition is requested has been or would be subjected in the requesting State to torture or cruel, inhuman, or degrading treatment or punishment or if that person has not received or would not receive the minimum guarantees in the criminal proceedings, as contained in the International Covenant on Civil and Political Rights, Article 14; and
- the judgment of the requesting State has been rendered in absentia, the convicted person has not had sufficient notice of the trial or the opportunity to arrange for his or her defense and he has not had or will not have the opportunity to have the case retried in his or her presence.

687. Article 52 stipulates the optional grounds for refusal to extradite. Extradition may be refused if:

- the competent authorities of the UC have decided either not to institute or to terminate proceedings against the person for the offense in respect of which extradition is requested;
- a prosecution in respect of the offense for which extradition is requested is pending in the UC against the person whose extradition is requested;
- the offense for which extradition is requested has been committed outside the territory of either party and the law of the UC does not provide for jurisdiction over such an offense committed outside its territory in comparable circumstances;
- the person whose extradition is requested has been sentenced or would be liable to be tried or sentenced in the requesting State by an extraordinary or ad hoc court or tribunal;
- the UC, while also taking into account the nature of the offense and the interests of the requesting State, considers that, in the circumstances of the case, the extradition of that person would be incompatible with humanitarian considerations in view of the age, health, or other personal circumstances of that person; and
- the offense for which extradition is requested is regarded under the law of the UC as having been committed in whole or in part within its territory.

688. Subject to the limits authorized by national legislation and without prejudice to the rights of third parties, all property found in the territory of the UC the acquisition of which is the result of an offense committed or that could be required as evidence may be sent to the

requesting State, if that State so requests and if extradition is granted. The property in question may, if asked for by the requesting State, be remitted even if the extradition granted cannot be carried out (Article 54 of the 2009 Ordinance).

Dual criminality and legal assistance (c.37.1 and 37.2)

689. Article 50 of the 2009 Ordinance provides that extradition will only be executed when provision is made in the legislation of the requesting State and in the UC for the offense leading to extradition or for a similar offense.

Money laundering as an extraditable offense (c.39.1)

690. Article 55 provides that money laundering and terrorist financing offenses will not be regarded as offenses of a political nature.

Cooperation regarding criminal prosecution of its own nationals (c.39.2(b), c.39.3)

691. Article 53 of the 2009 Ordinance establishes the principle of *aut dedere aut judicare* by providing that if the UC refuses to extradite based on one of the grounds indicated in Article 52 (f) or (g), it must submit the matter, when asked by the requesting State, to the competent authorities so that proceedings can be filed against the person for the offense that led to the request.

692. When the request requires that the existence and nature of the request be kept confidential, this will be honored, except to the extent required to carry out the request. If this is impossible, the requesting authorities should be so informed without delay.

Effectiveness of extradition procedures (c.39.4)

693. Article 56 of the 2009 Ordinance—Transmission of requests: Requests sent by competent foreign authorities for purposes of establishing money laundering offenses, executing or ordering precautionary measures or confiscation, or for purposes of extradition are sent through diplomatic channels.

694. In urgent cases, requests may be sent through the International Criminal Police Organization (ICPO/Interpol) or sent directly by foreign authorities to the judicial authorities of the UC, by mail or by any other faster means, leaving a written or materially equivalent record. In such cases, if there is no notice through diplomatic channels, no action will be taken on requests.

695. Requests and attachments thereto must be accompanied by a translation in a language acceptable to the UC.

696. Requests must specify: (i) the authority seeking the measure; (ii) the authority to which the request is made; (iii) the purpose of the request and any relevant comment

regarding its context; (iv) the facts justifying the request; (v) any known elements that could facilitate identification of the persons concerned, particularly civil status, nationality, address, and profession; (vi) all information necessary to identify and locate the targeted persons, instruments, funds, or property; (vii) the text of the legal provision creating the offense or, if applicable, a presentation of the law applicable to the offense and indicating the penalty incurred for the offense (Article 57 of the 2009 Order).

697. In addition, the request should contain the following items in specific cases: (i) in the case of a request to take precautionary measures, a description of the measures requested; (ii) in the case of a request to issue a confiscation order, a presentation of the facts and relevant arguments to permit judicial authorities to order confiscation based on domestic law; and (iii) in the case of a request to enforce an order to take precautionary measures or a confiscation order:

- a certified conforming copy of the order and if not included in the order, a presentation of the grounds;
- a statement according to which the order is enforceable and not subject to ordinary appeal;
- indication of the limits under which the order must be carried out and, when applicable, the amount to be recovered on the property or properties;
- if appropriate and possible, any indications relating to the rights that third parties may claim to the targeted instruments, funds, property or other items.

698. In the case of a request for extradition, if the individual has been recognized as guilty of an offense, the judgment or a certified conforming copy of the judgment or any other document establishing that the guilt of the interested party has been recognized and indicating the punishment handed down, the fact that the judgment is enforceable, and the extent to which the punishment has not been carried out.

699. With respect to the processing of requests, Article 58 stipulates that the Minister of Justice of the UC, after being assured of the propriety of the request, sends it to the public prosecutor of the place where the investigations should be conducted, the place where the covered funds or property are found, or the place where the person whose extradition is being sought can be found. The public prosecutor refers requests for investigation to the competent officials and requests for precautionary measures, confiscations, and extradition to the competent jurisdiction. A judge or official delegated by the foreign competent authority may accompany the execution of the measures depending on whether they are carried out by a judge or by an official.

700. The Minister of Justice or the public prosecutor, at their own initiative or at the request of the jurisdiction to which the matter is referred, may ask the competent foreign

authority, through diplomatic channels or directly, to provide any additional information needed to carry out the request or to facilitate its execution (Article 59 of the 2009 Ordinance).

701. The public prosecutor may only defer referral to the competent authorities if the measures or order requested could prejudice ongoing proceedings. He must immediately inform the requesting authority to that effect through diplomatic channels or directly (Article 60 of the 2009 Ordinance).

Additional element - Existence of simplified extradition procedures (c.39.5)

702. Article 61 of the Ordinance establishes a simplified extradition procedure. For money laundering and terrorist financing offenses and when the person whose extradition is sought explicitly gives consent thereto, the UC may grant extradition after receiving the request for provisional arrest.

Additional element regarding SR.V (application of c.39.5 of R.39, c.V.8)

703. Terrorist financing covers only the terrorist act, to the exclusion of the terrorist organization and the terrorist. This may limit the scope of the assistance that the authorities are able to provide to other countries.

Statistics (application of R.32)

704. The information provided by the PR indicates that the UC extradited four individuals between 2003 and the date of the assessment mission. It also indicated that none of the offenses underlying these requests for extradition involved money laundering and terrorist financing.

705. Money laundering and terrorist financing are criminalized in the UC. The criminalization of money laundering is not entirely consistent with international standards, particularly because the list of predicate offenses is incomplete. The criminalization of terrorist financing covers only the terrorist act, to the exclusion of the terrorist organization and the terrorist. Article 50 of the aforementioned 2009 Ordinance provides that extradition will only be executed when the offense leading to extradition or a similar offense is defined in the legislation of the requesting State and the UC. This may limit the scope of the assistance that the authorities are able to provide to other countries.

706. The mission received no information on the length of time needed to process requests for extradition, nor the reasons why other requests were denied.

707. Comorian authorities have no statistics on questions relating to the effectiveness and proper operation of legal assistance mechanisms, nor on the number of requests for extradition received and made.

