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Joint First and Second Evaluation Rounds

Compliance Report on San Marino

Adopted by GRECO
at its 64th Plenary Meeting
(Strasbourg, 16-20 June 2014)

I. INTRODUCTION

1. GRECO adopted the Joint First and Second Round Evaluation Report on San Marino at its 53rd Plenary Meeting (Strasbourg, 5-9 December 2011). This report ([Greco Eval I/II \(2011\) 2E](#)) was made public by GRECO on 28 February 2012.
2. In accordance with Rule 30.2 of GRECO's Rules of Procedure, the authorities of San Marino submitted their Situation Report (RS-Report) on the measures taken to implement the recommendations on 28 February 2014. Additional information was communicated, together with comments, on 9 June.
3. At its 59th Plenary Meeting (18-22 March 2013), GRECO selected, in accordance with Rule 31.1 of its Rules of Procedure, Croatia and the Netherlands to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Dražen JELENIĆ on behalf of Croatia and Mr Don O'FLOINN on behalf of the Netherlands. The Rapporteurs were assisted by the GRECO Secretariat in drafting the Compliance Report (RC-Report).
4. The objective of the RC-Report is to assess the measures taken by the authorities of San Marino to comply with the recommendations contained in the Joint First and Second Round Evaluation Report.

II. ANALYSIS

5. It was recalled that GRECO in its Joint First and Second Round Evaluation Report addressed 16 recommendations to San Marino. Compliance with these recommendations is dealt with below.

Recommendation i.

6. *GRECO recommended 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.*
7. The authorities of San Marino report that the ruling majority faced a profound political crisis which led to the early termination of the XXVII legislature and inevitably caused pre-term parliamentary elections. In December 2012, following the parliamentary elections held on 11 November 2012, the new Government included in the agenda for the XXVIII legislature the continuation of the commitment of its predecessor to implement the 16 recommendations addressed by GRECO to San Marino. A copy of the previous Parliament's decision is made available to GRECO. In the face of this explicit political will, the composition of the inter-departmental working group (hereinafter, the IDWG) on GRECO was changed¹ and it was formally instructed by the new

¹ For further information on this working group, see paragraph 15 of the Evaluation Report. In its new composition, it comprises the four members of San Marino delegation to GRECO and representatives of the following persons and State entities:

- the Director of the Public Function (responsible for the Civil Service);
- the Director of the Department of Finance and Budget;
- the Director of the Department of Territory;
- the Director of the Department of Institutional Affairs and Justice;
- the Director of the Department of Economy;

Government to pursue its work with the aim of drafting all necessary implementing proposals. Subsequently, it finalised a detailed plan of action containing proposals for the implementation of each recommendation, which was then submitted to, and endorsed by the Government. On the occasion of the celebrations for the International Day against Corruption (9 December 2013), the Captains Regent (Heads of State) issued a statement reaffirming i.a. the importance of "fulfilling the commitments undertaken by the Government of San Marino in 2010", when the country joined GRECO, "by implementing all 16 recommendations addressed to our country".

8. On the first and third part of the recommendation, following a proposal of the IDWG endorsed by the Government, it was agreed to involve the population of San Marino in the definition of reforms by sending an ad-hoc questionnaire to all families residing on the territory. Its purpose is to gather feedback on the public perception of corruption, the sectors deemed at higher risk and the preventive and other measures which need to be taken in priority. The questionnaire was drafted following the model of the *Eurobarometer on Corruption* (used at the EU level). Once the responses have been received, the IDWG will have to synthesise the information with the competent public administration offices. It was also agreed that the national television broadcasting company (San Marino RTV) would promote this opinion poll and would develop and broadcast an advertisement² as an additional awareness-raising measure.
9. As for the second part of the recommendation, the Government is aware of particular corruption risks in certain areas, such as public procurement. On 7 February 2013, it decided to implement a series of measures aimed at improving tendering procedures, including the creation of a single budgetary chapter for public procurement in the Public Administration and the adoption of model contracts (general and special) for public tenders. The objective was to speed up the public bidding procedures, to increase the quality and consistency of contractual clauses and public procurement procedures, and ultimately to limit disputes. The authorities indicate that at its sitting of 10 June 2014, the Government will adopt a Decree on "Implementation of Law N°49 of 27 March 2002 – Law on the supply contract of the public administration and public entities". It is meant to govern contracts between the public administration and corporations on the one hand, and businesses on the other hand as regards the supply of consumer or every day goods and services. The new rules will provide for increased publicity and publication of bids on the Government Portal (including the intended supplies of goods and services, the announcements of tenders including award criteria, and the final decisions).
10. GRECO takes note of the above. It would appear that steps are being taken in order to implement the three groups of measures addressed in the recommendation. The study on corruption (through an opinion poll) and the awareness measures through the media are on the right way and need to materialise (first and third part of the recommendation, respectively). On the second part of the recommendation, the authorities of San Marino announce some reforms in the area of public procurement. GRECO anticipates that once the study on corruption is complete, its findings will be used to decide further measures in areas calling possibly for reforms. In conclusion, GRECO expects the completion of the measures undertaken in respect of the various parts of this recommendation.
11. GRECO concludes that recommendation i has been partly implemented.

² The message will be based on the spot used by the United Nations Office on Drugs and Crime (UNODC) in 2008 for the campaign entitled "Act against Corruption".

Recommendation ii.

