Groupe d'Etats contre la corruption
Group of States against corruption

DIRECTORATE GENERAL I - HUMAN RIGHTS AND RULE OF LAW
INFORMATION SOCIETY AND ACTION AGAINST CRIME DIRECTORATE

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Joint First and Second Evaluation Rounds

Evaluation Report on San Marino

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INTRODUCTION

1. San Marino joined the partial agreement establishing GRECO on 13 August 2010 that is, after the closure of the first and second evaluation rounds. Consequently, San Marino was submitted to a joint evaluation procedure covering the themes of the first and second rounds (see paragraph 3). The GRECO Evaluation Team (hereafter the GET) comprised Ms Elena KONCEVICIUTE, International Relations Officer, Special Investigation Service (Lithuania), Mr Keith McCARTHY, Chief Investigator, Serious Fraud Office (United Kingdom), Mr Luis Miguel PINTO DE SOUSA E SILVA, Chief Inspector of Finances, General Inspectorate of Finance (Portugal) and Ms Laura STEFAN, Anti-Corruption Co-ordinator, Romanian Academic Society (Romania). The team, accompanied by Ms Laura SANZ-LEVIA, from GRECO's Secretariat, visited San Marino from 20 to 24 June 2011. Before the visit, the GET received replies to the evaluation questionnaires (Greco Eval I-II (2011) 2E Eval I – Part 1 and Greco Eval I-II (2011) 2E Eval II – Part 2), copies of relevant legislation and other documentation.

2. The GET met the following leading figures and representatives from San Marino's governing institutions: Minister of Foreign and Political Affairs, Minister of Industry, Handicraft and Trade, Minister of Internal Affairs, Department of Foreign Affairs (Directorate of Political Affairs), Department of Industry (Department Coordinator, Office for Industry, Handicraft and Trade, Office for Control and Supervision over Economic Activities, Central Liaison Office), Department of Finance (Department Coordinator, Tax Office, General Directorate of Public Finance), Department of Territory (Department Coordinator, Public Works State Corporation), Department of Internal Affairs (Department Coordinator, State Lawyers' Office, Executive Secretariat of the Congress of State, Institutional Secretariat – also acting as Bureau of the Council of the Twelve), Commission for the Control of Public Finance, Single Court, Financial Intelligence Agency, Central Bank, National Central Bureau of Interpol, Police Forces (Civil Police, Gendarmerie and Fortress Guard). The GET also met with representatives of administrative districts in San Marino (so-called castles, i.e. "Castelli"). Finally, the GET met with members of several non-governmental organisations, the Chamber of Commerce, the Bar Association of Lawyers and Notaries Public, the Professional Association of Accountants, trade unions and journalists.

3. In accordance with Article 10.3 of its Statute, GRECO had decided that:

   - the First Evaluation Round would deal with the following themes:

     - **Independence, specialisation and means available to national bodies engaged in the prevention of and fight against corruption**[1]: Guiding Principle 3: authorities in charge of preventing, investigating, prosecuting and adjudicating corruption offences: legal status, powers, means for gathering evidence, independence and autonomy); Guiding Principle 7: specialised persons or bodies dealing with corruption, means at their disposal);
     - **Extent and scope of immunities**[2]: Guiding Principle 6: immunities from investigation, prosecution or adjudication of corruption); and

   - the Second Evaluation Round would deal with the following themes:

     - **Proceeds of corruption**[3]: Guiding Principles 4 (seizure and confiscation of proceeds of corruption) and 19 (connections between corruption and money

[1] Themes I and II of the first evaluation round
[2] Theme III of the first evaluation round

laundering/organised crime), together, for members having ratified the Criminal Law Convention on Corruption (ETS 173), with articles 19.3, 13 and 23 of the Convention;

- **Public administration and corruption**[4]**:** Guiding Principles 9 (public administration) and 10 (public officials);
- **Legal persons and corruption**[5]**:** Guiding Principles 5 (legal persons) and 8 (fiscal legislation), together, for members having ratified the Criminal Law Convention on Corruption (ETS 173), with articles 14, 18 and 19.2 of the Convention.

4. On 15 May 2003, San Marino signed - but it has not yet ratified - the Council of Europe Criminal Law Convention (ETS 173) and its Additional Protocol (ETS No. 191). The Civil Law Convention on Corruption (ETS174) has not been signed. San Marino has not ratified the United Nations Convention against Corruption (UNCAC).

5. This report was prepared on the basis of the replies to the questionnaires and the information provided during the on-site visit. The main objective of the report is to assess the effectiveness of measures adopted by the authorities of San Marino to comply with the provisions referred to in paragraph 3. For each theme, the report presents a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to San Marino on how to improve compliance with the provisions under consideration.

I. OVERVIEW OF SAN MARINO'S ANTI-CORRUPTION POLICY

a. Description of the situation

Perception and phenomenon of corruption

6. With a population of about 31,871 (of whom over 4,000 are foreign citizens, mostly Italian) and an area of 61 km^2, San Marino is the third smallest State in Europe. The institutional organisation of the Republic of San Marino rests upon Law No. 59 of 8 July 1974 on the Declaration on the Citizens' Rights and Fundamental Principles of San Marino Constitutional Order, as amended. San Marino is a parliamentary republic, headed by two Captains Regent, who are elected every six months by the Great and General Council (Parliament), usually amongst its members. San Marino has a unicameral Parliament, which is elected every five years by universal suffrage and consists of 60 members.

7. An agreement of economic cooperation and customs union was signed with the European Union in 1991, on the basis of which San Marino is treated as part of the EU customs zone. Italian is the official language of San Marino and it has adopted the Euro as its currency.

8. San Marino does not appear on the Transparency International annual index of perception of corruption. According to the authorities, the phenomenon of corruption in San Marino appears to be rather limited and the problem is not ranked as a main concern of Sammarinese citizens. Occasional episodes of economic crime have been experienced, but there is no evidence of criminal groups or organisations located or operating in San Marino. The "Reports on the State of Justice", which are drawn up every year by the Single Court, reflect the following figures

[3] Theme I of the second evaluation round
[4] Theme II of the second evaluation round
[5] Theme III of the second evaluation round

concerning corruption-related offences (offences against public administration committed by public officials):

Statistical data on criminal proceedings

CRIME	2008	2009	2010
Embezzlement by public official (Article 371 CC)		2	3
Bribery (Article 373 CC)		2	1
Abuse of power (Article 376 CC)	2	-	1
Failure to carry out professional duties (Article 378 CC)	3	2	1

Criminal law

9. San Marino has a civil law legal system with Italian law influences. The Criminal Code (CC) dates back to 1974. With regard to corruption offences, these are mainly covered in the relevant chapter of the CC dealing with offences committed by public officials against public administration. In particular, criminalisation of active/passive bribery is provided for in Article 373 CC, which differentiates between two types of situation depending on the unlawful (acts against the official duty)/lawful nature (acts within the official duty) of the expected act of the public official or employee being bribed (*corruzione propria/impropria*). In addition, Article 374 CC criminalises the reception of a benefit after the official act has been performed, i.e. so-called bribery *a posteriori* (*corruzione susseguente*). Amendments to the CC were introduced in 2008 (notably, through Article 79 of Law No. 92 of 17 June 2008) to enlarge the scope of corruption-related provisions in order to criminalise the incitement to bribery (Article 374bis), as well as bribery of foreign and international officials (Article 374ter). In addition, Sammarinese legislation criminalises the offences of extortion in office, so-called *concussione* (Article 372 CC), office for private gain (Article 375 CC) and abuse of power (Article 376 CC).

10. Money laundering is criminalised under Article 199bis CC, as amended in 2004, 2008 and 2010 (for details, see paragraph 94). San Marino has not criminalised trading in influence[6], nor bribery in the private sector.

[6] During the on-site visit, the authorities referred to the offence of "*millantato credito*" provided by Article 204 CC. The authorities indicated that such an offence would cover some instances of passive trading in influence. The authorities also indicated that the offence of "*millantato credito*" requires that a damage to a private individual. In particular, Article 204 CC provides that: *Anyone who, deceiving another by means of a trick or artifice, secures an unjust profit for himself or for a third party shall be punished by terms of second-degree imprisonment as well as second-degree daily fine or disqualification.*
The punishment above shall also apply to anyone who, imposing on a physically or mentally disabled or minor person, has such person perform acts detrimental to himself or to another.
The punishment above shall be increased by one degree:
1) if the conduct occurred to the detriment of the Republic of San Marino or public bodies;
2) if the conduct occurred to secure the price of insurance or induce someone to purchase an insurance policy;
3) if the conduct occurred by false pretences involving a public official or power of the Republic of San Marino;
4) if the conduct occurred to obtain a victory in a sports competition or other public competition or in authorised betting related thereto.
Where the conduct under the first paragraph occurred dissimulating a state of insolvency, the offender shall be punished, following action brought by the offended, by terms of first-degree imprisonment or daily fine.
In the event envisaged in the preceding paragraph, fulfilment of the obligation by the offender before a first-degree judgement is rendered shall extinguish the offence.

11. The following table illustrates the available penalties and statutes of limitation for the existing corruption-related offences:

Article CC	Offence	Sanction	Statute of limitations[7]
Active and passive bribery in the public sector (domestic/foreign/international officials)			
Art 373 Art 374ter	Unlawful official acts	4th degree imprisonment [from 4 to 10 yrs] and 4th degree disqualification from public office and political rights [from 2 to 5 yrs] and 3rd degree daily fine[8] [20-60 days]	5 yrs (ordinary term) 7 yrs and 6 months (absolute term - if interrupted)
	Lawful official acts	3rd degree imprisonment [from 2 to 6 yrs] and 3 rd degree disqualification from public office and political rights [from 1 to 3 yrs] and 2nd degree daily fine [10-40 days]	4 yrs (ordinary term) 6 yrs (absolute term - if interrupted)
Art 374	Bribe accepted after commission of official act	1st degree imprisonment [from 3 months to 1 yr] or 3rd degree daily fine [20-60 days]	2 yrs (ordinary term) 3 yrs (absolute term - if interrupted)
Incitement to corruption			
Art 374bis	Unlawful official acts	3rd degree imprisonment [from 2 to 6 yrs] and 3 rd degree disqualification from public office and political rights [from 1 to 3 yrs] and 2nd degree daily fine [10-40 days]	4 yrs (ordinary term) 6 yrs (absolute term - if interrupted)
	Lawful official acts	3rd degree imprisonment [from 2 to 6 yrs] and 2nd degree daily fine [10-40 days]	4 yrs (ordinary term) 6 yrs (absolute term - if interrupted)

[7] When a judicial act is performed, the limitation period is increased by half of the period described by law (Article 57 CC). The table above shows both the basic period and the term resulting from the interruption of the period of limitation. The limitation period is suspended during the period of summer holidays (July and August), Law No. 55 of 17 June 1994.

[8] With regard to fines in days, the amount to be paid is fixed by law with reference to a minimum and a maximum number of days. The judge is to determine, with reference to the particular case, the amount of money corresponding to a daily fine, on the basis of how much the perpetrator can save daily by living parsimoniously and, if necessary, providing for his/her family (Article 85 CC).

Article CC	Offence	Sanction	Statute of limitations[7]
Art 372	**Extortion in office**	3rd degree imprisonment [from 2 to 6 yrs] and 3rd degree daily fine [20-60 days] and 4th degree disqualification from public office and political rights [from 2 to 5 yrs]	4 yrs (ordinary term) 6 yrs (absolute term - if interrupted)
Art 375	**Abuse of office for public gain**	2nd degree imprisonment [from 6 months to 3 yrs] and 2nd degree daily fine [10-40 days] and 3rd degree disqualification from public office and political rights [from 1 to 3 yrs]	3 yrs (ordinary term) 4 yrs and 6 months (absolute term - if interrupted)
Art 376	**Abuse of power**	1st degree imprisonment [from 3 months to 1 yr] or 3rd degree daily fine [20-60 days] and 3rd degree disqualification from public office and political rights [from 1 to 3 yrs]	2 yrs (ordinary term) 3 yrs (absolute term - if interrupted)
Art 199bis	**Money laundering**	4th degree imprisonment [from 4 to 10 yrs] and 2nd degree daily fine [10-40 days] and 3rd degree disqualification from public office and political rights [from 1 to 3 yrs]	5 yrs (ordinary term) 7 yrs and 6 months (absolute term - if interrupted)

12. Conspiracy to commit an offence is covered by Article 73 CC; all those who have in any way taken part in committing a criminal offence are subject to the punishment established for that particular offence. Although the law does not specify what conspiracy consists of, according to case-law, conspiracy includes both material and psychological aiding and abetting. Participation in organised crime is both an aggravating circumstance and a separate offence under Article 287 CC. For a criminal organisation to exist, it requires a certain organisational structure; the mere agreement to jointly undertake criminal activities would not suffice to constitute such a structure. The association to commit offences is considered a crime even if the intended offences are not effectively perpetrated or detected.

13. Jurisdiction is established over acts committed within the territory of San Marino (principle of territoriality, Article 5 CC). To establish territorial jurisdiction for corruption offences, it is sufficient

that the corrupt agreement, promise, offer, delivery or receipt of the undue advantage takes place in San Marino, even if the unlawful consequences occur abroad. The law of San Marino also applies to anyone who commits any of the offences specifically listed in Article 6 CC, paragraphs 1 and 2 (e.g. extortion, stock manipulation, espionage, disclosure of political secrets, bribery of foreign and international officials, terrorism, counterfeiting, trafficking in human beings, etc), as well as to anyone who commits an offence abroad punishable with no less than 2nd degree imprisonment, when the offence entails a detriment to a Sammarinese citizen (Article 6 CC, paragraph 3).

14. San Marino does not allow for the extradition of nationals as a rule, except when expressly provided for by an international convention to which the country has adhered (Article 8, paragraph 2, n. 4 CC). San Marino acceded to the European Convention on Extradition (ETS 024) in 2009[9]. Finally, bilateral agreements for extradition and judicial cooperation have been concluded with several countries, e.g. Belgium, France, Italy, Kenya, Lesotho, Malawi, Netherlands, Uganda, United Kingdom, United States of America, etc.

Main initiatives in the anticorruption area

15. San Marino does not have a targeted anti-corruption policy, nor specialised agencies in this area. Repression of this phenomenon is heavily based on criminal law provisions. That said, on 2 June 2008, as part of the preparations to accede to GRECO, the Government decided to create an inter-departmental Working Group entrusted with the review of domestic legislation in order to better align it with international standards in this field of work. The aforementioned Working Group is composed of representatives of the Department of Foreign Affairs, the Department of Justice, the State Lawyers Office and the Court; it cooperates, as necessary, with the Police Forces Coordinator, the Financial Intelligence Agency and other public administration offices.

16. A number of initiatives have also been launched, or are underway, to prevent corruption in public administration, e.g. new legislation on disciplinary proceedings, on recruitment, on responsibilities of managers, etc. Draft regulatory texts are under preparation to further modernise public administration and to better provide for its transparency, efficiency and liability (e.g. regarding an organisational model of public administration, codes of conduct, administrative proceedings, access to information, etc.).

17. With regard to public procurement, it is regulated by virtue of Law No. 96 of 17 September 1999, Decree No. 10 of 20 January 2000, as amended by Decree No. 62/2000, Decree No. 100/2001, Law No. 49/2002 and by Delegated Decree No. 97/2011. Projects can be assigned by the responsible Public Administration or State Corporation, directly or through competition, to professionals who do not work with the public administration, on the basis of an ad-hoc service contract. The realisation of the project is assigned through tender, as per the requirements laid out in Delegated Decree No. 97/2011 (Article 3). The decision-making body of the contracting entities approves, at its own absolute discretion, upon proposal by the Head of the entity itself, the kind of tender chosen, the list of business to be invited (if the tender is not a public auction) and the award criteria, on the basis of the type of tender and in compliance with the conditions laid down in Decree No. 10/2000 (Article 10). Interested businesses must apply for enrolment in the relevant register in order to be able to participate in tenders. Entrepreneurs involved in bankruptcy or liquidation proceedings, who have committed grave and proven faults which can undermine their reliability as bidders, or who do not comply with tax, fiscal and social charges

[9] San Marino ratified the European Convention on Extradition (ETS 024) on 18 March 2009; it entered into force with respect to San Marino on 16 June 2009.

requirements, are not eligible for enrolment in the abovementioned register; if such entrepreneurs are already registered, they are then suspended from the register. The public administration and public sector entities may also rely, on an exceptional basis, on businesses that are not enrolled in the register in respect of temporary and special services, subject to the authorisation of the Congress of State. A system of internal control (performed by the Commission for the Control of Public Finance) and external control (non-judicial and judicial channels) of procurement procedures is in place.

b. Analysis

18. Important changes have recently been undertaken by the Republic of San Marino in the fight against money-laundering and terrorist financing, including building up the country's legislative framework and developing its institutional set-up to provide for, *inter alia*, responsible bodies/persons and co-ordination of activities among them. The GET highly values the efforts made by the Sammarinese authorities in that respect. Considering that most of these changes have been introduced with a view to rapidly bringing San Marino national legislation into line with international standards (as recommended by, *inter alia*, MONEYVAL, OECD, IMF), the GET believes that its full "ownership" requires more time and practice.

19. In the anticorruption arena, San Marino seems to follow a similar approach by relying on the recommendations given by international institutions. The GET welcomes the decision of San Marino to join the international community in its anti-corruption efforts. Moreover, the establishment of an Interdepartmental Working Group to ensure a coordinated approach in this area (see paragraph 15) is a positive development. That said, the GET is of the firm opinion that a more proactive approach to combating corruption needs to be undertaken by the authorities, in close coordination with civil society, for San Marino to be able to fully benefit from/contribute to the implementation of international standards in practice.

20. With particular reference to the Council of Europe anticorruption instruments, i.e. the Criminal Law Convention on Corruption (ETS 173) and its Additional Protocol (ETS 191), as well as the Civil Law Convention on Corruption (ETS 174), none of these have been ratified to date by San Marino. The authorities confirmed their intention to promptly accede to these instruments once the necessary adjustments of domestic legislation were completed. The GET welcomes the reported intention of the authorities to improve further the applicable anticorruption provisions in domestic law. Such a move will send a clear signal to the public and the international community that corruption is unacceptable in San Marino. The GET encourages San Marino to complete as soon as possible the ongoing legislative review, so that ratification of ETS 173, ETS 174 and ETS 191 can take place soon.

21. The GET was told on several occasions that there is "no history" of corruption in San Marino and that the vulnerabilities to this phenomenon are generally perceived as low. Very limited expertise regarding the detection and investigation of corruption offences has been gained in San Marino. Furthermore, there has never been a study undertaken to analyse the actual state of affairs or to identify risk areas that may be particularly prone to corruption in the country, although a number of representatives, of both public authorities and civil society, pointed at public procurement and public contracts as areas deserving more scrutiny and transparency. Although extensive legislation is in place in those areas, questions still arise regarding their concrete implementation, including competent authorities, types of control performed, extensive use of private bidding procedures as opposed to public bidding, review of tender specifications to make sure that they are not tailor-made, etc.

