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(CDPC)

COMMITTEE OF EXPERTS ON THE EVALUATION OF ANTI-MONEY LAUNDERING MEASURES AND THE FINANCING OF TERRORISM
(MONEYVAL)

THIRD ROUND DETAILED ASSESSMENT REPORT ON SAN MARINO[1]

COMBATING MONEY LAUNDERING AND THE FINANCING OF TERRORISM

EXECUTIVE SUMMARY

Memorandum
prepared by the Secretariat
Directorate General of Human Rights and Legal Affairs

[1] As adopted by MONEYVAL at its 26th Plenary Meeting (Strasbourg, 31 March – 4 April 2008).

EXECUTIVE SUMMARY

I. Background information

1. This report provides a summary of the AML/CFT measures in place in San Marino as at the date of the on-site visit which was undertaken from 4 to 10 March 2007, or immediately thereafter. It describes and analyses the measures in place, and provides recommendations on how certain aspects of the system could be strengthened. It also sets out San Marino's levels of compliance with the FATF 40 + 9 Recommendations.

2. San Marino is a parliamentary republic headed two Captains Regents. The legislative power resides in the Great and General Council, a unicameral legislature which has 60 members elected for a term of 5 years, under a proportional representation system in all the administrative districts. The Government - the Congress of State (*Congresso di Stato*), is politically answerable to the Great and General Council, and is composed of 10 Secretaries. (ministers), appointed by the Great and General Council from among its members.

3. By reason of its geographical location, San Marino maintains close bilateral relations and co-operation with Italy, notably through a friendship and good neighbourliness agreement (concluded in 1939 and subsequently amended) and a currency and customs union, subsequently followed by the 1991 co-operation and customs agreement with the European Community. Under the 1991 Financial and Currency Agreement between San Marino and Italy, there is free movement of capital and mutual recognition of financial products and means of payment between the two countries.

4. The authorities indicated that the money laundering situation had remained virtually unchanged and that laundering in San Marino almost always related to transactions conducted by non-residents who attempted to use the national financial system to launder proceeds obtained from crimes perpetrated outside San Marino. Some forms of micro-criminality originating from abroad have been experienced more frequently in the past years, but no evidence was found of criminal groups or organisations located in San Marino and involved in money laundering operations. Since 2003, there were four investigations and one conviction for money laundering. No terrorist financing activities have so far been recorded in San Marino.

5. Since the last evaluation visit in April 2003, a number of important legislative and institutional changes have occurred. On the legislative side, several relevant laws were adopted (such as in 2004 the Law No. 28 on anti-terrorism, anti-money laundering and insider trading; in 2005 new legislation on trusts and new legislation on companies and banking, financial and insurance services, in 2006 a new corporate law), some of which aimed at strengthening the domestic banking and financial system, including the anti-money laundering legal framework, and increasing transparency of companies and trusts. Institutionally, the Central Bank of San Marino (CBSM) was established through the merger between the former San Marino Credit Institute (which was vested with similar functions to those of a Central Bank) and the former Office of Banking Supervision (OBS).

I. Legal systems and related institutional measures

6. The money laundering (ML) offence is criminalized under article 199bis of the Criminal Code, as amended in 2004 and is based on an all crimes approach. The provision appears to be basically in line with international standards. The physical and material elements of the offence broadly cover the requirements of the United Nations Convention against Illicit traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) and the United Nations Convention against Transnational Organised Crime (the Palermo Convention). Under paragraph 1 of article 199bis the actions of concealing, substituting and transferring money knowing that

such money is proceeds are incriminated. Also, under 199bis (2) the use of money knowing that such money is proceeds is incriminated. The simple acquisition and possession of property known to be proceeds do not appear to be explicitly covered by article 199bis and the authorities advised that this would be covered by article 199 (Sale of stolen property) covers the simple acquisition or possession for cases when the offender acted for the purpose of making profit. In addition article 362 (abetting) covers cases where a person assists someone "to elude the authorities or to keep the product or profit of the crime" (with the exception of ascendants, descendants and spouse). The offence does not explicitly provides that both direct and indirect proceeds of crime are covered. All designated categories of offences listed in the FATF Glossary are included in the Criminal Code with only two exceptions (piracy, smuggling in persons).

7. The offence of money laundering is a wilful offence. In the 1998 version of the offence, the mental element was "*knowing or should have known that such money is proceeds*". This is no longer the case in the 2004 amended version, which now refers only to the "knowledge". Self laundering or negligent money laundering are not covered.

