

## COMMENTS ON SAN MARINO "COUNTRY REPORT-2015" BASED ON THE COMPARATIVE STUDY ON BLOCKING, FILTERING AND TAKE-DOWN OF ILLEGAL INTERNET CONTENT.

As far as San Marino Legal Framework (par. 1-2-3 of the country Report) and the "General Monitoring of Internet" in paragraph 4 are concerned, it is important to make reference to the recent **Decree Law No. 179 of 9 December 2015, "Establishment and Regulation of the Agency for digital development"**. In particular, the aim of the mentioned decree is to implement the directives and objectives established in the European Digital Agenda, whose aim is to project, promote, develop, monitor and control the strategic evolution of the digital system, of electronic communication and of the digital field in general. Art. 3 of the Decree establishes the "Agency for Digital Development" (hereinafter also referred to as "ADD"), which consists of seven members appointed by the San Marino legislative body, the "Consiglio Grande e Generale" (Great and General Council). The activity carried out by the ADD consists in providing consultancy in favor of the Congress of State (San Marino Government) in the fields identified by the Decree, as well as monitoring and controlling the necessary activities to implement the national strategy as far as digital development is concerned. Art. 5 identifies the tasks of the ADD which, among others, are:

- supervision of the implementation and enforcement of laws and regulations in the field of ICT (Information and Communication Technology);
- control of the entities which carry out activities in the field interested by the ADD's activities, in order to ensure respect for the standards and models provided.

According to article 6 of the Decree, ADD's activity is based on several pillars, which also include the field of "Trust and safety" with regard to digital matters. According to article 6, par. 3, the ADD, among others, carries out the following:

- by necessity and if the security and the privacy of personal data and citizens' rights are at risk, it informs relevant authorities of any crime identified in the field of interest;
- it cooperates with the authorities for the protection of personal data;
- it drafts and publishes a legal code which clearly explains the rights of the users of digital means of communication, also by cooperating with other offices and bodies of the State;
- it promotes means aimed at guaranteeing the protection and privacy of data and strengthens users' trust, citizens' rights and transparency, through promotional initiatives also by collaborating with other entities acting in the same field;
- it studies, evaluates and promotes projects and/or provides advice with regard to:
  - (a) new legal measures in order to prevent and protect users and their digital identity;
  - (b) alternative dispute resolutions in order to guarantee justice and consumers' rights;
- drafts an annual report concerning the offences committed in the field of digital market;
- with regard to data protection:
  - it promotes cultural initiatives in the field of digital security;
  - it monitors the digital market;
  - it promotes the participation in national and international warning platforms;
  - it regulates notices of offences committed on data protection against San Marino ITC entities;
  - it develops and implements a protection plan for digital infrastructures at risk, also through the control of the electronic means of communication;
  - it cooperates with public institutions and with relevant authorities in order to prevent digital crimes;

- it carries out monitoring and control activity on networks and on computer security, also by collaborating for the implementation of national protection plans;
- it participates in, promotes, organizes international initiatives against threats to security;
- it cooperates with and supports the entities in charge of the protection of digital identity and data protection.

As regards the observations provided in paragraph 5, "*Assessment as to the case law of the European Court of Human Rights*", concerning AMC/CFT actions and the reference made to the national risk assessment, please consider what follows.

As far as the national risk assessment is concerned, it is important to note that the Technical Commission of National Coordination (TCNC), which domestically supports the Committee for Credit and Savings (CCS) in its AML/CFT strategic activity, has unanimously recognized the need for the Country to improve the AML/CFT regime by performing a domestic NRA exercise. As a consequence, the San Marino Government (Congress of State) adopted a Decision on 1st September 2014 containing provisions on the NRA. The NRA project has been launched and the first working meeting took place in March 2015. To date, the NRA exercise is still ongoing and it's likely to be finished by next summer. The National Risk Assessment model adopted by San Marino is the one proposed by the World Bank, which provides for a self-assessment of the level of risk related to money laundering and terrorist financing, based on the analysis of the threats and vulnerabilities of the country. The objective of the risk assessment prepared by the Republic of San Marino is, therefore, to identify the general level of ML risk related to the country and, at the same time, to analytically understand the specific areas requiring measures to achieve (or to continue to maintain) this risk level as low as possible. This analysis has been carried out for the first time in a systematic manner in the Country, implementing FATF Recommendation 1.

As far as the DNFBPs are concerned, please note that in recent years, FIA has focused its supervisory activities on some DNFBP sectors that - according to FIA experience and knowledge- represent a higher risk. The inspections conducted so far at DNFBPs have disclosed cases that have been duly sanctioned, nonetheless a better understanding and knowledge of the AML/CFT obligations have been developed compared to the past. Moreover, in order to increase the capability of the DNFBPs to properly perform CDD requirements, ad-hoc meetings were held by FIA with the private sector. In particular, FIA and DNFBP representatives organized meetings in order to define proper CDD measures and the main challenges encountered in the performance of these obligations. In some cases, the action performed by FIA led to the creation of specific "categories of associations" (auction houses, real estate brokers), which favored a dedicated channel for dialogue with these categories. Please also note that the Foundation of the CBSM organized special training courses dedicated to these parties with the aim to increase the awareness of AML/CFT requirements and to illustrate concrete cases for the implementation of AML/CFT obligations.