22. During the on-site visit, the GET asked different interlocutors from a variety of fields to explain what, in their perception, corruption entailed. The majority of the respondents would mention bribery and nepotism and limit those only to illegal actions committed by public officials. Being a small community, they would say they relied on favours and that a favour rendered for a "proper" action would not be perceived as an offence. One example was given with regard to the employment of personnel: if two people had the same skills, the preference would be given to someone who was already known. Against this background, the GET was also made aware of the reform measures being taken by the authorities to strengthen transparency of decision-making processes in different sectors of activity (e.g. public administration, public procurement, legal persons, financial system, etc). The GET understands that this is an ongoing process on which both institutions and citizens must embark by changing perceptions, attitudes and practices, whenever necessary, to better fight corruption and to prevent instances of nepotism and favouritism from occurring.

23. The somewhat narrow understanding of the corruption phenomenon, including by the authorities interviewed, is not surprising as Sammarinese legislation criminalises corruption in the public sector (offences committed by public officials against public administration), but does not provide for the criminalisation of bribery in the private sector, nor does it appropriately look into the trilateral relationship offence of trading in influence and its very specific features to tackle the corrupt behaviour of those persons who are in the neighbourhood of power and try to obtain advantages for their situation. Amendments to the Criminal Code broadening the scope of corruption offences (e.g. bribery of foreign and international officials) are rather recent and date from mid-2008; some of them were brought into force to give an answer in law to a number of unlawful situations that went unpunished in practice due to shortcomings in legislation (e.g. with respect to the incitement to corruption or the punishment of bribery for acts performed in accordance with the official duties). The GET recalls that the transposition and implementation of the Convention is examined in depth in GRECO's Third Evaluation Round to which San Marino will be submitted at a later stage. For this reason, and in line with standing practice, GRECO refrains from issuing recommendations on this matter at this stage.

24. In the light of the state of affairs described above, the GET deems it essential to better study the situation in the country in order to identify risk areas for corruption, detect vulnerabilities, increase transparency and control of administrative procedures, and take prevention measures, as necessary. By making a thorough study of the situation in the country, analysing the manifestation of the multifaceted nature of corruption and including various stakeholders in the process (civil society, media, etc.), the country can take a more proactive approach to the phenomenon of corruption and introduce important anti-corruption legislative as well as institutional measures. Therefore, the GET recommends **to develop, with the involvement of civil society, a comprehensive anti-corruption work programme comprising the following elements: (a) study of the characteristics of corruption in its various forms and the areas exposed to risk; (b) identification and development of reforms needed in the area of public contracting and procurement, as well as any other existing sector at risk; (c) measures to raise awareness on the importance of combating corruption in its various forms, including by stressing the need to report instances of malpractice.**

II. INDEPENDENCE, SPECIALISATION AND MEANS AVAILABLE TO NATIONAL BODIES ENGAGED IN THE PREVENTION OF AND FIGHT AGAINST CORRUPTION

a. Description of the situation

Judges and courts

25. Based on the principle of separation of powers, the Declaration on the Citizens' Rights and Fundamental Principles of San Marino Constitutional Order (Article 3) guarantees to the judicial bodies, established by constitutional law, full independence and freedom of judgement in the fulfilment of their functions. The judicial system in San Marino required, until the reform introduced by Law No. 145 of 30 October 2003, that the country's lower court judges be non-citizens; this requirement does no longer apply.

26. Under Constitutional Law No. 144 of 30 October 2003, the judicial bodies are exclusively subject to the law and shall strictly interpret and apply the existing laws. Law No. 145 of 30 October 2003 on the Judiciary describes the relevant institutional framework. In particular, a Single Court exercises ordinary and administrative jurisdiction. This Court consists of two specialised sections, corresponding to administrative and ordinary jurisdiction, the latter being subdivided in relation to civil, criminal, juvenile and family. The organisation and supervision of its activities are entrusted to a Chief Magistrate, appointed for a 5 year term by the Judicial Council from among the Law Commissioners (judges) having served for at least 10 years. The ordinary jurisdiction is entrusted to: the Highest Judge of Appeal, the Judge of Extraordinary Remedies, the Judge of Appeal, the Law Commissioner, the Conciliating Judge and the *Uditore Commissariale.*

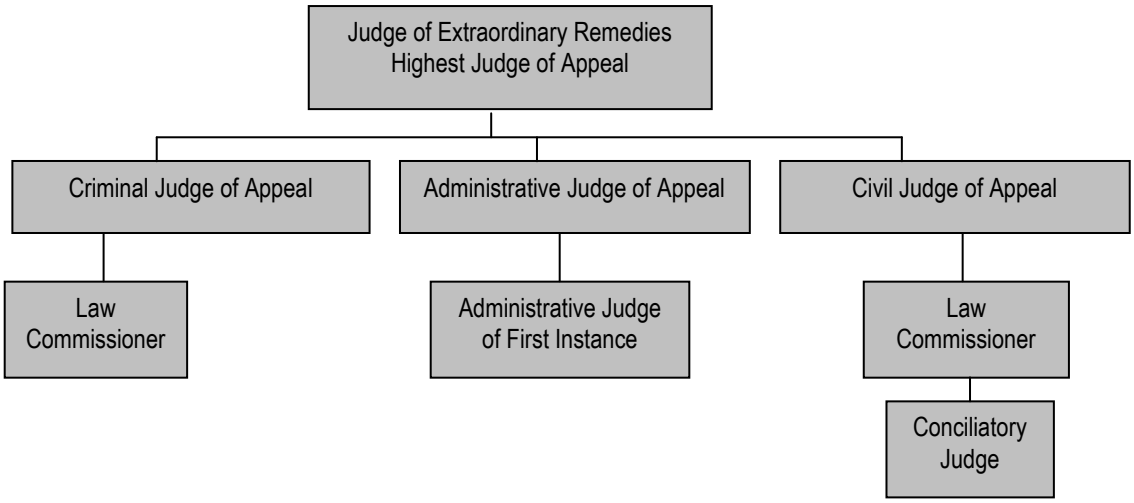
27. The Law Commissioner (*Commissario della Legge*) performs jurisdictional functions in the court of first instance, both in civil and criminal matters. With regard to criminal matters, the Law Commissioner is vested with investigating functions and makes decisions in the first instance. Article 2 of the Code of Criminal Procedure (CPC) stipulates that the Law Commissioner is responsible for the conduct of criminal action, while Article 24 of Law No. 83 of 28 October 1992 further specifies that judgements shall be made by a Law Commissioner other than the investigating judge in order to ensure the impartiality of the former[10]. The *Uditore Commissariale* assists the Law Commissioner in his/her activities; the Law Commissioner can delegate or entrust the *Uditore Commissariale* with preliminary investigation functions both in civil and criminal matters.

28. The Civil and Criminal Judge of Appeal and the Administrative Judge of Appeal decide on any appeal against the decisions made by the Law Commissioners in civil and criminal matters, by the Conciliatory Judge, pursuant to Article 3 of Law 145/2005 (only in case of judgements in civil proceedings concerning movables exceeding 50,000 EUR of value) and by the Administrative Judge, respectively. Appellate judges have jurisdiction to deal with points of fact and law; in particular, Article 196 of the Code of Criminal Procedure provides that the appellate judge has jurisdiction to deal with all aspects of a case (*piena cognizione del giudizio*). If an appeal is lodged solely by the accused, the judge may neither impose a harsher penalty nor withdraw any advantages granted.

[10] In its judgment of 25 July 2000 the European Court of Human Rights, having regard to the *Commissario della Legge*'s dual roles as the investigating and trial judge in the shortened form of procedure (*procedura sommaria*), held unanimously that there had been a violation of Article 6 § 1 of the European Convention on Human Rights concerning the right to trial by an impartial tribunal (*Case of Tierce and others v. San Marino*). The possibility for a combination of functions by the *Commissario della Legge* was abolished by Law No. 83 of 1992.

29. In criminal matters, the Highest Judge of Appeal decides on appeals concerning the legitimacy of precautionary measures involving both people and property and on the execution of penalties. In civil matters, the Highest Judge of Appeal decides on pleas for lack of competence, and in civil and administrative matters s/he decides in the third degree. The Judge of Extraordinary Remedies decides on disputes between civil, criminal and administrative jurisdictions, on the abstention and objection of magistrates, on appeals for the review of criminal judgements and on *querela nullitatis* (complaint for an annulment) *and restitutio in integrum* (reinstatement) extraordinary remedies against final civil judgements.

Legal structure of San Marino Courts



30. The Constitutional Court (*Collegio Garante della costituzionalità delle norme*) was established by Law No. 36 of 26 February 2002. Its organisation, functioning and incompatibility regime are regulated by Qualified Law No. 55 of 25 April 2003. It is composed of three standing judges and three alternate judges, appointed by the Great and General Council at a 2/3 majority for a 4 year term. The Court verifies that laws, acts and provisions that are given the force of law are consistent with the constitutional principles; it verifies the admissibility of any referendum, decides in case of conflicts between constitutional institutions and exercises interventions of censure on the activities of the Regents (so-called *Sindacato sui Capitani Reggenti*)[11].

31. The Judicial Council is entrusted with the exclusive competence to appoint, assign, move, promote and discipline magistrates. The Judicial Council sits in ordinary and plenary sessions, which are chaired by the Captains Regent who have no voting rights. Ordinary sessions are attended by all judges of the Single Court (a total of 18) and the Minister of Justice (who has no voting rights); ordinary sessions mainly deal with the general administration of justice and the organisation of work (e.g. criteria on the distribution of workload). Plenary sessions are attended by all judges of the Single Court, 10 members of the Committee of Justice Affairs of Parliament,

[11] All acts of the Captains Regent, including those carried out in their capacity as Presidents of the Great and General Council, are subject to the "Regency Syndicate" (*Sindacato sui Capitani Reggenti)*. Notably, at the end of their mandate, the Captains Regent are subject to a Syndicate, which judges what they have or have not done, i.e. what they might have done beyond their powers in violation of statutory rules or what they might not have done which it was their duty to do. The "Regency Syndicate", of ancient origin, is a remedy granted to all San Marino citizens and can be resorted to *ex post,* also in case of presumed violations of the rules safeguarding the secrecy of parliamentary votes. The Syndicate is competent to establish the so-called "institutional liability" of Captains Regent, who may also be liable for their actions under criminal and/or civil jurisdiction, as appropriate.

and the Minister of Justice (who is vested with voting rights). Plenary sessions deal, *inter alia*, with appointment and removal questions. The Judicial Council meets in ordinary session at least twice a year (every six months) and in plenary session at least once a year (for the adoption of the Annual Report on the State of Justice). Decisions are taken by the majority of those present.

32. Judges are selected through national competitive examinations. Previous professional experience is required to sit the exam. There is a three-year trial period after which, and upon confirmation of the Judicial Council sitting in plenary session, tenure of Law Commissioners, Administrative Judges of First Instance, Judges of Appeal, Conciliatory Judges and *Uditori Commissariali* is confirmed with a permanent character (excluding resignation or dismissal for disciplinary action). Promotions are granted according to criteria that combine seniority and merit. Highest judges of appeal, judges of extraordinary remedies and judges for civil liability actions of magistrates are appointed by the Judicial Council in plenary sessions (2/3 majority) and are chosen from among legal experts of good reputation who meet the minimum requirements for judges of appeal.

33. There are certain limitations for judges who engage in extra-judicial activities (e.g. restrictions in participation in political parties and trade unions, acceptance of private employment, etc); any extra-judicial activities must be authorised by the Judicial Council (e.g. academic work in University). Incompatibility instances may entail temporary suspension or removal from office.

Procuratore del Fisco and Pro-Fiscale

34. Under the current system, in the Republic of San Marino, the *Procuratore del Fisco* and the *Pro-Fiscale* are prosecuting magistrates: they support the charges against the defendant in criminal proceedings; they are also responsible for evaluating requests for case dismissal.

35. It must be noted that the appointment and functions of the *Procuratore del Fisco* and the *Pro-Fiscale* are being reconsidered in the context of the reform of the Code of Criminal Procedure, by which the *Procuratore del Fisco* and the *Pro-Fiscale* will become real and proper Public Prosecutors according to the accusatory model.

36. The *Procuratore del Fisco* and the *Pro-Fiscale* are recruited by means of public competition among attorneys over 30 years old and professors of law who are employed in a University (tenured or law professors working in a faculty subsequent to a public competition).

Police

37. There are three police forces in San Marino: the Civil Police which is subject to the Ministry of the Interior, the Corps of Gendarmerie of San Marino, and the Guardia di Rocca (Fortress Guard) who have provided assistance to the Gendarmerie since a Statute of 1987 which redefined their role. Both the Gendarmerie and Fortress Guard are subordinate to the Ministry of Foreign Affairs. All three agencies perform both public security and investigative functions. In total, there are around 200 police officers in San Marino; 80 of those officers belong to the Civil Police corps.

38. In particular, the Civil Police is a non-military corps dealing, *inter alia*, with tax and economic crimes. The Gendarmerie is a military police force with specific responsibilities relating to public order and security matters. The Fortress Guard is a military police force responsible for public order; it also carries out border controls and is entrusted with customs tasks. In the framework of such activity, the Fortress Guard, in cooperation with other law enforcement agencies, conducts

controls over cross-border transportation of cash and similar instruments (Delegated Decree No. 74/2009).

39. Police forces are vested with autonomous precautionary powers (i.e. arrest and stop) which automatically expire if they are not confirmed by the responsible investigating judge within 96 hours from notification. The Police can also seize the *corpus delicti* and any other relevant item subject to the same confirmation procedure detailed above.

40. Staff of police forces is recruited through competition. Whoever has been convicted for an intentional offence is barred from competition. The Civil Police agents are subject to the conduct requirements of public officials, as well as to specific deontological obligations as laid out in Law No. 142/1990. The agents of the Gendarmerie and the Fortress Guard are subject to the disciplinary provisions contained in the By-Law No. 15/1990 on Military Corps, as well as those contained in the special laws of the said Corps, i.e. Law No. 131/1987 and Law No. 132/1987, as amended. The Military Congress is responsible for assessing and investigating disciplinary violations.

41. Members of police forces are not allowed to hold any political positions or have any secondary employment (Law No. 142 of 1990 on Civil Police Corps, Law No. 131 of 1987 on Gendarmerie Corps and Law No. 132 of 1987 of the Fortress Guard).

Criminal investigations

Criminal investigations

42. San Marino's criminal system is based on the principle of mandatory prosecution. Such action is taken by the investigating judge. If a case is dismissed, the offended person or the complainant is entitled to lodge an appeal before the judge of appeal, who may order the case to be reopened by a different investigating judge.

43. While performing the functions of crime prevention, the Police may acquire information – including from anonymous sources and informants – on criminal activity, in such a case, it must inform the investigating judge. After entering the *notitia criminis* in the relevant registers, the judge starts a judicial investigation. The investigating judge has the power to direct any of the three police forces to serve as judicial police in the conduct of investigations. The investigating judge cannot be the sitting judge deciding on the same matter.

44. Trials are public and are presided over by a single judge. There are no provisions for a jury trial. Defendants have the right to be present and to consult with an attorney even during preliminary investigations. Defendants can confront or question witnesses against them and present witnesses and evidence on their behalf. They have access to all evidence held by the competent judicial authority which may be relevant to their cases. They enjoy a presumption of innocence and have the right to two levels of appeal. Publicity of proceedings is subject to restrictions during the investigative phase; publicity is guaranteed (unless specific exceptions provided by law apply) at the adversarial stage of a given trial (Article 8, Law No. 93/2008). The publication of documents protected by secrecy of investigations constitutes a criminal offence (Article 192bis CC).

45. The preliminary investigative phase consists of pre-trial investigation procedures (such as interviews, examination of witnesses, confrontations, identifications, searches, experts' reports),

which are directly carried out by the investigating judge. Some of these procedures can also be carried out by the judicial police. When carrying out an investigation with economic crime elements, both the judicial authority and the Police can draw on the expertise of the Central Bank of San Marino and the Financial Intelligence Agency (FIA). The latter is involved when there are suspicions of money laundering or terrorist financing.

46. During criminal proceedings, precautionary measures may apply in relation to persons (preventive detention, home arrest, prohibition or obligation to remain in the national territory, ban on expatriation, etc. – Article 53 onwards of CPC) or property (seizure and forfeiture – Articles 59 onwards and Article 74 of CPC). Such measures are to be ordered by the judicial authority and executed by the Police. These measures can be challenged before the Criminal Judge of Appeal within 10 days from notification or execution of the relevant measure (Article 56 CPC). The decision of the Criminal Judge of Appeal can be challenged, within 30 days before the Highest Judge of Appeal, who decides on the legitimacy of the precautionary measure.

47. The case may be dropped when the evidence collected is not sufficient to provide legal grounds for declaring the defendant guilty. In this case, the investigating judge forwards the written record of the proceedings to the *Procuratore del Fisco* and requests his/her opinion on closing the proceedings. If such an opinion is positive, the investigating judge orders the closing of the file and the acquittal of the defendant. The case can be reopened only if new evidence appears against the defendant (Article 135 CPC). If the *Procuratore del Fisco* does not agree with the closing of the file, the preliminary investigative phase continues, as necessary; this phase needs to be concluded, in accordance with the principle of expeditious pre-trial proceedings, according to the statutory time limits laid out in Article 6, paragraph 2, of Law No. 93/2008.

48. If the evidence collected is sufficient to demonstrate the liability of the defendant, the judicial authority orders adjournment of the case, by formulating the charge and requesting that a date be set for the hearing. In the trial, namely during the cross-examination, new evidence may be provided, examined and compared with that gathered during the preliminary investigation. Prosecuting functions are performed by the *Procuratore del Fisco*.

49. After evidence is collected, closing statements are made: the *Procuratore del Fisco*, the plaintiff's attorney and that of the defendant submit their requests.

50. The adjudicating judge reads the decision containing the acquittal or conviction of the defendant (Articles 161 and 162 PC). In case of conviction, the judge also orders refundment of expenses and damage compensation to the plaintiff. The judge must order the confiscation of the seized property or value-based confiscation. The grounds upon which such decisions are made may be drawn up separately and be deposited with the Court Register. The deposit must be notified to the parties. Each party involved may appeal against the decision within 30 days, specifying the reasons for the appeal (which shall be deposited within 30 days from the notification of deposit of the grounds for the decision). Appeal proceedings shall take place in the form of a public hearing attended by all parties even though they are not appellants. The decision of first instance may entail a more severe punishment for the defendant only if the appeal is submitted by the *Procuratore del Fisco*. After the reading of the judgement on appeal, the Court's decision becomes final.

Specialised anticorruption bodies within law enforcement authorities

51. There are no special departments, services, units or persons within the police and the judiciary which have been assigned specific functions and/or powers in the prevention, control, investigation and enforcement of measures to combat corruption.

52. That said, some specialisation in financial crime (notably related to anti-money laundering provisions) has been developed in the last years. Police officials who have a specific aptitude and preparation in relation to the prevention and combating of financial crime may be assigned to the Financial Intelligence Agency (FIA). The authorities indicated that there were around 20 to 22 officers who would have that type of expertise and were ready to be pooled in financial investigations, as needed. Likewise, the FIA is to organise training for police officials concerning anti-money laundering legislation (e.g. through courses and internships lasting no longer than six months); a Memorandum of Understanding is in the process of being concluded between the FIA and the relevant forces of the Police to this effect. The authorities highlighted that an Inter-force Group (composed of officers of the Civil Police, the Gendarmerie and the Fortress Guard) was established in 2009 to deal with money laundering, terrorist financing and, generally speaking, with economic crime. It is staffed with 6 officers. Moreover, a Fraud Squad was established in 2010 and is composed of 10 Civil Police officers; it operates in accordance with the needs of the Office for Control and Supervision over Economic Activities and performs functions that are independent from the Civil Police, although it is not a separate corps. Finally, another Inter-force group performing judicial police functions was established in 1998; it is composed of 5 officers who collaborate with the Court in investigating offences.