8. The intentional element of the offence of ML is in practice inferred from objective factual circumstances. The case-law has established that "*criminal intent (dolus) may not be grounded on presumption, yet evidence thereof (inherent to a mental or psychic element) is in most cases and by its very nature corroborated by forms of manifestation, materialization – so to speak – elements or objective circumstances that denote such intent*" (Judge of Appeal, 8 April 1999, in criminal proceeding No. 164 of 1997; Id. 15 June 1998, in proceeding No. 585 of 1997).

9. Legal persons cannot be held criminally liable for money laundering, nor are legal entities subject to civil or administrative sanctions.

10. As regards criminal sanctions for natural persons, the punishment is imprisonment of second degree (6 months to 3 years) and a second degree fine "by the day" (10 to 40 days), the amount to be paid being determined by the judge on the basis of what the person can afford (see article 85 of the Criminal Code). The sanction can also entail a 3rd degree disqualification (1 to 3 years) from public offices and political rights. The sentence can be reduced by one degree (imprisonment from 3 months to 1 year) and a fine (1 to 20 days) depending on the amount of money and nature of transactions or increased by one degree (imprisonment from 2 to 6 years and a fine by the day of 20 to 60 days) if the offence was committed in the exercise of a economic or professional activity which is subject to licensing by the competent public authorities or if the offender is a usurer. Where penalties for the predicate offence are lower than for money laundering, the launderer is imposed the lower penalty (i.e. of the predicate offence).

11. The 2004 ML offence has been tested successfully for the first time in 2005, and three defendants were convicted for money laundering, with sanctions ranging from 3 months to 1 year imprisonment.

12. The evaluators formulated a number of recommendations to improve the present incrimination of money laundering and also to enhance the effectiveness of its prosecution. On the basis of statistics provided, they considered that the implementation aspect appeared to be quite unsatisfactory and this needed to be addressed by the San Marino authorities through a firm prosecution policy. They also recommended to review the legislation to ensure that natural and legal persons are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions for money laundering and to consider increasing the level of sanctions.

13. The Law No. 28/2004 on provisions on anti-terrorism, anti-money laundering and anti-insider trading introduced in the Criminal Code a new article 337 bis entitled "Associations for the purpose of terrorism or subversion of the constitutional order" under Chapter IV – Offences against the State. This provision has never been applied in practice. The evaluators considered

that this provision does not cover the requirements of Special Recommendation II. It is thus recommended that an autonomous offence be introduced in the Criminal Code which would cover the financing of terrorism, terrorist acts and terrorist organisations in line with the requirements of the International Convention for the Suppression of the Financing of Terrorism. Also criminal liability for financing of terrorism (FT) should be extended to legal persons and such persons should be subject to effective, proportionate and dissuasive criminal sanctions for FT.

14. As regards provisional measures and confiscation, the system in place in San Marino seems to enable sufficient actions even though the following amendments to the legislation should be considered by the authorities. Equivalent value confiscation should be considered also for offences other than ML or crimes committed for the purpose of terrorism or subversion of the constitutional order . The legal powers of competent authorities to identify and trace proceeds need reviewing, in particular those of the financial intelligence unit (FIU), so as to enable it to block or freeze assets other than those held or maintained within banks or financial intermediaries. The possibility to void contracts or other similar actions should be provided for in the legislation. The authorities reported that in 2003, in a single money laundering case, property seized amounted to € 1 892 700 and in 2005, subsequent to conviction, the whole amount was confiscated. In 2007, property seized amounted to around €11 million in one case. Despite this significant confiscation, the evaluators have not received sufficient data on which to base a judgment on the effectiveness of confiscation generally in proceeds generating offences. In the absence of supporting data, the evaluators are concerned that in such proceeds generating cases there could be a lack of financial investigations into proceeds, such as would lead to confiscation orders.

15. San Marino has taken steps to ensure compliance with the United Nations Security Council Resolutions, however the legal framework for the implementation of UN sanctions remains incomplete and needs to be reviewed. There is no designating authority for 1373. The Supervision Department 1 of the Central Bank circulates the lists and informs of any updates. No guidance, of which the evaluators were aware, was provided to the banking and financial institutions on their obligations to take actions under freezing mechanisms and the procedures to be followed. The authorities should also ensure that the mechanism applies to all targeted funds or other assets as described in the UN resolutions of individuals, groups and legal entities. Financial institutions are checking the lists but it remained unclear when this is actually taking place. The evaluators recommended also that the supervisory authority should be actively checking compliance with SR.III and that the legal framework for imposing administrative sanctions should be reviewed to adequately enable it to sanction failure to comply with the obligations. Also clear and publicly known procedure for de-listing and unfreezing requests; and appropriate procedures authorizing access to frozen funds for necessary basic expenses, payment of certain fees, service charges or extraordinary expenses should be established.