12. *GRECO recommended (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.*
13. The authorities of San Marino report that in order to enhance the level of specialisation of judicial authorities dealing with corruption offences, also through the planning of a comprehensive specialised training programme for judges, the Ministry of Justice contacted in 2013 the Italian School for the Judiciary, in order to request the admission of magistrates from San Marino to the training courses. Starting from July 2013, San Marino magistrates have participated in five courses, for a total number of 14 days³. In addition, the Ministry of Justice has proposed to the Italian School for the Judiciary the signing of a memorandum of understanding, which would enable, also in the future, the participation of San Marino magistrates in the training activities of the School, including, among others, topics connected with the different corruption-related offences. The participation of magistrates in such future courses shall take place under the supervision of the Head Magistrate of the San Marino Single Court, on the basis of specific organisational needs of the Court and jurisdictional considerations. As for the training of police officers, an Agreement on Cooperation in preventing and combating crime was signed on 29 February 2012 between the governments of San Marino and of Italy. Such Agreement was followed, on 20 December 2013, by an implementing technical arrangement between San Marino Department of Police and the Italian Ministry of Interior - Public Security Department. Accordingly, the Parties shall cooperate in order to combat and investigate crime and envisage, among others, the provision of assistance in training and improving skills through training activities.
14. The authorities of San Marino finally stress that additional training is in the process of being organised and in their latest information, they indicate that more precisely, concerning 2014, a course on “Investigations and assessment of evidence in offences against public administration” was scheduled recently for the period 30 June-2 – July 2014.
15. GRECO takes note of the above. It would appear that no measures have been taken to increase the specialisation of practitioners called upon to deal with corruption offences (first part of the recommendation). As for comprehensive specialised training (second part of the recommendation), some measures have been implemented punctually in 2013 but none of these has a direct connection with corruption. Several new plans are announced, in cooperation with the Italian School for the judiciary and the University of Urbino: these appear to have a closer link to the present recommendation. GRECO will need to look again at the concrete outcome in terms of training when the level of implementation of these agreements has progressed.
16. GRECO concludes that recommendation ii has been partly implemented.

³ A total number 9 judges were involved. The topics of the courses were the following: Confiscation (15-16 July 2013); Facts and charges (15-16 July 2013); How are civil damages settled ? (16-18 October), Practice of European and international criminal justice cooperation (21-23 October); Families in crisis and judges’ interventions (27-29 November 2013).

Recommendation iii.

17. *GRECO recommended 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.*
18. The authorities report that after the adoption of Law no. 98 of 21 July 2009 - "Law on wiretapping" and the subsequent implementing provisions, it was decided in 2010 to assign specifically designed and secured rooms within the Single Court to the wire-tapping activity. Following consultations with the Italian public prosecutor's office, a leading company was contracted in January 2014 for the supply of soft- and hardware and the services necessary to the wiretapping activity. The new Government also decided on 27 December 2013, to renew the entire telecommunications network of the Administration in order to make it compatible with the technology to be used for wiretapping. The contract with the above-mentioned company provides for training opportunities for the Court staff who will be involved in these activities in future. It is reported that once these steps are completed, the Republic of San Marino will have the capacity to use effectively telephone and environmental wiretapping in corruption cases, as the need arises. In their most recent submission, reference is nonetheless made to an additional text which has been adopted by the Government at its sitting of 12 May last, namely a "Regulation containing technical details for the performance of wiretapping"
19. It is reported that other investigative means (controlled deliveries, covert operations, gathering of intelligence, undercover agents), already provided for in legislation, continue to be used by the law enforcement agencies, whenever such techniques are deemed useful and appropriate to increase the effectiveness of investigations. In their most recent submission, the authorities indicate that to allow for the actual use of these techniques in corruption-related cases, the Government adopted on 10 June the Decree-law on "Urgent provisions to prevent and combat corruption offences". It entered into force on 16 June. Article 6 of the decree specifies i.a. that the use of these measures in connection with the offences of Title IV, Chapter IV of the Criminal Code is made under the supervision of the Judicial Authority.
20. GRECO recalls that at the time of the on-site visit (June 2011), the usefulness of the 2009 legislation on wiretapping could not be assessed given the lack of special equipment to perform such operations and the non-existence of local telephone providers in San Marino (hence the need to resort to the Italian telecom system). It had also emerged that the use of such techniques as controlled deliveries, covert operations, gathering of intelligence, undercover agents is also very limited, if any. GRECO takes note of the new implementing measures taken in 2013 and earlier this year to use wire-tapping more effectively and to permit the use of other investigative techniques in relation to corruption, under judicial supervision. It would appear that San Marino is still taking measures to introduce these techniques domestically. GRECO is of course pleased to see some progress but pending the finalisation of the reform (including the designation and training of the court staff responsible for interception of communications in particular), it remains premature to assess whether these special investigative means overall are used more actively in practice.
21. GRECO concludes that recommendation iii has been partly implemented.

Recommendation iv.