6.4.2. Recommendations and comments

- Criminalize the predicate offenses to money laundering in the penal code.
- Expand the criminalization of terrorist financing to be consistent with the Terrorist Financing Convention.
- The Comorian authorities should adopt clear arrangement to prevent that technical differences between the laws of Comoros and the requesting state will not pose an impediment to the extradition proceedings.
- Introduce statistical tools so as to have an accurate count of requests for extradition received and sent.

6.4.3. Compliance with Recommendations 32, 37 & 39, and Special Recommendation V

	Rating	Summary of factors underlying rating
R.39	PC	• The dual criminality condition could limit the execution of requests for extradition when the request relates to money laundering of the proceeds of a crime that is not criminalized in the penal code. • In the absence of specific cases, the practical effectiveness of the mechanism cannot be measured.
R.37	PC	• No indication that technical differences between the laws of Comoros and the requesting state would not pose an impediment to the extradition proceedings.
SR.V	PC	• Limited scope of assistance that authorities are able to provide to other countries in the area of TF due to the nonconsistency of the TF definition with the 1999 Terrorist Financing Convention.
R.32	NC	• No statistics on the number of requests for extradition received and made.

6.5. Other forms of international cooperation (R.32 & 40, & SR.V)

6.5.1. Description and analysis

Legal framework:

- Ordinance No. 3-002/PR of January 29, 2003 on money laundering, confiscation, and international cooperation in relation to the proceeds of crime.
- Decree No. 03-25/PR on the Financial Intelligence Unit.
- Title 5 of Ordinance No. 09-002/PR on money laundering, financing of terrorism, confiscation, and international cooperation in relation to the proceeds of crime.
- Bilateral cooperation agreement on legal assistance, extradition, and information sharing with Madagascar in 1976.

Scope of international cooperation mechanisms (c.40.1)

Supervisor:

708. The banking law contains no provision on information sharing with foreign supervisors. Supervisory authorities may only share information after a convention has been signed. People met by the mission mentioned that no convention has been signed so far with any foreign supervisory authority. On the other hand, they indicated that there were two draft conventions with France and Tanzania.

DNST:

709. The DNST cooperates with its foreign counterparts through the Interpol national central bureau created in 2005 and through its participation in sub-regional organizations to combat crime generally. This office represents the only point of contact for the IOC (five Indian Ocean countries).

710. The security services maintain ongoing relationships with the security services of surrounding countries, particularly Tanzania and Madagascar, as well as France. They communicate regularly with their security services and armed forces on all types of information for identifying suspects and possibly preventing their activities, whether national or foreign individuals or groups are involved. They note transfers and monitor the movements of these persons and organizations. There are bilateral exchanges with Tanzania, particularly since this country supported the March 2008 operations. BRIMAD has direct contacts with its counterpart in Tanzania. However, the authorities deplore the difficulty of official relations with Mayotte, since they feel that crimes are committed in the Comoros and the criminals take refuge in Mayotte. The authorities note some letters rogatory not executed by France.

Rapid, constructive, and effective assistance (c.40.1.1)

711. The Comorian authorities met by the mission indicate that they are in a position to provide international assistance in a constructive and effective manner within the framework of domestic legislation.

712. However, the lack of information and statistics on requests for mutual legal assistance prevented the mission from confirming this assertion.

Clear and effective mechanisms facilitating exchanges between counterparts (c.40.2):

713. The existing mechanism allowing information sharing between the DNST and its foreign counterparts is the Interpol national central bureau.

Spontaneous exchanges of information (c.40.3)

714. The general rule in the area of information sharing is a request submitted by a counterpart within the framework of Comorian legislation, but there is nothing to indicate that a spontaneous exchange could occur in the case of ML offenses or predicate offenses.

Inquiries conducted on behalf of foreign counterparts. (c.40.4)

715. Besides the provisions on mutual legal assistance, the FIU is authorized to conduct inquiries on behalf of its foreign counterparts based on Article 20 of the 2009 Ordinance.

Inquiries by the FIU on behalf of its foreign counterparts (c.40.4.1)

716. Article 20 on “relations with foreign financial intelligence units” provides that “the FIU may, subject to reciprocity, share information with foreign units responsible for receiving and processing STRs, when they are subject to confidentiality requirements and regardless of the nature of these units, subject to respect for the national sovereignty of preserving the interests and national security.” To this end, it may reach cooperation agreements with these units.

717. When it receives a request for information or transmission from a counterpart foreign unit dealing with an STR, “it follows up under the same conditions as mentioned in the preceding paragraph in the context of the powers given to it under this law to process such reports.”

Inquiries by law enforcement authorities on behalf of foreign counterparts (c.40.5)

718. Other than mutual legal assistance mechanisms, law enforcement authorities are not authorized to conduct inquiries on behalf of their foreign counterparts.

Lack of disproportionate or unduly restrictive conditions on exchanges of information (c.40.6)

719. Pursuant to Article 43 of the 2003 Ordinance, the authorities of the UC are committed to cooperating as much as possible with the authorities of other countries for purposes of information sharing, investigation, and procedures covering precautionary measures and confiscations of instruments and proceeds associated with money laundering, for purposes of extradition, as well as for purposes of mutual technical assistance.

720. Other aspects of information sharing are left to the discretion of the competent authority, depending on each case. The mission received nothing that would allow it to assess the effectiveness of this exchange, given the lack of practical experiences in the area of predicate offenses or ML or TF related offenses.

Cooperation also involving fiscal matters (c.40.7)

721. The competent authorities indicated that requests for cooperation are not refused solely because they relate to fiscal matters. The 2009 Ordinance contains no special provisions to this effect.

Cooperation despite the existence of laws imposing secrecy or confidentiality (c.40.8)

722. Article 45 of the 2009 Ordinance expressly provides that banking or commercial secrecy may not be invoked to refuse to execute a request for assistance.

723. However, the 2009 Ordinance contains no similar provision in the area of requests for cooperation.

Controls and safeguards on the use of information (c.40.9)

724. The mission found no controls and safeguards that would ensure that information received by the competent authorities is used only in an authorized manner.

725. Article 20 of the 2009 Ordinance on exchanges with foreign financial intelligence units refers to Article 19. According to this article, the use of information obtained by any public authorities or natural or legal persons covered under Article 3 will be limited strictly to ML/FT.

Additional elements—Exchanges with non-counterpart authorities (c.40.10 and 40.10.1)

726. Law enforcement authorities, the FIU, and other competent authorities have not set up a mechanism allowing rapid and constructive exchanges of information with other non-counterpart authorities.

727. According to the institutions contacted by the mission, no non-counterpart authority has made any request in the context of an investigation relating to ML or TF offenses or predicate offenses.

728. Article 20 bases other additional functions of cooperation on reciprocity.

Additional element—Information sent to the FIU by other competent authorities at the request of a foreign FIU (c.40.11)

729. Article 20 provides that when the FIU receives a request for information or transmission sent by a counterpart foreign unit dealing with an STR, it follows up under the same conditions as mentioned in the preceding paragraph in the context of the powers this law gives it to deal with such reports.

International cooperation relating to SR.V (application of c.40.1-40-10 of R.40, c.V.5 and c.V.9)

730. Article 20 of the 2009 Ordinance on relations with foreign intelligence services does not mention terrorist financing. However, since the FIU is not competent to analyze STRs relating to terrorist financing, such exchange cannot occur.