16. As regards the FIU, evaluators of the previous two evaluation rounds had considered that the multiplicity of functions of the former Office for Banking Supervision prevented it from playing effectively its role as an FIU and they had recommended that a separate structure be created to deal exclusively with FIU issues or that its resources be strengthened with regard to its anti-money laundering functions. The institutional changes which were initiated in 2003 and finalised in 2005 (ie. the reorganisation of the Central Bank, the adoption of its administrative organisational structure) addressed some of the concerns raised previously. However, the evaluation team considered that an important number of improvements are necessary in order to meet the requirements of Recommendation 26.

17. The evaluators considered that there is no comprehensive legal text indicating the powers and duties of the financial intelligence unit. The authorities advised that all the functions, powers and prerogatives previously assigned by law to the Supervision Division, the former Office for Banking Supervision and *Instituto di Credito Sammarinese* were assigned to the Central Bank

(article 49 of the Statutes of the Central Bank) which is the financial intelligence unit. Operationally speaking, the FIU's functions on daily administrative matters were carried out by the *Servizio Antiriciclaggio* (the Anti-Money Laundering Service), an administrative unit within the Supervision Department 1 of the Central Bank. The current situation raised several concerns in the view of the evaluation team, which led them to recommend that the current institutional set up of the FIU be revisited and that specific legislation should be adopted which clearly states and defines the functions, responsibilities, powers of the FIU as an independent agency, irrespective of whether it is established as an independent governmental authority or within another entity. Another improvement to be made concerns the number of FIU staff and their functions. Additional concerns related to the absence of a mandatory reporting obligation of suspicious transactions related to FT (with the exception of lists of designated or suspected terrorists), the insufficiently detailed and precise guidance issued on procedures to be followed and information to be provided for STRs purposes, some issued regarding access to information held by all reporting entities, the risk of FIU related information and correspondence being accessible to unauthorised persons, the absence of public period reports containing information regarding its activities, information on typologies and trends in ML and FT.

18. San Marino has designated authorities to investigate ML and FT offences and equipped them with necessary powers. However the evaluators are reserved on the effectiveness and efficiency of the framework for the investigation and prosecution of offences, and more specifically ML offences. It is strongly advised that the San Marino law enforcement authorities start playing a more active role in AML/CFT efforts. The successful outcome of the investigation in 2007 demonstrates the importance of coordinated actions at national level and such promising efforts should be further pursued. A more pro-active approach should be adopted in investigating and prosecuting money laundering, putting focus more on the financial aspects of major proceeds generating crimes as a routine part of the investigation.

19. Though there are measures in place to provide competent authorities with a basis for the use of a wide range of investigative techniques when conducting ML or FT investigations, it is surprising to note that the authorities did not have the opportunity yet to make use of such tools. The law enforcement and judicial authorities' competencies in AML/CFT should definitely be strengthened, in particular through training developed and/or continued, placing an emphasis on the systematic recourse to financial investigations, the use of existing tools and investigative techniques, analysis and use of computer techniques.

20. The evaluators also believe that there needs to be a more in-depth analysis of the phenomenon of and trends in money laundering and terrorism financing.

21. San Marino is an enclave in Italy. It has no airport or railway station, the only access is possible by road through Italy. Given the historical context and the existing treaty provisions between Italy and San Marino, there was never a physical border with customs officers between the two States. Under the Treaty of 1939 with Italy (Article 44-52), San Marino is considered as part of the Italian customs area. The 1939 treaty provides for the freedom of movement of goods and products of any kind (including cash, securities and other monetary instruments) between the two countries, as such San Marino and Italian residents do not have any declaration obligation. Any foreign citizen travelling to San Marino via Italy have first to comply with the Italian laws and regulations and declare the physical transportation of cash, securities and other monetary instruments (above €12.500). There are no measures in place in San Marino which would enable to detect the physical cross-border transportation of currency and bearer negotiable instruments, to stop and restrain it in case of suspicion of ML or FT and to apply appropriate sanctions. Furthermore, the authorities did not seem to have undertaken any analysis or consideration of potential measures which could to be taken, either at national level or in co-operation with the Italian authorities, to comply with SR. IX.

II. Preventive measures – financial institutions

22. The preventive AML/CFT legal framework is covered by the AML Law No. 123/1998 as supplemented by Law No. 28/2004 together with Law No. 165/2005 on companies and banking, financial and insurance services and Decree no. 71/1996 on AML provisions . Also a number of circulars and standard letters on AML/CFT preventive requirements were issued by the former Office for Banking Supervision (until 2003) and by the Central Bank of San Marino (CBSM).