22. *GRECO recommended 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.*
23. The authorities of San Marino indicate that in accordance with Government Decision n. 20 of 12 February 2013, a technical working group has been entrusted with the drafting of a new code of criminal procedure. The group will take into account the above recommendation: the reform is meant to be far reaching and to embrace most aspects of the criminal procedure, including testimony as a form of evidence. In their latest submission, the authorities indicate that in the meantime, Government Decision N°6 of 3 June 2014 has established with immediate effect a hotline to receive reports of suspected cases of corruption. The hotline was set up under the responsibility of the Gendarmerie's Operations Centre and it became operational the same week. The Press Office of the Department of Foreign Affairs will inform the public about this new tool. As for protection measures, reference is made to the Decree-law on "Urgent provisions to prevent and combat corruption offences" adopted on 10 June and entered into force on 16 June. First of all, it would allow anyone to report suspicions of corruption. Secondly, it would provide for enhanced obligations for subjects of the anti-money laundering (AML) legislation (financial and designated businesses and professions), as they would be required to report suspicious transactions related to money laundering, terrorist financing but also – in future – to corruption to the police or judicial authorities. Their liability shall not be engaged for a report or disclosure of information to the above bodies, and their identity is protected (see also recommendation v).
24. GRECO takes note of the creation of a hotline for reporting suspicions of corruption which can be used in future by the public at large. The first part of the recommendation has thus been addressed and GRECO further takes note of the extension to corruption of the AML legislation. As for the second part of the recommendation, GRECO takes note of the above plans to address the matter of witness protection in the context of a general revision of the criminal procedure. For the time being, no tangible measures have been taken in respect of the second part of the recommendation since the measures pertaining to the AML legislation pursue a different matter (protection from liability in case of reporting).
25. GRECO concludes that recommendation iv has been partly implemented.

Recommendation v.

26. *GRECO recommended 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.*
27. The authorities of San Marino indicate that after the adoption of the Report in 2011, the Financial Intelligence Agency (FIA) of San Marino (which is acting as the national financial intelligence unit - FIU) adopted a number of measures in order to improve general awareness on anti-money laundering (AML) and corruption issues. Meetings and teaching events addressed to entities subjected to the anti-money laundering requirements (i.e. accountants, auditors and

advisory/legal professionals, banking and financial sectors, non-financial business and professions etc.) are an ongoing activity. The FIA regularly provides advice and disseminates information on best practices against money laundering and corruption, both to obliged subjects, professional bodies and to the competent national authorities. To this end, the FIA's website (<http://www.aif.sm/on-line/en/home.html>) contains the various documents of the Financial Action Task Force (FATF), which are also sent directly to the above-mentioned categories of persons and entities when they become available⁴. In order to increase the contribution of the anti-money laundering regime to the fight against corruption, the FIA in its Annual Report 2011-2012⁵, also gave additional publicity to the FATF activity against corruption and GRECO's evaluation (recommendation v is quoted *in extenso*). Drawing inspiration from the FATF work, a risk-based approach was developed in relation to transactions with foreign countries⁶.

28. On preventive measures, the authorities reiterate that FIA meetings with the professional bodies of accountants, auditors and advisory/legal professionals are an on-going activity. They stress that the dialogue with these professionals is always constructive. In recent months, bilateral meetings have been held in order to discuss and review some aspects of Customer due diligence (CDD) in their activities. While potential need for clarification has been highlighted in respect of CDD measures, no concerns have been expressed in relation to the mechanism for the reporting of suspicions of money laundering and associated predicate offences (where corruption is included). Moreover, legislative/regulatory aspects of the AML/CFT system have been updated and improved since the adoption of the Evaluation Report, in conformity with the FATF standards: a) in July 2013, the criminalisation of the laundering of proceeds from one's own criminal activity i.e. self-laundering was introduced⁷; b) with Decree-Law 25 July 2013 no. 98 the definition of Politically exposed person (PEP) was revised and aligned on international standards. As a result, customer due diligence requirements to be applied by financial institutions and other subjected businesses now extend also to domestic PEPs and PEPs of international organisations. A draft Instruction on this is being prepared by the FIA, in consultation with other actors.
29. Finally, the authorities of San Marino point out that money-laundering cases (with possible corruption predicate offence) are currently under investigation. In their latest submission, they also refer to the changes introduced by the Decree-Law adopted on 10 June 2014 on "Urgent provisions to prevent and combat corruption offences" (which entered into force on 16 June). Under article 4, the AML Law would apply to the reporting of transactions, activities and funds possibly connected to corruption offences. As indicated under recommendation iv, disclosures of

⁴ <http://www.aif.sm/on-line/en/home/typologies-methods-and-trends/international-documents.html>

For instance: a) the typology report on Laundering the Proceeds of Corruption (31 July 2011), prepared by the FATF on the links between corruption and money laundering, b) Specific Risk Factors in the Laundering of Proceeds of Corruption - Assistance to reporting institutions (16 July 2012) is a report written to assist reporting institutions to better analyse and understand specific risk factors that may assist them in identifying situations posing a higher risk of corruption-related money laundering risk; c) FATF Guidance paper entitled "Politically Exposed Persons (PEPs)" of 27 June 2013; d) "Best Practices Paper: The Use of the FATF Recommendations to Combat Corruption" (October 2013)

⁵ http://www.aif.sm/contents/instance13/files/document/42710Rapporto_annuale.pdf

⁶ It is reported that measures have been taken for reporting entities to better analyse and understand specific contexts so as to identify situations involving a higher level of risk of corruption-related money laundering. Following consultations with all the reporting entities (especially banking and financial subjects, lawyers and accountants) on 15 May 2013, the FIA – among other initiatives – issued Instruction No. 2013-06 entitled "Provisions on risk assessment and overview on the Customer Due Diligence". One of the criterion for risk profiles deals specifically with corruption ("*...for the purposes of the assessment, the presence within a territory of illegal activities that may facilitate money laundering and terrorism financing activities, is also relevant. Therefore, the level of infiltration of the economic crime, the socio-economic or institutional weakness factors, the exposure to corruption activities, 'underground economy' and, in general, any information useful to define the risk profile of the territory, must all be taken into account*"). For this purpose, the corruption perception index for a country is also recalled.