Special investigative techniques

53. Law No. 98 of 21 July 2009 has introduced wiretapping as a special technique for conducting investigations, including for corruption offences. In case there are serious grounds for suspicion and reasonable cause to believe that wiretapping is absolutely necessary for the continuation of investigations, the investigating judge shall request of the deciding judge (or another Law Commissioner designated by the Head Magistrate), by reasoned decree, the authorisation to order wiretapping, by specifically indicating its modalities and duration which, in any case, cannot exceed 3 months. The duration of the wiretapping can be exceptionally extended for a maximum of 3 further months. In urgent cases, if there are reasonable grounds to believe that a delay may be seriously prejudicial to investigations, the investigating judge can order wiretapping by means of a reasoned decree; this has to be validated within 48 hours by the deciding judge. The investigating judge conducts wiretapping operations either personally or through a judicial police officer or other appropriate personnel.

54. In addition, Article 15 of Law No. 28/2004 (as amended by Law No. 92/2008) provides for the use of other special means of investigation, such as controlled deliveries, undercover investigations, simulation of purchasing of goods, etc. These techniques can be applied by the Police (upon authorisation of the investigating judge), before proceedings are formally started, to collect evidence for money laundering and terrorist financing-related offences (hereinafter AML/CFT offences). Any evidence obtained through these means can also be used in the relevant proceedings of the predicate offences to money laundering (Article 15, paragraph 5, Law No. 28/2004). Finally, special investigative techniques can also be used, as ordered by the responsible judge, in relation to other types of crime, in the course of preliminary investigations.

Access to financial and other information

55. Article 36 of Law No. 165 of 17 November 2005 (Law on Companies and Banking, Financial and Insurance Services), as amended by Law No. 5 of 21 January 2010, provides that bank secrecy can never be invoked against the following authorities in the exercise of their public functions: a) the Law Commissioner in criminal cases; b) the Central Bank of the Republic of San Marino in the exercise of its supervisory functions; c) the Financial Intelligence Agency (FIA); d) the Central Liaison Office (pursuant to Article 3 of Decree Law No. 36/2011) and other San Marino public bodies and offices responsible for the direct exchange of information with foreign counterparts in accordance with the international Agreements in force.

56. In 2010, the lifting of bank secrecy vis-à-vis parent companies, including foreign ones, was confirmed in legislation (pursuant to the provisions of Law No. 5 of 21 January 2010). Decree Law No. 36/2011 has introduced a transitional rule for pre-existing transnational groups, which clarifies that information shall be mandatorily transmitted to the foreign parent company even in the absence of agreements in force between the respective Supervisory Authorities. Moreover, interpretative notices and instructions have been issued by the Central Bank of San Marino to expressly underscore that the provision of information by Sammarinese financial institutions on their customers to financial institutions of other countries, which may be sought by the latter to fulfil anti-money laundering/combating of terrorism (AML/CFT) obligations, does not constitute a breach of bank secrecy. On the contrary, where such provision of information is necessary to comply with customer due diligence requirements, it constitutes an obligation subject to sanctions according to FIA Instruction No. 2009-02.

57. Law Decree No. 65 of 14 May 2009 provides for the establishment of a database, to be maintained by the Central Bank of San Marino, to facilitate interbank transmission of data on customers and beneficial owners between Sammarinese and Italian banks.

Special measures to encourage cooperation; protection of collaborators and witnesses

58. No specific measures have been adopted to protect witnesses, victims and collaborators of justice. In this regard, the general rules on the protection of public officials and parties to proceedings apply. Intimidation may give rise to the offence of threats (Article 181 CC), domestic violence (Article 179 CC) and extortion (Article 196 CC).

59. Statements made before the legal authorities during preliminary hearings can be used as evidence in court if the presence of the witness in court is impossible.

60. It is not possible for anonymous witnesses to give evidence.

61. There are no privileges or arrangements in place that could be proposed to suspects or to sentenced persons who agree to cooperate with the police and the judiciary in corruption cases (e.g. plea bargaining or other compromise procedures). Extenuating circumstances can be possible in case of useful and spontaneous confession (Article 90 CC).

b. Analysis

62. The information gathered by the GET did not suggest that the police, prosecution or judicial authorities suffered from any undue political or other interference in dealing with corruption related crimes. With respect to the allocation of workload within the court, ordinary jurisdiction is

internally subdivided into civil and criminal matters, to which Law Commissioners are assigned by the Head Magistrate on the basis of work distribution criteria approved by the Judicial Council. With respect to the particular terms of employment of law enforcement authorities, as noted in the descriptive part, both judges and staff of police forces are recruited through competition, their career is merit-based and they have to take part in a competition to be promoted. Judges are disciplined by the Judicial Council. Out of the three police forces, i.e. the Gendarmerie, the Fortress Guard and the Civil Police, only the latter (which is the one dealing with white-collar crime) is subject to the conduct requirements of public officials. The agents of Gendarmerie and Fortress Guard follow their own disciplinary provisions. The GET learned that, before 2003, the country's lower court judges had to be non-citizens with a view to better securing their impartiality; this requirement is no longer applicable and judges can now have Sammarinese citizenship. No special codes of conduct have been developed either for the Police or magistrates, but the general rules on incompatibilities and prohibitions of public officials have reportedly been included in the laws and decrees governing the operation of the respective bodies.

63. With regard to the concrete investigation of corruption offences, the GET noted that the level of expertise on the subject matter in the police and judicial authorities seemed rather low. The GET was told that the officers responsible for dealing with white-collar crime were those belonging to the Inter-force Groups of the Police (i.e. the Inter-force Group responsible for investigating money laundering, terrorist financing and, more generally, economic crime, as well as the Inter-force Group performing judicial police functions) and the Fraud Squad. There are no special units, groups or officers specialising in the detection and investigation of corruption crimes. Nor is there specialisation of prosecutors or judges to deal with corruption offences. In dealing with such types of cases, the latter would rely on their own expertise and self-training. In the course of the on-site visit, it became evident to the GET that key emphasis had been placed on upgrading legislative and institutional tools to combat money laundering: a specialised group was set up in 2009 in the Police (which draws together officers from the three different police forces) to deal with this type of crime; much training has been developed in this area, specific protocols of cooperation have been concluded, etc. It was also clear to the GET that, probably as a result of this strong focus on anti-money laundering issues over recent years, virtually all officials interviewed thought that the experience acquired in the investigation of money-laundering and fraud would be sufficient to approach the prevention and fight against corruption, should the need arise.

64. When looking at the statistics on corruption offences, it is obvious that current experience in this field is very limited (see figures in paragraph 8). The officials interviewed during the on-site visit were of the opinion that one of the reasons for the lack of cases could well be the fact that corruption is not perceived as a widespread problem in San Marino. That said, the GET was also able to gather some more critical views, coming from the media, stressing that the potential for corruption in San Marino was real; some concrete examples were referred to concerning licensing procedures (so-called *Licenzopoli* case) and alleged instances of nepotism in the conduct of public affairs.

65. In the GET's view, the perception that San Marino has a very low level of corruption may well have a negative impact on the alertness of the authorities with regard to possible corruption now or in the future. In this connection, the GET was under the impression that there was no proactive approach to identifying/investigating corruption in San Marino. It was obvious to the GET that there was little understanding of the risks attaching to corrupt conduct and, although the focus on training to understand money laundering and the anti-money laundering legislation was being pursued, there was no real focus on corruption awareness training or the methods used in laundering corruption proceeds. Indeed, the GET, despite the assertion of the various police and

judicial respondents met during the on-site visit, was not convinced that the experience levels, in the relevant law enforcement agencies within San Marino, in detecting corruption and associated money laundering conduct were sufficiently developed.

66. Moreover, much legislation, having an impact in the anticorruption field, has been adopted or amended in recent years; more reform is expected to occur in the context of ratification of the Council of Europe anticorruption standards (for example, with regard to trading in influence, corruption in the private sector, etc.). It is key that Sammarinese investigation, prosecution and adjudication authorities have not only a thorough knowledge of the newly introduced provisions in theory, but are also able to apply them in practice. The corruption investigations that are likely to be started by the new criminal provisions will inevitably increase the workload of law enforcement agents and their need for special expertise in the carrying-out of corruption inquiries. The GET recommends **(i) to make sure that the level of specialisation of investigation, prosecution and adjudication authorities with respect to corruption offences is increased, and (ii) to establish a comprehensive specialised training programme for judges, prosecutors and police officers in order to build up and share common knowledge and understanding on how to deal with corruption offences.**

67. The size of the country allows for close working relationships between officials and flexibility in their action, which greatly facilitates overall co-operation between different authorities. The GET was told that although human resources were scarce, an investigative judge could draw resources from all the three police forces to carry out an investigation. It should also be noted that many other bodies, including the Financial Intelligence Agency (FIA) and tax office, would rely on the Police as their operating arm and would not have their own staff to carry out inspections or further checks in case of suspicion. All the databases (on tax, company registration, convicted persons, vehicles, etc.) can be accessed by the Police directly. The law enforcement authorities interviewed stressed that the sharing of information among themselves occurred in a swift and fluent manner, thanks to which the exchange of data reportedly takes place in real time. Law No. 92/2008 provides for specific provisions concerning co-operation between the FIA, the Police and public administration, the Central Bank and the relevant professional associations under which the aforementioned authorities and associations are obliged, upon a motivated request, to provide data and information which is deemed useful for the purposes of preventing and combating money-laundering and terrorist financing.

68. The use of special investigative techniques is rather limited in a country of this size. As stated in the descriptive part, San Marino has recently (in 2009) adopted a specific Law on Wiretapping (Law No. 98/2009), a technique which is applicable to all corruption offences provided for in the Sammarinese Criminal Code. However, the usefulness of this law could not be assessed by the GET due to some very practical constraints faced: the lack of special equipment to perform wiretapping and the non-existence of local telephone providers in San Marino, hence the need to resort to the Italian telecom system. It emerged from the discussions held on-site, that the use of other special investigation means (e.g. controlled deliveries, covert operations, gathering of intelligence, undercover agents) is also very limited, if any. The GET therefore recommends **to adopt a more proactive approach with regard to the investigation of corruption, including by making best use of the existing system of special investigative techniques, with the appropriate legal and judicial safeguards.**

69. The GET was told that, in carrying out an investigation, the police forces may acquire information from anonymous sources (by phone or in writing) and from informants. Moreover, all State bodies, companies and offices are obliged to provide the Civil Police with information, reports,

research and archive data necessary to perform its institutional tasks. That said, from the interviews carried out during the on-site visit, the GET got the impression that the police could still be much more proactive in the investigation of corruption offences. Moreover, it would appear that citizens were not always sure of the means or channels available to report their suspicions of corruption, including in an anonymous manner. This was said to be particularly important in a country where "everyone knows everyone" and good neighbourly relations could easily be put at risk. Both interlocutors from the non-governmental sector, and the authorities themselves, acknowledged that the establishment of a hotline for people to report wrongdoings anonymously, if they were unwilling to have their identity revealed to the others, could prove to be a valuable instrument to facilitate the uncovering of corruption instances. Moreover, an important lacuna in San Marino is that no specific measures have been adopted to protect witnesses, victims and collaborators of justice. In view of the above, the GET recommends **to facilitate the reporting of corruption suspicions to law enforcement authorities by (i) establishing a hotline and (ii) developing witness protection legislative and practical mechanisms**.

III. EXTENT AND SCOPE OF IMMUNITIES FROM PROSECUTION

a. Description of the situation

70. Immunity is granted to the Heads of State (Captains Regent). It is broad in scope: they cannot be prosecuted in any form or under any title throughout the six months that last their mandate. Immunity ceases at the end of the mandate, at the time of which the Captains Regent can be prosecuted, in ordinary (criminal, civil or administrative) court, for any illegal act committed during their mandate. Moreover, they can be held "institutionally liable" before the Guarantor's Panel on the Constitutionality of Rules (Constitutional Court). The latter type of liability arises for acts which a Captain Regent may have done or not have done in the course of his/her mandate (e.g. incorrect enforcement of a regulation). The applicable sanctions when institutional liability applies are contained in an old Statute dating from 1600 and include: moral reprimand, ban from Great and General Council, deprivation of political rights.

71. Members of Parliament (Great and General Council) enjoy non-liability, i.e. freedom of speech, for votes and opinions they express in the course of their duties (Article 36, Rules of Procedure of the Great and General Council).

72. Non-liability does not apply to ministers for the opinions or statements they make when developing their duties in Government (Congress of State). Individual and collegial liability of the members of the Congress of State for acts performed in the fulfilment of their duties, as well as civil, administrative and criminal liability, are applicable pursuant to the provisions of Article 8 of Law No. 183/2005. Likewise, judges do not enjoy any special immunity.

73. Sammarinese diplomats posted abroad are conferred diplomatic immunity in accordance with the Vienna Convention. The recently adopted Decision No. 4 of 22 March 2011 provides that the Congress of State can lift the diplomatic immunity of any diplomatic or consular representative (not applicable to consuls honorary) being subject to criminal proceedings in the receiving country. This measure is adopted also if there are strong presumptions that a diplomatic or consular representative has committed certain acts of corruption in the country in which s/he benefits from diplomatic immunity. The lifting of diplomatic immunity shall be immediately notified to the receiving State through diplomatic channels. To date, such a situation has never arisen with respect to acts of corruption.

b. Analysis

74. Two categories of persons enjoy inviolability in San Marino, i.e. Captains Regents and diplomats. Members of the Great and General Council enjoy non-liability with regard to opinions expressed or votes cast in Parliament.

75. The immunity of the Captains Regent, although broad in scope, is limited to the six-months of their term of office, at the time of which they can be prosecuted in ordinary (criminal, civil or administrative) court, for any illegal act committed during their mandate. Moreover, Captains Regent can be held "institutionally liable" for acts which they may have done or not have done in the course of their mandate that are in breach of legal procedures. Institutional liability has applied in practice, several examples were quoted by the authorities.

76. Members of the Great and General Council may only be elected if they have not received any criminal sanction exceeding one year and were never involved in bankruptcy proceedings. If a bankruptcy proceedings occurs while holding mandate, the member of the Great and General Council loses the mandate. Such a case occurred in 1992. Members of the Great and General Council do not enjoy procedural immunity. The freedom of speech immunity (non-liability) applies, but in the mid '90s a member of the Great and General Council took the floor and suggested that there appeared to be some wrongdoings in relation with an urbanism case. At the end of the session, he was called to testify in court and an investigation was opened about those wrongdoings. State Secretaries (ministers) do not have immunity for freedom of speech even if they take part in the activities of Parliament. Once an MP becomes State Secretary his/her mandate as an MP is suspended and s/he is replaced by the next candidate on the list that obtained most votes at the time of elections.

77. Diplomats are covered by the provisions of the Vienna Convention. Most of the Sammarinese ambassadors are in fact non-residents and, therefore, the Vienna Convention does not apply. Consuls are doing an honorary job and therefore do not enjoy immunity. The Government recently issued Decision No. 4/2011 requiring diplomats to report on ongoing criminal investigation against them in order for a decision to be taken by the Government (Congress of State) as to whether: (1) lifting immunity, if the diplomat is resident in the country and s/he enjoys immunity; (2) revoking the mandate – if the diplomat is a non-resident and therefore does not enjoy immunity. There were three cases of non-resident ambassadors against whom criminal investigations had been initiated (none of them involving a corruption offence): in one case the person was dismissed, in another case the ambassador resigned before a court decision was taken, and the third case is still pending. The GET was told that the lifting of diplomatic immunity is a duty for the Government whenever an investigation is started. For all serious crimes, as defined in Article 6 of the Criminal Code (see paragraph 13), the diplomat may also be prosecuted in San Marino, even if the crime is committed abroad.

78. From the analysis above, it follows that San Marino not only has sound provisions ensuring that the categories of persons covered by immunity, i.e. Heads of State, Members of Parliament and diplomats, can ultimately be held accountable, but also shows a track-record of these provisions being used in practice successfully (including in relation to abuse of office and malpractice instances).

IV. PROCEEDS OF CORRUPTION

a. Description of the situation

Confiscation and other forms of deprivation of the instruments and proceeds of crime

79. Confiscation is provided for in Article 147 CC, as amended in 2004, 2008, 2009 and 2010. Confiscation is a consequence of conviction and operates on the instrumentalities that served or were destined to commit the offence which belong to the offender. It also operates on the things which represent the price, the product or the profit of the offence, only when owned by the offender (Article 147(1) CC). Primary and secondary proceeds are covered.

80. Article 147(2) CC provides for mandatory confiscation, regardless of a conviction, whereby the offence consists in the illicit manufacture, use, carriage, possession, transfer or trade in property even over things which are not the property of the offender.

81. Article 147(3) CC provides for a value-based confiscation, i.e. when confiscation is not possible, the judge shall impose the payment of a sum of money equal to the value of criminal proceeds and instrumentalities.

82. Article 147(4) CC establishes that confiscated properties of equivalent sums are allocated to the State budget or, where appropriate, destroyed.

83. Confiscation of property owned by a third party is only possible when *mala fides* has been proved. The onus of the proof remains with the prosecutor. If confiscation of property held by third parties in good faith is not possible, the judicial authority is to order equivalent value confiscation.

84. Pursuant to Law No. 92/2008 on the Prevention and Combating of Money Laundering and Terrorism Financing (Article 75), it is possible to resort to a non-conviction based confiscation of (alleged) proceeds of crime. The reversal of the burden of proof for the purpose of confiscating corruption proceeds is also envisaged by Article 75 of Law No. 92/2008. In particular, the recipient of the illegal proceeds, and any successor in title, have the onus of proving their good faith. The elements/procedures of proof which are traditionally used in civil proceedings apply (e.g. inductive assumptions, rebuttable presumptions, known facts, etc.).

Provisional measures: seizure of material evidence and preventive attachment of assets

85. Seizure is provided for confiscation purposes. The seizure of assets prior to the confiscation can be ordered at any moment during the investigation for mainly (a) preventive or (b) probatory purposes (Articles 78 and 58 Criminal Procedure Code). Moreover the (c) precautionary/conservative seizure of the sums of money that could be necessary to compensate the damage suffered by the victim of the offence is also provided for by Article 145 CC. Decree Law No. 134/2010 (Articles 38 and 39) establishes rules for the management of seized property; likewise, the provisions on the administration of seized funds contained in Delegated Degree No. 137/2008 are applicable.

86. The Police can seize the *corpus delicti* and any other relevant item. The Financial Intelligence Agency (FIA) is also empowered to order the freezing of assets (blocking measure), funds or other economic resources whenever there are reasonable grounds to believe that these are derived from an offence or may be used to commit an offence of money laundering or terrorism

financing. The blocking order of the FIA is to be notified to the judicial authority within 48 hours for their validation in the following 96 hours.

87. Moreover, in connection with money laundering offences, since 2009, the Fortress Guard (Guardia di Rocca) has been responsible for policing of cross border currency movements, in accordance with Delegated Decree No. 74 of 19 June 2009, as amended by Decree Law No. 187 of 26 November 2010. The Fortress Guard has taken action as follows:

Years	2009	2010	2011
Number of control stops	2,988	7,588	4,931
Seized assets [12]	52,000 EUR	117,052 EUR	159,298 EUR

88. According to the Fortress Guard, when, in the course of a control inspection, it finds amounts in excess of 10,000 EUR, the Fortress Guard reports directly to the FIA: 29 disclosures were filed in 2010, and 9 in 2011, respectively.