23. The San-Marino AML/CFT system currently in place has not been based on a risk assessment of the financial sector by the authorities, as envisaged in the revised FATF 40 Recommendations.

24. On the basis of the definition of activities conducted by a financial institution within the meaning of the 40 FATF Recommendations, the financial institutions operating in the Republic of San Marino are the following: banks; financial companies; Post Offices (which are State-owned); credit recovery on behalf of third parties; financial promoters and insurance promoters; and agencies of Italian insurance companies and insurance brokers selling solely insurance policies based on Italian law.

25. The FATF Recommendation defines the basis on which AML/CFT measures are to be set out in law, regulation or other enforceable means. In assessing the requirements in San Marino for customer due diligence (CDD), the evaluators have considered that the laws, decrees and Congress of State Decisions qualify as "law or regulation" as provided by the Methodology, and any other regulations, circulars, instructions, standard letters of the supervisory authority (previously the Office for Banking Supervision followed by the Central Bank) qualify as "other enforceable means". Such documents are binding and include general provisions which implement and supplement the provisions of the law and its implementing decrees.

26. The evaluators found that a number of the basic obligations of Recommendation 5, which need to be implemented by law or regulation were not provided for in legislation or regulations issued or authorised by a legislative body. In particular, while banks and financial companies are required to undertake identification measures in number of specified situations, there is no obligation in the law to carry out identification when there is a suspicion of money laundering or terrorist financing or when the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data. Furthermore the other elements of CDD are not required by law (e.g. beneficial ownership, and where necessary the source of funds). Additionally, the threshold applied to transactions is €15,500 rather than €15,000 limit referred to in FATF Recommendations.

27. As regards bearer passbooks, while there is regular identification of the bearer upon issuance, conduct of transactions and closure of passbooks, the facility to transfer such passbooks anonymously poses a significant challenge for banks to ensure that they conduct ongoing due diligence on these passbooks throughout the business relationship with the person presenting themselves as the bearer.

28. The following requirements to verify customers' identity are not in the current legislation and should be provided for:
    - use reliable, independent source documents, data or information;
    - verify that any person purporting to act on behalf of the customer (for customers that are legal persons or legal arrangements) is so authorised, and identify and verify the identity of that person;
    - identify the beneficial owner and take reasonable measures to verify the identity of the beneficial owner using relevant information or data obtained from a reliable source such that the financial institution is satisfied that it knows who the beneficial owner is;

- determine whether the customer is acting on behalf of another person, and then take reasonable steps to obtain sufficient identification data to verify the identity of that other person;
- conduct ongoing due diligence on the business relationship, which includes scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer, their business and risk profile, and where necessary, the source of funds.

However, some of the above requirements are currently included in circulars which have been issued by the Central Bank.

29. At the time of the evaluation visit, the provisions on customer identification, record maintenance and reporting requirements for post offices, credit recovery on behalf of third parties, financial promoters and insurance promoters and agencies of Italian insurance companies and insurance brokers had not been implemented, as no provisions were issued by the CBSM as required in the law.

30. A comprehensive definition of beneficial owner, as provided for in the Glossary to the FATF Recommendations, incorporating the concept of identifying the natural persons who ultimately own or control the customer needs to be included in relevant legislation.

31. There are no specific requirements in San Marino AML laws or regulations with regard to politically exposed persons. San Marino has not implemented Recommendation 7 through enforceable means. Also San Marino AML legislation and regulations do not include enforceable requirements on non-face to face business relationships or transactions nor do they require financial institutions to have policies in place to prevent the misuse of technological developments for ML/FT purposes, and to have policies in place to address specific risks associated with non face to face transactions.

32. Currently the AML Law does not provide for third party reliance in the performance of customer identification or for introduced business but neither does it prohibit it, even though in practice this situation does not occur.

33. Banking secrecy is an important component of San Marino's financial services business. The evaluators recommended that the AML Law should clearly lift bank secrecy, not only for STRs in respect of money laundering, but also in particular in the context of the ability of competent authorities to access information required in the performance of their AML/CFT functions and of the sharing of information between competent authorities, either domestically or internationally.

34. Under the AML Law No. 123/1998, financial institutions are required to record and keep for 5 years customer identification data and transaction data. The obligation that records of the identification data, account files and business correspondence should be kept for at least five years after the closure of the account or termination of the business relationship will have to be included in law or regulation. There are no provisions in the AML law that require financial institutions to ensure that customer and transaction records and information are available on a timely basis to the competent authorities. Such provisions should be included in law or regulation.