⁷ Law no.100 of 29 July 2013, amending the criminal code, the code of criminal procedure and provisions on civil procedure and judicial matters, effective as of 13 August 2013.

such cases would not constitute a breach of duties or legislation. The authorities also recall a series of other features of the AML Law (professional and official secrecy cannot be opposed to the judicial and police authorities, with certain exceptions for the professions of (registered) lawyers, notaries, accountants when they defend or represent a client in judicial or administrative proceedings and so on).

30. GRECO takes note of the above. It recalls that this recommendation had been triggered by two series of findings. First, there was the apparent absence of corruption or money laundering issues identified within San Marino. Among the likely reasons for this situation, the Evaluation Report listed the lack of communication with, and involvement of the public and the media in the anti-money laundering efforts, the lack of intelligence-based work and the limited knowledge sharing in general (including through feedback to the entities subjected to preventive and reporting requirements). Secondly, the Evaluation Report pointed to the fact 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.”*
31. On the first part of the recommendation, GRECO is pleased to see that since the on-site visit, various guidance documents on corruption-related aspects of AML policies, produced by the international community, have become available to national financial institutions and other businesses concerned in San Marino with these. The FIA of San Marino is taking measures to make obliged entities aware of these, and to transpose new requirements (in particular on risk-based approaches, politically exposed persons) and the existence of an on-going dialogue with them is reported. However, the information provided is often redundant and of a general nature. It would appear that apart from the transposition of the new concept of politically exposed persons (to domestic officials) and the imminent extension to corruption of the AML legislation, no concrete measures have been taken as regards San Marino specifically to better take into account the domestic dimensions and specificities of criminal activities as possibly related to corruption and money laundering. No measures are reported either in favour of a broader interaction with the media and awareness of the public. This part of the recommendation can thus only be considered as partly addressed. As for the second part of the recommendation, the information provided does not respond to the requirement for measures to increase the reporting of suspicions of corruption and money laundering by activity sectors which were deemed insufficiently cooperative at the time of the on-site visit, i.e. notaries, lawyers, accountants and auditors (for instance doing research and typologies concerning these sectors of activity in particular, sending reminders, increased supervisory action etc.). GRECO cannot rely on the mere indication that the dialogue is satisfactory between the FIA and all the reporting entities, and that there have been no concerns expressed on the reporting duty. In particular, it is not demonstrated in concrete terms how the interaction has developed with the sectors of activity concerned by the recommendation. Moreover, no positive trends are reported on the number of disclosures of suspicions transactions / activity. In conclusion, this part of the recommendation also requires additional implementing measures.
32. GRECO concludes that recommendation v has been partly implemented.

Recommendation vi.

33. *GRECO recommended 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).*
34. The authorities of San Marino indicate in their latest submission that on 20 May 2014, the Fortress Guard has adopted a set of "Internal guidelines for controls aimed at verifying cross-border transportation of cash and similar instruments. An English translation is made available.
35. The document regulates the procedure involving 1) controls on persons, identities and vehicles, including a system of declaration of cash and similar instruments "upon request" from the law enforcement officer; 2) steps to follow in case of detection of undeclared amounts above 10,000 € (or less if there are suspicions as to the origin of funds), 3) a subsequent administrative verification and sanctions mechanism to be carried out in the presence of the carrier at the Fortress Guard's premises. A settlement can be found if the person demonstrates the legitimate origin and destination of the amounts, in which case s/he pays an amount corresponding to 10% of the sums in excess of 10,000 €; In case the matter cannot be settled, 40% of the excess amounts is subject to administrative seizure. The matter is subsequently reported to the financial intelligence unit, which is required to keep the amounts subject to administrative seizure (those corresponding to the above-mentioned 40%), and to forward to the State Treasury the amounts resulting from voluntary settlements; 4) the applicability of criminal seizure under article 78 of the Code of Criminal Procedure, which is applicable instead of the measures indicated in point 3 above "if the controlled person is not able to provide certain evidence as to the origin and destination of the items". A specific verbatim record is drafted in such a case, the seizure order is subsequently validated by the competent Law Commissioner and the funds are placed in a safe. The authorities explain that the above document makes it clear that criminal seizure is applicable to the whole amount of assets concerned whenever a person is not in a position to provide evidence on their legitimacy. Otherwise, if the person is in a position to provide evidence on their legitimacy, the measures indicated in point 3 above apply.
36. GRECO takes note of the above "Guidelines" which are in fact drafted in the form of regulations. GRECO welcomes the explicit reference to the applicability of criminal seizure of the total amounts under article 78 of the Code of Criminal Procedure, as well as the clear indication of circumstances where it is to be applied. The main underlying concerns of the recommendation (uncertainty as to the situations where criminal seizure is applicable and excessive discretion left to individual law enforcement officers which generated risks for their integrity) have thus been addressed by means other than guidance documents.
37. GRECO concludes that recommendation vi has been dealt with in a satisfactory manner.

Recommendation vii.