Statistics (application of R.32)

731. There are no statistics in the area of international cooperation.

6.5.2. Recommendations and comments

- Amend the relevant provisions in order to authorize supervisors to collaborate with their foreign counterparts in order to strengthen prudential cooperation at the international level.
- Adopt mechanisms authorizing the DNST to conduct inquiries on behalf of its foreign counterparts while ensuring that the information received by the competent authorities is used only in an authorized manner.
- Allow spontaneous exchange of information in relation to both money laundering and the underlying predicate offenses.
- Expand the scope of the FIU's competence in the area of terrorist financing so as to allow it to effectively share information on behalf of its foreign counterparts.

6.5.3. Compliance with the 40 Recommendations and SR.V

	Rating	Summary of factors underlying rating
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R.40	PC	• No in-depth cooperation of supervisors with their foreign counterparts. • The competent authorities are not authorized to conduct investigations on behalf of their foreign counterparts. The mission did not receive anything that would allow it to assess the effectiveness of information sharing with foreign counterparts, given the lack of practical experience in the area of predicate offenses or offenses related to ML or TF. • No possibility of spontaneous exchange of information. • No controls and guarantees to ensure that information received by the competent authorities is used only in an authorized manner. • The Ordinance limits the FIU's ability to conduct investigations on behalf of foreign counterparts.
SR.V	NC	• Since the FIU is not competent to analyze STRs relating to terrorist financing, such exchanges cannot occur.

7. OTHER ISSUES

7.1. Resources and statistics

732. Recommendations 30 and 32 apply to the FIU, law enforcement agencies and prosecution agencies and supervisors and other competent authorities involved in combating money laundering and the financing of terrorism.

7.2. Compliance with Recommendations 30 and 32

	Rating	Summary of factors underlying rating
R.30	NC	• Inadequate and insufficient structural and financial resources for assessing the subject of AML/CFT in all its dimensions. • Insufficient technical and material resources for the FIU. • Lack of suitable and relevant staff training for judicial authorities, police, and FIU agents. • Serious shortage of documentary and on-site supervision resources in

		credit institutions.
R.32	NC	• Statistical measurements relating to the effectiveness and proper operation of AML/CFT systems and analysis of crime are non-existent. • No complete statistical data at the FIU. • No statistical data in the area of cash or currency transactions or wire transfers in particular. • No statistics on the few requests for mutual legal assistance received and sent.

Table 1. Ratings of Compliance with FATF Recommendations

Forty Recommendations	Rating	Summary of factors underlying rating²³
Legal systems		
1. ML offense	PC	• Some predicate offenses designated by the FATF are not criminalized under Comorian law and thus are not covered by the money laundering offense. Other predicate offenses are defined too strictly. • Some ancilliary offenses to the offense of money laundering are not criminalized, particularly assisting, facilitating, and advising in the commission of the offense. • In the absence of specific cases, it is difficult to measure the effective application of the relevant provisions.
2. ML offense—mental element and corporate liability	PC	• FT offenses are not criminalized in accordance with the 1999 United Nations Convention for the Suppression of the Financing of Terrorism. The definition of terrorist financing covers only the terrorist act to the exclusion of the terrorist organization and the terrorist. • The definition of the terms “funds” and “property” are incomplete. • Complicity, conspiracy, aiding, assisting, and association are not established as such as a criminal offense. • Terrorist financing is not established as a predicate offense of money laundering. • No provision to define territorial jurisdiction.

²³ These factors are only required to be set out when the rating is less than Compliant.

		• In the absence of specific cases, it is difficult to measure the effective application of the relevant provisions.
3. Confiscation and provisional measures	PC	• Due to inconsistent cross references in the relevant provisions, it is unclear whether law enforcement authorities have the powers to identify, detect and trace the origin of property subject to confiscation or that may be subject to confiscation or may constitute the proceeds of a crime. • Failure to implement freezing, seizure, and confiscation measures for money laundering offenses, making it impossible to assess their effectiveness in practice.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	NC	• Ability to oppose the disclosure of documents. • No provisions ensuring that banking secrecy does not hamper information sharing among competent national authorities and among financial institutions.
5. Customer due diligence	NC	<u>Insurance companies:</u> • No preventive measures. <u>Other financial institutions:</u> • No provisions regulating the maintenance of numbered accounts in line with the FATF Recommendations. • No requirements on updating customer information. • Identification of natural and legal persons is difficult due to the unreliability of public records and the commercial registry as well as the circulation of identification documents

		that could be forged. • No limits on the application of simplified measures, particularly in the case of customers residing in foreign countries and cases where ML/FT is suspected. • No due diligence requirement in the case of unsatisfactory compliance with CDD after the establishment of the business relationship. • No due diligence measures for existing customers holding numbered accounts. • Limited effectiveness of existing provisions.
6. Politically exposed persons	NC	• Failure to apply provisions on PEPs to insurance companies. • No requirement to obtain authorization from senior management in order to continue a business relationship with an existing client that subsequently appears to be a PEP. • No clear definition of PEPs.
7. Correspondent banking	LC	• No provision for ensuring the adequacy and effectiveness of controls put in place by the correspondent bank. • Lack of effectiveness.
8. New technologies & non face-to-face business	PC	• No provisions on non-face to face business relationships.
9. Third parties and introducers	NC	• No rules governing reliance on intermediaries or other third parties to perform the CDD process or to introduce business.
10. Record-keeping	NC	• No clear obligation to keep records for five years after transactions are completed. • No record keeping requirements with respect to terminated accounts or business

		relationships. • Failure to apply record-keeping provisions to insurance companies. • Limited effectiveness of existing provisions.
11. Unusual transactions	NC	• Special attention to all complex, unusual large transactions, or unusual patterns of transactions is only required when a threshold condition is met. • Failure to apply provisions to insurance companies. • No requirements to keep findings available for auditors for at least five years. • Lack of effectiveness.
12. DNFBP–R.5, 6, 8–11	NC	• No implementing language, making the 2009 Ordinance inapplicable to casinos and traders in special stones and metals. • Limited scope of due diligence requirements. • No requirement to obtain information on directors when opening an account. • No information on the purpose and intended nature of the business relationship. • No enhanced due diligence measures for higher-risk categories. • No measures in the event of unsatisfactory compliance with customer due diligence requirements. • No measures with respect to PEPs. • No measures with respect to new technologies and relationships not involving

		the physical presence of the parties. • No measures with respect to record-keeping. • Results of reviews of complex transactions not available to auditors. • Lack of effectiveness of the applicable measures.
13. Suspicious transaction reporting	NC	• Ambiguity of the framework for reporting suspicions which does not clearly requires financial institutions to report. • Terrorist financing is not explicitly covered by the reporting requirement, which does not cover funds of lawful origin. • No requirement to report attempted transactions. • Existence of a different reporting requirement in Anjouan. • No STRs reported.
14. Protection & no tipping-off	LC	• Lack of effectiveness.
15. Internal controls, compliance & audit	NC	• No requirement to establish internal AML/CFT policies and procedures. • No requirement for financial institutions to ensure timely access to necessary information by the compliance officer. • Independence of internal control mechanisms is not ensured. • Limited application of the 2009 ordinance's provisions.
16. DNFBP–R.13–15 & 21	NC	• No implementing language, making the mechanism ineffective for traders in precious