89. When performing controls over cross-boarder transportation of cash and similar instruments, the Fortress Guard officers can stop vehicles on the roadside, enter in their notebooks the details provided and, where necessary, conduct a search of the vehicle or person. The Fortress Guard is entitled to detain the person for 48 hours, if the person is not compliant. If the person in the car is a foreign national, the Fortress Guard will ask for a "legal address" and will note passport/identity card details where available. Any cash and similar instruments transferred or attempted to be transferred exceeding the equivalent of 10,000 EUR are subject to administrative seizure. Seizure is executed within the limit of the 40% of the amount exceeding the threshold, and without a limit when the object is indivisible or when owing to the nature and amount of the assets transferred, the related value in EUR cannot be easily assessed at the time of seizure. The GET discussed during the on-site visit with the Fortress Guard, the process and mechanism for the seizure in respect of amounts over 10,000 EUR, which takes place as follows:
(1) The person stopped is advised that the officer is seizing cash (or cheques);
(2) The officer fills in a seizure form at the roadside;
(3) A copy of the seizure form is given to the stopped person;
(4) A special numbered tamper proof seizure envelope is used to hold the cash (cheques);
(5) The person stopped is informed of the number of the envelope used;
(6) The officer writes on the envelope the amount of money inside;
(7) The driver is then allowed to drive on;
(8) The officer will, no later than the next day, arrange for the cash to be deposited on a special account and for the seizure to be placed in a separate register maintained by the Fortress Guard.

Practical application of provisional measures and confiscation with respect to corruption offences

90. Confiscation/provisional measures have never been ordered in relation to a corruption case, although they have been/are used in relation to money-laundering offences.

Mutual assistance: provisional measures and confiscation

91. San Marino ratified the European Convention on Mutual Assistance in Criminal Matters (ETS 030) on 18 March 2009; it entered into force with respect to San Marino on 16 June 2009.

[12] In 2010, 20 cheques with a drawer's signature thereon, but no beneficiary noted and without a "non transferable" clause printed on them, were seized. In 2011, there were 3 such similar occurrences.

92. The provisions of Law No. 104 of 30 July 2009 on International Letters Rogatory relating to Criminal Matters, as amended in 2010, apply in this field. In particular, legal assistance is provided by the judicial authorities of San Marino, usually through the services of the investigating judge, in response to a letter rogatory from a foreign country. A copy of the request is to be sent to the Secretary of State for Justice. The execution of a letter rogatory shall not exceed 60 days from its receipt. If the letter rogatory concerns the search or seizure of property, it can only be effected if the requirement of dual criminality is met.

93. In the absence of a treaty, mutual legal assistance is granted on the basis of reciprocity. In such cases, the processing of the letter by the judicial authorities requires the approval of the political authority (the Secretary of State for Justice) on the basis of a legal assessment of the admissibility of the request undertaken by the judicial authorities.

Money laundering

94. Money laundering is criminalised in accordance with article 199bis CC, as amended in 2004, 2008 and 2010. It is a wilful offence: the person laundering the proceeds must be aware of their unlawful origin. The offence of money laundering follows an "all crime approach": any intentional criminal offence can be a predicate offence to money laundering, even if committed outside San Marino.

> ***Article 199bis CC: Money laundering***
>
> *Apart from cases of participation in the commission of the predicate offence anyone who - for the purpose of concealing its true origin – conceals, substitutes or transfers money, or cooperates or intervenes in causing it to be concealed, substituted or transferred, knowing that such money is proceeds of a felony, commits a money laundering felony.*
> *Also anyone who uses money, or cooperates or intervenes in causing it to be used in economic or financial activities, knowing that such money is proceeds of a felony, commits a money laundering felony.*
> *The provisions of this article shall also apply when the felon from whom the proceeds were received is not indictable or punishable, or failing any of the conditions for the predicate felony to be proceeded against. Where the predicate felony was committed abroad, it shall be punishable under the San Marino criminal laws and procedures.*
> *Any property, as well as legal documents, acts or instruments evidencing title to or interest in such property shall be considered equivalent to money.*
> *Anyone who commits the crimes set forth in this article shall be punished by terms of fourth-degree imprisonment, second-degree daily fine and third-degree disqualification from public offices and political rights.*
> *The penalties may be decreased by one degree based on the amount of money or assets corresponding to them and by the nature of the transactions carried out. The penalties may be increased by one degree when the facts have been committed during the exercise of a commercial-professional activity subject to the authorisation or licence granted by the competent Public Authorities.*

95. As regards the applicable sanctions, the punishment is imprisonment of fourth degree (4 to 10 years) and a second degree day fine (from 10 to 40 days), the amount to be paid being determined by the judge on the basis of what the person can afford (Article 85 CC). The sanction can also entail a third degree disqualification (1 to 3 years) from public offices and political rights.

The penalties can be reduced by one degree (imprisonment from 2 to 6 years) and a fine (from 1 to 20 days) depending on the amount of money and nature of the transaction made. The penalties can be increased by one degree (imprisonment from 6 to 14 years and a day fine from 20 to 60 days) if the offence was committed in the exercise of an economic or professional activity which is subject to licensing by the competent public authorities.

96. Law No. 92 of 17 June 2008, as subsequently amended, lays down the general framework for preventing money-laundering. Some of its features include: due diligence measures applying to all customers (identification of clients and of beneficial owners, purpose and nature of the business relationship, ongoing monitoring, recording and keeping records of customer identification data), the prohibition of transactions with shell banks, ban on anonymous accounts or accounts under fictitious names, limits on the transfer of cash and bearer securities, etc. Companies are required to ensure compliance with the rules, notably, through the appointment of a compliance officer who is to forward STRs to the FIA and promote internal oversight.

97. The Financial Intelligence Agency (FIA) is an autonomous body established at the Central Bank of San Marino. The FIA is responsible, *inter alia*, for gathering and analysing suspicious transactions reports (STRs), proposing anti-money laundering measures, developing training, cooperating with national and international bodies involved in the prevention of money-laundering and terrorist financing, etc. The FIA is also responsible for issuing provisions for the implementation of the customer identification, record maintenance and reporting requirements for designated reporting entities. The FIA submits a report on its activities to the Great and General Council on an annual basis. As for the powers of the FIA, it can order the obliged entities, the Central Bank or a public administration to give access to or hand over their documents/data/information, as necessary, in the framework of a money-laundering investigation. It can also carry out on site inspections, block assets, etc. Moreover, the FIA can act as "judicial police", upon delegation of such authority by the judiciary, in investigations related to money laundering or non compliance with the requirements of anti-money laundering requirements (e.g. interrogations of suspects or witnesses). The FIA also exchanges information with other foreign counterparts; it is a member of the Egmont group. As statistics evidence, international cooperation has increased (including FIA's spontaneous exchange of information with its foreign counterparts) in the last four years.

International cooperation of Financial Intelligence Agency (FIA) of San Marino

	2008	2009	2010	2011
Requests of cooperation sent by FIA (outgoing requests)	0	38	46	13
Requests of cooperation received by FIA (incoming requests)	0	41	25	24
Spontaneous sharing of information sent by FIA	1	6	37	5
Spontaneous sharing of information received by FIA	0	2	2	6

* Period: From 24 November 2008 (starting operability date) to 16 June 2011

98. Under the current legislation, the list of entities required to file STRs to the FIA includes financial institutions (e.g. banks, investment firms, insurance companies), non-financial companies (e.g. gold and valuable dealers and importers, auction houses, art galleries, antique dealers) and other professionals (accountants, auditors, notaries and legal advisors). Sanctions for non-reporting apply (Article 55 of Law No. 92/2008, as amended by Decree Law No. 134/2010).

99. Where a suspicion (of money laundering, predicate offences of money laundering, organised crime or terrorist financing) is substantiated, the FIA must always notify the court (investigating judge). Cooperation and information exchange with the Police is structured on the basis of Article 12 of Law No. 92 of 17 June 2008 (see also paragraph 52); a memorandum of understanding between the FIA and the Police is currently being developed.

100. Since the FIA started to operate, on 24 November 2008, it has analysed and sent to court one case where the alleged predicate offence was corruption; one more case that could be related to corruption is currently under analysis. The following table provides a breakdown of the relevant prosecutions for money laundering offences (and the respective predicate offence) from 24 November 2008 to 31 December 2010.

Breakdown of cases reported to judicial authority for ML per hypothesis of predicate offence

No.	Hypothesis of predicate offence	Amounts (eur)[1]		Blocking[2]	Seizure[3]
3	Drug trafficking	1,535,094	[4]	-	1,535,094
2	Fraud	5,650,000		-	2,143,420
1	Fraud or extortion	155,776		155,776	155,776
2	Misappropriation of assets in bankruptcy	1,824,000		-	418,316
1	Misappropriation or corruption	425,000		-	-
1	Usury or drug trafficking	1,128,501			-
3	Usury or extortion	3,939,000	[5]	-	850,000
1	Usury or fraudulent bankruptcy	3,504,732		-	-
1	Usury or illegal gambling	747,000		-	-
1	Criminal association (mafia style)	5,400,000		-	-
5	Unknown	2,499,500	[5]	-	-
21	**Total**	**26,808,604**		**155,776**	**5,102,606**

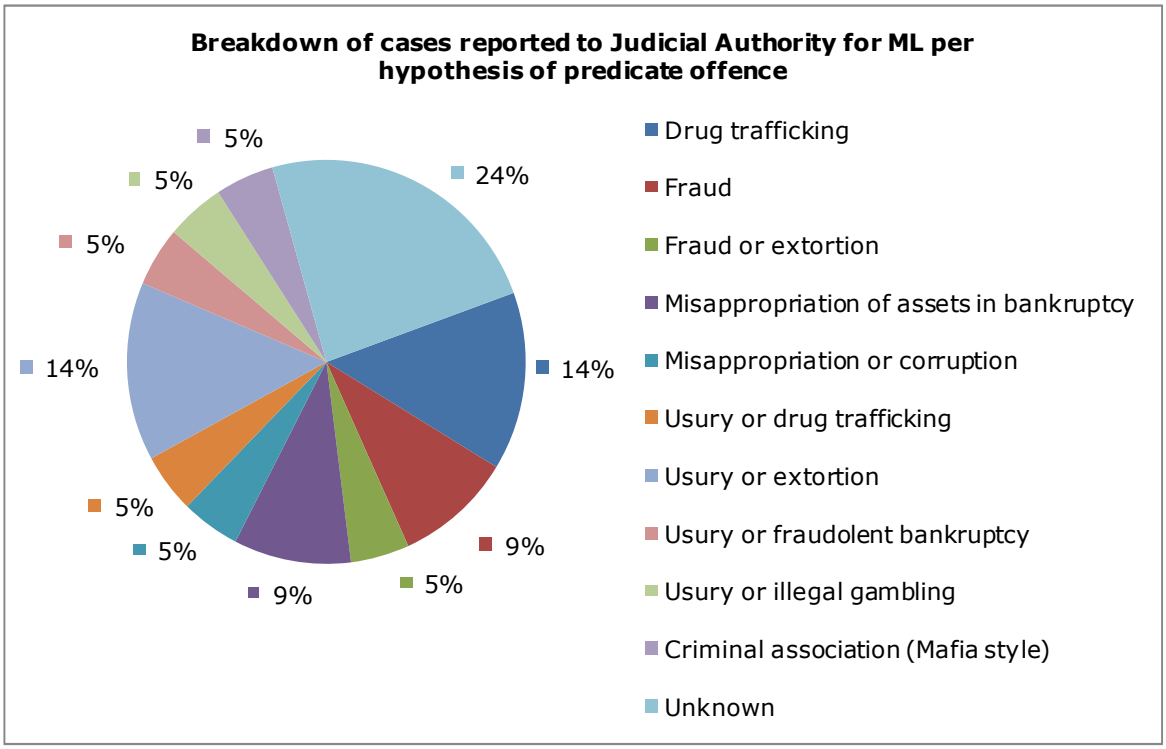
[1] In some cases it is not possible to determine the exact amount of the sums under investigation. This depends on the complexity of transactions and financial instruments used.

[2] Blocking measures by FIA (ex Art. 6 Law 92/08)

[3] Seizures by judicial authority.

[4] This amount represents only one of the cases reported to the judicial authority.

[5] This amount represents two of the cases reported to the judicial authority.



b. Analysis

101. San Marino has made significant strides in establishing an active and functional anti-money laundering framework since 2008 when the Financial Intelligence Agency (FIA) was brought into being. In 2007, MONEYVAL conducted an evaluation of San Marino's compliance with the FATF Recommendations for Anti-Money Laundering and Combating of Terrorism (AML/CFT). MONEYVAL identified several important shortcomings in the Sammarinese legal framework and its effective implementation and put San Marino under its compliance-enhancing procedures. In September 2009, the enhanced compliance procedure with respect to San Marino was lifted in the light of the reform measures introduced by the country. In this connection, the GET was told by a senior official that San Marino had to take tough measures to regain the confidence of the international community, as well as Sammarinese citizens, in the transparency and legality of the domestic financial system.

102. The offence of money-laundering follows an "all crime approach": any offence criminalised in Sammarinese law can be a predicate offence to money laundering. It must be recalled in this connection that under Sammarinese legislation, and contrary to the pertinent provisions of the Criminal Law Convention on Corruption (ETS 173), corruption in the private sector and trading in influence are not criminalised, and, as a consequence, the list of corruption offences which can be predicate offences to money laundering is limited. As already mentioned, San Marino has not yet ratified the Convention. The GET notes that ratification, and the ensuing legislative changes that may precede or follow such process, would allow the Sammarinese authorities to better ensure that the links between all types of corruption and money laundering are taken into consideration. This would also facilitate international judicial cooperation in this area.

103. Concerning the institutional framework to combat money laundering, the GET found that the representatives from the FIA seen during the on-site visit were clearly committed to improving the understanding of money laundering risks and combating money laundering threats. The development of training and awareness raising activities is regarded by the FIA as an on-going

process for its staff and those engaged in combating money laundering within San Marino. Examples were provided concerning some of the training provided to date, including a joint seminar for officers of the FIA, Police and magistrates organised, at the beginning of 2011, by the US Treasury Department; several training sessions for obliged entities (mainly professionals and financial operators), etc. The FIA, at the time of the on-site visit, operated with a staff of 12 with specialisation in accounting and financial matters. There is no representative presence from the San Marino Police services working within the FIA offices, but liaison takes place. In this connection, the FIA has adopted a professional process of looking at debriefing information in order to develop a "lessons learned" culture within the FIA around handling and interrogating data. The FIA is introducing a new search engine that will enable its officials to data mine still further the information and material that they have collected with a view to improving the intelligence regarding corruption issues, as well as insight of sectorial risks. By doing so, the FIA looks to develop its understanding of threats in order to better inform both domestically and internationally. The GET welcomes the data analytics approach being adopted for the purpose of identifying both criminal networks/relationships and money flows. Both areas have the potential to assist in San Marino adopting a more proactive response to anti-corruption, terrorist financing and money laundering issues.

104. The GET noted that, whilst the FIA had embraced anti-money laundering work and reached out internationally to increase and improve its own awareness, some of those interviewed during the visit complained that they were unaware of any corruption or money laundering issues that had been identified within San Marino as a result of suspicious transaction reports (STR's) or other intelligence received by the FIA; knowledge sharing needed to be better and it was stated that the feedback process as it exists was patchy and needs to be quicker. Indeed those interviewees from the media complained that they gained the impression that the FIA did not consider that the media could assist in the fight against economic crime within San Marino, whereas the media representatives emphasised that they wanted to engage and work with the FIA to increase awareness within San Marino. The GET was informed that there was no media or public awareness strategy in place with the FIA; in the GET's view, this is something that the FIA could usefully employ as part of its broader engagement within San Marino.

105. The GET noticed that the bulk of STR's reported to the FIA came from commercial banking and that reporting by notaries, lawyers, accountants and auditors was extremely low and had been since the FIA was established. The GET was informed by the legal/accountancy professionals they spoke with during the on-site visit that the AML provisions had been difficult for them to implement, requiring a changed mind-set and that they had lost clients due to the introduction of the AML provisions. The GET recommends **that, in order to strengthen the contribution of the anti-money laundering regime to fight against corruption, (i) a programme of public engagements be set up to improve general awareness and disseminating best practice and advice on anti-money laundering and corruption issues; (ii) the authorities explore, in consultation with the professional bodies of accountants, auditors and advisory/legal professionals, what further measures can be taken to improve the situation in relation to reports of suspicions of corruption and money laundering to the competent bodies.**

106. Sammarinese legislation provides for the mandatory confiscation of instruments used to commit offences, the direct or indirect proceeds of those offences and any profits that might accrue. It is also possible to confiscate the equivalent value of proceeds. In the case of assets held by third parties, legal protection is only afforded to persons of good faith. A reversal of the burden of proof and a non-conviction based confiscation are possible in relation to money laundering offences. While the legal provisions governing confiscation appear to be appropriate to allow for the

attachment of illicit proceeds, their practical application in respect of corruption proceeds has not yet been established within San Marino. Consequently, the GET was unable to make an overall judgement on the effectiveness of the relevant provisions, although those with responsibility for applying the legislation through the courts were very clear as to the legal processes that would need to be followed.

107. The GET discussed closely with the representatives of the Fortress Guard (Guardia di Rocca) the practical application of the seizure provisions in relation to control inspections over cross border transportation of cash. The GET was told that the primary focus of their inspection was to check vehicular traffic transiting the roads. In this context, the officers of the Fortress Guard would check whether the occupants of the vehicle had more than 10,000 EUR on them, whether in drafts or bills. The officers would stop vehicles on the roadside, enter in their notebooks the details provided and, where necessary, conduct a search of the vehicle or person. The GET was told that, if in the course of a control inspection amounts in excess of 10,000 EUR were found, the Fortress Guard would report directly to the FIA. Administrative seizure would apply: seizure would be executed within 40% of the amount exceeding the threshold (or without a limit if the object is indivisible or the related value in EUR cannot be easily assessed at the time of seizure). The GET had difficulty understanding why the current law (i.e. Delegated Decree No. 74/2009 on Cross-Border Transportation of Cash and Similar Instruments – as amended, and, in particular its Article 6) does not envisage the possibility of the full amount of the cash over 10,000 EUR being seized, despite the suspicious nature of the cash and the filing of a STR to the FIA. The authorities later indicated that if suspicions of a crime arose, seizure of the full amount of suspected cash would be possible by virtue of the general provisions of the Criminal Procedure Code on probatory/preventive seizure. The GET discussed in detail the concrete process and mechanism for the seizure in respect of amounts over 10,000 EUR (for details, see paragraph 89). The officers to whom the GET spoke did not recognise any potential corruption risk around this process. They indicated that no officer had been sanctioned for any corrupt conduct related to the seizure of cash; however, the GET noted that the Fortress Guard did not appear to have any available mechanism for auditing such a process. The GET recommends **that clear guidance documents be drawn up in respect of the best practice for handling and auditing of the seizure/confiscation of cash by police officers (particularly the Fortress Guard).**

108. The GET was informed that, in the view of those charged with the responsibility of providing mutual assistance, international cooperation was absolutely crucial in San Marino's fight against corruption and money laundering. Details were provided on two current cases that had been developed through the letter of request process. One case was on-going, involving an outstanding request to Italy, and, in the other case, 1,500,000 EUR had been frozen immediately on receipt of the request. It was evident to the GET that the authorities in San Marino were looking to develop casework through the effective use of mutual assistance requests and were also providing significant assistance to overseas authorities whenever appropriate to do so.

