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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

**SELECT COMMITTEE OF EXPERTS ON THE EVALUATION
OF ANTI-MONEY LAUNDERING MEASURES**

MONEYVAL

***SECOND ROUND EVALUATION REPORT ON
SAN MARINO***

SUMMARY

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San Marino was the 15th country to be evaluated in the second round. It received the visit of the evaluation team from 2 to 5 April 2003

San Marino has a small territory and it is an “open country”, without border controls. As regards the free movement of capital for instance, under the 1991 Financial and Currency Agreement between San Marino and Italy, both countries are in a currency union. This means that, from the “currency” perspective, there is mutual recognition of the free movement of capital (Italian financial products and means of payment are valid also in San Marino). Under an ad hoc San Marino-EC agreement, San Marino adopted the Euro as legal currency.

Because of its size, the Republic of San Marino does not experience common forms of domestic organised crime. The number of domestic money-laundering related offences is very small. This can be ascribed to the fact that no cases concerning drugs or arms trafficking, kidnapping, robbery or bag-snatching have been reported. Only one single case of bankruptcy has been reported. The rate of criminality is rather low compared to other countries and in particular to Italy. In spite of that, San Marino has been experiencing some new form of micro criminality (such as burglary and other forms of thefts) coming essentially from outside the country. This is due notably to the open country situation.

The most serious crimes recorded for the year 2002 were the following:

Fraud	36
Mark Counterfeiting	11
Possession of Drugs	12
Smuggling	1
Extortion	3
Bankruptcy	1

There have been some changes since the first evaluation round, even if the preventive mechanism instituted in December 1998 by the Law on Anti Money Laundering and Usury, has not been amended since then.

As far as legal aspects are concerned, and pending the entering into force of the draft Law N°28 on “Provisions on Anti-Terrorism, Anti-Money Laundering and Anti-Insider Trading”¹, the provisions in place were mostly the same as at the time of the first evaluation round. The criminalisation of money laundering has not been tested yet (no final decision in such a case has been rendered, though some investigations are under way). As a consequence, most recommendations from the first round were standing and San Marino needs to adopt provisions to cover indirectly obtained “money” and self laundering. The evaluators also found that San Marino should consider criminalise negligent money laundering and failure to report knowledge or suspicions of money laundering. They also found that San Marino should review the adequacy of the administrative sanctions against legal persons provided for in the

¹ it was adopted after the visit, on 26 February 2004.

anti-money laundering law, and ensure that the legal provisions on tipping off are comprehensive enough.

The provisions on seizure and confiscation have not been revised, nor applied at the time of the second evaluation, apart from cases involving goods the possession of which was illegal or dangerous. Here too, the examiners mainly reiterated the recommendations from the first round, that is: to consider introducing a non penal confiscation procedure of the nature of an action “in rem” (with a lower onus of proof) to enable the authorities to confiscate proceeds in all circumstances. They also suggested to review the legislation in order to make sure that indirectly obtained proceeds can be confiscated as well. Concerning temporary measures, it was suggested that the authorities of San Marino should continue to monitor the situation and any developing case law in this field, so as to be able to intervene legislatively to correct any problems that might arise.

It was noted that significant progress has been made in the area of international cooperation with the ratification of several international instruments. To fully comply with the obligations deriving from these instruments, their full implementation is necessary. San Marino was invited, in particular, to consider introducing in the domestic legislation provisions on assets sharing.

Turning to the financial aspects, it was found that the prevention and fight against money laundering urgently needs to be made more effective by bringing the professions and entities, including insurance agencies, liable to suspicious transaction reporting and the other anti-money laundering obligations into line with the 2nd EC Directive.

Concerning the role of the Office for Banking Supervision, which also performs the tasks of an FIU, the examiners welcomed the increase of the technical and human means. They found that the institutional set up could be improved by creating a special unit at the OBS to deal exclusively with FIU issues. The examiners further recommended that all banks and non-bank financial institutions be subject to regular, i.e. yearly, supervision by the OBS (or the Central Bank when roles are separated) regarding their implementation of anti-laundering provisions.

The formal introduction in 2003 of the institution of the money laundering compliance officer, as a central element in the preventive field, was a significant improvement. On the other side, it was found that the current duty to report promptly suspicious transactions is lacking definite time limits for doing this. It was therefore recommended that the duty to report suspicious transactions be put in line with art.7 of the 2nd EC Directive.

The keeping of customer identification is provided for in the legislation of San Marino, but without clear periods of time. It was therefore recommended that it be made clear by the OBS circular that the time required for keeping customer identification records is five years after closing the account or after otherwise terminating the business relationship with the customer.

On the issue of customer identification in relation to certain financial products, the examiners recommended to phase out bearer passbooks from San Marino's savings practice and transform the underlying records into current accounts. They also suggested that the issue of anonymous joint-stock companies be addressed.

Finally, concerning the law enforcement side and operative measures, the examiners welcomed the creation of a new police body (called Nucleus) specialised in the investigation of economic crimes (it will also deal with money laundering cases). Nevertheless, it was found that the role of the police is not pro-active enough when it comes to money laundering investigations and the targeting of assets. The examiners also invited San Marino to provide more training on these issues, as well as adequate technical equipment.

Overall, the examiners noted with satisfaction that the authorities of San Marino were achieving encouraging results. They invited the country to complete the domestic process of harmonisation with the relevant international standards.

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