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

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Report on Fourth Assessment Visit

Anti-Money Laundering and Combating the Financing of Terrorism

SAN MARINO

29 September 2011

San Marino is a member of MONEYVAL. This evaluation was conducted by MONEYVAL and the mutual evaluation report on the 4th round assessment visit of San Marino was adopted at its 36th Plenary (Strasbourg, 26-30 September 2011)

TABLE OF CONTENTS

I. PREFACE

1. This is the seventh report in MONEYVAL's fourth round of mutual evaluations, following up the recommendations made in the third round. This evaluation follows the current version of the 2004 AML/CFT Methodology, but does not necessarily cover all the 40+9 FATF Recommendations and Special Recommendations. MONEYVAL concluded that the 4th round should be shorter and more focused and primarily follow up the major recommendations made in the 3rd round. The evaluation team, in line with procedural decisions taken by MONEYVAL, have examined the current effectiveness of implementation of all key and core and some other important FATF recommendations (i.e. Recommendations 1, 3, 4, 5, 10, 13, 17, 23, 26, 29, 30, 31, 35, 36 and 40, and SR I, SR II, SR III, SR IV and SR V), whatever the rating achieved in the 3rd round.

2. Additionally, the examiners have reassessed the compliance with and effectiveness of implementation of all those other FATF recommendations where the rating was NC or PC in the 3rd round. Furthermore, the report also covers in a separate annex issues related to the Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (hereinafter the "The Third EU Directive") and Directive 2006/70/EC (the "implementing Directive"). **No ratings have been assigned to the assessment of these issues.**

3. The evaluation was based on the laws, regulations and other materials supplied by San Marino, and information obtained by the evaluation team during its on-site visit to San Marino from 6 to 11 September 2010, and subsequently. During the on-site visit, the evaluation team met with officials and representatives of relevant government agencies and the private sector in San Marino. A list of the bodies met is set out in Annex I to the mutual evaluation report.

4. The evaluation was conducted by an assessment team, which consisted of members of the MONEYVAL Secretariat and MONEYVAL and FATF experts in criminal law, law enforcement and regulatory issues and comprised: Mr Nikoloz Chinkorashvili (Head of the Unit for Prosecution of Illicit Income Legalization, Office of the Chief Prosecutor of Georgia) who participated as legal evaluator, Mr Arakel Meliksetyan (Deputy Head Financial Monitoring Center, Central bank of Armenia) and Mr Philipp Röser (Executive Office – Legal and International Affairs, Financial Market Authority, Principality of Liechtenstein) who participated as financial evaluators, Mr. Daniel Gatt (Senior Financial Analyst, Financial Intelligence Analysis Unit, Malta) who participated as a law enforcement evaluator and Ms Livia Stoica Becht and Mr Fabio Baiardi, members of the MONEYVAL Secretariat. The experts reviewed the institutional framework, the relevant AML/CFT Laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBPs), as well as examining the capacity, the implementation and the effectiveness of all these systems.

5. The structure of this report broadly follows the structure of MONEYVAL and FATF reports in the 3rd round, and is split into the following sections:

1. General information
2. Legal system and related institutional measures
3. Preventive measures - financial institutions

4. Preventive measures – designated non financial businesses and professions
5. Legal persons and arrangements and non-profit organisations
6. National and international co-operation
7. Statistics and resources

Annex (implementation of EU standards).
Appendices (relevant new laws and regulations)

6. This 4th round report should be read in conjunction with the 3rd round adopted mutual evaluation report (as adopted at MONEYVAL's 26th Plenary meeting – 31 March to 4 April 2008), which is published on MONEYVAL's website[1]. FATF Recommendations that have been considered in this report have been assigned a rating. For those ratings that have not been considered the rating from the 3rd round report continues to apply.

7. Where there have been no material changes from the position as described in the 3rd round report, the text of the 3rd round report remains appropriate and information provided in that assessment has not been repeated in this report. This applies firstly to general and background information. It also applies in respect of the 'description and analysis' section discussing individual FATF Recommendations that are being reassessed in this report and the effectiveness of implementation. Again, only new developments and significant changes are covered by this report. The 'recommendations and comments' in respect of individual Recommendations that have been re-assessed in this report are entirely new and reflect the position of the evaluators on the effectiveness of implementation of the particular Recommendation currently, taking into account all relevant information in respect of the essential and additional criteria which was available to this team of examiners.

8. The ratings that have been reassessed in this report reflect the position as at the on-site visit in 2010 or shortly thereafter.

[1] http://www.coe.int/moneyval

II. EXECUTIVE SUMMARY

Background Information

1. This report summarises the major anti-money laundering and counter-terrorist financing measures (AML/CFT) that were in place in San Marino at the time of the 4th on-site visit (6 to 11 September 2010) and immediately thereafter. It describes and analyses these measures and offers recommendations on how to strengthen certain aspects of the system. The MONEYVAL 4th cycle of assessments is a follow-up round, in which Core and Key (and some other important) FATF Recommendations have been re-assessed, as well as all those for which San Marino received non-compliant (NC) or partially compliant (PC) ratings in its 3rd round MER. This report is not, therefore, a full assessment against the FATF 40 Recommendations and 9 Special Recommendations but is intended to update readers on major issues in the AML/CFT system of San Marino.

Key findings

- San Marino has a low crime environment. No specific money laundering (ML)/financing of terrorism (FT) risk assessment has been undertaken. The money laundering risks, according to the authorities continue to derive from the foreign predicate offenses (primarily offences of fraud, usury and bankruptcy), with proceeds being invested or transferred through San Marino, with the banking and fiduciary sectors being the areas with the greatest vulnerability. Money laundering is often committed by making use of fictitious business operations to justify movements of capital. Indicators suggest that San Marino is susceptible to ML, such as cross linked investments to launder in San Marino proceeds from tax evasion and from the Italian criminal organisations, possibly exploiting the vulnerabilities of San Marino's financial system. The TF risks are deemed to be low.

- Money laundering is riminalised largely in line with the FATF standard and the legal framework provides an ability to freeze and confiscate assets in appropriate circumstances. There remain a number of deficiencies to ensure that FT offence is fully in line with the international requirements. Since the previous evaluation, there has been an increase in the number of money laundering investigations, with annual numbers rising from 4 in 2007 to 13 in 2008, and with the development of jurisprudence on money laundering, with convictions reached in 4 judgements. There has also been an increase of international co-operation with foreign authorities on money laundering cases, with predicate offences identified being inter alia fraud, usury, bankruptcy, international trafficking in narcotics, which have led to a number of seizure orders of important amounts. As of the assessment date, there have been no prosecutions or convictions for terrorism financing. Additional measures are required to ensure a comprehensive system for freezing terrorist assets in application of the United Nations Security Council Resolutions (UNSCR).

- San Marino has made substantial progress to establish an operational financial intelligence unit (FIA), which is now at the centre of the overall AML/CFT effort. However, the additional functions entrusted to FIA and the over reliance by other authorities on FIA to carry out a number of non-FIU tasks impact on the workload of its staff and thus affect its effectiveness. Additional measures are required to ensure that the San Marino police officials start playing an active role in AML/CFT efforts.

- Considering the large number of legislative, regulatory and institutional measures adopted by San Marino since March 2008, the authorities have demonstrated a clear commitment to implement AML/CFT standards. The preventive regime has undoubtedly been strengthened and while the legal framework is comprehensive for both financial and non financial institutions, it falls short of the international standards in some areas such as simplified due diligence and risk management procedures and raises certain concerns about the quality of the implementation.

- The competence for supervision of compliance with AML/CFT requirements lies now with the Financial Intelligence Agency, which has a comprehensive supervisory mandate and powers, though the limited resources allocated to that effect appear to impact negatively on the implementation of its supervisory function. These resources need to be increased and supervisory action be strengthen to ensure that both financial and non financial institutions are adequately implementing the AML/CFT requirements.

- The effectiveness of the operational co-operation and of the coordination mechanisms led by the Technical Commission of National Coordination gathering all domestic competent authorities has improved. The Commission's role should be enhanced by providing for a fora where trends and emerging money laundering risks could be examined and regular reviews undertaken of the AML/CFT strategic direction on the basis of risks identified, so as to make necessary adjustments to relevant policies and measures.

- The legal framework for mutual legal assistance is sound and San Marino responds to requests for assistance generally in an efficient and effective manner. Further efforts appear necessary to ensure that the legal framework regarding non-MLA related assistance, in particular international cooperation with foreign supervisory authorities, is adequate and cooperation mechanisms in this area are effective.

Legal Systems and Related Institutional Measures

2. Since the third evaluation, San Marino has ratified on 20 July 2010 the United Nations Convention against Transnational Organised Crime (Palermo Convention) and its two protocols (Trafficking in Persons and Migrants Protocols).

3. The money laundering offence, as set out in article 199 bis of the Criminal Code Law is generally compliant with the requirements established under the Vienna and Palermo Conventions. Predicate offences include a range of offences in each of the designated categories of offences based on the FATF Methodology, however there are a few deficiencies noted, such as gaps in the criminalisation of piracy in respect of some conducts, as well as for terrorism offences, in respect of several acts set out under the treaties annexed to the TF convention. The sanctions applicable to natural persons for ML have been increased while sanctions for the administrative liability of legal persons have been introduced in January 2010. The effectiveness of sanctions could not be fully established, given the small number of convictions, though it is noted that the evaluation was conducted only shortly after the third round evaluation. Since the previous evaluation round, San Marino courts have successfully obtained convictions for money laundering in 3 cases against 4 persons. The authorities should ensure that the effectiveness of on-going investigations and prosecutions is enhanced and that magistrates strive to develop the case law to establish money laundering as a stand-alone offence which can be prosecuted independently from prosecutions relating to the predicate offence.

4. San Marino has amended the Criminal Code by introducing a new article 337 ter – Financing of terrorism, by defining relevant terms and ensuring that the legislation includes also sanctions for

the administrative liability of legal persons for terrorism offences. Unfortunately, the legislation does not appear to cover a large majority of acts that should be encompassed within the definition of terrorist act for the purpose of SR.II, this impacting on the definition of a terrorist organisation as far as it is correlated with the definition of a terrorist act. Sanctions set out have the potential to be dissuasive. The FT offense has never been tested in practice, however the authorities indicated their vigilance and readiness to undertake the investigations and prosecutions if such cases were to be identified.

5. The legal framework for the confiscation regime, as amended in the past three years, provides for a wide range of confiscation, seizure and provisional measures with regard to property laundered, proceeds from and instrumentalities used in ML or predicate offences. There are only minor deficiencies relating to the scope of criminalisation of the predicate offences for ML and of the FT which may impact if such cases were to appear in practice. The system has started to produce concrete results as far as seizures and confiscation in ML are concerned and as regards property frozen, seized and confiscated in criminal cases related to predicate offences, statistics show on average a constant increase.

6. The legal framework for implementing the UNSCR has substantively changed, with some technical deficiencies having been identified in respect of the implementation of UNSCR 1373, such as clarifications required as regards the designating authority for the purposes of UNSCR 1373, the need for effective and publicly known procedures for considering de-listing requests and for unfreezing funds and other assets of delisted persons or entities in a timely manner, including for persons inadvertently affected by the freezing mechanism. The FIA instructions and guidance were issued a few months before the visit, and while banks showed awareness of the need to conduct checks, the awareness of the other parts of the financial sector and of DNFBPs varied greatly. At the time of the assessment, no freezing had occurred under SR. III.

7. Following serious concerns expressed under the third round evaluation, San Marino has undertaken the necessary changes in order to establish an operational financial intelligence unit. The Financial Intelligence Unit (FIA), which became operational in November 2008, is the central national authority in charge of receiving, requesting, analyzing and disseminating to the competent authorities all information relative to preventing and combating money laundering and terrorist financing. The FIA is established as an independent authority, at the Central Bank. The assessment welcomed the determination and commitment shown by FIA in the performance of its numerous functions, and considering the positive feedback received during the visit noted that FIA enjoys the trust and cooperation of the other authorities and reporting entities. Yet, concerns emerged as regards its effectiveness, in the light of the numerous additional (non –core FIU) functions of the FIA and current practice of overreliance by the judicial authority for financial investigations and implementation of MLA requests may impact on the performance of its core functions and impose additional burden on the staff's workload. This may also be reflected by the limited number of disseminated cases to the judicial authority, though the volume of disseminations has clearly increased when compared with the previous evaluation, and all cases disseminated have led to the opening of a criminal investigation.

8. San Marino has also taken several measures aimed at strengthening the legal framework with respect to the law enforcement authorities' competencies and roles. The statistics received show an increase of ML investigations and prosecutions, which appear to be the result of a determined policy within the Single Court to devote efforts to such cases. While in 2006, there had been only 4 proceedings initiated for ML offences, the number of ML investigations started by the Investigating Judge has initially remained stable in 2007 and then increased in 2008 (2008: 13; 2009: 10; October 2010: 9), involving an increasing number of persons. While there have been no prosecutions at all in the period from 2006-2008, there have been 2 prosecutions in 2009 and 6 in 2010. These results are very encouraging. All convictions achieved involved laundering of

proceeds derived from foreign predicates. The role played by the FIA in assisting the law enforcement agencies and the Investigating Judge with respect to the financial aspects of the investigation is crucial and the law enforcement authorities rely on this agency for undertaking the financial investigations. It is however recommended that additional measures are taken to ensure that in the medium and long term, the law enforcement agencies' skills and expertise are developed so as to enable them to pursue complex financial crime investigations, rather than to have to rely on another agency for a key aspect of the investigation.

9. Delegated Decree no. 62 of May 2009 as amended by Delegated Decree no. 74 of 19 June 2009 on Cross border transportation of cash and similar instruments and subsequently in November 2010 established a declaration system. The introduction of the declaration requirements is relatively recent, and the authorities have already introduced several amendments to extend the scope of the obligation, clarify the requirements, increase sanctions and ensure that the FIA has access to all relevant information. Additional measures were put in place to ensure that the law enforcement authorities properly understand the new requirements and enforce them and statistics show an increasing involvement of the law enforcement authorities in carrying out controls from 2008 onwards, with sanctions applied and enforced as of 2009 only. The effectiveness of the implementation of the declaration obligation needs however to be further enhanced.

Preventive Measures – financial institutions

10. The scope of preventive measures in the area of AML/CFT for the financial sector now covers all institutions/professions working in a financial activity as defined by the FATF.

11. The legislative framework is now based on a new AML/CFT Law - Law no. 92 of 17 June 2008 on "Provisions on preventing and combating money laundering and terrorist financing" which entered into force in September 2008. Further amendments to this act were introduced by Law no. 73 of 19 June 2009 on "Adjustment of national legislation to international conventions and standards on preventing and combating money laundering and terrorist financing", Decree Law no. 134 of 26 July 2010 and Decree Law no. 181 of 11 November 2010 on "Urgent provisions modifying the legislation on the prevention and combating of ML and TF" (ratified by Decree Law no. 187 of 26 November 2010).

12. Since the third round evaluation in 2008, important CDD elements, including the identification and verification of the beneficial owner requirement, the obligation to use reliable source documents and information as well as the requirement to conduct ongoing due diligence have been introduced by the new AML/CFT Law. The obligations set out by law are further specified by an extensive set of instructions issued by the authorities. Rather few gaps remain within this overall solid framework.

13. However, the effective implementation of those CDD requirements has not fully kept up with the comprehensive broadening of the legal framework. Given that the new obligations had to be implemented in a rather short period of time and in particular the rather inadequate supervision of compliance with those requirements has led to a situation that raises concerns about the quality of the implementation. A particular cause for concern was the risk classification applied by some financial institutions. The institutions met by the evaluation team only classified a marginal portion of their customers as "high risk" and accordingly applied enhanced due diligence to a very limited number of customers. Where enhanced due diligence is being applied, it remained unclear to what extent such measures include additional and independent verification of the ownership and source of funds.

14. As far as the requirements regarding politically exposed persons, correspondent banking relationships, non-face to face business and third party reliance are concerned only few deficiencies could be identified, coupled with concerns as regards their effective implementation. For example, as for many other countries who have implemented the Third EU AML Directive, the PEP definition contained in the AML/CFT Law is not fully in line with the FATF Standard. The requirements regarding correspondent banking relationships have to be applied only to respondent institutions located in jurisdictions that are not considered to have equivalent AML/CFT obligations.

15. The new AML/CFT Law has introduced provisions related to third parties and introduced businesses, which was complemented by templates issued by the FIA to ensure that all the information required is obtained immediately by the financial institution relying on third parties. Additional requirements are necessary so that financial institutions are obliged to take adequate steps to satisfy themselves that copies of identification data and other relevant documentation will be made available from the third party upon request without delay and that the third party has measures in place to comply with CDD requirements.

16. Financial institution secrecy laws do not appear to inhibit the implementation of the FATF Recommendations. As regards secrecy laws, the wording of the banking secrecy provisions contained in the Banking Act have caused legal uncertainties amongst financial institutions in the past. Doubts have arisen as to whether the sharing of information covered by the banking secrecy with financial institutions is permissible in all instances required by the FATF recommendations. Banking secrecy ultimately does not appear to inhibit the exchange of information, the legal framework has however created some legal uncertainties, which raises concerns with regard to its effectiveness. It was however recommended that clarifications should be brought to the law with regard to the information that can be exchanged with other financial institutions and with a parent company for legal certainty.

17. Record keeping requirements are appropriately set out under the AML/CFT Law and relevant FIA Instructions and meetings with the representatives of banks revealed a rather adequate understanding of these requirements. At the time of the on-site visit, the respective implementing regulation for financial/ fiduciary companies had been introduced only recently (July, 2010) and was to be implemented starting from January 1, 2011.

18. The AML/CFT Law and relevant FIA instructions provide for requirements on obtaining and maintaining full originator information and define rules for domestic and cross-border wire transfers in compliance with the criteria of SR VII. These rules are lifted in respect of transfers where the payee is a public administration, and the transfer is made for the payment of duties, taxes, financial penalties or other charges in the country, as prescribed by the respective EU regulation. Meetings with the representatives of banks revealed adequate comprehension of the wire transfer requirements under the law and implementing regulations. San Marino complies with Special Recommendation VII.

19. Relevant FIA Instructions implement largely the requirements of FATF recommendations 11 and 21 with minor deficiencies such as the lack of requirements for financial promoters and parties providing professional credit recovery services to pay special attention to complex and unusually large transactions, as well as to unusual patterns of transactions or respectively the lack of appropriate countermeasures in respect of countries which continue not to apply or insufficiently apply the FATF Recommendations.

20. The AML/CFT Law and relevant FIA Instructions extend the reporting requirement to all cases, when the reporting entities suspect or are led (have reasonable grounds) to believe that the funds

"came directly or indirectly from criminal activity", i.e. they are proceeds of crime. The reporting performance of financial institutions over the last four years has significantly improved, though financial institutions still remain the main generators of STR-s accounting for an average 95% of total reporting, in which banks account for an average 86% of total reporting, and the reporting pattern raises effectiveness issues as regards the defensive reporting by the banking sector, the low level or no reporting by other parts of the financial sector (i.e. insurance, collective investment companies), questions on the quality of reporting and the fact that the implementation of the TF reporting requirement is not demonstrated. Further general feedback should be provided to obliged entities, in particular on ML/TF methods, techniques and trends as well as sanitised examples of ML cases, which focus on specific vulnerabilities and are sector tailored. San Marino complies with Recommendation 14 and 19.

21. Several deficiencies remain as regards the implementation of the requirements on internal control, compliance, audit and foreign branches, and shell banks, which will require further legislative provisions.

22. The competence for supervision of compliance with AML/CFT requirements by all obliged persons in San Marino lies now with the FIA, which has a comprehensive supervisory mandate encompassing adequate powers for general regulation and supervision through off-site surveillance and on-site inspections, unhindered access to all records, documents, and information relevant to monitor compliance of supervised entities with applicable legislation. In the absence of a risk assessment, the implementation of an adequate risk based supervision could not be demonstrated. Market entry rules, including those on "fit and proper" criteria for the management of financial institutions subject to the Core Principles have improved since the last evaluation and seem to be applied in a consistent manner and so is the legal framework regarding sanctions. However, there is definitely scope for strengthening the supervisory action and methodology applied, as the inspection cycles appear too long for some financial institutions. It is also noted that the capacity of the FIA, particularly its human resources, do not appear to appear to provide for a full-scale functioning of the FIA to ensure an adequate supervision of compliance by relevant obliged parties with the requirements of the AML/CFT legislation. The small number of identified irregularities and the low level of applied sanctions are also indicative of the need for enhanced supervisory practices.

Preventive Measures – Designated Non-Financial Businesses and Professions (DNFBP)

23. The new AML/CFT Law applies to all DNFBPs mentioned in the FATF glossary, with the exception of casinos whose operation is prohibited in San Marino. The preventive measures for Designated Non-Financial Businesses and Professions mirror those for financial institutions, therefore the same gaps as identified for financial institutions apply, with some sector specific differences. There appeared to be little outreach to real estate brokers and dealers in precious metals and stones.

24. While the representatives of the DNFBP sectors overall demonstrated a good knowledge and awareness of the preventive measures under the new AML/CFT framework, there are still concerns regarding the effective implementation, which vary across the different DNFBP sectors. Professionals, including accountants, auditors and notaries appear to be more advanced amongst DNFBPs in implementing the preventive measures. Implementation appears to be strengthened by the proactive role taken by the professional associations and their close dialogue with FIA. Other DNFBPs, including in particular real estate brokers and dealers in precious metals and stones appear to represent the most critical sector as regards efficient implementation. Doubts remain whether beneficial ownership verification and the clarification of the source of funds are adequately carried out in more complex situations by all DNFBPs.

25. The concerns previously expressed in respect of the supervisory arrangements and the effectiveness of supervision equally apply in the context of DNFBPs. There has been a very low level of supervisory activities in respect of DNFBPs, and the coverage of the supervision was very limited, as mentioned above in particular due to the lack of sufficient human resources.

Legal arrangements and Non-Profit Organisations

26. San Marino has made important changes to its legal framework to ensure the transparency of information on beneficial ownership and control of companies and to prevent the misuse of bearer shares. Nine cases of incompliance with the bearer shares legislation were detected and sanctions were applied in respect of eight legal entities. However, given that some of the requirements were still subject to transitional periods which expired either shortly before the visit or at end November 2010, the evaluation team was not able to fully assess the effectiveness of implementation of the new requirements. San Marino should pursue efforts to ensure that the relevant information on legal persons is adequately and on a timely basis included in the Register and that adequate sanctioning measures are applied in cases of non compliance with the legal requirements.

27. The legislation governing trusts has been largely revised in 2010, in particular by the introduction of a new Trust Act and the Delegated Decrees on the Office of Professional Trustee and the Trust Register. Few deficiencies were noted such as the fact that the obligation of a resident trustee to periodically ask the non-resident trustee about possible amendments relating to registered information is not clearly stipulated, which could affect the up to datedness of information regarding trusts with non-resident trustees. Also, it is questionable whether the sanctions for failure of resident trustees to fulfill their obligations and duties with respect to the registration and notification of amendments relating to registered information, which involve an administrative penalty of 2000 Euros, can be considered as sufficiently dissuasive.

28. As regards the legal framework covering non - profit organisations (NPO), a number of measures were adopted since 2008, which include provisions of the Law no. 129 (2010) the Congress of State (Decisions no. 34 and 55 of February 2009), by the Council of Twelve (Decision 30 of 27 May 2009), by the FIA (review of the sector and FIA Instruction no. 2010-05 of 8 July 2010), the conclusion of a Memorandum of Understanding between the Council of Twelve, the Judge of Supervision of NPOs and the FIA (2009, as renewed in 2010). Various outreach measures and steps have also been taken to promote supervision and monitoring of the sector. The effective implementation of the newly adopted requirements by the NPO sector and of administrative penalties by the authorities could not be assessed given their recent adoption and the fact that the transitional period envisaged for the NPO sector to comply with the requirements under Law no. 129 was still ongoing at the time of the on-site visit. This raised questions also as regards the up to datedness of the Registries and of the data kept by the non profit sector entities, given that technically speaking, the transitional period had not elapsed.

National and International Co-operation

29. The San Marino authorities have reviewed the legal and institutional framework in order to address the concerns expressed during the last evaluation and foster co-operation and coordination at national level. This is reflected by the new provisions adopted since 2008 and which govern various aspects of national co-operation and coordination, including the ability of specific agencies and institutions to make disclosures to enhance the ability of other agencies to fulfil their functions. The effectiveness of the operational co-operation and of the coordination mechanisms set out at policy level has improved.

30. San Marino has signed and ratified the United Nations Convention against Transnational Organised Crime (Palermo Convention), the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) and the United Nations Convention for the Suppression of the Financing of Terrorism (Terrorist Financing Convention. There remain some implementation issues in respect of the Palermo, Vienna and FT Conventions. As noted above, there are also shortcomings in respect of the implementation of the S/RES/1373 as well as of the scope of assets as regards UNSCR 1267.

31. San Marino can provide a wide range of mutual legal assistance in investigations, prosecutions and related proceedings concerning money laundering and the financing of terrorism, in application of the multilateral and bilateral agreements to which it is a Party or otherwise based on the national legal framework provisions. The international instruments ratified have strengthened the legal basis upon which co-operation in criminal matters and extradition can be provided. The internal legal framework has also been improved and clarified, which is a very positive step, and now there are clear processes for the receipt and execution of mutual legal assistance requests. The total number of requests sent and received, and in particular requests regarding ML cases and other banking and financial crimes, has notably increased, with instances involving very complex requests and detailed assistance measures, and sensitive cases involving organised crime. Measures taken appear to result in an efficient process for executing mutual legal assistance requests and extradition requests.

32. While the FIU to FIU co-operation levels in 2008 was close to nonexistent, following the establishment and operation of the FIA, the situation has clearly improved and the statistics on international cooperation demonstrate an expanding and intensifying patters of cooperation, both in terms of geographical coverage and intensity of activities, and information points to a satisfactory performance of the FIA both in terms of timing and quality of responses. Further amendments appear necessary to ensure that the legal framework sets out an adequate basis for cooperation between FIA and foreign supervisory authorities which are not financial intelligence units and to enable the CBSM to exchange information spontaneously. The adequacy of cooperation mechanisms and effectiveness of cooperation by Police and the CBSM remains to be demonstrated.

Resources and statistics

33. The human, financial and technical resources allocated to competent authorities regarding AML/CFT matters are not satisfactory on the whole, and in particular this appears to be a major hindrance for the FIA to adequately perform its supervisory functions. The skills of law enforcement and judiciary need further enhancement through training, in particular on financial investigation, handling of complex criminal investigations of financial and banking offences, techniques for tracing proceeds and evidence gathering etc.

34. San Marino should also continue to review on a regular basis the resources of the Court and the judges' workload, also taking into consideration the specific case workload and complexity of pending cases, as well as the respective workload derived from mutual legal assistance requests, and take remedying measures as appropriate to ensure an efficient treatment of cases.

35. As regards statistics, San Marino maintains comprehensive statistics on matters relevant to the effectiveness and efficiency of the AML/CFT system. Further efforts by the CBSM are required to keep track of formal requests for assistance made or received from foreign supervisory authorities relating to or including AML/CFT, including whether the request was granted or refused.

III. MUTUAL EVALUATION REPORT

1 GENERAL

1.1 General Information on San Marino

1. This sections provides a factual update of the information previously detailed in the third round mutual evaluation report on San Marino covering : the general information on the country, its membership of international organisations and key bilateral relations aspects, economy, system of government, legal system and hierarchy of norms, transparency, good governance, ethics and measures against corruption[2].

2. As noted in the earlier report, San Marino maintains close bilateral relations and co-operation with Italy, through numerous bilateral conventions. Since March 2007, San Marino and Italy concluded two additional agreements: Agreement between the Government of the Republic of San Marino and the Government of the Italian Republic concerning economic co-operation (signed on 31 March 2009) and the Agreement between the Government of the Republic of San Marino and the Government of the Italian Republic concerning collaboration in financial matters (signed on 26 November 2009). Bilateral negotiations have also been concluded for a Protocol, to bring the 2002 Double Taxation Agreement into line with the latest OECD standards concerning the exchange of information on tax matters. The text of the protocol was agreed upon at technical level and initialed by both country delegations on 25 June 2009 in Rome The entry into force of both the Economic Co-operation and Financial Collaboration agreements is subject to the conclusion of the amending Protocol to the 2002 DTA, which at the time of the visit was pending signature by the Italian authorities.

Economy

3. Detailed information on the economic developments, indicators and outlook of San Marino for the period covered by this assessment and including 2010 is available in the latest IMF country report on San Marino under the 2010 Article IV Consultation[3]. According to the Office of Economic Planning, Data Processing and Statistics, San Marino's gross domestic product (GDP) in 2009 was € 1.102.000.000. In 2010, an Indicator of Economic Activities (EAI) was introduced, which enables to measure the performance of the economy in the short term, and according to the EAI, the forecast of GDP for 2010 is – 2.5%. Tourism contributed to 2,3% of San Marino's 2009 GDP (calculated on the direct spending only), with nearly two million visitors annually (2009: 2.055.705 persons; 2010: 1.976.481 persons, in both years around 70% of persons visiting by car). In 2010, the manufacturing sector grew by 2.9%, the financial sector decreased by 18,1%, the retail sector, construction and services growing by 0,3% and a stable public sector. The financial sector accounted in 2009 for 17, 6% of the Sammarinese GDP.

[2] The reader is referred to the information set out under this section in the Third round detailed assessment report on San Marino (MONEYVAL(2008)10), which was based on the legislation and other relevant materials supplied by San Marino and information fathered by the evaluation team during its on-site visit to San Marino from 4-10 March 2007 and subsequently. The report was adopted by MONEYVAL at its 26th Plenary meeting (31 March- 4 April 2008).

[3] The report, which was published in March 2011, is available at : http://www.imf.org/external/pubs/ft/scr/2011/cr1178.pdf

4. The implementation by Italy of the tax shield programme in the period September 2009 till April 2010 has resulted in important financial outflows from San Marino to Italy, with fall in bank deposits by more than a third, and which overall required important adjustments by the financial sector and close monitoring by the Central Bank of San Marino. An additional factor was also the measure taken by Italy as of July 2010 to subject companies to enhanced scrutiny by Italian Revenues Authority when having business relationships with companies located in the extra EU area, including San Marino, which impacted domestically with a number of non bank financial institutions closing down or moving their operations to Italy.

System of Government

5. No major changes are reported, thus the reader is referred to the section of the third round mutual evaluation report (paragraphs. 6-8). The last parliamentary elections were held in November 2008 and the next ones are scheduled to be conducted in 2013.

Legal system and hierarchy of laws

6. The reader is referred for further details to the section of the third round mutual evaluation report (paragraphs 9-17). An updated table reflecting the hierarchy of relevant norms in San Marino and their status according to the Methodology has been included in the introduction to Chapter 3 – Preventive measures – which reflects the changes introduced by the new AML/CFT legal framework, in particular as regards the status of Instructions issued by the Financial Intelligence Agency.

Transparency, good governance, ethics and measures against corruption

7. As regards transparency and effective exchange of information in tax matters within the Organisation for Economic Co-operation and Development (OECD), the April 2009 report issued by the OECD placed San Marino in the list of tax havens that had committed to the internationally agreed tax standard, but had not yet substantially implemented it. San Marino has extensively extended its network of exchange of information agreements by signing tax treaties with 29 countries in the period April 2009 – November 2010, out of which 8 of these agreements were in force as at November 2010 (See Annex). San Marino is as of 23 September 2009 listed under jurisdictions having substantially implemented the internationally agreed tax standards. The OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes has recently published its Peer Review Report under Phase 1 (Legal and Regulatory Framework) which includes an in-depth assessment of San Marino's legal and regulatory framework for transparency and exchange of information as at October 2010[4].

8. The Republic of San Marino joined the Council of Europe Group of States against Corruption (GRECO) on 13 August 2010 as its 48th Member State. Its evaluation by GRECO is scheduled to take place in June 2011, with the report being examined for adoption in December 2011. While this is undoubtedly a positive step forward, there have been no developments regarding the signing of the United Nations Convention against Corruption and of the Council of Europe Civil Law Convention on Corruption, nor regarding ratifying the Council of Europe Criminal Law Convention on Corruption.

9. The authorities reported having established in June 2008 an inter-departmental working group tasked with reviewing the existing legal framework's compliance with anti-corruption standards and preventive measures with a view to developing proposals for amendments. As a result of its work, a number of changes were introduced to the existing legislation by Law No. 92/2008, in

[4] See http://www.oecd.org/document/45/0,3746,en_21571361_43854757_46975405_1_1_1_1,00.html

particular regarding offenses against public administration, corruption of foreign public officials and incitement to corruption, and led to strengthening some of the existing sanctions. This is reflected in the provisions of the CC: article 372 (abuse of quality or function by a public official), article 373 (acceptance of an undue advantage by a public official for himself or a third party as well as giving and promising an advantage), article 374 (acceptance by a public official or a public employee of an advantage for an act already performed and provision by a person of such an advantage); article 374 bis (incitement to corruption of a public official or public employee); article 374 ter (Embezzlement, extortion, corruption and incitement to corruption of officials of foreign states and international organisations); article 375 (abuse of public office for private gain), article 376 (abuse of power). Law no. 6 of 21 January 2010 includes among the list of offences for which liability of legal persons is extended, the offences under articles 372, 373, 374, 374 bis and ter. As regards judiciary results, the authorities have indicated that in the period 2008-2010, proceedings have been initiated involving bribery cases (2 in 2009 and 1 in 2010), misappropriation of public money (1 case in 2009, with one conviction achieved as well in 2009); neglect of official duty (3 cases in 2008, 2 in 2009 and 1 in 2009) and abuse of office (2 cases in 2010).

10. Furthermore, since the previous evaluation, San Marino has adopted a number of measures regulating new requirements to prevent conflict of interest situations, requirements of professionalism and sanctions for public officials. The Secretaries of State are required to refrain from taking part in a sitting in cases of conflict of personal and direct interest or relating to their spouses, blood relatives and relatives by affinity up to the third degree (article 5 of Regulation no. 11/2010). Law no. 105/2009 dated 31 July 2009 (Framework Law for the Public Administration Reform) aims at rebuilding the rules applicable for the access to public employment, the system of duties and responsibilities of public servants, disciplinary sanctions and procedures for their application, etc. Law no. 106/2009 sets out the sanctions applicable to public employees for breaches of disciplinary rules and Law no. 108/2009 on Office Directors introduces additional cases and forms of sanction and incompatibilities. Law no. 107/2009 on Competitions and other forms of selection redefines the recruitment rules for public access to public employment, the professionalism requirements and criteria for the composition of committees of selection.

1.2 General Situation of Money Laundering and Financing of Terrorism

11. San Marino is a politically stable country, with a low crime environment. The authorities provided the table below, which provides an overview of investigations and convictions (under FATF designated categories of offences) for the reference period 2008-2010:

Table 1: Statistics of Investigations and Convictions for Serious Offenses

FATF designated categories of offences	2008		2009		2010	
	Investigations	Convictions	Investigations	Convictions	Investigations	Convictions
Participation in organized criminal group and racketeering						
Terrorism and terrorist financing						
Trafficking in human beings and migrant smuggling						
Sexual exploitation and sexual exploitation of	**4**				**1**	

children						
Illicit trafficking in narcotic drugs and psychotropic substances **(1)**	**6**	**3**	**9**	**2**	**4**	
Illicit arms trafficking **(2)**	**3**	**2**	**5**	**2**	**4**	**5**
Illicit trafficking in stolen and other goods	**16**		**8**	**1**	**2**	**1**
Corruption and bribery **(3)**		**3**	**3**	**1**	**1**	
Fraud	**40**	**6**	**68**	**2**	**44**	**8**
Counterfeiting currency **(3)**	**48**	**1**	**33**		**22**	**1**
Counterfeiting and piracy of products	**7**	**11**	**4**	**2**	**2**	**1**
Environmental crimes **(4)**	**2**				**2**	
Murder, grievous bodily injury	**6**	**4**	**14**	**1**	**11**	**1**
Kidnapping, illegal restraint and hostage-taking	**2**	**2**	**2**	**1**	**1**	**1**
Robbery or theft **(5)**	**295**	**7**	**292**	**4**	**203**	**1**
Smuggling						
Extortion						
Forgery	**15**	**3**	**27**	**2**	**18**	**1**
Piracy						
Insider trading and market manipulation **(6)**	**1**					

Notes:
(1) The proceedings refer to cases of illegal import into the territory of small quantities of narcotic drugs for personal use;
(2) The proceedings refer to cases of illegal import or unauthorised carrying of firearms or side arms;
(3) The convictions refer to cases of misappropriation of public money.
(4) The Law provides for the obligation to report any case of possession (even in good faith) of counterfeit currency to the Judicial Authority. For this reason the number of proceedings is high.
(5) The proceedings for environmental crimes refer to unauthorised spills and not to illegal trade in waste;
(6) the large number of investigations mainly refers to thefts in apartments committed by unknown people;
(7) the proceeding initiated for insider trading led to a proceeding for money laundering for which a sentence of conviction was passed.

12. As shown above, the majority of recorded crimes consist of robbery or theft, and other most prominent categories include fraud, counterfeiting of currency and forgery. A few cases have been recorded involving illegal import into the territory of small quantities of narcotic drugs for personal use.

13. The money laundering risks, according to the authorities continue to derive from the foreign predicate offenses (primarily offences of fraud, usury and bankruptcy), with proceeds being invested or transferred through San Marino, with the banking and fiduciary sectors being the areas with the greatest vulnerability. The authorities indicated that one of the main challenges remains the high level of sophistication achieved by the interposition of a series of legal entities, often located in different countries, however in most cases, there is involvement (real or fictitious) of at least one San Marino national. Money laundering is often committed by making use of fictitious business operations to justify movements of capital. No significant changes to patterns or methods appear to have been identified. However, the evaluation team noted that several Italian media articles and TV reports issued in the period before the evaluation visit raised concerns of cross linked investments to launder in San Marino proceeds from tax evasion and from the Italian mafia, possibly exploiting the vulnerabilities of San Marino's financial system.

14. The San Marino authorities have placed a greater emphasis on developing its AML/CFT system, through a deep reform of its legislative and institutional framework, and an increased focus on training and resources. These initiatives have led to an increase in the number of money

laundering investigations, with annual numbers rising 4 in 2007 to 13 in 2008, and with the development of jurisprudence on money laundering, with convictions reached in 4 judgements. This was also reflected in an increase of international co-operation with foreign authorities on money laundering cases, with predicate offences identified being inter alia fraud, usury, bankruptcy, international trafficking in narcotics, and having led to a number of seizure orders of important amounts.

15. As regards terrorist financing, the situation remained unchanged and no cases of terrorist activity or terrorist financing have been identified in San Marino, nor were requests received for assistance relating to suspected terrorist financing.

1.1 Overview of the Financial Sector and Designated Non-Financial Businesses and Professions (DNFBPS)

Financial Sector

16. The financial sector in San Marino is set out in detail in the 3rd round evaluation report. The number of licensed institutions remained largely stable, except for the financial/ fiduciary companies whose number decreased significantly. As of 31 December 2010, there were 12 banks operating in San Marino. The total assets of the banking sector amounted to EUR 8 billion at end of 2010 compared to EUR 10,4 billion in 2007. The total assets represent close to 7.61 times GDP. Of the 12 banks operating in San Marino, 6 banks were majority foreign-owned. They are mainly owned by banks or individuals from countries including Italy, Switzerland and Luxembourg. The core business of Sammarinese banks remains deposit-taking, lending and asset management. Only one bank held a foreign subsidiary at the time of the onsite visit (majority stake in a Croatian bank).

Table 2: Overview of the financial sector

Overview of the financial sector

	2008 (**)	2009 (**)	2010 (**)	March 2011 (***)
Banks				
- number of institutions	12	12	12	12
- number of employees	672	702	673	673
- assets (*)	11 536	10 063	8 061	7 920
- loans (*)	6 525	6 230	5 873	5 783
of wich: loans to banks (*)	*1 251*	*1 208*	*1 443*	*1 424*
of wich: loans to customer (*)	*5 274*	*5 022*	*4 431*	*4 359*
- deposit (*)	9 161	7 147	5 887	5 764
- deposit "core", *equal to deposit minus bond issued by the bank (*)*	8 679	6 224	4 948	4 815
- capital (*)	1 232	1 226	846	854
- guarantees, commitments and others (*)	2 732	1 564	1 593	1 362
Insurance companies				
- number of institutions	0	2	2	2
- number of employees	0	7	8	8
- assets (*)	0	78	171	*n.a.*
- capital (*)	0	10	10	*n.a.*
Collective Investment Scheme (CIS)				
- number of management companies	1	2	2	2
- number of employees	3	3	3	3
- number of Collective Investment Scheme	8	9	10	10
- assets - CIS (*)	36	22	31	30
Financial companies				
- number of institutions	53	49	40	37
- number of employees	256	250	216	*n.a.*
- assets (*)	1 323	1 378	1 160	1 131
- loans, leasing included (*)	891	933	698	675
- financial instruments (*)	46	50	33	36
- shares and others equities (*)	44	41	42	47
- fiduciary activity (*)	3 460	1 921	1 061	963

Source: CBSM
(*) data in million of euro
(**): from balance sheet
(***): from quarterly report

17. The non-banking sector mainly comprises financial/fiduciary companies. At the end of 2010, 38 fiduciary companies and 2 investment firms [5] were licensed (49 at the end of 2009). The fiduciary companies mainly offer fee based services for holding customers assets in their own name in execution of a mandate without representation.

18. In addition, at end 2010, there were 2 collective investment companies, 2 recently licensed Sammarinese life insurance companies. These activities are defined as reserved activities under the Law No. 165 of 17 November 2005 (Law on Companies and Banking, Financial and Insurance Services referred to as "LISF"). In addition there were 62 insurance intermediaries, 11 of which were banks and 3 were financial/fiduciary companies authorized under the LISF. All of them are subject to the prior authorisation of the CBSM. Supervisory responsibilities regarding AML/CFT are shared between the CBSM and FIA.

19. Above-mentioned financial institutions carrying out reserved activities may also act as trustees in terms of Law No. 42 of 1 March 2010, subject to the prior approval of the CBSM. At the end of 2010, 12 financial institutions were authorised to act as professional trustees.

20. San Marino post offices are entirely state-owned and form part of the Public administration, under the responsibility of the Ministry of Post and Telecommunications. 6 out of the 10 post offices operating in San Marino are technologically equipped (PGOs) to offer MVT services. These services are rendered on behalf of Poste Italiane S.p.A (the privatised Italian postal administration). According to the authorities, this relation can be considered as an "agency contract" or similar to a branch office.

Designated Non-Financial Businesses and Professions (DNFBPs)

21. The designated non financial businesses and professions (DNFBP) operating in San Marino are described in detail in the 3rd round evaluation report. Pursuant to the new AML/CFT law, the responsibility for AML/CFT supervision for all DNFBPs now lies with the FIA. The table below reflects the total number of DNFBPs in San Marino:

Table 3: Designed Non-Financial Businesses and Professionals (DNFBPs)

DNFBPs (Data at 31 December 2010)	**Total**
Professionals	253
Professional office of the trustee*	12
Real estate Agencies	46
Gambling house (BINGO)	1
Purchase of unrefined gold	0
Export and import of precious metals and stones (Jewellers and shops selling semi-precious stones refined with gold or silver)	114
Total	**462**

*At end 2010, among the 12 professional trustees authorized, just 5 are operational.

22. The operation of casinos (including internet casinos) is forbidden. The only games allowed in San Marino are bingos and similar games, lotteries, lotto betting and game machines other than slot-machines and roulettes. Currently there is only one authorized bingo facility operating.

[5] Exclusively authorized to provide investment services.

23. At the end of 2010 there were 46 real estate agencies operating in San Marino.

24. As far as dealers in precious metals and dealers in precious stones are concerned, there are 114 persons registered with the Ufficio Industria as exporters or importers of precious metals and stones. Every dealer purchasing gold is also registered at Ufficio Industria. The purchasing of unrefined gold is subject to a authorization by the Central Bank To date, the Central Bank had never granted an authorisation for the purchase of unrefined gold.

25. At 31 December 2010, there were 113 lawyers and notaries, and a total of 140 accountants (80 ragionieri with High School certificate and 60 dottori commercialisti with University degree). All these professions may be carried on subject to authorization and membership in the relevant professional association. The services provided by these professionals remain the same as those described in the 3rd round evaluation report.

26. Trust and Company Services such as acting as a trustee are provided by professional trustees authorized by the CBSM. Authorizations can be granted to financial institutions, members of the Bar and the Accountants Association and specific joint-stock companies. At the end of 2010, 39 trusts and 18 trustees (out of which 5 professional trustees which are financial institutions and which administer 25 trusts ; 1 foreign professional trustee, which is a financial institution and administers 2 trusts; and 12 non professional trustees) were included in the Register of Trust. No professional trustee licenses were granted to DNFBPs. Further relevant services, such as the holding of title to the assets of third parties are provided by fiduciary companies, which are mentioned in the financial institutions overview.

Table 4: Professional and non professional trustees (Data at 31 December 2010)

Professional trustees		
	Trustees	**Trusts**
Financial institutions	5	25
	1 (foreign entity)	2
DNFBPs	-	-
Total	**6**	**27**

Non professional trustees[6]		
	Trustees	**Trusts**
	11	12
	1 (limited company under Luxembourg Law)	
Total	**12**	**12**

27. In addition to the above mentioned FATF categories of DNFBPs, San Marino has extended the scope of the AML/CFT Law to the following activities:

- assistance and advice concerning investment services;
- assistance and advice on administrative, tax, financial and commercial matters;
- credit mediation services;
- running of gambling houses and games of chance as set forth in Law N° 67 of July 25, 2000 and subsequent amendments;

[6] The office of non-professional trustee may only be held in one single trust by a natural or legal person. according to Art. 18 (1) Trust Act.

- offer of games, betting or contests with prizes in money through the Internet and other electronic or telecommunication networks;
- custody and transport of cash, securities or values;
- management of auction houses or art galleries;
- trade in antiques;
- selling or rental of registered movable goods;

1.2 Overview of Commercial Laws and Mechanisms Governing Legal Persons and Arrangements

28. Since the 2008 MER, San Marino has made a number of changes to its legal framework aimed at ensuring the transparency of legal persons and arrangements. The following legal instruments were adopted, the details of which are set out in Chapter 5 of this report.

29. Law no. 98 dated 7 June 2010 on Provisions for determining the ownership frameworks of the beneficial owners of companies established under the laws of San Marino abolished 'anonymous companies' (bearer share owned companies). Pursuant to article 2 of Law no. 47 dated 23 February 2007, as amended by Law no. 98/2010, bearer share owned companies are only limited-liability companies and stock companies which can only issue registered shares; a sole partnership is envisaged, which is the general partnership. Art. 1 of law no. 98 of 2010 introduced a requirement that all existing bearer share owned companies shall register their shares by 30 September 2010 and deposit at the Commercial Chancellery of the Single Law Court, the original excerpt of the stock ledger by 30 November 2010. With the deposit at the Commercial Chancellery of such documents, the bearer share owned companies become stock companies and are obliged to hold a first useful meeting after the coming into effect of the law to change the articles of association and indication of the type of company so as to eliminate all reference to the bearer share owned company. Fines were set out in legislation for companies that fail to observe these requirements. Thus, new bearer share owned companies can no longer be set up and the existing one will become stock companies, with registered shares only by 30 September 2010.

30. Before that, Law no. 100 of 22 July 2009 had introduced measures for the transferability of bearer shares of anonymous joint stock companies: the traceability of the bearer shares was executed through an authenticated private agreement between parties concerned, notaries (who are public officials) are custodian of the bearer shares and are required to perform CDD.