		stones and metals. • Ambiguities in the STR framework which does not clearly requires all DNFBPs to report. • Terrorist financing is not explicitly covered by the reporting requirement, which does not cover funds of lawful origin. • No requirement to report attempted transactions. • No STRs sent to the FIU. • No requirement to put in place internal control mechanisms. • No requirement to pay special attention to relationships and transactions relating to countries that insufficiently apply the FATF Recommendations.
17. Sanctions	NC	• Monetary sanctions for banks and financial institutions are not effective, proportionate and dissuasive. • Concerning IFDs, absence of monetary sanctions and unclear framework for other sanctions. • No sanctions for insurance companies. • Lack of effectiveness.
18. Shell banks	NC	• Weaknesses in the licensing process may lead to the establishment and operation of shell banks. • Failure to prohibit financial institutions from maintaining relationships with shell banks. • No requirement that financial institutions take reasonable measures to satisfy

		themselves that their correspondent banks do not themselves maintain relationships with shell banks.
19. Other forms of reporting	PC	• No study on feasibility and usefulness of a system for reporting currency transactions.
20. Other NFBP & secure transaction techniques	PC	• Applying preventive measures to other NFBPs has not been considered. • Insufficient measures to encourage the development and use of modern and secure techniques.
21. Special attention for higher risk countries	NC	• Failure to apply provisions to insurance companies. • No measures taken to inform financial institutions of high-risk countries. • No requirements to make results of reviews available to auditors. • The 2009 ordinance indicates that the financial institution, not the country, must take counter-measures.
22. Foreign branches & subsidiaries	NC	• No requirements imposed on financial institutions to ensure that their foreign branches and subsidiaries apply AML/CFT measures in compliance with Comorian law and the FATF recommendations.
23. Regulation, supervision and monitoring	NC	• No licensing conditions for money transfer organizations, foreign exchange offices, and insurance companies. • Existence of an unauthorized foreign exchange office. • Existence of unauthorized microfinance networks. • Existence of a bank holding an unconditional

		authorization and continuing not to operate²⁴. • No monitoring authority for insurance companies²⁵. • Weakness of on-site controls of financial institutions and absence of documentary controls.
24. DNFBP—regulation, supervision and monitoring	NC	Casinos: • No regulatory authority. • No administrative sanctions. • No measures to prevent control by criminals. Other DNFBPs • Risk not taken into account. • No administrative sanctions. • No organization, regulation, and supervision of accountants, traders in precious stones and metals, and real estate agents. • No AML/CFT powers for competent agencies with respect to notaries and lawyers.
25. Guidelines & Feedback	NC	• No reporting guidelines to help in the implementation of and compliance with AML/CFT requirements. • No information feedback. • No guidelines. • No reporting guidelines to help in the implementation of and compliance with AML/CFT obligations.

²⁴ This bank began its operations in July 2009

²⁵ Insurance companies are now monitored by the BCC

Institutional and other measures		
26. The FIU	NC	• No legal basis for reception, analysis and dissemination of information on the subject of terrorist financing. • Weakness of information provided to subject entities on how to prepare STRs. • Inconsistent cross references in the 2009 ordinance limit access to information. • No guarantees for independence and operational autonomy. • No periodic reports. • Membership in the Egmont Group will only be considered after it becomes a member of ESAAMLG. • Lack of effectiveness.
27. Law enforcement authorities	PC	• Lack of precision regarding the specific framework for investigations and the appointment of competent investigative authorities to conduct ML/FT investigations. • Lack of effectiveness.
28. Powers of competent authorities	LC	• No ability to conduct searches to obtain financial documents or information. • Lack of effectiveness.
29. Supervisors	NC	• Inadequacy of AML/CFT supervision. • Insurance company sector not monitored. • IFDs only partially monitored.
30. Resources, integrity, and training	NC	• No premises, staff, and ongoing budget. • Notable inadequacy of financial and logistical resources of law enforcement and

		investigative authorities. • Inadequate training for law enforcement and investigative authorities. • No suitable and relevant AML/CFT training. • Failure to conduct special training programs for judges and courts on the subject of AML/CFT. • Insufficient supervisory staff. • Inadequate training for supervisory employees. • Inadequate and insufficient structural and financial resources for assessing the subject of AML/CFT in all its dimensions. • Insufficient technical and material resources for the FIU. • Lack of suitable and relevant staff training for judicial authorities, police, and FIU agents. • Serious shortage of documentary and on-site supervision resources in credit institutions.
31. National co-operation	LC	• Weaknesses in effective implementation of domestic cooperation.
32. Statistics	NC	• Statistical data are generally not available. • No case of terrorist financing has been processed by law enforcement authorities.
33. Legal persons–beneficial owners	NC	• Marketing of an offshore sector without adequate measures to ensure transparency and supervision in order to prevent potential use for criminal purposes. • No national file for registration of companies

		and other legal persons or other mechanism ensuring transparency. • No follow-up on registration of changes in the management and equity capital of commercial companies. • Inadequate measures for timely identification of beneficial owners. • Inadequate measures to prevent the use of joint stock companies with bearer shares from being willfully misused.
34. Legal arrangements – beneficial owners	NC	• Possible existence of a legal framework for trusts on Anjouan in the absence of adequate transparency requirements.
International Cooperation		
35. Conventions	PC	• Failure to ratify additional protocols to the United Nations Convention Against Organized Transnational Crime. • Failure to transpose the provisions of the Vienna and Palermo Conventions into domestic law.
36. Mutual legal assistance (MLA)	PC	• No mechanisms making it possible to grant assistance on a timely, constructive, and effective basis. • No legal cooperation rules allowing seizure of assets connected to proceedings conducted in foreign countries. • Absence of rules/mechanisms specifying that professional secrecy cannot be invoked to deny a request for assistance. • No specific mechanisms allowing for determinations as to the most appropriate venue for criminal prosecution.

		• The fund to combat organized crime or drug trafficking to which confiscated funds or property are allocated according to the Ordinance has not been established. • No concrete requests for assistance, making it impossible to determine the practical effectiveness of the Comorian mechanism in this area. • Application of the dual criminality entails that shortcomings identified with respect to the ML offense, in particular the limited number of predicate offenses, limit Comores ability to provide MLA.
37. Dual criminality	PC	• Reliance on dual criminality even for less intrusive measures which, given the limited list of predicate offenses to money laundering under Comoros law, may considerably limit the scope of the assistance that may be provided. • No indication that technical differences between the laws of Comoros and the requesting state would not pose an impediment to the extradition proceedings.
38. MLA on confiscation and freezing	PC	• No provision on precautionary measures such as identification, freezing, or seizure for responding effectively and in a timely manner to requests for assistance made by foreign countries. • No arrangements allowing the coordination of seizure and confiscation actions with other countries.
39. Extradition	PC	• The dual criminality condition could limit the execution of requests for extradition when the request relates to money laundering of the proceeds of a crime that is not criminalized in

		the penal code. • In the absence of specific cases, the practical effectiveness of the mechanism cannot be measured.
40. Other forms of co-operation	PC	• No in-depth cooperation of supervisors with their foreign counterparts. • The competent authorities are not authorized to conduct investigations on behalf of their foreign counterparts. The mission did not receive anything that would allow it to assess the effectiveness of information sharing with foreign counterparts, given the lack of practical experience in the area of predicate offenses or offenses related to ML or FT. • No possibility of spontaneous exchange of information. • No controls and guarantees to ensure that information received by the competent authorities is used only in an authorized manner. • The Ordinance limits the FIU's ability to conduct investigations on behalf of foreign counterparts.
Nine Special Recommendations		
SR.I Implement UN instruments	PC	• Failure to transpose the provisions of the Terrorist Financial Convention and SC resolutions into domestic law.
SR.IICriminalize terrorist financing	PC	• FT offenses are not criminalized in accordance with the 1999 United Nations Convention for the Suppression of the Financing of Terrorism. The definition of terrorist financing covers only the terrorist act to the exclusion of the terrorist organization