35. The provisions of SR.VII on wire-transfers are not directly addressed in law or regulation. While in practice some measures are taken that cover certain limited elements of SR.VII, requirements need to be introduced to ensure that complete originator information is included in outgoing wire transfers and that beneficiary financial institutions adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by account number and address information. Also measures should be introduced to effectively monitor

compliance with any requirements introduced in relation to wire transfers and there should be specific sanctions in relation to obligations under SR.VII.

36. There are no explicit provisions that impose a direct obligation on financial institutions to pay special attention to all complex, unusual large transactions or unusual patterns of transactions. The circulars issued to date focus on the listing of indicators of and examples of unusual transactions. Under former OBS Circulars No. 26 & 16/F of 27 January 1999, banks and financial companies are required to analyse critically and periodically all transactions made by their customers by establishing closer relations with them for the purpose of detecting any laundering whenever such transactions are deemed to be suspicious and under former OBS Circular No. 33 of 12 February 2003, banks and financial companies are obliged to report any transaction suspected of money laundering, analysed on the basis of objective features of the transaction (such as type, amount and nature), of the customers' profile (economic capacity or background and business activity) and of any other information or circumstance they may have knowledge of because of their activity. However, there is no specific requirement in law, regulation or other enforceable means to examine as far as possible the background and purpose of such transactions and to set forth findings in writing.

37. The circular of 12 February 2003 sets out lists of indicators of unusual transactions which indicate objective criteria for institutions to use to identify unusual transactions and, together with other information in their possession, to carry out further investigation to assess the true nature of the operation. One of the items listed under the category '*Indicators of unusual transactions concerning all categories of transactions*' is transactions with counterparts established in geographical areas considered off-shore centres included in the list of NCCTs published by FATF or located in drug-trafficking and smuggling areas when such transactions are not justified by the customers business activities or by other circumstances. However, mechanisms should be put in place to facilitate financial institutions being made aware of the different degree of compliance by other jurisdictions with respect to the FATF standards.

38. The evaluators considered that the system put in place for the reporting of suspicious transactions needs reviewing to ensure that it meets all the requirements set out in Recommendation 13. The AML law should require financial institutions to report promptly to the FIU. Attempted transactions are not dealt with explicitly in the AML legislation. Circular No. 33/2003 indicates that even if a transaction has not taken place, but an intermediary has acquired sufficient elements of suspicion, reporting is in all cases mandatory. There is no standard form to report an STR. There is no obligation in legislation to make an STR where there are reasonable grounds to suspect or they are suspected to be linked or related to or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism.

39. STRs/ UTRs were received mainly from banks and a very few from financial institutions and statistics surprisingly indicate a decrease over time. Overall, the evaluation team considered that both the number of suspicious and unusual transaction reports received so far since the second evaluation round from the banks, and particularly from the financial companies, is low. The conversion rate from STRs to cases sent to the Court (1 or 2 out of maximum 15) suggests that the quality of reports must be rather poor. No STRs were reported on suspicions of FT. the evaluators questioned the awareness among reporting entities of their reporting obligations and their ability to recognise and report suspicious activities.

40. The situation as regards implementation of requirements of Recommendation 14 highlights issues which were already of concern in the first and second evaluation rounds and for which no changes have occurred. The San Marino authorities should ensure that legislation provides for an explicit legal prohibition of tipping-off. Such provision should cover financial institutions and their directors, officers and employees (permanent and temporary) and should prohibit from disclosing the fact that a STR is being reported or provided to the FIU. Legal protection of reporting entities for disclosures in good faith should be extended to cover reporting of

suspicions of financing of terrorism. There should be a clear legal provision excluding any kind of liability for breach of any restriction on disclosure of information imposed by contractual, legislative, regulatory or administrative provisions for persons reporting suspicions of financing of terrorism

41. The authorities advised that there has been no analysis undertaken regarding the feasibility and utility of a system where banks and other financial institutions would report all domestic and international currency transactions above a fixed amount to a national central agency.

42. No adequate and appropriate feedback is provided to reporting entities.

43. The requirements of Recommendation 15 were partially addressed by Circular of 12 February 2003. However there are no detailed requirements for financial institutions to establish internal procedures to prevent AML/CFT are contained in a law, regulation or other enforceable obligation. In particular there should be requirements to ensure that compliance officers and other appropriate staff have timely access to customer identification data and other CDD information, that financial institutions maintain an adequately resourced and independent audit function to test compliance and that there are screening procedures to ensure high standards when hiring employees.