38. *GRECO recommended to adopt appropriate freedom of information legislation and introduce adequate measures for its implementation.*
39. The authorities of San Marino indicate that Law No. 160 of 5 October 2011 on "Administrative Procedure and Access to Administrative Documents" and other legislative provisions are part of a general reform of the Public Administration, which aims at increasing the transparency, impartiality and predictability of administrative action, and improving the relations with citizens as

end-users⁸. The purpose of the above Law is not only to provide the Public Administration with general tools on how to protect and achieve public interest, but also and above all to provide citizens with access keys enabling them to have an equal, transparent and objective relationship with the Administration, when a specific public action is required by private individuals or when such action has an impact on the rights or interests of such persons. With a view to guaranteeing the effective protection of these rights and interests, all interested parties shall have access to the administrative procedure; access shall also be guaranteed to all holders of public interests or diffuse interests (bodies, public entities, social groups, private subjects), who may be negatively affected by an administrative procedure. The authorities of San Marino also underline the prohibition for public officials (under article 17) to use assigned competences for clientelistic purposes and the obligation to refrain from behaviours aimed at obtaining an undue advantage in exchange for carrying out or omitting to carry out an act which falls within one's duties or for carrying out acts conflicting with one's official duties. An unofficial translation is made available.

40. A further measure to enhance the transparency of and public access to administrative acts shall be implemented soon with the online publication of all acts and measures concerning public biddings for the procurement of goods and services, and for public works. Moreover, the Law on "Regulations governing licenses to conduct industrial, service, handicraft and commercial activities" was adopted on 27 March 2014 and promulgated four days later. It has established a public and computerised register, run by the *Office of Industry, Handicraft and Trade*, containing all licences issued with the name of the holder, the tax registration number, the statistical code, the place of establishment of the business and the business purpose, as well as the date of issuance of the license and other information deemed useful. The computerised register of licences is accessible to anybody.
41. GRECO takes note of the above information about the Law No. 160 of 5 October 2011, which was already mentioned in the Evaluation Report but not analysed given its late adoption. GRECO also takes note with interest of the various other steps, taken or under way, for the modernisation and transparency of public administration. The above legislation is primarily concerned with the efficiency and fairness of administrative action, and it is in that context that some guarantees on access to information are provided: this right is granted only to those persons who are involved in specific administrative procedures and/or who are likely to see their individual rights affected by a public decision. GRECO welcomes this first step. For the time being, Law N°160 has a narrow scope, and even in that context, not only does an "interested party" (who is the subject of administrative measures) need to duly motivate its legitimate interest to obtain the information needed, in accordance with articles 25 and 29 paragraph 2. Even the validity of the request is then double checked by the recipient and by the Directorate General of Public Function. Other areas raise similar questions. For instance, "the consultation of preliminary documents preparing administrative measures shall not be allowed while such measures are being drafted" (article 27 paragraph 2): this potentially inhibits access to any document, study, expertise used in the

⁸ For instance, pursuant to Decision no. 23 of 7 February 2013, the Government decided to start a number of projects for the enhancement of administrative activity, including one to assess the quality of services provided by the Public Administration; in this framework, a monitoring activity was conducted in May-August 2013 to assess the level of satisfaction of citizens with regard to the quality of services provided by the administration (Technical Cadastral Office; Office for Industry, Handicraft and Trade; Vehicle Registration Office; Population Registration Office), to detect weaknesses and strengths of offices and of services provided, and to identify areas for improvement.

It was also decided to create a State web portal containing a complete list of all San Marino institutional websites, facilitating the search for and consultation of institutional information, and provide online services (for instance for applications in the area of taxation and social security contributions, contacts with the offices of the Public Administration etc.). Users will also have the possibility to be directly informed of the progress of administrative procedures which concerns them, and of the person in charge.

planning or preparation phase concerning for instance a major project where huge interests are at stake and possibly corruption or conflicting interests. The list of limitations to the exercise of access rights (article 30) contains, for the same reasons, some excessively broad exceptions⁹ and the articulation with other legal regimes on confidentiality and archives would need to be clarified. Likewise the Great and General Council (Parliament) and the Congress of State (Government) have broad discretion to provide in their own regulations for derogations to the law as regards the documents in their possession (article 26 paragraph 2). In conclusion, GRECO can only urge San Marino to take more determined action to implement the present recommendation with the adoption of a fully-fledged freedom of information legislation which would clearly guarantee to all persons a general access to information (with a clear set of limited exceptions which are needed to protect national security, personal data etc.) without having to justify a personal direct interest.

42. GRECO concludes that recommendation vii has been partly implemented.

Recommendation viii.

43. *GRECO recommended 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.*
44. The authorities of San Marino report that the Government adopted, in July 2012, a Delegated Decree no. 106 entitled "Implementation of Law no. 107 of 31 July 2009 on public competitions and other recruitment forms", which was promulgated by the Captains Regent on 2 August 2012. It implements Law no. 107 of 31 July 2009 "Public competitions and other recruitment forms", by regulating the procedures, tests and assessment procedures, modalities of announcements for open competitions, as well as recruitment mechanisms other than competitions. The Decree also regulates internal and career progression in the administration. It defines the assessment criteria and relevant scores, and thus contributes to the transparency and predictability of these various procedures. In particular, Articles 23 and 30 of the above-mentioned Decree of 2012 define in detail the scores that might be assigned in relation to the activity carried out, the qualifications required, the curricula and other relevant factors to be taken into account to evaluate the level of professional qualification. The new rules were used for instance, for the recent filling of the position of Head of the Civil Protection Service, through a competition announcement issued on 14 December 2012¹⁰. This being said, shortly before these changes, the Government had already announced in May 2012 a public competition¹¹ for the recruitment of 8 public officials to enhance the economic and financial sector supervision. The authorities of San Marino also provide a dozen of examples of persons having already benefited from the current internal career progression mechanisms in force. In their latest information, they also indicate that a fully-fledged periodic appraisal system is being considered in the context of the overall reform of the administration.
45. GRECO welcomes the recent adoption of the measures which appear to have been missing for the implementation of the 2009 legislation on recruitments in the public sector. The examples of