V. PUBLIC ADMINISTRATION AND CORRUPTION

a. Description of the situation

Definitions and legal framework - anti-corruption programme

109. The existing legal framework in San Marino does not include a definition of public administration, which, however, can be inferred from Article 18 of Law No. 184/2005 and from Articles 2 and 6 of

Law No. 105/2009, establishing the organisational structure of public administration and covering public administration *stricto senso* (Departments, Offices and Services), as well as the so-called "enlarged" public administration (Autonomous entities of the State, Social Security Institute, San Marino National Olympic Committee, University). In particular, the Government (Congress of State) is composed of 10 Ministries (Secretariats of State), usually appointed by Parliament from amongst its members[13]. The Congress of State assigns to each Minister specific competences and administrative sectors for which they are politically and directly responsible. There are 10 Departments pertaining to each Ministry[14], each Department is composed of the offices and services of public administration, of autonomous sectors and of autonomous State corporations; they all share similar features in terms of institutional functions and objectives (Law No. 184/2005 on the Congress of State).

110. The country is administratively divided into nine "castles": Città di San Marino, Borgo Maggiore, Serravalle, Acquaviva, Chiesanuova, Domagnano, Faetano, Fiorentino and Montegiardino. The biggest castle has around 10,000 inhabitants, the smallest has 800-900 inhabitants. Castles are governed by the Captain of the castle and the Township Council (*Junta*) composed of either 7 (for castles with less than 2,000 inhabitants) or 9 members (for castles over 2,000 inhabitants). These governing bodies (with advisory, non decision-making capacity) are elected in direct suffrage by the citizens of each castle. The castles have very limited competences and small budgets (a total allocation of 315,000 EUR was provided in 2011 for distribution among the different castles); they mainly deal with the establishment of markets, the maintenance of roads and the promotion of social activities in their territory.

111. Employment in public administration is regulated by Law No. 41/1972 on Public Employment (hereinafter Law on Public Employment). San Marino has a collective bargaining system by which legal provisions on employment conditions are implemented through collective agreements. There are three types of collective labour contracts: (i) public employment contract; (ii) quasi-private contract (*contratto privatistico*), which applies to staff performing operational support and ancillary tasks; and (iii) wage earners' contract, which applies to staff employed to perform manual tasks and in the building sites of the State. As of 31 May 2011, there were a total of 3,914 public officials (out of which around 450 persons had a temporary contract): 2,450 public employment contracts (62,60%), 839 quasi-private contracts (21,43%) and 360 wage earners' contracts (9,20%). Moreover, contracts exist which are governed by private law and working relationships regulated by conventions with a view to overcoming, notably in the health sector, the lack of those categories of professionals in San Marino. There are 265 such public employee (i.e. 6,77% of the total of public officials). Sammarinese public administration differentiates between senior public officials with leadership/managerial positions (*dirigenti*) and other public officials (*dipendenti*). Finally, other professionals may be hired on an occasional basis, for a given project, through consultancy or other professional collaboration contracts. There are currently about 22 consultancy contracts and 17 professional collaboration contracts in vigour. Altogether

[13] Likewise, any citizen, who is not a member of Parliament but meets the requirements to be an elected representative pursuant to Article 1 of Law No. 184/2005, can be appointed Secretaries of State, by a two third majority of the members of Parliament. The number of Secretaries of State elected through this system cannot exceed one third of the total number of members that compose the Congress of State. Once appointed as Ministers (Secretaries of State), they can no longer be members of Parliament (incompatibility of functions).

[14] Department of Internal Affairs, Department of Foreign Affairs, Department of Finance and Budget, Department of Health and Social Security, Department of Territory, Environment and Agriculture, Department of Education and Culture, Department of Productive Activities (Industry, Handicraft, Commerce), Department of Labour and Cooperation, Department of Justice, Department of Tourism and Sport.

the public sector absorbs about one fifth of the labour force in San Marino; it accounts for 14% of the GDP and 15% of total employment[15].

112. The Declaration on the Citizens' Rights and Fundamental Principles of San Marino Constitutional Order establishes that public administration is to conform its activity to the criteria of legality, impartiality and efficiency (Article 14).

113. A reform of public administration was initiated in 2007 (on the basis of legislation adopted in 2005 establishing a clear-cut separation of powers and enshrining autonomy of public administration) and is still underway. In particular, the ongoing administrative reform includes a reorganisation of public service (to provide for, *inter alia*, greater flexibility and labour mobility) and confirms the principles of separation of competences of the Congress of State from that of public administration, enhanced autonomy and accountability for managers, increased transparency in the recruitment process, and increased efficiency (Law No. 105 of 31 July 2009 – Framework Law for the Public Administration Reform). A draft law on the organisational model of public administration is being prepared; it includes a specific definition of public administration, rules on allocation of human resources, management, incompatibilities, pantouflage, rotation and mobility, discipline, etc[16]. A memorandum of understanding was signed with Italy in November 2009 to facilitate the exchange of information and the undertaking of common initiatives in reforming public administration (e.g. common training sessions).

Transparency, access to information

114. The Declaration on the Citizens' Rights and Fundamental Principles of San Marino Constitutional Order provides for the obligation to ensure transparency and publicity of the acts of the Congress of State (Article 3). The only exception to the above applies to confidential decisions dealing with State security and international relations, as necessary.

115. Law No. 184/2005 on the Congress of State, as well as Rules of Procedure No 11/2010 of the Congress of State, further articulate the principle of publicity of administrative acts, by establishing by whom (Executive Secretariat of the Congress) and how (ad-hoc registers, website of the Ministry of Internal Affairs: www.interni.segreteria.sm) this information is to be accessed. Anyone may have access to decisions that have not been expressly declared confidential. The authorities refer to information of public interest which is available in the relevant Government websites, such as decisions to award consultancy and professional collaboration contracts, salaries of Ministers and other public servants, etc.

116. With respect to decisions from the Great and General Council, there is a dedicated website which includes information on laws and decrees, notices for meetings and corresponding minutes, annual reports on justice administration, budgetary control, anti-money laundering regime, etc. (www.consigliograndeegenerale.sm). Similar dissemination/advertising practices are followed in the respective websites of the Constitutional Court (www.collegiogarante.sm), the Captains Regent (www.reggenzadellarepubblica.sm), etc.

117. The acts and measures of the Township Council (*Junta*) must be made public in conformity with Law No. 22/1994 (Article 23). Likewise, the Commission for Territorial Policies is to provide information on town planning interventions at its dedicated website: http://www.territoriorsm.sm.

[15] International Monetary Fund Country Report on San Marino No. 11/79 of March 2011.
[16] The authorities indicated, after the on-site visit, that Law No. 188 of 5 December 2011 on the Reform of the Structure and Organisational Model of Public Administration had been adopted.

118. Full transparency on executive and legislative action is also promoted by the National Radio and Television Broadcasting. In this connection, open sessions[17] of the Great and General Council are retransmitted in real time on radio and TV (the operability of the latter form of diffusion is not yet fully completed; technical arrangements are underway).

119. A draft law is foreseen to provide for transparency and legal certainty of administrative procedures by, *inter alia*, establishing different stages and deadlines for administrative action, as well as articulating the public's right to access administrative information[18].

Oversight of public administration and other measures

Administrative appeals

120. The bodies of administrative jurisdiction decide on appeals for lack of competence, excess of power or law violation against decisions or measures adopted by institutional bodies of public administration in general, including the decisions adopted by the administrative bodies of the Social Security Institute and by the Autonomous State Corporations, when they pursue the interests of a natural or legal person. Acts concerning public employment are also subject to administrative jurisdiction. The decisions adopted by the Great and General Council and political decisions adopted by the Congress of State are excluded from administrative jurisdiction.

121. Administrative decisions may be challenged either through (Articles 10-13, Law No. 68/1989 concerning Administrative Jurisdiction, Review of Legality and Administrative Sanctions):
(a) appeals through non-judicial procedure: anyone directly concerned by a decision adopted by the administration may bring an appeal, within 10 days following the date on which the notification of the administrative decision is received, before the same body that has adopted the decision for reasons of competence, legitimacy and merits. The administrative body before which the appeal is brought is to adopt the measures deemed appropriate to suspend the enforceability of the decision; it must then decide, within a maximum of 15 days, whether to dismiss, annul or reform the appeal. If the administrative body fails to provide a decision upon expiry of the above term, the appeal is considered as dismissed.
(b) appeals through judicial procedure: anyone directly and immediately interested by a decision adopted by the administration, which s/he deems has injured one of his/her interests, may bring an appeal, within 60 days following the date on which the notification of the administrative decision is received, before the Administrative Judge of First Instance. The above term cannot be interrupted by any appeal through non-judicial procedure or by a decision of the administration reiterating previous unchallenged decisions.

Control of public administration

122. Law No. 30 of 18 February 1998 on General Rules on the State Accounting System regulates the controls performed by the Public Finance Control Commission relating to budget management and implementation of expenditure plans and programmes. These controls have a legitimacy (preventive controls), as well as an administrative-accounting nature (subsequent controls), but never a political or institutional nature since they are aimed at assessing the regularity, effectiveness and cost-efficiency of management, as well as the functionality of the entire

[17] The sessions of the Great and General Council are closed to the public only when they relate to international affairs, diplomatic and consular staff (Law 21/1981, Article 13).
[18] The authorities indicated, after the on-site visit, that Law No. 160 of 5 October 2011 on Administrative Procedure and Access to Administrative Documents had been adopted.

accounting and organisational structure. The Public Finance and Control Commission may rely on external collaborators with high quality professional expertise in technical, accounting and administrative matters, for performing subsequent controls.

123. The Public Finance Control Commission draws up annual reports containing reasoned and technical opinions on the control performed.

124. There is no Ombudsman in San Marino. That said, pursuant to Constitutional Law No. 185/2005, the Captains Regent are responsible for overseeing the functioning of public powers and State bodies, including public administration, and the conformity of administrative action with the principles enshrined in the Declaration on the Citizens' Rights and Fundamental Principles of San Marino Constitutional Order (Article 2, Law No. 185/2005). The Captains Regent may carry out assessments following complaints by private citizens against public administration (Article 6, Law No. 185/2005). Furthermore, the Captains of the castles can request, on behalf of their electorate, documents to which access has been denied (or simply not granted) by public administration (e.g. on the status of an administrative decision to repair a road).

Recruitment, careers and preventive measures

125. The requirements to be recruited as public employees are provided for in Law No. 107 of 31 July 2009 on Competitions and Other Forms of Selection. In particular, the following requirements are applicable for admission to competitions and recruitment thereafter as public officials:

- being a San Marino citizen, or being a resident of the territory of the Republic and citizen of a country with which a convention has been concluded providing for reciprocity;
- having attained 18 years of age;
- enjoying civil and political rights;
- being physically suitable for the relevant employment;
- not having been convicted by a criminal judgement having the force of *res judicata* for a crime committed intentionally and not having been punished with more than one year's imprisonment or interdiction from public office;
- not having been dismissed from public administration employment or been fired following the application of a disciplinary sanction.

126. Other additional requirements may apply as advertised in the relevant notice of competition (e.g. academic titles, professional qualification, etc.)

127. The recruitment of managers (*dirigenti*) with definite term contracts, consultants and other professionals working for a given project, as well as persons with a University degree joining a training course offered by public administration, is yet to be regulated in implementing legislation (Article 31, Law No. 107/2009).

Training

128. The requirement to provide training, as necessary, for public officials is referred to in Article 17 of Law No. 106/1993 and in Article 13 of Regulation No. 2/2007. Moreover, in the context of the Memorandum of Understanding signed with Italy (see paragraph 113), it is foreseen that managers (*dirigenti*) participate in the training courses organised by the School of Public

Administration of Italy. Further training activities are planned following the adoption of the different legislative acts being currently drafted in this area (e.g. on administrative proceedings, ethics, access to information, etc.).

Codes of conduct

129. There is no code of conduct for public functions. That said, the conduct of public officials is regulated to a certain extent by the Law on Public Employment, notably, by establishing that the functioning of public administration officials is to be guided by the principles of impartiality, efficiency and transparency; likewise, certain forms of conduct are forbidden by law and subject to possible disciplinary (and criminal) sanctions (e.g. reception of gifts, incompatibilities, insubordination, etc.).

Regulations on gifts

130. Article 29 of the Law on Public Employment establishes that public officials should refrain from receiving any reward for their duties. Infringements of this provision may result in disciplinary action pursuant to the rules of Law No. 106 of 31 July 2009 (Disciplinary Rules for Public Employees).

131. Furthermore, the receipt or the acceptance of a promise of an undue advantage is punished by criminal law (see paragraph 9).

Conflicts of interest, incompatibilities

132. The Law on Public Employment lays down strict restrictions on additional employment; exceptions are possible, if granted by the Head of Personnel, with the assent of the Advisory Commission, for highly skilled and quality scientific activities that do not affect the regular work activity of the public official concerned (Article 30, Law on Public Employment). Further provisions are contained in Law No. 38/1967 on Incompatibilities related to Public Employment, which details the type of ancillary activity forbidden (e.g. entering into business contracts with public administration, consultancy work, representing rights and interests of third parties against public administration, performing administration and accounting tasks on behalf of third parties).

133. Moreover, public officials must refrain from participation in a decision on any matter in which s/he (or his/her spouse or relatives up to the third degree of consanguinity and affinity) has a personal interest. The Law further refers to specific rules on ancillary employment for health and education professionals.

134. A separate Law No. 108 of 31 July 2009 on Senior Officials subjects managers (*dirigenti*) to more stringent rules, including by introducing the principle of rotation (and a maximum period of 9 years in the post for sensitive positions), to stress that the conduct of these categories of persons must set the tone for integrity in public administration and must, therefore, be subject to greater accountability and responsibility rules. Moreover, managers cannot be members of the Great and General Council (Parliament), nor representatives of political parties or trade unions (Article 17, Law No. 108/2009).

135. Failure to comply with the aforementioned provisions on additional employment and routine withdrawal is punished with suspension, and if reiteration occurs, with dismissal. Likewise, the

law punishes those persons who have cooperated with the official concerned in the violation of the rules with fines from 25 to 129 EUR.

136. Additional conflict of interests rules are established for members of the Great and General Council (e.g. statutory representation or participation in governing bodies of trade unions, banks and financial institutions, election as a member of the Township Council, etc.), and other categories of persons working in at-risk areas: e.g. the judiciary (positions in and membership of political parties, trade unions, private legal practice, auditing, etc.) and law enforcement agents, including the Public Finance Commission or the FIA (position of parliamentarian or executive officer within political parties, trade unions or trade associations) business activities, participation in boards of companies, etc.) among others. Routine withdrawal is applicable when private interests of the official may concur in the taking-up of a public decision.

137. Pursuant to the Law No. 6 of 31 January 1996, as amended in 2007 and 2008 (Election Law), candidatures for election are to be accompanied by a copy of the income tax return of the candidate, as well as a declaration relating to any additional income and participation in companies (Article 15, Election Law).

138. There are no measures in place to limit the phenomenon of public officials who move to the private sector where they can abuse their contact networks and knowledge of administrative mechanisms and decision-making processes (so-called pantouflage). The authorities, nevertheless, indicated that they intend to deal with this matter both in the draft code of conduct, as well as in the draft law on the organisational model of public administration, under which a cool-off period of one year is foreseen for officials leaving public service[19].

Rotation

139. Provisions are in place to ensure fixed timeframes for holding certain high-level positions. For example, a renewable fixed-term contract of three years is established for Office Directors (Articles 7 to 11, Law No. 108 of 31 July 2009) and Heads of Personnel (Law No. 23/1995). The renewal of the contract is not automatic, but subject to a subsequent decision. Moreover, in order to better ensure the independence and impartiality of Office Directors in the exercise of his/her functions, his/her term of tenure (and possible rotation) is to be established on the basis of specific needs of the relevant organisational unit (Article 17, Law 108/2009).

140. Likewise, the mandate of Ministers cannot exceed a maximum of 10 years (including non-consecutive years) and re-appointment cannot take place before 10 years have elapsed from the conclusion of the last mandate (Article 1, Law No. 184/2005, as amended by Law No. 1/2011).

141. Similar restrictions exist with respect to key positions in the FIA, the Central Bank of San Marino, etc.

142. Further regulations are envisaged for adoption in this area, in particular, the draft law on the organisational model of public administration provides for a maximum period of 9 consecutive years for managers (*dirigenti*) in sensitive sectors.

[19] The authorities indicated, after the on-site visit, that Law No. 188 of 5 December 2011 on the Reform of the Structure and Organisational Model of Public Administration had been adopted.

Reporting corruption and protective measures (for whistleblowers)

143. Under Article 350 CC, public officials are subject to a specific obligation to report on criminal offences of which they become aware in the course of their duties. Failure to report may be punished with first degree arrest (from 5 days to 1 month). If the act is committed by a police office or agent, a second degree interdiction (from 9 months to 1 year) from public office may apply.

144. There are no legal measures in place to ensure confidentiality and protection of public officials reporting corruption (whistleblowers).

Disciplinary procedures, sanctions

145. Law No. 106 of 31 July 2009 (Disciplinary Rules for Public Employees) provides for the following sanctions: admonition, censure, suspension from service and dismissal. Admonition is a written form of discipline imposed by the Director of the Office on an employee in case of minor violations that are recorded in the employee's personal file. Censure is a written and reasoned form of reprimand by the Head of Personnel, on the favourable opinion of the Disciplinary Board. It is notified to the employee and recorded in the personal file. Violations subject to censure are *inter alia*: negligence while working, failure to comply with the tasks assigned, repeated failure to comply with office hours, etc.

146. The disciplinary action for suspension is taken by the Head of Personnel before the Disciplinary Board, which adopts all relevant consequent decisions. Suspension from service includes suspension from holding office and cessation of the public official status, dismissal from service and loss of salary for a period not exceeding 6 moths. Violations subject to suspension are *inter alia*: serious insubordination, acts and conducts contravening the duty of loyalty, conduction of activities which are incompatible with public employment, etc. The disciplinary action for dismissal is taken by the Head of Personnel before the Disciplinary Board, which adopts all relevant consequent decisions. Dismissal entails immediate and definite termination of the employment relationship. The employee concerned must leave the office and can no longer be hired as a public official. Violations subject to dismissal include *inter alia*: all offences against public administration – regardless of the sanction applied, reiterated instances of incompatibility, conviction of a corruption offence or other offences whose penalties entail disqualification from public office, suspension from service twice in a 15-year period, etc.

147. The Disciplinary Board is appointed by the Great and General Council and has a mixed composition bringing together: (a) a judge, who acts as President, designated by the Head Magistrate of the Single Court; (b) a member designated by each legally recognised trade union, provided that s/he is not a public employee, including seconded employees; (c) a number of members representing public administration equal to that of the members referred to in letter (b), appointed by the Congress of State, and a member designated by the Minister of Internal Affairs, provided that they are not public employees, including seconded employees or members of the Great and General Council and of the Congress of State (Article 14, Law No. 106/2009). If there is any disagreement in the Disciplinary Board, the decisive vote is for the judge.