44. While there are currently no financial institutions that have established operations abroad, provisions on AML/CFT requirements in respect of subsidiaries, branches or representative offices abroad should be included in future legislation or other enforceable means.

45. There is no explicit reference to shell banks in the law. The authorities advised that, arising from the legislation that is in place on establishing banks, they are not permitted and that there are no shell banks in San Marino. There are no specific provisions that prohibit banks or financial companies to enter into or maintain business relationships with shell banks. At the time of the on-site visit, there was no requirement for financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

46. In accordance with Law No. 96/2005 (Statutes of the CBSM) and Law No. 165/2005 (LISF), the "on-site inspection service", within the Supervision Department 2 of the Central Bank, is in charge of carrying out on-site visits. AML/CFT requirements (identification, registration, reporting requirements and internal auditing) are included in the issues dealt with by this service. In addition, the AML Service conducts on-site inspections on its own or jointly with the On-Site Inspection Service. The evaluators were concerned by the low level of on-site inspections carried out. Out of 12 banks and 42 financial companies, in 2005, 2 inspections (1 Bank, 1 Financial Company) and 2006 , 5 inspections (2 Banks, 3 Financial Companies) were carried out[2]. There were no inspections undertaken during 2003 and 2004 due to the work that was being undertaken during that period on the new CBSM structure. This important problem impacts on the assessment of the effectiveness of the preventive mechanism in the financial sector.

47. Powers to monitor and ensure compliance by financial institutions with AML/CFT requirements are vested in the CBSM under AML Law No. 123/1998 as supplemented by Law No. 28/2004, Law No. 96/2005 (Statutes of the CBSM) and Law No. 165/2005 (LISF). Such powers are set out in Article 34 of the CBSM Statutes (and are not limited to AML/CFT requirements), and Articles 39 - 44 of the LISF cover the areas of regulatory powers. While the Central Bank has adequate powers to monitor and inspect financial institutions, the effectiveness of these powers

[2] The authorities advised after the visit that in 2007, the On-Site Inspection Service carried out 4 inspections concerning supervision issues, including on AML/CFT matters (3 banks and 1 financial company) and 6 specific AML/CFT inspections (3 banks and 3 financial companies).

has not been fully tested to date due to the low level of inspections. Also, the effectiveness of the sanctions in place has not been fully tested in practice.

48. There is no comprehensive and updated guidance to assist financial institutions to implement and comply with AML/CFT requirements.

49. Overall, while the CBSM appears to be adequately structured and provided with sufficient technical resources, the level of staff resources assigned to the inspections area is not considered adequate, particularly for on-site inspection work.

50. In respect of AML requirements connected to the provision of MVT services, San Marino post offices comply with the rules applicable to the Italian postal service. Domestic AML/CFT implementing provisions legislation should be adopted as soon as possible in order to meet the requirements of Special Recommendation VI, criteria 1 to 6.

III. Preventive measures – designated non-financial businesses and professions

51. Most of the FATF designated Non-Financial Businesses and Professions (DNFBPs) currently operate in San Marino: real estate agencies, dealers in precious metals and stones, lawyers, notaries, accountants, auditors and trust and company service providers.

52. San Marino has brought a long list of DNFBPs within the remit of the AML legislation. The core obligations for both DNFBP and financial institutions are based on the same law (AML Law No. 123/1998 as amended by Law No. 28/2004)). However the AML/CFT preventive measures as described for financial institutions do not apply to DNFBPs, since the Central Bank has not issued the relevant implementing regulations yet. As a consequence, San Marino does not comply with the requirements of Recommendations 12, 16, 24, 25.

53. As regards supervision of DNFBPs, for the time being no regulation has yet been devised for the implementation of AML/CFT supervision over the new categories of obliged entities and persons. Consequently they are not supervised and monitored by designated competent authorities or self-regulatory organisations (SROs). Also sector specific guidance on suspicious transaction reporting needs to be developed and provided to DNFBPs required to make suspicious transaction reports.

54. San Marino has taken steps to extend AML/CFT requirements to some other categories of professions and activities. Regardless of the restrictions on the use of cash in amounts over €15.500 it is recommended that the San Marino authorities extend the AML/CFT framework in accordance to Article 2a(6) of the second EU Directive to all dealers in high value goods not only to antiques shops, dealers in precious metals and precious stones.