31. Law no. 95 dated 18 June 2008 on the "re-organisation of the supervisory services over economic activities has assigned to the Supervisory and Control Office, *inter alia*, the task of preventing, identifying and contrasting tax fraud "analogous behaviours", frauds and distortions as regards trade. The Supervisory and Control Office is tasked with the control and supervision of all economic operators organised in the form of companies. The Office wields inspection and sanctioning powers, while availing itself of the Police Force, and notifies irregularities to the State Congress for the revocation of licences and the consequent liquidation of the company, which, lacking a resolution of the company, can be ordered by the Judicial Authority, integrating the withdrawal of the licence as the cause of winding up due the impossibility of achieving the corporate purpose, together with notices sent to the other supervisory bodies (FIA).Its tasks include to : i) propose intervention and reports to the competent Bodies and/or Offices those economic operators which have arbitrarily exercised a business activity essentially different from that envisaged in the corporate purpose; ii) indicate and propose interventions for those activities which in any way pursue a purpose not in conformity with the interests of the State, and

international conventions and agreements; iii) ensure that that asset and property investments and shareholdings are centred on the achievement of the corporate purpose; iv) check the state of the share capital, with respect to its subscription, payment and making good of losses; v) check the conformity of the corporate purpose with the laws of the State and with the International Conventions and Agreements signed by the Republic and notifies any deformities or breaches of the obligations required for the setting up of the company; vi) identify operators who have not begun any of the activities envisaged by their corporate purposes; vii) monitor commercial transactions carried out by San Marino economic operators (art. 5).

32. Congress of State Decision no. 55 of 2 February 2009 amended the Regulation governing the keeping of the electronic register of legal persons and provided that data related to members of limited liability companies and joint stock companies shall be kept in a special section of the Register of Companies and clarified the unrestricted access for relevant authorities.

33. The AML/CFT law as amended provides that failure to comply with CDD requirements is sanctioned with an administrative sanction from 5.000 to 70.000 Euros.

34. CBSM Regulation no. 2009-02 of 13 March 2009 (amending CBSM Regulation 2006-01) provided that the list of shareholders of banks owing more than 5% of the capital shares are published on the website of the Central Bank.

35. The legislation governing trusts has been also revised in 2010 with the introduction of several acts which are relevant in this context: the Law no. 42 dated 1 March 2010 (the Trust Institution Act), Decree No. 49 dated 16 March 2010 (Office of Professional Trustee), Delegated Decree no. 50 dated 16 March 2010 (Registration and Keeping of the Trust Register and procedures for the certification of the book of events), Delegated Decree no. 51 dated 16 March 2010 on identification of the methods and procedures necessary to keep account of the steps taken in the administration of trust assets.

36. Previously, on 18 February 2009, the Judge of Supervision on Trusts issued a clarification letter to the Office for Industry, Handicraft and Commerce where the Trust is kept, indicating that confidentiality requirements shall apply when information requested, if divulgated, may cause a threat to national security, exercising of national sovereignty, continuity and correctness of international relations, protection of public order and crime suppression and prevention. Consultation of the Trust register is refused only in cases indicated in article 4 paragraph 45 of decree no. 86/2005. Furthermore, Decision no. 13 of the Congress of State of 29 May 2009 had established that the office of the Trust Register shall record the information on the settler and beneficiaries of trusts and the procedure for depositing such information to the Office by trustees and notaries. The Financial Intelligence Agency issued Instruction 2010-06 on 8 July 2010 on identification of the beneficial owner for a trust.

37. As regards the non profit organisations (NPOs), San Marino has taken a number of measures for the review of the sector, outreach and oversight:

    a) A draft Law on the NPO sector was prepared following the mandate entrusted under the Decision of the Congress of State no. 34 of 16 February 2009, and was submitted to the Great and General Council on 16 June 2009.

    b) Law no. 129/2010 on Regulations governing licenses to pursue industrial, service, handicraft and commercial activities was adopted on 23 July 2010, and included 2 specific articles regarding foundations and non profit associations aimed at enhancing transparency and setting out administrative functions;

c) A separate database on members was established for all registers related to legal persons (associations, foundations, cooperatives, consortiums) kept at the Registrar's Office of the Single Court (Congress of State decision no. 55 of 2 February 2009).

d) On 27 May 2009, the Council of Twelve, which is the authority responsible for supervising NPOs, adopted Decision no. 30 (27 May 2009) which requires the NPO sector to register data and information regarding funding and funds received and their use for at least 5 years from the date when they were granted or used and to provide yearly a report to the Judge of Supervision. In addition, this decision sets out several measures, such as the launching of an awareness raising and information campaign (conducted on 23 July 2009), the set up of a coordination and information exchange mechanism between the FIU, the Council of Twelve and the Judge of Supervision (a memorandum of understanding was signed on 14 September 2009), a study on the funding sources of NPOs and a questionnaire on risks of abuse of the NPO sector and its vulnerability to ML and TF (carried out by FIA on the basis of a specific questionnaire).

e) On 8 July 2010, FIA issued Instruction n.2010-05 providing principles to be followed to identify the beneficial owners of Foundations and Associations.

f) A Protocol of Understanding between the Council of Twelve, the Judge of Supervision and the FIA was adopted, introducing coordination mechanisms in 2009 and was renewed in 2010;

g) In 2008, the Judge of Supervision has taken action against 4 associations and 5 non profit foundations which were subject to formal winding up and in 2009, against 2 foundations and 1 association. With regard to year 2009, 5 Associations and 3 Foundations went into voluntary liquidation. In 2010, the Judge of Supervision ordered the cancellation from the public register of 1 association.

1.3 Overview of Strategy to Prevent Money Laundering and Terrorist Financing

a. AML/CFT Strategies and Priorities

38. As regards AML/CFT strategies and priorities, the San Marino authorities have undertaken since the adoption of the 2008 MER a substantive review of the legislative and institutional framework in order to address the concerns previously raised in respect of the adequacy and efficiency of its AML/CFT system[7]. Measures taken were based on the action plan and recommendations formulated by MONEYVAL under the third evaluation round, as well as on the basis of the additional measures raised in the context of the Compliance Enhancing Procedures which were applied in respect of San Marino after the adoption of the MER, given the high level of non compliant and partially compliant ratings.

39. The legislative framework is now based on a new AML/CFT Law - Law no. 92 of 17 June 2008 on "Provisions on preventing and combating money laundering and terrorist financing" which entered into force in September 2008. Further amendments to this act were introduced by Law no. 73 of 19 June 2009 on "Adjustment of national legislation to international conventions and standards on preventing and combating money laundering and terrorist financing", Decree Law

[7] For measures taken one year after the adoption of the report (March 2009), see San Marino's first progress report: http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/progress%20reports/MONEYVAL(2009)5-ProgRep-SMR.pdf

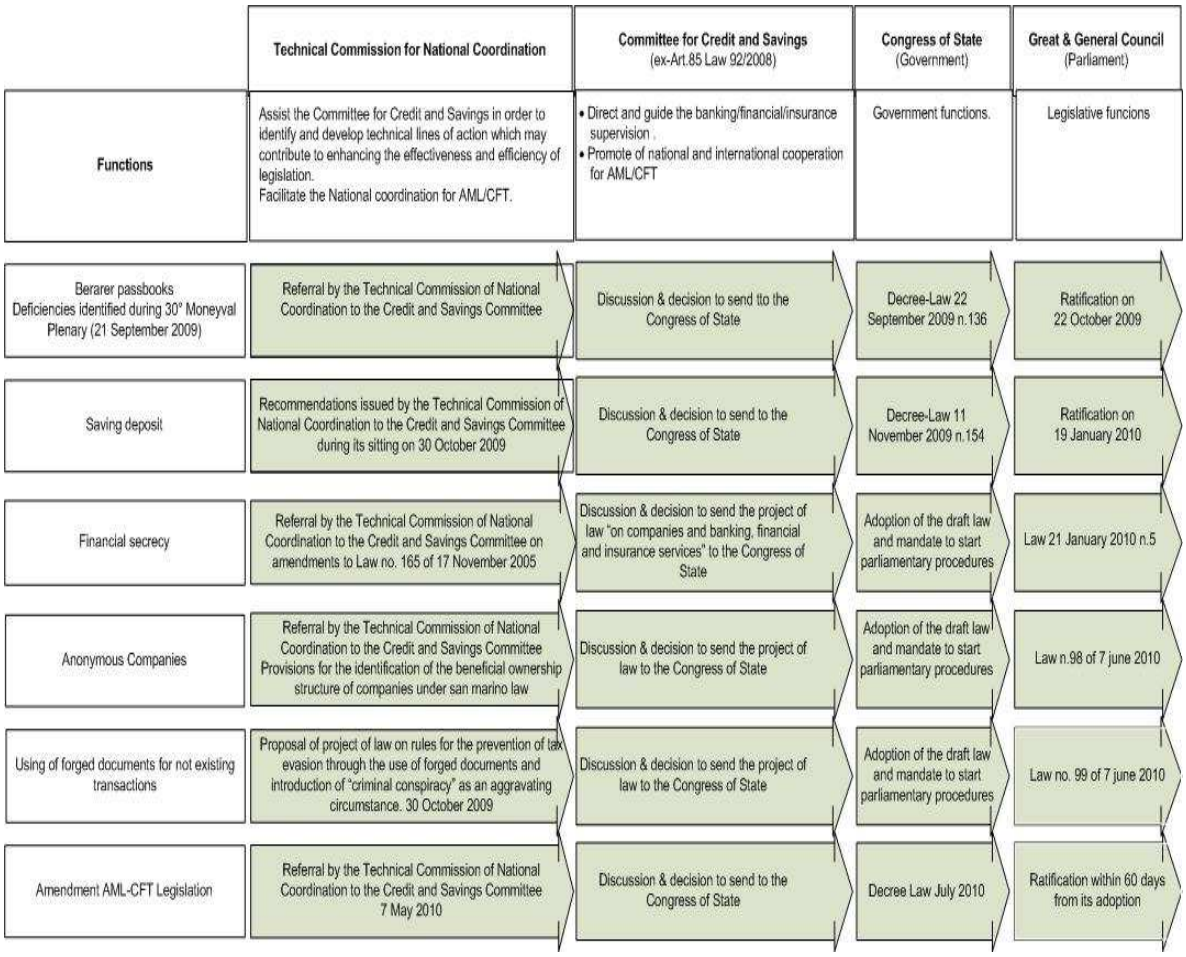
no.134 of 26 July 2010 and Decree Law no. 181 of 11 November 2010 on "Urgent provisions modifying the legislation on the prevention and combating of ML and TF" (ratified by Decree Law no. 187 of 26 November 2010).

40. Considering the large number of legislative, regulatory and institutional measures since March 2008, the authorities have demonstrated a clear commitment to implement AML/CFT standards, with AML/CFT issues being placed high on the political agenda. The main changes are summarised in the tables below:

Table 5: Summary of main measures taken by San Marino

	Technical Commission for National Coordination	**Committee for Credit and Savings** (ex-Art.85 Law 92/2008)	**Congress of State** (Government)	**Great & General Council** (Parliament)
Etablished by	Congress of State decision n. 6 of 29 May 2009 And Decision n 39 of 07 Dec. 2009	Art.48 of Law 29 June 2005 n. 96 as modified by Art.85 of the Law 17 June 2008 n. 92	Law 08 July 1974 n. 59 and subsequent amendments	Law 08 July 1974 n. 59 and subsequent amendments
Composition	• Mrs. RV, designated Law Commissioner, Single Court; • Mrs. VP, Executive Magistrate, Single Court; • Mr. PG, Collaborator of the Secretariat of State for Foreign Affairs, and the Secretariat of State for Finance; • NV, Director of the Financial Intelligence Agency; • NM, Vice Director of the Financial Intelligence Agency; • GU, Legal Expert of the Financial Intelligence Agency; • PEC, Supervision Committee representing the Central Bank; • PM & PF, members representing the Law Enforcement for AML/CFT.	• The Secretary of State for Foreign Affairs; • The Secretary of State for Finance and the Budget; • The Secretary of State for Economic Planning; • The Secretary of State for Industry; • The Secretary of State for Education and Culture • A Magistrate appointed by the Judicial Council • The Director of the Financial Intelligence Agency • A representative appointed by the Police Forces. • Members of Supervision Commitee of the Central Bank	10 Secretaries. (ministers), appointed by the Great and General Council	60 Members elected for a term of 5 years, under a proportional representation system in all the administrative Districts
Functions	Assist the Committee for Credit and Savings in order to identify and develop technical lines of action which may contribute to enhancing the effectiveness and efficiency of legislation. Facilitate the National coordination for AML/CFT.	• Direct and guide the banking/financial/insurance supervision . • Promote of national and international cooperation for AML/CFT	Government functions.	Legislative funcions

Deficencies identified during 29th Moneyval Plenary	Proposal of project of law on updating law 92/2008 *(confiscation, piracy crimes, criminal sanctions on CDD requirements, international cooperation)*	Discusion & decision to sent the project of law to the Congress of State	Adoption of the draft law and mandate to start parliamentary procedures	Law 19 June 2009 n.73
Special investigative techniques (Wire-tappings)	Project of law on wire-tapping *Consultation, proposal and draft of project of law*	Discusion & decision to sent the project of law to the Congress of State	Adoption of the draft law and mandate to start parliamentary procedures	Law 21 July 2009 n.98
Legal person and arrangements (Beneficial owner issue)	Analysis of R.33, R.34 and Moneyval Recs. and draft of project of law on trasferibility of the anonymous shares	Discusion & decision to sent the project of law to the Congress of State	Adoption of the draft law and mandate to start parliamentary procedures	Law 22 July 2009 n.100
International cooperation (Mutual legal assistance)	References and draft of project of law on Rogatory Letter	Discusion & decision to sent the project of law to the Congress of State	Adoption of the draft law and mandate to start parliamentary procedures	Law 30 July 2009 n.104



b. The institutional framework for combating money laundering and terrorist financing

41. A number of changes were brought to the institutional framework and functions of the main institutions responsible for AML/CFT matters previously described in the 2008 MER (paragraphs 80-97) as indicated in the following paragraphs.

(i) Ministries and coordinating committees

Credit and Savings Committee (CSC)

42. Since the previous evaluation, the functions of the Committee for Credit and Savings have been expanded with the adoption of the AML/CFT law. The CSC has been assigned the role of national coordination mechanism, as well as the role of designating authority and authority responsible for the implementation of restrictive measures of the United Nations Security Council Resolutions.

Technical Commission for National Coordination

43. The Congress of State Decision no. 6 of the 29 May 2009, subsequently amended by Decision no. 39 of 7 December 2009, established a Technical Commission for National Coordination to facilitate at national level the co-operation, coordination and consultation concerning the development and implementation of AML/CFT policies and legislation and to ensure that the competent authorities review the effectiveness of the AML/CFT system on a regular basis. The

Commission is entrusted with the task of assisting the Committee for Credit and Savings in order to identify and develop technical lines of action. It gathers representatives of the Single Court, the FIA, the Central Bank, law enforcement authorities, and its Secretariat is ensured by the Financial Intelligence Agency.

(ii) Criminal justice and operational agencies

44. As regards the judiciary, qualified Law no. 1 of 4 May 2009 on Special and Urgent Measures for the Recruitment of Judges has instituted special recruitment procedures in derogation of the procedures set out under Law no. 145 of 30 October 2003 and related regulation, in order to recruit 3 Uditori Commissariali, one Law Commission and an Administrative Judge in first instance. At present, the judges of first instance include: an administrative judge, 8 Law Commissioners and 3 uditori commissariali. Four Law Commissioners and one uditore commissariale perform investigative functions. Two Investigating Judges deal specifically and exclusively with money laundering investigations, infringements of the AML/CFT law and banking crimes. There are two deciding judges and they both have handled proceedings relating to money laundering. By virtue of these amendments, the number of Investigating Judges has doubled, and one uditore commissariale is also involved in the investigations.

45. As regards law enforcement agencies, in 2009, the Government decided to establish a working group composed of 6 Police officials (three from the Inter-Force Group, one from the Civil Police and two from the Fortress Guard) with specific functions in preventing and combating money laundering and terrorist financing. The Police officials have been appointed by the Congress of State upon suggestion of the competent Investigating Judge, on the basis of professional standards and experience. The State Congress through a Resolution dated 3 May 2010 appointed a further Police section consisting of 7 Civil Police members appointed to contrast and prevent tax frauds, distortions and anomalies as regards trade (*interscambio*). The Police forces' duties, and in particular the Fortress Guard's duties, have also been modified, with the introduction of a declaration system through the adoption of the delegate decree on cross border transportation of cash and similar instruments (June 2009).

46. The adoption of Law no. 92/2008 of 17 June 2008 has led to the establishment of a new Financial intelligence unit, namely the Financial Intelligence Agency (FIA), at the Central Bank of the Republic of San Marino (CBSM) which became operational in November 2008. The functions of the Agency are set out in article 4 of the Law and include:
a) receiving STRs from obliged parties;
b) carrying out financial analysis on STRs or, on its own initiative, on the data and information available;
c) reporting to the Criminal Judicial Authority any fact that might constitute money-laundering or terrorist financing;
d) issuing instructions regarding the prevention and combating of money-laundering and terrorist financing;
e) supervising compliance with the obligations under the Law 92/2008 and the FIA instructions;
f) taking part in national and international bodies involved in the prevention of money-laundering and terrorist financing;
g) promoting and taking part in the professional training of police officers on matters regarding the prevention of money-laundering and terrorist financing.

(iii) Financial Sector bodies and DNFBPs

47. In application of the provisions of the new AML/CFT Law, the Financial Intelligence Agency is the competent authority for supervising that obliged entities comply with the AML/CFT requirements as set out in the Law and the FIA implementing Instructions.

48. The statute of the Central Bank established by Law No 96, June 29, 2005, has been amended in order to strengthen the independence of the statutory bodies of the Central Bank. The governance provisions of the Statute have been amended, with the adoption of Law no. 178 on 4 November 2010. The major changes of the Statute relate to the removal of powers of appointment currently assigned to the Congress of State with reference to the members of the Governing Council, of the Board of Auditors and of the Supervision Committee; the attribution to the Supervision Committee of exclusive powers to proceed into compulsory liquidation or extraordinary administration of supervised intermediaries (removing any form of government involvement), the enlargement of incompatibilities for taking up the office of member of the Governing Council or member of the Board of Directors of the CBSM (now including among incompatibilities the role of manager at a bank or other financial intermediaries). As regards the functions of the Central Bank, in the field of AML/CFT, the CBSM has regulatory powers only with reference to organisational issues of supervised entities and cannot impose penalties for AML/CFT breaches. However, under Article 14 of the AML/CFT Law, whenever, in performing its supervision tasks over the financial parties or in performing its other statutory functions, it detects violations of the AML/CFT Law, or facts or circumstances that might be related to money laundering or terrorist financing, it is required to immediately inform the FIA in written form.

b. The approach concerning risk

49. San Marino authorities have not yet undertaken a comprehensive ML/TF risk assessment. At the time of the on-site visit, it was however indicated that the Financial Intelligence Agency was in the process of developing a risk assessment strategy based on the information to which it had access (public sources, official communications from domestic and foreign authorities, confidential sources, meetings with private sector, other public administration offices and authorities, as well as data and statistics available at national and international level) in order to determine risks per type of sector, instrument, persons and countries involved and to better target its policies and actions to be taken.

50. The approach concerning risk has changed since the previous evaluation, with Article 25 of the Law no. 92/2008 introducing a risk based approach for obliged entities. For the evaluation of the risk, the obliged parties are required to evaluate at least the following aspects: requiring obliged parties to evaluate the risk, by considering at least the following aspects:

A) with reference to the customer:
   1) the legal status,
   2) the main business activity,
   3) the behaviour at the moment of establishing the business relationship, or carrying out the transaction or professional services,
   4) the residence or registered office of the customer or of the counterpart with particular attention to that do not require equivalent obligations to those set forth in the law No.92/2008;

B) with reference to any business relationship or occasional transaction:
   1) the type and specific way of execution,
   2) the amount,
   3) the frequency,

4) the coherency of the transaction in relation to the whole of information available for the obliged party,
5) the geographic area of the execution of the transaction, with particular attention to that do not require equivalent obligations to those set forth in the law No.92/2008.

51. The Financial Intelligence Agency has issued several instructions which are aimed at assisting obliged entities to implement the risk based approach, namely FIA Instruction 2009-03 and 2009-05 of 22 May 2009 and 2009-08 of 5 August 2009.

d. Progress since the last mutual evaluation

52. As a result of the third round evaluation process, San Marino was rated Non compliant (NC) on 19 Recommendations and Partially Compliant (PC) on 22 Recommendations. Consequently, following the adoption of the report in March 2008, Compliance Enhancing Procedures were applied to San Marino under Step 1 which required Sammarinese authorities to provide regular reports on measures taken to address the deficiencies underlying all recommendations rated NC and PC until MONEYVAL would be satisfied that those deficiencies were addressed in a satisfactory manner. San Marino reported back to MONEYVAL in July 2008, December 2008 and September 2009. San Marino submitted also its first year progress report as required by the Rules of Procedure in March 2009.

53. MONEYVAL decided at its 30th Plenary meeting (September 2009) that the Compliance Enhancing Procedures at Step (i) could be lifted and that the situation should be revisited by an early 4th round evaluation. It was noted in this context that San Marino had made substantial progress on the overall number of the Recommendations rated NC and PC since the report was adopted and that the speed with which San Marino responded to the Committee's continuing concerns about the bearer passbooks demonstrated their political commitment to reform the system.

54. The findings of the on-site visit confirmed that San Marino had made substantial progress in implementing the recommendations formulated under the third round. As such, progress has been achieved as far as the requirements are concerned on almost every Recommendation under evaluation, though, considering that the forth round assessment visit was advanced and took place only 2 years after the adoption of the report, the evaluation team was not always able to ascertain the effectiveness of the implementation of the new AML/CFT requirements, considering their recent adoption.

55. The judicial system has started producing clear results, with 4 convictions for money laundering, as of September 2010, as well as helpful case law on provisional measures and confiscation. The financial intelligence unit is now well established, fully operational and it plays a central role in the overall AML/CFT efforts. On the preventive side, San Marino registered noticeable progress, by fine-tuning the AML/CFT legal framework to address the previously identified deficiencies and by issuing an important number of decrees, regulations and instructions. Also, co-operation at the policy and operational level between relevant authorities, through formal mechanisms, was strengthened and the framework for international co-operation.

56. More detailed information on how the third round mutual evaluation report's recommendations have been addressed can be found in the analysis part of the respective recommendations in this report.

2 LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

2.1 Criminalisation of Money Laundering (R.1 and 2)

2.1.1 Description and analysis

Recommendation 1 (rated LC in the 3rd round report)

Summary of 2008 MER factors underlying the rating and developments

57. As described in the 3rd round evaluation report, San Marino had received a Largely Compliant rating. The deficiencies mentioned included inter alia technical gaps as regards the physical and material elements of the offence of money laundering (i.e. acquisition and possession of property known to be proceeds, concealment of the true location and disposition), the need to clarify that the offence of ML extended to any type of property that directly and indirectly represented the proceeds of crime and in particular indirect proceeds of crime, missing designated categories of offences. At the time of the evaluation, there had been just one case for which three convictions were achieved, and the sentences and fines applied in that case appeared to be low, thus raising concerns as regards the effective implementation of the offence.

Legal Framework

58. It is to be noted that since the third evaluation, San Marino has ratified on 20 July 2010 the United Nations Convention against Transnational Organised Crime (Palermo Convention) and its two protocols (Trafficking in Persons and Migrants Protocols).

59. Law no. 92 of 17 June 2008[8] amended article 199 bis (the money laundering office) of the Criminal Code by adding three additional paragraphs after the fourth paragraph. The offence now reads (amendments highlighted in italics):

"**Article 199 bis**
Money laundering

(1)Apart from cases of participation in the commission of the offence, anyone who - for the purpose of concealing its true origin – conceals, substitutes or transfers money, or cooperates or intervenes in causing it to be concealed, substituted or transferred, knowing that such money is proceeds of a felony, commits a money laundering felony.

(2)Also anyone who uses money, or cooperates or intervenes in causing it to be used in economic or financial activities, knowing that such money is proceeds of a felony, commits a money laundering felony.

[8] Law No. 92 of 17 June 2008 - Provisions on preventing and combating money laundering and terrorist financing (in force three months after its legal publication, i.e. 23 September 2008) and as amended by Decree-Law no. 134 of 26 July 2010.

(3) The provisions of this article shall also apply when the felon from whom the proceeds were received is not indictable or punishable, or failing any of the conditions for the predicate felony to be proceeded against. Where the predicate felony was committed abroad, it shall be punishable under the San Marino criminal laws and procedures.

(4)Any property, as well as legal documents, acts or instruments evidencing title to or interest in such property shall be considered equivalent to money.

(5) Anyone who commits crimes set forth in this article shall be punished by terms of fourth-degree imprisonment, a second-degree daily fine and third-degree disqualification from public offices and political rights.

(6) The penalties may be decreased by one degree based on the amount of money or assets equivalent to them and by the nature of the transactions carried out. The penalties may be increased by one degree when the facts have been committed during the exercise of a commercial-professional activity subject to authorization or certification by the competent Public Authorities.

Criminalisation of money laundering (c.1.1 – Physical and material elements of the offence)

60. The third round MER criticised that the simple acquisition and possession of property known to be proceeds did not appear to be explicitly covered by the ML offence of the CC. As shown by the changes introduced to article 199bis, the physical and material elements of the offence of the CC do not appear to have been amended by Law no. 92.

61. However, the authorities consider having addressed those and referred in this context to the definition of conducts under article 1 paragraph 2 of the Law no. 92, which provides :

Article 1 (Definitions and scope)

(2). With the sole object of the laws regarding preventing and combating money laundering, except as provided in articles 199 and 199 bis of the criminal code, the following conducts may constitute money laundering if committed intentionally:
a) converting or transferring assets knowing that such assets come directly or indirectly from criminal activity or from participation in said activity, with the aim of concealing or disguising the criminal origin of the said assets, or assisting any person involved in said activity to evade the legal consequences deriving from his or her actions;
b) concealing or disguising the true nature, origin, location, disposition, movement of property, ownership of the assets or interest in such assets, carried out knowing that such assets come directly or indirectly from criminal activity or participation in said activity;
c) the acquisition , possession or use of assets, knowing, at the time of receipt, that such assets are proceeds directly or indirectly of a criminal activity or participation in said activity.
(3). Knowledge, intent or purpose as referred to in paragraph 2 may be inferred from objective factual circumstances.

62. This matter was also confirmed by the case law of the Court, as detailed in a judgement of the Law Commissioner dated 8 June 2010[9], which establishes that «the legislator, with RSM Law no. 92 dated 17 June 2008, provided a sort of authentic interpretation of art. 199 bis of the Criminal

[9] This interpretation was confirmed by the Judge of Appeal in a judgement rendered after the on-site visit

Code of San Marino, showing (and by doing this, adopting the direction already indicated by the judges), that the conducts relevant for the purposes of money laundering include the conversion (i.e. the material replacement), the transfer, the concealment, both material and judicial (through the dissimulation of the real nature, source, location, movement, ownership of the assets or of the rights thereon), the purchase or use of the assets resulting (directly or indirectly) from crimes". In the case at hand, in addition to the replacement (i.e. the conversion of money resulting from the crimes committed in Italy into a certificate of deposit) and transfer (through the material transfer from Mr. "C" to Mr. "M"), there has also been a concealment realised through the presentation of the false report of loss aimed at concealing the real location and judicial availability of the certificate and through the presentation of false declarations by part of Mr. "M" about the past holding of the security and the exclusive ownership of the underlying funds.

63. The interpretation provided by the jurisprudence, through references to the definition of the AML/CFT legislation, would fill the gaps identified during the previous evaluation concerning the concealment of true location and disposition, indirect proceeds and acquisition, possession or use of proceeds, though these are not explicitly addressed in the Criminal Code offence.

64. It is to be noted also that Law 92 (article 77) amended Article 199 of the Criminal Code (Sale of stolen property) which now reads:

> **Art. 199. Receiving of stolen property** (*)- Apart from cases of complicity to commit an offence, anyone who acquires or receives properties knowing that these are proceeds of crime, shall be punished by terms of second-degree imprisonment and daily fine and third-degree disqualification from public offices and political rights.
> Where a bankruptcy procedure is initiated, the same penalty shall apply to anyone who, for profit making purposes, intervenes to lead others to acquire or receive properties which are proceeds of crime, or receives properties owned by individuals or companies knowing that such individuals or companies suffer insolvency or buys such properties at a much lower price.

65. According to the above-mentioned amendment, the purchase or possession of property knowing that it constitutes proceeds of crime is punishable and is no longer limited to cases when the offender acted for the purpose of making profits. The authorities also reiterated their previous views that also article 362 (abetting) covers cases where a person assists someone to elude the authorities or to keep the product or profit of the crime , though these instances would not include ascendants, descendants and spouse.

The laundered property (c.1.2) & Proving property is the proceeds of crime (c.1.2.1)

66. Article 199 bis refers to "money" and establishes that "any property, as well as legal documents, acts or instruments evidencing title to or interest in such property shall be considered equivalent to money". The authorities once more referred in this context to the clarifications made in Article 1, paragraph 1 and 2 of Law no. 92/2008 which are broad enough to cover all types of property regardless of its value, that directly or indirectly represents the proceeds of crime.

67. Art. 1, para 1, of Law n. 92/2008 defines "assets" or "funds": property of any kind, whether tangible or intangible, movable or immovable, including means of payment and credit, any document or instrument, including electronic or digital, evidencing title to or an interest in such assets; economic resources of any nature, tangible or intangible, movable or immovable assets, thus including all accessories, fixtures and returns that may be used to obtain funds, assets or services as well as any other utility specified in the technical Annex to this Law».

68. Article 2 of the technical annex further provides:

> «1. The following are considered "assets" or "funds": property of any type, corporeal or incorporeal, movable or immovable, including the means of payment and credit, any document or instruments, including electronic or digital, that is suitable to demonstrate having rights to send assets or have control over them. The following are for exemplification purposes:
> a) cash, checks, bills of exchange, pecuniary credits, payment orders and other means of payment;
> b) deposits in the credit institutions or financial institutions or other entities, the balance of accounts, credits, bonds of any nature and securities negotiable at public and private levels as well as financial instruments as defined by law number 165 on November 17, 2005 and subsequent amendments;
> c) interest, dividends and other income and increments of value generated by the activity;
> d) credits, right to compensation, guarantees of any nature, deposits and other financial commitments, letters of credit, bills of lading and other certificates representative of assets;
> e) documents that demonstrate participation in funds or economic resources;
> f) all other instruments related to financing exports.»

69. When proving that property is the proceeds of crime, it is not necessary that a person be convicted of a predicate offence (Judge of Appeal, 9 May 2008, Proceedings no. 1494/2003 – " *it would be absurd to identify the offence of money laundering because there was a prior conviction for the offence from which the money concealed or transferred 'has been obtained'; there might be no ascertainment, however there might be sufficient grounds for a legal action against a money laundering case". […] the fact of having obtained, through an offence, the money related to the illegal conduct is , therefore , an objective requirement to be verified and ascertained, like all the others, based on an autonomous assessment of the judge*".

70. In order to prove that the offender know that the property constituted proceeds of crime, according to the same judgment, " *it is sufficient to roughly know, according to the forms of dolus eventualis, about the illicit origin of money and the purpose of concealing [transferring, etc]. Such mental element – namely to have acted, by accepting the risk to commit the crime – is […] consistent with […] such relevant offence*").

71. Under the case law, both proceeds directly obtained from the predicate offence and indirect proceeds (for instance interest accrued on bank deposits) may be laundered.

72. It can thus be concluded that the legislation covers assets of any kind, whether corporeal or incorporeal, moveable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in such assets, and is thus in compliance with the FATF standard on this aspect.

The scope of the predicate offence (c.1.3) & Threshold approach for predicate offences (c.1.4)

73. Article 199 bis applies to proceeds of any criminal offence which constitutes a felony, that is, according to article 21 of the CC, any offence committed with intent.

74. Law No. 92/2008 (article 83) amended the Law no. 22 of 24 February 2000 introducing the offence of "trafficking in migrants". Law no. 73 of 198 June 2009 introduced further amendments to the Criminal Code (article 244 - Illegal prescription of narcotic drugs; Article 195bis – Acts of

piracy on ships and aircrafts, article 195 ter – Taking possession of a ship or an aircraft) and to Law no. 139 of 26 November 1997 (amendments of its Articles - 1 – Illicit production, traffic and possession of narcotic drugs, Art 2 bis – Association for the purpose of illicit traffic in narcotic drugs).

75. The table below establishes how each FATF designated category of predicate offenses is now criminalised under the Sammarinese law:

Table 6: Designated categories of offences (based on the FATF Methodology) in the Sammarinese legislation

Designated categories of offences based on the FATF Methodology	San Marino Criminal Provisions
Participation in an organised criminal group and racketeering;	Association to commit offences (article 287 CC)
Terrorism, including terrorist financing	Associations for the purpose of terrorism or subversion of the constitutional order (article 337bis) and terrorist financing (337 ter CC)
Trafficking in human beings and migrant smuggling;	Enslavement (article 167 CC); trafficking and trade in slaves (article 168 CC), Trafficking in migrants (article 34 of Law no.118 of June 28, 2010),
Sexual exploitation, including sexual exploitation of children;	Exploitation of child prostitution (article 177bis CC), Child pornography (article 177ter CC), organisation of travels for the exploitation of child prostitution (article 177quater CC), trafficking for purposes of prostitution (article 268 CC), inducement to prostitution (article 269 CC), running of a prostitution business (article 270 CC), exploitation of prostitution (article 271 CC)
Illicit trafficking in narcotic drugs and psychotropic substances;	Law No. 139 of 26 November 1997 supplementing provisions of the Criminal Code and Code of Criminal procedure for offences related to narcotic drugs, alcoholic beverages, harmful or dangerous substances, psychotropic substances; illegal production, trading and prescription of narcotic drugs (article 244 CC)
Illicit arms trafficking	Making of, circulating, shooting, unauthorised carrying of arms, bombs, explosive devices and inflammable or explosive materials (article 251 CC); failure to observe caution with respect to arms, bombs and explosive devices (article 252 CC); purchase of firearms (Law No. 40 of 13 March 1991)
Illicit trafficking in stolen and other goods	Sale of stolen property (article 199 CC)
Corruption and bribery	Corruption (article 373 CC), bribery (article 372 CC) ; acceptance of advantages for an act already performed (374), instigation of corruption (374bis), embezzlement, extortion, corruption and instigation to corruption of officials from foreign states or international public organisations (374 ter)
Fraud	Swindling (article 204 CC), fraud in the execution of contracts (article 208), fraudulent bankruptcy (article 212 CC)
Counterfeiting currency	Misuse of credit cards or similar devices (article 204bis CC); counterfeit currency, stamps and negotiable instruments (article 401 CC); counterfeiting of credit cards or similar devices (article 401bis CC); making, holding, buying and selling of instruments or materials designated for counterfeiting (article 403 CC).
Counterfeiting and piracy of products	Counterfeiting and alteration of marks of intellectual works and trademarks (article 308 CC); products and intellectual works

	bearing deceitful marks (article 309 CC)
Environmental crime	Attacks on public health through environmental deterioration (article 241 CC); deterioration of the natural environment (article 246 CC)
Murder, grievous bodily injury	Murder (article 150 CC), bodily injury (article 155 CC) ; beating (article 157 CC) ; injury of beating followed by death (article 158 CC) ; involuntary manslaughter (article 163 CC) ; involuntary bodily injury (article 164 CC) ; epidemic and slaughter (article 236 CC);
Kidnapping, illegal restraint and hostage-taking	Illegal restraint (article 169 CC)
Robbery or theft	Theft (article 194 CC) ; robbery (article 195 CC) ; misappropriation (article 197 CC) ; embezzlement by public official (article 371 CC)
Smuggling	Manufacturing and smuggling of goods to defraud the state tax office (article 388 CC) ;
Extortion	Extortion (article 196 CC)
Forgery	Material falsehood in public deeds (article 295 CC) ; ideological falsehood in public deeds (article 296 CC) ; falsehood in private contracts (article 299 CC), use of forged deeds (article 300 CC)
Piracy	Acts of piracy on ships and aircrafts (195 bis CC) and Taking possession of a ship or an aircraft (195 ter CC)
Insider trading and market manipulation	Stock jobbing (article 305 CC) ; misuse of privileged information (article 305bis CC) ; false communications (article 316 CC)

76. It should be noted that for instance the criminalisation of piracy in San Marino falls short from incriminating some conducts such as piracy committed by the passengers of a private ship or a private aircraft; piracy committed against property on board of another ship or aircraft, any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft or the acts of inciting or of intentionally facilitating acts of piracy. The same applies for terrorism offences, as explained in the following section of this report.

77. As regards fiscal offences, Law no. 99 of 7 June 2010 criminalises the false statement through the use of forged invoices, the use and the issuance of invoices for non existing operations or services, and introduces criminal conspiracy as an aggravating circumstance. Tax evasion offence is also a predicate offence for money laundering if the fiscal dues and relative administrative fines have not been previously paid, because such a payment would extinguish the application of penalties for the offence.

Extraterritorially committed predicate offences (c.1.5)

78. Article 199 bis paragraph 3 as amended refers explicitly to predicate offenses committed abroad, and the ML offence is punishable when the predicate offence is committed abroad, provided that the conduct is punishable under the San Marino criminal laws and procedures.

Laundering one's own illicit funds (c.1.6)

79. The situation regarding criminalisation of self-laundering remained unchanged in San Marino. The evaluation team reiterates the findings of the third evaluation round, whereby San Marino could not demonstrate that fundamental principles of domestic law prevented the criminalisation of self-laundering.

Ancillary offences (c.1.7)

80. The Sammarinese legislation includes appropriate ancillary offenses to ML. Conspiracy is criminalised under article 73 of the CC and the authorities advised that the case law in application of article 73 included both material and psychological aiding and abetting. In 2010, San Marino also introduced the offence of criminal association of organised crime which envisages heavier penalties than the crime of criminal association when the associates use methods of intimidation to acquire the control of economic activities (art. 6, Law no. 99 dated 7 June 2010). Article 287 of the CC provides that the association of three or more people to carry out a plan of criminal activity shall constitute an offence punishable by terms of 3rd degree imprisonment and 4th degree disqualification from political rights and public offices. The prison sentence is increased by two degrees if, for the purpose of committing offences, acquiring, either directly or indirectly, the management or, in any case, the control of economic activities, licenses, authorizations, public contracts and services, or obtaining illegal profits or advantages for themselves or others, the associates avail themselves of the power of intimidation related to the association bond and the resulting condition of subjection and silence to commit offences. Attempt is also covered (Article 26 CC ("the acting person wilfully and unequivocally undertakes to commit an offence with suitable means but fails to carry out the intended action"). Article 75 of CC sets out different kinds of accountability according to the type of contribution which each participant has brought in the preparation, or execution of the crime.

Additional element – If an act overseas which does not constitute an offence overseas but would be a predicate offence if occurred domestically leads to an offence of ML (c.1.8)

81. Following the amendments introduced by article 33 of Decree Law no. 134 of 26 July 2010, the conduct which occurred abroad constitutes a predicate offence for money laundering if it is punishable under San Marino legislation. Dual criminality is no longer required.

Recommendation 2 (rated PC in the 3rd round report)

82. Recommendation 2 was previously rated Partially Compliant, given that a number of deficiencies were identified: criminal liability did not extend to legal persons, nor were they subject to civil or administrative liability; serious concerns regarding the effectiveness, proportionality and dissuasiveness of existing sanctions for ML. There were no fundamental principles of domestic law which would render impossible the introduction of criminal liability.

Liability of natural persons (c 2.1)

83. It is recalled in this context that in the 1998 UN Convention offence, the mental element was broader as it covered cases where the perpetrator "should have known that such money is proceeds". As outlined in the third MER, as no changes have occurred since, the ML offence applies to natural persons that knowingly engage in ML activity (Article 199 bis of the Criminal Code).

The mental element of the ML offence (c 2.2)

84. As stated in the third MER, this matter was already clarified by case law and the intentional element of the offence of ML was in practice inferred from objective factual circumstances (Judge of appeal, 8 April 1999, in criminal proceeding no. 164 of 1997, id. 15 June 1999, in proceeding no. 585 of *1997).* This aspect is now been also covered explicitly, under Article 1 paragraph 3 of Law no. 92 of 17 June 2008 , which provides that " *Knowledge, intent or purpose, as referred to in paragraph 2 may be inferred from factual circumstances"*.

Liability of legal persons (c 2.3)

85. The third round MER had criticized the absence of extending criminal liability for ML to legal entities in the absence of fundamental principles of domestic law, as well as the lack of civil or administrative sanctions. The authorities advised after the visit that criminal liability was not introduced, due to fundamental principles – they referred in this context to the traditional principle of San Marino's legal system based on Roman Law, *societas delinquere non potest*, according to which entities and companies cannot be criminally charged or punished and to provisions of the Declaration on the Citizens' Rights and Fundamental Principles of San Marino Constitutional Order (article 15 of the Law no. 59-1974). They indicated that in order to implement the requirements of R. 2, specific legislation on the (administrative) liability of legal persons, modelled on the Italian legislation, was adopted.

86. San Marino has however made several changes to its legal framework as regards the liability of legal persons. Law no. 6 of 21 January 2010 on liability of legal persons for offences sets out the principles, measures and sanctions to be applied to legal persons for several offences, including for ML. In addition, Law no. 92/2008 also provides for shared liability of the entity deriving from an administrative violation committed by its representatives or employees. If the legal person pays the relevant pecuniary sanction, it is entitled to take action against the perpetrator of the violation for the reimbursement of the sums paid.

87. Law no. 6 of 2010 introduces the liability of legal persons for administrative offences resulting from the perpetration of the offences committed, attempted or failed in the Republic of San Marino, on its behalf or for its benefits, by one of its bodies or anyone performing representative, management and administration functions.

88. Pursuant to article 2 of Law no. 6, administrative liability applies to a specific list of offences: articles 168 (trafficking and trade in slaves); 177bis (Exploitation of child prostitution) 177 ter (Child pornography); 177 quarter (organisation of travels for the exploitation of child prostitution), 199 (Receiving of stolen property), 199bis (Money laundering); 207 (usury); 244 (Illicit trafficking in narcotic drugs and psychotropic substances); 271 (exploitation of prostitution); 305 (Stock jobbing); 337bis (Associations for the purpose of terrorism or subversion of the constitutional order); 337ter (terrorist financing), 372 (bribery); 373 (Corruption), 374 (acceptance of advantages for an act already performed), 374bis (instigation of corruption), 374 ter (embezzlement, extortion, corruption and instigation to corruption of officials from foreign states or international public organisations); 401 (counterfeit currency, stamps and negotiable instruments); as well as offences referred to in article 134 of Law no. 165 of 17 November 2005 (abusive exercise of an activity - i.e. reserved activity without the authorisation of the supervisory authority or of Congress of State declaration) and articles 3bis, 3quater, 3 quinquies of law no. 22 of 24 February 2000 as set out by article 83 of the Law no. 92 of 17 June 2008 (Trafficking in migrants).

89. The Law does not apply to the State and non-economic public entities. Also, the legislation sets forth a sort of liability "exemption" in favour of the legal entities able to prove "to have adopted a document outlining an organizational model, identify they risks of commission of offences in the scope of activities of the legal person and management measures aimed at preventing such risks", and registered that model in cases where the offence was committed by those parties by fraudulently circumventing the measures referred to in the organisational model. Delegated Decree no. 96 of 27 May 2010 sets out the general principles and criteria for the organisational model. The registration of the organisational model by entities is optional and no entities have registered so far their organisational model.

90. The parties that may commit offences from which the liability of the legal person derives ("anyone performing representative, management and administration functions"), include all parties, whether from inside or outside the entity, with powers to commit acts aimed at binding the company. With a view to identifying such persons, the relevant rules laid down in commercial law may be used for interpretation purposes. In this regard, the concept of administration relates to the power of administering and controlling the material resources of the entity. The concept of management refers to the power of managing and controlling the staff of the entity and the production processes (the exercise of the business activity in the strict sense). The concept of representation regards the formation, manifestation to third parties and reception of the will of the entity in relation to transactions. These commercial functions may be conferred, by law, on persons that are both employees of the entity and external persons. An agent, by virtue of his/her capacity, has always the power of representing the entity, be it an employee or external person. The authorities indicated that according to a consolidated approach in the case-law (for instance, with regard to bankruptcy and corporate offences), the criminal judge who shall individuate the liable parties, shall not identify them only among those who have been formally vested with powers of administration, management or representation, but he/she can also include those exercising "de facto" such powers on the legal person.

91. Liability is also excluded by the law if the offence was committed exclusively in the interest of third parties.

92. Article 3 of Law no. 6 further provides that the liability of legal persons envisaged under this Law is regulated by the provisions of the criminal law and that the jurisdiction and decisions regarding the administrative offences of legal persons is assigned to the judge dealing with the crimes from which the administrative offences derive, in compliance with the provisions of criminal procedure. The liability of legal persons lapses 5 years after the perpetration of the offence and as regards the limitation period, the provisions of article 56 and following of the CC shall be applied, that is the limitation period applicable to the administrative violation is suspended for the entire period required to end the criminal proceedings concerning the offence from which the liability of the legal person arises.

93. As regards the criminal liability of legal persons, the evaluation team however stand by the previous findings of the third round, which had concluded that criminal liability of legal persons for ML should be clearly provided by law. As regards the administrative liability regime, it is noted that it does not apply to a number of criminal offences, which are predicate offences for ML, such as in particular fraud, illicit arms trafficking, insider trading and market manipulation; mmanufacturing and smuggling of goods to defraud the state tax office), extortion, participation in an organized criminal group and racketeering.

Liability of legal persons should not preclude possible parallel criminal, civil or administrative proceedings (c 2.4)

94. Administrative liability of legal entities does not preclude the possibility of parallel criminal or administrative proceedings. In all cases where administrative liability is connected with criminal liability, the criminal and administrative proceedings are parallel and according to the distribution of the workload within the Court, they are conducted by the same judge.

Sanctions for ML (c 2.5)

Natural persons

95. Sanctions for intentional ML pursuant to article 199bis have been increased as a result of the amendments introduced by the Law no. 92/2008.

Table 7 : Sanctions for natural persons for ML offences

Sanctions provided under the third round (Article 4 of Law no. 123/1998)	**Sanctioning regime after changes introduced by Law no. 92/2008**
Second degree imprisonment (from **6 months to 3 years)** and a second degree fine 'by the day" (from 10 to 40 days ") and 3rd degree disqualification (1 to 3 years) from public offices and political rights.	Fourth-degree imprisonment (from **4 to 10 years**), a second-degree daily fine (from 10 to 40 days) and third-degree disqualification (1 to 3 years) from public offices and political rights.
The penalties may be **decreased** by one degree (i.e. **imprisonment from 3 months to 1 year and fine from 1 to 20 days**) based on the amount of money or assets equivalent to them and by the nature of the transactions carried out.	The penalties may be **decreased** by one degree (i.e. **imprisonment from 2 to 6 years and first degree daily fine from 1 to 20 days and disqualification from 9 months to 2 years**) based on the amount of money or assets equivalent to them and by the nature of the transactions carried out.
The penalties may be **increased** by one degree ((i.e. **imprisonment from 2 to 6 years and fine from 20 to 60 days**) when the facts have been committed during the exercise of a commercial-professional activity subject to authorization or certification by the competent Public Authorities.	The penalties may be **increased** by one degree (i.e. **imprisonment from 6 to 14 years and fine from 20 to 60 days and 2-5 years of disqualification**) when the facts have been committed during the exercise of a commercial-professional activity subject to authorization or certification by the competent Public Authorities.

96. The available sanctions appear to be proportionate and dissuasive, but would need to be applied in a way that serves indeed as a deterrent. It is to be noted that until July 2010, the ML offence prescribed that the judge shall apply the corresponding penalty for the predicate crime, if this is less serious, though this provision has never been applied in practice. An amendment introduced by Article 34 of Decree Law no. 134 of 26 July 2010 has eliminated this provision, thus lesser penalties are no longer possible, even when the predicate offence sanction is lower.