148. Records on disciplinary proceedings are kept at the Registrar's Office of the Single Court – Civil Section. Disciplinary measures are contained in the personal file of the concerned official.

149. Appeal channels for disciplinary decisions are possible before the responsible administrative judge: i.e. the administrative judge of appeal (if the sanction contested concerns suspension or dismissal) or the administrative judge of first instance (if the sanction contested concerns admonition, censure or preventive suspension imposed as a precautionary measure).

150. The relationship between disciplinary and criminal procedures is expressly laid out by Law No. 106/2009. Both procedures can run in parallel. Evidence acquired during criminal proceedings may be used in the disciplinary context also with a view to bringing disciplinary proceedings. It is possible to impose both a criminal and a disciplinary sanction if the act of the official involves the infringement of both administrative and penal provisions. Precautionary suspension may be requested by the Head of Personnel, and confirmed by the Discipline Board, until the conclusion and on the basis of the outcome of preliminary investigations, or until the conclusion and on the basis of the outcome of first instance criminal judgements or of disciplinary proceedings. The outcome of criminal proceedings is not binding in disciplinary proceedings, except for the application of the dismissal or in case of preventive suspension, as provided by law (Articles 2, 13 and 29, Law No. 106/2009). Finally, the competent judicial authority is required to communicate to the relevant administrative service the outcome of the criminal proceeding.

Licensing and issuing permits

151. In San Marino, for a business to open and operate it will need a licence; the licensing system was recently reformed and is now disciplined by Law No. 129 of 23 July 2010 and Decree Law No. 179/2010. No property can be built without a licence either. A General Town Planning Scheme is in place; it is reviewed every 10 years. The General Town Planning Scheme establishes the town planning and building use within the national territory; each particular intervention envisaged in the scheme is subject to the approval of a Detailed Plan. The decision to approve a Detailed Plan has an ad hoc nature and is taken by the Commission for Territorial Policies. Public consultation mechanisms, involving the inhabitants of the Castles concerned, are to be developed throughout the Detailed Plan adoption process. The Detailed Plan may be appealed before the Administrative Judge of First Instance for errors of law. Any activity entailing the town planning and building transformation of the territory shall be subject to preventing permit or authorisation issued by the Director of the Town Planning Office. Once approved, the building licence, granted by the Director of the Town Planning Office, cannot be revoked, but it can be annulled by the same Director, for self-protection purposes, within five years from the date of adoption, in case the licence contravenes the applicable building and town planning rules. Administrative appeals, through judicial and non-judicial procedures, may be filed by any party whose rights have been damaged by the building decision.

b. Analysis

152. Despite the fact that public administration plays a large part in the economy of San Marino, measures to prevent corruption at both institutional and individual levels are still at very incipient stages. The Government, in 2009, introduced a number of laws aimed at addressing the large and bureaucratic structure of public administration (e.g. on disciplinary proceedings, recruitment system, senior managers). However, implementation of such measures has been slow and most of the primary legislation in this field needs to be developed and given effect by secondary legislation. Furthermore, drafting of some pieces of key legislation and policy documents in this area is still underway (e.g. concerning administrative proceedings, access to information, reorganisation of public administration, code of ethics, etc). The GET is confident that the current plans to modernise public administration through a comprehensive legislative package will

provide a timely opportunity to take more account of questions of integrity and the prevention of corruption in the public sector.

153. At present San Marino does not have a law on access to information. The authorities did, however, indicate that a draft law on administrative proceedings and access to information has been prepared. While Sammarinese society is quite interconnected, the absence of a specific procedure to grant access to information to citizens gives the administration more free space for manoeuvre, especially when access to sensitive financial or contractual information is requested. The Government pro-actively disseminates information which it deems interesting for the public. While the GET acknowledges the efforts taken in San Marino to improve communication (e.g. increased number of Internet sites, arrangements to facilitate access to laws and regulations, etc.), it also notes that the selection of the information to be published is at the sole discretion of the administration itself. While the Government does not see the absence of specific legislation as a barrier to citizens obtaining information, other actors such as the media and the NGOs are of a different view. The GET was told that controversial projects (e.g. building, planning decisions) can be among the most protected against citizens' access. In the absence of clear legislative provisions concerning access to information, the GET was told that the response of public administration to citizens' requests depends on the particular official in charge of the file, who is to assess whether the requesting person has a legitimate interest or whether the request has been submitted in a timely manner. While some refusals to release information are motivated, other requests simply receive no answer.

154. Moreover, public officials are under a legal obligation to strictly adhere to the principle of secrecy of information when such information is not of public interest (Article 29 (b), Law on Public Employment); disciplinary sanctions may apply in the event of infringement of such an obligation. There is however no guidance for public officials as to what constitutes information of public interest and what is to be protected by the rules on professional confidentiality and discretion (other than the applicable provisions on the protection of personal data, as laid out in Law No. 70/1995). In addition, when access to information is requested, a legitimate interest may be required; in the GET's view, this requirement could well be used by the authorities to further restrict the possibilities of citizens to consult administrative documents.

155. The decisions of public administration to deny information may be challenged through non judicial (appeal to the authority that made the decision) or judicial channels (appeal before administrative courts). The GET learnt that judicial remedy is usually not sought in practice as court procedures can be slow (some interlocutors referred to an average time of 4-5 months for an administrative proceeding to be concluded). The system also allows for a control of the action of public administration through citizens' petitions to the Captains Regent, as well as to the Captains of the castles. The GET was told that these latter channels are commonly used in practice by citizens, including in relation to denials (or administrative silence) of access to administrative documents. Another mechanism which is used in practice to pressure the Government to release information is through the use of media campaigns against non-responsive political figures.

156. Access to information is an essential tool to establish the necessary accountability mechanisms and to assist in the prevention and fight against corruption in any democratic society. The absence of a specific law regulating this matter in San Marino hinders significantly the capacity of the Sammarinese society to scrutinise the actions of the public institutions and provide substantive feedback on the policies which are developed in various agencies. The GET recommends **to adopt appropriate freedom of information legislation and introduce adequate measures for its implementation.** The authorities indicated, after the on-site visit,

that Law No. 160 of 5 October 2011 on Administrative Procedure and Access to Administrative Documents had been adopted. The GET is pleased to note this positive development. The appropriateness of the new legislation adopted in this area, as well as its implementation mechanisms, will be analysed in the framework of GRECO's compliance procedure.

157. With regard to employment/recruitment procedures in public administration, only a few competitions have been organised to fill positions in the public sector since 1998, with reference to strategic posts and specific sectors (for example, directors, police forces, diplomatic careers); internal mobility has been prioritised since then. The decision to freeze competitions for public employment was based on budgetary grounds. The GET is concerned that the exceptions from the rule of open competitions (which ensures a fully transparent, merit-based and fair process) are favoured in public administration. Since 1998, the public sector has resorted to the transformation of fixed-term contracts into permanent contracts without having passed an external competition as per the applicable statutory provisions (this process has occurred twice in the past ten years, at the request of trade unions), the use of public unemployment lists and consultancy contracts. Having heard criticism concerning the recruitment process, as expressed by the interlocutors met on-site, the GET is of the firm opinion that the transparency of public service employment needs to be significantly strengthened in order to regain public confidence in the system. As regards evaluation of public officials' performance (including their integrity), as well as the establishment of an assessment mechanism for career advancement, a performance appraisal system is yet to be developed. The GET considers that a proper system of evaluation of public officials during their career, implemented effectively and including integrity, increases public sector performance and thus contributes to reducing possibilities for corruption. Consequently, the GET recommends **to strengthen the existing mechanisms for recruitment and advancement in the public service in order to ensure that they are fair, merit-based and transparent.**

158. Likewise, the issue of potential conflicts of interest for public servants needs further attention to make sure that the extensive list of prohibitions and incompatibilities, as already provided in legislation, is properly understood and enforced in practice. This is an area that acquires specific significance in San Marino due to the small size of the country, the natural interconnections that exist between the public and private sector, and the potential dilemmas for the public official which can certainly emerge in such a context (e.g. situations where personal/financial interests or activities may lead to a question of conflict or partiality with regard to the public official's duties and responsibilities). Against this background, the GET considers that certain forms of conflict of interest have not been given much consideration, even though they could create a climate of corruption. This applies, for example, to situations when a public official moves into the private sector where the particular information/knowledge from the former position may be used to the disadvantage of public interest ("pantouflage"); this area is not yet regulated in San Marino.

159. Moreover, the GET notes that there is no code of conduct for public officials in San Marino. During the on-site visit, the authorities confirmed their intention to issue a code of conduct which would take as a model Recommendation No. R (2000) 10 on Codes of Conduct for Public Officials. When discussing the matter with the people entrusted with the drafting of such a code, the GET emphasised the importance of coming up with a text which addresses in a pragmatic manner ethical issues that officials will have to face everyday and tailored to the reality of San Marino. The GET further notes that the requirements, and practical arrangements, for initial and continuing training are fairly limited, in particular, insofar as ethical or corruption prevention issues are concerned. In GRECO's experience, when new legislative/institutional measures are designed to fill gaps or when existing provisions are not always unequivocally understood, they

must be accompanied by training, guidance and other measures to raise awareness, aimed not just at officials but also at the general public. The GET recommends **to (i) adopt a code of conduct for public officials; (ii) improve the management of conflicts of interest and regulate the migration of public officials to the private sector ("pantouflage"); (iii) provide training and set in place mechanisms for individualised guidance of public officials on issues relating to ethics, corruption and its prevention; and (iv) familiarise civil society and the media with these initiatives so that they are fully advised on the conduct to be expected from public officials.**

160. An important tool in the fight against corruption is the understood obligation of public officials to report corruption when they become aware of it in the course of their duties. While San Marino has a legal provision which requires an official to report criminal offences, there are no standards or procedures in place to protect that official from reprisals for having made that report; it provides no specific "whistleblower" protection (other than the protection that may be granted under criminal or labour law for acts of harassment). The GET considers whistle-blowing as an indispensable tool to increase accountability, to foster a culture of integrity and to strengthen the fight against mismanagement generally and corruption in particular. Adequate legal provisions must be developed affording *bona fide* whistleblowers reliable protection against any form of retaliation (be it unfair dismissal, harassment, or any other punitive or discriminatory treatment) by an enforcement mechanism investigating the whistleblower's complaint and seeking corrective action, as necessary. Therefore, the GET recommends **that an adequate system of protection for those who, in good faith, report suspicions of corruption within public administration (whistleblowers) be instituted.**

161. With respect to disciplinary matters, new legislation has recently been adopted in this area, i.e. Law No. 106/2009. This law certainly has many positive aspects, including, an increased level of responsibility for managers (*dirigenti*), greater clarity concerning sanctions and related infringements, a more efficient coordination of criminal and disciplinary proceedings, i.e. by providing for a system of discipline in cases of malpractice in public administration, independently of a final criminal conviction, and by requiring courts to communicate their decisions to the administrative service concerned. The GET was informed that the legislative framework on disciplinary proceedings was undergoing further amendments. One of the aims of this reform refers to a certain limitation of the leverage that representatives of employees have in the process. The GET was told, in this context, that the composition of the Disciplinary Board (see paragraph 147) was being reconsidered with a view to suppressing participation of the judicial branch and the trade union representatives and leaving all disciplinary decisions to public administration itself. In particular, in the envisaged reform, disciplinary decisions would be taken by the Direction General of Public Administration composed of 3 high civil servants appointed by the Government (Congress of State). The GET was also told that the existing disciplinary procedures are cumbersome: for a very simple sanction, e.g. reprimand, it could take up to 3 months to take a decision and – with the exception of a couple of cases which have led to a conviction – there has been only a limited number of dismissals (three cases from 2008 to date), even if malpractice has taken place. In the GET's view, the envisaged changes in the composition of the Disciplinary Board raise concerns as to the perceived impartiality of this body. If all the members are to be appointed by the Government, and the Board will be under the Direction General of Public Administration, then the leverage of public officials' representatives (either trade unions or directly elected) disappears. In turn, this might lead to undue pressures being applied to employees in the public sector through the disciplinary process. If this is put in the context of the existing mechanisms of recruitment, the danger of abuse of power against public officials increases. The GET encouraged the authorities to give further thought to their

plans to reform the current disciplinary mechanisms in order to strike a balance between the need to ensure efficiency and accountability in the public sector with the requirement to guarantee sufficient protection of public officials from any potential undue pressure of public administration itself. This is very much in line with the *rationae* underlying recommendation x (paragraph 160) aiming to ensure an adequate protection of whistleblowers in law and in practice. At the time of adoption of the present report, the authorities indicated that, in the light of the discussions held with the GET in San Marino and the concerns raised at that time, they have reconsidered their position in this matter and have now taken a formal decision to ensure that the Disciplinary Board is composed, on an equal footing, of representatives of the Directorate General of Public Administration as well as trade unions, and chaired by the Director of Public Function[20]. The GET welcomes this development.

162. Finally, with respect to the granting of building licences, the GET noted that the decision to grant a licence is taken by the Director of the Town Planning Office on the basis of the screening process performed by the officials of the Town Planning Office and the preliminary assessment made by the responsible supervisor. Once approved there is no audit process around the decision of the relevant official who would then have 120 days to issue the licence. No risk assessment guidelines are in place currently around the decision process and the only oversight process might come if there is any challenge or appeal against a decision. The situation described above, and, in particular, the lack of effective administrative controls over the licensing process, may expose the official in charge of taking territorial planning and licensing decisions to potential corruption risks and gives rise to doubts about the system's accountability. In the GET's view, it will be important to develop an administrative audit process, which is external to the Town Planning Office and which is able to assess, in an independent manner, the correct implementation of the applied procedures when granting building licences. The authorities indicated that they expected the situation to improve, and administrative controls to be strengthened thanks to the provisions introduced to this effect in the Law on Administrative Proceedings and the Law on the Reform of the Structure and Organisational Model of Public Administration[21]. Consequently, the GET recommends **that the decision-making process in the domain of granting of building licences be properly risk assessed for anticorruption purposes and be subject to an appropriate auditing mechanism.**

VI. LEGAL PERSONS AND CORRUPTION

a. Description of the situation

General definition and constitution

Profit sector

163. Companies are generally governed by Law No. 47 of 23 February 2006 (so-called Company Law), as amended. They can be established in one of the following forms:
(a) partnerships:

[20] Law No. 188 of 5 December 2011 on the Reform of the Structure and Organisational Model of Public Administration (Article 43).

[21] The authorities indicated, after the on-site visit, that Law No. 160 of 5 October 2011 on Administrative Procedure and Access to Administrative Documents and Law No. 188 of 5 December 2011 on the Reform of the Structure and Organisational Model of Public Administration had been adopted. This new information will be analysed in the framework of GRECO's compliance procedure.

- unlimited partnerships (all partners are answerable jointly, severally and unlimitedly for the company's obligations);
(b) companies limited by shares (both natural and legal persons can be partners of companies with share capital):
- joint-stock companies (minimum starting capital of 77,000 EUR; only the company is answerable with its assets for the obligations of the company);
- limited liability companies (minimum starting capital of 25,000 EUR; only the company is answerable with its assets for the obligations of the company).

164. The establishment of a company limited by shares and of a partnership requires: (i) a fully underwritten capital; (ii) compliance with formal requirements set forth by relevant legislation in case of companies with a special corporate purpose; (iii) observance of law provisions concerning contributions of capital; and (iv) that company members who are physical persons are not "unfit" persons[22].

165. Pursuant to Law No. 98 of 7 June 2010 (Article 1), anonymous companies are forbidden in San Marino.

166. Cooperatives are specifically regulated by Law No. 149 of 29 November 1991 and more generally under the Company Law. The main features of cooperatives include a variable capital (capital varies depending on the joining of new member-owners, withdrawal, death or exclusion of members, capital losses or increases), and the existence of a "mutual objective" (i.e. cooperatives operate for the benefit of their member-owners). Cooperatives are formed by public act in the presence of a notary, who must deposit certified copy of the by-laws and memorandum of association within 30 days with the Register of Cooperatives. Cooperatives have the same governing bodies as companies: a general meeting, a board of directors and a board of auditors. Cooperatives are subject to the supervision of the Cooperation Committee, which is vested with inspection and sanctioning powers, including the possibility to order liquidation, without prejudice to other civil, criminal or administrative penalties that may apply.

[22] Pursuant to Decree Law No. 179 of 5 November 2010, an "Unfit Person" "is an individual who has been convicted by a criminal judgement having the force of *res judicata* and has been punished with more than 2 years' imprisonment for felonies against property, public confidence, public economy or for trafficking in narcotic drugs, committed over the last 15 years; or has been convicted by a criminal judgement having the force of *res judicata* for corruption, use of false invoices for inexistent operations, tax fraud, usury, fraudulent bankruptcy or money laundering committed over the last 15 years; or has suffered convictions, including non-final, or is subject to ongoing criminal proceedings, for criminal conspiracy or terrorist financing; b) during the 12 months preceding the date of the instrument of incorporation of the company, of the share acquisition or of the appointment of directors, has been a shareholder or has had representative powers in conformity with Article 52 of Law No. 47 of 23 February 2006 in at least two San Marino companies, which have entered into ex officio or compulsory liquidation, or in a company, the license of which has been revoked by the Congress of State. The fact of being a shareholder or of having representative powers in conformity with Article 52 of Law No. 47 of 23 February 2006 shall be concurrent with the company's entering into liquidation or with the revocation of its license by the Congress of State. A shareholder who demonstrates that, by behaving diligently, he/she is not responsible for the decisions or activities of the company leading to its compulsory or ex officio liquidation or to the revocation of its license shall not be considered an "Unfit Person"; c) has undergone bankruptcy proceedings or equivalent proceedings under foreign legal systems, either ongoing or concluded less than five years ago; or a legal person that: i) is undergoing bankruptcy or compulsory liquidation proceedings for insolvency, or equivalent proceedings also under foreign legal systems; ii) is undergoing voluntary liquidation proceedings in the presence of a cause for dissolution; iii) during the 12 months preceding the date of the instrument of incorporation of the company or of the share acquisition, has been a shareholder of at least two San Marino companies, which have entered into ex officio or compulsory liquidation, or of a company, the license of which has been revoked by the Congress of State. The fact of being a shareholder shall be concurrent with the company's entering into liquidation or with the revocation of its license by the Congress of State. A shareholder, which demonstrates that, by behaving diligently, it is not responsible for the decisions or activities of the company leading to its compulsory or ex officio liquidation or to the revocation of its license shall not be considered an "Unfit Person".

167. Banks, financial institutions and insurance companies are governed by Law No. 165 of 17 November 2005, as amended.

168. Foreign legal entities may purchase real estate in San Marino only if granted authorisation. They may hold shares, parcels of shares or stakes of San Marino companies.

Non-profit sector

169. Associations, foundations and other non-profit organisations are regulated by Article 4 of Law No. 68 of 13 June 1990, by Articles 37 and 38 of Law No. 129 of 23 July 2010, and more generally, by the Company Law.

170. Where a non-profit association pursues broader objectives than the personal interest of the associates and has a memorandum of association and by-laws similar to those of a partnership, it may obtain legal recognition. Even if recognised as legal entities, foundations and non-profit associations are not allowed to purchase real estate or accept gifts or legacies without the authorisation of the Council of Twelve[23].

171. The memorandum establishing a non-profit association or foundation must indicate the name, purpose, assets or wealth and registered office of the said entity, as well as its management and operating criteria.