V. Legal persons and arrangements and non profit organisations

55. The main types of private legal persons in San Marino *are associazioni non commerciali riconosciute* (recognised non-commercial associations), *fondazioni* (foundations) and *società di capitali* (share capital companies). Both recognised non-commercial associations and foundations are part of the non profit sector. Under Law No. 130/1995, the non-profit sector also includes 2 non-profit credit organizations or undertakings which establish joint stock companies operating in the credit sector (*fondazioni bancarie*). Recognized non-profit associations and foundations are listed in a special record of private bodies corporate kept with the Court's Register. They are controlled and supervised by the Council of Twelve, which may if necessary appoint a special commissioner.

56. According to article 2 of the new Company Law No. 47/2006, companies must be established in one of the following forms: a) partnerships or b) companies limited by shares (anonymous

companies; joint stock companies; limited liability companies). In addition, under article 2(5) of the new Company Law, other corporate forms (hereinafter atypical companies) may be licensed when certain conditions are fulfilled. The acquisition of legal personality for companies is based on the registration in the Company Register, a public register held by the Court Registrar.

57. The San Marino legislation also provides for "partnerships among professionals" and cooperatives are specifically regulated under Law No. 149/1991, and more generally under the Company Law.

58. The evaluators considered that the San Marino legislation does not clearly provide for transparency on information on beneficial ownership and control of companies and have made a number of recommendations aimed at increasing transparency. Concerns arise in particular given the fact that in anonymous companies all shares can be bearer shares and that, in such a case, real owners of anonymous companies are not known when bearer shares are transferred. Information on natural persons holding bearer shares, which are transferred by consignment, do not appear in the Register.

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

60. Under article 1 of the new Company Law and article 3 of the LISF, a fiduciary is a company, authorized by the Central Bank of San Marino, holding "title to the assets of third parties in execution of a mandate without representation".

61. A trust legislation was enacted 2 years ago providing for the creation of trusts under the law of San Marino, namely Law No. 37 of 17 March 2005 on the trust institution as well as Law No. 38 on the tax treatment of trusts based on San Marino legislation. Further provisions were issued subsequently, which include Decree No. 83 of 8 June 2005 on record keeping requirements concerning the administration of trust assets, and Decree No. 86 of 10 June 2005 stipulating on registration in, maintenance and consultation of the Trust Register and certification of the Book of Events of trusts.

62. Only banking and financial institutions or fiduciaries may be authorised to act as trustee. Such trustees have to be authorised by the Supervisory Authority (the Central Bank) and are subject to supervision by the same. Nevertheless, if the trust has more than one trustee and at least one of them is an authorized trustee, the trustee office may also be held by natural persons. In such a case, the trustees act unanimously.

63. The legislation provides that a Trust Register is kept in the Office of the Trust Register (at the Industry Office) under the supervision of a judge delegated by the Executive Magistrate (article 9(1) of the Law on Trust). The evaluators noted that the magistrate responsible for the Trust Register was only appointed on 1st January 2007. The Register, though formally established by Law No. 37/2005, did not seem to be physically in place at the time of the on-site visit. Also it remained unclear when the five trusts established in 2005 under the new Trust Law were actually registered.

64. Additional steps need to be taken to ensure that legislation on trusts requires additional information on the beneficial ownership and control of trusts and other legal arrangements. In particular, there is no clear definition of beneficial ownership provided in the legislation, and information accessible in the Trust Register did not include details on settlors, administrators, and trustees.

65. The NPO sector primarily consists of associations (233), foundations (50) and non-profit credit institutions (2) all operating domestically. Furthermore, there are also 50 ecclesiastic entities and 7 trade unions or workers' associations, subject to the same registration requirements applicable to associations and foundations. These are under the supervision of the Council of

Twelve, which also authorises their purchasing of real estate and accepting of gifts, inheritances or legacies. A number of measures have been taken, as a matter of practice and by analogy to the existing requirements for companies, which led to the collection of certain information on registered entities, though there is no legal requirement in legislation for this purpose. No review of the adequacy of laws and regulations related to NPOs has been undertaken by the San Marino authorities nor any review of the sector's potential vulnerabilities to terrorist activities. There has been no outreach to the NPO sector.

VI. National and international co-operation

66. The evaluators noted with satisfaction the close co-operation and co-ordination that existed between the judiciary and the law enforcement forces as well as the consultation process between the Central Bank and banking and financial institutions. Operational co-operation between the Judiciary and the AML Service appeared to take place at a working level in specific cases under investigation. However, the evaluators were concerned as there appeared to be a lack of policy co-operation across all relevant competent authorities. No mechanism facilitating a regular and joint review or the AML/CFT system and its effectiveness by competent authorities was put in place and the absence of such a mechanism wass considered to be a serious weakness in the system.