		and the terrorist. • The definition of the terms “funds” and “property” are incomplete. • Complicity, conspiracy, aiding, assisting, and association are not established as such as a criminal offense. • Terrorist financing is not established as a predicate offense of money laundering. • No provision to define territorial jurisdiction. • In the absence of specific cases, it is difficult to measure the effective application of the relevant provisions.
SR.III Freeze and confiscate terrorist assets	NC	• No mechanism for freezing funds pursuant to Resolutions 1267 and 1373.
SR.IV Suspicious transaction reporting	NC	• No implementing provisions for declaring the transportation of cross-border currency. • No legal provisions for reporting information on the origin and use of currency transported. • No legal or procedural provisions on saving declarations providing information on the amount of currency and the identity of the carrier. • No legal obligation to report to the FIU in the context of discovering cross-border transportation in excess of the authorized threshold. • Lack of precision regarding sanction applicable to a person who fails to file a declaration or prepares a false declaration regarding the transportation of currency in excess of the authorized threshold. • No legal measures to include gold, precious

		metals, and precious stones in currency transportation requirements. • No computerized database to allow Customs to save prepared reports in a database. • No direct requirement to report suspicions of terrorist financing. • No requirement to report attempted transactions.
SR.V International cooperation	PC	• Limited scope of the assistance that authorities are able to provide to other countries in the area of TF due to the non consistency of the TF definition with the 1999 Terrorist Financing Convention. • Since the FIU is not competent to analyze STRs relating to terrorist financing, such exchanges cannot occur.
SR.VI AML/CFT requirements for money/value transfer services	NC	• No provisions on licensing conditions for alternative remittance service providers.. • Gaps identified in the recommendations on customer due diligence, record-keeping, supervision, and regulation also apply with respect to alternative remittance service providers. • No requirements on maintaining a list of operators. • Insufficient controls. • Informal remittance service providers are said to be operating in the Comoros without registration.
SR.VII Wire transfer rules	NC	• No provisions on batched cross-border transfers. • No requirement to include information in the

		message accompanying the transfer. • No provisions on handling transfers that are not accompanied by complete information. • No effective measures to monitor financial institutions' compliance with rules and regulations. • Limited effectiveness of existing provisions.
SR.VIII Nonprofit organizations	NC	• No laws on NPOs. • No in-depth study on the risks of the NPO sector with respect to potential FT. • No awareness campaign for NPOs on risks of misuse for purposes of TF or on the transparency of NPOs. • No NPO monitoring and surveillance mechanisms. • No measures to sanction violation of rules on monitoring by NPOs. • No regulatory provisions requiring NPOs to keep records of their national and international transactions for a period of at least five years. • No mechanism to verify the effectiveness of cooperation, coordination, and information sharing at the national level among all appropriate authorities on NPOs and questions of FT. • No mechanism for conducting rapid investigation or preventive action against suspected NPOs. • No mechanism for rapid information sharing among competent authorities to examine

		suspected NPOs. • No points of contact and procedures for responding to international requests for information on certain NPOs.
SR.IX Cross-Border Declaration & Disclosure	NC	• No implementing provisions for declaring the transportation of cross-border currency. • No legal provisions for reporting information on the origin and use of currency transported • No legal or procedural provisions on saving declarations providing information on the amount of currency and the identity of the carrier. • No legal obligation to report to the FIU in the context of discovering cross-border transportation in excess of the authorized threshold. • Lack of precision regarding sanction applicable to a person who fails to file a declaration or prepares a false declaration regarding the transportation of currency in excess of the authorized threshold. • No legal measures to include gold, precious metals, and precious stones in currency transportation requirements. • No computerized database to allow Customs to save prepared reports in a database.

Table 2. Recommended Action Plan to Improve the AML/CFT System

FATF 40+9 Recommendations	Recommended Action (in order of priority within each section)
1. General	
2. Legal System and Related Institutional Measures	
2.1 Criminalization of Money Laundering (R.1 & 2)	• Criminalize the predicate offenses to money laundering designated by the FATF such as human trafficking and smuggling of migrants, trafficking in stolen goods, environmental crimes, abduction of adults and hostage taking, smuggling, piracy, as well as insider trading and market manipulation, in the Penal Code or in special legislation. • Expand the criminalization of trafficking in narcotics and psychotropic substances, and participation in organized crime to include all the material elements in accordance, respectively, with the 1988 Vienna Convention and the 2000 Palermo Convention against Transnational Organized Crime. • Make provision for offenses related to money laundering not provided for in the 2009 Ordinance, particularly assisting, facilitating, and advising in the commission of the offense. • Training for everyone involved in the AML/CFT mechanism seems necessary in order to better define the elements that constitute the offense and the conditions for establishing proof, particularly with respect to the intentional element. Such training should also address the question of investigations, prosecutions, and the imposition of the various sanctions. • Improve the resources of judges in order to give them greater autonomy and independence.
2.2 Criminalization of Terrorist Financing (SR.II)	• The 2003 and 2009 Ordinances put into place a Comorian mechanism for freezing, seizure, and confiscation for offenses related to money laundering that is generally consistent with international standards. Nonetheless,

	Comorian authorities are urged to implement these provisions as quickly as possible. • Correct erroneous references to Article 14 (instead of Article 15) in Articles 19 and 27, so that law enforcement authorities and the FIU will have adequate powers to detect and trace the origin of property subject to confiscation or that may be subject to confiscation or may constitute the proceeds of crime. • Provide a mechanism to know the value of sums seized for money laundering and how they are managed in order to measure the effectiveness of judicial seizure and confiscation measures and to calculate the amounts.
2.3 Confiscation, freezing, and seizing of proceeds of crime (R.3)	• The 2003 and 2009 Ordinances put into place a Comorian mechanism for freezing, seizure, and confiscation for offenses related to money laundering that is generally consistent with international standards. Nonetheless, Comorian authorities are urged to implement these provisions as quickly as possible. • Correct erroneous references to Article 14 (instead of Article 15) in Articles 19 and 27, so that law enforcement authorities and the FIU will have adequate powers to detect and trace the origin of property subject to confiscation or that may be subject to confiscation or may constitute the proceeds of crime. • Comorian authorities should provide a mechanism allowing them to know the value of sums seized for money laundering and how they are managed in order to measure the effectiveness of judicial seizure and confiscation measures and to calculate the amounts.
2.4 Freezing of funds used for terrorist financing (SR.III)	• Make subject to freezing measures pursuant to Resolutions 1267 and 1373 the funds or other property of persons who commit or attempt to commit terrorist acts or participate in or facilitate the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons and entities, including funds derived from property owned or controlled, directly or indirectly, by such persons and