⁹ For instance, access shall be limited, deferred or denied if it can undermine ... "the appropriate implementation of effective measures by an authority" (paragraph 2 item d)

¹⁰ The competition, which was open to all employees of the public sector, was forwarded and made public in all Offices of the Public Administration. Out of the nine candidates who applied, four met the conditions required. The selection tests, carried out by an ad-hoc examining commission, were completed on 15 January 2013.

¹¹ It was announced by mail to all the families residing on the territory and e-mailed to all public administration offices. It was also published, on several occasions, on San Marino daily newspapers, broadcast by the national broadcasting company and posted on the homepage of the Ministry of Industry, Handicraft and Trade.

recent recruitments given above seem to illustrate a clear change of approach in the way public officials are to be hired. GRECO also notes that greater emphasis is now placed on objective criteria for advancement, according to the Decree no. 106 adopted in July 2012. The improvements recommended have thus been taken into account, and GRECO is pleased to see that further positive measures are being considered.

46. Overall, GRECO concludes that recommendation viii has been implemented satisfactorily.

Recommendation ix.

47. *GRECO recommended 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.*
48. The authorities of San Marino explain that the current Government who took up its office in December 2012, attaches great importance to the implementation of all the recommendations stemming from the Evaluation and membership in GRECO. In its programme for the XXVIIIth legislature, the adoption of a code of conduct for public officials is explicitly mentioned. As a result, the inter-departmental working group referred to in paragraph 8 has drawn up a "Code of Conduct for Public Officials" which was subsequently endorsed by the Government and then submitted to Parliament for the parliamentary procedure. The draft draws inspiration from similar foreign codes and the model code appended to the Council of Europe Recommendation N°R(2000)10 of the Committee of Ministers on codes of conduct for public officials, with some adaptations to the situation of San Marino. The draft addresses conflicts of interest (article 9 and 10), incompatibilities (article 11), gifts and reaction to improper benefits (article 14 and 15). It also regulates the migration of public officials to the private sector, providing for a cooling-off period of two years, including for contracts with the administration (article 21). Articles 3 and 23 require that the Code be communicated through the media to all public officials and civil society / the public.
49. GRECO welcomes that a code of conduct for public officials is in the process of adoption. It would appear that most of the elements of the recommendation are being addressed, with the exception of training and an individual advice mechanism (third part). These practical arrangements will logically need to be implemented in due course, when the Code is adopted.
50. GRECO concludes that recommendation ix has been partly implemented.

Recommendation x.

51. *GRECO recommended that an adequate system of protection for those who, in good faith, report suspicions of corruption within public administration (whistleblowers) be instituted.*
52. The authorities of San Marino indicate that the draft Code of conduct mentioned under recommendation ix introduces a duty for public officials to submit complains and reports to their supervisor, the judicial authority or the police, when they are asked to act illegally or contrary to the principles of ethics and sound administration, when they become aware of violations to the Code by other officials or when they otherwise suspect or know of an illegal or criminal activity concerning the administration. The administration is required to ensure that the reporting public

official who acts on reasonable suspicion and in good faith, does not suffer any drawback as a result of a report or disclosure. His/her identity may be kept confidential by the administration and by the judicial authorities possibly involved unless this contradicts the right of the defence of the reported person or the identity is declared essential for the investigation / prosecution of the crimes.

53. GRECO welcomes that in the future Code of conduct, provision is made for the protection of whistleblowers within the administration. It invites the authorities to ensure that the protection obligation lying upon the administration is adequately detailed and translated into concrete duties for the employer and/or rights and measures to the benefit of the whistleblower. Otherwise, an excessively general protection obligation placed on the administration could remain little effective in future, when the Code is adopted and enters into force.

54. GRECO concludes that recommendation x has been partly implemented.

Recommendation xi.

55. *GRECO recommended 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.*

56. The authorities of San Marino indicate that Law n°188 of 5 December 2011, which was mentioned as a recent initiative taken at the time of adoption of the Evaluation Report, has now become effective. The Directorate General of Public Function (DGPF), set up by this law with the responsibility for organisation, planning and control over the entire public sector in San Marino, became fully operational in November 2013 with the appointment of its head and staff and the allocation of a specific budget. The Town Planning Office, which is responsible for the granting of building licences, is subject to the audit and inspections of the DGPF; the latter can thus verify whether the procedures are correctly applied. The scope of its supervision also extends to the way the Director of the Office performs his/her tasks.

57. GRECO considers that in the light of the new developments concerning the Directorate General of Public Function, especially the information provided as to the scope of its supervision, the second part of the recommendation has thus been addressed. This is a positive achievement. A risk-assessment of the decision-making process for the delivery of building licences still needs to be carried out, for this recommendation to be considered fully implemented.

58. GRECO concludes that recommendation xi has been partly implemented.

Recommendation xii.