67. As regards international co-operation, the evaluation team noted that some key international instruments signed several years ago are still not ratified (Palermo convention and additional protocols, European Convention on Extradition, European Convention on Mutual Assistance in Criminal Matters, etc).

68. San Marino ratified the 1988 the Vienna Convention, the 1999 Terrorist Financing Convention and the International Convention for the Suppression of Terrorist Bombings. San Marino signed the United Nations Convention against Transnational Organised Crime ("Palermo Convention"), and its two Protocols (New York, 2000), on 14 December 2000 but it has not ratified them yet. It has implemented, with some shortcomings as noted previously, the Vienna and the Terrorist Financing conventions and the provisions of S/RES/1267(1999) and S/RES/1373(2001).

69. San Marino has signed the European Convention on Mutual Assistance in Criminal Matters on 29 September 2000, but has not ratified it. It has ratified the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (CETS 141), with a number of reservations and declarations. Two bilateral agreements have been signed with Italy on criminal, civil and administrative matters (31 March 1939) and with France on criminal and civil matters (14 January 1954). The authorities indicated that most requests are submitted and responded under the 1939 agreement with Italy.

70. Legal assistance is provided by the judicial authorities of San Marino, usually through the services of the investigative judge, in response to a letter rogatory from a foreign country. In the context of CETS No. 141, the competent central authority is the Secretary of State for Foreign Affairs and for urgent cases, direct communication is possible in application of article 24 of the Convention. In the absence of a treaty, the processing of the letter by the judicial authorities requires the approval of the political authority on the basis of a legal assessment of the admissibility of the request undertaken by the judicial authorities. Such assistance may cover the production, search and seizure of information, documents, and evidence in general from banking and financial institutions, or other legal and natural persons; the taking of statements; obtaining evidence. Assistance may also be given where the state is seeking the identification, freezing, seizure and confiscation of property or proceeds laundered or intended to be laundered. The dual criminality requirement must be met as a precondition for granting mutual legal assistance or certain forms of such assistance

71. Certain shortcomings were identified which may render requests for assistance vein. As regards money laundering, it is likely that legal assistance is provided only where the offence of money laundering in the requesting state is based on actual knowledge and /or inferences drawn from objective circumstances but not if the offence is based on a "should have known" or negligence criterion". Moreover, certain cases of tax evasion (in-direct tax evasion) or self money laundering are not regarded as a criminal offence therefore San Marino can refuse mutual legal assistance in these cases. The existing domestic financing of terrorism offence appears insufficiently wide to render assistance for all types of financing of terrorism where dual criminality is required. In all cases, the predicate offence must also be an offence in San Marino. These issues have not been tested, and in these circumstances the evaluators had reservations as to how far all types of mutual legal assistance could be applied in particular cases of FT. The shortcomings identified in the context of the mechanism for freezing, seizing and confiscating are also relevant in the context of mutual legal assistance.

72. As regards extradition, San Marino has acceded to very few extradition agreements. San Marino signed the European Convention on Extradition on 29 September 2000, but has not ratified yet. It has concluded only 7 bilateral treaties on extradition with the following countries: Belgium (15 June 1903), France (30 April 1926), Italy (1939), the United Kingdom (10 October 1899), the Netherlands (7 November 1902), the US (10 January 1906), and Lesotho (5 October 1971). In the absence of a treaty, the authorities advised that a person may be extradited to the requesting country subject to the necessary political authority to proceed following a legal assessment of the request by the judicial authorities within the limits laid down by article 8 of the Criminal Code. The extradition of nationals is prohibited unless it is otherwise agreed by treaty.

73. The evaluation team was reserved about the extent to which extradition request could be enforced where dual criminality is invoked particularly in respect of ML for instance on the basis of tax offences, self money laundering and certain aspects of financing of terrorism not covered in domestic provisions. They also considered that extradition proceedings may incur undue delays.

74. As regards other forms of co-operation, they recommended that the AML/CFT legislation be reviewed in order to eliminate any uncertainties related to the scope of co-operation of the FIU with foreign counterparts. No co-operation has been taking place between police agencies internationally. No data or information were provided regarding requests made by the supervisory authority or received from foreign supervisory authorities in order to assess the effectiveness of such co-operation.

VII. Resources and statistics

75. Competent authorities, in particular the AML Service and the CBSM should review their staff numbers so as to ensure that they are adequately resourced to effectively perform their functions, as this appears to seriously impact on their capacities to carry out fully their functions.

76. In general, the San Marino authorities have certain statistics, however they appear to be insufficiently detailed to draw up a comprehensive picture of the effectiveness and efficiency of the AML/CFT system.