97. San Marino courts have now successfully obtained convictions for money laundering in 3 cases against 4 persons. In terms of application of the statutory sanctions, the following sanctions were applied in those cases:
    - Criminal proceedings no. 1175 dated 2007 and no. 349 dated 2008 (Judgement of 15 June 2010): 2 years and 6 months imprisonment, disqualification for a period of 2 years and 6 months, fine in days of 40 days for an aggregate of Euros 6000 with confiscation of the money already seized and conviction to pay 4 361 364.10 Euros as confiscation equivalent and payment of Court's costs.
    - Criminal proceedings no. 333/2009 (Judgment of 8 June 2010): 4 years and 6 months imprisonment, payment of a fine in days for Euro 3000 Euros (corresponding to 30 days), disqualification from holding public offices and political rights for 2 years with confiscation amounting to 154 500 Euros and 1 276.21 corresponding to the interests accrued.

98. It has to be clarified that different sanctions regime were applied, due to the fact that in latter case the new law which provides for higher penalties was applied, while in the first cases the former law was applied, given that the offence was committed prior to the amendments of the legislation.

99. Effectiveness of sanctions cannot be fully established, given that since the third evaluation round, there have been convictions in only three cases, though it is to be noted that the fourth evaluation was conducted only shortly after the third mutual evaluation round, that is with a three years interval (i.e. March 2007 – September 2010).

Legal persons

100. Law no. 6 of 21 January 2010 sets out the measures and sanctions for the administrative liability of legal persons for ML offences. Precautionary measures can be applied pending criminal proceedings, such as the suspension of the licence or the appointment of a receiver to carry on the activity (article 6) or in such cases, the judge may order the seizure of anything which may be subject to confiscation under article 147 of the CC. The list of sanctions which can be applied when the liability of the legal person is proven, includes:

- application of pecuniary administrative sanction (from Euros 3.000 to 500.000);
- disqualification (for a period from 3 months to one year) which entails: exclusion from grants, funding, contributions or State benefits, revocation of grants, funding, contributions of State benefits already provided, inability to contract with the Public Administration;
- revocation of authorisations, licenses, or grants concerning the activity and the rights deriving there from.
- the judge may apply where appropriate the provisions regarding confiscation (article 147 of the CC).

101. According to the view of the San Marino authorities, the pecuniary administrative sanction of € 500,000 is adequate given that it may be applied together with disqualification, withdrawal of authorizations and confiscation of the assets received by the entity after the perpetration of the crime, or their equivalent value. Also San Marino authorities consider that due regard should be given to the fact that commercial companies are required by law to have a capital of € 77,000 (joint-stock-companies) and of € 25,500 euro (limited liability companies).

102. They also mentioned in this context that the pecuniary sanction is not intended to impact on the benefits, as this would be dealt with through confiscation. The confiscation of the proceeds of crime (or of their equivalent value) as set out in Article 11 of Law no. 6 of 21 January 2010, on the basis of Art. 147 of the Criminal Code, is a compulsory and independent measure applied independently from the other measures applying to the entity. Even when the advantage achieved exceeded € 500,000, confiscation would be applied to the entire advantage achieved, whereas the pecuniary sanction applies to the pre-existing assets of the entity.

103. However, the above-mentioned maximum threshold of the pecuniary administrative sanction may not appear to be proportionate and dissuasive in all circumstances.

104. Though the authorities indicated having taken action in several cases against a number of legal entities (i.e. revocation of licences of companies for doing business against the prestige and interest of the Republic of San Marino, compulsory winding up of financial/fiduciary companies, measures of extraordinary administration, civil cases, etc), there have been no instances where application of this law was initiated or of legal entities held criminally liable for ML in application of Law no. 6/2010.

Recommendation 32 (money laundering investigation/prosecution data)

105. The keeping of statistics has improved and now the authorities keep a variety of statistics, which include information on the number of investigations, number of accused persons, number of convicted persons, with breakdown per relevant offences and information of the amount of seizures and confiscations etc. These are kept by the Single Court. The data received was summarised in the table below:

Table 8 : Statistics on investigations, prosecutions and convictions for ML

	Notitia criminis reported to the Court by authorities Number of cases (persons)	**ML investigations initiated by the investigating judge Number of cases (persons)**	**Prosecutions**	**ML Convictions**
2005	1(2)	1(2)	3	1 judgment (3 convicted natural persons) **(1)**
2006	3 (5)	4 (10)	0	1 judgement (2 convicted natural persons) **(2)**
2007	3 (11)	4 (21)	0	0
2008	9 (18)	13 (22)	0	0
2009	8 (14)	10 (18)	2	0
October 2010	8 (19)	9 (22)	6	2 (each case 1 natural person convicted)

Notes:
(1) First case: First degree in year 2005 resulting in 3 natural persons convicted.
(2) Appeal of First case in year 2008 resulting in 2 persons convicted.

Effectiveness and efficiency

106. Since the previous evaluation round, San Marino courts have now successfully obtained convictions for money laundering in 3 cases against 4 persons (Appellate Court judgment of 9 May 2008, which upheld the conviction rendered by the Law Commissioner on 29 November 2005 against 2 persons in 1 criminal case; and 2 new convictions rendered on 8 and 15 June 2010 by the first instance judge against 2 persons in 2 cases).

107. The first conviction involved three persons. A person investigated for fraud, holder of a current account, had delegated his father to withdraw some of the money deposited in the same account. The money was withdrawn in cash and delivered to a third party which hid it in a safe-deposit box owned by another person. All three persons involved -the person withdrawing the money from the account, the one hiding it in the safe-deposit box and the owner of the box who made it available - were convicted. The second conviction involved the accountant of a company who had laundered the proceeds of crimes committed by the managers of a bank to the detriment of the bank itself (by investing such proceeds in shares and transferring them to different accounts). With a view to hiding the illicit origin of the money, the provision of consultancy and client acquisition services was simulated, while the services were never provided. The directors of the bank were convicted of the predicate offence in the framework of separate proceedings, while the accountant was convicted for money laundering. The third conviction involved a case of money laundering committed by transferring and collecting a bearer security from the perpetrator

of a fraud to an unconnected person. The legal ownership of funds deposited with a bank was also transferred in this way.

108. The authorities also indicated that 2 other convictions were also achieved for the offence referred to in Article 199 CC (Receiving of stolen property), with sanctions involving imprisonment sentences of 2 years, 2-year disqualification and a fine of € 400, for receiving and hiding abroad the proceeds (jewels and money) of a theft committed in San Marino.

109. While welcoming these results, the evaluation team considers that further efforts are necessary to enhance the effectiveness of the on-going investigations and prosecutions, and as such the effectiveness of implementation of the ML offence. When considering the figures available, the number of judgments in comparison with the numbers of investigations (2 in 2005, 10 in 2006, 21 in 2007, 22 in 2008, 18 in 2009 and 22 from 01.01.2010 to 20.06.2010), one notes a rather important disproportion. Also, considering the statistics provided by the authorities concerning the cases forwarded by the FIA to the judicial authorities and statistics on the activities enforced by the police, the outcome (i.e. number of investigations, prosecutions and convictions for serious offenses that generate proceeds) is higher in comparison with the number of investigations and convictions for ML.

110. These figures must be seen also in terms of the money laundering (ML) risks to which San Marino is exposed to, considering on one hand the size of the country and its low crime environment and on the other hand its vulnerability arising from the laundering of proceeds of crimes committed abroad (mostly in Italy) and the action that the authorities are taking to address this vulnerability. Statistics provided by the authorities on mutual legal assistance (MLA) related to ML, indicate that proceeds that could have been laundered in San Marino seem to be generated from serious predicate offences, such as drug-trafficking, mafia-type criminal organizations, illegal banking activities, fraudulent bankruptcy, fraud and tax evasion. The above-mentioned raises indeed concerns on whether internal proceeds are thoroughly investigated by the law enforcement authorities in terms of money laundering, though it is positively noted that the number of ML investigations initiated by the investigating judge have increased substantially since 2008. The 4 ML convictions achieved in San Marino were all for the laundering of proceeds derived from foreign predicates. They have enabled to establish a useful case law claryfing important aspects of the application of the ML offence.

111. The money laundering offence still does not cover self-laundering, which could have a negative effect on the execution of mutual legal assistance requests and granting of extradition, in the context of the application of the dual criminality requirement. During meetings with the judiciary, it was confirmed that several cases for self laundering had been dismissed.

112. Elements contributing to the small number of indictments and convictions appear to be related to the practical difficulties in establishing a link with the predicate offence, especially when those offences are committed abroad, and the length of time to receive responses from foreign authorities. Therefore, the magistrates should strive to develop their own case law to establish ML as a standalone offence which can be prosecuted independently from prosecutions relating to the predicate offence. Also, there continues to be a clear need for further specialised training of law enforcement authorities and the court magistrates.

2.1.2 Recommendations and comments

Recommendation 1

113. The authorities are recommended :

114. To extend the list of offences in the categories of terrorism and piracy as predicate offenses for money laundering;

115. To revisit the ML offence or enact a provision in order to cover the laundering of proceeds from one's own criminal activity. This could also be seen as having an additional deterrent effect and would certainly assist the work of the law enforcement agencies.

116. To examine the underlying reasons for the disproportion between the number of ML prosecutions and convictions and take measures as appropriate to enhance the effective application of the ML offence and sanctions.

117. To consider amending the legislation in order to criminalise negligent money laundering. As raised previously under the earlier evaluation rounds, in some jurisdictions a clearer subjective mental element of suspicion that property is proceeds (with appropriately lesser sentences than for an offence based on direct intention) has been useful and, if this would not be contrary to any fundamental legal principles in San Marino, it could be considered.

118. To ensure that judicial authorities take part on a regular basis in specialised training on ML and predicate offences, so as to enhance their skills and expertise and assist them to develop case law on autonomous money laundering and the aspects related to the gathering of evidence in such cases;

Recommendation 2

119. The authorities are recommended to, as already mentioned under the third evaluation round, and given the absence of fundamental principles of domestic law, to amend the existing legislation in order to extend criminal liability to legal persons, including for ML;

120. The maximum threshold barrier should be reconsidered in respect to the administrative liability for money laundering and as appropriate, the list of offences to which administrative liability applies should be extended.

121. Law enforcement and judicial authorities should receive adequate training on the application of sanctions for ML to natural and legal persons as set out under the newly adopted legislation.

Recommendation 32

122. This recommendation is fully observed.

2.1.3 Compliance with Recommendations 1 and 2

	Rating	Summary of factors underlying rating
R.1	**LC**	• The categories of offences of terrorism, including the financing of terrorism and piracy are not fully covered as a predicate offence to ML • Self laundering is not criminalised in the case of conduct under Article 199bis, though it is not demonstrated that there are fundamental principles of domestic law preventing such criminalisation ; • Effectiveness issues: effectiveness of implementation of the ML

		offence cannot be demonstrated considering the small number of convictions achieved to date; disconnect between the number of investigations and prosecutions as well as low number of convictions and indictments for ML compared to the number of criminal investigations and convictions for serious offenses that generate proceeds .
R.2	**LC**	• Corporate criminal liability is not extended to legal persons; • Effectiveness of sanctions for ML applied in respect of natural persons cannot be fully established, while legislation covering the administrative liability of legal persons for ML was recently introduced and never applied in practice.

2.2 Criminalisation of Terrorist Financing (SR.II)

2.2.1 Description and analysis

Special Recommendation II (rated PC in the 3rd round report)

Legal framework

123. San Marino had received a Partially Compliant rating under the third evaluation round, as the FT incrimination was not in line with the requirements of the United Nations International Convention for the Suppression of the Financing of Terrorism and SR II. Specifically, the report noted inter alia that the article 337bis of the Criminal Code did not cover the financing of terrorist acts by individual terrorists, that not all terrorist acts as defined in the 9 treaties listed in the annex to the convention were covered, that it was not clear whether the collection of funds or transfer or concealment of assets were included. There were also concerns that only natural persons were subject to criminal liability for the terrorist financing offence and that there were no adequate sanctions for FT set out in legislation.

124. San Marino introduced the following changes to its legislation:

- Law no. 92/2008 amended the Criminal Code, introducing Article 337ter – Financing of Terrorism and defined the terms " terrorism", " terrorist act" and terrorist" (article 1 (p), (q), (j));
- The Law no. 6 of 21 January 2010 sets out the measures and sanctions for the administrative liability of legal persons for offences under articles *337 bis* (Associations for the purpose of terrorism or subversion of the constitutional order) and *337 ter* (terrorist financing) of the Criminal Code.

Criminalisation of financing of terrorism (c.II.1)

125. The changes introduced by Law no. 92/2008, which amended the CC, are highlighted in italics below:

"Article 337 bis
Associations for the purpose of terrorism or subversion of the constitutional order

(1) Anyone promoting, establishing, organising, *or* directing ~~*or financing*~~ associations that aim at perpetrating violent acts for the purpose of terrorism or subversion of the constitutional order against public or private institutions or bodies either of the Republic of San Marino or of a foreign

State or international, shall be punished by terms of sixth-degree imprisonment and fourth-degree disqualification from public offices and political rights.

(2) Anyone participating in such associations shall be punished by terms of fourth-degree imprisonment and third-degree disqualification from public offices and political rights.

(3) Except for cases of participation and support, anyone providing participants in the associations referred to in the preceding paragraphs with assistance or aid in any form shall be punished by terms of second degree imprisonment and second-degree disqualification from public offices and political rights.

(4) The person committing the fact referred to in paragraph 3 above in favour of a close relative shall not be punishable."

"Article 337 ter
Financing of terrorism

Whoever, by any means and also through a third-party, receives, collects, detains, gives up, transfers or conceals funds intended to be used, in full or in part, in order to carry out one or more terrorist acts or to provide economic support to terrorist individuals or terrorist groups or provides them with financial service or other connected services shall be punished with sixth-degree imprisonment and fourth-degree disqualification from public offices and political rights. ».

126. Special Recommendation II requires that the terrorist financing offence extends to any person who provides or collects funds by any means, directly or indirectly, with the intention that they are used (1) for terrorist acts as defined under the TF Convention, (2) by a terrorist organisation or (3) by an individual terrorist.

Financing of terrorist acts as defined in the TF Convention

127. Pursuant to Article 2 of the TF Convention, countries are required to criminalize the financing of "terrorist acts," whereby the term includes

(1) conduct covered by the offenses set forth in the nine conventions and protocols listed in the Annex to the TF Convention and
(2) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act.

128. Article *337 ter* refers generally to terrorist acts, which have been defined under article 1 of Law no. 92/2008 as "any conduct contrary to the constitutional order, the rules of international law and statutes of international organisations, aimed at seriously injuring people or things, so as to compel the institutions of the Republic of San Marino, of a foreign State or International Organisation, to carry out or to refrain from carrying out any act, or to intimidate the population or part of it, or to destabilize or destroy the political, constitutional, economic or social institutions of the Republic of San Marino, of a foreign State or International Organisation".

129. When considering the definition above as well as the offences set out in the Criminal Code, the Sammarinese legislation does not appear to cover a large majority of acts that should be encompassed within the definition of a 'terrorist act" for the purposes of SR.II[10].

Financing of terrorist organisations as reflected in SR II

130. Article 337 ter punishes whoever receives, collects, details, gives, transfers or conceals funds intended to provide economic support to a terrorist group or to provide them with financial services or other connected services. The provision is clear in prohibiting both the collection and the provision of financial support or other forms of support.

131. Law 92/2008, in its article 1, defines a terrorist organisation by reference to any group set up in the form of an association. This provision is understood by the magistrates as covering groups of 2 persons through application of article 73CC (accomplices) and of three persons through article 287 CC (association to commit offences).

132. Deficiencies identified with respect to the criminalisation of "terrorist acts" impact on the definition of a terrorist organisation, as far as it is correlated with the definition of a terrorist act.

Financing of individual terrorists as reflected in SR.II

133. Article 337 ter punishes whoever, by any means and also through a third-party, receives, collects, detains, gives up, transfers or conceals funds intended to be used, in full or in part, in order to provide economic support to terrorist individuals or provides them with financial service or other connected services.

134. Law 92/2008, in its article 1, defines a terrorist as "any individual perpetrating or attempting to perpetrate an act as defined under letter p of this article, that is by reference to the definition of terrorism or terrorist act as defined in the law. Thus, the deficiencies identified with respect to the criminalisation of " terrorist acts" impact on the definition of a terrorist, as far as it is correlated with the definition of a terrorist act.

Attempt and ancillary offenses under article 2(4) –(5) of the FT Convention

135. Article 2 paras. 4-5 of the FT Convention requires that States criminalise attempts to commit the FT conduct, and for both completed or attempted conduct, participation as an accomplice, the organisation or direction to others to commit an offence, and contribution to the attempt or completed conduct through association or conspiracy.

[10] Stealing, seizing or exercising control of aircraft (covered only as a piracy); Deliberate destruction or damage of property, which can cause endanger of **s**afety in flights; Untrue report or false denunciation, when the person knows to be false, thereby endangering the safety of an aircraft in flight; Performing an act of violence against a person on board an aircraft in flight, murder, kidnapping upon the person or liberty of an international protected person; A violent attack upon the official premises, the private accommodation or the means of transport of an internationally protected person likely to endanger his person or liberty; Unlawful receipt, possession, use, transfer, alteration, disposal or dispersal of nuclear material and causes death or serious injury to any person or substantial damage to property; A theft or robbery of nuclear material; An embezzlement or fraudulent obtaining of nuclear material; Using threat or force by demand for nuclear material; A threat to use nuclear material to cause death or serious injury to any person or property damage; Seizing or exercising control over a ship by force or threat; Destroying a ship or causing damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship; Untrue report or false denunciation, when the person knows to be false, thereby endangering the safe navigation of a ship; Deliberate murder or injuring any person in the ship; Threatens, with or without a condition and which endangers the safe navigation of the ship in question; Seizing or exercising control over a fixed platform by force or threat; Performing an act of violence against a person on board a fixed platform if that act is likely to endanger its safety; Destroying a fixed platform or causing damage to it which is likely to endanger its safety etc

136. The general provisions of the CC at articles article 26 (attempt), article 27 (failed conduct), article 73 (accomplices) apply in this context. Article 75 of CC sets out different kinds of accountability according to the type of contribution which each participant has brought in the preparation, or execution of the crime. Furthermore, whoever organises or directs other persons in order to commit the offence of FT or an act of terrorism is punishable as aiding and abetting the crime, and if the aim of the association is to commit several offences, as an associate offender.

Predicate offence for money laundering (c.II.2)

137. Terrorism financing is now a separate statutory offence in the CC and qualifies as a predicate offense for ML. However, considering the gaps above, it does not constitute a complete predicate offence to ML.

Jurisdiction for Terrorist financing offence (c.II.3)

138. Under Art. 6 (1) of the CC, anyone committing the felonies covered in Articles 337 bis and ter outside the territory of San Marino is "subject to the provisions of this Code".

The mental element of the FT (applying c.2.2 in R.2)

139. The discussion of the mental element set forth in R.2 applies in relation to the FT offence as well. Likewise, also terrorist financing is a wilful offence, where the criminal intent may be inferred from factual circumstances.

Liability of legal persons (applying c.2.3 & c.2.4 in R.2)

140. Legal persons are also liable for engaging in FT. As noted under the discussion under R.2, pursuant to article 2 of Law no. 6/2010, administrative liability applies also offences set out under articles 337bis (Associations for the purpose of terrorism or subversion of the constitutional order) and 337ter (terrorist financing) of the CC. Comments made in the previous section in respect of corporate criminal liability are also applicable in this context.

Sanctions for FT (applying c.2.5 in R.2)

141. The sanctions for violations of article 337 ter include sixth-degree imprisonment (i.e. 10 to 20 years) and fourth-degree disqualification (2-5 years) from public offices and political rights. The same applies for violations of article 337 bis paragraph 1, while participation in associations for the purpose of terrorism or subversion of the constitutional order is punishable by less severe sanctions, that is by fourth-degree imprisonment (from 4 to 10 years) and third-degree disqualification (from 1 to 3 years) from public offices and political rights. Comments made previously in respect of the dissuasiveness of administrative sanctions for legal entities are also applicable in this context.

142. As there has never been a conviction for FT, no sanctions have ever been imposed. The sanctions for natural persons are proportionate and have the potential to be dissuasive. It could not be determined that the amount and sanctions for legal persons are dissuasive.

Recommendation 32 (statistics applying c.32.2)

143. The FT offense has never been tested in practice. There have been no investigations nor prosecutions for FT, nor was there any STR filed which would relate potentially to FT.

Effectiveness and efficiency

144. The changes made to the legal framework as outlined above would enable the authorities to prosecute terrorism financing activities in certain situations envisaged by the international standards. Given that the FT offense has never been tested in practice, it is not possible to assess their effectiveness. The authorities however indicated their vigilance and readiness to undertake investigations and prosecutions in FT matters if such cases would be identified.

2.2.2 Recommendations and comments

Special Recommendation II

145. The authorities should enact amendments to the Criminal Code to ensure that the FT offence covers the financing of all acts that are within the definition of a 'terrorist act" for the purposes of SR.II.

146. The existing legislation should be amended in order to extend criminal liability to legal persons for FT, as already mentioned under the third evaluation round, and given the absence of fundamental principles of domestic law.

147. San Marino should ensure that adequate training is provided to relevant authorities, in particular law enforcement and judicial authorities, on the application of the newly adopted legislation in respect of the FT offence and recently adopted measures extending administrative liability of legal persons for FT.

Recommendation 32 (statistics applying c.32.2)

[not applicable]

2.2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	**PC**	• FT criminalisation does not comply with the standard in that: - the legislation does not criminalise a large majority of acts, as set out under the treaties that are annexed to the FT Convention and this impacts also on the definitions of a terrorist and of a terrorist organisation - the FT offence does not constitute a complete predicate offence to ML. • Criminal liability has not been extended to legal persons. • Effectiveness cannot be tested in the absence of TF investigations and prosecutions.

2.3 Confiscation, Freezing and Seizing of Proceeds of Crime (R.3)

2.3.1 Description and analysis

Recommendation 3 (rated PC in the 3rd round report)

Legal framework

148. San Marino had received a Partially Compliant rating under the third evaluation round, on the consideration that several shortcomings were noted in respect of the legal framework covering provisional measures and confiscation and also given the concerns that there could be a lack of financial investigations into proceeds and a lack of effectiveness generally.

149. Following the evaluation, San Marino introduced the following changes to its legislation:

- Law no. 73/2009 and Decree 181/2010 amended article 147 paragraph 3 of the Criminal Code extending value based confiscation to the most serious offences constituting predicate offences to ML
- Law no. 118 of 28 June 2010 (article 34) enabled to apply value based confiscation to smuggling of migrants, trafficking in persons and commercial offences
- The powers of competent authorities to identify and trace property were reviewed – Law no. 92/2008 sets out revised provisions regarding the powers of the FIU to order the block of assets, funds or other economic resources
- Law no. 92/2008 also introduces specific provisions to void actions, such as contracts
- Law no. 6 of 21 January 2010 introduces specific provisions on seizure and confiscation in respect of legal persons;
- The authorities have initiated keeping statistics on seizures, blocking measures and confiscation

Confiscation of property related to ML, FT or other predicate offences including property of corresponding value (c.3.1) & confiscation of property derived from proceeds of crime (property in third party hands) (c.3.1.1)

150. As noted in the previous evaluation report, San Marino uses its CC provisions to address confiscation of ML and FT in criminal proceedings. Confiscation in general is provided for in article 147 of the Criminal Code, as amended by article 5 of the Law no. 28/2004, article 1 of Law no. 73/2009, article 32 of Decree Law no. 134/2010 and article 42 of Decree 181/2010. Article 147 as amended reads:

Article 147. Confiscation

1. An offence shall entail confiscation of the instrumentalities, owned by the culprit, that served or were destined to commit the offence, and of the things being the price, product or profit thereof.

2. Regardless of conviction, confiscation shall also apply to the illegal making, use, carrying, holding, sale of or trade in property even not owned by the offender.

3. In case of conviction, the confiscation of the instrumentalities that served or were destined to commit the offences referred to in Articles 167, 168, 168 bis, 169, 177 bis, 177 ter, 194, 195, 195 bis, 195 ter, 196, 199, 199 *bis*, 204

paragraph 3 number 1, 204 bis, 207, 212, 305 *bis*, 337 *bis*, 337 *ter*, 371, 372, 373, 374, 374 *ter* paragraph 1, 388, 389, the offences for the purpose of terrorism or subversion of the constitutional order and the offence referred to in Article 1 of Law no. 139 of 26 November 1997, as well as of the things being the price, product or profit thereof shall always be mandatory. Where confiscation is not possible, the judge shall impose an obligation to pay a sum of money corresponding to the value of the instrumentalities and things referred above.

4. When the instrumentalities that served or were destined to commit the offence or the things being the price, product or profit thereof have been intermingled, in whole or in part, with property acquired from legitimate sources, the judge shall order the confiscation of the intermingled proceeds, up to the assessed value of the instrumentalities that served or were destined to commit the offence or of the things being the price, product or profit thereof.

5. In the cases specified in paragraph 3, the judge shall also order the confiscation of money, property and other benefits of which the offender is not able to demonstrate the lawful origin.

6. Where confiscation is not possible, the judge shall impose an obligation to pay a sum of money corresponding to the value of the instrumentalities and things to be confiscated.

7. Confiscated instrumentalities and things, or equivalent sums, shall be allocated to the inland revenue or, where appropriate, destroyed.

151. Confiscation is a consequence of conviction for the offence (article 147(1)) and operates on the instrumentalities that served or were destined to commit the offence which belong to the offender. It also operates on things which represent the price, the product or the profit of the offence, only when owned by the offender. Regardless of a previous conviction, confiscation is mandatory whereby the offence consists of the illicit manufacture, use, carriage, possession transfer or trade in property, even if the object or instrumentality belongs to a third party.

152. In case of conviction, the confiscation of the instrumentalities that served or were destined to commit a list of specific offences[11] as well as the things being the price, product or profit thereof shall always be mandatory. In relation to the same offences, it is mandatory to confiscate money, property and other benefits for which the offender is not able to demonstrate the lawful origin.

[11]Article 167 (enslavement, article 168 (trafficking in human beings), article 168 bis (incitement to prostitution), article 169 (kidnapping), article 177 bis (exploitation of child prostitution) , article 177 ter (child pornography), article 194 (theft), article 195 (robbery), article 195bis (acts of piracy on ships and aircrafts), article 195 ter (taking possession of a ship or an aircraft), article 196 (extortion), article 199 (receiving of stolen property), article 199 bis (ML), 204 para 3 (fraud to the detriment of the State), article 204 bis (misuse of credit cards or similar devices), article 207 (usury), article 212 (fraudulent bankruptcy), article 305bis (insider trading), article 337 bis (associations for the purpose of terrorism or subversion of the constitutional order), article 337 ter (financing of terrorism), article 371 (embezzlement by public official), article 372 (extortion), article 373 (bribery), article 374 para 1 (accepting an undue advantage for an act already performed), 374 ter para 1 (embezzlement, extortion, corruption and instigation to corruption of officials from foreign countries and international public organisations), article 1 of the Law 139/1997 (offences related to narcotic drugs, alcoholic beverages, harmful or dangerous substances, psychotropic substances), article 34 of law no. 118 of June 28 2010 (smuggling of migrants, trafficking in persons and commercial offences, falsification of travel and identity documents of migration).

Where confiscation is not possible, the judge shall impose an obligation to pay a sum of money equal to the value of instrumentalities and things referred to above. Article 1 subsection 2 of Law no. 92/2008 explicitly indicates that this can refer to any assets that "come directly or indirectly from the criminal activity or from participation in the said activity".

153. It is to be noted that not all offences which are included in the FATF designated categories of offences and which should constitute predicate offences to ML and FT are covered in the list above (i.e. certain offences in the category of sexual exploitation, illicit arms trafficking, counterfeiting of currency, counterfeiting and piracy of products, fraud, forgery).

154. The absence of corporate criminal liability does not appear to cause problems in terms of confiscation of assets held by legal persons. As explained previously, Law no. 6 of 21 January 2010 sets out the measures and sanctions for the administrative liability of legal persons for ML offences. It also provides that in respect of legal persons, the judge may order the seizure of anything which may be subject to confiscation under article 147 of the CC and apply, where appropriate, the provisions regarding confiscation (article 147 of the CC).

Provisional measures to prevent any dealing, transfer or disposal of property subject to confiscation (c.3.2)

155. As mentioned in the third MER, seizure of assets prior to confiscation can be ordered at any moment during the investigative process (see articles 78 and 58 of the CPC, which have not been modified) mainly in 2 cases:
a) preventive seizure: when such assets are property subject to confiscation
b) probatory seizure: when such items are necessary for evidentiary purposes

156. Moreover, under the AML/CFT Law (article 6), FIA can order the blocking of assets, funds or other economic resources whenever there are reasonable grounds to believe that these are derived from ML or TF or may be used to commit such offences. Such measures are notified within 48 hours to the judicial authority, which shall confirm the blocking measure within the following 96 hours, if the requirements are met. Whenever the assets are registered movable or immovable ones, the Agency shall order the registration of the freezing at the State Office in charge of keeping public registries. The blocking measure can last up to 15 days, and the term is extendable up to 45 days, upon motivated request by the agency, where investigations are particularly complex or where co-operation of foreign FIUs is needed.

Initial application of provisional measures ex-parte or without prior notice (c.3.3)

157. As regards preventive measures applied under the CPC, the authorities have indicated that these are issued on an ex parte basis and without prior notice. There is no CPC provision addressing this issue explicitly,, this being the usual accepted practice. Notification of the measure is given at a subsequent stage.

158. As regards the blocking by the FIA, article 6 provides that the measure shall be communicated to the entity or person who holds the assets, funds or economic resources, and in the case of the interested party, it shall also communicate the measure except where the communication may prejudice the outcome of the investigation.

Adequate powers to identify and trace property that is or may become subject to confiscation (c.3.4)

159. As mentioned in the third MER, the law enforcement authorities appear to have adequate powers under the PCP to identify and trace property that is or may become subject to confiscation.

The judge may authorise the police to carry out undercover operations, intervene in intermediation activities, simulate the purchase of goods, materials and objects liable to generate proceeds, and take part in any initiative. As a result of investigations, police can seize property, the validation of seizure by the judge may be delayed as long as the investigation is underway in order not to impair the acquisition of further evidence. As regards the FIU's powers in this context, these were reviewed and blocking measures are no longer limited to assets, funds or other economic resources held by the financial and banking sector.

Protection of bona fide third parties (c.3.5)

160. Property owned by bona fide third parties cannot be confiscated. In such case, where there is a money laundering conviction, article 147(6) providing for value based confiscation is applied to the convicted person with an obligation to pay an amount of money equal to the value of the property which could not be confiscated. Equivalent value confiscation has already been applied in practice in relation to a conviction for ML where the criminal proceeds were returned to the victim of the predicate offence (Law Commissioner, Decision of 15 June 2010)[12].

Power to void actions (c.3.6)

161. Previously, there were no provisions covering this requirement.

162. Law No.92/2008, Article 75, sets out that "any act, fulfilled in any capacity, evidencing title to assets, funds or economic resources that constitute directly or indirectly the price, product or profits from an offence is null and void, if the person who has received them knows or should have known that they derived from an offence". Accordingly, "I Sindaci di Governo" (authorities dealing with acts and deeds involving the State) shall sue the transferor, the transferee and any successors in title, who shall be jointly sentenced to transfer the property, funds or economic resources to the State, or, if this is not possible, to pay an equivalent amount. The assignee and any subsequent assignees have the onus of proving their good faith. Protection of bona fide third parties is also ensured in this procedure. This provision was not yet applied in practice.

Additional elements (c.3.7)

163. The judge can order the confiscation, including equivalent, of the assets of the corporate body in relation to the misdemeanours carried out, attempted or failed in the Republic of San Marino, on its behalf or to its advantage, by one of its bodies or by whosoever has representation, management or administration functions (art. 11 of Law no. 6 dated 21 January 2010).

164. The case law had established that all sums for which a defendant could not demonstrate the lawful origin could be confiscated. The judge regarded such assets as illicit on the basis of factual circumstances, such as any suspicious or unusual manner by which the defendant had taken possession of such assets. Decree Law no. 134 of 26 July 2010 (ratifying Decree Law no. 126 of 15 July 2010 has amended paragraph 3 of article 134 explicitly providing that the judge shall also order the confiscation of money, property and other benefits for which the offender is not able to demonstrate the lawful origin.

[12] This was confirmed by the Judge of Appeal in a judgment rendered after the on-site visit.

Recommendation 32 (statistics)

165. The authorities keep statistics on the number of seizure and confiscation orders and value, as well as with respective breakdowns per offences and years. The Statistics Office of San Marino has drawn up a programme to process the data entered by the Cancelleria Penale, within which a person is responsible for the collection of statistics. The database containing all the data entered is retained at the Statistics Office. The statistics are published after the end of the year when the report on Justice matters is approved. FIA keeps statistics as well on the number of blocking orders and values involved. The keeping of statistics has improved compared with the previous situation. A summary of statistics is provided below:

Table 9: Property seized and confiscated in ML cases

Money laundering cases	**2007**	**2008**	**2009**	**June 2010**
ML investigation cases	4	13	10	9
Seizure orders (national proceedings)	1	2	2	4
Property Seized (value in EUR)	1,919,757.9	685,441.20	1,009,081.01	4,849,581.06
Confiscation (value in EUR)	-	1,892,700.00	-	4,517,140.31

(*) In one of the 2007 money laundering proceedings, an amount equal to 4,997,124.37 euro was seized. This sum of money was totally returned to the victim of the predicate offence. Subsequently, a proceeding was commenced against the persons suspected of the predicate offence instead of the offence of money laundering.
(**) In a 2010 proceeding concluded with a judgement of conviction, the judge has ordered the confiscation of a sum equivalent to that already seized (and already returned to the victim of the predicate offence), besides the sums transferred by the person committing the crime of money laundering, the seizure of which was not materially possible.

166. As regards property frozen, seized and confiscated in criminal cases related to predicate offences, the authorities also provided statistics on seizures and confiscation measures applied for selected predicate offences (receiving stolen goods, theft/misappropriation, counterfeiting, fraud, drug trafficking). Those statistics show on average a constant increase of the value of seizures and confiscations in the years 2008-2010 and that the authorities are making use of the legal framework quite efficiently. It was also indicated that in the proceedings relating to drugs, the seizure and confiscation of narcotic drugs are always ordered. Similarly, statistics were also received regarding seizures carried out based on mutual legal assistance requests, those cases concerning bankruptcy, misappropriation and usury offences.

167. FIA made use of its blocking power under article 6 of the AML/CFT Law in one instance in 2009, the value of the amount blocked being of 155 776,21 Euros[13].

168. There have been no blocking measures, seizure or confiscation of FT assets, as no FT cases have been investigated or prosecuted.

Effectiveness and efficiency

169. The legal framework for the confiscation regime, as amended in the past three years, provides for a wide range of confiscation, seizure, and provisional measures with regard to property laundered, proceeds from, and instrumentalities used in, ML or predicate offences.

170. As indicated above, a number of offences falling under the FATF categories of offences are excluded from the list under article 147 CC. Also, the limitations related to the criminalisation of

[13] FIA indicated that after the visit, they have taken 5 blocking measures involving assets of 2.5 million Euros and postponed one transaction of 100.000 Euros.

certain offences as predicate offences for ML, as noted under the analysis of compliance with R.1, and to the FT criminal offence, as identified under the analysis related to SR. II, would have a cascading effect on the authorities' ability to seize and confiscate.

171. As regards the application of provisional measures and confiscation, the statistics received from the Court show that the system has started to produce concrete results as far as seizures and confiscation in ML cases are concerned, both in the context of requests stemming from proceedings at national level or international legal assistance requests. There appeared also to be a clear commitment of the authorities to make full use of the seizure provisions also in connection with other major proceeds generating offences, and according to the data received, those concerned primarily cases of fraud and theft.

172. However, from discussions held during the visit, and when comparing the total figures of ML investigations and the number of seizure orders, the concerns raised previously in respect of initiating financial investigations into the proceeds aspects of cases seem to remain valid, which would also allow to initiate the application of provisional measures. This has also to be seen in context with previous comments regarding the need for law enforcement authorities to develop their own expertise and skills in conducting in-depth financial investigations instead of relying on those of the FIA, so that the law enforcement authorities make full use of the powers under criminal legislation in pursuing criminal assets in proceeds generating crime under investigation and prosecution.

173. The evaluation team had also the opportunity to discuss with the FIA the circumstances when use was made for the first time of its blocking power. It was mentioned that in that specific case; preliminary consultations of the judicial authority by the FIA were made before applying its blocking power. The evaluation team was of the opinion that such a practice could affect the independent decision-making function of the FIA in the context of this procedure, which otherwise required a post confirmation of the application of those measures by the judicial authority. The powers of the FIA would enable it to act rapidly and block assets and property on a temporary basis, which can subsequently be confirmed by the judge, if those were effectively used.

2.3.2 Recommendations and comments

174. The authorities should amend the legal framework to remedy the deficiencies raised under R.1 and SR II and ensure that, in respect of those conducts, instrumentalities used and to be used and proceeds can be seized and confiscated; and amend the legislation as appropriate to ensure that confiscation measures can be applied to all predicate offences.

175. Efforts should be increased to put in place comprehensive training programme for the judiciary and the law enforcement officials to further increase their skills and expertise in identifying and tracing, in both domestic and foreign cases proceeds and consequently in applying the provisions regarding provisional measures and confiscation.

176. The consequences of the practice of relying on the FIA for conducting financial investigations should be examined, in the light of the staff and budgetary resources that this assistance involves, so that law enforcement authorities make full use of their powers under the criminal legislation in pursuing criminal assets in proceeds generating crime under investigation and prosecution.

2.3.3 Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
R.3	**LC**	• Deficiencies in criminalisation of predicate offences to ML (TF and piracy, noted in R.1) and of the FT offence (noted in SR.II) limit the ability to seize and confiscate. • The list of offences in Article 147 does not encompass all offences listed as predicate offences to ML or TF. • Effectiveness is not fully established as there was a limited number of ML cases where these measures were applied.

2.4 Freezing of Funds Used for Terrorist Financing (SR.III)

2.4.1 Description and analysis

Special Recommendation III (rated PC in the 3rd round report)

Summary of 2008 MER factors underlying the rating and developments

177. San Marino was previously rated Partially Compliant in the third evaluation round, as the legal framework for the implementation of the UN resolutions was incomplete. he concerns expressed included: the absence of a designating authority for UNSCR 1373; the absence of guidance on obligations and procedures, the lack of clear publicly known provisions for considering de-listing and unfreezing, the lack of appropriate procedures authorizing access to frozen funds for necessary basic expenses, payment of certain fees, service charges or extraordinary expenses, the need to review the legal framework for imposing administrative sanctions and the lack of checks for compliance with the requirements.

178. San Marino has introduced several changes to the legal framework aimed at addressing the above-mentioned concerns. The implementation of the requirements under SR.III is now covered by the following provisions:

- AML/CFT Law 92/2008 (as last amended in 2010): Title IV - Measures for preventing, combating and repressing terrorist financing and the activity of states that threaten international peace and security (article 46 and following) as well as related referenced provisions under Title VI – Sanctions (articles 60, 64, 65 67)
- Congress of State decision no. 2 dated 6 October 2008 - Provisions for implementing the measures adopted by the United Nations Security Council against persons and organisations linked to Osama Bin Laden, to the "Al -Qaida" group or to the Taleban and following decisions implementing changes and measures taken by the Sanctions Committee as regards UNSCR 1267(1999)
- Delegated Decree no. 137 dated 31 October 2008 on " Regulations for the safekeeping administration and management of frozen economic resources"
- FIA Instruction 2010-03, Provisions implementing FATF Special Recommendation III, dated 4 June 2010
- FIA Guidelines on SR.III, dated 20 August 2010, addressed to all obliged entities.

Freezing assets under S/Res/1267 (c.III.1) and under S/Res/1373 (c.III.2)

179. San Marino has the ability to freeze assets under S/Res/1267 (c.III.1) in application of the AML/CFT legislation and pertinent Congress of State Decisions adopted to implement Article 46 of the AML/CFT Law.

180. Article 46 provides that in order to "comply with the international obligations assumed by the Republic of San Marino to combat terrorism, terrorist financing and the activity of countries that threaten international peace and security, the Congress of State, upon proposal by the Secretary of State for Foreign Affairs and the Secretary of State for Finance and Budget, shall adopt without delay a decision outlining restrictive measures, conforming to the resolutions of the United Nations Security Council or one of its committees".

181. The restrictive measures include the following:

a) the freezing of funds and economic resources held or controlled, directly or indirectly, by persons , entities or groups included in the list drawn up by the appropriate United Nations Committee;

b) commercial restrictions, including commercial restrictions on imports or exports and arms embargoes;

c) restrictions of a financial nature, including financial restrictions or financial assistance and the prohibition of providing financial services;

d) restrictions of other nature, including restrictions on technical assistance, flight prohibitions, prohibition of entry or transit, diplomatic sanctions, the suspension of co-operation and the boycotting of sport events. [….]

182. Article 1 of the AML/CFT Law defines " assets" or funds" adequately as : "*property of every kind, whether tangible or intangible, movable or immovable, including means of payment and credit instruments, documents or instruments in any form, including electronic or digital, evidencing title to, or interest in such property; economic resources of every kind, whether tangible or intangible, movable or immovable, including ancillary assets, appurtenances and interest that may be used to obtain funds, assets or services as well as any other benefit specified in the technical Annex to this Law*". Article 2 of the Technical Annex to the law further clarifies: that the following can be included as an example:

a) cash, checks, bills of exchange, pecuniary credits and claims on money, payment orders and other means of payment;

b) deposits with banks or financial institutions or other entities, the balance on accounts, credits, bonds of any nature and negotiable securities at public and private levels as well as financial instruments as defined by Law N° 165 on November 17, 2005 and subsequent amendments;

c) interests, dividends and other incomes and increases of values generated by the assets;

d) credits, right of set-off (settlement and clearing), guarantee of any nature and other financial commitments, letters of credit, bills of lading and other certificates representative of assets or goods;

e) documents that demonstrate an interest in funds or economic resources;

f) all other instruments of exports-financing.

183. Whenever a resolution of the UN Security Council or one of its Committees provides for the adoption, amendment or abrogation of restrictive measures, the Congress of State shall provide for their enforcement in the territory of the Republic of San Marino with a decision. The decisions referred to in the previous paragraphs are immediately published *ad valvas Palatii* and at the Court, and from that moment they are presumed to be known by everyone. The decisions are sent to the FIA which is responsible for their transmission to the Judicial Authority, the administrations listed in article 48 and to the designated persons and entities».

184. A number of additional Congress of State decisions were adopted subsequently. These acts are available on the website of the Secretariat of State for Home Affairs (http://delibere.interni.segreteria.sm) and also on the website of the FIA, through a special section (www.aif.sm) "restrictive measures" - Resolutions of the State Congress.

185. The freezing is considered to be effective immediately after adoption of the Congress of State decision and perfected without prior notice to the person whose property or funds are affected by such action. The freezing mechanism under the AML/CFT Act applies to "funds and economic resources held or controlled, directly or indirectly, by persons, bodies or groups included in the lists". The scope seems to be more limited, as it does not explicitly include the funds derived from funds or other assets owned or controlled, directly or indirectly by persons acting on their behalf or at their direction. The authorities are of the view that this would not constitute an issue given that the definition of a terrorist in Article 1 paragraph 1 letter q) III explicitly refers to any "entity acting on behalf or, or directed by said individual or groups that has been funded, even partly, with proceeds obtained from or generated by assets directly or indirectly held or controlled by said individuals or groups".

186. Freezing of funds under the AML/CFT law is defined in article 1 as " *preventing any movement, transfer, alteration, disposition, use or management of and access to funds or economic resources in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or other change that would enable the use of the funds or economic resources, including, but not limited to, portfolio management, the selling, leasing, hiring or mortgaging of such funds or economic resource*s".

187. Designated authorities and public administrations are required to comply and ensure compliance with the Congress of State decision and failure to observe those provisions is sanctionable under the AML/CFT Law.

188. Under the AML/CFT Law, article 46 provides that the Congress of State decision can introduce additional restrictive measures or specific provisions to the resolutions adopted by the UNSC or one of its Committees.

189. The designating authority for UNSCR 1267 is the Committee for Credit and Savings[14] under article 49 and article 85 para 8 of the Law No.92/2008. The latter integrates article 48 and article 3 of Law No.96 of 29 June 2005 (Statutes of the Central Bank by which the Credit and Saving Committee is regulated). Article 49 sets out in detail the functions of the Committee in the implementation of the restrictive measures under the UNSC Resolutions. These include :

- Evaluating requests for unfreezing of funds and economic resources upon requests received from parties concerned
- When a freezing order was repealed, taking actions to return the assets to their rightful owner or to register the unfreezing order of registered movable or immovable assets in the public registers
- Authorising access to frozen assets or property to meet basic needs of listed persons or their family members, including payments for foodstuffs, medicines, housing, medical care and legal assistance or payment of tax duties, insurance premiums and bank charges and notifying such measures to the competent UNSC Committee.
- Formulating proposals to international organisations for including persons, entities or groups in the lists on the basis of information provided by the FIA and other national authorities, for de-listing

[14] The Committee for Credit and Savings is an administrative body chaired by the Secretary of State for Finance and Budget, and composed of 2 to 4 persons (Ministers) nominated by the Congress of State among its own members.

- Taking action upon notifications of foreign authorities of adoption of freezing measures in respect of persons not included in the lists.

190. Although the San Marino authorities indicated that they would rely on these provisions to implement UNRES 1373, it remains unclear whether these provisions would provide sufficient legal authority to designate and freeze the assets of persons that the national authorities would determine to fall under the category of persons to be covered under S/Res/1373.

191. The evaluation team considers that the freezing mechanism set out in the AML/CFT Law is related to freezing of terrorist assets under UNSCR 1267. Article 46 paragraph 1 a) of the AML/CFT Law includes a direct reference that decisions outlining restrictive measures relate to persons, entities or groups included in the lists drawn up by the competent UN Committee. The unfreezing mechanism set out under paragraph 2 of Article 49 and paragraph 4 of article 46 of the AML/CFT Law contemplates the unfreezing of funds based on a decision to that effect by the UNSC or one of its Committees. The same applies to the FIA Instruction No. 2010-03, which clarifies the term "List" as "list of parties – persons, entities and groups- drawn up and amended on a regular basis by the UNSC or one of its Committees" and indicates that the delisting and annulment of the freezing order based on the interested parties' request is only possible after the above-mentioned request is forwarded by the Committee of Credit and Savings to the UNSC or one of its Committees for approval.

192. The authorities indicated that the freezing mechanism under UNSCR 1373 is established through implementation of article 49 paragraphs 9 and 1 ; article 46 paragraph 2 and article 5 paragraph 1 letter d) of the AML/CFT Law. However, the evaluation team consider that article 46 paragraph 2 which sets out that the Congress of State can introduce additional restrictive measures or specific provisions related to the resolutions adopted by the UNSC or one of its Committees is quite general and could not be interpreted in the way that it would cover designations of persons and entities, freezing of their assets and related procedures under UNSCR 1373.

193. Article 49 paragraphs 9 and 1, Article 46 paragraph 2 and article 5 paragraph 1 letter d) address differently the freezing obligations under UNSCR 1373. In particular, according to the above-mentioned provisions, upon notification of a foreign authority of the adoption of freezing measures in respect of persons other than those designated by the UN, the Credit and Savings Committee submits this information to the FIA then FIA orders the block of assets, funds or other economic resources when there are reasonable grounds for suspecting that these are derived from ML or TF or may be used to commit such offences. This mechanism appears to be more restrictive than the one set out under UNRES 1373.

194. Thus, the legislation adopted does not appear to clearly define which is the designating authority for the purposes of UNSCR 1373, who would be authorized to designate persons and entities who should have their funds or other assets frozen based on an internal request for designation. In practice, considering the size of the jurisdiction and the framework in place, it appears indeed that this role would inevitably be undertaken by the Credit and Savings Committee. However, the evaluation team considers that the framework in place does not set this out clearly, and does not provide clear procedures related to the designation and freezing of assets under UNSCR 1373.

195. Furthermore, shortcomings also arise from a cascading effect of deficiencies noted under SR.II in respect of criminalising all terrorist acts included in the nine treaties annexed to the FT Convention and thus problems may occur in relation to freezing of funds and other assets of persons who commit or attempt to commit such terrorist acts.