	associated persons and entities; • Extend the freezing measures to all “funds and other property,” which would make it possible, pursuant to the aforementioned resolutions, to cover all financial assets and property of any kind, whether corporeal or incorporeal, movable or immovable, as well as legal documents or instruments of any kind evidencing title to or interest in such property; • Extend the regulations’ scope of application to cover all actors holding funds or other property belonging to persons and entities directly or indirectly involved in the commission of terrorist acts; • Provide a clear and rapid mechanism for distributing the Sanctions Committee lists nationally; • Provide a clear and rapid procedure for examining and giving effect to initiatives taken pursuant to other countries’ freezing mechanisms under Resolution 1373; • Introduce effective and publicly-known procedures for timely review of requests to delist designated persons and to unfreeze the funds or other property of persons or entities removed from the lists; • Introduce effective and publicly-known procedures for unfreezing as promptly as possible the funds or other property of persons or entities inadvertently affected by a freezing mechanism, upon verification that the person or entity is not a designated person; • Introduce appropriate procedures for authorizing access to funds or other property frozen pursuant to Resolution S/RES/1267(1999) and that have been determined to be necessary for basic expenses, the payment of certain types of fees, expenses, and service charges as well as extraordinary expenses; • Introduce appropriate procedures allowing a person or entity whose funds or other property were frozen to challenge that measure with a view to having it reviewed
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	by a court; • Introduce a provision that would ensure protection for the rights of third parties acting in good faith.
2.5 The FIU and its functions (R.26)	• Repeal the 2005 law of Anjouan. • Allow the FIU to receive, analyze, and transmit STRs and other information concerning all actions suspected of being related to terrorist financing. • Disseminate a new model STR and new guidelines. • Fix the limitation on access to information due to incorrect cross-referencing in the order. • Ensure the independence and operational autonomy of the FIU. • Publish periodic reports including statistics. • Consider seeking membership in the Egmont Group and take its principles into consideration. • Appoint permanent staff, assign an office, and provide a budget line for the FIU
2.6 Law enforcement, prosecution and other competent authorities (R.27 & 28)	• Update their CCP and adapt it to the country's judicial reality. • Give in-depth consideration to the role and missions of the FIU and its interactions with existing investigative units. • Ensure that the FIU has suitable human and logistical resources to carry out its missions and to protect information, particularly the operational unit, so that it can, when appropriate, utilize the recommended investigative techniques. • Proceed with a suitable training program on the subject of financial investigation and AML/CFT techniques for FIU personnel.

	• Develop, train, and professionalize the Economic and Financial Brigade of the DNST. • Proceed with a suitable program on the subject of money laundering and the FT for judicial authorities and units involved in the prevention and suppression of ML/FT. • Strengthen the logistical resources of investigative authorities, particularly the police and the gendarmerie.
2.7 Cross-Border Declaration & Disclosure (SR.IX)	• Define procedural conditions with respect to the detection of currency carriers; • Define the conditions for collaboration with the FIU and the Office of the Public Prosecutor; • Introduce appropriate training on the subject for Customs personnel; • Create a suitable form to be used by travelers at airports and ports for declaring currency; • Raise the awareness of the traveling public at airports and ports by posting the requirements on declaring currency; • Set up a specific database for recording and preserving the information on declarations; • Incorporate in the legislation the distinction between money laundering and terrorist financing, and specify in the definition of terrorist financing the nature of lawful and unlawful funds that may fall within this definition; • Expand in the legislation on money laundering and terrorist financing the concepts of currency and bearer instruments to include other valuables, particularly gold, precious metals, and precious stones.
3. Preventive Measures—Financial Institutions	
3.1 Risk of money laundering or terrorist financing	•
3.2 Customer due diligence,	• Comorian authorities should regulate insurance

including enhanced or reduced measures (R.5–8)	companies. Their current activity does not cover life insurance, but current law does not prohibit them from engaging in this line of business. • The two Ordinances have already introduced criteria related to due diligence but the authorities should ensure their application in order to ensure that the provisions are fully effective. In addition, they should improve the legislative and regulatory framework, which contains significant weaknesses. • The authorities should introduce the following requirements in the law: ○ Provisions with respect to due diligence in insurance companies. ○ Provisions governing numbered accounts. ○ No threshold for implementing customer due diligence measures. ○ Updating of information and documents collected for customer due diligence. • The authorities should introduce the following requirements, at least in the form of regulations: ○ Limits on the application of simplified due diligence measures, whether with respect to customers residing in foreign countries or in the case of money laundering or terrorist financing. ○ Due Diligence Requirements after entering into the business relationship in the event of unsatisfactory compliance with the requirements indicated. • The authorities should also introduce implementing language governing certain aspects, such as the definition of: ○ The duration of the period determined with respect to different transactions carried out by occasional
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	customers. ○ Reasonable measures for verifying the identity of the beneficial owner based on relevant information or data obtained from a reliable source and to understand the ownership and control structure. ○ High-risk clients in order to allow financial institutions to classify their customers according to the risk they present. ○ Cases where reduced or simplified measures should be applied. ○ Appropriate times with respect to due diligence measures for existing clients in order to allow financial institutions to apply the measures appropriately. ● Accelerate the issuance of biometric passports in order to halt the circulation of regular passports that can be falsified and used to open bank accounts and in order to improve the reliability of public records. In addition, it seems essential to update and computerize the files in the clerk's office at the TPI in order to ensure a reliable and accessible source for identifying legal persons. ● Apply the provisions relating to PEPs to insurance companies. ● Require financial institutions to obtain authorization from senior management in order to continue a business relationship with an existing client that subsequently seems to be a PEP. ● Include provisions to require financial institutions to determine whether the beneficial owner is a PEP. ● Introduce implementing language to define PEPs. ● Introduce a provision so that financial institutions satisfy themselves regarding the relevance and effectiveness of the controls put in place by the correspondent bank.
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	• Introduce provisions on non-face to face business relationships.
3.3 Third parties and introduced business (R.9)	• Distribute instructions establishing the conditions under which financial institutions may rely on third parties or intermediaries,
3.4 Financial institution secrecy or confidentiality (R.4)	• Put in place provisions eliminating obstacles to information sharing between competent national authorities and financial institutions. • Take steps so that Article 27 regarding the prohibition on invoking banking secrecy refers to the article on the disclosure of documents.
3.5 Record keeping and wire transfer rules (R.10 & SR.VII)	• Amend the provision on record-keeping to ensure that records are kept for five years after transactions are completed. • Introduce a legal or regulatory requirement on keeping necessary documentation with respect to transactions if the account or the business relationship is closed. • Impose record-keeping requirements on insurance companies. • Correct weaknesses in effective record-keeping, providing more examples to subject institutions through on-site visits or training seminars. • Introduce provisions for individual transfers that are part of a batch transmission. Thus, the financial institution of the originator can make do with mentioning the account number of the originator or a unique reference number for each separate transfer; to do this, it is necessary that the batch (including individual transfers) itself includes full information on the originator – information that could be obtained in the receiving country. • Introduce provisions to ensure that full information regarding the originator appears on the message accompanying cross-border transfers, or the account number only for domestic transfers.