172. Recognised non-profit associations and foundations are listed in a special record of private corporate entities kept with the Court's Register. They are controlled and supervised by the Council of Twelve, which may, if necessary, appoint a special commissioner. Moreover, a Judge of Supervision over Non-Profit Organisations (who is a Law Commissioner specifically designated by the Head Magistrate) verifies every year the legality of the use of the funds, purpose and object of the non-profit association or foundation. The Financial Intelligence Agency carries out controls and verifications, on the basis of the functions entrusted to it by Law No. 92/2008, by the Decision of the Council of Twelve No. 30 of 27 May 2009 and in the light of the Memorandum of Understanding concluded with the Council of Twelve and the Judge of Supervision, with a view to introducing coordination mechanisms to guarantee national and international exchange of information on money laundering and terrorist financing in relation to San Marino associations or foundations.

Other legal arrangements

173. San Marino legislation also provides for legal arrangements such as fiduciaries and trusts.

174. A fiduciary is a company authorised by the Central Bank of San Marino, holding "title to the assets of third parties in execution of a mandate without representation" (Article 1, Company Law and Annex 1, letter c) to the Law No. 165 of 17 November 2005 on Companies and Banking,

[23] The Council of Twelve appears in the statutes of the early 1600's as a body of administrative justice; with the Law No. 13 of 5 June of 1923, its functions and competencies were reorganised. The Council of Twelve is nominated by the Parliament, which designates the components, at the beginning of each legislature, from its members. The Presidency is entrusted to the Captains Regent, who do not have a vote, unless they are members by direct nomination. With the 2003 reform of the judiciary, the Council of Twelve has been totally deprived of its jurisdictional functions. The Council of Twelve is presently entrusted with the following functions: authorising the purchase of real estate by foreigners; acceptances of inheritance; authorising the purchase of real estate by companies, by housing cooperatives, by banks or financial companies and also for financial leasing contracts; control and supervision over the management of non commercial companies and foundations; authorising the reopening of a case declared time-barred; granting of legal aid.

Financial and Insurance Services). Recent legislation, Law No. 98 of 7 June 2010, has been enacted to introduce transparency requirements in the ownership structures of San Marino companies. To this end, all anonymous companies are required to become joint stock companies, by depositing the abstract of the register of shareholders with the Registry of the Single Court. Fiduciary companies, whether Sammarinese or foreign, holding shares, are required to forward to the Central Bank any useful information on their settlors and relevant beneficial owners, to be included in the *ad hoc* "Archive" of Fiduciary Shareholdings (this "Archive" is kept by the Supervisory Authority of the Central Bank). Foreign fiduciary companies are required to comply with the same obligations imposed on fiduciary companies authorised and supervised in San Marino. They cannot establish contractual or pre-contractual relations with clients on San Marino territory. Fiduciary companies (including those with a credit purpose and those established in accordance with the 1986 regime which was then superseded by Law No. 165/2005) account for the majority of the non-bank financial sector in San Marino.

175. Trusts are mainly regulated by Law No. 42 of 1 March 2010 (Trust Act) and several implementing acts. A trust can be created exclusively by a notarised deed (public deed or authenticated private document). The trust instrument is to include information concerning the identity of the trustee, identification of the resident agent (if the trustee is a non-resident), settlor's will to create the trust, identification of the trust assets, identification of beneficiaries in the case of a beneficiary trust and identification of a protector in the case of the purpose trust. There can be three types of trusts: beneficiary trusts (created for the benefit of one or more beneficiaries), purpose trust (created to pursue one or more purposes), beneficiary and purpose trust (for the benefit of beneficiaries and pursuing a purpose).

Registration

176. All types of companies are required to register in the Register of Companies, maintained by the Court Registrar (Article 20, Company Law). In particular, the notary who received the memorandum of association forming a company, being satisfied that all requirements have been met, has to deposit certified copy thereof within 30 days with the Court Registrar, together with appropriate evidence of compliance with all law requirements. The Registrar checks the formal adequacy of the documentation deposited and is to enter the company in the Register within 10 days of the request, or issue a motivated refusal. If a refusal is issued or if failure to register within the statutory deadline occurs, the applicant (notary/director or any other member of the concerned company) can file an appeal with the Law Commissioner within 30 days. The Law Commissioner, after verifying the fulfilment of the conditions provided for by law, orders by decree that the company be entered in the Register. In case of refusal to enter the company in the Register, the Law Commissioner's decree may be appealed before the Judge of Appeal within 30 days following the notification. Registration is notified by the Court Registrar to the Office of Industry, Handicraft and Trade within the following 15 days. Any modification of the articles of association must be made in a public deed submitted by the notary to the Court Registrar for due registration (Article 22, Company Law).

177. Companies gain legal personality up on registration in the Register of Companies. With regard to any transactions carried our prior to registration, their authors are deemed personally jointly, severally and unlimitedly liable. Any issue or transfer of shares or stakes prior to entry in the Register of Companies is null and void.

178. The content of the Register of Companies is public. Such information includes: details of the memorandum of association, registered office, subscribed and paid capital and any variations,

corporate purpose and any subsequent changes thereof, personal particulars of the legal representatives of the company, of the directors, auditors, liquidators and other information regarding key events in the existence of the company (Article 6, Company Law). Pursuant to specific provisions issued by the Head Magistrate on 20 November 2008, access to the information contained in the Register of Companies is free of cost and immediate (it takes place in real time). As of 31 May 2011, there are 4,805 limited liability and 144 joint-stock companies registered.

179. The Register of Cooperatives is kept with the Court Registrar at the Register of Companies; its content and public nature is the same as that of companies. Within 30 days from deposit, the judge grants legal recognition and orders that the cooperative be entered in the Register, with publication in the Official Journal.

180. As regards entities of the non-profit sector, a centralised registration system exists for this type of legal person; it is kept with the Register of Companies. The Register of Non-Profit Entities includes information concerning the name of the entity, essential data of the memorandum of association, date of establishment, date of legal recognition, registered office and subsequent changes therein, corporate purpose and any subsequent changes therein, personal particulars of founders, members of governing bodies and auditors and any subsequent changes therein, date of approval of balance sheets, details concerning liquidation. The information registered is public.

181. A Trust Register is kept by the Supervisory Authority of the Central Bank. A main novelty of this Register (as compared to the one formerly established in 2005 and kept at the Industry Office) is that it now includes details on the identity of settlors and beneficiaries with a current interest in the trust fund. Law enforcement authorities (e.g. judicial authorities, judicial police, FIA, etc.) have non-restricted access to the Trust Register. Access is also granted to the Central Liaison Office, to obliged entities under AML-CFT legislation for the fulfilment of their due diligence obligations, and to parties, other than a trustee, upon prior authorisation of the competent judicial authority.

182. A so-called Archive of Fiduciary shareholdings is kept by the Supervisory Authority of the Central Bank, as provided by Law No. 98 of 7 June 2010 (Article 2).

Measures to ensure transparency

183. In addition to the transparency-related tools in place during establishment and registration of legal entities, other measures exist in San Marino to better allow for ownership and identity information of corporate bodies.

184. With respect to companies (whether domestic or foreign), the Company Law requires them to keep a stock ledger containing the personal details of the holders of the registered shares and holdings and also any transfers or obligations relating to the same. The personal details recorded include: the shareholder's full name and any other data contained in the ID card or passport or, in case of legal entities, business name and certificates of registration with the Court. Furthermore, by Decision No. 55 of 2 February 2009, the Congress of State established a Register of Shareholders to which all public offices, judicial authorities and the FIA can have free and immediate access upon request (to be kept in a confidential file). Additional transparency and control measures are included in Law No. 98 of 7 June 2010 (Provisions for the Identification of Beneficial Ownership Structure of Companies under San Marino Law), as well as Law No. 129 of 23 July 2010 (Regulations on Licences for Industrial, Service, Handicraft and Commercial Activities). For example, under Law No. 98/2010 all companies are to provide the Commercial

Register of the Single Court, through a public notary, with a certified abstract of their Register of Shareholders, which must clearly outline their ownership structure.

185. With regard to fiduciary companies, if the mandate concerns participation in San Marino companies, fiduciary companies, whether Sammarinese or foreign, are required to forward to the Supervision Department of the Central Bank a written communication containing the identification data of the settlors, the shareholdings of each of them as well as, if they are not natural persons, the identification data of their beneficial owners. In addition thereto, any subsequent change relating to their settlors and/or beneficial owners must be notified.

186. The Trust Act requires the resident trustee or resident agent to draw up a certificate of trust to be authenticated by a notary public, who certifies its truthfulness. The certificate is to contain information on the trustee, protector, settlor and beneficiaries. The notary is to file this certificate with the Office of the Trust Register.

187. Foundations and other non-profit associations are required to keep at their registered office a register containing the names of their members and beneficiaries. A list of members is to be submitted to the Commercial Registry (*Cancelleria Comerciale*) of the Single Court by 31 December of each year, with a view to keeping up to date the information recorded in the Register of Non-Profit Entities. In the event of non-compliance with reporting, deposit and custody requirements, administrative sanctions of 2,000 EUR may apply for each single non-compliance case, to be imposed by the Office for Industry, Trade and Handicraft upon indication of the *Cancelleria Comerciale* of the Single Court.

Restrictions on the performance of duties by individuals and legal persons

188. As described before (see paragraph 164 and footnote 22), unfit persons cannot be members of a company nor shareholders. The definition of "unfit" persons has been recently reworked to cover a larger number of cases.

189. A person who has been convicted of corruption by a criminal judgement having the force of *res judicata* cannot be a member of a company (Article 16, Company Law), nor be the beneficiary of a disposal of shares or stocks (Articles 26 and 28, Company Law) nor hold any operating licence (Article 7, Law No. 129/2010).

190. Moreover, the Company Law sets the following reasons for ineligibility:
- Any person being an "unfit" party or being convicted for the facts referred to in Article 56 paragraph 9 (that is to say directors subject to criminal proceedings for facts pertaining to their office or for other facts of serious criminal importance) shall not be eligible to hold the position of Director and, if elected, they shall be removed from office;
- the following persons shall not be eligible to hold the position of auditor and, if elected, shall be removed from that position: unfit parties; spouses, blood relatives or relatives by affinity of company directors up to the fourth-degree; any person bound to the company by an employment relationship or a continuous or periodic consulting/service provision relationship or by any other capital relationship undermining his/her independence; any person being cancelled or struck off the professional register; any person having been convicted for the facts referred to in Article 56, paragraph 9 of the Company Law; any person being cancelled or suspended from the Register of Auditors, if the enrolment in such a register is a sine-qua-non condition to be elected as internal auditor of a company; any person being director in controlling or controlled companies (Article 60);

- directors, statutory auditors, external auditors, liquidators and executives subjected to criminal proceedings for facts pertaining to their office or for other facts of serious penal importance, may be suspended from their tasks by a provision from the same authority or office responsible for the assignment of tasks. Condemnation for the facts indicated in the previous sub-section leads to the definitive fall from office and the inability to carry out the functions of director, liquidator, statutory auditor, external auditor or executive for the term established by the sentence (Article 56).

191. In addition, criminal law establishes professional disqualification sanctions (e.g. disqualification from holding the offices of director, legal representative, internal or external auditor, liquidator or commissioner) for certain offences, including corruption.

Legislation on the liability of legal persons, penalties and other measures

192. Law No. 6 of 21 January 2010 has introduced administrative corporate liability, including in connection with bribery and money-laundering offences. In particular, legal persons are liable for administrative offences resulting from the perpetration of offences committed, attempted or failed in San Marino, on its behalf or for its benefit, by one of its bodies or anyone performing representative, managerial and administration functions. Pursuant to the jurisprudence developed in commercial law (i.e. with respect to bankruptcy and corporate offences), the notion of "anyone performing representative, managerial and administration functions" has been interpreted as to cover persons working within or without the company itself (employees or external persons), with powers to commit acts aimed at binding the company. Such powers of administration, management and representation do not need to be formally conferred, but could well arise from a *de facto* situation.

193. It is possible to assign liability to the legal person even when no natural person can be accused or identified (Article 2(2), Law No. 6/2010).

194. In principle, the liability of a legal person is determined within the framework of the same proceedings as those against the physical perpetrator and a single decision is taken. The liability of the legal person does not exclude criminal proceedings against the physical perpetrator of the offence (Article 4(2), Law No. 6/2010).

195. Where a legal person is found administratively liable, the following sanctions may apply:
(i) fines ranging from 3,000 to 500,000 EUR;
(ii) disqualification for a period of 3 months to 1 year. Disqualification entails (a) exclusion from grants, funding, contribution or State benefits; (b) revocation of grants, funding, contributions or State benefits already provided; (c) inability to contract with public administration;
(iii) revocation of authorisations, licences or grants concerning the activity and the rights deriving there from;
(iv) confiscation.

196. In the decision on the sanction to be applied, the judge must take into account the seriousness of the conduct, the degree of liability of the entity and the amount of damage caused. In addition, precautionary measures may apply, e.g. suspension of the licence for the activity of a legal person (Article 6, Law No. 6/2010).

197. Liability may be waived if the so-called "defence of organisational models" is successfully invoked. Delegated Decree No. 96 of 27 May 2010 regulates the functioning of organisational

models. In particular, for corporate liability to be waived on the basis of an organisational mode, the legal person must prove that: (a) before the offence was committed, it had adopted and effectively implemented an appropriate organisational and management model designed to prevent the concerned offences; (b) the persons have committed the offence, by fraudulently circumventing the organisational and management model. Organisational models must constitute a code of conduct for the relevant legal person; they are to provide for a risk management system and specific control protocols, including disciplinary measures, as necessary. A multi-party Supervisory Board is to be appointed for medium and large-sized companies; small companies may appoint a single-party Board. Any act, conduct or event that may entail a violation of the model must be duly reported to the Supervisory Body through an appropriate internal communication system. The proper fulfilment of the reporting obligation on the part of employees cannot give rise to the application of disciplinary sanctions.

198. Specific provisions are in place to avoid that institutional changes (transfer of business, transformation, merger, division, dissolution and winding-up of the legal person) allow circumvention of the application of sanctions (Article 5, Law No. 6/2010).

199. Sentences imposed on legal persons are to be recorded in the criminal registers of the Court and also in the Register of Companies.

200. No proceedings have been instituted against legal persons for corruption offences to date.

Tax relief

201. The current legislation allows for tax deductibility only with respect to documented transactions.

Tax authorities

202. Tax authorities are subject to the obligation for public officials to report offences, of which they become aware in the course of performing their duties, to law enforcement authorities. Failure to report is punished with first degree arrest, i.e. from 5 days to 1 month (Article 350, CC).

203. There are no specific mechanisms in place concerning the access of law enforcement bodies to tax records, but the judicial authorities must be granted access to the necessary information they may require to uncover offences. Delegated Decree No. 36/2011 contains specific measures to better facilitate cooperation and information exchange among responsible authorities dealing with tax matters (e.g. cooperating protocols between Supervisory Offices over Economic Activities, the Central Bank and the Financial Intelligence Agency).

Accounting rules

204. Companies are required to keep accounting records and books, even in electronic format, namely, the journal book of original entries, the inventory ledger and the book of depreciable assets at the registered office of the company (Article 72, Company Law). For each transaction, the originals of incoming and outgoing correspondence and invoices must be kept. Companies are also required to keep: a share register, a bond register, a record of general meetings and decisions, a record of the meetings and decisions of the board of directors, the executive committee and the board of auditors/single auditor, a book of audits (only if accounting audits are not a prerogative of the board of auditors). Companies are required to compile the balance sheet (asset and liability statement, as well as profit and loss account) at the end of the financial year

and provide an explanatory note thereof. The balance sheet, auditor's report (when applicable, see paragraph 210) and the minutes of the meeting of the company approving the balance sheet must be deposited by the directors with the Registrar's Office (Article 84, Company Law).

205. Companies' records and books must be kept for 5 years in the registered office of the company; if there is an ongoing investigation, books are to be kept until the relevant investigation is over. Tax documents must be kept for at least 5 years.

206. Failure to comply with bookkeeping requirements is punished with fines ranging from 2,000 to 25,000 EUR. Sanctions (depending on the type of infringement made) are applied by either the Tax Office or the Office of Industry, Handicraft and Trade in the amount determined by the Office for Control and Supervision over Economic Activities. In the event of repeated administrative breaches, the pecuniary administrative sanction may be increased up to three times (Article 10, Decree Law No. 36 of 24 February 2011).

207. As regards associations and foundations, they must keep a register containing the names of their associates and members (see paragraph 187). Council of Twelve Decision No. 30 of 27 May 2009 and Law 129/2010 have introduced the obligation to keep accounting documents for a period of 5 years. Failure to comply with bookkeeping obligations is punished with a fine of 2,000 EUR; the penalty is imposed by the Office of Industry, Handicraft and Trade.

208. Pursuant to the Company Law no legal person is exempted from the obligation to keep accounting records or books.

209. Further provisions concerning the use of invoices and other accounting documents containing false or incomplete information are contained in the Criminal Code (Articles 214, 316 and 317 CC) and Law No. 99 of 7 June 2010 on Fiscal Evasion. Sanctions entail imprisonment (of up to 6 years in aggravated cases) and professional disqualification. Law No. 91 of 13 October 1984 on the General Income Tax also provides for administrative sanctions for breaches of accounting and fiscal obligations.

Auditing rules

210. All joint stock companies are required to nominate auditors. In case of limited liability companies, the appointment of an auditor is mandatory when the company capital exceeds 77,000 EUR or the proceeds from sales and services exceed 2,000,000 EUR for two consecutive business years. A board of auditors is nominated when the sales and services in the company exceed 7,300,000 EUR for two consecutive business years. Auditors are required to make sure that the annual balance sheet corresponds to the accounting results (Article 58, Company Law).

Role of auditors, accountants and other professionals

211. Law No. 92 of 17 June 2008 has introduced specific reporting obligations for auditors, accountants and legal professionals for the purposes of preventing and combating money laundering and terrorist financing (Articles 20 and 36, Law No. 92/2008). Cooperation of these categories of persons with law enforcement agencies is also required under Article 11 of Law No. 92/2008 and Article 2 of Decree Law No. 36/2011.

212. Professional secrecy and confidentiality of information is regulated by the respective by-laws of lawyers, notaries (Decree No. 56 of 26 April 1995), accountants (Decree No. 57 of 26 April 1995),

and auditors (Law No. 146 of 27 October 2004). According to such rules, these categories of professionals are to maintain the confidentiality of the activity performed or issues dealt with. Lawyers are also prohibited from testifying on facts or acts of which they have gained knowledge in the course of their professional activity. That said, in the context of money-laundering and terrorist financing offences, professional secrecy can only be invoked, against judicial authorities, the Financial Intelligence Agency (FIA), the Police and the Central Liaison Office, in connection with the information acquired while defending or representing a client during a judicial or administrative proceeding or in relation to a proceeding, including advice on the eventuality of prosecuting or avoiding a proceeding, where the information is obtained or received before, during or after that proceeding (Article 38, Law No. 92/2008). In the context of international cooperation and exchange information on tax matters, chartered accountant and auditors cannot oppose professional secrecy to the Central Liaison Office, unless in connection with the information acquired while representing a client during a judicial or administrative proceeding (Article 2, Decree Law No. 36/2011).

b. Analysis

213. Overall, the system in force for the establishment and registration of legal persons in San Marino seems to be adequate. There is a variety of legal persons provided for in legislation; their nature, purpose and functioning are well defined. Requirements for establishing legal persons depend on the form of the legal entity, but all of them are subject to registration.