59. *GRECO recommended 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.*

60. The authorities of San Marino report that as a result of the above recommendation and input from other international bodies, Law no. 99 of 29 July 2013 on Liability of legal persons was adopted. It repealed the existing legislation of January and May 2010, which clearly lacked effectiveness. Article 1 and Article 2 of Law no. 99 provide for two situations where any entity or company or association whether registered / recognised or not, as well as a public body carrying out

economic activities, can be held liable for a criminal offence: a) the offence was committed on behalf of the entity or in its interest by a person acting intentionally who had the power to act for the legal person; b) the offence was made possible because of an organisational failure attributable to the legal person, to a lack of supervision or control by a natural person, or the offence was committed upon an instruction from one of the entity's leading body or a person vested with managerial functions. Other circumstances are contemplated as well, for instance when the offender has not been identified, or s/he cannot be subject to prosecution or punishment (Article 4, paragraph 3). The liability of a legal person can be sought also in case of statutory changes such as a merger (Article 2, paragraph 2) and in any case it shall not preclude that of natural persons who actually committed the offence (Article 4, paragraph 2). An unofficial translation in English of the full text of Law no. 99 was made available to GRECO.

61. GRECO takes note of the above reform, which clearly addresses the concerns which had led to this recommendation.
62. GRECO concludes that recommendation xii has been implemented satisfactorily.

Recommendation xiii.

63. *GRECO recommended 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.*
64. The authorities of San Marino report that as indicated for recommendation ii, the Government has decided on 3 June 2014, to conclude through the University of San Marino a formal collaboration agreement with the University of Urbino, Italy, to promote and implement, as a priority, training i.a. for members of the Police Forces, professionals and magistrates in relation to the recent reform on the liability of legal persons.
65. GRECO notes with interest the above recent decision of the Government. However, since no tangible measures have been taken to date, it concludes that recommendation xiii has not been implemented.

Recommendation xiv.

66. *GRECO recommended to consider amending legislation in order to expressly exclude tax deductibility of bribes or other expenses linked to corruption offences.*
67. The authorities of San Marino report that in order to fully provide for the non-deductibility of bribes and other expenses linked to corruption offences, the III Permanent Parliamentary Commission of San Marino Parliament approved on 19 April 2012, in its reporting function, a draft law submitted by the Government and entitled "Legislation on general income tax". In two distinct articles, the draft law expressly excluded tax deductibility of bribes both for natural and legal persons. Due to the Government crisis mentioned in the answer to Recommendation i, the legislative procedure could not be completed. In July 2013, the new Government therefore sent to Parliament a new draft. This led to the adoption of Law no. 166 of 16 December 2013 "General Income Tax", which expressly precludes the fiscal deductibility of bribes. With regard to the taxation of corporate income of natural persons (Chapter V of Law no. 166 of 16 December 2013), Article 33 paragraph 5 provides that in determining the taxable amount "costs or expenses linked to facts, conducts or activities categorised as an offence shall not be tax deductible". The same wording is

used concerning the taxation of legal persons' corporate income (Chapter II of Law no. 166 of 16 December 2013) in accordance with Article 49 paragraph 5.

68. GRECO takes note of the above clear-cut amendments, which have introduced a clear ban on the deductibility of corruption-related expenses.

69. GRECO concludes that recommendation xiv has been implemented satisfactorily.

Recommendation xv.

70. *GRECO recommended 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.*

71. The authorities of San Marino indicate that Article 11 of Decree Law no. 36 of 24 February 2011 had already conferred greater powers to the San Marino Tax Office for the accomplishment of its control activity. Law no. 166 of 16 December 2013 - "General Income Tax" (see also the information provided under recommendation xiv above) has redefined the tasks of the Tax Office which is now responsible for determining the income subject to taxation and the imposition of sanctions (instead of two commissions appointed by Parliament, as it was the case previously). Article 106 of Law no. 166 lists the powers and functions of the Tax Office, including: a) its ability to carry out on-site inspections and controls of locations where economic activities are conducted; b) its access to accounting records, acts and documents kept by tax payers (including archives and information kept in electronic format); c) its ability to collect any other information on the economic and financial situation on taxpayers' income from the Tax Collecting Service and from any other public administrative office and foreign authorities; d) the ability to obtain financial information from banks and financial institutions and to consult databases kept by public sector entities; e) the ability to obtain, through income tax returns important indirect information about the assets held also abroad, including through legal entities.

72. Finally, Law no. 166 of 16 December 2013 also establishes that whenever the Tax Office detects facts which may constitute a criminal offence, it shall promptly transmit all relevant documents and acts to the judicial authority, together with a report on the activity carried out.

73. The authorities underline that generally speaking, training is of paramount importance for the San Marino Administration. To this end, Article 149, paragraph 9 of Law no. 166 of 16 December 2013 assigns to the Government the task of promoting initiatives aimed at reorganising and re-qualifying the Tax Office personnel, with special reference to the start of staff training plans.

74. In the latest information communicated, the authorities of San Marino indicate that on 5 June 2014, the Department of Finance and Budget formally adopted a text entitled "Implementing and Operational Guidelines for San Marino examiners in the fight against corruption". These guidelines draw inspiration from the "OECD Bribery Awareness Handbook for Tax Examiners". A first training day addressed to the tax officials responsible for controls and focused on these guidelines is scheduled for 12 June. Further training days will be determined on that occasion.