196. Ultimately, the freezing mechanism under the AML/CFT Act (article 46) applies to "funds and economic resources held or controlled, directly or indirectly, by persons, entities or groups included in the lists". The scope appears thus to be more limited than the wider scope under paragraph 1c) of the UNSCR 1373 and should be reviewed.

Freezing actions taken by other countries (c.III.3)

197. The authorities indicated that the mechanism put in place may enable San Marino to consider and if relevant to apply freezing measures in situations when foreign authorities communicate the adoption of such measures in respect of subjects not included in the UN lists. These situations are covered under either article 49 (9) or 49(10) of the AML/CFT Law. However it remains unclear how this process would be applied in practice and whether the procedures in place are adequate in this respect. The authorities have indicated that this provision was effectively implemented in one case.

198. Article 49(9) indicates that the Committee for Credit and Savings shall take action also when foreign authorities communicated the adoption of measures of freezing in respect of subjects not included in the lists (i.e. UN Lists) and the documentation and information shall be transmitted to the FIA. The details of such action is not further specified.

199. Article 49(10) sets out that FIA can take the actions set forth in article 5 paragraph 1 (i.e. order the block of assets) also on its own initiative, when it receives from national or foreign authorities information about the presence of assets, funds or other economic resources deriving from TF or which may be used to finance terrorism or activities that threaten international peace or security. As indicated above, these provisions do not appear to cover sufficiently the freezing obligations under UNSCR 1373.

200. The authorities indicated that no foreign request has so far been received in this context.

Extension of c.III.3 to funds or assets controlled by designated persons (c.III.4)

201. Under Article 46 of the AML/CFT Law, and as noted previously, the freezing obligations outlined in the Congress of State decisions apply explicitly to funds and economic resources held or controlled, directly or indirectly by designated persons, entities or groups.

202. The freezing mechanism under the AML/CFT Law does not cover explicitly funds or other assets wholly or jointly[15] owned or controlled, directly or indirectly, by terrorists, those who finance terrorism or terrorist organisations nor funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons, terrorists, those who finance terrorism or terrorist organisations. The authorities consider however that those would be covered by an extended interpretation of the relevant provisions of the AML/CFT (including definitions) Law and of the criminal legislation.

Communication to the financial sector (c.III.5)

203. Congress of State decisions are formally published on the website of the Secretariat of State for Home Affairs[16]. FIA is the authority responsible for communicating the decisions of the Congress of State to the obliged entities and for publishing the updated lists on its website.

[15] *Jointly* refers to those assets held jointly between or among designated persons, terrorists, those who finance terrorism or terrorist organisations on the one hand, and a third party or parties on the other hand.
[16] http://delibere.interni.segretaria.sm

204. The authorities indicated that FIA Instruction No. 2010- 03 provides also for a domestic parallel procedure in order to communicate actions taken under the freezing mechanisms referred to in Criteria III.1 – III.3 to the financial sector not only immediately upon taking such action, but also before taking such action: anticipating via e-mail the content of the UNSCR resolution to all obliged entities. This procedure has been put in place given that the adoption by the Congress of State of this decision may take a few days. It was thus aimed at ensuring that it would not delay the process, and in order for the obliged entities to be able to comply with the urgency of the obligations, and that funds or assets could be detected immediately and freezing measures or blocking measure applied if the Congress of State decision was pending adoption. For this reason the press release of the UNSCR are forwarded by the FIA to all the obliged entities immediately.

Guidance to financial institutions and other persons or entities (c. III.6)

205. FIA issued in June 2010 Instruction 2010-03, which is binding on all obliged entities. The instruction further details the obligations of the obliged entities (in terms of checking requirements, freezing procedures, reporting to the FIA, custody and management of the resources frozen, internal controls, communications), obligations of the State administrations, and provisions relating to the derogations or cancellation of freezing measures and judicial protection. The instruction was complemented by Guidelines in August 2010, which takes the form of Questions/answers regarding the obligations set in the law and includes templates for various procedures and references to other international bodies' documents for further information. The management of the FIA had lectures at various conferences held for obliged entities and law enforcement officials, which presented these new requirements and procedures.

De-listing requests and unfreezing funds of de-listed persons (c.III.7)

206. Pursuant to the AML/CFT Law (article 49), the Committee for Credit and Savings is competent for formulating proposals to international organisations related to the listing of persons, entities or groups, on the basis of information received from FIA and other competent authorities.

207. Article 15 of the FIA Instruction clarifies that any interested party who considers that their funds, assets or economic resources have been unjustly frozen is entitled to submit a written and motivated request to the Secretary of State for Finance in his capacity as President of the Committee for Credit and Savings, at the Secretary of State for Finance, with any additional information. A template of the request for annulment of the freezing order is annexed to the Instruction. If the Committee considers that the request is well grounded, it forwards the request to the UNSC or the relevant committee.

208. When a restrictive measure has been abrogated, pursuant to a decision of the Congress of State in application of article 46(4), the Committee for Credit and Savings is competent for evaluating the motions of exemption from the freezing of funds and economic resources presented by the interested parties and it is required by law to adopt a decision to that effect "without delay"[17]. If the delisting proposal is not accepted by the UN, the FIA Instruction and Guidelines clarify that the Committee for Credit and Savings would inform without delay the applicant.

209. However, the above-mentioned delisting procedures appear to be relevant only in respect of designations under UNSCR 1267 and there are uncertainties as to whether those norms could also

[17] Previously the term of adoption of the decision was of 4 months, this was rectified after the on-site visit through amendments introduced in Decree law no. 181 of 11 November 2010 (article 20 of Decree Law 187 ratifying the Decree Law).

be applied with regard to designations under UNSCR 1373, in particular in the absence of a designation procedure for implementing the latter resolution.

Unfreezing procedures of funds of persons inadvertently affected by freezing mechanisms (c.III.8)

210. In such cases, the authorities indicated that there would be a communication by the Committee for Credit and Savings to the obliged entities that have frozen the assets or funds of the persons inadvertently affected by the freezing mechanism, upon verification that the person or entity is not a designated person. However, the AML/CFT Law or FIA instruction do not appear to provide for clear procedures for unfreezing in a timely manner the funds or other assets of such persons.

Access to frozen funds for expenses and other purposes (c.III.9)

211. Article 49 of the AML/CFT Law provides that the Committee for Credit and Savings may authorize access to funds or other assets that were frozen to designated persons or family members, including payment of food, medicines, housing, medical and legal assistance expenses. Analogous authorization may be granted when the use of frozen assets is necessary for the payment of taxes, duties, obligatory insurance premiums, bank account maintenance fees. The applicable procedure in such cases is set out under article 14 of the FIA Instruction, together with a corresponding template form for such requests.

212. If the request is considered well grounded, the Committee for Credit and Savings would submit the request to the UNSC or the relevant committee and the access cannot be granted in case of a negative decision.

213. Though the procedure is drafted in broad terms, it is reminded to the authorities that for basic expenses, Resolution 1452(2002) only requires notification by the State of the intention to authorize, where appropriate, access to such funds, assets or resources and such access is to be granted in the absence of a negative decision by the Committee within 48 hours of such notification, whereas approval by the Committee is explicitly required for extraordinary expenses.

Review of freezing decisions (c.III.10)

214. San Marino has a procedure through which a person or entity whose funds or other assets have been frozen can challenge that measure with a view to having it reviewed by the Court. This is set out under Article 50 of Law 92/2008 (Jurisdictional protection) and further clarified under article 16 of the FIA Instruction.

Freezing, seizing and confiscation in other circumstances (applying c.3.1-3.4 and 3.6 in R.3, c.III.11)

215. As explained earlier, provisions to seize and confiscate terrorist related funds in a criminal law context also can be applied in San Marino. The provisions that apply to criminal offenses, as discussed under R.3, apply equally to terrorism related offences, whether the investigation or prosecution is for terrorist activities or their financing.

Protection of rights of third parties (c.III.12)

216. The freezing of funds and economic resources, the omission or refusal of financial services deemed in bona fide conforming to this law shall not imply any kind of responsibility for the natural person, legal person or entity without legal status who applies it, neither for its directors nor employees (article 46 par. 6 of the Law No. 92/2008). Article 50 of the APL/CFT law and

article 15 of the FIA instruction would also apply to third parties whose rights may have been infringed.

Enforcing obligations under SR.III (c.III.13)

217. Obligations under the AML/CFT Law under SR III are sanctionable as follows:

- article 60 – anyone who carries out actions intended to evade measures for freezing funds under article 46(1) shall be punished by terms of imprisonment, daily fine and disqualification of third degree. Moreover, a pecuniary administrative sanction up to double of the value of the funds or economic resources object of the freezing shall be applied.
- Article 64 – except if the conduct amounts to a more serious crime, the violation of the provisions under article 47(1) (i.e. transfer, holding or use of funds subject to freezing) constitutes an administrative violation and bears a pecuniary sanction up to double of the value of the funds or economic resources object of the transfer, holding or use.
- Article 64 – except if the conduct amounts to a more serious crime, the violation of the provisions under article 47(2) (i.e. making funds or economic resources available to listed persons) constitutes an administrative violation and bears a pecuniary sanction up to double of the value of the funds or economic resources object of the transfer, holding or use.
- Article 65 – violation of the obligation of communication regarding frozen funds and resources entails a pecuniary administrative sanction from 500 to 25.000 Euros.
- Any other obligation of the FIA instruction, not covered under the above (i.e. internal controls), entails a pecuniary administrative sanction from 3.000 to 100.000 Euros.

218. Compliance with AML/CFT measures is to be verified through inspections of the FIA.

Additional element (SR III) – Implementation of measures in Best Practices Paper for SR III

219. San Marino's legal framework and procedure reflect a number of the practices set out in the Best Practices Paper.

Recommendation 32 (terrorist financing freezing data)

220. San Marino has never found any funds/assets in the name of designated persons or entities pursuant to the UN Lists.

Effectiveness and efficiency

221. San Marino has adopted comprehensive provisions to implement the requirements of Special Recommendation III with some technical deficiencies having been identified as outlined in the analysis section above in respect of the implementation of UNSCR 1373. Effectiveness remains a concern. Although the risk may be low and reporting entities are aware of the need to conduct checks against the list, there was limited awareness in this field, considering that the additional instructions and guidance had been adopted a few months before the visit. Thus the efficiency of implementation could not be fully ascertained. While the banking sector is equipped with software which enables it to conduct checks, and the compliance with the requirements is appropriate, this is not the case with other parts of the financial sector and DNFBPs. No sanctions have been applied or administrative cases instituted against entities for failure to comply with SR III requirements.

2.4.2 Recommendations and comments

222. The authorities should clarify in legislation the designating authority for the purposes of UNSCR 1373 and the related designating procedures.

223. The restrictive measures provided under article 46 paragraph 1 a) should be extended to persons and entities designated pursuant to UNSCR 1373 and to funds and other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons, terrorists, those who finance terrorism or terrorist organisations;

224. Effective and publicly known procedures should be established for considering delisting requests and for unfreezing of funds and other assets of delisted persons or entities in a timely manner in respect of persons designated under UNSCR 1373, including for persons inadvertently affected by the freezing mechanisms.

225. More guidance and outreach to the private sector is necessary, especially to the non banking financial industry and DNFBPs, on the freezing obligations, including the obligation to check client files and databases against those lists.

226. San Marino should take additional measures as necessary to monitor effectively all financial institutions for compliance with SR III requirements.

2.4.3 Compliance with Special Recommendation SR.III

	Rating	Summary of factors underlying rating
SR.III	**PC**	• The designating authority for the purpose of UNSCR 1373 and relevant procedures for designation, de-listing , unfreezing, etc in respect of the persons designated under UNSCR 1373 are not clearly set out in legislation; • The scope of the freezing mechanism is more limited than the wider scope under UNSCR 1373 and the shortcomings identified in respect to SR II requirements impact negatively; • The freezing mechanism does not extend to funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons, terrorist, those who finance terrorism or terrorist organisations; • Effectiveness issues: limited awareness of the obligations by obliged entities, given the recent adoption of the acts, and the adequate implementation is thus not fully demonstrated.

Authorities

2.5 The Financial Intelligence Unit and its functions (R.26)

2.5.1 Description and analysis

Recommendation 26 (rated NC in the 3rd round report)

Legal framework

227. San Marino had received a Non Compliant rating under the third evaluation round with the MER highlighting serious concerns in respect of the financial intelligence unit's core functions, powers, operational independence and autonomy.

228. As a result of the application of compliance enhancing procedures, the authorities have promptly taken several measures to address the deficiencies highlighted in the mutual evaluation report. The AML/CFT Law included provisions redefining the functions, responsibilities and powers of the financial intelligence unit, which led to the establishment of a new authority, the Financial Intelligence Agency (FIA). The aspects related to the independence and autonomy of the financial intelligence unit have been set in legislation, under the new AML/CFT Law and also in the implementing provisions of Delegated Decree 146/2008 on Regulations of the Financial Intelligence Agency.

Establishment of an FIU as national centre (c.26.1)

229. As set out under Article 2 of the AML/CFT Law, the Financial Intelligence Agency is established at the Central Bank. Its functions are detailed in Article 4 of the Law and go beyond the traditional core functions of an FIU, as explained below. Article 1 of the Law clearly defines the financial intelligence unit as the "central national authority in charge of receiving, requesting, analyzing and disseminating to the competent authorities all information relative to preventing and combating money laundering and terrorist financing".

230. Pursuant to the AML/CFT Law, the FIA is also entrusted with the following additional functions:

- Issuing instructions regarding the prevention and combating of ML and TF (Article 2 (d))
- Supervising compliance with the obligations under the AML/CFT law and instructions issued by the Agency (Article 2 (e))
- Taking part in national and international bodies involved in the prevention of ML and TF (Article 2(f))
- Promoting and taking part in the professional training of police officers on matters regarding the prevention of money laundering and terrorist financing (Article 2(g))
- under the delegation of the judicial authority, carrying out investigations relating to proceedings regarding ML and TF as well as crimes and administrative violations set forth in the AML/CFT law, operating in such cases as judicial police (Article 5(4))
- Transmission of decisions on restrictive measures as adopted by the Congress of State to the judicial authority, the state administrations and obliged parties (Article 46(6))
- providing for the ascertainment of the administrative violations and application of sanctions under the law (Article 74)
- Servicing the Technical Commission for National Coordination.

231. The Financial Intelligence Agency, in its new set up, became operational in November 2008 and had at the time of the 4th round visit approximately one year and a half of experience.

232. Receiving (and if permitted requesting): Pursuant to the functions attributed under article 4, the FIA shall receive "suspicious transaction reports from obliged parties". Article 37 of the AML/CFT Law also gives the possibility to anyone to be able to report to FIA facts or circumstances relevant to the prevention and combating of ML and FT. Article 5 setting out the powers of the FIA also include the power to request for documents, data and information from obliged parties, Central Bank or public administration.

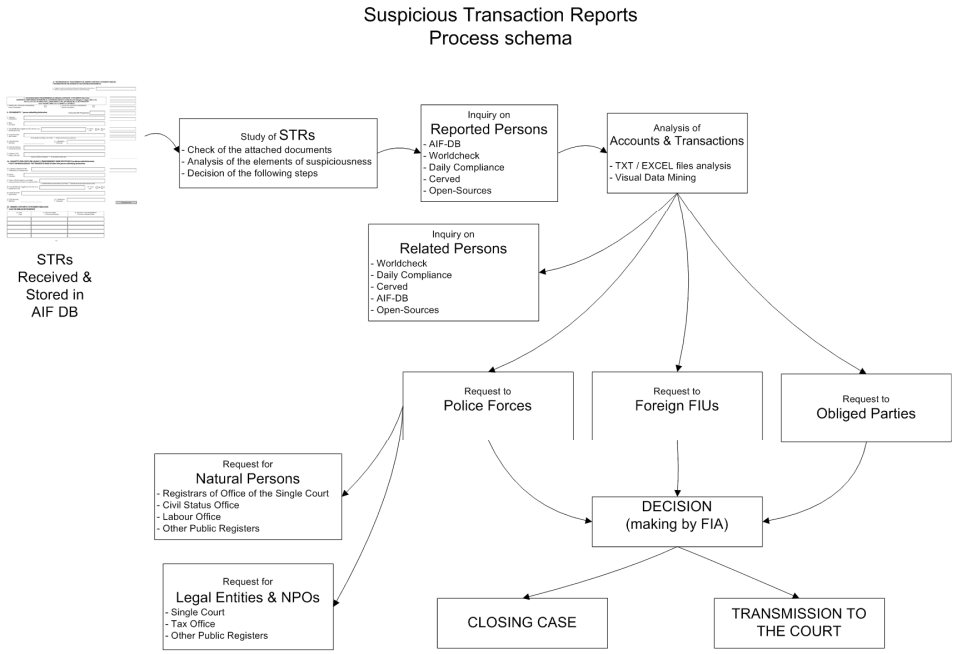
233. FIA receives all STRs electronically. A check is carried out to ensure that the reporting officer has completed all relevant fields and then the STR is integrated into the FIA database. An automated system flags up through a notice when an STR is in the system and ready for analysis. Obliged entities also provide subsequently a hard copy of the STR.

234. Analysing: FIA, under Article 4 paragraph 1 letter b) is tasked with carrying out financial investigations on received reports or on its own initiative, on the data and information available. Delegated Decree 146/2008 further details that this entails performing financial analysis and investigation of reports received and data and information available. In its analysis function, it shall exercise the powers under article 5 para 1 letters a), b), c) and f) of the law as well as the powers under articles 8 (access to information), 11 (co-operation with authorities and professional associations), 12 (co-operation with police authority), 14 (competences of the Central Bank) and 16 (co-operation with foreign FIUs.

235. The FIA staff indicated that when an STR is received, a "pre-analysis" is immediately undertaken in order to determine the elements of prioritization of the STR analysis, with a number of checks being undertaken to confirm that all fields are correctly entered, following which the report is registered, entered into the database, and a case number is allocated and assigned to a financial analyst.

236. Once a case has been opened, the analysis carries out a number of steps and processes according to the internal manual on analysis of STRs which has been approved by the Director of the FIA. These include inter alia a preliminary analysis of the STR, a number of checks against relevant databases (AIF database which includes previously received reports as well as other information, and also checks in commercial databases to which it has access), together with the analysis of relevant accounts and transactions. After each STR has been preliminarily analysed, a case is opened. If it is found that the pre-analysed STR is linked or connected to another open case, then this is noted and combined with the latter case. The analysis of accounts and transactions is carried out at an early stage following by an in-depth analysis, and the necessary requests are undertaken in order to obtain the additional elements necessary for the analysis. Then, the 2nd level of analysis consists in undertaking a profiling of the persons involved in the case, the analysis of movement of funds, including where applicable cross border movements of funds and the assistance requests to foreign FIUs. The process is detailed in the scheme below:

Table 10 : Scheme of processing STRs



237. The primary IT instrument used in this process is the AIF Database, which is used to receive STRs and other disclosures, to collect data and information as well as documents and to keep updated-statistics[18]. "AIF DATA BASE" is also used to manage all FIA activities ("on site inspections", international co-operation requests etc). For the analysis of STR and any other disclosures received, FIA uses three commercial databases: FIA is also in the process of considering the implementation of IT instruments for the analysis of STRs, in order to interface the AIF-DATABASE to discover all networks and links on a particular subject under analysis.

238. As evidenced by the statistics received, in the period from 24 November 2008 -31 October 2010, 62 % of cases are closed /filed, while 33% were pending/under analysis, either as a result of pending information to be received from other authorities or foreign FIUs or being under analysis.

Table 11: Disclosures received per type and reporting subject/entity
Period: From 24 November 2008 to 31st October 2010

Year[1]	Obliged parties	Disclosures received	Cases[2]	Pending cases			Cases closed/ filed	Cases[4] reported to Judicial Authority for:		
				Primary analysis performed	Awaiting for information[3]	Ongoing analysis		ML[5]	TF[5]	Other offences[7]
2008	Financial parties	11	10	-	-	-	10	-	-	-
	Professionals	1	1	-	-	-	1	-	-	-
	Non financial parties	-	-	-	-	-	-	-	-	-
Total		*12*	*11*	-	-	-	*11*	-	-	-
2009	Financial parties	223	171	-	5	20	135	10	-	1

[18] FIA has adopted a visual data mining software to interface the AIF database to discover all networks and links on a particular subject under analysis.

	Professionals	21	16	-	-	3	13	-	-	-
	Non financial parties	-	-	-	-	-	-	-	-	-
Total		*244*	*187*	-	*5*	*23*	*148*	*10*	-	*1*

2010	Financial parties	240	205	81	11	13	92	5	-	3
	Professionals	14	7	2	-	-	5	-	-	-
	Non financial parties	-	-	-	-	-	-	-	-	-
Total		*254*	*212*	*83*	*11*	*13*	*97*	*5*	-	*3*

Total	**510**	**410**	**83**	**16**	**36**	**256**	**15**	**-**	**4**

[1] Data at 31st October 2010.
[2] This column includes the number of cases opened by FIA (which may include several disclosures)
[3] This column includes cases where FIA is still awaiting to receive information from other National Authorities or from other foreign FIUs.
[4]Cases referring – only – to STRs received by obliged parties per year.
[5]Money Laundering.
[6]Terrorism Financing.
[7] Criminal violations of L.92/08 (AML/CFT Law) are included.

239. Overall, the quality of analysis undertaken by the financial intelligence unit has undoubtedly improved, if one is to compare with the situation under the third round. The procedure followed by FIA analysis when a suspicious transaction report is received appears to be on par with the usual procedures in place in other financial intelligence units. These procedures, based on the explanations received by FIA representatives, appear to denote a systematic approach aimed at covering all aspects of the analytical process.

240. Naturally, the FIA is a young institution which has started operating recently, thus it needs to pursue its efforts to strengthen the expertise and skills of its analysts to as to have the ability to undertake in-depth analysis of the collected information, keep themselves up to date to developments underway in particular as regards operational and strategic analysis, and should ensure that they undergo relevant trainings for that purpose on a regular basis.

Guidance to financial institutions and other reporting parties on reporting STRs (c.26.2)

241. Under Article 4, FIA is entrusted with the function of issuing relevant AML/CFT instructions for obliged entities. FIA has issued several instructions related to suspicious transactions reporting and procedures and also it implemented an electronic reporting system, which introduced a standardized electronic STR reporting form for all reporting entities.

242. The following instructions issued include provisions in respect of reporting procedures:
- Instruction 2009-06 dated 27 May 2009 on requirements of customer due diligence, record keeping and suspicious transaction reporting for the professionals (in force as of 6 June 2009), including a list of professional services, a reporting form and indicators of anomaly
- Instruction 2009-07 dated 8 July 2009 on typologies of suspicious transactions and procedures for the examination of transactions referred to under Article 36 of the AML/CFT Law (in force as of 20 July 2009)[19] including a specimen reporting form and a technical annex with instructions for completing and returning the reporting form.

[19] Repealing provisions under previously issued Instruction no. 2008-1 (Articles 7, 8, and 9) and 2009-6 (Article 26)

- Instruction 2009-09 dated 5 August 2009 on obligations of customer due diligence, record keeping and suspicious transaction reporting by non financial parties referred to in article 19 of the AML/CFT Law (in force on 1 September 2009).
- Instruction 2010-04 dated 21 June 2010 Provisions to implement the FATF SR IV – Indicators of anomalies linked to terrorist financing.

243. The use of the forms included in the annexes to the Instructions is mandatory. As mentioned in Instruction No. 2009-07, reporting forms and relevant instructions are available in 2 versions: a complete version for the financial institutions and a simplified version for non financial institutions and professionals. Reports are to be sent by both e-mail and in hard copy (Article 11) however reports may also be provided orally under the condition that the obliged entity will send the written report on the supplied reporting form within 48 hours or the latter can be provided in person to the FIA staff in their capacity as public official (article 12). Indicators included in the annex are periodically updated.

244. At the time of the visit, FIA was also in the process of developing a standardized reporting form of operations executed for their customers in order to speed up the process of financial analysis and also to permit financial institutions to report not only STRs, but also the movements of the reported accounts in a standardized version.

245. It was also noted that in 2009, the FIA organised together with the Bar Association and Banking and Financial Association, nine AML/CFT training events gathering 367 persons, and respectively in 2010, in cooperation with the CBSM and the University of San Marino seven events gathering 97 lawyers and accountants. These meetings enabled to address issued related to the reporting obligation, processes and procedures.

Access to information on timely basis by the FIU (c.26.3)

246. FIA appears to have access on timely basis to the financial, administrative and law enforcement information that it requires. As set out under Article 5 of the AML/CFT Law, it has the power to request the Central Bank or the Public administration to communicate data or information or to provide any formal documents or papers according to the procedure and terms established by the FIA.

247. This is further complemented under Article 8 of the AML/CFT Law of a general access right, also electronically, to electronic data and information available in public registries, archives, professional rolls kept by the Central Bank, public administration and professional associations (i.e. company and business information, motor vehicle and drivers licence information, real estate property data, ownership records, tax records and information). For information which is not available as set out above, these institutions are required to immediately make available to the FIA the information requested upon simple motivated request.

248. Also, upon request, FIA is also empowered to access registers, archives, data or information kept by the Police or by the Single Court, including data regarding criminal records. Data regarding investigations can be provided to the Agency only subject to the authorisation of the judge.

249. The FIA as also the ability to access commercially or publicly available databases, as well as information from foreign FIUs through Egmont secure web.

Additional information from reporting parties (c.26.4)

250. The FIA has the power to order all obliged entities to provide documents, data and information, also in original copy, according to the terms and conditions set out by the Agency (article 5 paragraph 1 letter a of the AML/CFT Law). This power covers both the reporting entity which has made a disclosure as well as other obliged entities in general. The time limits in which obliged entities are to respond is determined by the FIA and indicated in the specific request. During the visit, the assessors were informed that FIA has never experienced any difficulties in receiving the additional information requested, when such information was available and kept by the obliged parties. FIA indicated that without this power, it would not be able to function properly.

Dissemination of information (c.26.5)

251. Disseminating disclosures of STRs and other relevant information: Pursuant to article 4 paragraph 1 letter c, FIA is tasked with reporting to the criminal judicial authority any fact that might constitute money laundering or terrorist financing. Article 7 further clarifies the aspects related to the communication to the judicial authority, indicating that when the FIA detects 'facts that might constitute an offence of ML or TF', it shall transmit the documents and acts, including the report on the financial investigation conducted, to the judicial authority without delay'. The FIA indicated that once the analysis has been completed, a decision is taken, determined by the evidence at hand, as to whether the case is to be referred to the Court for investigation, together with all the necessary information.

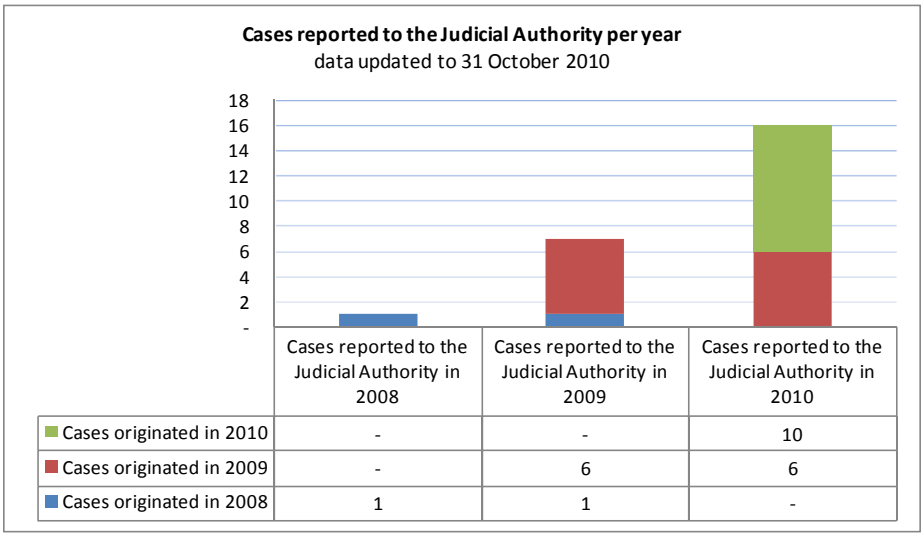
252. The FIA provided statistics on cases reported to the judicial authority in the period 24 November 2008 to 31 October 2010, and also including a yearly breakdown of cases.

Table 12: Cases reported to Judicial Authority
Period: From 24th November 2008 to 31th October 2010

Sources of disclosures	Disclosures received	Cases	Cases reported to Judicial Authority		Cases reported for:		
					ML[3]	TF[4]	Other offences[5]
International co-operation	65	60	1	[2]	1	-	-
National co-operation	98	96	1	[2]	1	-	-
Obliged parties	510	410	19		15	-	4
Financial parties	*474*	*386*	*19*		*15*	-	*4*
Professionals	*36*	*24*	-		-	-	-
Non financial parties	-	-	-		-	-	-
FIA own initiative	18	15	3		3	-	-
Others[1]	4	4	-		-	-	-
Total	**695**	**585**	**24**		**20**	**-**	**4**

[1] ex art. 37 L.92/08 – Anyone can report to the Agency facts or circumstances relevant to the preventing and combating of money laundering and terrorist financing.
[2] The case reported to the Judicial Authority refers to disclosures received before 24th November 2008.
[3] Money Laundering.
[4] Terrorism Financing.
[5] Criminal violations of L.92/08 (AML/CFT Law) are included.

Table 13: Cases reported to the Judicial Authority per year



253. From the statistics received, the majority of cases disseminated originate from disclosures received from the financial institutions (19 cases out of 24), with 3 cases originating out of FIA's own initiative, 1 as a result of co-operation at national level, and 1 as a result of international co-operation.

254. FIA indicated that cases are closed when the analysis does not enable to find any indication of ML or TF. However, there are cases where, even though there is not enough evidence to refer these cases to the investigative judge, these remain open (under analysis), and when additional evidence is gathered through additional referrals to FIA or other STRs received, the new information is linked to the open case.

255. It is also important to note that the number of cases disseminated to the judicial authority has substantially increased. While only 1 report was disseminated in 2008, the figures increased to 7 in 2009 and to 16 by October 2010. Out of those cases, 20 cases disseminated related to ML and 4 to other criminal offences (fraud or misappropriation, illegal gambling, misappropriation of assets). Furthermore, as shown by the tables below, those cases were accompanied, as appropriate, by relevant blocking measures. It was noted that for the evaluated period, only 5% of the total cases were reported to the judicial authority, though the authorities indicated that all cases disseminated to the judicial authority have led to the opening of a criminal investigation.

Table 14: Cases reported to Judicial Authority - Breakdown of cases reported to Judicial Authority for ML per hypothesis of predicate offence (From 24th November 2008 to 31th October 2010)

No.	Hypothesis of predicate offence	Amounts (Euro)[1]		Blocking[2]
3	Drug trafficking	1.535.094	[3]	-
2	Fraud	5.650.000		-
1	Fraud or extortion	155.776		155.776
2	Misappropriation of assets in bankruptcy	1.824.000		-
1	Misappropriation or corruption	425.000		-
1	Usury or drug trafficking	1.128.501		

3	Usury or extortion	3.939.000	[4]	-
1	Usury or fraudulent bankruptcy	3.504.732		-
1	Usury or illegal gambling	747.000		-
5	Unknown	2.499.500	[4]	-
20	**Total**	**21.408.604**		**155.776**

[1] In some cases it is not possible to determine the exact amount of the sums under investigation. This depends on the complexity of transactions and financial instruments used.
[2] Blocking measures issued by FIA (ex art.6 L.92/08).
[3] This amount represents only one of the cases reported to Judicial Authority.
[4] This amount represents two of the cases reported to Judicial Authority.

Table 15: Breakdown of cases reported to Judicial Authority for other offences per hypothesis of offence
Period: From 24th November 2008 to 31th October 2010

No.	Hypothesis of offence	Amounts (euro)	Blocking[1]
1	Criminal violation of AML/CFT Law	not applicable	-
1	Fraud or misappropriation	800.000	-
1	Illegal gambling	690.000	-
1	Misappropriation of assets	300.000	-
4	**Total**	**1.790.000**	**-**

[1] Blocking measures issued by FIA (ex art.6 L.92/08).

256. The judicial authorities clarified that when a when a complaint or report is submitted, a criminal proceeding is initiated (Art. 2 of Law no. 93 of 17 June 2008). This is also the case when the notitia criminis is completely unfounded, or when the offence is extinguished or the reported facts do not amount to an offence, and that in such cases, the proceedings are dismissed. If, on the contrary, the judge intends to carry out further investigation, he/she collects evidence also by delegating the Judicial Police. The Registrar enters the case in the Register of notitia criminis, on the basis of the classification of the facts described in the complaint or report. However, the Investigating Judge may change the classification of the offence. This is the reason why there are discrepancies in the statistical data provided. The data relating to registered cases takes into account the offences reported (as entered by the Registrar), whereas the data on indictments and dismissals reflects the offences as re- classified by the Investigating Judge.

Operational independence and autonomy (c.26.6)

257. The issue of operational independence and autonomy was one of the primary concerns raised in the context of the third evaluation round. As noted earlier, San Marino has taken a number of measures to remedy the situation.

258. The AML/CFT Law, under Article 2 paragraph 2, now explicitly sets out that the Agency "shall perform the functions assigned to it in complete autonomy and independence". The FIU is now independently performing the analysis and dissemination functions – the functions and powers on AML/CFT have been formally transferred from the Central Bank to the FIA (article 93 of the AML/CFT Law) and FIA decides independently upon disseminating the information to the judicial authority.

259. The matter has been further regulated by the Congress of State through Delegated Decree no. 146/2008 which includes provisions concerning the logistical independence, custody and

protection of data (article 1) of the FIA, specific requirements to ensure the independence for the Director and Vice Director (Articles 4 and 5), the operational independence and performance of financial investigations (article 14), and other relevant provisions regarding staff. Those provisions establish the conditions for an adequate level of independence and autonomy, in comparison with the previous situation under the third round.

260. The Director and Vice Director are appointed by the Congress of State, upon proposal of the Committee for Credit and Savings and having heard the opinion of the Central Bank, for a mandate of five years renewable for one more term. FIU staff is hired by a competitive process and on basis of selected criteria, as further detailed in the delegate decree. The Director of the FIA is entrusted with supervisory functions over the staff and shall present to the Board of management of the Central Bank the information and assessments regarding the staff for decisions on hiring, promotion and other contractual conditions (Article 7 of delegate decree no. 146/2008).

261. As regards its budget, the FIA prepares annually a document indicating the financial resources that it needs which is sent to Committee for Credit and Saving (CCS). The CCS evaluates if the resources requested are coherent with the cost effectiveness and efficiency criteria. Then, the CCS transmits the document to the Central Bank to fulfill its obligation (i.e. the Central Bank provides the Agency with the required resources). The 2009 budget has been approved for 1.670.000 Euros, while the 2010 one is of 1.626.000 Euros.

262. FIA is now located in separate premises from the Central Bank, to which only FIA staff have access. The support services, computer and communication systems of FIA are used exclusively by the Agency staff and its server network is entirely independent from the Central Bank.

Protection of information held by the FIU (c.26.7)

263. The AML/CFT Law (article 9) and Delegated Decree no. 146/2008 (articles 11 and 1(3)) set out explicit provisions aimed at ensuring the protection of data and information acquired by the Agency.

264. The FIA has also developed internal procedures and ICT measures in order to guarantee the protection of data.

265. The Financial Intelligence Agency relies on a Client-Server architecture based on Microsoft technology and it also has Terminal Server MS 2008 - R2. At present, the FIA's local network (VPN) is a virtual private network with 3DES data encryption which is completely independent from the Central Bank and is controlled by the internal units of the Agency. All accesses to personal computers are protected by passwords and another password shall be entered to have access to the system "Terminal Server". Three UTM (Unified Threat Management) integrate the necessary security functions.

266. The servers are administers by a service provider and are located in the FIA site. Access to the servers is controlled. The premises also have additional security measures for its physical protection (i.e. alarm system, access/control system, video-control system, etc). The evaluation team visited the premises and ascertained that the technology in use and the security standards were appropriate. At the time of the visit, the database back-up was held in the premises of the local computer service provider, and notwithstanding the fact that the database is encrypted, the evaluation team was of the view that additional measures should be taken to ensure that the backup database is held in a more secure environment. After the visit, FIA informed the evaluation team that the database back up was moved to the Agency's premises one week after the evaluation visit. Access to the backup database is limited to only 3 members of the FIA.

Publication of periodic reports (c.26.8)

267. Article 10 of the AML/CFT Law sets out that the FIA shall collect annually the data regarding AML/CFT activities and that it shall present an annual report through the Secretary of State for Finance and Budget to the Great and General Council. The 2009 annual report was also posted on the FIU's website (www.aif.sm), where it is accessible to obliged entities and the wider public. The annual report includes information on the new legal framework, a wide range of statistical information (STRs including relevant breakdowns, national and international co-operation, cases reported to the judicial authority, information on exchanges of information with other FIUs, cross border declaration system), information on FIU's activities related to the implementation of the AML/CFT Law and 4 sanitised cases with details about the methods and techniques used, as well as the suspicious indicators.

268. It was noted from meetings held on-site that there was a wide perception among the obliged entities that more specific information was needed from the FIA in respect of current ML/TF techniques and trends.

Membership of Egmont Group & Egmont Principles of Exchange of Information among FIUs (c.26.9 & 26.10)

269. The San Marino FIU is a member of the Egmont Group since 2005.

270. Article 16 of the AML/CFT Law requires the FIA to cooperate with foreign financial intelligence units on the basis of reciprocity, including the exchange of information. In practice, this provision is deemed to cover co-operation with other FIUs that are also members of the Egmont. The restriction which was previously set out under paragraph 5 of this article in relation to international judicial assistance procedures and the exchange of information between FIUs was repealed by Law no. 73/2009, in response to the concerns raised in the context of application of Compliance Enhancing Procedures. The San Marino FIU is not required to conclude MOUs, but is able to enter such MOUs with FIUs that may require them. Before 2008, the former FIU (AML Service of the Central Bank) had concluded 10 MOUs. By end 2010, FIA had concluded 27 additional MOUs.

271. While the FIU to FIU co-operation levels in 2008 was close to nonexistent, following the establishment and operation of the FIA, and as demonstrated by the 2009-2010 statistics received, there is an increased flow of exchange of information and co-operation, as shown by the incoming and outgoing requests of information (see statistics in Chapter VI, Section 6.5).

Recommendation 30 (FIU – Resources)

Adequacy of resources to FIU (c.30.1)

272. While the previous AML Service counted 2 persons in 2007, the newly established FIA's staffing has gradually increased, reaching at the time of the on-site visit a staff of 12 persons (Director, Vice-Director, 3 analysts, 3 inspectors, 1 legal adviser, 1 IT staff and 2 administrative staff). The following data was received, reflecting the updated human resources situation as of October 2010 per entities:

Human resources per Organizational Unit (OU)

- Management: no. 1 Director and no. 1 Deputy Director (Total human resources: 2)
- OU Organization and Administration: no. 1 Executive employee and no. 2 Employees (Total human resources: 3)

- OU Regulation and Legal Services: no. 1 Employee (Total human resources: 1)
- OU Financial Intelligence: no. 3 Employees (Total human resources: 3)
- OU AML/CFT Supervision: no. 1 Executive employee and no. 2 Employees (Total human resources: 3)

273. The staffing plan is determined by the Director (Art. 7, para. 3 of the Delegated Decree No.146/2008): he is entrusted with proposing to the CCS the "*pianta organica*" and the CCS, having heard the Governing Council of the CBSM, approves the proposal, after having determined that the proposed personnel structure "meets the criteria of economy, proportionality, efficiency, and effectiveness". According to paragraph 4, the Director is also responsible for proposing to the Board Central Bank the recruitment of staff as well as for the annual performance review of the FIA's staff for promotions. In determining the number of staff (set at 12 for the first 2 years of operation), FIA has followed a phased approach that takes into account the start up period and a test of the performance in the implementation of the FIU's functions. In April 2010, following a needs assessment, the Director had requested an additional 3 staff members to the CCS.

274. The FIU's budget consist mainly of salaries, the management of the infrastructure, training costs, as well as consultancy, logistics, technology, operative, and administrative costs. In 2009, FIA received a budget of 1.670.000 Euros, while in 2010, this was of 1.626.000 Euros.

Integrity of FIU authorities (c.30.2)

275. Staff is required to maintain high professional standards. According to article 8 of the Delegated Decree No.146/2008, the personnel of the Agency shall be hired according to the procedures and with application of the contracts in force at the Central Bank according to professionalism, level of responsibility and autonomy, functions and duties carried out. The Director is involved in the recruitment procedures. The Decree provides that FIA personnel must be selected in such a manner as to guarantee the complete independence of the Agency. The personnel of the Agency reports directly and exclusively to the Director and the Vice Director. The personnel of the Agency may not assume any other assignment or employment, carry on any other professional or advisory activity or cover assignments of a political nature.

276. Positions in the FIU are staffed through a competitive selection process with candidates required to have either a financial, economics or legal profile Successful candidates undergo upon recruitment an internal program of training on AML/CFT matters and FIA competences. The FIA staff's professional experience is very diversified, with staff having several years of experience in the banking and financial sector, law and auditing, supervision and IT.

277. FIA can also be staffed through transfers of personnel from the Central Bank to the Agency. Such transfers are governed by the principles set out in the agreement concluded between the Director of the FIA and the General Director of the Central Bank, which also clarify the decision-making process and the role of the FIA director in approving staff requests for transfer from FIA back to the CBSM. FIA can also be staffed with personnel from Public Administration. The FIA director is directly involved in the selection process of the personnel to ensure that they have the adequate skills and competencies.

278. FIA may also, under paragraph 1 of Article 9 of the Delegated Decree 146/2008, recruit personnel who possess the skills and requirements of professionalism and experience necessary to carry out the specific functions or duties from the staff of the Public Administration. These transfers are subject to approval of the transfer by the Director of Public Administration. Moreover, according to articles 50 and 51 paragraphs 1 – 4 of the Law No.92/2008 and article 9 paragraph 2 of the Delegated Decree No.146/2008, police personnel may be seconded to the

Agency. At the time of the on-site visit, FIA has never made use of these provisions to recruit/accept secondments from Public Administration and/or Police Forces.

279. The evaluation team is of the view that these provisions may assist in a useful manner the FIA in the implementation of its tasks, particularly when considering its numerous additional tasks, and in particular those of acting as Judicial Police. During the visit, it was explained that the Court always requires FIA to undertake investigations that relate to ML and FT and is being called upon to collect the documentation requested under the mutual legal assistance requests and in undertaking other necessary investigative acts. The evaluation team was informed that these assignments are usually carried out by the senior management, so as not to impact on the analysis or supervision work. Notwithstanding this matter, the evaluation team considers that such assignments would perhaps be more appropriate to be carried out by other FIA staff than the management, analysts or supervisors, in particular if Police staff were to be integrated in the FIA staff, as rendered possible under the legislation. It is also believed that this would familiarise and strengthen the knowledge of the law enforcement officers and expose them to financial and banking issues, including ML and TF related aspects. This would also benefit positively in the long term, when these officers would be returning to their institution of origin, in strengthening the expertise of the Police force on financial investigations.

280. The Human Resources Service of the Central Bank checks upon recruitment whether those applying are fit and proper. These checks are carried out by requesting several certificates, *inter alia*, certificates of General Criminal Certificate (*Certificato Penale generale*), (*Certificato carichi pendenti*) and certificate of good behaviour (*Certificato di buona condotta*). This is carried out in application of Article 4 of the employment contract. Moreover Articles 8-9 of the CBSM contract of personnel set forth the rights and duties of employees and hypothesis of removal from service. Under Article 69, disciplinary sanctions are considered. There is no specific policy in updating the fit and proper checks on a regular basis during the period of employment.

281. The legal framework sets out adequate provisions regarding confidentiality. According to the article 3, paragraph 3 of the Law No. 92/2008, the staff of the FIA, while performing the functions set forth in this law, are public officials and are bound by official secrecy. According to Article 149 of the Criminal Code the term "public official" (*pubblico ufficiale*) stand for: "all those who, permanently or temporarily, free of charge or for a consideration, hold positions of decision, representation, imperiousness, certification or every other public function, at the service of the Republic or a public body". These aspects are further detailed in Delegated Decree n.146/2008 regulating the Financial Intelligence Agency which provides detailed criteria of confidentiality and high integrity for the FIA staff (Article 2: Requirements of professionalism for the Director and Vice Director, Article 3 : Requirements of honorability for the Director and Vice Director, Article 4: Requirements of independence for the Director and Vice Director, Article 5: Conflicts of interest of the Director and Vice Director, Article 8: Employees, Article 11: Observance of official secrets.)

282. The same provision applies for personnel from external transfers as set forth in article 11, para 1, of the Delegated Decree No.146/2008. Moreover, as indicated in article 11, paragraphs 2 and 3 of the Delegated Decree No.146/2008, the Director, the Vice Director and the personnel of the Agency are obliged to comply with official secrecy also in regard to the Central Bank. The obligation of secrecy regarding all information that may come to light in the performance of functions or duties carried out at the Agency must be observed even after the assignment or employment is terminated. According to the Criminal Code , any violation of the provision of confidentiality is sanctioned under Article 377 (*Rivelazione dei segreti d'ufficio*): the public official or the public employee who does not have such attribution, who reveals to strangers information representing official secrets, shall be punished by second degree imprisonment (from six months to three years).

Training of FIU staff (c.30.3)

283. Training of staff focused in 2009 on the AML/CFT legal developments and FIA structures, through internal courses and training on the job. In the first half of 2010, it was noted that several FIA staff participated in 5 trainings events, some of which were organised jointly by FIA with other domestic partners and international bodies. A focused course on internal control, compliance and analysis of STRs was carried out for staff of the FIA and of the Central Bank. Also, FIA organised jointly with the Police Force a course on money laundering and criminal activities, which was also attended by FIA staff. The evaluation team was informed of activities underway to organise bilateral courses for FIA staff with foreign FIUs. One analyst and the IT expert of the FIA took part into a tactical analysis training in October 2010. Further training will undoubtedly be necessary to be provided to the staff on operational and strategic analysis, financial investigations, economic crime, etc.

Recommendation 32 (FIU – Statistics)

284. FIA's database includes a wide range of statistics, that is on: a) suspicious transaction reports and other disclosures received and disseminated; b) STRs received by the FIU, including relevant breakdowns, c) statistics on STRs and cases analysed, closed, pending, disseminated.

Additional elements

285. FIA maintains statistics also on STRs resulting in investigation, prosecution or convictions for ML, TF or hypothesis of underlying predicate offences.

Effectiveness and efficiency

286. It is undisputed that San Marino has made substantial progress to establish an operational financial intelligence unit, which is now at the centre of the overall AML/CFT effort. The evaluation visit welcomes the determination and commitment shown by FIA staff in the performance of their numerous functions. Also, the team noted a very positive feedback received on-site from judicial and police authorities, who expressed their appreciation of the FIA's professional assistance in every ML related investigation, particularly as regards reliance upon the financial investigations analysis and performance of functions set under the law upon delegation from the judicial authority.

287. Yet, a number of factors may limit the effectiveness of the FIU in carrying out its core functions as set out in Recommendation 26. As explained above, in addition to its core functions, the FIU is entrusted with a large number of additional functions – development of regulatory acts, supervisory functions and judicial police functions - which inevitably have a direct impact on the implementation of its core functions, in particular the analysis and dissemination function. As explained in detail in the various parts of this report, it is clear that San Marino's AML/CFT preventive regime has changed profoundly, with a very large number of legal norms adopted in the past three years, including numerous instructions and guidelines issued by FIA, and FIA staff has had an important role to play in this process.

288. Another aspect which needs to be taken into account is the heavy burden arising from the numerous instances where the FIA is tasked with undertaking judicial police functions upon delegation of the investigative judges in respect of cases under investigation or mutual legal assistance requests. There is clearly an overreliance on FIA in the context of investigations, collection and seizing of financial documentation in connection with ML and other banking and financial crimes, arising also as a result of international requests for assistance. It was noted in this

context that when carrying out judicial police activity, FIA may also observe and detect issues that could add value to its core functions, and also supervisory functions. However the fact that FIA may be overburdened with duties that are not part of the core functions of an FIU cannot be overruled.