214. There are different registers according to the form of the legal entity. Several controls are performed with a view to ensuring the accuracy of the information entered in the registration process and the compliance with legal requirements: firstly, the information submitted by the applicants is checked and certified by a notary; secondly, the registrars check the formal adequacy of the documentation presented and, if all legal conditions have been fulfilled, the legal person is registered by the competent registrar. In addition, the GET was told that all new companies undergo on-site preliminary controls, which are performed by the Civil Police prior to the delivery of the licence to operate by the Office of Industry, Handicraft and Trade. Changes in the registered data must be communicated to the registrars. Information in the Registers of Companies, Cooperatives and Non-Profit Entities is public; the data contained in the Trust Register is accessible to law enforcement authorities, other public bodies and interested parties.

215. In addition to the transparency-related instruments in place during the establishment and registration procedures, some recent reforms have been introduced in the field of legal persons, namely in order to better allow for ownership information of San Marino companies. Pursuant to Law No. 98/2010, anonymous companies are currently forbidden in San Marino. According to data provided by the registration services, since the enactment of the aforementioned law, only 10 of the 152 initial companies were still operating at the time of the on-site visit of the GET, but they were all under legal proceedings in order to proceed with their winding-up. Moreover, in addition to the obligations contained in the Company Law to ensure transparency of legal persons, such as the requirement for companies to keep a stock ledger including the personal details of the holders of the registered shares and holdings and also any transfers or obligations relating to the same, recent legislation (enacted in 2009, 2010 and 2011) has provided for additional measures concerning the identification of beneficial ownership structures of companies, notably, through the establishment of a centralised register of shareholders. Further measures have also been introduced to better allow identification of founders, beneficiaries or partners behind other types of legal persons (e.g. foundations and other non-profit associations,

fiduciary companies, etc.). The GET acknowledges, and positively values, the efforts made by San Marino to increase transparency in the ownership structures of San Marino legal persons.

216. Several restrictions on the performance of duties on legal persons or the holding of shares are contained in legislation. These constraints have also been recently strengthened, in particular, through the notion of "unfit person", i.e. a person who is banned, on the basis of a criminal conviction (including for corruption-related offences) or involvement in a legal person subject to bankruptcy or compulsory liquidation, from holding the aforementioned management/shareholder positions.

217. Administrative liability of legal persons for criminal offences was introduced by Law No. 6/2010. Corporate liability covers only those offences listed under the aforementioned law, including bribery in the public sector and money-laundering. However, as trading in influence and bribery in the private sector are not criminalised in San Marino, corporate liability is not possible in respect to these offences. This departs from the requirements of Article 18 of the Convention. Considering that San Marino has signed, but has not yet ratified, the Convention (and that reservations may be entered by San Marino, as provided by Article 37 of the Convention), the GET refrains from issuing a formal recommendation on this matter. However, the GET notes that this state of affairs must necessarily be taken into account as the authorities align domestic legislation with the Convention in the framework of the relevant ratification process.

218. Furthermore, the regime of liability of legal persons in San Marino does not explicitly cover the situations foreseen in Article 18 (2) of the Convention, i.e. situations where corruption offences committed by legal persons are the result of a lack of supervision or control by a natural person. In this connection, Article 1 of Law No. 6/2010 establishes that legal persons may be held liable for crimes committed, attempted or failed, on their behalf or for their benefit, by one of its bodies or anyone performing representative, management and administration functions. During the on-site visit, the GET was told that the issue of lack of supervision is deemed to be covered by the possibility of the legal person to adopt an organisational model designed to prevent the commission of offences. In such cases, the legal person may be exempted from liability if it proves the adequacy of the organisational model, adopted before the offence was committed, and that the perpetrator fraudulently circumvented the model. However, the GET notes that the establishment of an organisational model is simply a possibility (not a mandatory requirement) that is provided to a legal person to potentially waive its liability. The GET finds it difficult to understand how this possibility addresses the lacuna identified above, in Law No. 6/2010, with respect to instances when the offence is committed by a subordinate employee and made possible by lack of supervision or control. The GET notes that, while Law No. 6/2010 does not refer to the issue of lack of supervision or control (*culpa in vigilando*), the Company Law does specifically contemplate this situation to assign liability for administrators (Article 56, Company Law) and auditors (Article 64, Company Law), as necessary. There is no case law as regards the provisions on corporate liability, which may have helped to address the aforementioned misgiving of the GET and, therefore, sufficiently prove that the courts are able to assign, in practice, corporate liability for lack of supervision. Consequently, the GET recommends **to clarify the provisions on corporate liability to ensure that it also applies to situations where corruption offences committed by legal persons are the result of a lack of supervision or control by a natural person.**

219. The sanctions available under Law No. 6/2010 appear to be in line with the requirements established by Article 19 (2) of the Convention. That said, as noted before, corporate liability was only introduced in 2010 and no proceedings against legal persons for corruption offences have

been concluded so far. The law is yet to be tested and subjected to interpretation by the courts. This in turn means that the GET is not in a position to assess whether the sanctions provided for by law are effective, proportionate and dissuasive also in practice. The GET considers that the situation needs to be followed up in order to effectively ensure proper implementation of the relevant provisions. It was in any case clear to the GET that the level of awareness of corporate liability of the law enforcement bodies and judicial authorities needed to be increased. This calls for proper information and training to be provided to the aforementioned authorities. In view of the above, the GET recommends **to ensure that police officers, prosecutors and judges are given the necessary training in order to fully apply the existing provisions on liability of legal persons.**

220. As the legislation on liability of legal persons is very recent, the GET could not evaluate how the provisions on organisational models (i.e. organisational and management systems established by companies to prevent the commission of an offence) were applied in practice. During the on-site visit, it clearly emerged that the experience gained by the judicial authorities and the private sector with these models was very limited. Organisational models may operate, in principle, as a defence which could exonerate the legal person concerned. Therefore, in the GET's view, it is important to ensure that this type of defence is subject to rigorous conditions in order to safeguard against potential abuse. That said, the GET also considers that organisational models are likely to play a positive role by setting in place a preventive framework for fighting cases of malpractice and corruption in the private sector. The issue of organisational models, and, in particular, the way in which they may be interpreted and ultimately accepted by the courts to waive liability, as well as their beneficial use in preventing corruption in business activities, merits a joint reflection process by the authorities and private sector representatives.

221. The legislation in force does not provide a list of tax deductible expenses insofar corporate income taxation is concerned. According to the provisions in place, tax deductibility is only allowed with respect to documented transactions. There is no specific provision expressly prohibiting tax deductibility of illegal payments or expenses or costs incurred as a result of a criminal offence. During the on-site visit, the tax authorities stated that, because of the secret nature of corruption offences, related expenses are not, in principle, supported by proper documentation and so they may not, in practice, be deducted. However, in the GET's view, the existing provisions are not sufficient to fully ensure that bribes or other expenses linked to corruption offences are not tax deductible. In order to unequivocally ensure that fiscal legislation contributes to combating corruption in an effective manner, the regime needs to be more assertive and precise. Moreover, the GET was made aware of the intention of the authorities to proceed with reforms in the tax field in the second half of 2011; the GET was told that, in the context of such a reform, the authorities envisaged the introduction of a list to single out expenses which are not tax deductible, including facilitation payments. In view of the above, the GET recommends **to consider amending legislation in order to expressly exclude tax deductibility of bribes or other expenses linked to corruption offences.**

222. Tax officials are subject to the general obligation for all public officials to report to law enforcement bodies criminal offences detected within their scope of competence. There is however no specific obligation for the tax authorities to report suspicious financial activities and accounting records which may conceal corruption offences. The GET noted that tax authorities did not seem sufficiently aware of the important role they could perform in preventing, detecting and reporting corruption offences. No specific training or guidelines have been provided to tax officials in this domain. The GET is of the firm opinion that the involvement of the tax authorities in respect of operational anti-corruption activities could be strengthened. Moreover, the GET

heard concerns, as expressed by some representatives from the NGO and private sector during the on-site visit, regarding the existence of companies without real activity. The GET noted that no adequate risk analysis or guidelines have been developed to date by tax authorities in order to better identify and control the aforementioned category of taxpayers, i.e. companies without activity. Once again, in the GET's view, the tax authorities can play a crucial role in the detection and prevention of the irregular use of companies to shield illegal activities, notably through corruption and other related offences. Finally, the GET noted that tax authorities usually do not perform on-site inspections on taxpayers, allegedly due to lack of sufficient resources. These inspections are carried out by the Civil Police, at the request of the tax authorities or on its own initiative. It is therefore important that tax authorities are able to perform on-site inspections on their own, whenever they consider it necessary to accomplish their control activity and, consequently, that they have at their disposal the indispensable means for that purpose. In view of the above, the GET recommends **that the tax authorities pay greater attention to the problem of corruption, in particular, through the development of appropriate directives or guidelines, as well as specific training on the detection of suspicions of corruption offences and their reporting to the competent law enforcement authorities.**

223. The issuing and use of invoices containing false or incomplete information is considered to be a criminal offence in San Marino (Articles 2 and 3, Law No. 99/2010). The unlawful omission of accounting records, such as the destruction or hiding of books and other accounting records triggers criminal liability only with respect to certain situations, notably: failure to keep accounting records, irregular and false bookkeeping by an entrepreneur in the event of bankruptcy proceedings (Article 214, Criminal Code); fraudulent reporting to shareholders or to the general meeting of untrue data as to the financial and asset position of a company (Article 316, Criminal Code); and misappropriation of corporate money to create hidden reserves (Article 317, Criminal Code). The GET could not gain a clear picture as to the lack of a provision in the Criminal Code which would deal with the destruction or hiding of accounting records in general, i.e. not restricted to the aforementioned types of situation. This results in two different sanctioning regimes: (i) criminal sanctions including imprisonment and professional disqualification (if the omission of accounting records occurs in the specific situations covered in Articles 214, 316 and 317, Criminal Code); (ii) administrative fines ranging from 2,000 to 25,000 EUR (omission of accounting records in all other cases, as per the applicable provisions of the Company Law). In the GET's view, the available fines in the latter type of situation may not be deterrent enough to prevent unlawful omissions of accounting records from happening in practice and thereby concealing corrupt deals. Additional administrative sanctions are provided by Law No. 91/1984 (General Income Tax Law) and other legislation regarding breaches of accounting and fiscal obligations. The applicable level of sanctions has been recently increased by Decree-Law No. 36/2011. However, some of the violations remain subject to a very low level of fine. This is, for instance, the case of non-compliance with orders, requests and summons made by the so-called "Assessment Committees" (which are to perform assessment, control and sanctioning activities in respect of the tax declarations filed by physical and legal persons) in order to obtain relevant data and documents or examine account records necessary for supervision and tax assessment purposes. These violations, according to Article 71 of the General Income Tax Law, are subject to a fine ranging from 25.82 to 154.94 EUR. In the GET's view, these low limits cannot provide for effective, proportionate and dissuasive sanctions. Consequently, the GET recommends **to review and strengthen the applicable sanctions for account offences in order to ensure that they are effective, proportionate and dissuasive.**

224. There is no specific obligation for accountants, auditors and legal professionals to report suspicions of corruption offences. According to Law No. 92/2008, these professionals have,

nevertheless, specific reporting obligations for the purposes of preventing and combating money laundering and terrorist financing (AML-CFT). The FIA has developed important work through the issuance of instructions on the application of the AML-CFT framework. However, during the on-site visit, the GET got the impression that professionals were not sufficiently aware about the specificities of corruption offences and that more could be done to increase their role in the detection and reporting of suspicions of these particular crimes. On the other hand, these categories of persons are subject to professional secrecy rules, as regulated by the respective by-laws. Professional secrecy cannot be opposed in respect of money laundering investigations, or with respect to the activity performed by the Central Liaison Office in the context of international cooperation and information exchange on tax matters, unless the information is acquired while defending or representing a client during (or in connection with) a judicial proceeding (Article 38 of Law No. 92/2008 and Article 2 Decree Law No. 36/2011). The GET has some misgivings as to the understanding of professional secrecy obligations by auditors, accountants and legal professionals. Firstly, the GET notes that legislation only provides for professional secrecy to be lifted in connection with certain criminal investigations, as mentioned above. Secondly, the applicable provisions in this respect broadly cover notaries, lawyers and accountants, irrespective of the particularities of the respective profession and the manifold aspects of their activities which may be interpreted by the respective professionals as still falling under professional secrecy and therefore, not subject to the reporting obligation under the anti-money laundering framework. As already mentioned, the GET considers that the involvement of accountants, auditors and legal professionals in the uncovering of corruption in general (beyond money laundering or international cooperation on tax matters) needs to be further supported and strengthened; the implementation of recommendation v (and more particularly, its second component) of the present report (paragraph 105) could prove to be key in this respect. Moreover, the GET considers that the need to strike an adequate balance between professional secrecy and the reporting obligations of accountants, auditors and legal professionals is an issue that merits further attention. While refraining from issuing a formal recommendation in this respect, the GET would find it advisable that, when implementing recommendation v (ii), the authorities look carefully into this matter so that the scope of professional secrecy is better clarified, for example, by delimiting it more explicitly according to the specificities of each profession.

CONCLUSIONS

225. San Marino has made important efforts in establishing an anti-money laundering framework; the engagement of the Sammarinese authorities and the determined steps taken to clean up business are commendable.

226. While much focus has been placed on combating money laundering and terrorist financing, the country is still at an early stage in the fight against corruption. The nature and scale of corruption in San Marino has not so far been investigated and there is virtually no conclusive information on the subject. Very few corruption-related convictions have been passed and the problem does not appear to be ranked as a main concern of Sammarinese citizens. The perception that San Marino has a very low level of corruption may well have a negative impact on the alertness of the authorities with regard to possible corruption now or in the future: a full assessment of corruption and steps to increase awareness of the new anti-corruption measures, including the need to report suspected cases, will therefore be necessary. Moreover, some specialisation of law enforcement authorities is indispensable in order to carry out a veritable, proactive and effective fight against corruption.

227. San Marino is currently undertaking a comprehensive reform specifically aimed at modernising public administration, a sector of activity which plays a large part in the economy of the country. In the context of the ongoing reform, it is essential that more attention is paid to questions of integrity and the prevention of corruption in the public sector. A number of targeted improvements must be made as a matter of priority in this domain: they should relate, *inter alia*, to the process of recruitment of public officials, the adoption of a code of ethics and the establishment of an adequate system to protect staff who reports corruption and maladministration instances in good faith (whistleblowers). San Marino's close-knit environment makes arrangements to prevent conflicts of interest crucial.

228. Concerning the private sector, regulation and transparency in this area have been significantly strengthened: anonymous companies and accounts are forbidden, a broad range of customer due diligence obligations is now in place, bank secrecy is no longer opposable to law enforcement authorities, etc. In 2010, San Marino introduced the notion of corporate administrative liability; a number of steps still need to be taken to facilitate its application, such as familiarising practitioners and companies' representatives with the new rules. Professionals such as accountants and auditors should also become more actively involved in detecting and revealing corruption offences. More attention to the problem of corruption is also required from the Sammarinese tax authorities.

229. Finally, there appears to be a strong consensus among authorities in San Marino concerning the opportunity to introduce substantial measures against corruption. The present report and its recommendations should therefore be seen as a timely contribution to this process. Likewise, the swift ratification of the relevant Council of Europe instruments in this area, i.e. the Criminal Law Convention on Corruption (ETS 173) and its Additional Protocol (ETS 191), as well as the Civil Law Convention on Corruption (ETS 174) – to none of which San Marino is a party currently – would certainly assist in aligning domestic law and practice with international anticorruption standards.

230. In the light of the foregoing, GRECO addresses the following recommendations to San Marino:

i) **to develop, with the involvement of civil society, a comprehensive anti-corruption work programme comprising the following elements: (a) study of the characteristics of corruption in its various forms and the areas exposed to risk; (b) identification and development of reforms needed in the area of public contracting and procurement, as well as any other existing sector at risk; (c) measures to raise awareness on the importance of combating corruption in its various forms, including by stressing the need to report instances of malpractice** (paragraph 24);

ii) **(i) to make sure that the level of specialisation of investigation, prosecution and adjudication authorities with respect to corruption offences is increased, and (ii) to establish a comprehensive specialised training programme for judges, prosecutors and police officers in order to build up and share common knowledge and understanding on how to deal with corruption offences** (paragraph 66);

iii) **to adopt a more proactive approach with regard to the investigation of corruption, including by making best use of the existing system of special investigative techniques, with the appropriate legal and judicial safeguards** (paragraph 68);

iv) **to facilitate the reporting of corruption suspicions to law enforcement authorities by (i) establishing a hotline and (ii) developing witness protection legislative and practical mechanisms** (paragraph 69);

v) **that, in order to strengthen the contribution of the anti-money laundering regime to fight against corruption, (i) a programme of public engagements be set up to improve general awareness and disseminating best practice and advice on anti-money laundering and corruption issues; (ii) the authorities explore, in consultation with the professional bodies of accountants, auditors and advisory/legal professionals, what further measures can be taken to improve the situation in relation to reports of suspicions of corruption and money laundering to the competent bodies** (paragraph 105);

vi) **that clear guidance documents be drawn up in respect of the best practice for handling and auditing of the seizure/confiscation of cash by police officers (particularly the Fortress Guard)** (paragraph 107);

vii) **to adopt appropriate freedom of information legislation and introduce adequate measures for its implementation** (paragraph 156);

viii) **to strengthen the existing mechanisms for recruitment and advancement in the public service in order to ensure that they are fair, merit-based and transparent** (paragraph 157);

ix) **to (i) adopt a code of conduct for public officials; (ii) improve the management of conflicts of interest and regulate the migration of public officials to the private sector ("pantouflage"); (iii) provide training and set in place mechanisms for individualised guidance of public officials on issues relating to ethics, corruption and its prevention; and (iv) familiarise civil society and the media with these initiatives so that they are fully advised on the conduct to be expected from public officials** (paragraph 159);

x) **that an adequate system of protection for those who, in good faith, report suspicions of corruption within public administration (whistleblowers) be instituted** (paragraph 160);

xi) **that the decision-making process in the domain of granting of building licences be properly risk assessed for anticorruption purposes and be subject to an appropriate auditing mechanism** (paragraph 162);

xii) **to clarify the provisions on corporate liability to ensure that it also applies to situations where corruption offences committed by legal persons are the result of a lack of supervision or control by a natural person** (paragraph 218);

xiii) **to ensure that police officers, prosecutors and judges are given the necessary training in order to fully apply the existing provisions on liability of legal persons** (paragraph 219);

xiv) **to consider amending legislation in order to expressly exclude tax deductibility of bribes or other expenses linked to corruption offences** (paragraph 221);

xv) **that the tax authorities pay greater attention to the problem of corruption, in particular, through the development of appropriate directives or guidelines, as well as specific training on the detection of suspicions of corruption offences and their reporting to the competent law enforcement authorities** (paragraph 222);

xvi) **to review and strengthen the applicable sanctions for account offences in order to ensure that they are effective, proportionate and dissuasive** (paragraph 223).

231. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of San Marino to present a report on the implementation of the above-mentioned recommendations by 30 June 2013 at the latest.

232. Finally, GRECO invites the authorities of San Marino to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make this translation public.