75. GRECO takes note of the above information. It recalls that the Evaluation Report (paragraph 222) had pointed to the existence of concerns regarding the existence of shadow / shelf companies (i.e. entities without real activity) and that in this context the tax authorities appeared to be

unprepared to deal with suspicious financial activities and accounting records which may shield corruption and other related offences. In particular: a) there was no specific obligation for the tax authorities to report such suspicious activities; b) tax authorities did not seem sufficiently aware of the important role they could perform in preventing, detecting and reporting corruption offences; c) no specific training and guidelines had been provided to tax officials in this area, nor risk analyses performed to identify the actual problems; d) tax authorities usually do not perform on-site inspections on taxpayers, allegedly due to lack of sufficient resources.

76. It would appear that the changes made in December 2013 have the potential to strengthen the control function of the fiscal services. Together with the introduction of a clear duty for these to report suspicions of crimes to the prosecutorial authorities, important prerequisites are now in place for a greater involvement of the tax authorities in the uncovering of illegal financial activities. As for the practical measures addressed in this recommendation, GRECO welcomes the recent adoption of guidelines to assist tax examiners in the recognition of bribery offences and the early efforts in the area of training. However, it is premature at this stage to assess positively these training efforts overall. .

77. GRECO concludes that recommendation xv has been partly implemented.

Recommendation xvi.

78. *GRECO recommended to review and strengthen the applicable sanctions for account offences in order to ensure that they are effective, proportionate and dissuasive.*

79. The authorities of San Marino state that in order to implement this recommendation, the recent Law no. 166 of 16 December 2013 (see previous recommendation), in particular its Title XI "Violations and sanctions" (Articles from 135 to 145) and Title XII "Amendments to the Criminal Code" (Articles 146 and 147), amend and increase, in most cases, the existing sanctions. Law no. 166 has also substantially modified Article 389 of the Criminal Code by widening the range of conducts which constitute a tax evasion offence and by abolishing the mechanism of non-prosecution agreements in this area (which allowed to terminate criminal action when the offender agrees to pay within 90 days an amount corresponding to the evaded taxes and the administrative fines s/he would have been liable to).

80. With particular reference to violations in Article 71 of the former General Income Tax Law (Law no. 91 of 13 October 1984), the fine ranging from 25.82 to 154.94 EUR had been pointed out in the Evaluation Report as an example of inappropriate sanctions. This fine was increased by Article 11 of Decree Law no. 36 of 24 February 2011 and, lastly, by Article 139, paragraph 1), letter k) of Law no. 166 of 16 December 2013, which provides for the imposition of a fine from 2,000.00 to 15,000.00 EUR in case of non-compliance with the orders, requests and summons made by the Tax Office under the present legislation.

81. In their latest comments, the authorities also indicate that the Government adopted in its sitting of 10 June 2014, a Decree-Law on "Urgent provisions to prevent and combat corruption offences", which was promulgated and entered into force on 16 June. It increases the administrative pecuniary sanctions envisaged for irregular, omitted or false bookkeeping to make these more dissuasive (letter h. revised of Article 139 Law no.166): the upper level of fines was raised from 15,000 to 50,000 EUR and a fine applicable to legal persons in the range of 5,000 to 75,000 EUR was introduced. At the same time, a new article 140bis was introduced, which provides for penal

sanctions (fines or imprisonment) in case of a) failure to keep or retain accounting records, b) counterfeiting, altering or destroying accounting record or providing false statements therein.

82. GRECO takes note of the above and considers that the various improvements made to the system of sanctions for account offences address the underlying concerns of the recommendation.
83. GRECO concludes that recommendation xvi has been implemented satisfactorily.

III. CONCLUSIONS

84. **In view of the above, GRECO concludes that San Marino has implemented satisfactorily or dealt with in a satisfactory manner less than a third of the sixteen recommendations contained in the Joint First and Second Round Evaluation Report.**
85. Recommendations viii, xii, xiv and xvi have been implemented satisfactorily, and recommendation vi was dealt with in a satisfactory manner. Recommendations i, ii, iii, iv, v, vii, ix, x, xi and xv have been partly implemented. Recommendation xiii has not been implemented.
86. The reform process has been fairly slow in order to comply with the recommendations issued by GRECO. To date, almost all areas subject to recommendations have been dealt with, but only for a few of them decisive measures have been taken to fully implement them: guidance for the seizure/confiscation of cash by police officers, the recruitment and advancement in the public sector, the liability regime applicable to legal entities, the explicit exclusion of tax-deductibility of expenses related to corruption, and sanctions for account offences. It is of course encouraging to see that a number of reforms and projects, often wide-ranging, are still on-going. For instance, San Marino has initiated an ambitious reform of the administration and of the tax system. In this context, a variety of pertinent improvements are still expected such as the adoption of a Code of conduct for public officials. GRECO is also pleased to see that determined steps are being taken to carry out assessments of the situation and characteristics of corruption in the country, and to raise the awareness of the population in an area which is fairly new in San Marino. GRECO encourages the country to pursue vigorously the reforms engaged so as to achieve as soon as possible a number of tangible results.
87. GRECO invites the Head of the delegation of San Marino to submit additional information regarding the implementation of recommendations i, ii, iii, iv, v, vii, ix, x, xi, xiii and xv by 31 December 2015.
88. GRECO invites the authorities of San Marino to authorise, as soon as possible, the publication of the report, to translate it into the national language and to make this translation public.