289. While acknowledging the increase in the number of disseminated reports to the Judicial authority for the period 2009-2010 compared with previous years, there is clearly a visible difference between the number of cases received by FIA for analysis and the number of cases referred by FIA to the judicial authorities for investigation. Reasons for this disconnect may concern the quality of STRs received, in the context of a defensive reporting practice. However the evaluation team remains reserved on the current practice which leads to the involvement of the FIA in the financial investigation aspects of the case, following the analysis and dissemination of the STR to the judicial authority, as this may also impact on its dissemination function, i.e. FIA could disseminate only cases where it is certain to have sufficient evidence for an investigation to start, in which its resources would be called upon to undertake further financial investigations as opposed to disseminating 'facts that might constitute an offence of ML or TF'. Discussions held during the visit with the FIA representatives and the investigating judges confirmed that the threshold for disseminating would thus in practice be higher than what the legislation provides for.

2.5.2 Recommendations and comments

Recommendation 26

290. It is thus recommended to take measures to ensure that FIA staff are primarily responsible for carrying out duties in relation to the core functions of an FIU and review the current working methods and co-operation with the Judicial authority to ensure that the dissemination function of the FIU is adequately implemented, i.e. FIA should disseminate financial information to domestic authorities for investigation or action when there are grounds to suspect ML or TF.

Recommendation 30

291. San Marino authorities should ensure that the FIA is adequately resourced so that it can focus its work primarily on the core FIU functions, as opposed to other additional functions, so that this does not impact on the timeliness of analysis and dissemination of reports to the Judicial Authority.

292. The authorities should consider making full use of the provisions under the AML/CFT Law and delegate decree so as to associate Police officers to the FIA, so that the current approach of overreliance on the FIA management in the context of investigations, collection and seizing of financial documentation in connection with ML and other banking and financial crimes is reviewed and does not constitute an additional burden on FIA's performance in relation to its core functions.

293. Existing policies should be reviewed to ensure that integrity checks are updated periodically during employment periods.

294. San Marino authorities should ensure that FIA has the adequate technical resources and that its staff is participating in trainings on a regular basis, to enable it to enhance the quality of its STR operational and tactical analysis and conduct strategic analysis.

Recommendation 32

[no recommendation]

2.5.3 Compliance with Recommendation 26

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	**LC**	• Effectiveness issues the numerous additional functions of the FIA and current practice of overreliance on FIA by the judicial authority for financial investigations and implementation of MLA requests may impact on the performance of its core functions: such as the dissemination function, and on the adequacy of resources; this may also be reflected in the limited number of disseminated cases to the judicial authority.

2.6 Law enforcement, prosecution and other competent authorities – the framework for the investigation and prosecution of offences, and for confiscation and freezing (R.27, 30 and 32)

Recommendation 27 (rated PC in the 3rd round report)

2.6.1 Description and analysis

Summary of 2008 MER factors underlying the rating and developments

295. As described in the 3rd round evaluation report, San Marino had received a Partially Compliant rating for its compliance with Recommendation 27. The deficiencies mentioned included reservations on the effectiveness and efficiency of the framework for the investigation of offences, and specifically ML offences, in the absence of a proactive inquiry in money laundering matters, a low number of ML investigations and prosecutions and the fact that the law enforcement system was response based. It was also noted that there had been no ML investigation initiated by the police at their own initiative after 2003.

296. Since the third round evaluation, the San Marino authorities have taken several measures aimed at strengthening the legal framework with respect to the authorities competencies and roles, which they indicated led to a more active role of the law enforcement authorities in AML/CFT efforts:

- The AML/CFT Law includes specific provisions clarifying the roles and duties of the law enforcement authorities, including their powers, and covering also the co-operation with other competent authorities;
- The Congress of State adopted Decision no. 17 of 11 May 2009 (covering the appointment of a special team of the Police forces exclusively dealing with ML, FT and financial crimes offences) and a resolution in May 2010 (appointing a police section to deal with fraud offences);
- Several training sessions were organised for the members of the Police Forces by the FIA and the Judicial authority, on a regular basis and also in the context of on-going cases.

Designation of Authorities having responsibility for ML/FT Investigations (c. 27.1):

297. As already indicated in the previous mutual evaluation report, all three law enforcement agencies – the Civil Police, the Gendarmerie and the Fortress Guard (Guardia di Rocca) - exercise both public security and investigative functions. The Civil Police is a non-military corps dealing, inter alia, with tax and economic crimes. The Gendarmerie is a military Police force with specific competences concerning public order and security matters. The Fortress Guard is a military Police Force responsible for public order, which also carries out border controls and is entrusted with customs duties. The Investigating Judge has the power to direct the three law enforcement authorities to serve as judicial police in investigations.

298. The Police authority (hereinafter, this term encompasses all three law enforcement agencies, unless otherwise specified), in exercising its powers and duties, has the authority to conduct at its own initiative, activities to prevent and combat money laundering and terrorist financing (article 12 of the AML/CFT Law). The AML/CFT Law, following amendments in July 2010, explicitly provides that "whenever, in the exercise of its functions, the Police Authority has reasonable grounds to believe that the funds are proceeds of crime, it may request the co-operation of the Financial Intelligence Agency with a view to carrying out financial investigations. This co-operation may be requested also with regard to investigations involving crimes that could be the predicate offences for money laundering or terrorist financing" (article 12, paragraph 4).

299. Once it detects elements of crime, the Police has a statutory duty to inform the Investigating Judge. The powers of the Investigating Judge are set out in detail in the Code of Criminal Procedure and procedure laws. After registering the notice of offence, the Judge shall initiate the judicial investigation and inform the investigated person of the pending proceedings within a month from the registration of the notice. Such notification can be postponed, for investigative purposes, up to nine months from the registration, by ordering that the documents remain secret. The regime of provisional secrecy covering the investigation stage shall be also extended to the period necessary to execute letters rogatory issued. The person under investigation shall take part in all investigation acts (including the examination of witnesses, searches, etc.). In case of secrecy, the participation of the person under investigation may be postponed to the subsequent stage.

300. The Criminal Judge has the power to rely on the three law enforcement agencies which serve as Judicial Police to carry out investigations.

301. The Congress of State Decision no. 17 of 11 May 2009 appointed 6 representatives of the Policy authority (2 from each law enforcement agency) as counterparts exclusively responsible for the investigation of ML and TF offences upon which the Investigating Judge may rely. It also indicated that as such, priority shall be given to these investigations rather than duties and tasks concerning other issues and that the designated officials shall exclusively respond to the Investigating Judge in this regard. Furthermore, it also clarified that all personnel of the law enforcement authorities shall have the duty to conduct investigations of their own initiative aimed at preventing ML and TF. It explicitly refers to cases when in the exercise of their ordinary functions they suspect that proceeds are generated from an offence and when they carry out investigations related to offences which might constitute predicate offences for ML, in such cases, requiring law enforcement authorities to conduct their investigations not only to identify the offender and the offence itself, but also to search of the location of the illicit proceeds and to establish whether the illegal proceeds have been used to commit other offences.

302. As regards the general framework, the preliminary stage to the exercise of the criminal action falls within the competence of the Investigating Judge. During the preliminary investigation stage, prosecuting functions are performed by the Investigating Judge, who is responsible for

criminal action, and by the Procuratore del Fisco who is responsible for evaluating any case dismissal requests. The Investigating Judge is required to proceed against «any type of offences as soon as he has knowledge thereof in any manner» (art. 15 of the Criminal Procedure Code). Law enforcement officials and anyone required by law to make reports or official denunciation (art. 22 of the Criminal Procedure Code) shall inform the Law Commissioner (Investigating Judge) of the notitia criminis (except for the cases where proceedings may only be brought upon a complaint). Omission to report is criminally sanctioned (art. 350 of the Criminal Code). Any other document containing information addressed to the Judicial Authority with regard to the commission of acts constituting an offence shall be considered equivalent to reports or official denunciation.

303. The preliminary investigative stage consists in pre-trial investigation procedures (such as interviews, examination of witnesses, confrontations, identifications, searches, seizures, expert reports) directly carried out by the Investigating Judge. Some of these procedures can also be carried out by the Judicial Police.

304. During criminal proceedings, some precautionary measures may be adopted in relation to persons (preventive detention, home arrest, prohibition or obligation to remain on the national territory, ban on expatriation: art. 53 and following of the Criminal Procedure Code) or property (seizure and forfeiture: Article 59 and following Article 74 of the Criminal Procedure Code.). Such measures shall be ordered by the Judicial Authority and executed by Police Forces. Any such measure can be challenged before the Criminal Judge of Appeal within 10 days from notification or execution of the measure (art. 56 of the Criminal Procedure Code). The decision of the Judge of Appeal can be challenged within 30 days from notification of the measure before the Highest Judge of Appeal, who decides on the legitimacy of the precautionary measure.

305. The case may be filed when the evidence collected is not sufficient to provide legal grounds for declaring the defendant guilty. In this case, the Judge forwards the written record of the proceedings to the Procuratore del Fisco and request his opinion on closing the proceedings. This procedure ensures that another Magistrate supervises over the correctness of decisions taken by the Investigating Judge. If the Procuratore del Fisco's opinion is positive, the investigating judge orders the closing of the file and the defendant's acquittal. The case can be reopened only when «new evidence is subsequently collected to the charge of the defendant» (art. 135 Code of Criminal Procedure). If the evidence collected is sufficient to demonstrate the liability of the defendant, the Judicial Authority orders to adjourn the case, by formulating the charge and requesting to set a date for the hearing. All parties shall have access to the records of the proceedings. The hearing is public and takes place before the Law Commissioner (Deciding Judge) who, according to San Marino legal system, shall be a judge (natural person) other than that who has performed the functions of Investigating Judge. In the trial, namely during the cross-examination, new evidence may be provided and examined, compared with that one collected during the preliminary investigative stage. Prosecuting functions are performed by the Procuratore del Fisco. After evidence is collected, closing statements are made: the Procuratore del Fisco, the plaintiff's attorney and that of the defendant submit their requests. The Judge reads the decision containing the acquittal or conviction of the defendant (art. 161 and 162 of the Criminal Procedure Code). In case of conviction, the Judge shall also order to refund expenses and compensate damage to the plaintiff. The Judge shall order the confiscation of the seized property or value-based confiscation. The grounds upon which such decision is made may be drawn up separately and be deposited with the Court Register. The deposit shall be notified to the parties. Each party involved may appeal against the decision within 30 days, specifying the reasons for the appeal (which shall be deposited within 30 days from the notification of deposit of the grounds for the decision). Appeal proceedings shall take place in the form of a public hearing attended by all parties even though they are not appellants. The decision of first instance may entail a more severe

punishment for the defendant only if the appeal is submitted by the Procuratore del Fisco. After reading judgement on appeal, Court's decision becomes final.

306. The Code of Criminal Procedure and the legislation on combating money laundering and terrorist financing provide the Judiciary and the Judicial Policy with investigative powers to identify and find assets. In particular, the Judge can authorise the Judicial Police to conduct undercover operations, intervene in intermediation activities, simulate the purchase of goods, materials and things which may generate illicit proceeds, and take part in any initiative aimed at suppressing the offences of money laundering and terrorist financing. If, further to these investigations, the Police proceeds with seizure, the related confirmation shall be postponed until investigations are concluded, when the acquisition of relevant evidence is necessary. Also the issue of warrants for provisional custody may be delayed until conclusion of investigations (Article 15 of Law no. 28 of 26 February 2004).

Ability to Postpone/Waive Arrest of Suspects or Seizure of Funds (c. 27.2):

307. Police forces are vested with autonomous precautionary powers (i.e. arrest and stop) which automatically expire if they are not confirmed by the Law Commissioner within 96 hours from notification. Arrest by the Police is mandatory in the event of flagrant offences punished by the law by terms of at least 3rd degree imprisonment. In the event of flagrant offences punished by the law by terms of imprisonment lower than 3rd degree, the Police can proceed with the arrest. They can also stop circumstantial suspects of offence «when there is grounded suspicion of escape also in relation to the inability to identify the suspect or when reasons for investigation or community protection so require» (art. 92 Code of Criminal Procedure). The Police can also seize the *corpus delicti* and any other relevant item. This measure is subject to the same confirmation procedure envisaged for arrest and stop.

308. The Law no. 28 of 26 February 2004 sets out specific provisions regarding investigatory measures for ML and FT. The Law Commissioner may postpone validation of a seizure order until the conclusion of the investigation or delay the issue of preventive detention orders as long as the acquisition of relevant evidence is necessary (article 15 paragraph 4 of the Law no. 28 of 26 February 2004).

Additional elements

Additional Element—Ability to Use Special Investigative Techniques (c. 27.3):

309. As mentioned in the third round MER, Article 15 of the Law no. 28 of 26 February 2008 as amended by Law no. 92/2008 (article 84), the Law Commissioner may authorise special agents of the Police Forces to conduct undercover operations, intervene in intermediation activities, simulate the purchase of goods, materials and other. Furthermore, Law no. 98 of 21 July 2009 lays down the framework for use of wiretapping, such measures being authorised for use in the investigation of offences punishable by no less than 3rd degree imprisonment as well as a specific list of offences, including also explicitly offences related to banking, financial and insurance activities punishable by no less than second degree imprisonment. On 29 December 2009, Delegated Decree no. 178 was adopted, which sets out in detail the rules applicable regarding the archive of wiretappings kept by the Court, the access and consultation procedures, the archive's features, the record-keeping, and the confidentiality rules.

Additional Element—Use of Special Investigative Techniques for ML/FT (c. 27.4):

310. The legal framework allows a number of special investigative techniques. The authorities have made limited use of special investigative techniques when conducting investigations of ML and underlying predicate offences. Controlled deliveries were used in a ML investigation, and wiretapping in a corruption case. Controlled deliveries were also authorised in the context of a case involving international co-operation which was pending at the time of the on-site visit. The police indicated that that they make use of use of regular investigative techniques.

Additional Element—Specialized Investigation Groups and Conducting Multinational Cooperative Investigations (c. 27.5):

311. There are no permanent or temporary groups specialised in investigating the proceeds of crime (financial investigators).

312. Co-operation with foreign authorities, notably Italian authorities, takes place frequently for the purpose of investigation and when special investigative techniques are used by foreign authorities, those can be used domestically for investigation and prosecution purposes.

Additional Elements—Review of ML and TF Trends by Law Enforcement Authorities (c. 27.6):

313. ML and TF methods, techniques and trends are discussed on an interagency basis at the level of the Technical Commission for National Coordination established in 2009, as well as in bilateral meetings of the FIA with the law enforcement authorities and the Investigating Judge or of the latter two. The Investigating Judge holds regular meetings with the law enforcement authorities to analyse reported cases, examine the modalities to detect and investigate offences as well to discuss the results of investigations carried out and operational aspects. When investigations are concluded, it was reported that the results achieved and checked and analysed with a view to improving the investigative strategy on the basis of the experience gained.

Analysis of effectiveness (R.27)

314. The third round evaluation had concluded that the law enforcement authorities needed to start playing a more active role in ML/FT efforts and that a more pro-active approach in the investigation and prosecution of ML offences was requirement. It was also recommended that more focus should be put on the financial aspects of major proceeds generating offences as a routine part of the investigation and that competencies in this field of the law enforcement authorities needed strengthening.

315. As mentioned above, the investigations of ML and FT offences are a prerogative of the Inter Force Group which has specific competence in this field. Notwithstanding the legal and institutional changes that have been brought in order to give the Police a firmer basis as far as and their pro-active role in the investigation of such offences, and the additional training carried out, the changes in the practice are yet to be demonstrated.

316. The statistics received from the Court indicate that here has clearly been an increase in the number of ML investigations and prosecutions, which appears to be the result of a determined policy within the Single Court to devote efforts to such cases.

317. However, they also show that in the period from 2008 to June 2010, as far as ML proceedings are concerned, there have been only 2 instances where the notitia criminis was registered as a result of a report from the Police, namely the Gendarmerie and the Civil Police, out

of a total of 27 notitia criminis. The rest of the notitia criminis were registered as a result of reports from FIA (17 reports), foreign authorities/ rogatory letters (7 reports) and the Central Bank (1 report). That is to say that over 60% of the investigations are initiated based on a FIA report, whereas 7% are generated by the Police, and the rest primarily as a result of MLA related investigation. One conviction was based on the investigations carried out on the basis of a notitiae criminis directly acquired by the Police.

318. It remained unclear whether the competent authorities have ever made use of their ability to postpone/waive arrest of suspects in connection to any case investigated. As regards the investigations conducted so far, the discussions held during the visit clarified that the competent authorities have continued to use traditional investigative methods in this process.

319. It was also very clear that the role played by FIA in assisting the law enforcement agencies and the Investigating Judge with respect to the financial aspects of the investigation is crucial and that the law enforcement authorities rely on this agency for undertaking the financial investigations. Notwithstanding that this role is also established in the AML/CFT law specifically, this is set out in optional terms (" may request the co-operation of the Financial Intelligence Agency with a view to carrying out financial investigations") whereas in practice it would appear that FIA is required to carry out the financial investigation aspects on a rather systematic basis and to assist the police officials in the investigation phase, including when gathering financial and banking documentary evidence from reporting entities. This signals that there is a certain level of over-reliance on another (non law enforcement) agency as a routine part of the investigation and can be a sign that there continue to be gaps as far as the level of knowledge and experience of the law enforcement agencies in carrying out autonomously financial investigations. From the discussions held during the visit, it was not demonstrated that the law enforcement agencies are capable of handling complex financial investigations without the support of other authorities.

320. As regards the results of the investigatory action of the Investigating judge, while in 2006, there had been only 4 proceedings initiated for ML offences, the number of ML investigations started by the Investigating Judge has initially remained stable in 2007 and then increased in 2008 (2008: 13; 2009: 10; October 2010: 9), involving an increasing number of persons.

321. While there have been no prosecutions at all in the period from 2006-2008, there have been 2 prosecutions in 2009 and 6 in 2010, this results being very encouraging. When considering these figures, one has to remember that the San Marino authorities are greatly dependant on the assistance received from the foreign counterparts. However, that being said, the results of the system in terms of prosecutions remain modest. As regards convictions achieved, all involved laundering of proceeds derived from foreign predicates. There remain open questions as to whether internal proceeds are investigated by the law enforcement agencies in terms of money laundering and challenges that the authorities are experiencing in investigating and prosecuting ML as an autonomous offence, based on evidence gathered in San Marino as opposed to depending on foreign authorities.

322. While one should of course take into account the limited number of officials of the San Marino competent authorities, as well as the short time between the previous evaluation and the current one, it appears that the skills of the law enforcement agencies need to be further enhanced. As suggested previously in this report, as regards the Police, the authorities should consider making full use of the provisions of the AML/CFT Law and delegate decree to second Police officers to the FIA, as this could expose those seconded law enforcement officials to the daily FIA's work and financial analysis aspects and could in the medium and long term impact positively on the capacity of the law enforcement agencies to develop their own pool of expertise

to pursue complex financial crime investigations, rather than rely on another agency for a key aspect of the investigation.

323. As regards the Investigating Judge, the low number of prosecutions raises as well an issue of effectiveness. The authorities should take measures as appropriate to enable Investigating Judges to develop their expertise and should consider placing an emphasis on the development of case law on standalone money laundering, based on evidence collected in San Marino.

Recommendation 32 (Statistics – law enforcement and prosecution)

324. See statistics in the Introduction and Section 2.1.

Recommendation 30 (Adequate financial, human and technical resources – law enforcement and prosecution) (rated PC in the third round MER)

Summary of 2008 MER factors underlying the rating and developments

325. As described in the 3rd round evaluation report, San Marino had received a Partially Compliant rating for its compliance with Recommendation 30. The evaluation team had concluded that, in the light of the data available regarding the law enforcement and prosecution authorities, the law enforcement authorities appeared to be adequately staffed and structured, however reservations were expressed as regards the practical experience and expertise on ML/TF issues of the law enforcement authorities and given the limited training, both upon recruitment and on an on-going basis, on ML, TF and AML/CFT matters.

326. As regards the structural organisation of the law enforcement and judiciary, as well as the requirements to maintain high professional standards, the previous findings remain valid. The evaluation team did not find any indication of undue influence or interference.

327. As regards the level of resources dedicated to ML and TF related investigations and prosecutions, the staff of the Single Court, Ordinary Jurisdiction Section is composed of 8 Law Commissioners, 6 of whom are assigned to the criminal field: 4 of them deal with preliminary investigations, and 2 are responsible for criminal decisions. At the time of the evaluation, only one Investigating Judge handled criminal preliminary investigations for ML, offences envisaged by the AML/CFT Law and financial and banking offences. After the visit, a second Investigating Judge was also appointed and also deals with such cases, with the case file being distributed between them according to the monthly date of registration. It is also important to note that the Investigating Judges who deal with criminal preliminary investigations for ML, and both deciding judges, are also responsible, with varying degrees of responsibility, for the execution of rogatory letters as well as participation in trainings and performing other judicial activities duties.

328. Another Investigating Judge is responsible for preliminary investigations related to terrorism offences (no note: none to date), corruption, corporate offences, bankruptcy offences, fraud to the detriment of the State, etc. The other Investigating Judge deals with proceedings related to other offences, including predicate offences to ML, and another magistrate (Uditore Commissariale) also performs investigative functions.

329. Each Investigating Judge is competent to conduct investigations relating to ML or TF whenever the relevant offence is discovered in the context of a proceeding already assigned and concerning for instance a predicate offence. In this case, the case file is not transferred since according to the rules, all criminal judges are fully competent with regard to all crimes.

330. There are two deciding judges, who reciprocally replace each other. The case files are divided between them according to the type of offence concerned: one being responsible with the trial and criminal decisions for indictment concerning ML, TF, AML/CFT offences, as well as banking, corporate and financial offences while the other for decisions regarding proceedings for other offences. They are also the deciding judges for authorising interceptions. A magistrate appointed for the criminal appeal deals with appeals against precautionary measures and the sentences adopted by the first degree judge, and the Highest Judge of Appeal decides on the legitimacy of precautionary measures concerning persons and property. He/she is also competent in relation to appeals made by the *Procuratore del Fisco* against provisions of rejection of international assistance requests.

331. The evaluation team noted that the Court experiences a rather heavy workload. The evaluation team believes that this issue may affect its resources both in terms of departures and of attractiveness to identify and recruit new judges. The issue of workload has also to be seen in perspective with the growing number of preliminary investigations related to ML and other financial and banking offences, as well as the increasing number of incoming and outgoing rogatory letters, some of which as detailed in Section 6 of the report, require complex investigative acts and requests.

332. The authorities reported that the Court had taken measures to review its human resources (Qualified Law no. 1 of 4 May 2009) and upon the request of the Head Magistrate, the Government and the Parliamentary Commission for Justice had approved the recruitment of an additional magistrate to deal with preliminary investigations in the field of ML, TF and financial crimes.

333. An Investigating Judge is appointed through a public competition to which are entitled to participate graduates of Law who have practiced the profession as attorney for at least six years, magistrates and law professors teaching at university. After a trial period (of three years) the appointment of Law Commissioners are to subject to confirmation by the Judicial Council (composed of all magistrates on duties, 10 members of the Parliament and the Secretary of State for Justice). Once their appointment is confirmed, Law Commissioners hold their position on a permanent basis, except for resignations or revocation (due to violation of professional obligations). The recruitment of the additional judge occurred after the on-site visit.

334. The authorities stressed during the visit that with the recruitment of an additional magistrate, it was expected that the resources devoted to investigations of financial and economic crimes, including ML, would be strengthened, with a view to guaranteeing an effective and rapid conclusion of the preliminary stage investigations. Considering that this recruitment only occurred after the visit, this did not have an impact on the situation at the time of the visit, and one should also take into account the fact that any new recruited person would need a certain period of adaptation before becoming fully operational and being fully familiarised with the specificities of the Sammarinese legal system. The evaluation team considers that the workload of the deciding magistrates should be kept under close scrutiny and that further training shall be required to ensure that the newly recruited magistrates become fully operational.

335. As regards the Police, it was already indicated that the Police Inter-force composed of 6 members belonging to the three corps (3 from Civil Police, 1 from Gendarmerie, 2 from Fortress Guard) is responsible for cooperating with the Investigating Judges in the investigation of ML, TF and financial crimes. These members are appointed by the Executive Magistrate upon proposal of the Investigating Judges, on the basis of their professional standards. They depend on the Judiciary as regards operational activities, while administratively they are under the authority of their respective Commanders. In 2009, the Government decided to establish a working group

composed of 6 police officials (3 from the Inter-Force Group, 1 from the Civil Police and 2 from the Fortress Guard) with specific functions in preventing and combating ML and TF.

336. As regards training of Police officials, the situation appears to have improved. A training was jointly organised by the Police, FIA and the Single Court in May 2010, gathering around 100 officials of the three police corps, and covering theoretical aspects of the AML/CFT legislation (relevant norms, competences and investigation, operating procedures for identifying financial flows) as well as practical sessions on asset investigation and investigation techniques. There are however no regular compulsory training programmes on AML/CFT issues or a requirement to attend on a regular basis relevant training courses. As explained earlier, it appears that law enforcement officials and judges competent for ML, FT and predicate offences would benefit from a regular attendance to specialised training, in particular as regards financial investigation, handling of complex criminal investigations of financial and banking offences, techniques for tracing proceeds and evidence gathering, etc.

337. As regards technical and other resources, the Police and Court judges make use of the facilities and resources (logistics, IT, etc) which are available to their respective agencies and institution. No major changes, compared with the previous situation, were reported to have occurred in this respect.

Additional elements

Special training for judges (c.30.4)

338. As regards the training of magistrates, primarily this appears to be self training, which was explained as taking place through the study of case law (judgements are automatically distributed among judges of the Court) of legal literature and exchanges of information and experience among magistrates and with foreign counterparts. It was also indicated that each magistrate had participated in specific courses open to the various institutions involved in AML/CFT, organised under the aegis of the Secretariat of State and promoted by financial institutions, professional associations, etc). A specific training in the field of investigation in the fields of ML and international organised crime was also organised in October 2010, in co-operation with Italian magistrates. No special educational programmes are set up for judges and courts concerning ML, FT and predicate offences, the training available being organised in an ad-hoc manner.

2.6.2 Recommendations and comments

Recommendation 27

339. The authorities should make full use of the provisions of the AML/CFT Law and delegate decree to second Police officers to the FIA, as this could in the medium and long term impact positively on the capacity of the law enforcement agencies to develop their own pool of expertise to pursue complex financial crime investigations, rather than rely on another agency for a key aspect of the investigation.

340. San Marino authorities should take measures as appropriate to ensure that the San Marino police officials start playing an active role in AML/CFT efforts.

341. The authorities should consider placing an emphasis on the development of case law on standalone money laundering, based on evidence collected in San Marino;

Recommendation 30

342. The authorities should continue to take measures as appropriate, to ensure that law enforcement officials and judges can develop their skills and expertise, such as through regular participation in specialised trainings in San Marino or abroad, in particular as regards financial investigation, handling of complex criminal investigations of financial and banking offences, techniques for tracing proceeds and evidence gathering.

343. San Marino should continue to review on a regular basis the resources of the Court and the judges' workload, also taking into consideration the specific case workload and complexity of pending cases, as well as the respective workload derived from mutual legal assistance requests, and take remedying measures as appropriate to ensure an efficient treatment of cases.

344. San Marino should ensure that the law enforcement authorities have the necessary equipment and are trained to make use of it so as to have the ability to make full use of the special investigative techniques allowed by the legal framework.

Recommendation 32

345. This Recommendation is fully observed.

2.6.3 Compliance with FATF Recommendations

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R.27	**PC**	• Though the number of ML investigations is increasing, there are very few police generated ML investigations • Effectiveness issues: (1) the effectiveness and efficiency of the role of the law enforcement authorities in the investigation phase is not demonstrated; (2) it was not demonstrated that the Police has the ability to carry out autonomously (complex) financial investigations without the support of other authorities

2.7 Cross Border Declaration or Disclosure (SR.IX)

2.7.1 Description and analysis

Legal Framework

Summary of 2008 MER factors underlying the rating

346. San Marino had received a Non Compliant rating under the third evaluation round given that it had not implemented the requirements of Special Recommendation IX.

347. As a result of the application of compliance enhancing procedures, and in order to implement those requirements, the Congress of State adopted Delegated Decree no. 138 (31 October 2008) which introduced a disclosure system. Subsequently, those provisions were abrogated and a revised system was put in place with the adoption of Delegated Decree no. 62 of May 2009, which was ratified and amended by Delegated Decree no. 74 of 19 June 2009 on Cross border transportation of cash and similar instruments setting out a declaration system.

Further amendments were introduced after the visit by Ratifying Decree Law no. 181 of 11 November 2010 (subsequently Decree Law no. 187 of 26 November 2010).

Mechanisms to monitor cross-border physical transportation of currency (c.IX.1)

348. The Delegated Decree no.74 introduces a legal requirement for any natural person entering or leaving the territory of the Republic of San Marino to declare the transport of cash and similar instruments in Euro or foreign currencies of more than EURO 10,000 or the equivalent value by making a written declaration to the Commands or branch offices of the law enforcement agencies (i.e. the Gendarmerie Corps, the Civil Police Corps and the Fortress Guard). It should be noted that the declaration requirements, before the amendments introduced after the visit by Ratifying Decree Law no. 181 of 11 November 2010, established that the declaration could also be submitted to financial institutions and that this option was subsequently eliminated. Article 1 defines cash as "banknotes and coins in Euro or other currency" and similar instruments are understood to include " bearer negotiable instruments, including travellers cheques, cheques, bills of exchange and payment orders, that are either in bearer form, endorsed without restriction, instruments issued in a form such that the related title is transferred on delivery as well as signed instruments that do not specify the name of the beneficiary or which specify a fictitious beneficiary".

349. The requirement covers also transfers of cash and similar instruments, to and from foreign countries, carried out by post, which until 11 November 2010 were to be declared to the Post Office at the time of shipment or within 48 hours of receipt or sending and after directly to the Commands or branch offices of the Police Forces within 48 hours of receipt.

350. The obligation does not apply to transfers by postal orders or promissory notes, or giro cheques, bank cheques or bank drafts, which specify the name of the beneficiary and the clause non negotiable and are drawn or issued by authorised parties under the LISF, or drawn on or issued by foreign parties that mainly carry out an activity falling under the reserved activities indicated in LISF, established in a State applying obligations equivalent to those set forth by this Decree and imposing supervision and control over compliance with such obligations for the purposes of preventing and countering money laundering and terrorist financing.

351. The obligation to declare applies to all parties, both individuals and legal persons, importing or exporting cash and similar instruments. If a physical person acts in the name and on behalf of a legal person, and fails to make the declaration, sanctions are available and applied to the legal person, which is jointly and severally liable with the individual who has carried out the import or export. The authorities indicated that the Administrative Judge of Appeal had confirmed the application of a sanction to a company when its legal representative had been found in possession of undeclared cash during an inspection by the Fortress Guard and the company was held liable in that case.

352. The FIA as provided the following statistics with respect to the total number of declarations received, with a breakdown per entity (natural/legal person).

Table 16: Declarations on Cash Cross Border Declaration Reports

Year		incoming	outgoing	Total
2009	Natural Persons	98	187	285
	Legal Persons	30	31	61
Total		**128**	**218**	**346**

Year		incoming	outgoing	Total
2010*	Natural Persons	23	88	111
	Legal Persons	45	43	88
Total		**68**	**131**	**199**

As at 9th November 2010

Source:FIA

Request information on origin and use of currency (c.IX.2)

353. Amendments introduced by Ratifying Decree Law no. 181 of 11 November 2010 clarify that the obligation to declare is not considered to be fulfilled if the information provided is incorrect or incomplete. Law enforcement representatives have the authority to verify the identity of persons and inspect the vehicles and luggage when undertaking regular border controls. The law enforcement official is responsible for checking the truthfulness of declarations and any false answers given to them represents an offense of false statement (Article 297 of the Criminal Code), which gives them the authority to perform an independent investigation to ascertain whether the crime has been committed, including by requesting any further information from the person.

354. All the members of the law enforcement agencies can perform inspections not only at border points but also within the country in cases of suspicions. Pursuant to Article 3 of Delegated Decree no. 74 of 19 June 2009, the various law enforcement agencies responsible for ML investigations are not subject to any kind of spatial or territorial restrictions in the exercise of supervision and control activities regulated by the law. Therefore, considering the limited territorial dimensions of the Republic of San Marino, the entire territory can be considered a "customs supervision area".

Restraint of currency (c. IX.3)

355. The legislation is not explicitly covering the authority by law enforcement officials to be able to stop or restrain currency or bearer negotiable instruments during a time period, in order to enable it to ascertain whether there is a suspicion of ML or TF. Article 3 (2) of Delegated Decree No 74 of 19 June, 2009 specifies that authorities shall also subject persons, vehicles and their contents to control measures "if there are reasonable grounds to believe that the transportation of cash or similar instruments is connected to money laundering or terrorist financing".

356. The legislation provides that false declarations are to be considered a breach of the reporting requirement and entail application of relevant sanctions, including restraint of currency as detailed below.

Retention of information of currency and identification data by authorities when appropriate (c.IX.4)

357. The declaration form contains a series of data which needs to be filled in, which include, inter alia, the details of the person submitting the declaration (name, identification code, place of birth, birth date, country of residence, nationality and address), the party on whose behalf the transfer is being made if other than the person submitting the declaration, the type of cash or instruments and the amount as well as further information on the transfer (origin, final recipient, intended use, means of transportation) and the date and signature. All declarations received are uploaded in the FIA database are used by the FIA to perform its functions. The retention period of such data is 30 years, following which the documentation can be transferred to another authority for archiving purposes.

358. Furthermore, Article 6 requires law enforcement officers to draw up an official report on the seizures made and the declarations submitted by the persons involved and to forward it to the FIA. Reports are kept by the Headquarters of Law Enforcement Agencies (Fortress Guard) and are available to the FIA to conduct financial analysis.

Access of information to FIU (c.IX.5)

359. It is to be noted that until 11 November 2010, there was an option where the declaration could be submitted to the financial institutions as opposed to the law enforcement officials. This option has been repealed. The legislation requires that copies of all declarations are transmitted to the FIA within the tenth day following the reference months with the exception of a transmission within the next working day in cases where there are facts or circumstances from which it is inferred that sums of cash are related to ML and TF. The FIA receives also, pursuant to Article 6, copies of official reports prepared by the police on the seizures made and the declarations submitted by the persons.

Domestic co-operation between Customs, Immigration and related authorities (c.IX.6)

360. Article 10 of Delegated Decree no. 74/2009 refers to national and international co-operation regarding cross-border cash movements. The article sets out that all data and information acquired by FIA may be exchanged with other competent national authorities when fact and circumstances arise through which it can be inferred that the money or similar instrument are connected to money laundering or terrorist financing.

361. Since the Delegated Decree was issued, the authorities indicated that regular meetings were held between the FIA and the police forces to define implementing procedures and creating a functional work flow, where functions, powers and relevant results are defined at each level of the process.

362. These meetings are also aimed at addressing issues of concern and interpretation (i.e. transfer of cheques without the amount or with indication 'to myself', transfers of multiple cheques and cash below the threshold but which altogether exceeded the threshold, control of cash couriers, etc) but also to prepare an adhoc report to acquire information on the persons and means of transport to verify that the verbal declarations made are truthful

363. The feedback received from the authorities regarding co-operation issues related to the implementation of SR.IX was positive. The Fortress Guard provided examples of such co-operation with other law enforcement authorities, in instances where the persons involved had a criminal record. As a result of this co-operation, it was reported that FIA had initiated financial analysis in 3 cases, based on the cash controls carried out by the Police forces at the border, and that one case had been referred to the judicial authority for investigation.

International co-operation between competent authorities relating to cross-border physical transportation of currency (c.IX.7)

364. Article 10 of the Delegated Decree, as amended, enables the FIA to exchange data and information received in this context with other financial intelligence units when facts and circumstances arise from which it is inferred that sums of cash or similar instruments are connected with ML and TF. This provision is applicable , as far as the scope of exchange of information is concerned, only to cases "*connected with money laundering and terrorist financing*". The authorities indicated that this provision has always been interpreted and applied in

a wide manner. FIA indicated that it exchanges regularly information relating to cross border physical transportation of currency.

365. Article 12 (7) of the AML/CFT Law empowers the Police authority to cooperate and exchange information with foreign counterparts on the basis of specific co-operation agreements. The Police authority may also exchange information through the National Central Bureau of Interpol. It was reported in this context that the Fortress Guard can exchange information with other police authorities and that co-operation takes place through exchange of information with the Guardia di Finanza regarding the import/export of goods as well as on individual cases.

Sanctions for making false declarations/disclosures (applying c.17.1-17.4, c.IX.8) & Sanctions for cross-border physical transportation of currency for purposes of ML or FT (applying c.17.1-17.4, c.IX.9)

366. As mentioned earlier, pursuant to article 2 of the Delegated Decree, the obligation of declaration is not fulfilled if the information provided is incorrect or incomplete.

367. Making a false declaration or failing to file the declaration or providing inaccurate or incomplete information constitutes an administrative violation and is punished by an administrative sanction of up to 40% of the amount transferred or attempted to be transferred, exceeding the equivalent value of €10,000, with a minimum sanction of € 200 . This pecuniary sanction is applied even if the facts are envisaged as an offence by another provision of the Decree or other laws, and if it is connected with another offence, it shall be separately prosecuted. False declarations are reported to the Court. Pecuniary sanctions are immediately applied.

368. This provision was amended in November 2010 and further completed in order to include also explicitly cases where a similar instrument, although bearing the drawer's signature, does not contain an indication of the amount. In such cases, a fixed € 200 administrative sanction shall be applied for each instrument.

369. Article 7 paragraph 2 of the Delegated Decree refers to Title VI, Chapter III of the AML/CFT, thus ensuring that Article 70 of the Law applies, setting out provisions applicable as far as the liability of a legal person is concerned.

370. Furthermore, in application of article 5, anyone who omits to provide the personal details of the person on whose behalf they are transferring cash or similar instruments to and from foreign countries or provides false information shall be punished by terms of imprisonment or second degree arrest or with a third degree daily fine. This provision had not been yet applied in practice.

371. Article 8 of the Delegated Decree allows for a specific procedure of voluntary settlement, which consists in the immediate payment equal to 10% of the money or similar instruments exceeding the threshold of € 10.000, with a minimum of € 200. In such cases, the payment is executed within 20 days of its notification and the FIA orders the return of money or similar instruments within 10 days following receipt of the proof of payment. Voluntary settlement is not permitted for an amount exceeding the value of € 250.000.

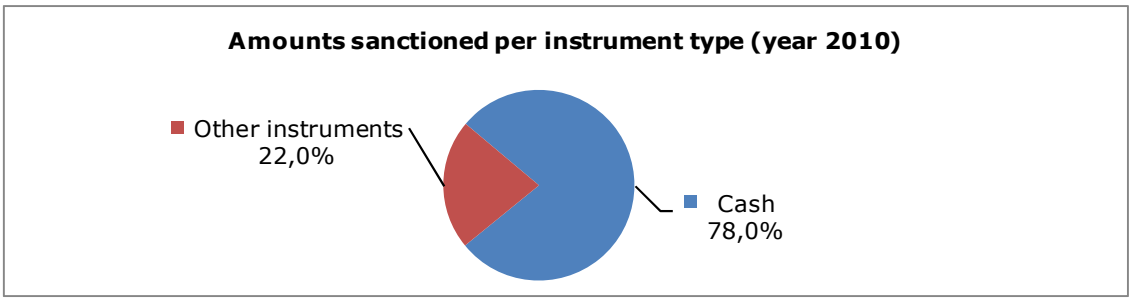
372. Though welcoming the clarifications brought by the November 2010 amendments in respect of instruments without a reference of the exact amount, the evaluators remain unconvinced by the changes introduced. Though sanctions were raised from 10% to 40% of the amount in excess of the fixed threshold, the voluntary settlement rules enables one to immediately pay 10%, of the money exceeding the fixed threshold, with a minimum of € 200.

373. The authorities have provided detailed statistics on the controls carried out by the Police forces, the violations ascertained and the sanctions applied. The information below summarises the main results:

Table 17: Transport of cash and similar instruments across transnational borders
Period: From 31th October 2008 to 31th October 2010

Year	Controls carried out	Violations ascertained	%	Administrative sanctions (euro)	Amounts involved (euro)
2008	64	-	0,0%	-	-
2009	2.988	13	0,4%	24.018	458.592
2010	6.055	17	0,3%	38.098	260.205

Table 18: Sanctions applied per instrument type



Confiscation of currency related to ML/FT (applying c.3.1-3.6, c.IX.10) and pursuant to UNSCRs (applying c.III.1-III.10, c.IX.11)

374. Freezing, seizure and confiscation also apply in this context. Article 6 of the Delegated Decree sets out that the cash and similar instruments transferred or attempted to be transferred exceeding the equivalent value of € 10.000 shall be subject to administrative seizure and the sums or the assets seized are deposited with the FIA within the next working day. Seizure is also executed within the limit of 40% of the amount exceeding the threshold, and without a limit when the object is indivisible or when owing to the nature and amount of the assets transferred or attempted to be transferred, the related value in Euro cannot be easily assessed at the time of seizure. The interested parties can appeal against the seizure order to the FIA. The evaluation team was informed that in 2009, the amounts seized amounted to 52.000 Euros, while in 2010 to 117.000 Euros, in addition to seizures of financial instruments. No information was available regarding appeals made against the seizure orders.

375. Cash or similar instruments are returned to the persons entitled within 5 days from the date of seizure if a) the interested party demonstrates that such cash or instruments are not covered by the declaration requirement pursuant to article 2(3) or b) they are not retained as payment of the administrative sanction. Before the amendments introduced in November 2010, returns were also possible if the author of the violation had deceased.

376. The Fortress Guard has access to the UN lists but the assessors were unable to establish how they applied them. The evaluation team was later informed that they have real time access through a specific website, which is also accessible via the FIA website. The authorities indicated that names are verified at the time of controls, since the identity of the person stopped and that of any person transported shall be communicated via radio to the police headquarters, which shall verify whether the names are included in the lists.

Notification of foreign agency of unusual movement of precious metal and stones (C.IX.12)

377. Before the evaluation visit, the Delegated Decree did not cover explicitly aspects arising from the discovery of unusual cross border movement of gold, precious metals and precious stones, and those are not covered as such by any declaration requirements or by the international co-operation provisions of the decree. The authorities then indicated that in such cases FIA would exchange information both with other national authorities and with corresponding financial authorities.

378. After the visit, Article 3 paragraph 3 of Decree Law no. 74/2009, as amended by Article 35 of Decree Law no. 187/2010 (ratifying Decree Law no. 181 of 11 November 2011) requires police authorities to immediately inform the FIA of any cross border movement of gold, precious stones or metal considered to be suspicious. It was indicated that FIA may exchange information with other competent authorities, in application of the provisions of Article 16 of the AML/CFT Law, however, as indicated in this report, this article allows FIA to exchange information only with other FIUs. Additional clarifications provided by the authorities have also made reference to an additional channel of communication of such instances to foreign authorities: if in the context of controls the Fortress Guard or any other police forces ascertain the existence of suspicious movements of gold, metals and other precious stones, besides contacting the foreign counterparts, they shall notify the Tax Office, which shall inform foreign customs offices, and the Office of Industry, Handicraft and Trade, which shall inform the Central Liaison Office for notification to the foreign competent Authorities and for the application of the sanctions envisaged by law.

379. The authorities indicated that without prejudice to the legislation concerning cross-border movements of cash, the Fortress Guard, in the framework of ordinary control activities on the import and export of any goods, may carry out inspections aimed at controlling gold, precious metals and stones. Import and export operations concerning non-EU countries are subject to Italian customs controls and may be carried out only through authorised customs agents in conformity with the Customs Co-operation Agreement with the EU. Also in this case, the Fortress Guard controls transport documents (telematic stamp) and physically checks goods and documents. International co-operation is not limited in any way and may also be carried out exclusively for commercial and import controls, irrespective of a correlation with a crime or category of crimes.

380. In practice, no unusual cross border movement of gold, precious stones or precious metals was detected.

Safeguards for proper use of information (c.IX.13)

381. The authorities stated that the information collected by the police is subject to secrecy, as is the information collected by the FIA. Only designated officers have access to the systems. The sharing of information is allowed with other competent authorities, only when facts and circumstances arise from which it is inferred that the amounts are connected to ML and TF.

Training, Data Collection, Enforcement and Targeting Programs (c. IX.14)

382. It was indicated that for training purposes, the assistance of the Italian authorities was requested. Based on the information available, it was not demonstrated that competent law enforcement authorities had received adequate training and that this is pursued on a regular basis.

Supra-National Approach: Timely Access to Information (c. IX.15)

383. N/A.

Additional elements – Implementation of SR.IX Best Practices (c.IX.16) & Computerisation of databases and accessibility to competent authorities (c.IX.17)

384. Reports are maintained in a computerised data base of the FIA and of the Fortress Guard. The authorities indicated that they are implementing the measures in the Best Practices Paper for SR.IX.

Recommendation 32 (Statistics)

385. See above. Statistics maintained by the authorities are comprehensive and include a variety of breakdowns (overall value of movements to and from San Marino, sanctions applied, nationality of persons involved, direction of transport, results of controls per port of entry etc).

Recommendation 30 (Customs authorities)

386. Limited information was available during the third round regarding the structures, funding, staffing of the Fortress Guard, which is the primary competent law enforcement authority for undertaking the controls.

387. The authorities stated that they have involved trained staff with experience in inspections on persons and means of transport. There are 8 Police officers involved in the controls and they always operate in patrols consisting of two officers, within the territory. The evaluation team was also informed that as a result of the legislative changes, the resources of the Fortress Guard had increased, and the total number of staff now reached 20 persons with a coverage of the territory 20 hours a day. Some trainings have been organised, with some members having received training on ML aspects. The authorities indicated after the visit that the tools and equipment at the disposal of the Fortress Guard are adequate since they have both computer devices and technical instruments required to check means and vehicles.

388. The evaluation team was informed at a later stage that the integrity of the Fortress Guard's agents is guaranteed by their military status and their duties are laid down in Law no.132 of 13 November 1987. Their discipline is established by Law no.15 of 26 January 1990, as amended by Law no.28 of 18 February 1999. In the absence of further detailed information, the evaluation team was not able to form a positive conclusion on the adequacy of training received and equipment available, nor on the requirements applicable to the Fortress Guard to ensure that officials are required to maintain high professional standards and that there are appropriate internal measures governing integrity aspects.

Effectiveness

389. The introduction of the declaration requirements is relatively recent, and the authorities have already introduced several amendments to extend the scope of the obligation, clarify the requirements, increase sanctions and ensure that the FIA has access to all relevant information. Additional measures were put in place to ensure that the law enforcement authorities properly understand the new obligations and enforce them.

390. The introduction of such a declaration system and the remittance of a copy of the declaration form to FIA and the subsequent storage of the data contained in the declaration allows the FIU

and the other competent authorities to monitor the flows of cash and other instruments in and out of the country. The authorities indicated that the system has started to work relatively well.

391. The effectiveness of the implementation of the declaration obligation needs however to be further enhanced. As mentioned previously, the legislation enabled until recently to submit the declaration to the financial parties (as opposed to the competent authorities), and though no statistics were available on this, the assessment team has learnt that there was a clear preference of the persons to make the declaration with the financial institutions.

392. While previously no controls were undertaken, the statistics clearly demonstrate an increasing involvement of the law enforcement authorities in carrying out controls starting from 2008 onwards. Sanctions were applied and enforced as of 2009 only. The cases provided indicate instances where the amounts involved ranged between €17.000 Euros and € 200.000. Those cases relate interestingly in majority to outgoing transfers, and the nationalities of the persons involved are in majority Italians, with one case involving an Albanian citizen and one Sammarinese citizen. 13 violations were detected in 2009 with administrative sanctions totalling € 24.108. This figure rose to 17 violations for a total of €38.098 as pecuniary sanctions. The fines, in the aggregate, amounted to less than 6% of the amounts involved in 2009, and approximately to 14% in 2010 (this was probably due to the increase of penalties from 10% to 40%). The average amount of the fines issued is between € 200 and € 31.065, and the majority also seems to be in application of the voluntary settlement procedure (i.e. 10%).