	• Require the beneficiary's financial institution to adopt effective procedures based on a risk assessment in order to identify and deal with transfers that are not accompanied by full information on the originator. Obtaining incomplete information should be considered a factor in evaluating the suspicious nature of a transfer or any other related transaction, and should make it possible to evaluate the relevance of a report to the FIU or any other competent authority. In certain cases, the beneficiary's financial institution should consider the possibility of limiting, or putting an end to, the commercial relationship with another institution that is not in a position to comply with the above conditions. • Put appropriate measures in place to allow effective monitoring of the implementation of regulations on wire transfers by financial institutions. • Correct weaknesses in effectiveness.
3.6 Monitoring of transactions and relationships (R.11 & 21)	• Apply the transaction monitoring provisions to insurance companies. • Not limit the monitoring of specific transactions to a defined threshold. • Require that the results of reviews of specific transactions and transactions with countries that do not comply with the FATF Recommendations be made available to the auditors. • Inform financial institutions of concerns raised by weaknesses in the AML/CFT mechanisms of other countries. • Replace "financial institution" with "country" in the provision on allowing counter-measures against a country that continues not to apply or to insufficiently apply the FATF Recommendations. • Enforce the provisions on keeping written records of the results of reviewing complex transactions and transactions

	with high-risk countries.
3.7 Suspicious transaction reports and other reporting (R.13, 14, 19, 25, & SR.IV)	• Clarify the framework for reporting suspicions in order to remove the ambiguities created by the wording of Article 21 of the 2009 Ordinance. • Extend the requirement to report suspicious transactions to all funds linked or related to or to be used for terrorism, terrorist acts or by terrorist organizations or those who finance terrorism. Currently funds of lawful origin are not covered by the reporting requirement. • Make reporting attempted transactions a requirement. • Repeal the AML law of Anjouan dated January 10, 2005. • Undertake actions to strengthen the knowledge that entities subject to anti-money laundering and counter-terrorism requirements have about their obligations to report suspicious transactions. • Study the feasibility and usefulness of a system for reporting currency transactions. • Develop and disseminate reporting guidelines and feedback of information on STRs. • Introduce a direct requirement on reporting suspicions linked to terrorist financing. • Make the requirement to report attempted transactions linked to terrorist financing mandatory.
3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)	• Apply provisions on internal AML/CFT programs to insurance companies. • Amend the text of Article 15 so that the internal control program covers terrorist financing as well. • Introduce a regulatory provision requiring financial institutions to establish AML/CFT policies and procedures. • Disseminate instructions to fill in some gaps with respect

	to timely access to information needed for the professional ethics and independence of the internal control mechanism. • Introduce implementing language to define the content of ongoing employee training and the nature of strict hiring criteria. • Have financial institution staff participate in AML/CFT training. • Define the rules applicable to financial institutions with foreign branches or subsidiaries.
3.9 Shell banks (R.18)	• A directive or other restrictive measure should prohibit financial institutions from forming or continuing correspondent banking relationships with shell banks. Along the same lines, financial institutions should ensure that financial institutions that are their foreign customers do not allow their accounts to be used by shell banks. • It is recommended that the authorities conduct an investigation at the national level to punish local complicity in the creation of an offshore banking sector on Anjouan. • The Central Bank and the Ministry of Finance should revise their procedures in order to respect the timeframe granted to a licensed bank to begin its activities.
3.10 The supervisory and oversight system—competent authorities and SROs’ role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)	• Increase the monetary sanction imposed on banks and financial institutions. • Specify whether the sanctions applicable to decentralized financial institutions are also applicable in the case of failure to comply with AML/CFT obligations. • Establish the monetary sanctions applicable to decentralized financial institutions. • Appoint a monitoring authority for insurance companies²⁶.

²⁶ The BCC has been granted this power after the on-site visit.

	• Introduce requirements for approval of insurance companies, money transfer organizations, and foreign exchange offices. • Take measures with respect to all persons engaging in financial activities without authorization. • It is imperative that the BCC strengthen on-site controls and design a methodological inspection guide in order to guide the work of on-site inspectors and ensure uniformity in their controls. This guide should be based on the provisions of the Ordinances and the regulatory provisions that the BCC plans to issue. It should regularly conduct inspections, monitor documentation, and use appropriate sanctions to ensure compliance with legal and regulatory provisions. • Allocate the resources needed to implement documentary and on-site controls. • Accelerate and provide adequate training in the area of AML/CFT for supervisors. • Establish guidelines in the area of AML/CFT to help financial institutions and DNFPB implement and comply with their respective AML/CFT obligations. • Develop the statistical apparatus.
3.11 Money value transfer services (SR.VI)	• Establish licensing conditions specific to money transfer services. • Fix the gaps with respect to customer due diligence, record-keeping, and supervision and regulation. • Increase inspections of money transfer services. • Establish a requirement to maintain an updated list of money transfer organization operators. • Proceed to register services that use the SSB system and conduct a survey to identify the possibility of another informal channel. Take steps needed to control these

	activities when identified.
4. Preventive Measures– Nonfinancial Businesses and Professions	
4.1 Customer due diligence and record-keeping (R.12)	• Publish the implementing regulations with respect to casinos and traders in precious stones and metals. • Write the following provisions into the law: ○ Expand the range of situations in which due diligence requirements should be observed so as to include occasional transactions when there is suspicion of money laundering or terrorist financing independent of any thresholds or exemptions, or when the DNFBP has doubts as to the accuracy or relevance of customer data obtained previously. ○ Require DNFBPs to identify the beneficial owner. ○ Require DNFBPs to perform ongoing monitoring with respect to business relationships. ○ Introduce measures on record-keeping. • Impose the following requirements on DNFBPs: ○ Obtain information regarding directors of legal persons when opening an account. ○ Obtain information on the purpose and intended nature of the business relationship. ○ Take enhanced due diligence measures for higher-risk categories. ○ Implement measures for cases of unsatisfactory compliance with customer due diligence requirements. ○ Due diligence with respect to PEPs. ○ Due diligence with respect to new technologies and relationships not involving the physical presence of

	the parties. ○ Introduce specific provisions with respect to third parties and intermediaries ○ Authorize making the results of the review of complex transactions available to auditors.
4.2 Suspicious transaction reporting (R.16)	● Publish the implementing regulations with respect to traders in precious stones and metals. ● Clarify the framework for reporting suspicions to remove the ambiguities caused by the wording of Article 21 of the 2009 Ordinance. ● Expand the STR requirement to all funds linked or related to or that be will used for terrorism, terrorist acts, or terrorist organizations, or those that finance terrorism. At present funds of lawful origin are not covered by the reporting requirement. ● Make reporting of attempted transactions a requirement. ● Undertake actions to strengthen the knowledge of entities subject to AML/CFT requirements with respect to their STR obligations. ● Require DNFBPs to introduce and maintain internal control procedures, policies, and measures. ● Require DNFBPs to pay special attention to business relationships and transactions with countries that insufficiently apply the FATF Recommendations.
4.3 Regulation, supervision, monitoring, and sanctions (R.17, 24, & 25)	● <u>Casinos</u> ○ The authorities should designate a regulatory authority for casinos on the subject of AML/CFT. ○ There should be administrative sanctions for failure to comply with due diligence requirements. ○ There should be measures to prevent criminals or their

	accomplices from taking control of a casino. • <u>Other DNFBPs</u> - o Provide administrative sanctions with respect to DNFBP failures to meet their obligations in the area of AML/CFT. - o Organize, regulate, and supervise accountants, traders in precious metals and stones, and real estate agents. - o Include AML/CFT powers in bar association advisory missions. - o Organize and supervise the activities of notaries with respect to AML/CFT. • Develop and distribute reporting guidelines and provide information feedback on STRs.
4.4 Other DNFBPs (R.20)	• Consider whether other non-financial businesses or professions present a risk of money laundering or terrorist financing and, if so, should make them subject to preventive measures. • Encourage the development of modern and secure techniques.
5. Legal Persons and Arrangements & Nonprofit Organizations	
5.1 Legal Persons—Access to beneficial ownership and control information (R.33)	• Fully investigate the offshore sector developed from the island of Anjouan and possibly from the island of Mohéli and take appropriate legal measures to inform the international community of the end of these arrangements and clarify the illegality of offshore financial and non-financial entities (Internet casinos, IBCs, registration of ships and airplanes in particular) that would claim or continue to claim a Comorian reference. • Clarify the provisions on the operations of legal persons in company form, particularly as regards accounting supervision and the expertise of auditors.