393. The evaluation team also noted that the arrangements for displaying information notices on the declaration requirements may need to be re-examined. Information is currently available on the website of the FIA under an adhoc section for Cross border control, where the declaration form can be downloaded. (www.aif.sm > Cross border Controls > Model). The authorities however stressed that the declaration requirements that came in force are widely known both in San Marino and Italy, as this measures was widely publicised.

2.7.2 Recommendations and comments

Special Recommendation IX

394. Authorities should take stock of the sanctions applied and analyse whether the voluntary settlement provisions undermine the effectiveness and deterrent scope of the sanctions, and if appropriate, reconsider the statutory sanctions to ensure that these are proportionate.

Recommendation 30

395. San Marino should ensure that the Police forces, including Fortress Guard officials, are required to maintain high professional standards and that there are adequate measures covering integrity aspects.

396. Comprehensive training should be provided regularly to law enforcement authorities, and in particular to the Fortress Guard, on detection of cash couriers and further guidance on trends/risks/patterns associated with cross border transportation of cash and other instruments, as well as typologies are available.

Recommendation 32

397. San Marino is compliant with the requirements of Recommendation 32.

2.7.3 Compliance with Special Recommendation IX

	Rating	Summary of factors relevant to s.2.7 underlying overall rating
SR.IX	**PC**	• Though the administrative sanctions applicable have been increased and may appear substantial, the voluntary settlement rule substantially reduces the level of sanctions and may undermine the deterring scope of the sanction. • Effectiveness issues: (1) the declaration system has been recently introduced, while it was not demonstrated that the authorities responsible for overseeing its implementation were provided with sufficient training to effectively perform their functions, (2) the implementation of the declaration requirement at the time of the on-site visit was not very effective, considering that the declaration could be (and was) submitted to financial institutions[20] (3) no indication of undertaking risk assessment exercises at the border specifically targeting cash movements

[20] This possibility has been abrogated by the amendments introduced after the visit through Ratifying Decree Law no. 181 of 11 November 2010 (subsequently Decree Law no. 187 of 26 November 2010.

3 PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

Legal framework and developments since the third evaluation

398. Since the adoption of the third mutual evaluation report in March 2008, San Marino has taken several legislative and regulatory measures in order to address the main deficiencies identified in the third evaluation round. These developments are set out in detail under the description of each of the relevant recommendations.

Scope

399. The new AML/CFT Law applies to the whole financial sector as defined in Methodology, including authorized parties pursuant to the LISF, taking of deposits, granting of loans, fiduciary activity, investment services, collective investment services, insurance, reinsurance, payment services, electronic money issue services, exchange intermediation, etc. (Attachment I to the LISF) as well as post offices, financial promoters, insurance and reinsurance intermediaries.

400. Among other things, the new Law introduces a full range of CDD requirements, including the obligation to identify and verify the customer and the beneficial owner, to obtain information on the purpose and intended nature of the business relationship as well as to conduct ongoing monitoring of the relationship. Furthermore the new Law introduces a risk-based approach to CDD and record keeping requirements have been strengthened.

Law, regulations and other enforceable means

401. For the purposes of the assessment process, the hierarchy of relevant norms in San Marino and their status according to the Methodology is as follows:

Table 19: Hierarchy of relevant norms in San Marino and status according to the Methodology

Hierarchy of relevant norms in San Marino	Status according to the Methodology
International treaties and conventions	Law or regulation
Constitutional laws	Law or regulation
Qualified and ordinary laws	Law or regulation
Decrees (*Decreto, Decreto Consigliare, Decreto Delegato)*	Law or regulation
Congress of State decisions	Law or regulation
FIA Instructions	FIA Instructions 2008-04; 2009-03; 2009-04; 2009-05; 2009-06; 2009-07; 2009-09; 2009-10 are considered to qualify as "regulation" while the others are "other enforceable means"
Circulars and standard letters issued by the former Office for Banking supervision (in force until the issuing of FIA Instructions	Other enforceable means
Regulations of the Central Bank	Other enforceable means
Circulars of the Central Bank	Other enforceable means
Standard letters of the Central Bank (only issued until the entry into force of the Law on companies and banking, financial and insurance services, April 2006)	Other enforceable means
CBSM Recommendations	Non binding guidance
FIA Guidelines	Non binding guidance

402. Eight FIA Instructions[21] have been adopted in application of articles 27 (1), 33 (1) and 95 (2) of the AML/CFT Law, which clearly predetermine their scope and content. The power pursuant to which they have been adopted can be considered as "authorized by a legislative body". The other instructions have been issued under Article 4(1)(d) of the AML/CFT Law which empowers the FIA to issue instructions regarding the prevention and combating of money laundering and terrorist financing. All instructions issued by FIA set out enforceable requirements which are subject to sanctions for non compliance.

403. For the purpose of this assessment, and to ensure a consistent approach with previous assessments, the evaluation team considered that those eight FIA Instructions are considered as "regulation" while the others qualify as other enforceable means. It is however to be noted that the basic obligations under Recommendations 5, 10 and 13 that are marked with an asterisk (*) and which should be set out in law or regulation are covered in the AML/CFT Law.

Customer Due Diligence and Record Keeping

3.1 Risk of money laundering / financing of terrorism

404. The new AML/CFT Law applies to the all activities and operations carried out by financial institutions and DNFBPs as defined in the Glossary to the FATF Methodology. In addition the scope of application of the AML/CFT requirements has been extended to further DNFBPs and to transactions below the thresholds provided by the FATF Standard.

405. The new AML/CFT Law has also introduced a risk-based approach to CDD. Enhanced CDD is required by law for non face-to-face business relationships, cross-border correspondent banking and PEPs. Those three enhanced risk-categories are modelled on the risk-based approach set out in the Third EU AML Directive and are not the result of a specific risk assessment of the Sammarinese financial sector. The AML/CFT Law does not provide for other mandatory situations for enhanced CDD.

406. The instances for simplified CDD provided in the AML/CFT Law are also modelled on the instances provided by the Third EU AML Directive (see c.5.8 for further details). In addition, the FIA is empowered to specify, by issuing relevant instructions, categories of parties or products characterized by a low risk of money laundering or terrorist financing to which customer due diligence shall not apply. However, FIA has not made use of the power to issue such an instruction so far.

407. There is a clear need for a comprehensive risk assessment to properly judge the adequacy of the current approach. Authorities reported during the visit of plans to carry out such a risk analysis and the development of a corresponding strategy to address the risks of ML and TF identified.

[21] FIA Instructions 2008-04; 2009-03; 2009-04; 2009-05; 2009-06; 2009-07; 2009-09; 2009-10.

3.2 Customer due diligence, including enhanced or reduced measures (R.5 to R.8)

3.2.1 Description and analysis

Recommendation 5 (rated NC in the 3rd round report)

Summary of 2008 MER factors underlying the rating and developments

408. As described in the 3rd round evaluation report, San Marino had received a Non Compliant rating for Recommendation 5. The deficiencies mentioned included the existence of bearer passbooks and the fact that certain categories of financial institutions were not covered by the identification obligations. Evaluators also noted that there was no requirement in law or regulation to carry out CDD when there is a suspicion of ML or TF regardless of any exemptions or thresholds, when the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data, or when carrying out occasional transactions that are wire transfers in the circumstances covered by SR. VII. Additionally the threshold applied to transactions was EUR 15.500 rather than the EUR 15.000 limit set out in the recommendations.

409. Further deficiencies included the lack of obligation to verify the customer's identity using reliable independent source documents, data or information or to the other elements of the CDD measures; to verify that any person purporting to act on behalf of the customer is so authorized and to identify and verify the identity of that person; to identify the beneficial owner and take reasonable measures to verify the identity of the beneficial owner; to determine whether the customer is acting on behalf of another person and to take reasonable steps to obtain sufficient identification data to verify the identity of that other person; to conduct ongoing due diligence on the business relationship.

410. Evaluators also criticized that there were no provisions in law, regulation or other enforceable means that addressed circumstances where there is a failure to satisfactorily complete CDD. Moreover there were no provisions in law, regulation or other enforceable means that required financial institutions to perform enhanced due diligence for higher risk categories of customer, business relationship or transaction. It was also unclear to evaluators if there was any explicit requirement to apply customer identification requirements to existing customers that had opened accounts prior to the entry into force of the AML/CFT Law No.123/1998.

411. Since the adoption of the MER of San Marino (March 2008), several legislative and regulatory measures have been adopted by the authorities. The legislative framework is now based on Law No. 92 of 17 June 2008 "Provisions on preventing and combating money laundering and terrorist financing" that entered into force on September 2008. The measures have been strengthened by the Law No. 73 of 19 June 2009 "Adjustment of national legislation to international conventions and standards on preventing and combating money laundering and terrorist financing" as well as Decree-Law No. 134 of 26 July 2010 and Decree-Law No. 181 of 11 November 2010 "Urgent provisions modifying the legislation on the prevention and combating of ML and TF" (ratified according to the national procedure by Decree Law no. 187 of 26 November 2010).

412. This framework is further complemented by 24 instructions as set out in the table below.

Table 20: Instructions issued by the supervisory authorities

Instr. #	Title	Date	In force	Coverage
2008-01	"Operating rules and procedural aspects of the fight against Money Laundering and financing of terrorism" on Customer Identification Procedures"	12.06.08 *Ante Law 92/2008*	30.06.08	Financial (art. 18)[22] Aauthorized parties mentioned in article 6 of Law no. 123 of 15 December, 1998 (credit and financial brokers)
2008-02	"Enhanced procedures for due diligence on customers resident or located in countries, jurisdictions or territories subject to strict monitoring by the FATF"."	04.07.08 *Ante Law 92/2008*	07.07.08 Repealed by Instruction 2009-01	Financial (art. 18) Authorised parties mentioned in article 6 of Law no. 123 of 15 December, 1998 (credit and financial brokers)
2008-03	"Identification, verification and assessment of "critical transactions" on large pattern of transactions"	25.11.08	15.12.08	Financial (art. 18) Art.18 Letter a) and b) of Law no. 92/2008
2008-04	"Specific measures for the electronic transfer of funds" on electronic wire transfers of funds"	25.11.08	01.02.09	Financial (art. 18) Financial operators authorised to perform the reserved activity identified in subparagraph I) of Attachment 1 to Law no. 165 of 17 November 2005 ("Payment services")
2008-05	"Operating rules and procedural aspects of the fight against Money Laundering and financing of terrorism" on extension of the CDD requirement of financial parties"	25.11.08	15.12.08	Financial (art. 18)
2009-01	"Enhanced procedures for due diligence on customers resident or located in countries, jurisdictions or territories subject to strict monitoring by the FATF and MONEYVAL"	29.01.09	05.08.09: Repealed by Instruction. 2009-08	Financial (art. 18)
2009-02	"Duties to inform foreign counterparts" on obligation of San Marino Financial	06.02.09	09.02.09	Financial (art. 18) Non financial (art.19)[23]

[22] Definition of **Financial parties** according to art.18 para 1 of the AML/CFT Law:

a) the authorized parties on the basis of Law N° 165 of November 17, 2005 and subsequent amendments;
b) the Central Bank, whenever in the field of its institutional functions, establishes business relationships or carries out occasional transactions that require the fulfilment of obligations set forth in this law;
c) the post offices whenever they establish business relationships or carry out occasional transactions that require the fulfilment of obligations set forth in this law;
d) the financial promoters as defined in article 24 and 25 of Law N° 165 of November 17, 2005;
e) the insurance and reinsurance agencies as defined in article 26 and 27 of the Law N° 165 of November 17, 2005;
f) the parties that provide professional credit recovery on behalf of third parties.

[23] According to art.19 para 1 of the AML/CFT Law **Non financial parties** are defined as parties that provide professional services regarding the following activities:

a) professional office of the trustee in conformity with the trust legislation ;
b) assistance and consultancy on matters of investment services;
c) assistance and consultancy on tax, financial and commercial matters;
d) credit brokerage;
e) real estate brokerage;
f) running of gambling houses and games of chance as set forth in Law N° 67 of July 25, 2000 and subsequent amendments;
g) custody and transport of cash, securities or values;
h) management of auction houses or art galleries;
i) trade in antiques;

Instr. #	Title	Date	In force	Coverage
	institutions to reveal information to counterparts for the fulfilment of the CDD requirements"			Professionals (art. 20)[24]
2009-03	"Risk assessment and other evaluations referred to in Article 25 of Law no. 92 of 17 June 2008"	22.05.09	01.06.09	Financial (art. 18) Non financial (art.19) Professionals (art. 20)
2009-04	"Identification to be carried out through third parties and ways of transmission of documents and information referred to in Article 29 of Law no. 92 of 17 June 2008"	22.05.09	01.06.09	Financial (art. 18) Non financial (art.19) Professionals (art. 20)
2009-05	"Ways for the fulfilment of the obligations referred to in Article 22, paragraph 1, letter b)" on beneficial ownership;	22.05.09	01.06.09	Financial (art. 18) Non financial (art.19) Professionals (art. 20)
2009-06	"Requirements of customer due diligence, record keeping and suspicious transaction reporting for the professional practitioners referred to in article 20 of Law no. 92 of 17 June 2008"	27.05.09	06.06.09	Professionals (art. 20)
2009-07	"Typologies of suspicious transactions and procedures for the examination of transactions referred to in article 36 of Law no. 92 of 17 June 2008"	08.07.09	20.07.09	Financial (art. 18) Non financial (art.19) Professionals (art. 20)
2009-08	"Enhanced due diligence procedures for customers resident or located in countries, jurisdictions or territories subject to strict monitoring"	05.08.09	06.08.09	Financial (art. 18)
2009-09	"Requirements of customer due diligence, record keeping and suspicious transaction reporting for the professional practitioners referred to in article 20 of Law no. 92 of 17 June 2008"	05.08.09	01.09.09	Non financial (art.19)
2009-10	"Data and information that shall be registered and maintained according to article 34, paragraph 1 of the Law 92/2008"	03.12.09	01.01.10	Financial (art. 18) Art.18 Letter a) and b) of Law no. 92/2008
2009-11	"Procedure for irregular cheque reporting under Article 32 of Law no. 92 of 17 June 2008"	15.12.09	18.01.10	Financial (art. 18) Non financial (art.19) Professionals (art. 20)
2010-01	"Closure and replacement of "omnibus accounts""	08.03.10	15.03.10	Financial (art. 18) Banks and fiduciary companies
2010-02	"Provisions relating to closure or conversion of bearer passbooks and other bearer instruments and securities"	30.04.10	10.05.10	Financial (art. 18) Art.18 Letter a) of Law no. 92/2008

j) purchase of unrefined gold;
k) manufacturing, mediation of and trade in, including export and import of precious metals and stones.

[24] According to art. 20 para 1 of the AML/CFT Law **Professionals parties** are defined as follows:

a) members of the Registry of Accountants (holding a university degree or holding an high school certificate) of the Republic of San Marino;
b) members of the Registry of External Auditors and Auditing companies and of the Registry of Actuaries of the Republic of San Marino;
c) members of the Bar Association of Lawyers and Notaries of the Republic of San Marino, when they carry out in name of or on behalf of their clients any financial or real estate transaction, or when they assist a customer in the planning or execution of related transactions, such as:
   1) the transfer of any title of real rights on properties or companies;
   2) the management of currency, financial instruments or other assets of customers;
   3) the opening or management of bank accounts, savings and securities accounts;
   4) the establishment, management or administration of companies, trusts or similar arrangements with or without legal personality;
   5) the organisation of all the steps required to establish, operate or manage companies.

Instr. #	Title	Date	In force	Coverage
2010-03	"Provisions implementing FATF Special Recommendation III"	04.06.10	14.06.10	Financial (art. 18) Non financial (art.19) Professionals (art. 20)
2010-04	"Provisions implementing FATF Special Recommendation IV- Indicators of suspiciousness"	21.06.10	01.07.10	Financial (art. 18) Non financial (art.19) Professionals (art. 20)
2010-05	"Identification of the beneficial owner of foundations and associations"	08.07.10	12.07.10	Financial (art. 18) Non financial (art.19) Professionals (art. 20)
2010-06	"Identification of the beneficial owner of Trust"	08.07.10	12.07.10	Financial (art. 18) Non financial (art.19) Professionals (art. 20)
2010-07	"Data and information that shall be registered and maintained according to article 34, paragraph 1 of the Law 92/2008 for financial/fiduciary companies".	27.07.10	01.09.10	Financial (art. 18): Financial operators authorised to perform the reserved activity identified in subparagraphs b) and c) of Attachment 1 to Law no. 165 of 17 November 2005
2010-08	"Provisions relating to business relationships established with foreign financial institutions"	05.11.10	10.11.10	Financial (art. 18)

Anonymous accounts and accounts in fictitious names (c.5.1)

413. The adoption of Delegated Decree No. 136 of 22 September 2009 prohibited the issuance of new bearer passbooks and the existing ones, regardless of their balance, had to be closed or converted to nominative accounts by 30 June 2010. CDD requirements had to be fulfilled when the bearer passbooks were closed or converted. Moreover withdrawals, closure or conversion of bearer passbooks of over € 15,000 had to be reported to the compliance officer as potential suspicious transactions. 13.997 passbooks have been closed or converted into nominative passbooks before the deadline (30 June 2010). The assets of those passbooks closed or converted amounted to about Euros 172.002.989.

414. Deposits represented by bearer passbooks that have not been closed or converted by 30 June 2010 have been closed ex lege and have been accounted for in a specific liabilities account up to the date of effective return to the rightful owner. The number of passbooks closed ex lege on 30 June 2010 was 20.091, which amounted to about EUR 32.157.919. More in detail, those 20.091 passbooks consisted of 234 passbooks having a balance greater than 15.000€, and 19.857 with a balance equal or lower to 15.000 €.

415. The payment of those assets to the rightful owner is subject to the CDD requirements specified by the AML/CFT Law (Art. 4 Delegated Decree No. 136 of 31 October 2008). Pursuant to Art. 5 of Delegated Decree 136/2008 (*Economic conditions of the closed deposit*), that applies as mentioned in article 2 of Law Decree 136/2009, closed deposits shall be non-interest bearing from the date of closure; the sum must be returned for the same nominal amount at that date.

Table 21: Assets of passbooks closed ex lege

Data at 30 June 2010

Balance Lower than 15.000	€ 9.928.830,00
Balance Greater than 15.000	€ 22.229.089,00
Total amount closed at June	**€ 32.157.919**

416. Furthermore, the issuance of all bearer instruments, other than passbooks, constituting savings deposits (= certificates of deposits in bearer form) has been prohibited as of 11 November 2009 (Delegated Decree No. 154). The payment of interest upon maturity of the existing ones for a total value of over EUR 15,000 has to be reported to the compliance officer. As soon as interests of such instruments are paid upon maturity, CDD measures have to be applied. The different treatment regarding the phasing out of certificate of deposits compared to bearer passbooks appears to be legitimated by the fact that bearer passbooks are indefinite relationship between the bank and the customer, while certificate of deposit have a pre-definite duration term. According to the authorities the maximum term is 5 years according to CBSM regulation 2007-07.

Table 22: Bearer savings deposits
Data at 30th June 2010

	nominal value/credit balance less than euro 15.000		**nominal value/credit balance exceeding euro 15.000**		**Total**	
	No.	**Amounts (euro)**	**No.**	**Amounts (euro)**	**No.**	**Amounts (euro)**
Bearer savings deposits	31	259.000	28	1.604.000	**59**	**1.863.000**

417. Violations of the CDD requirements regarding bearer passbooks or bearer instruments constituting savings deposits are sanctioned under Art. 61 of the AML/CFT Law. Violations of the prohibition to issue new bearer passbooks or passbooks constituting savings deposits are subject to administrative sanctions from € 10,000 to € 50,000 imposed by the FIA. The same sanctions are applicable to violations regarding the conversion and respectively the closure requirement.

Customer due diligence

When CDD is required (c.5.2)*

418. The obligation to apply customer due diligence is set out in Article 21 of the AML/CFT Law and it is required in situations when establishing a business relationship, when carrying out occasional transactions or professional services for an amount exceeding € 15,000, whether the transaction is carried out in a single operation or in several operations which appear to be linked. This obligation also applies in cases when there is a suspicion of ML or TF or when there are doubts about the veracity or adequacy of the information and data previously obtained for the identification of the customer.

419. As regards wire transfers, Article 33 of the AML/CFT Law empowers the FIA to regulate with its own instructions the data and information that the financial parties, authorized to carry out payment services are required to obtain about those parties ordering the electronic transfer of funds and the ways for registering and maintaining these data and information. In this regard, FIA Instruction 2008-04 has been issued on 24 November 2008. Accordingly the transfer of funds must be accompanied by the following minimum information on the payer:

a) name and surname or, if a legal person, full name or business name;

b) address of residence or domicile or, if a legal person, address of the registered office (information may be substituted by the date and place of birth or by the unique identifier)

c) current account number or, if the transfer of funds takes place without debiting a current account, the unique identifier.

Identification measures and verification sources (c.5.3)*

420. Financial institutions are required to identify the customer and verify the customer's identity on the basis of a valid identification document or, where this is not possible, on the basis of documents, data or information obtained from a reliable and independent source (Article 22 (1) (a) AML/CFT Law).

421. Instruction no. 2008-01 defines "identity document" as a document containing the photograph and all the general details of an individual (i.e. name and surname, place and date of birth, address of residence and nationality), issued by a national or foreign public authority. Further indications as to which sources can be used as a valid identification document are contained in Articles 2 to 4 of FIA Instruction 2008-01 (in particular regarding legal persons/ arrangements).

Identification of legal persons or other arrangements (c.5.4)

422. As regards customers that are legal persons or legal arrangements, financial institutions are required to verify the actual existence of the power of representation and acquire the data and information necessary to identify and verify the identity of the representatives who are authorized to sign for the transaction to be carried out. (Art. 23 (2) AML/CFT Law).

423. Article 3 of Instruction No. 2008-01 determines a minimum set of data financial institutions have to acquire upon starting a continuous relationship or performance of an occasional operation with a legal person or arrangement (including associations and foundations). This set includes inter alia name or corporate name, legal status, economic operator code or other identification code, address, activities performed, date of incorporation, share capital or endowment fund, scope and nature of the relationship/operation, etc. In the case of a company, the date and registration number on the register of companies and the corporate purpose have to be obtained as well.

424. In order to verify the data and information obtained, financial institutions must acquire a true copy of the deed of incorporation, of the up-to-date articles of association, of the resolution of the shareholders' meeting or board of directors' meeting indicating the appointment and any changes in the legal representative and the people who have powers of signature or management of the relationship, in order to check that each person who acts is duly authorised to do so, as well as a copy of the most recently approved financial statements. In the case of companies or organisations with or without corporate status (including associations and foundations), the certificate of validity or an equivalent document has to be obtained as well.

425. Financial institutions must acquire a copy of the documentation with which the individuals acting on behalf of the principal in the relationship are authorised to operate and must inform the client that they are required to notify any changes in the data and information provided and to deliver a copy of the relative revised documents. Individuals operating within the relationship of the client have to be identified and their identity has to be verified as outlined above.

426. For companies or organisations with or without corporate status from outside San Marino, financial institutions must acquire equivalent documents to those indicated above, accompanied by a sworn and authenticated translation.

Identification of Beneficial Owners (c. 5.5; 5.5.1 & 5.5.2)

427. Financial institutions are required to identify the beneficial owner and to adopt adequate and risk-based measures to verify his/her identity (Article 22 (1) (b) AML/CFT Law). These measures have to be carried out at the same time as the identification of the customer and requires, for customers that are not natural persons, taking risk-based and adequate measures in order to understand the ownership and control structure of the customer. In order to identify and verify the identity of the beneficial owner, financial institutions may make use of public registries, lists, acts or documents in the public domain, containing information on the beneficial owners, and request from its customers the pertinent data and information, or obtain information in other ways (Art. 23 (3) AML/CFT Law).

428. For legal persons established in San Marino, examples of the main sources are the Register of Companies at the Court, the Trust Register, and the licence register at Ufficio Industria . There is also online data provided by the Chamber of Commerce of San Marino As far as foreign legal entities are concerned, commercial database are used (for examples: CERVED, LINCE or Titles search –visure- of the Chambers of Commerce, are the main providers used for this purpose). According to the authorities those databases contain information on the beneficial owner of those entities. The most common documents acquired in order to verify the beneficial ownership information of foreign companies are the official documents issued by the competent foreign Authorities. As far as available, various internet websites are examined to verify the documents and/or information provided.

429. Art. 5 (a) of Instruction No. 2009-05 further specifies the requirement of beneficial owner identification with regard to companies. Accordingly financial institutions are required to reconstruct the shareholding structure of the company up to its top management, firstly by using the information provided by the legal representative. This information shall be assessed according to objective documents (financial sheets, certifications by public entities) and comprehensive data available, also in relation to the risk profile of the customer. The obliged party may rely on the information provided by the customer only if the latter has been classified as showing a "limited" risk, pursuant to the criteria indicated in Instruction No. 2009-03.

430. In addition to the formal ownership of stocks and participating shares, financial institutions shall consider situations where the relevant threshold is thought to be exceeded because of particular relations between natural persons or specific powers concerning the management (i.e. shareholders' agreement, family ties or ties due to business relationships, financing constraints, power to appoint one or more directors, position as sole director, etc.).

Information on purpose and nature of business relationship (c.5.6)

431. According to Art. 22 (1) (c) AML/CFT Law financial institutions are required to obtain information on the purpose and intended nature of the business relationship or occasional transaction.

Ongoing due diligence on business relationship (c.5.7, 5.7.1 & 5.7.2)*

432. According to Art. 22 (1) (d) of the AML/CFT Law, financial institutions are required to conduct ongoing monitoring of the relationship with the customer, including scrutiny of transactions undertaken throughout the course of that relationship to ensure that they are compatible with the data and information that the financial institutions have regarding the customer, its economic activities and risk profile, taking into consideration the source of the funds where necessary.

433. In contradiction to Art. 22 (1) (d) AML/CFT Law FIA Instruction 2009-03 allows financial institutions to limit their scrutiny of "limited risk customers" to once every two years and of "medium risk customers" to once every six months. It should be clarified that financial institutions are required to conduct ongoing due diligence on the business relationship.

434. Furthermore there is the requirement to update documents, data and information acquired during the fulfilment of customer due diligence obligations (Art. 22 (1) (e) AML/CFT Law). While for professionals like accountants, auditors, lawyers and notaries this update requirements for financial institutions further specified (Art. 18 FIA Instruction 2009-06) there is no comparable specification for financial institutions.

435. Authorities state that from the obligation to acquire a copy of a valid identity document results the obligation to acquire a copy of a new valid document once the document is expired. However, the review of existing records is not only necessary when such documents expire. Examples for further instances are provided in the above mentioned Instruction for professionals and should also be applicable to financial institutions.

436. Authorities also point to the obligation of the customer under Art. 22 (2) AML/CFT Law to provide, under their own responsibility, in writing, all data and information required and updated to allow the obliged parties to comply with the requirements set forth in this law. However, the standard (c.5.7.2) clearly requires that the financial institution undertakes such reviews autonomously.

Risk – enhanced due diligence for higher risk customers (c.5.8)

437. Article 27 (1) AML/CFT Law requires financial institutions to apply, on the basis of a risk assessment, enhanced CDD measures in higher ML/FT risk situations. Enhanced CDD measures are mandatory when (a) the customer is not physically present; (b) the customer is a politically exposed person; (c) the customer or counterpart is located in countries, jurisdictions and territories under strict monitoring by the FATF, MONEYVAL and other international organizations.

438. In addition Art. 25 of the AML/CFT Law introduces a risk-based approach. Accordingly CDD requirements shall be fulfilled by carrying out risk-based verifications depending on the type of customer, business relationship, occasional transaction, professional service, product or transaction. The aspects to be evaluated in this regard are further specified in the Law and in the FIA Instruction no. 2009-03. Following the assessment of these criteria customers have to be classified according to four risk levels. According to Art. 6 FIA Instruction no. 2009-03 enhanced CDD measures and enhanced monitoring are only required for the highest risk level. Only customer to whom four or more higher potential risks have been assigned fall within this risk category. For example, a customer resident or registered in a country that does not require equivalent AML/CFT obligations or to which restrictive measures have been applied and who additionally behaves non-cooperatively or reticently in providing information or documents requested by the obliged party could technically be considered as a "Low risk profile" according to the Instruction. This raises concerns about the adequacy of the risk classification required by FIA Instruction no. 2003-03 . As regards the enhanced CDD measures that have to be applied the FIA Instruction refers to Art. 27 AML/CFT Law. However, Art. 27 AML/CFT specifies inter alia measures to manage risks related to cross-border correspondent banking relationships and non-face to face business relationships. Not all of these measures are necessarily appropriate to address the risks mentioned in the FIA Instruction no. 2009-03.

439. For the three lower risk levels the Instruction allows financial institutions to limit their monitoring and ongoing control requirements to once a year "for low risk profiles", respectively to every two years for "limited risk profiles" instead of requiring continuous monitoring as

stipulated in Art. 22 (1) (d) AML/CFT Law and does not require any additional CDD measures. Furthermore, the evaluators have concerns with the risk classification foreseen in FIA Instruction no. 2009-03 is appropriate.

Risk – application of simplified/reduced CDD measures when appropriate (c.5.9)

440. Art. 26 of the AML/CFT Law establishes certain cases where financial institutions are not required to meet the CDD requirements. Rather than providing for simplified due diligence measures, the law creates blanket exemptions from the CDD requirements. While the approach is largely modelled on the EU Third AML Directive and can be found in most EU countries, it is not fully in line with the FATF standard whereby minimum CDD (i.e. less detailed CDD) should nevertheless be accomplished, including in circumstances where the risk of money laundering and terrorist financing is low.

441. It is important to note that pursuant to Art. 26 (4) of the AML/CFT Law, financial institutions shall in any case collect sufficient data and information to establish if the customer falls into an exempted category. Due to this requirement obliged institutions presumably will in practice still need to "know their customers" to basic due diligence levels. However, it is not specified which data and information are considered to be sufficient in terms of Art. 26 (4) of the AML/CFT Law.

442. Financial institutions are not required to meet the CDD requirements when the customer is:
a) a domestic financial institutions (except for financial promoters, insurance intermediaries and credit recovery companies);
b) a foreign institutions that mainly carries out banking, granting of loans, fiduciary activity, investment services or collective investment located in a country which imposes equivalent AML/CFT requirements and provides supervision and control of compliance with those requirements
c) a foreign party that carries out post office services that require the fulfilment of AML/CFT obligations and which is located in a country which imposes equivalent AML/CFT requirements and provides supervision and control of compliance with those requirements;
d) a company listed on a regulated market in a country, as long as this market is subject to regulations consistent with or equivalent to EU legislation;
d) public administration .

443. Financial institutions are as well exempted from applying CDD requirements in respect of the following products:

a) life insurance policies where the annual premium is no more than € 1,000 or the single premium is no more than € 2,500;
b) complementary pension schemes if there is no surrender clause and the policy cannot be used as collateral for a loan under the schemes set forth in current legislation;
c) compulsory or complementary or similar pension schemes that provide retirement benefits, which contributions are made by way of deduction from wages and the scheme rules do not permit the transfer of beneficiaries' rights if not after the death of the holder.

444. According to the authorities, financial institutions nonetheless do apply some of the main CDD measures (including identification and verification of customer and beneficial owner and monitoring of transactions through GIANOS), irrespective of the exemptions provided by the AML/CFT Law. According to the authorities this approach is also included in the internal procedures of financial institutions and has been examined at the occasion of onsite inspections.

While the evaluators take good note of this practice, such practice could probably not be legally enforced by the authorities given the above mentioned legal exemptions.

Risk – simplification/ reduction of CDD measures relating to overseas residents (c.5.10)

445. Countries imposing equivalent AML/CFT requirements are determined in the Congress of State Decision No. 9 of the 26 January 2009 upon suggestion of the FIA as prescribed in Art. 95 (5) AML/CFT Law. While not completely clearly stipulated, authorities state that financial institutions are not allowed to consider other countries to be equivalent than those mentioned in the Congress of State Decision.

446. The countries contained in the Congress of State Decision correspond to those mentioned in the common understanding of EU member states on third country equivalence of April 2008 plus the Member States of the EU/EEA and French and Dutch overseas territories and UK Crown Dependencies. The common understanding list has been drawn up by EU member states based on information available on whether those countries adequately apply the FATF Recommendations and Methodology. Amendments to this list are reported by the FIA to the Congress of State that will modify the mentioned list.

447. The authorities have not undertaken an independent and autonomous risk assessment neither with regard to the third countries nor with regard to the EU/EEA Member states mentioned in the Congress of State decision. Specific risks for the San Marino environment have not been taken into account. San Marino authorities informed that after some years of experience with the approach taken in the Congress of State Decision and following some difficulties identified, the authorities are considering the possibility to review this approach. The new approach could also include experience acquired in the course of international co-operation.

Risk – simplified/ reduced CDD measures not to apply when suspicions of ML/FT or other risk scenarios exist (c.5.11)

448. Pursuant to Article 26 of the AML/CFT Law, financial institutions shall not be required to meet the CDD requirements in the instances described above. This exemption (inevitably) overrides the CDD obligations for all cases mentioned in Art. 21 AML/CFT Law, including the case when there is a suspicion of money laundering or terrorist financing, which is not in line with the standard. As regards "other risk scenarios" Art. 27 AML/CFT Law prescribes the application of enhanced CDD which overrides Art. 26 AML/CFT Law according to the authorities.

Risk Based application of CDD to be consistent with guidelines (c.5.12)

449. Financial institutions are permitted to determine the extent of the CDD measures on a risk sensitive basis, having regard to FIA Instruction no. 2009-03 (as foreseen in Art. 95 (2) (b) AML/CFT Law). With this measure the FIA gave guidelines to obliged parties in order to fulfill CDD by risk-based verifications which depend on the type of customer, business relationship, occasional transaction, professional service, product or transaction. Additional guidance regarding adequate and risk-based measures to verify the identity of the beneficial owner is contained in FIA Instruction no. 2009-05.

Timing of verification of identity – general rule (c.5.13)

450. As stated in Art. 23 (1) AML/CFT Law obliged parties are required to identify and verify the identity of the customer and beneficial owner before establishing a business relationship or carrying out a transaction.

Timing of verification of identity – treatment of exceptional circumstances (c.5.14 & 5.14.1)

451. As stated in Art. 23 (4) AML/CFT Law the obliged parties may in some cases complete the verification of the identity of the customer and beneficial owner "in the shortest time possible" after the establishment of the business relationship if it is necessary not to interrupt the normal conduct of the business and when the risk of money-laundering or terrorist financing is low. However, no risk management procedures are prescribed for situations where a customer is permitted to utilize the business relationships prior to the verification. Furthermore, there is no guidance determining situations, where it is considered "necessary" to interrupt the normal conduct of business.

Failure to satisfactorily complete CDD before commencing the business relationship (c.5.15) and after commencing the business relationship (c.5.16)

452. If the obliged parties are not able to carry out the identification and verification of the customer and the beneficial owner as described above, they are required to refrain from establishing business relationships or carrying out occasional transactions, and interrupt them, if already initiated, at the earliest opportunity and decide whether the situation should be reported to the FIA (Art. 24 (1) (a) AML/CFT Law).

Existing customers – (c.5.17 & 5.18)

453. The AML/CFT Law entered into force on 23 September 2008. As a consequence, obliged parties have been required to apply CDD requirements to existing customers. According to Art. 95 (4) of the AML/CFT Law the CDD obligations shall apply also to occasional transactions and professional services which might be ongoing on the entry into force of this law, as well as relationships existing on that date. According to Art. 5 FIA Instruction no. 2008-01 (extended to all obliged parties by FIA Instruction no. 2008-05) the data, information and documentation that is not already in the possession of the obliged party must be requested at the first opportunity. If not produced within a reasonably necessary time, the financial institutions must immediately withdraw from the contract, without delay. However, more than two years after the new AML/CFT Law became effective there still appear to be cases where the new CDD requirements (including inter alia the requirement to identify and verify the beneficial owner) have not been met yet. According to the authorities, 3.5% of the business relationships have not yet been brought in line with the requirements of the new law. While FIA Instruction no. 2009-06 and 2009-09 clearly stipulate for DNFBPs that the new CDD requirements must be fulfilled – in any event – within 12 months at the latest from the entry into force of the new AML/CFT Law, there is no comparable deadline for financial institutions.

454. As outlined above the adoption of Delegated Decree No. 136 of 22 September 2009 prohibited the issuance of new bearer passbooks and the existing ones, regardless of their balance, had to be closed or converted to nominative accounts by 30 June 2010. CDD requirements had to be fulfilled when the bearer passbooks were closed or converted according to Art. 3 (2) of the Delegated Decree. Furthermore, the issuance of all bearer instruments, other than passbooks, constituting savings deposits (= certificates of deposits in bearer form) has been prohibited the adoption of Delegated Decree No. 154 on 11 November 2009. As soon as interests of such instruments are paid upon maturity, CDD measures have to be applied according to Art. 2 (1) of the Delegated Decree.

Effectiveness and efficiency

455. In general the strengthening of the legal framework for CDD is also reflected in the increased awareness and strong commitment demonstrated by all financial institutions met during

the onsite visit. All institutions interviewed have implemented comprehensive CDD policies and procedures, though still implemented uneven across the different financial sectors.

456. The new AML/CFT Law has extended the CDD requirements for financial institutions significantly compared to the legislation previously in place. Important CDD elements have only been introduced by the new Law in September 2008. This applies for example for the identification and verification of the beneficial owner requirement, the obligation to use reliable, independent source documents, data and information in order to verify the customer´s identity, the requirement to conduct ongoing due diligence on the business relationship as well as the introduction of a risk based approach to CDD.

457. Consequently these extended requirements have generated a great amount of work for financial institutions in San Marino. In particular the updating of CDD information and procedures with respect to their existing customers demand considerable resources. Given that the new legal framework for CDD and in particular the respective regulations had to be implemented in a rather short time and in particular the poor supervision of compliance with those requirements in the past led to a situation where the implementation of CDD requirements is not fully consolidated yet.

458. This concern is supported by the following findings: all financial institutions met reported that they have largely concluded the updating of CDD profiles of legacy customers. However some financial institutions stated that it was not necessary to contact existing customers to gather the information required by the new AML/CFT Law. However, evaluators take the view that in particular with regard to foreign legal persons or arrangements for whom beneficial ownership information is not available in public registers it remains questionable whether ultimate beneficial ownership information or the source of funds can be properly established without contacting the customer. Other financial institutions stated that they request such information "at the first opportunity", i.e. when the customer visits the financial institution. However, many customers do hardly visit or contact the bank. Accordingly these statements raise concern about the up-to-datedness, completeness and quality of the CDD measures applied.

459. As outlined in the analysis section, financial institutions are required by FIA Instruction No. 2009-03 to classify their customers according to four levels of riskiness. As regards existing customers, this classification had to be carried out until 1 December 2009 and according to the information received, it seems that it has been largely concluded by all financial institutions. Some of the financial institutions met classified less than 10% of their customers as "high risk", whereas the majority of customers were classified as "low risk". Given that the financial services sector in San Marino features a significant number of customers, business relationships and transactions that should be considered as higher risk categories such as: non-resident customers, private banking, legal persons or arrangements that are personal assets holding vehicles, as well as the availability of fiduciary services, this raises questions with respect to the appropriateness of the risk classifications and the monitoring measures allocated accordingly.

460. Furthermore the answers of financial institutions asked for the enhanced due diligence measures applied to high risk customers varied remarkably. It remains unclear to what extent such measures include additional and independent verification of the ownership and source of funds and whether the consistency of the transactions monitored is always made plausible in an adequate form and recorded correspondingly in the CDD files.

461. All banks have IT systems at their disposal to support their CDD procedures. In order to identify transactions that may not be consistent with the customer normal activity and profile most credit institutions use the same software solution (GIANOS). While the individual fine-tuning

may not be finalized yet in all cases, the systems in place appear to be adequate. The respective systems at other financial institutions, in particular fiduciary companies, appeared less appropriate. Certain representatives of the non-banking sector reported that the introduction of enhanced IT solutions was being evaluated.

462. Representatives of the investment fund and insurance sector met, demonstrated good understanding of their responsibilities and awareness of their sector specific ML/CFT risks. A need for more sector specific guidance and training was indicated. As authorities confirmed that the characteristics of some products in those sectors could entail enhanced risks. Authorities informed that a more comprehensive review of these sectors has been projected.

463. An important contribution to the effectiveness of CDD procedures is provided by FIA Instruction no. 2010-01, which prohibits fiduciary companies to open new omnibus accounts. In addition, fiduciary companies had to close existing omnibus accounts and replace them with dedicated accounts by 15 July 2010.

464. To sum up, all financial sectors – with varying levels - revealed that the effectiveness of the implementation of CDD requirements have not yet fully kept up with the comprehensive broadening of the legal framework after the last evaluation.

Recommendation 6 (rated NC in the 3rd round report)

Summary of 2008 MER factors underlying the rating and developments

465. San Marino received a Non-compliant rating in the third round report as no enforceable AML/CFT measures were implemented concerning the establishment of business relationships with politically exposed persons (PEPs).

Risk management systems, senior management approval, requirement to determine source of wealth and funds and on-going monitoring (c. 6.1- c. 6.4)

466. "Politically exposed persons" are defined in Art. 1 (1) (n) AML/CFT Law as "individuals, residing in a foreign State, who are or have been entrusted, during the year preceding the establishment of the business relationship, the carrying out of the transaction or the provision of the professional service, with prominent public functions, as well as their immediate family members or persons known to be close associates of such persons as provided for in the Technical Annex to the AML/CFT Law".

467. According to the Technical Annex, prominent public functions include the following functions, even if differently named:

a) heads of State, heads of government, ministers, deputy ministers, assistant ministers, members of parliaments,

b) members of judicial bodies whose decisions are not generally subject to further appeal,

c) members of the board of directors of central banks or supervisory authorities,

d) ambassadors, chargés d'affaires, high-ranking officers in the armed forces,

e) members of the administrative, management or supervisory bodies of State-owned enterprises;

Immediate family members or persons known to be close associates of the persons referred to in the preceding paragraph, include the following persons:

a) the spouse or any partner considered as equivalent to the spouse,

b) the children and their spouses,

c) the parents.

468. The expression "politically exposed persons" covers as well any natural person who is known to have beneficial ownership of companies or legal entities with a person entrusted with prominent public functions and any natural person who has sole beneficial ownership of a company, legal entity or legal arrangement which is known to have been set up for the benefit de facto of a person entrusted with prominent public functions.

469. Financial institutions are required to meet, on a risk-sensitive basis, enhanced customer due diligence requirements even if they have ceased to be entrusted with a prominent public function. (Art 1 (2) Technical Annex to the AML/CFT Law).

470. The PEP definition is largely in line with the definition of PEPs in the Glossary to the FATF Recommendations. However the PEP definition refers to persons residing in a foreign State whereas the standard refers to persons entrusted with prominent public functions in a foreign country irrespective of the residence. As a result the PEP definition excludes people residing in San Marino and entrusted with prominent public functions abroad. Furthermore, based on the option provided by EU Commission Directive 2006/70/EC, only persons that are or have been entrusted with prominent public functions during the year preceding the establishment of the business relationship, the carrying out of the transaction or the provision of the professional service are to be considered as PEPs. Beyond that timeframe, the general rule of Art. 27 (1) AML/CFT Law applies: enhanced due diligence measures are only mandatory if the financial institution considers that the situation presents by its nature a higher risk situation. The FATF plenary has considered the one-year limit in the context of another EU member state's mutual evaluation report, and has concluded that such a threshold is not a material deficiency when there is a general obligation to apply enhanced due diligence to customers (including PEPs) who still present a higher risk of ML or TF regardless of any timeframe. Such an obligation is provided in Art. 27 (1) AML/CFT Law.

471. Furthermore the PEP definition does not fully cover "senior politicians" and "important political party officials" who are listed as an example under the standard (see definition of PEPs in the Glossary to the FATF Recommendations). However, it is noted that they are usually captured due to their participation in either government or Parliament.

472. Financial institutions are required to take adequate procedures in relation to the activity carried out in order to determine if the customer is a politically exposed person. According to Art. 27 (2) (b) AML/CFT Law the obliged parties are required to take enhanced CDD measures when the customer is a politically exposed person, while the standard requires enhanced CDD to be applied as well in instances where the beneficial owner is a politically exposed person. However, in Art. 27 (4) the enhanced CDD requirements are further specified and there is clear reference to beneficial owner identified as politically exposed persons.

473. According to the Art. 27 (4) AML/CFT Law financial institutions are required to obtain the authorisation of the Director General, or an equivalent person or a person delegated by him, before establishing a business relationships or carrying out an occasional transaction. This authorisation has to be obtained even where the customer or beneficial owner becomes or is found to be a politically exposed person after he/she has been accepted. Financial institutions are also required to take adequate measures to establish the source of funds and wealth of the customer or beneficial owner identified as politically exposed person. In addition financial institutions must ensure ongoing and enhanced control over the relationship with the customer.

Additional elements

Domestic PEP-s – Requirements

474. The requirements of R.6 are not extended to PEPs who hold prominent public functions domestically.

Ratification of the Merida Convention

475. The 2003 United Nations Convention against Corruption has not yet been signed. The Republic of San Marino has joined the Council of Europe Group of States against Corruption (GRECO) on 13 August 2010 as its 48th Member State.

Effectiveness and efficiency

476. All financial institutions interviewed had risk management systems in place to determine whether a potential customer, customer or the beneficial owner is a PEP. However the supporting IT systems in place and in particular the databases in use to determine whether a person is a PEP appear to be less adequate outside the banking sector.

477. The requirement to obtain senior management approval for establishing and (as newly introduced) continuing a business relationships with a PEP appears to be implemented. According to the financial institutions met, they do establish the source of wealth and of the funds of PEPs and conduct enhanced ongoing monitoring.

Recommendation 7 (rated NC in the 3rd round report)

Summary of 2008 MER factors underlying the rating and developments

478. San Marino received a Non-compliant rating in the third round report as no enforceable AML/CFT measures were implemented concerning the establishment of cross-border correspondent banking relationships.

479. It is to be noted that apart from the provisions applicable in application of the AML/CFT Law, the FIA has issued on 5 November 2010 (after the on-site visit), Instruction no. 2010-08 on measures to be taken by financial institutions in relation to cross border correspondent banking and other similar relationships. This instruction entered into force on 10 November 2010.

Require to obtain information on respondent institution & Assessment of AML/CFT controls in Respondent institutions (c. 7.1 & 7.2)

480. Financial institutions that maintain a business relationship or carry out occasional transactions with foreign financial institutions located in States not imposing obligations equivalent obligations to those in the AML/CFT Law and not providing for any supervision and control of compliance with such obligations, are required to adopt enhanced CDD (Art. 27 (5) AML/CFT Law). According to the FATF standard, the requirements regarding correspondent

banking relationships have to be applied even if the respondent institution is located in a State imposing equivalent obligations. [25]

481. Financial institutions are required to collect sufficient information about a respondent foreign institution to fully understand the nature of the respondent's business and to determine, from publicly available information, the reputation of the institution and the quality of supervision. While there is no explicit obligation to determine whether respondent institution has been subject to a ML or TF investigation or regulatory action, this obligation should be covered by the requirement to collect information about , the reputation of the institution. In addition financial institutions are required to assess the adequacy and effectiveness of controls applied by the respondent institution regarding matters of preventing and combating money laundering and terrorist financing.

Approval of establishing correspondent relationships (c.7.3)

482. According Art. 27 (5) (c) AML/CFT Law, financial institution are required to obtain authorization by the general director or equivalent figure, or by a person authorized by the general director, before establishing a business relationship or carrying out an occasional transaction.

Documentation of AML/CFT responsibilities for each institution (c.7.4)

483. According Art. 27 (5) (d) AML/CFT Law financial institution are required to specify in written form the respective obligations and responsibilities regarding matters of preventing and combating money laundering and terrorist financing.

Payable through Accounts (c.7.5)

484. Art. 1 (1) (i) AML/CFT Law defines "payable-through accounts" as transnational bank accounts used directly by the customers to carry out transactions on their own behalf". According to Art. 27 (6) AML/CFT Law financial institutions operating with a respondent institution that permit the use of "payable-through accounts" shall assure that the counterpart "(I) has verified the identity of customers having direct access to payable-through accounts, (II) has performed ongoing customer due diligence, and (III) is able to provide relevant customer due diligence data to financial party, upon request."

Effectiveness and efficiency

485. Financial institutions have adopted their internal AML/CFT to the abovementioned requirements. However, several questions emerged from the practical implementation of those requirements. FIA issued after the visit Instruction 2010-08, containing specific provisions on the procedures that financial institutions shall apply in this regard. It is to be noted that with respect to accounts opened or relationships established in the name of foreign financial institutions, already in place at 10 November 2010, the instructions requires financial institutions to fulfil the CDD requirements as set out under the instruction by and no later than 31 March 2011.

486. At the time of the on-site visit, there had been no comprehensive assessment of the implementation of this requirement carried out by the supervisory authorities.

[25] The authorities emphasize that this provision is modelled on Art. 13 (3) of the 3rd EU AML Directive. However, the EU AML Directive only exempts correspondent banking relationship with member states from the application of enhanced due diligence. See also Box 5 under Chapter V. Compliance with the 3rd EU AML

Recommendation 8 (rated PC in the 3rd round report)

Summary of 2008 MER factors underlying the rating and developments

487. San Marino received a Partially Compliant rating in the third round report as no financial institutions were required to have policies in place to prevent the misuse of technological developments in ML/FT schemes or to have policies and procedures in place to address the specific risks associated with non-face to face business relationships or transactions.

Misuse of new technology for ML/FT (c.8.1)

488. According to Art. 44 (1) of the AML/CFT Law, obliged parties are required to adopt policies and procedures conforming to the obligations of this law and to the instructions issued by the FIA in order to prevent and combat money laundering and terrorist financing. In particular, they are required to adopt policies and procedures to ensure that technological advancements, connected to the activity, are not used for the purpose of money laundering and terrorist financing.

Risk of non-face-to-face business relationships (c8.2)

489. Financial institutions are required to take enhanced CDD measures when the customer is not physically present (Art. 27 (2) and (3) AML/CFT Law). In such cases, one or more of the following measures have to be applied: :

a) ensuring that the first transfer of funds is carried out through an account opened in the customer's name with a San Marino financial institution or a foreign financial institution located in a country imposing equivalent AML/CFT requirements;
b) verifying the identity of the customer through supplementary information or documents in addition to those requested for a customer that is physically present;
c) taking supplementary measures to verify the documents supplied;
d) requiring the certification of information or documents presented;
e) requiring confirmatory from a financial institution established in San Marino or in a Country imposing equivalent AML/CFT requirements that it has already met customer due diligence for the customer in question.

490. There appears to be no further specification nor guidance as to which supplementary information or documents (b) respectively which supplementary measures (c) are considered to be adequate to verify the identity of a customer who is not physically present.

Effectiveness and efficiency

491. Except for instances of third-party reliance (discussed under Recommendation 9), San Marino financial institutions do require in practice the presence of the customer when establishing a business relationship. Accordingly, in practice, non-face-to-face business relationships are rarely established.

492. However, the following non-face-to-face transactions and operations provided by Sammarinese financial institutions are of relevance: Internet banking, use of ATM machines, use of prepaid cards and the transmission of instructions via facsimile, telephone or similar means. In all cases, customers is required to be present when opening a business relationship with a bank, (having been duly identified by the bank prior to starting the business relationship), and have to be given either a password or PIN code to be able to conduct such transactions. In addition, financial institutions prohibit their customers to pass on debit, credit and prepaid cards as well as passwords and pins to others.

493. Financial institutions interviewed appeared to have respective policies in place. Some of them conduct enhanced monitoring on such transactions. However, non-face-to face transactions are not mentioned in the FIA Instruction 2009-03 as an aspect, which would require the assignment of a Higher Potential Risk to the respective customer.

3.2.2 Recommendations and comments

494. The following is recommended to ensure an adequate implementation of Recommendations 5, 6, 7 and 8.

Recommendation 5

495. A domestic ML/TF risk assessment should be conducted in order to have a national understanding of the risks facing the country that allows for a proper verification of the risk based approach in place.

496. Authorities should set significantly higher standards for the risk classification required by FIA Instruction no. 2009-03 so that the application of enhanced to due diligence is not unduly restricted (enhanced CDD measures and enhanced monitoring should at least be required for customers to whom two higher potential risks have been assigned).

497. The reference in FIA Instruction no-2009-03 to the measures to be applied in enhanced risk situations should be more precise. Not all the measures mentioned in Art. 27 AML/CFT law are appropriate to mitigate the risks mentioned in the FIA Instruction.

498. Authorities should bring the FIA Instruction no. 2009-03 in line with Art. 22 (1) (d) of the AML/CFT Law. It should be clarified that financial institutions are required to conduct ongoing due diligence on the business relationship.

499. The authorities should address the exemptions for low-risk customers as adopted from the Third EU AML Directive by clarifying that minimum CDD (i.e. less detailed CDD) should nevertheless be accomplished.

500. It should be clarified that the exemptions from CDD requirements granted under Article 26 of the AML/CFT Law do not apply when there is a suspicion of money laundering or terrorist financing.

501. Financial institutions should be required to adopt risk management procedures concerning the situations where a customer is permitted to utilize the business relationship prior to verification. These procedures should include a set of measures such as limitation of the number, types and/or amount of transactions that can be performed.

502. Authorities should take measures to strengthen the effective and efficient implementation of CDD requirements across all financial institutions.

503. Authorities should take measures to ensure the appropriateness of risk classifications undertaken and the measures allocated accordingly by financial institutions.

504. Authorities should take measures, as appropriate, to ensure that financial institutions are also obliged, the implement the new CDD requirements for existing customers within a set timeframe and verify that this has been adequately undertaken.

505. Promote the implementation of adequate IT systems supporting AML/CFT procedures (in particular the monitoring of transactions) among financial institutions outside the banking sector.

506. Authorities should undertake an independent and autonomous risk assessment of the countries qualified as equivalent by the Congress of State decision and should take into account the specific risks for the San Marino environment. The list should also include an express indication that the list constitutes only a refutable presumption, based on risk, for the application of simplified CDD.

Recommendation 6

507. The PEP definition should be extended to cover "senior politicians" and "important political party officials" and should refer to persons entrusted with prominent public functions in a foreign country irrespective of their residence.

508. Promote the use of adequate databases to determine whether a person is a PEP for the whole financial sector.

509. San Marino should consider to sign, ratify and fully implement the 2003 United Nations Convention against Corruption.

Recommendation 7

510. According to the FATF standard, the requirements regarding correspondent banking relationships have to be applied irrespective of whether the respondent institution is located in a State imposing equivalent obligations. Therefore Art. 27 (5) AML/CFT Law should be amended and be applied to correspondent institutions located in any foreign jurisdiction.

Recommendation 8

511. Authorities should consider to issue guidance specifying which supplementary information or documents respectively which supplementary measures are considered to be adequate under Art. 27 (3) AML/CFT Law to verify the identity of a customer who is not physically present.

3.2.3 Compliance with Recommendations 5, 6, 7 and 8

	Rating	Summary of factors underlying rating
R.5	**PC**	• No domestic ML/TF risk assessment that allows for a proper verification of the adequacy of the risk based approach in place. • Rather than providing for minimum CDD (i.e. less detailed CDD), the AML/CFT Law creates blanket exemptions from the CDD requirements. • The AML/CFT Law allows for the application of simplified due diligence for cases where there is suspicion of ML or TF. • No requirement to adopt risk management procedures concerning the conditions under which a customer may utilize the business relationship

		prior to verification. • The risk classification required by FIA Instruction 2009-03 appears not to be adequate as enhanced CDD is only required for customers to whom four or more higher potential risks have been assigned. • Risk classification undertaken and the measures allocated accordingly by some financial institutions appear not to be appropriate. • FIA Instruction 2009-03 is not in line with the requirement to conduct ongoing due diligence. • No adequate IT systems supporting CDD procedures among financial institutions outside the banking sector. • Effectiveness and efficiency of implementation not fully demonstrated.
R.6	**LC**	• PEP definition is not fully in line with the FATF standard. • Effectiveness and efficiency outside the banking sector not fully demonstrated.
R.7	**LC**	• The requirements regarding correspondent banking relationships are limited to respondent institutions located in a State not imposing equivalent AML/CFT obligations.
R.8	**LC**	• It is not specified which supplementary measures are considered to be adequate to verify the identity of a customer who is not physically present.

3.3 Third Parties and Introduced Business (R.9)

3.3.1 Description and analysis

Recommendation 9 (rated N/A in the 3rd round report)

Summary of 2008 MER factors underlying the rating and developments

512. San Marino received a Not Applicable rating in the third round report. The new AML/CFT law introduced provisions related to third parties and introduced businesses, thus the evaluation team has considered necessary to review under the fourth assessment this Recommendation.

Requirement to immediately obtain certain CDD elements from third parties; availability of identification data from third parties (c.9.1 & c. 9.2)

513. According to Art. 29 AML/CFT Law financial institutions are allowed to rely on third parties to perform CDD requirements, with the exception of the ongoing due diligence measures and the updating of documents and information acquired during the fulfilment of CDD requirements.

514. Third parties are required to make immediately available to the financial institution the information acquired with respect to the identification and verification of the customer and the

beneficial owner as well as the purpose and intended nature of the business relationship or occasional transaction (Art. 29 (3) AML/CFT Law).

515. The information and documents regarding the identification of the customer or of the beneficial owner shall be forwarded without delay, upon simple request by the obliged parties (Art. 29 (4) AML/CFT Law). There is no explicit requirement for financial institutions to take adequate steps to satisfy themselves that such documents will be made available from the third party upon request without delay. This requirement is met indirectly as far as domestic third parties are concerned, who are obliged by law to forward such information.

516. However, such a requirement could be of importance with regard to third parties located outside San Marino, with respect to whom it could be difficult to enforce the local requirement to forward such documents. On the basis of Article 29 and 95 of the AML/CFT Law, the FIA issued implementing Instruction 2009-04, which mainly specifies the procedure and format regarding the third party´s certification confirming that CDD has been fulfilled.

Regulation and supervision of third party & adequacy of application of FATF Recommendations (c.9.3 & 9.4)

517. According to Art. 29 of the AML/CFT Law financial institutions are only allowed to rely on the CDD performed by financial institutions (except for financial promoters, insurance intermediaries and credit recovery companies) and foreign institutions that mainly carry out banking, granting of loans, fiduciary activity, investment services, collective investment or post office services located in a country which imposes equivalent AML/CFT requirements and provides supervision and control of compliance with those requirements.

518. However, financial institutions are not required to satisfy themselves (as required by the FATF standard) that the third party has measures in place to comply with CDD requirements. As the effectiveness of CDD measures applied among financial institutions are uneven (see remarks under R.5), the absence of an explicit requirement to verify that the third party has measures in place to comply with CDD requirements is a concern.

519. The FIA may identify, by means of instructions, other categories of third-parties upon which the obliged parties may rely on in order to avoid the repetition of obligations foreseen in Art. 22, paragraph 1, letters a), b) and c). So far, the FIA has not yet identified, by means of instructions, other categories of third-parties. Countries imposing equivalent AML/CFT requirements are determined in the above-mentioned Congress of State Decision No. 9 of 26 January 2009.

Ultimate responsibility (c.9.5)

520. The ultimate responsibility for meeting customer due diligence requirements remains with the financial institution that relies on a third party (Art. 29 (1) AML/CFT Law).

Effectiveness and efficiency

521. According to bank and fiduciary representatives interviewed, financial institutions rely considerably less on the CDD performed by a fiduciary than they did in the past. Third party reliance also appears to be relevant for the insurance sector, where insurance companies rely on the CDD performed by domestic banks.

522. Institutions interviewed stated that information acquired by the third parties acquired with respect to the identification and verification of the customer and the beneficial owner is

immediately and always (not only upon request) being forwarded to the financial institution relying on the third party´s CDD performance. Evaluators consider this to be essential in order to facilitate effective ongoing monitoring of the relationship, which has to be carried out by the financial institution itself and cannot be delegated to the third party.

523. The effectiveness of the implementation of the requirements regarding third party reliance appears to be strengthened by the templates issued by FIA and contained in the Annex to FIA Instruction 2009-04. These templates appear to ensure that all the information required Art. 29 (3) AML/CFT Law is obtained immediately by the financial institution relying on the third party.

3.3.2 Recommendations and comments

524. Financial institutions should be required to take adequate steps to satisfy themselves that copies of identification data and other relevant documentation will be made available from the third party upon request without delay.

525. Financial institutions should be required to take adequate steps to satisfy themselves that the third party has measures in place to comply with CDD requirements.

	Rating	Summary of factors underlying rating
R.9	**LC**	• No requirement for financial institutions to take adequate steps to satisfy themselves that copies of identification data and other relevant documentation will be made available from the third party upon request without delay. • No requirement for financial institutions to satisfy themselves that the third party has measures in place to comply with CDD requirements.

3.4 Financial Institution Secrecy or Confidentiality (R.4)

3.4.1 Description and analysis

Recommendation 4 (rated PC in the 3rd round report)

Summary of 2008 MER factors underlying the rating and developments

526. As described in the 3rd round evaluation report, San Marino had received a Partially Compliant rating for Recommendation 4. The evaluators had noted that the AML/CFT Law lifted bank secrecy only for STRs in respect of money laundering. Furthermore, it was criticised that given the fact there was no legal provision excluding liability for STRs related to FT, submitting a report even in good faith constituted a violation of bank secrecy. Official secrecy only allowed the Central Bank to share information with the judicial authority, in the course of a criminal proceeding, and did not seem to allow any kind of sharing of relevant documents and data with other domestic authorities outside the course of a criminal proceeding.

527. Evaluators also considered Art. 103 LISF to be an obstacle, as the provision allowed the CBSM to share information with foreign supervisory authorities only subject to a previous co-operation agreement and subject to very strict cumulative conditions. Finally evaluators criticised

that sharing of information between financial institutions where this is required by SR VII was limited to cases where the client consented.

528. San Marino has made a number of changes to the legal provisions applicable in this context:

- Article 86 AML/CFT Law modifying Art. 36 LISF (Banking Secrecy) by specifying that Banking Secrecy may not be evoked against FIA in the exercise of its functions of preventing and combating money laundering and terrorist financing.
- A draft bill with amendments to Art. 36 LISF was introduced by the Congress of State Decision no. 20 of 14 September 2009 having regard to the need to implement the necessary legislative measures and actions to ensure an effective exchange of information, as envisaged by the international agreements signed by the Republic of San Marino.
- On 21 January 2010 the Parliament adopted Law n.5 in order to modify Art. 36 LISF, specifying that banking secrecy cannot be opposed to Criminal Judicial Authority, CBSM, FIA and to public offices responsible for the direct exchange of information with foreign counterparts in accordance with the international Agreements.[26]
- Interpretative note (CBSM Recommendation No. 2009-01), which later has been reinforced by FIA Instruction No 2009-02 (Duties to inform foreign counterparts).
- Decree Law No. 65 of 14 May 2009 on Intermediation of the Central Bank for the purposes of interbank data transmission between San Marino and Italy.

529. Recommendation 4 requires countries to ensure that financial institution secrecy laws do not inhibit the implementation of the FATF Recommendations. The assessment will therefore strictly be limited to the applicable secrecy provisions. Possible other conditions for the exchange of information or for the access to information are evaluated under Recommendation 40 and R. 29.

530. The only financial institutions secrecy law provided in San Marino is stipulated in Art. 36 LISF. Even though professional secrecy or official secrecy laws are not exactly financial institutions secrecy laws, the evaluation team additionally assessed whether those laws inhibit the implementation of the FATF Recommendations as this has been done in the 3rd round report.

Ability of competent authorities to access information they require to properly perform their functions in combating ML or FT

Financial institutions secrecy

531. As outlined in the third round report Art. 36 LISF defines "banking secrecy" as the prohibition on financial institutions to reveal to third parties, without the express written authorisation of the party concerned, the data and information acquired in the exercise of their licensed activities.

532. The persons bound by this prohibition are the directors, internal and external auditors, actuaries and employees of any type and grade, external consultants, company representatives, liquidators, commissioners, members of the supervisory committee of the authorised parties and financial promoters. It is also binding on any natural persons to which the authorised parties have outsourced functions. It is important to note that the competent authorities and their employees are not bound by the "banking secrecy".

[26] Further amendments to Art. 36 and 156 LISF have been introduced by the Decree-Law No. 190 of 29 November 2010 and Decree-Law No. 36 of 24 February 2011 which could not be taken into account, because they are out of the time frame that can be considered by the report

533. According to Art. 36 (5) LISF as amended, banking secrecy cannot be evoked against the following parties in the exercise of their public functions:
   a) the Law Commissioner (Judicial authority) in criminal cases;
   b) the Central Bank of the Republic of San Marino in the exercise of its supervisory functions;[27]
   c) the FIA;
   d) the Central Liaison Office and other San Marino public bodies and offices responsible for the direct exchange of information with foreign counterparts in accordance with the international Agreements in force.

534. Accordingly banking secrecy does not inhibit the competent authorities to access information they request based on their powers stipulated in Art. 5 (1) (a) and (b) AML/CFT Law for the FIA, in Art. 42 LISF for the CBSM and in the Criminal Procedure Code for the judicial authority. It is to be noted that Article 36 LISF does not include the Police among the parties against which banking secrecy cannot be evoked. The authorities indicated that in practice, this does not constitute an issue, given that banking secrecy is not opposed to the Police in the context of investigations, as they always act under the direction of the Law Commissioner. There have been no instances where access to such information was denied to the Police.

535. The observance made in the 3rd round report that the former AML/CFT Law lifted bank secrecy only for STRs in respect of ML and not in respect of FT, has been resolved. Art. 39 AML/CFT Law states that STRs and disclosures forwarded under the AML/CFT Law (which includes STRs related to ML and FT) do not constitute violation of any restriction to the communication of data or information resulting from contracts or legislative, statutory, regulatory or administrative provisions, nor of obligations of confidentiality and of professional, official or bank secrecy referred to in Art. 36 LISF.

Professional secrecy

536. Pursuant to Art. 38 (3) AML/CFT Law information subject to professional secrecy held by professionals like lawyers, notaries or accountants cannot be invoked against the Judicial Authority, the FIA and the Police Authorities in the exercise of their functions to prevent and counter money laundering and terrorist financing, except for instance where the legal professional privilege applies. According to Art. 38 (5) of the AML/CFT Law professional secrecy cannot be invoked even when the data and information are necessary for the purposes of investigating the offences and administrative violations envisaged by the AML/CFT Law. The CBSM is not included in the above mentioned provisions as it has no supervisory responsibilities with regard to professionals.

Official secrecy

537. Pursuant to Art. 38 (4) AML/CFT Law official secrecy cannot be invoked against the Judicial Authority, the FIA and the Police Authorities in the exercise of their functions to prevent and counter money laundering and terrorist financing. The reason why the CBSM is not included in this provision is due to the CBSM´s strictly limited role in the field of AML/CFT as a prudential supervisor of supervised entities. The CBSM is only interested in knowing possible

[27] According to authorities the version of Art. 36 (5) (b) LISF currently in force is the version introduced by Art. 86 of the AML/CFT Law, which reads as follows: "to the supervisory authority in the exercise of its functions of supervision, and to the Financial Intelligence Agency in the exercise of its functions of preventing and combating money laundering and terrorist financing." However, according to understanding of the evaluation evaluator, a legal provision that has come into force in 2009 (even if forgotten to be "implemented") can not supersede the version of Art. 36 introduced by Law No. 5 of 21 January 2010.

breaches of AML/CFT rules if they concern the sound and prudent management of intermediaries or deficiencies in their internal control systems This kind of information is exchanged based on the MoU between FIA and CBSM signed in November 2008 and official secrecy has never been invoked against the CBSM in this context..

538. As regards the official secrecy binding the Director, the Vice Director and the personnel of the FIA Art. 9 (1) AML/CFT Law states that this obligation is without prejudice to exchange of information set forth in the AML/CFT Law. It is understood that this includes the exchange of information with the Central Bank, the Police and Judicial Authority as foreseen in Art. 11, 12 and 15 of the AML/CFT Law.

539. Analogously Art. 29 (3) of the CBSM statute provides that official secrecy binding the members of all the Central Bank's organs, its consultants and its entire staff may not be relied upon against the judicial authority if the information requested is necessary for investigations into infringements liable to criminal sanctions and to the Financial Intelligence Agency in the exercise of its functions of preventing and countering money laundering and terrorist financing.

Sharing of information between competent authorities, either domestically or internationally

Financial institutions secrecy

540. As outlined above the competent San Marino authorities are not bound by the banking secrecy. Therefore the exchange of information with competent authorities, either domestically or internationally cannot be inhibited by the banking secrecy. The further conditions for the exchange of information are evaluated under Recommendation 40.

Official secrecy

541. The official secrecy binding FIA is pursuant to Art. 9 (1) AML/CFT without prejudice to exchange of information set forth in the AML/CFT Law. It is understood that this includes the exchange of information with foreign financial intelligence units as foreseen in Art. 16 of the AML/CFT Law. There is no such clarification contained in the CBSM statute with respect to information exchanged with foreign counterparts as foreseen in Art. 103 LISF. According to the authorities the explicit empowerment in Art. 103 LISF to exchange information overrides the official secrecy provision contained in the CBSM statute.

Sharing of information between financial institutions where this is required by R.7, R.9 or SR. VII

542. Before 2009, there have been doubts amongst financial institutions in San Marino as to whether the provision of information covered by banking secrecy (customer identification data) to other financial institutions constitutes a breach of Art. 36 LISF.

543. Pursuant to Art. 36 (6) (a) LISF "no breach of banking secrecy will be deemed to have occurred if communication to third parties is necessary in order to fulfil obligations arising from a contract to which the interested person is a party or in order to comply, before the conclusion of the contract, with that person's specific, express requests".

544. The CBSM has clarified with an interpretative note (CBSM Recommendation No. 2009-01 - Interpretation of Art. 36 (6) LISF), that the provision of information to financial institutions, including foreign ones, does not constitute a breach of bank secrecy when the information is

sought to fulfil AML/CFT requirements by the requesting party and therefore "necessary to execute the customer´s request".[28]

545. This interpretative note has been reinforced by FIA Instruction 2009-02 (Duties to inform foreign counterparts). Accordingly in all cases a obliged subject under the AML/CFT Law - in exercising its activities and for the purposes of creating continuing relations or to carry out occasional transactions or to provide professional activities - establishes a relationship with a foreign counterpart falling compelled under its legislation to obligations similar to those under the provisions of the AML/CFT Law binds the obliged San Marino subject who is obliged to provide on request of the foreign counterpart, all information requested, provided that this is equivalent or in any case compatible with the terms of Art. 22 AML/CFT Law (CDD measures), and necessary and essential to establish a continuing relationship or to carry out an occasional transaction or to provide a professional service.

546. The evaluators take the view that based on the clarification provided by the CBSM Recommendation 2009-01 and FIA Instruction no. 2009-02, banking secrecy does not inhibit the exchange of information under R.7, R.9 and SR. VII. However, the current framework has created some legal uncertainties, which raise concerns with regard to its effectiveness, which is discussed below. Furthermore the exchange of information appears to be limited to financial institutions from jurisdictions considered to be equivalent. In this regard, the FIA Instruction refers to the jurisdictions listed in the Congress of State Decision no. 9 of January 26, 2009 (further described under R.5). Contrary to this provision, the authorities stressed that information exchange is not limited to equivalent jurisdictions given that Art. 36 (6) LISF does not foresee such limitations.

547. In the context of information exchange with other financial institutions, it should also be mentioned that substantial amounts of information are exchanged via a customer database that contains the identification data of customers, beneficial owners and any delegated parties which San Marino banks are requested to provide using the Italian and European payment service systems through, for amounts exceeding the threshold of EUR 5.000 (and all transactions regardless of the amount in case of cheques). This information is accessible to Italian intermediary banks which require such data to fulfill customer due diligence obligations. This information exchange platform based on Decree-law no. 65 of 14 May 2009 is further described under R.19. Authorities state that the exemption from banking secrecy provided by Art. 36 (6) (a) LISF is also relevant for the information exchanged via the above mentioned customer database.

548. As regards the exchange of information between a Sammarinese bank and its foreign parent company Art. 36 (6) (c) LISF stipulates that no breach of banking secrecy will be deemed to have occurred if communication is being made to a parent company of a foreign State with which a relevant international agreement is in force, and is directed to comply with the rules concerning consolidated supervision contained in the LISF. At the time of the onsite visit there were two banks which are subsidiaries of Italian banks and one Sammarinese bank had a subsidiary in Croatia.

549. A co-operation agreement is already in force between the Croatian National Bank and the CBSM since September 2009[29]. With respect to the competent Italian authority, who is the

[28] The CBSM Recommendation No. 2009-01 refers to the former Art. 36 (6) (c) which corresponds to Art. 36 (6) (a) LISF, as amended by Law No. 5 of 21 January 2010.

[29] The agreement in place with the Croatian National Bank is aimed at co-operating on the basis of mutual trust and understanding in the field of banking supervision The scope of co-operation in force covers authorisations (issuance, change and withdrawal of authorisations), prior approval for share acquisition (ownership control) and ongoing supervision of cross-border establishments, including mutual exchange of information and on-site examinations. The authorities agreed to advise each other on cross-border establishments in or from the respective other country, upon

principal counterpart in this regard, the evaluation team was informed that there is no agreement in place, and that the CBSM proposed to them the conclusion of such an agreement with the Bank of Italy.

550. The San Marino authorities take the view that the absence of an agreement does not inhibit the provision of CDD information to a foreign parent bank. They referred to Art. IX.IV.1 of Regulation 2007-07 which states that information passed to a foreign parent bank that is necessary to enable it to meet its home supervisor's regulatory (including AML/CFT) requirements is exempt from the bank secrecy restriction[30]. According to the authorities, only when the requirement of a "relevant international agreement in force" was introduced in Art. 36 (6) (c) LISF in January 2010, doubts have risen amongst financial institutions with regard to the application of above-mentioned provision of Regulation 2007-07. The CBSM however considers that the Regulation is reconcilable with Article 36 LISF and has elaborated on this position in a letter sent to the two foreign owned banks in San Marino in April 2010.

551. For the evaluation team, it remains nevertheless unclear how a clear prohibition in the primary law (Art. 36 LISF) can be superseded by a provision in a regulation and why the requirement of a "relevant international agreement in force" was introduced in Art. 36 (6) (c) LISF when the provision of CDD data to the parent company is anyhow permissible without such restrictions under Regulation no. 2007-07[31] .

552. On the other hand, it has to be taken into account that it is the exclusive competence of the CBSM to monitor compliance with the banking secrecy (Art. 36 (9) LISF) and the CBSM has stated clearly that no action would be taken against a bank for sharing client and beneficial owner identification data with a foreign parent bank. Therefore the evaluators acknowledge that the provision of CDD information to the parent bank is possible under the current framework. However, given the apparent confusions created by this framework, there is a concern with regard to its effectiveness as discussed below.

Effectiveness and efficiency

553. Ability to access information: According to the authorities there have been no cases in the past, where secrecy laws (including banking, professional and official secrecy) inhibited the ability of competent authorities to access information. The evaluation team could neither find any indications that financial institution secrecy laws have been an obstacle to co-operation between the domestic competent authorities.

554. Sharing of information between competent authorities: As regards international information exchange with FIUs, secrecy laws have not been identified as an obstacle according to feedback received from other countries regarding international co-operation. According to the FIA no request has ever remained unanswered due to secrecy laws.

555. San Marino authorities state that all requests for information received relate to FIU investigations.[32].According to the authorities, the CBSM does not receive requests on AML/CFT issues as it has no direct competence as AML/CFT supervisor. The only requests for information

specific request, to the extent permitted by law, and on any other relevant information that might be required to assist with the supervisory process.

[30] In reference to this provision the Italian subsidiaries affected, have introduced specific provisions in their mandatory statutes to protect the right of information of their Italian parent.

[31] Authorities stress that clarification has been introduced by Decree Law n. 190 of 29 November 2010, which could not be taken into account by the evaluation team, because it entered into force after the time frame considered by this report.

[32] The powers of FIA to exchange information pursuant to Art. 16 AML/CFT Law appear to be limited to information related to FIU investigations.

it could be asked for could be those related to shortcomings in the internal control systems of supervised entities which carry on cross border activities or which are part of a cross border financial group. However, no such requests have been received so far,

556. Sharing of information between financial institutions: Apparently there have been some uncertainties amongst financial institutions as to which extent costumer and beneficial owner data can be shared where this is required by R.7 (cross-border correspondent banking), R.9 (intermediaries or third party reliance) or SR.VII (cross-border wire transfers) While the CBSM Recommendation and the FIA Instruction have contributed to remove important uncertainties, an amendment of Art. 36 (6) LISF introducing a clearer wording at the level of primary law in this regard would be of great benefit to legal certainty and consequently effectiveness and efficiency in the implementation of these provisions.

557. As regards intra-goup information exchange the representative of a foreign owned bank interviewed stated that they do already share information with their parent companies and do permit their head office internal audit access to their files. However, it could not be clearly established whether this includes customer and beneficial owner identification data.

558. Given the apparent confusions created by the framework formed by CBSM Regulation 2007-07 and Art. 36 (6) (c) LISF there is an obvious need to increase legal certainty and consequently effectiveness and efficiency by introducing a clearer wording into Art. 36 (6) LISF[33].

3.4.2 Recommendations and comments

559. Authorities should introduce a clearer wording at the level of primary law with regard to the information that can be exchanged with other financial institutions and with a parent company.

560. Authorities should amend FIA Instruction 2009-02 in order to straighten out that the exchange of information with foreign institutions where this is required by R.7, R.9 or SR.VII is not limited to jurisdictions mentioned in the Congress of State Decision no. 9 of 26 January 2009.

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	**LC**	• Uncertainties resulting from FIA Instruction no. 2009-02 regarding the exchange of information with foreign institutions which are not mentioned in the Congress of State Decision no. 9 of 26 January 2009 • Effectiveness and efficiency concerns resulting from an unclear wording contained in Art. 36 (6) (a) and (c) of the LISF with regard to information that can be exchanged with other financial institutions and with a parent company.

[33] Authorities stress that clarification has been introduced by Decree Law n. 190 of 29 November 2010, which could not be taken into account, because it entered into force after the time frame considered by this report.

3.5 Record Keeping and Wire Transfer Rules (R.10 and SR. VII)

3.5.1 Description and analysis

Recommendation 10 (rated NC in the 3rd round report)

Summary of 2008 MER factors underlying the rating and developments

561. As described in the 3rd round evaluation report San Marino had received a Non Compliant rating for Recommendation 10. The evaluation report noted that there were no requirements in law or regulation to require financial institutions to keep identification data, account files and business correspondence for at least five years (i) after the closure of the account or (ii) termination of the business relationship. Furthermore, the absence of provisions in law or regulation requiring financial institutions to ensure that customer and transaction records and information are available on a timely basis to the competent authorities was also criticized.

562. The AML/CFT Law as amended has introduced new requirements, which were further detailed though instructions (FIA Instructions no. 2009-10 of 3 December 2009 and no. 2010-07 of 27 June 2010).

Record keeping & Reconstruction of Transaction Records (c.10.1 and 10.1.1)

563. Article 34, Paragraph 1 of the AML/CFT Law establishes that obliged parties shall register the data and information obtained for meeting CDD requirements (as articulated under Article 22 on CDD measures). Paragraph 2 of the same article defines that obliged parties shall register the supporting evidence and records of business relationships and occasional transactions (original documents or copies) admissible in court proceedings. In both cases, there is a requirement that the data and documentation is maintained for a period of at least five years following completion of the transaction, provision of the service, or termination of the business relationship. Paragraph 3 of that article goes on saying that the data and information shall be registered no later than the fifth day after obtaining thereof.

564. The FIA Instruction no. 2009-10, which sets out in detail the measures for recording and maintaining the data and information on transactions and business relationships according to the law applies to financial parties (or, 'authorized parties' as referred to in Article 18, Paragraph 1, Letter [a] of the AML/CFT Law)[34], as well as to the CBSM[35]. The FIA Instruction no. 2010-07 specifies similar requirements for financial and fiduciary companies[36].

[34] This article gives the definition of financial institutions involved under the law as obliged parties with further reference to "authorized parties" defined under the Law No 165 (2005) as follows: "*authorised parties*: parties who have obtained authorisation to engage in one or more reserved activities in accordance with Title II" (Article 1, Paragraph 1, Letter [nn]); "the entrepreneurial exercise of one or more activities listed in Attachment 1 in the Republic of San Marino will be reserved to parties authorised for such exercise by the supervisory authority" (Title II, Article 3, Paragraph 1); whereas Attachment 1 lists all types of financial activity virtually in consistence with the FATF Glossary definitions. Under the AML/CFT Law, the notion of "authorized parties" does not specifically include financial promoters and parties providing credit recovery services in as much as they are defined as different types of financial parties pursuant to Article 18, Paragraph 1, Letters [d] and [f].

[35] In the cases established by Article 18, Paragraph 1, Letter [b] of the AML/CFT Law

[36] These are defined under Article 143 of the Law No 165 (2005) as companies involved in granting of loans, including leasing, consumer credit, the issue of guarantees and endorsement credit.

565. These instructions also provide for the establishment of the so-called AML Archive[37] – a dedicated database to be run at each financial institution for the purpose of maintaining transaction, CDD, and other relevant data readily available for the use of compliance officers and supervisors. Sufficiency of transaction records for permitting reconstruction of individual transactions is provided for by specific provisions of the said instructions on the scope of contents of obtained data and information.

566. However, none of the above-mentioned instructions defines measures for the implementation of record-keeping requirements by financial promoters and parties providing professional credit recovery services, which are determined as financial parties under Article 18, Paragraph 1, Letters [d] and [f] of the AML/CFT Law [38].

Record keeping of identification data, files and correspondence (c.10.2)

567. Customer identification data, as well as account files and business correspondence, which should be obtained and maintained in accordance with Article 34 of the AML/CFT Law (as articulated under Article 22 on CDD measures), are in sufficient detail defined and specified under relevant articles of the FIA Instructions No 2009-10 and 2010-07, including those establishing the scope and contents of the data and information to be obtained and maintained in the AML Archive.

Availability of records to competent authorities in a timely manner (c.10.3)

568. Paragraph 4 of Article 34 of the AML/CFT Law sets out that all data, information and documents registered and kept by obliged parties shall be made available to the FIA without delay so as to enable it to perform its AML/CFT tasks. Article 35 further elaborates that financial parties should equip themselves with electronic systems allowing them to respond timely and completely to the FIA's requests (this requirement is also implemented through the AML-Archive).

Effectiveness and efficiency

569. Meetings with the representatives of banks revealed a rather adequate understanding and comprehension of the recordkeeping requirements under the law and implementing regulations. However, at the time of the on-site visit, the specific requirement on taking appropriate measures at operational level for financial/ fiduciary companies (i.e. implementing the AML Archive) had been introduced only recently (July, 2010) and provided for implementing those measures starting from January 1, 2011. Hence, it was still in the early stages of implementation, which did not enable any efficiency assessment whatsoever.

570. In addition, no implementing regulations have been issued for financial promoters involved in the promotion and sale of financial instruments and investment services, and for parties providing professional credit recovery services on behalf of third parties. Although the authorities advised that, as of the time of the on-site visit, no financial promoters and credit recovery agents were registered by the CBSM, the assessment team believes that since the current legislation provides for the operations of these types of obliged parties, there should be an appropriate framework to regulate their activities.

[37] "Archivio Informatico Antiriciclaggio" or "Electronic Anti-Money Laundering Archive"

[38] *Financial promoters* are defined with further reference to Articles 24 and 25 of the Law No 165 (2005), as natural persons who, acting as an agent or authorised representative, are professionally engaged in out-of-office promotion and sale of financial instruments and investment services. *Parties providing professional credit recovery* are defined as those providing such services on behalf of third parties.

Special Recommendation VII (rated NC in the 3rd round report)

Summary of 2008 MER factors underlying the rating and developments

571. As a result of the assessment of compliance with SR.VII, San Marino was rated Non Compliant given that the provisions of SR.VII on wire-transfers were not directly addressed in law or regulation, but only in a limited manner through circulars. Furthermore, it was also noted that there were no other provisions requiring financial institutions to ensure that complete originator information was included in outgoing wire transfers and that beneficiary financial institutions based in San Marino adopted effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information. Lastly, no measures were put in place by San Marino to monitor compliance with SR.VII and consequently no related sanctions.

572. San Marino has modified its legal framework by introducing specific provisions under the AML/CFT Law, which were further complemented by FIA Instruction no. 2008-04 on wire transfers.

Obtain Originator Information for Wire Transfers (c.VII.1)

573. Article 33, Paragraph 1 of the AML/CFT Law establishes that the FIA shall regulate with its instructions the data and information that financial parties authorized to provide payment services are required to obtain on customers ordering electronic transfer of funds, as well as the procedures for the recording and keeping of such data and information. In implementation of this, the FIA Instruction no. 2008-04 specifies the information to be obtained on ordering customers, as well as the measures to be taken for verifying their identity.

574. It should be noted that, according to Article 7, Paragraph 1, Letter [d] of the Instruction, wire transfer rules as specified by this instruction are lifted in respect of transfers where the payee is a public administration, and the transfer is made for the payment of duties, taxes, financial penalties or other charges in the country. The authorities advised that such exemption from wire transfer rules has been introduced in accordance with Regulation no. 1781/2006 of the European Parliament and of the Council of 15 November 2006. Particularly, Article 3, Paragraph 7, Letter [d] of the said regulation establishes that it shall not apply to transfers of funds to public authorities for taxes, fines or other levies within a Member State.

575. Article 2 of the Instruction defines that any transfer of funds equal to or exceeding EUR 1.000 should be accompanied by the following minimum information on the payer: a) name and surname or, if a legal person, full name or business name; b) address of residence or domicile (which may be substituted by the date and place of birth or by the unique identifier) or, if a legal person, address of the registered office; and c) current account number or, if the transfer of funds takes place without debiting a current account, the unique identifier.

576. Article 3 of the Instruction further establishes that the payment service provider should verify the information on the payer on the basis of an unexpired proof of identity or, when this is not possible, on the basis of documents and information obtained from a reliable and independent source[39]. At that, in the case of transfer of funds made by debiting a current account, the verification may be deemed to have already been carried out with the fulfilment, on the opening of the account, the CDD and recordkeeping requirements as defined under the AML/CFT Law.

[39] For example, registers and lists kept by public authorities or certifications issued by the competent consular authorities.

Inclusion of Originator Information in Cross-Border Wire Transfers (c. VII.2); Inclusion of Originator Information in Domestic Wire Transfers (c. VII.3); Maintenance of Originator Information (c.VII.4)

577. As already set forth above, Article 2 of the FIA Instruction no. 2008-04 defines that any transfer of funds equal to or exceeding EUR 1.000 should be accompanied by full originator information. Then, Article 6 of the instruction defines that, in the case of outgoing cross-border batch file transfers, this requirement does not apply to the individual transfers of funds provided that the batch file contains relevant information on the payer, and that the individual transfers carry the account number of the payer or the unique identifier. At that, in the case of incoming cross-border batch file transfers, the payment service provider of the payee is required to verify that the information on the payer is contained in the batch file transfers.

578. Domestic wire transfers, in accordance with Article 5 of the instruction, may be carried out solely on the basis of the account number of the payer or the unique identifier. However, upon the request of the payment service provider of the payee, the payment service provider of the payer is required to make full originator information available to the requester within three working days after receiving such request.

579. Communication of full originator information with any wire transfer, as well as maintenance of such information for five years is stipulated by the above-specified requirements of the Instruction and by Article 34 of the AML/CFT Law. In addition, Article 9 of the Instruction requires intermediate payment service providers to ensure that all information received on the payer along with the transfer is kept attached thereto.

Risk Based Procedures for Transfers Not Accompanied by Originator Information (c. VII.5)

580. According to Article 33 of the AML/CFT Law and Article 8 of the FIA Instruction, the payment service provider of the payee shall refuse the transfer of funds, if the information on the payer is incomplete, and shall request the missing information in writing. If the request remains unsatisfied, the payment service provider of the payee shall apply enhanced CDD measures as specified under Article 27 of the AML/CFT Law, file with the FIA a copy of the request for the missing information sent to the counterparty, and consider suspending relations with the counterparty. It shall also consider missing or incomplete information on the payer as a factor in assessing whether the transfer of funds, or any related transaction, is a suspicious transaction pursuant to Article 36 of the AML/CFT Law.

Monitoring of Implementation (c. VII.6) and Application of Sanctions (c. VII.7: applying c.17.1 – 17.4)

581. Monitoring of implementation of the requirements regarding wire transfer rules is to be carried out by means of off-site surveillance and on-site inspections by the FIA and the CBSM. As far as the sanctioning regime is concerned, the applicable legislation contains two general provisions on sanctioning obliged parties for the violation of wire transfer rules; those being Article 66 of the AML/CFT Law setting out that "violations of other provisions envisaged in this Law shall be punished with a pecuniary administrative sanction from EUR 3.000 to 100.000" [Article 33 of the Law can be considered as "other provision", because there is no specific sanctioning provision for its violation], and Article 67 of the same Law establishing that "failure to comply with the instructions issued by the Agency shall be punished with a pecuniary administrative sanction from EUR 3.000 to 100.000" [which virtually covers violations of the requirements of the FIA Instruction no. 2008-04].

582. In view of this, relevant findings of the analysis under Recommendation 17 regarding the availability of effective, proportionate, and dissuasive sanctions, the designated authority to apply such sanctions, their applicability to company management, and the sufficient range of sanctions are attributable to this criterion, as well.

Additional elements – Elimination of thresholds (c. VII.8 and c. VII.9)

583. The legislation in force, particularly relevant articles of the FIA Instruction no. 2008-04, specifies that wire transfers (both incoming and outgoing) above EUR 1.000 should contain full originator information.

Effectiveness and efficiency

584. Meetings with the representatives of banks revealed a rather adequate understanding and comprehension of the wire transfer requirements under the law and implementing regulations. It is also reported that the San Marino Payment System (SISPAG) has promptly adopted the specifications stipulated by the FIA Instruction no. 2008-04 and, in the cases envisaged, it is obligatory to provide complete data and information on the originator within the Sammarinese Interbank Network (Rete Interbancaria Sammarinese – RIS). Since June 1, 2009 the latter has made mandatory the IBAN code with reference both to the payer and the payee.

3.5.2 Recommendation and comments

585. It is thus recommended:

Recommendation 10

586. To introduce implementing regulations for financial promoters and parties providing professional credit recovery services (identical with those applicable to other financial parties) to ensure appropriate implementation of recordkeeping requirements by these types of obliged parties.

Special Recommendation VII

587. Special Recommendation VII is fully observed.

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	**LC**	• No implementing regulations introduced for financial promoters and parties providing professional credit recovery services • The very recent[40] introduction of the relevant instruction for financial/ fiduciary companies does not allow to assess the effectiveness and efficiency of implementation of the respective measures
SR. VII	**C**	

[40] As of the time of the on-site visit, i.e. September 2010

Unusual and Suspicious transactions

3.6 Monitoring of Transactions and Relationship Reporting (R. 11 and R. 21)

3.6.1 Description and analysis

Recommendation 11 (rated PC in the 3rd round report)

Summary of 2008 MER factors underlying the rating and developments

588. As a result of the assessment of compliance with Recommendation 11, San Marino was rated Partially Compliant given that it did not have in place adequate requirements for financial institutions to pay special attention to all complex, unusual large transactions or unusual patterns of transactions that have no apparent or viable economic or lawful purpose, nor to examine as far as possible the background and purpose of unusual transactions, to set forth findings in writing and keep such findings available for competent authorities and auditors for at least five years.

589. Since the third evaluation report, San Marino has issued Instruction 2008-03 on "Identification, verification and assessment of "critical transactions" with a view to address those gaps.

Special attention to complex, unusual large transactions (c. 11.1)

590. The AML/CFT Law does not contain a direct reference to the obligation to pay special attention to complex and unusually large transactions, as well as to unusual patterns of transactions, which have no apparent or visible economic or lawful purpose. The FIA Instruction no. 2008-03, which is binding, provides for the obligation of certain subjects of the Law to pay special attention to the so-called "critical" transactions. The instruction applies to financial parties (or, 'authorized parties' as referred to in Article 18, Paragraph 1, Letter [a] of the AML/CFT Law) and, where applicable, to the CBSM[41].

591. However, there are no similar requirements in legislation for financial promoters and parties providing professional credit recovery services, which are determined as financial parties under Article 18, Paragraph 1 of the AML/CFT Law.

592. Article 1 of the FIA Instruction no. 2008-03 defines a "critical" transaction as "a transaction that due to its complexity or unusually large amount or due to its unusual pattern of execution with respect to the economic, financial and asset profile, and the professional profile of the customer, requires an assessment of its compatibility with respect to the customer's profile". Hence, the complexity or unusualness of transactions are linked to and contrasted against the customer's profile[42].

593. Then, the FIA Instruction no. 2009-07 elaborating on the implementation of the STR reporting requirement has a technical annex listing indicators of unusual or "critical" transactions,

[41] For the details of the reference chain, please see the respective footnotes under the analysis of Criterion 10.1.

[42] According to Article 3 of the Instruction, the assessment of "critical" transactions should take into consideration the indicators of anomaly listed in the Circulars of 27 January 1999 and 12 February 2003 issued by the former Inspectorate for Credit and Currencies (now the Central Bank). Before the issuance of the FIA Instruction no. 2009-07, which provides a wider list of indicators for identifying critical transactions, these enforceable means were in force due to Article 95, Paragraph 6 of the AML/CFT Law stating that "the circulars and standard letters issued by the Central Bank regarding the prevention and combating of money laundering and terrorist financing shall continue to be applied, mutatis mutandis, until the instructions referred to in paragraph 2 are issued".

among which there are several references to transactions "unjustified by the customer's business activity", "seemingly unjustified by the business relation between the customer and the beneficiaries", "requesting or maintaining illogical business relations with intermediaries" etc; these and other references, in effect, encompass the transactions that have no apparent or visible economic or lawful purpose.

594. At that, Article 6 of the FIA Instruction no. 2009-07 defines that a transaction, which seems to be unusual or shall be considered critical under the FIA Instruction no. 2008-03, shall not necessarily be considered suspicious; however, obliged parties shall be required to carry out a detailed analysis in order to completely rule out the suspicion of money laundering or terrorist financing, which in effect amounts to "paying special attention" to such transactions.

595. Article 2 of the FIA Instruction no. 2008-03 requires that the addressee financial institutions pay special attention to all "critical" transactions by establishing suitable internal criteria for the identification and assessment of such transactions, whereas the document containing these criteria shall be approved by the managing body of the financial institution and made known to all of its employees and contract workers (pursuant to Article 44 of the AML/CFT Law).

Examination of complex and unusual transactions (c. 11.2)

596. Under Article 4 of the FIA Instruction no. 2008-03, compliance officers should undertake the identification, verification, and assessment of "critical" transactions, followed by compilation of a written report on the conducted analysis. According to Article 5, Paragraph 4, Letter [a] of the same instruction, the report shall contain "a substantiated judgment on the purpose and nature of the transactions and their compatibility with the significant aspects of the customer's profile, in particular the economic, financial and asset profile, and the professional profile of the customer".

Record-keeping of finding of examination (c. 11.3)

597. Under Article 5 of the FIA Instruction no. 2008-03, there is a requirement that the aforementioned written report, signed by the compliance officer, shall be kept for at least 5 years after the date of its compilation. According to Article 7 of the same instruction, the written report shall be made available immediately on request to the FIA and the CBSM in their role as supervisory authorities, as well as to the Board of Statutory Auditors and the Internal Auditing Department of the financial institution. As advised by the FIA, the Agency also satisfies itself that written reports are made available to external auditors, by means of checking the minute-books of the Board of Statutory Auditors.