	• Strictly enforce measures to identify managers, administrators, and partners of legal persons, and take into account the identification of real economic beneficiaries. • Take the necessary steps to computerize the Commercial Registries (RCCM) and centralize the information referring to the three islands in the context of the National File, as provided in the commercial code, but which still has not been created.
5.2 Legal Arrangements– Access to beneficial ownership and control information (R.34)	• Ensure that there is no longer a legal framework in effect on Anjouan for establishing trusts without adequate transparency requirements.
5.3 Nonprofit organizations (SR.VIII)	• Unify and centralize requests for authorization of foreign NPOs in a single ministerial department. • Adopt a specific legal framework for NPOs that includes adequate regulatory provisions on the operational, administrative, and financial transparency of NPOs in national territory, on supervisory methods, and on access to accounting documents by Comorian supervisory authorities, and provides effective methods for implementing such administrative measures. • Develop an information campaign for NPOs to raise the awareness of their management and employees regarding terrorist financing.
6. National and International Cooperation	
6.1 National cooperation and coordination (R.31)	• The operational division of the FIU should ensure as a matter of priority enhanced cooperation in the implementation of UNSCRs 1267 and 1373 (and their successor resolutions) and in the the development and implementation of policies and activities to combat ML and TF. • The mission recommends that Comorian authorities consider a mechanism for consultation among competent AML/CFT authorities, the financial sector, and non-financial businesses and professions governed by the

	legislation on preventing and detecting suspicious financial transactions.
6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)	• Ratify (i) the Protocol against the Smuggling of Migrants by Land, Air, and Sea (ii) the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, adopted in New York on November 15, 2000, as well as the (iii) Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components, supplementing the United Nations Convention against Organized Transnational Crime, adopted in New York on May 31, 2001. • Accelerate the process of transposing into domestic law the provisions of the various conventions ratified in order to reconcile domestic legislation and international commitments.
6.3 Mutual Legal Assistance (R.36, 37, 38 & SR.V)	• Criminalize predicate offenses to money laundering in the penal code. • Expand the criminalization of terrorist financing in accordance with the Terrorist Financing Convention. • Introduce mechanisms so as to be able to provide assistance in a timely, constructive, and effective manner. • Specify arrangements allowing the coordination of seizure and confiscation actions with other countries. • Specify rules providing that professional secrecy cannot be invoked to deny a request for assistance. • Allow for the delivery of mutual legal assistance on non-intrusive measures even in the absence of dual criminality. • Include specific mechanisms so that determinations can be made as to the most appropriate venues for criminal prosecution. • Set up a fund to combat organized crime or drug trafficking to which confiscated funds or property are

	allocated. • Maintain statistics on each request for legal assistance, making it possible to analyze the effectiveness of this assistance.
6.4 Extradition (R.39, 37 & SR.V)	• Criminalize the predicate offenses to money laundering in the penal code. • Expand the criminalization of terrorist financing to be consistent with the Terrorist Financing Convention. • The Comorian authorities should adopt clear arrangement to prevent that technical differences between the laws of Comoros and the requesting state will not pose an impediment to the extradition proceedings. • Introduce statistical tools so as to have an accurate count of requests for extradition received and sent.
6.5 Other Forms of Cooperation (R. 40 & SR.V)	• Amend the relevant provisions in order to authorize supervisors to collaborate with their foreign counterparts in order to strengthen prudential cooperation at the international level. • Adopt mechanisms authorizing the DNST to conduct inquiries on behalf of its foreign counterparts while ensuring that the information received by the competent authorities is used only in an authorized manner. • Allow spontaneous exchange of information in relation to both money laundering and the underlying predicate offenses. • Expand the scope of the FIU's competence in the area of terrorist financing so as to allow it effectively share information on behalf of its foreign counterparts.
7. Other Issues	
7.1 Resources and statistics (R.30 & 32)	See recommended actions in relation to the relevant Recommendations.

Annex 1. Details of All Bodies Met During the On-Site Visit

List of ministries, other government authorities or bodies, private sector representatives and others.

Union and Islands Authorities

Presidency of the Union
Central Bank of the Comoros
Ministry of Finance of the Comoros
Ministry of Justice of the Comoros
Ministry of Foreign Affairs of the Comoros
Island Presidency – Grande Comore
Island Presidency – Anjouan
Island Presidency – Grande Comore
Ministry of Finance – Anjouan
Ministry of Finance - Moheli

Criminal Justice and Operational Agencies

Customs
Financial Intelligence Unit (SRF)
Gendarmerie
Island Police – Grande Comore
Island Police – Anjouan
Island Police – Moroni
Joint Anti-Drug Squad (BRIMAD)
Judges and Public Prosecutors in Grande Comore
Judges and Public Prosecutor in Anjouan
National Directorate for Government Documentation and Protection (DNDPE)
National Directorate of Territorial Surveillance (DNST)
Tax Department

Financial Sector Supervisory Bodies

Supervision Department - Central Bank of the Comoros

Private Sector Bodies

Bar Association
Chamber of Commerce

Private Sector Representatives

Accountants

Audit firms

Casino

Credit Institutions

Microfinance institutions

Non-Profit Organizations

Real estate agent

Insurance undertakings

Lawyers

Notaries

Annex 2. List of All Laws, Regulations, and Other Material Received

1. Constitution of the Union of Comoros, December 23, 2001 amended in May 2009.
2. Ordinance No. 3-002/PR, of January 29, 2003 on Laundering, Confiscation, and International Cooperation in Relation to the Proceeds of Crime.
3. Ordinance No. 09-002/PR on Laundering, Financing of Terrorism, Confiscation, and International Cooperation in Relation to the Proceeds of Crime.
4. Decree No. 03-25/PR on the Financial Intelligence Unit.
5. Law on Economic Citizenship of December 23, 2008.
6. Circular Note No 12-2005 on Offshore Banks.
7. Penal Code provided by Law No.- 082 P/A.F. – Law No. 95-012/AF.
8. Code of Minor Offenses provided by Law No. 81/007.
9. Tax Code (Law n° 85-018/AF, December 24 1985).
10. Uniform Act on Commercial Law of April 17, 1987- the Commercial Code.
11. Uniform Act on the Law of Commercial Companies and Economic Interest Groups of April 17, 1997.
12. Ordinance No. 92-008/PR of September 7, 1992- Customs Code.
13. Organic Law No. 04/2004 of August 31, 2004 on the Organization of the Judiciary in the UC and in the Islands.
14. Comorian Code of Criminal Procedure (1972 version of the French Code).
15. Law No. 04/04 of November 10, 2004 on the General Civil Service Statute of the UC.
16. Banking Law, Law No. 80 of 2007.
17. Decree No. 87-005 on Foreign Exchange.

18. Anjouan legislation on offshore companies (International Business Companies Act 004 of 2005 adopted by the Anjouan Parliament on February 5, 2005).
733. Law No. 86-006/AF of May 30, 1986 on the Articles of Association.