Effectiveness and efficiency

598. Financial institutions met during the on-site visit demonstrated a certain understanding of the requirement to pay special attention to "critical" transactions as defined under relevant regulations. In addition, banks reported having installed the *GIANOS* software, which provides for risk profiling with the use of certain customer and transaction parameters and screening of transactions for the identification of "critical" ones.

Recommendation 21 (rated NC in the 3rd round report)

Summary of 2008 MER factors underlying the rating and developments

599. San Marino was rated Non Compliant in respect of Recommendation 21, in the absence of an adequate implementation of all the criteria under the standard.

600. In order to address the deficiencies raised in the third evaluation report, San Marino has issued firstly Instruction no. 2008-02 "Enhanced procedures for due diligence on customers resident or located in countries, jurisdictions or territories subject to strict monitoring by the FATF"[43] which was subsequently repealed and replaced by FIA Instruction no. 2009-01 on "Enhanced procedures for due diligence on customers resident or located in countries, jurisdictions or territories subject to strict monitoring by the FATF and MONEYVAL". The latter was also repealed and replaced by FIA Instruction no. 2009-08 dated 5 August 2009 on "Enhanced due diligence procedures for customers resident or located in countries, jurisdictions or territories subject to strict monitoring". In addition, on January 26th, 2009, the Congress of State adopted Decision no. 9 on "Countries, Jurisdictions and territories that are considered equivalent to the San Marino AML/CFT framework".

Special attention to countries not sufficiently applying FATF Recommendations (c. 21.1 & 21.1.1)

601. The FIA Instruction no. 2009-08, which is addressed to all financial parties referred to in Article 18 of the AML/CFT Law defines "countries, jurisdictions or territories subject to strict monitoring" as "the countries, jurisdictions or territories against which the international organisations[44] involved in preventing and combating money laundering and terrorist financing issue public statements or other measures". On the other hand, the Decision No 9 (2009) of the Congress of State defines the list of countries, jurisdictions and territories whose system to prevent and combat money laundering and terrorist financing is considered equivalent to international standards. The latter includes all EU member countries, members of the European Economic Area, a limited list of FATF member countries which are non-EU members and a number of additional jurisdictions and territories.

602. Article 3 of the FIA Instruction no. 2009-08 requires that financial institutions "use extreme caution when establishing business relationships or carrying out occasional transactions with customers or counterparts (with or without legal personality) resident or located in countries, jurisdictions or territories subject to strict monitoring". By way of interpreting the notion of "extreme caution", the said article establishes that, should the financial institution wish to establish business relationships or carry out occasional transactions with such customers or counterparts, enhanced customer due diligence requirements shall be applied as laid down in Article 27 of the AML/CFT Law [as further examined under the analysis of Criterion 21.3 below].

603. To ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries, the FIA has arranged that:

a) every public statement issued by the FATF or an FSRB is promptly posted on the FIA website; and

b) notice is given by e-mail to all financial institutions of any decision taken in this regard in the international context.

[43] Dated 4 July 2008

[44] Reference is made to the FATF and FSRBs (including MONEYVAL), and a link is provided to the FATF website.

Examination of transactions with no apparent economic or visible lawful purpose from countries not sufficiently applying FAT Recommendations (c 21.2)

604. The technical annex to the FIA Instruction 2009-07 defines "operations or transactions from/to countries considered to be highly risky by FATF or MONEYVAL" and "transactions with counterparts established in geographical areas... included in the list of non-cooperative countries and territories, regularly published by FATF" as an indicator of "critical" transaction. On the other hand, Article 4 of the FIA Instruction no. 2008-03 requires compliance officers to undertake the identification, verification, and assessment of "critical" transactions, followed by compilation of a written report on the conducted analysis. According to Article 5, Paragraph 4, Letter [a] of the same instruction, the report shall contain "a substantiated judgment on the purpose and nature of the transactions and their compatibility with the significant aspects of the customer's profile, in particular the economic, financial and asset profile, and the professional profile of the customer".

605. Under Article 5 of the FIA Instruction no. 2008-03, there is a requirement that the aforementioned written report, signed by the compliance officer, shall be kept for at least 5 years after the date of its compilation. According to Article 7 of the same instruction, the written report shall be made available immediately on request to the FIA and the CBSM in their role as supervisory authorities, as well as to the Board of Statutory Auditors and the Internal Auditing Department of the financial institution. As advised by the FIA, the Agency also satisfies itself that written reports are made available to external auditors, by means of checking the minute-books of the Board of Statutory Auditors.

Ability to apply counter measures with regard to countries not sufficiently applying FATF Recommendations (c 21.3)

606. As a countermeasure applicable to countries, jurisdictions or territories subject to strict monitoring, Article 3 of the FIA Instruction no. 2009-08 requires that, should the financial institution wish to establish business relationships or carry out occasional transactions with such customers or counterparts, enhanced customer due diligence requirements shall be applied as laid down in Article 27 of the AML/CFT Law. Among enhanced CDD measures available in this case:
- With respect to natural persons – Paragraph 3 and 4 of the said article defines measures stipulated for non face-to-face business relationships and for interactions with PEP-s, basically in line with the requirements set forth under the FATF Recommendations 6 and 8;
- With respect to legal persons – Paragraph 5 of the said article defines measures stipulated for cross-border correspondent banking relations, basically in line with the requirements set forth under the FATF Recommendation 7.

607. Hence, the applicable requirements in force provide for enhanced due diligence as the only possible countermeasure with respect to countries, which do not or insufficiently apply the FATF recommendations. At that, such measures are practically irrelevant in relation to, for example, foreign legal entities which are not financial institutions, since the available enhanced CDD measures under respective provisions of Article 27 of the AML/CFT Law are logically and technically practicable with respect to for cross-border correspondent banking relations only.

608. Article 25 of the AML/CFT Law setting out the risk-based approach for applying customer due diligence procedures defines "the residence or registered office of the customers or the counterparts with particular attention to the States that do not impose requirements equivalent to those laid down in this law" and "the geographic area of the execution of the transaction, with particular attention to the States that do not impose requirements equivalent to those laid down in this law" as aspects to be taken into account for the purposes risk assessment. Nevertheless, such assessment of risk is not followed by the requirement to apply specific countermeasures – other

than enhanced CDD – to countries, which do not or insufficiently apply the FATF recommendations; examples of such countermeasures could be the enhanced relevant reporting mechanisms or systemic reporting of financial institutions on such countries, or limiting business relationships or financial transactions with identified countries or persons in those countries etc.

Effectiveness and efficiency

609. Meetings with the representatives of financial institutions demonstrated a rather adequate level of understanding that the countries included in "black" lists and customers from such countries should be treated in a specific and cautious manner. However, there was certain confusion, especially among financial institutions other than banks, as to what is the specific list or lists of those countries to be taken for reference – the one posted on the FIA's website on the countries under monitoring, or the one endorsed by the Congress of the State decision, or even a mixture of them. All financial institutions met during the on-site visit referred to the need of having more accurate and specific guidance in this matter.

3.6.2 Recommendations and comments

610. It is thus recommended to:

Recommendation 11

611. Introduce requirements obliging financial promoters and parties providing professional credit recovery services to pay special attention to "critical" transactions.

Recommendation 21

612. Introduce appropriate countermeasures in respect of countries which continue not to apply or insufficiently apply the FATF Recommendations[45].

3.6.3 Compliance with Recommendation 11 and Special Recommendation 21

	Rating	Summary of factors underlying rating
R.11	**LC**	• Lack of requirements for financial promoters and parties providing professional credit recovery services to pay special attention to complex and unusually large transactions, as well as to unusual patterns of transactions.
R.21	**LC**	• Lack of appropriate countermeasures in respect of countries which continue not to apply or insufficienly apply the FATF Recommendations

[45] See the FATF Methodology for examples of possible countermeasures.

3.7 Suspicious Transaction Reports and Other Reporting (R. 13, 14, 19, 25 and SR.IV)

3.7.1 Description and analysis

Recommendation 13 (rated NC in the 3rd round report) & Special Recommendation IV (rated NC in the 3rd round report)

Requirement to Make STRs on ML/FT to FIU (c. 13.1, c.13.2 & IV.1)

613. Article 36, Paragraph 1 of the AML/CFT Law requires that obliged parties should report without delay to the FIA:

> *"a) any transaction - even if not carried out – which, because of its nature, characteristics, size or in relation to the economic capacity and activity carried out by the customer to which it is referred, or for any other known circumstance, arouses suspicion that the economic resources, money or assets involved in said transaction may derive from offences of money laundering or terrorist financing or may be used to commit such offences;*
> *b) anyone or any fact that, for any circumstance known on the basis of the activity carried out, may be related to money laundering or terrorist financing;*
> *c) the funds that obliged parties know, suspect or have grounds to suspect to be related to terrorism or may be used for purposes of terrorism, terrorist acts, terrorist organizations and by those financing terrorism or by an individual terrorist."*

614. Article 1, Paragraph 2 of the Law defines that "*the following conduct, when committed intentionally, may constitute money laundering:*

> *a) the conversion or transfer of property, knowing that such property came directly or indirectly from criminal activity or from an act of participation in said activity, for the purpose of concealing or disguising the illicit origin of the said property, or of assisting any person involved in such activity to evade the legal consequences of his action;*
>
> *b) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property came directly or indirectly from criminal activity or from an act of participation in such activity;*
>
> *c) the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived, even indirectly, from criminal activity or from an act of participation in such activity".*

615. The definition of "terrorist financing" (along with the definitions of "terrorist", "terrorism" or "terrorist act", "terrorist purposes") is provided under Article 1, Paragraph 1 of the Law, as ", any activity aimed at, by any means, collecting, providing, intermediating, depositing, keeping or disbursing funds or economic resources, regardless of how they were obtained, intended to be used, in full or in part, in order to commit or promote one or more offences for the purpose of

terrorism, regardless of the actual use of the funds or economic resources for the perpetration of said offences".

616. In defining when the suspicions referred to in Article 36, Paragraph 1 of the Law arise, Article 4 of the FIA Instruction no. 2009-07 sets out the following: "Suspicions arise when obliged parties are led to believe that the transactions requested by the customer, because of their nature, characteristics or amount, or for any other circumstances, are not justified by or inconsistent with the financial, economic or patrimonial, as well as professional background of the customer. In this regard, reference shall be made to the indicators of unusual transactions – which are only illustrative examples and not comprehensive – contained in the reporting form".

617. Hence, the reporting requirement extends to all cases, when the reporting entities suspects or is led (has reasonable grounds) to believe that the funds "came directly or indirectly from criminal activity", i.e. are proceeds of crime. Article 5 of the FIA Instruction no. 2009-07 further specifies that "once suspicions arise, obliged parties shall always be required to make a suspicious transaction report, although the facts or situations identified as suspicious do not seem to be related to predicate offences".

618. The FIA Instruction no. 2009-07 goes on further elaborating on the implementation of the reporting requirement, by means of establishing specific rules for internal reporting to the compliance officer, analysis carried out and subsequent actions taken by the compliance officer, as well as the standard reporting form, both for financial and non-financial parties. Then, the FIA Instruction no. 2010-04 expounds in detail the reporting obligation in relation to suspicions of terrorism financing. Both instructions contain technical attachments defining indicators of anomaly linked to certain types of customers, transactions, and behaviors, as illustrative (but not comprehensive) examples of situations and conducts which may give rise to suspicions.

No Reporting Threshold for STRs(c. 13.3 & c. SR.IV.2)

619. The legislation does not establish a (lower) threshold for reporting suspicious transactions. Article 36, Paragraph 1 of the AML/CFT Law is also clear on the requirement that all transactions – even if not carried out – should be reported, if considered suspicious.

Making of ML/FT STRs regardless of Possible Involvement of Tax Matters (c. 13.4, c. IV.2)

620. The definition of the reporting obligation under Article 36, Paragraph 1 of the AML/CFT Law refers to assets which come "from offences of money laundering or terrorist financing or may be used to commit such offences"; whereas the definition of money laundering under Article 1, Paragraph 2, Letter [a] refers to property coming "directly or indirectly from criminal activity or from an act of participation in said activity"; hence involvement of tax matters is not specified as an exclusion from the reporting requirement. During the visit, the evaluation team was informed that any transaction, if suspicious, would be reported, including if tax matters related.

Additional Elements – Reporting of All Criminal Acts (c. 13.5)

621. As indicated above, all suspicions of criminal activity – both those related to acts constituting a predicate offence and those unrelated to such acts – would be reported to the national financial intelligence unit.

Statistics (R.32)

622. The FIU maintains and published in its 2009 annual report comprehensive statistics on the STR regime. According to statistics provided by FIA, since 2005, obliged persons filed the following number of suspicious transaction reports with the Agency:

Table 23 : Total number of disclosures per year

2005	2006	2007	2008	2009	2010*
20	17	44	104	244	254

* Up to 31st October, 2010

Table 24: Disclosures received per type and reporting subject/entity
Period: From 1st January 2010 to 31th October 2010

Reporting subjects/entities (obliged parties)	Attempt transactions	Suspicious transactions	Disclosures received
Financial parties	**36**	**204**	**240**
Commercial Banks	32	178	210
Financial and Fiduciary companies	3	22	25
Central Bank of San Marino	1	-	1
Insurance companies	-	-	-
Postal offices	-	4	4
Collective investments companies	-	-	-
Insurance intermediaries	-	-	-
Financial promoters			-
Professional credit recovery on behalf of third parties	-	-	-
Non financial parties	**-**	**-**	**-**
Office of the professional trustee	-	-	-
Consultancy on matters of investment services	-	-	-
Consultancy on tax, financial and commercial matters	-	-	-
Credit brokerage	-	-	-
Real estate brokerage	-	-	-
Gambling house (BINGO)	-	-	-
Custody and transport of cash, securities or values	-	-	-
Auction houses or art galleries	-	-	-
Trade in antiques	-	-	-
Purchase of unrefined gold	-	-	-
Export and import of precious metals and stones	-	-	-
Selling or rental of registered movable goods	-	-	-
Professionals	**2**	**12**	**14**
Accountants	2	11	13
Notaries and lawyers	-	1	1
External auditors and actuaries	-	-	-
Total	**38**	**216**	**254**

Effectiveness and efficiency R.13

623. On the objective side, reporting performance of financial institutions over the last four years has significantly improved. As indicated above, the number of STR-s has increased from 44 in 2007 to 104 in 2008, 244 in 2009 and 254 within the first ten months of 2010. On the other hand, financial institutions still remain the main generators of STR-s accounting for an average 95% of total reporting, in which banks account for an average 86% of total reporting. No STRs on terrorism financing-related suspicious have been filed so far.

624. The information provided to the assessors did not enable to conclude on the concentration of the reporting performance even among banks and financial companies; that is to understand whether the majority of STRs come from a few institutions, with the others being quite inactive in terms of STR identification and submission. On the other hand, the statistics on irregularities identified in banks due to on-site inspections of the CBSM reveal that there is a significant number of STRs (in 2010 – 77 cases) made by the CBSM to the FIA reflecting the fact that the respective transactions/ business relationships have not been reported to the FIA by the reporting entities themselves (otherwise the CBSM would not need to report them to the FIA as suspicious transactions), which is indicative of insufficient capacities and low performance of reporting entities to identify and report suspicious transactions.

625. Furthermore, meetings with the representatives of obliged parties revealed that often a "defensive" reporting pattern is prevailing under the perception that it is the FIA's responsibility to thoroughly examine and decide whether the transaction or relationship in question is linked to ML/FT or not. This would automatically result in a lower quality of STRs due to the reporting entities' failure to do a comprehensive analysis and to submit substantiated suspicions. In fact, the low quality of STRs was also admitted by the representatives of the FIA, who nevertheless pointed out its improving dynamics over the last period.

Recommendation 14 (rated PC in the 3rd round report)

Summary of 2008 MER factors underlying the rating and developments

626. San Marino was rated Partially Compliant in respect of Recommendation 14 as there were no adequate provisions in place protecting reporting entities from responsibility for violating restrictions on disclosure of information imposed by contractual, legislative, regulatory or administrative provisions in relation to STRs on FT. Furthermore there was no explicit nor direct provision in the law prohibiting the disclosure of a STR being reported to the FIU.

627. Changes to the legal provisions were introduced with the adoption of the AML/CFT law (in particular articles 39, 40 and 53) as amended subsequently. It has also to be pointed out that after the on-site visit, San Marino introduced further amendments to those provisions, through Decree Law no. 181 dated 11 November 2010, which entered into force the same day.

Protection for making STRs (c. 14.1)

628. Pursuant to Art. 39 of the AML/CFT Law, STRs and disclosures made in accordance with the AML/CFT Law (which includes STRs on ML and FT) shall not constitute a breach of any restriction on disclosure of data or information resulting from contracts or legislative, statutory, regulatory or administrative provisions, nor of requirements of confidentiality and of professional, official or bank secrecy referred to in Art. 36 LISF. The suspicious transactions reports and disclosures made in good faith shall not entail liability of any kind. This protection is available

even if they did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred.

629. According to the text of the provision, FIA instructions and case-law, anyone making a suspicious transaction report is required to highlight the factual circumstances and logical elements at the basis of his/her suspicion. According to the case-law, (Judge of Appeal 9.5.2008; Judge of Appeal 30.6.2011; Law Commissioner 4.5.2011) it is not necessary, also for conviction purposes, to specifically identify the precise typology of the underlying criminal activity. A fortiori, this specific knowledge cannot be requested from those making the report. Furthermore it is completely irrelevant whether the underlying criminal activity actually occurred. The report has to do with a mere "suspicion". The responsibility for verifying whether the suspicion is well founded and whether the crime actually occurred lies with the Authorities receiving the report and not with the person making the report.

Prohibition against tipping off (c.14.2)

630. Except in the cases provided for in the AML/CFT Law, obliged parties are not permitted to inform a customer or third parties involved that a STR has been made or that a money laundering or terrorist financing investigation is being or may be carried out (Art. 40 (6) AML/CFT Law).

631. According to Art. 40 (7) of the AML/CFT Law as amended by Law Decree no. 181, communication about STRs are allowed between financial parties located in the Republic of San Marino which belong to the same group. Furthermore, Art. 40 (8) AML/CFT Law allows for communication about STRs professional practitioners that perform their professional services in an associated form.

632. According to Interpretative Note to Recommendation 14 it does not amount to tipping off, where lawyers, notaries, other independent legal professionals and accountants acting as independent legal professionals seek to dissuade a client from engaging in illegal activity. In Art. 40 (9) AML/CFT Law this exemption has been extended to all obliged parties. From the evaluators point of view this does not conflict with the Interpretative Note given that dissuading a customer from engaging in illegal activity does not imply "disclosing the fact that a STR or related information is being reported or provided to the FIU", as prohibited by Recommendation 14.

633. Pursuant to Art. 40 (10) AML/CFT La, it shall neither constitute a violation of the requirement of secrecy, where the obliged parties notify the blocking order issued by FIA to the party concerned, if the notification is necessary in connection with the prohibition of transfer, disposition or use of blocked assets. The evaluation team again takes the view, that the notification of a blocking order does not imply the disclosure of the fact that a STR or related information is being reported or provided to the FIU. In addition it has to be stressed that a blocking order even does not necessarily result from a STR.

634. According to Art. 53 of the AML/CFT Law, criminal sanctions shall be applied in case of violations of the confidentiality of reports. Except where the conduct amounts to a more serious crime, a punishment by terms of first-degree imprisonment (i.e. 3 months to one year) and second-degree daily fine (from 10 to 40 days) shall be applied. The same penalty applies to anyone who, knowing that a suspicious transaction report has been filed under Art. 7 of the AML/CFT Law, informs the party concerned or a third party of the filing.

Additional element – Confidentiality of reporting staff (c.14.3)

635. Art. 40 (3) of the AML/CFT Law ensures that the names and personal details of staff of financial institutions that make a STR are kept confidential by the FIA. In particular Article 40 paragraphs (3) to (5) AML/CFT Law state that the FIA shall adopt appropriate measures to guarantee the confidentiality of the identity of the person that detected the suspicious transaction. Requests for information to the obliged party, and requests for further investigation, as well as exchange of information related to suspicious transactions reported, shall be made with appropriate ways that guarantee the confidentiality of the person that has detected the suspicious transaction.

636. In case of communication, complaint or report to the Judicial Authority, the identity of the person that has detected this suspicious transaction, even if known, shall not be mentioned (Art. 40 (5) AML/CFT Law). The identity of the person that has detected the suspicious transaction can be revealed only when the Judicial Authority, with a justified decree, declares it essential to the investigation of the offences for which it is proceeding. According to the authorities this may happen when the person making the report has witnessed the facts or has acquired information that can only be proved by obtaining his/her statements. However Judicial authorities have never declared it essential to reveal the identity of the person that has detected the suspicious transaction.

Effectiveness and efficiency R.14

637. Evaluators could not detect any obstacles to the effective and efficient implementation of the requirements in place. In particular no cases have come to the attention of the relevant authorities in the past, where the fact that a STR has been reported has been disclosed or where anyone has been held liable for breach of any restriction on disclosure when reporting suspicions in good faith to the FIU.

Recommendation 25 (c. 25.2 – feedback to financial institutions on STRs) rated NC in the 3rd round report[46]

638. Article 7, Paragraph 2 of the AML/CFT Law requires that "the Agency shall communicate the transmission of the documents and records to the Judicial Authority, or the closure of the case ordered in compliance with the previous paragraph, directly to the reporting obliged party, except when the communication might prejudice the outcome of the investigation or confidentiality with respect to the identity of the reporting party". Hence, this provision stipulates for the provision of case by case feedback. Representatives of the FIA advised that, in implementation of the provision above, an electronic mail is sent to the reporting entity once the respective case is closed by the Agency.

639. Annual reports regularly published by the FIA contain some statistics on the number of disclosures made by obliged parties, with breakdowns as to the number of cases reported to judicial authorities, prosecutions executed by the court after disclosures of the FIA etc. The reports also present some sanitized cases and some typologies of transactions (including attempted ones).

640. As advised by the FIA, the software installed and used for processing the disclosures from obliged parties sends out an automatic acknowledgment of receipt. Also, certain verbal communication initiated either by the FIA or by obliged parties is a usual practice exercised both before and after sending STR-s.

[46] Note: guidelines with respect to other aspects of compliance are analysed under Section 3.10.

Effectiveness and efficiency R.25.2

641. Financial institutions met during the on-site visit did not raise concerns about the level of specific feedback on STRs. They also testified about the responsiveness of the FIA to discuss and reflect on certain issues related to the implementation of the reporting requirement. However, there was a wide perception among the obliged entities that more specific guidance and information was needed from the FIA in respect of current ML/TF techniques and trends and sectoral risks.

Recommendation 19 (rated NC in the 3rd round report)

Summary of 2008 MER factors underlying the rating and developments

642. San Marino was previously rated Non Compliant in respect of Recommendation 19 as the authorities had not undertaken any analysis 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.

643. Following Decree Law no. 65 of 14 May 2009 a customer database has been established, providing Italian intermediary banks with CDD data in order to continue to have access to the Italian payment system. This database provides San Marino authorities also with information on all Italian and EU/EEA currency transactions. CBSM Regulation no. 2009-03 of 19 May 2009 regulates the organisation and functioning of the service. All currency transaction of Sammarinese banks (including transactions outside the EU/EEA) are reported on the basis of the CBSM Circular no. 2009-02.

Consideration of reporting of currency transactions above a threshold (c. 19.1)

644. Based on Art. 3 of Decree-law no. 65 of 14 May 2009, the Central Bank shall manage a customer database containing the identification data of customers, their beneficial owners (if different) and any delegated parties which request San Marino banks to provide payment services using the Italian payment system, for amounts exceeding the threshold of € 5,000. The customer database also includes the identification data referring to any party which might be qualified as a mere bearer of the above-mentioned requests. Such transactions are settled through Italian banks providing so-called "intermediary services" thanks to which payment flows are inserted in the Italian and European circuits.

645. The service provided by the Central Bank consists in creating the customer database, obtaining identification data from San Marino banks, updating the database, keeping the data recorded for ten years and sending said data to Italian intermediary banks which require such data to fulfil customer due diligence obligations.

646. Article 4, paragraph 2 of Decree-Law no. 65 of 14 May 2009 provides for a general obligation of co-operation between San Marino and Italian banks, setting forth that national banks are, however, required to directly provide intermediary banks with any additional information and/or document requested by intermediary banks themselves to supplement the identification data contained in the Customer Database, provided that the request is consistent with the fulfilment of CDD obligations and in line with what established in the agreements and convention concluded between intermediary banks and the Supervisory Authority.

647. The San Marino bank having sent the data shall be the only responsible for the correctness, completeness and timeliness of the information forwarded to the Supervisory Authority. In any

case, data are subject to formal logical controls, aimed at ascertaining that flows received are complete and the technical specifications established in the Regulation are observed. If flows are incomplete or wrong, the management system of the database automatically informs banks for the relevant amendments and changes to be made. The authority has not carried out any assessment with regard to the material quality of the information provided.

648. Further controls are made in relation to the documents regularly forwarded by banks. Such documents consist of:

- monthly declaration acknowledging that the information sent electronically is consistent with the records kept in the company archives;
- the results of quarterly verifications carried out by the Internal Audit with regard to the comprehensive reliability of internal procedures for the acquisition, extraction, processing and forwarding of data to the Central Bank.

649. The database has been operational since 20 May 2009. In June 2009 the agreements between the Central Bank and the Italian banks providing payment services to San Marino banks were signed. Said agreements also regulate the access modalities to the Database. In the agreements signed in the meantime between San Marino and Italian banks, it was agreed – with regard to cheques – to register all transactions regardless of the amount negotiated. San Marino authorities stated that the data provided by San Marino banks to the database is judged positively by Italian intermediary banks.

650. In addition to the above-mentioned database all currency transactions of Sammarinese banks (including transactions outside the EU/EEA) have to be reported to the CBSM based on CBSM Circular no. 2009-02. Each bank has to submit a periodic supervision report to the Central Bank with regard to: cheques, transfers, debits, credits, cash and interbank activity, specifying the amount (equivalent value in Euro), the number of transactions carried out in the period covered by the report, customers' business activity, the geographical area pertaining to the party requesting the provision of payment services. The Circular sets forth that the payment transactions requested by San Marino authorised parties shall also include the identification codes of said parties being customers of the bank (for instance, financial/fiduciary companies negotiating cheques or

Additional elements – Computerized database for currency transactions above threshold and access by competent authorities (c. 19.2)

651. All data provided by the Sammarinese banks (including currency transactions) are maintained in a computerised Customer Database. Both the CBSM and the FIA have access to the Customer Database and the data reported based on the CBSM Circular no. 2009-02.

Additional Element – Proper use of Reports of Currency Transactions above Thresholds (c. 19.3)

652. The Central Bank has issued Regulation no. 2009-03 of 19 May 2009, which regulates the organisation and functioning of the service envisaged by Decree Law no. 65 of 14 May 2009.. The issued provisions are aimed at ensuring the proper acquisition, management, consultation, maintenance and security of data, as well as the traceability of data corrections made by San Marino banks.

3.7.2 Recommendations and comments

Recommendation 13 and Special Recommendation IV

653. Take measures for enhancing the efficiency of reporting and the quality of STR-s, by means of, *inter alia*, better outreach and guidance aimed at reducing "defensive" reporting patterns and at ensuring conduction of comprehensive analyses and submission of substantiated suspicions by financial parties.

Recommendation 14

654. This Recommendation is fully observed.

Recommendation 25/c. 25.2 [Financial institutions and DNFBPS]

655. Provide further general feedback to the obliged entities, in particular on ML/TF methods, techniques and trends as well as sanitised examples of money laundering cases, that focus on specific vulnerabilities and are tailored to particular types of financial institutions.

Recommendation 19

656. This Recommendation is fully observed.

3.7.3 Compliance with Recommendations 13, 14, 19 25 and Special Recommendation SR.IV

	Rating	Summary of factors underlying rating
R.13	**LC**	• Effectiveness issues: (1) "defensive" reporting patterns seem to prevail in the banking sector (2) low level or no reporting by other parts of the financial sector (i.e. insurance, collective investment companies) raises questions on the quality of reporting and the effective implementation of the reporting requirement
R.14	**C**	This Recommendation is fully observed.
R.19	**C**	This Recommendation is fully observed.
R.25.2	**LC**	• Indication of the need to provide further general feedback tailored to particular types of financial institutions and sectoral risks
SR.IV	**LC**	• Effectiveness issues: the implementation of the FT reporting requirement is not demonstrated

Internal controls and other measures

3.8 Internal Controls, Compliance, Audit and Foreign Branches (R.15 and 22)

3.8.1 Description and analysis

Recommendation 15 (rated PC in the 3rd round report)

Summary of 2008 MER factors underlying the rating and developments

657. San Marino was previously rated PC in respect of Recommendation 15, with deficiencies including the lack of legislative or other enforceable obligations to ensure that compliance staff had timely access to CDD and transaction information; that financial institutions maintained an adequately resourced and independent audit function to test compliance and that they had in place adequate screening procedures for hiring employees.

658. San Marino referred to the following legal acts as covering the requirements under Recommendation 15:

- The 2008 AML/CFT Law as amended (articles 41 and 44)
- CBSM Regulation no. 2006-03 for Collective investment services (article 49 - Article 49 – System of internal controls.
- CBSM Regulation no. 2007-07 for Banks (article VII.IX.6 - Internal auditing)
- CBSM Regulation no. 2008-01 for insurance companies (article 48 - System of internal controls)

Internal AML/CFT procedures, policies and controls (c. 15.1)

659. Article 44, Paragraph 1 of the AML/CFT Law on procedures and internal controls requires obliged parties to adopt "policies and procedures in compliance with the requirements of this Law and with the instructions issued by the Agency with a view to preventing and combating money laundering and terrorist financing. In particular, they shall adopt policies and procedures to ensure that technological developments, related to the activities carried out, are not used for the purpose of money laundering or terrorist financing. Moreover, they shall adopt policies and procedures to address any risks associated with non face-to-face business relationships or transactions".

660. That is, the requirement with respect to obliged parties to have policies and procedures for combating ML/TF is derived to that of having such policies and procedures aimed at preventing misuse of technological developments and addressing the risks associated with non face-to-face relations. Paragraph 4 of the same Article further establishes that "obliged parties shall develop and organize adequate internal controls to prevent and combat the involvement in business relationships or transactions relating to money laundering or terrorist financing".

661. Hence, there are no explicit requirements for financial institutions detailing that procedures, policies, and controls of financial institutions should cover, *inter alia*, CDD, record retention, the detection of unusual and suspicious transactions and the reporting obligation, as set forth under Criterion 15.1. The authorities advised that, since Article 41 of the AML/CFT Law on control obligations under the law requires obliged parties to: a) comply with the obligations set forth in the Law; and b) make arrangements for and monitor the fulfillment of said obligations on the part of employees and collaborators, this amounts to requiring that they have internal policies, procedures and controls on all issues and matters covered by the law.

662. However, the assessment team believes that the provision under Article 41 to adopt "policies and procedures in compliance with the requirements of this Law and with the instructions issued by the Agency" may be interpreted simply as a requirement that, for example, the policies and procedures of obliged parties do not contradict and comply with the provisions of the Law and the instructions, which does not necessarily result in those parties' having specific policies and procedures articulating the details and business processes implementing certain requirements of the legislation in force.

663. Paragraph 2 of the same article also defines that "obliged parties shall communicate to all employees and collaborators the requirements set forth in this Law and [...] the measures and procedures adopted for the purpose of preventing and combating money laundering and terrorist financing".

Compliance Management Arrangements (c. 15.1.1); Access of Compliance Officer to Relevant Information (c. 15.1.2)

664. Article 42, Paragraph 1 of the AML/CFT Law requires that "when the financial parties are incorporated businesses, they shall internally appoint a compliance officer in charge of receiving internal suspicious transaction reports, further analyzing such reports and forwarding them to the Agency". However, the Law appears to be silent about the obligation of financial parties that are not incorporated businesses (e.g. natural persons which act as insurance intermediaries, financial promoters etc) to appoint a compliance officer. When interpreting the current provision, one understands that such financial parties are legally exempted from the obligation of having a designated compliance function with specific duties and responsibilities as defined under the Law.

665. Paragraph 6 of the same article further states that "even in absence of internal suspicious transaction reports, the compliance officer shall analyse the transactions carried out, seek and obtain information and, in the cases set forth in Article 36, forward the suspicious transaction report to the Agency". However, there is no requirement explicitly clarifying that the compliance officer should be designated at management level. The authorities advised that, as stated under Article 42, Paragraph 2 of the AML/CFT Law, "the compliance officer shall have adequate professional skills", which means that compliance officers shall be appointed at a high-enough level. Nevertheless, the assessment team is not of the opinion that the requirement to have adequate professional skills does guarantee that compliance officers are designated at management level.

666. Paragraph 2 of the same Article establishes that "the compliance officer [...] shall be given appropriate powers to carry out the functions referred to in the previous paragraph in full autonomy, including the power to access all information or documents also without authorization". In the assessors' opinion, the power to access all information or documents "without authorization" amounts to having timely access to such information and documents.

Independent Audit Function (c. 15.2)

667. Article 41 of the AML/CFT Law defines that "obliged parties... and those persons that perform management, administration and control functions of obliged parties...shall, according to their respective tasks and responsibilities: ... b) make arrangements for and verify the fulfillment of said obligations on the part of employees and collaborators".

668. As advised by the authorities, this requirement is realized by means of various sector-specific regulations. Particularly, Article VII.IX.6 of the CBSM Regulation no. 2007-07 *(Regulation on Collection of Savings and Banking Activities)* establishes that the internal auditing

function shall "have staff that are qualitatively and quantitatively well-equipped to perform the necessary tasks", "not report, within the chain of command, to any manager of operational units", "have access to all the bank's activities", "verify ...the relevant procedures to ensure compliance with current laws", "perform periodic tests on the functioning of operating and internal control procedures" etc. Functions of internal auditors in banks also include the audit of the compliance officer structure. Similar provisions are defined by the CBSM Regulation No. 2006-03 *(Regulation on Collective Investment Services)* and the CBSM Regulation No. 2008-01 *(Regulations on Life Insurance Operations).* As of the time of the on-site visit, there was no similar sector-specific regulation for financial and fiduciary companies[47].

Employee Training (c. 15.3)

669. Article 44, Paragraph 3 of the AML/CFT Law defines that "obliged parties shall promote ongoing employee training also through participation in specific training programmes concerning the prevention and combating of money laundering and terrorist financing".

670. However, the requirements in place do not directly or indirectly specify that such training should focus on ensuring "that employees are kept informed of new developments, including information on current ML and FT techniques, methods and trends; and that there is a clear explanation of all aspects of AML/CFT laws and obligations, and in particular, requirements concerning CDD and suspicious transaction reporting", as required under Criterion 15.3.

Employee Screening (c. 15.4)

671. Article 44, Paragraph 7 of the AML/CFT Law defines that "financial parties shall put in place screening procedures to ensure high standards when hiring employees and collaborators, taking into account their role and functions". However, this very recently introduced[48] requirement is not further detailed/ supported by applicable implementing regulations.

Additional elements (c. 15.5)

672. As advised by the authorities, the aim of Article 42 of the AML/CFT Law is to confer on the AML/CFT compliance officers the largest autonomy and independence when implementing their functions. Particularly, the law requires that compliance officers are given appropriate powers to carry out their functions in full autonomy (without specification whether such autonomy implies the ability to report to senior management above the compliance officer's next reporting level, or to the board of directors).

673. The authorities further advised that in accordance with regulations issued by the CBSM, internal auditors cannot be hierarchically subordinated to the Directorate General, and the internal auditing function reports directly to the Board of Directors. Compliance officers, in turn, can have the same position of independence, but this is not a mandatory requirement. The practice is that the internal audit must assess if the internal control system is adequate, and where the compliance is not working efficiently or its autonomy is limited, the internal audit should immediately report such deficiency to the Board of Directors.

[47] The authorities advised that the CBSM Regulation no.2011-03 (in force since 1st July 2011) has cleared up the matter of internal controls for all financial companies (fiduciary and investment firms included), by way of introducing rules similar to those applicable to banks (see Part VII, Title IX, Chapters I and II). However, due to its adoption time, the regulation is not taken into account for the purposes of this assessment.

[48] By the Decree-Law No 134 of 26 July 2010

Effectiveness and efficiency

674. Meetings with the representatives of banks revealed a proper understanding and comprehension of the requirement to have internal procedures, policies, and controls for the prevention of ML/FT. Compliance officers referred to rather detailed procedures for the internal collection of reports on potentially suspicious transactions (some 80% of such reports coming from the branches, and the other 20% generated at headquarters due to regular screening of transactions and business relationships), followed by an analysis documented in a special form and resulting in either forwarding the case to the FIA or dismissing it due to the lack of sufficient grounds for suspiciousness. However, the samples of internal regulatory documents of certain financial institutions were in Italian and could not be used for assessing how this requirement is implemented in practice.

675. Compliance officers from financial/ fiduciary, insurance and management companies demonstrated somewhat limited, but still certain understanding of their respective functions and duties, as well as the pertinent policies and procedures.

676. Staff training was reported to be a regular exercise throughout the financial sector, also assisted by their respective associations; however, the assessment team was not provided specific information/ proof on the existence of comprehensively developed and consistently implemented training plans at each financial institution. Furthermore, no information was provided on how the recently introduced requirement on employee screening procedures was to be implemented in practice.

677. A general comment from all persons met was the need to have more clear guidance on how to apply and implement the legislation and related regulations, which may be interpreted in different ways under the threat of being harshly punished for any omission.

Recommendation 22 (rated NC in the 3rd round report)

678. San Marino was previously rated Non Compliant in respect of Recommendation 22, given the absence of an adequate implementing framework to comply with the standard, notwithstanding that at the time there were no financial institutions that had established operations abroad and that in order to do so a series of agreement would have been necessary to be in place. Requirements in respect of subsidiaries, branches or representatives offices abroad have been introduced with the new AML/CFT Law (articles 45-46). At the time of the on-site visit only one San Marino bank has a subsidiary (majority stake in Croatian bank).

Application of AML/CFT Measures to Foreign Branches and Subsidiaries (c. 22.1, 22.1.1 and 22.1.2)

679. According to Art. 45 of the AML/CFT Law, financial institutions are required to ensure that their foreign subsidiaries or controlled foreign companies comply with obligations equivalent to those set forth in the AML/CFT Law. There is no specific requirement to pay particular attention to the principle of application of the domestic legislation to branches/subsidiaries that operate in countries which do not or insufficiently apply the FATF Recommendations. There is also no specific requirement to apply the higher AML/CFT standard when the AML/CFT requirements of the home and host country differ.

Requirement to inform home country supervisor if foreign branches and subsidiaries are unable to implement AML/CFT measures (c.22.2)

680. In case the legislation of the foreign State does not provide for requirements equivalent to those in the AML/CFT Law, the financial institutions are required to inform the FIA and the

CBSM and adopt supplementary measures to effectively address the risk of money laundering or terrorist financing (Art. 45 (2) AML/CFT Law). The evaluators take the view that due to this reporting requirement financial institutions would also cover instances where the foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because it is prohibited by the host country's laws, regulations or other measures(as required by c.22.2).

Additional elements (c. 22.3)

681. Under Article 44 (6) of the AML/CFT Law, financial institutions are required to extend the obligations concerning internal procedures and controls to their foreign subsidiaries, branches and representative offices.

Effectiveness and efficiency

682. At present, only one San Marino bank has a subsidiary (majority stake in Croatian bank). In March 2009, the FIA carried out a survey with regard to FATF Recommendation no. 22 and Articles 44 and 45 AML/CFT Law. Authorities reported that one of the measures taken by the San Marino bank with regard to its subsidiary was the introduction of a new AML/CFT internal regulation in compliance with Sammarinese AML/CFT provisions and 3rd EU AML Directive.

3.8.2 Recommendation and comments

683. The following is recommended to ensure an adequate implementation of Recommendations 15 and 22 .

Recommendation 15

684. Introduce additional requirements (in the law, regulation or other enforceable means) for financial institutions to adopt procedures, policies and controls as defined under Criterion 15.1, since the current language of the law seems to limit them to cover only certain types of high-risk activities and customers.

685. Establish a requirement that financial parties which are not incorporated businesses, assume the responsibilities and perform the duties of the compliance officer.

686. Establish a requirement that compliance officers are to be designated at management level.

687. Establish a requirement for financial institutions (other than banks, management companies) and insurance undertakings to have an adequately resourced and independent audit function.

688. Introduce terms of reference specifying the focus, coverage, and topics of employee training in accordance with Criterion 15.3.

689. Provide for practical implementation of employee screening requirement (by way of introducing relevant instructions/ best practices/ other guidance).

Recommendation 22

690. Introduce a specific requirement for financial institutions to pay particular attention that their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF Recommendations in countries which do not or insufficiently apply the FATF Recommendations.

691. Introduce a specific requirement for financial institutions to adopt the highest AML/CFT standard in case of branch subsidiaries or branches in foreign countries.

3.8.3 Compliance with Recommendations 15 and 22

	Rating	Summary of factors underlying rating
R.15	**PC**	• Definition of the requirement on internal procedures, policies and controls needs improvement • Lack of requirement to designate compliance officers at management level • Lack of requirement that financial parties, which are not incorporated businesses, assume the responsibilities and perform the duties of the compliance officer • Lack of requirement for financial institutions (other than banks, management companies and insurance undertakings) to have an adequately resourced and independent audit function • Lack of terms of reference specifying the focus, coverage, and topics of employee training
R.22	**LC**	• There is no requirement to pay particular attention that AML/CFT measures consistent with home country requirements and the FATF Recommendations are observed with respect to branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations. • No specific requirement for financial institutions to apply the higher AML/CFT standard when the AML/CFT requirements of the home and host country differ.

3.9 Shell Banks (R.18)

3.9.1 Description and analysis

Summary of 2008 MER factors underlying the rating and developments

692. San Marino was previously rated Partially Compliant in respect of Recommendation 18 as the legal framework did not prohibit financial institutions from entering into, or continuing correspondent banking relationships with shell banks no required them to satisfy themselves that respondent institutions in a foreign country do not permit accounts to be used by shell banks.

9. The AML/CFT law has introduced implementing requirements under article 28, and those are complemented by article 13 of LISF and CBSM regulation no. 2007-7 on the establishment of banks in San Marino. Furthermore it was indicated that the FIA has verified the implementation of those requirements through a questionnaire in July 2009.

Prohibition of establishment of shell banks (c. 18.1)

693. A"shell bank" is defined under Article 1, Paragraph 1, Letter [d] of the AML/CFT Law as "an entity engaged in activities equivalent to those envisaged in Annex 1 to Law no. 165 of 17 November 2005[49], incorporated in a jurisdiction in which it has no physical presence, and which is unaffiliated with a regulated financial group". Hence, the notion of shell banks encompasses not

[49] That is, reserved activities, which can be carried out only with proper authorization from supervisory bodies.

only banks as such, but any type of corporate entity involved in one of the reserved financial activities defined by Law No. 165.

694. The definition falls short of the one provided in the FATF Recommendations insofar as it does not specify that the referred "regulated financial group" should "be subject to effective consolidated supervision". The authorities advised that, in their understanding, the definition of "regulated financial group" does encompass the notion of "supervision", since regulation without failure incorporates the element of supervision (both off-site surveillance and on-site inspections), as well. Nevertheless, the assessment team believes that not all regulated financial groups are subject to consolidated supervision, and that such supervision is not necessarily effective.

695. The law does not establish a direct requirement on prohibiting approval of establishment or acceptance of continued operations of shell banks in the country. On the other hand, Article 13 of the Law no. 165 (2005) sets out the minimum requirements for authorization of entities to be involved in "reserved" activities, including those related to banking activity. These requirements include, *inter alia*, a registered office and administrative seat to be located in the country, corporate capital of an amount not less than the one determined by the supervisory authority, fit and proper tests for the owners and the management, a business plan defining the appropriate asset, human, organizational, and technical resources for the intended activities etc. The authorities believe that these requirements would not enable the establishment of a shell bank.

696. The authorities also refer to Article 75 of the Law no. 165 (2005) stipulating that "foreign parties intending to exercise one or more reserved activities in the Republic, by setting up a branch or under the regime of the provision of services without establishment, shall apply to the supervisory authority for authorization" and that "for the establishment of a branch, the provisions of the Part I, Title II of the present law will apply to authorization therefore" (Paragraphs 1 and 2, respectively). In practice, this means that branches of foreign entities to operate in the territory of San Marino "through a temporary organization or by means of distance communication or through intermediaries or independent agents" can be established only if meeting the minimum requirement of Article 13 of the Law no. 165 (2005) referred above.

697. Nevertheless, in the light of the above, the assessors consider that it would be relevant to define a direct requirement in the law, regulation or other enforceable means prohibiting the approval of establishment or acceptance of continued operations of shell banks.

Prohibition of correspondent banking with shell banks (c. 18.2)

698. Article 28 of the AML/CFT Law establishes that "financial parties shall not be permitted to enter into business relationships or carry out occasional transactions with shell banks […]. Relationships already existing on the date of entry into force of this law shall be terminated at the earliest convenience".

699. The authorities advised that the notion "at the earliest convenience" refers to the first opportunity where a bank enters in contact with the counterparts or with a customer (i.e. first time the client enter into contact with the bank, or the first transaction regardless of the amount involved, etc). However, such formulation seems to lack explicitness and provides space for various interpretations on what an earliest convenience would constitute as opposed to, for example, a proactive and immediate termination of relationships with entities that are found to be shell banks.

Requirement to satisfy respondent financial institutions of use of accounts by shell banks (c. 18.3)

700. According to Article 28 of the AML/CFT Law, financial parties are not permitted to enter into business relationships or carry out occasional transactions with "foreign parties that are known to permit their accounts to be used by shell banks". At the time of the on-site visit, there was no specific requirement for financial institutions to proactively take certain measures to make sure that the respondent financial institution in a foreign country does not permit its accounts to be

used by shell banks. Nonetheless, on 5 November 2010[50] the FIA Instruction no. 2010-08 was issued detailing certain requirements with respect to business relationships established with foreign financial institutions.

701. In its Annex 1, the FIA Instruction no. 2010-08 contains the so-called AML/CFT Questionnaire[51], which sets forth questions relevant for checking whether the respondent financial institution has policies to prohibit accounts/ relationships with shell banks, and whether it has policies to reasonably ensure that it will not conduct transactions with or on behalf of shell banks through any of its accounts or products.

702. However, Article 3 of the said Instruction defines that:

a) It shall apply when a foreign financial institution requests a San Marino financial institution to establish a business relationship or carry out an occasional transaction;
b) Cross-border correspondent bank accounts established with foreign financial institutions located in an equivalent country fall outside its scope.

703. Equivalent countries, in turn, are those included in the Decision No 9 (2009) of the Congress of State, which defines the list of countries, jurisdictions and territories whose system to prevent and combat money laundering and terrorist financing is considered equivalent to international standards. The latter includes all EU member countries, members of the European Economic Area, a limited list of FATF member countries which are non-EU members and a number of additional jurisdictions and territories.

704. This means that – at least as far as the countries included in the Decision No 9 (2009) of the Congress of State are concerned – financial institutions are not required "to satisfy themselves" that their respondent institutions in a foreign country do not permit their accounts to be used by shell banks.

705. Moreover, the provision that the FIA Instruction no. 2010-08 is applied "when a foreign financial institution requests a San Marino financial institution to establish a business relationship or carry out an occasional transaction", technically means that the said instruction is not necessarily applicable when a Sammarinese bank pursues and initiates establishment of, for example, correspondent relations with a foreign financial institution.

Effectiveness and efficiency

706. Representatives of banks met during the on-site visit demonstrated adequate knowledge of the requirement that business relationships with shell banks are not allowed. However, the impression of the evaluation team, based on the discussions during those meetings, was that the "presumption of innocence" was good enough for Sammarinese banks to continue business relationships with respondent institutions until they "become known" (also, through the advise/ guidance provided by the relevant supervisory authorities) to allow the use of their accounts by shell banks, and that a proactive inquisition was not something strictly required by the legislation and implied by current practices.

707. It was also reported that in 2010 the CBSM filed with the FIA two suspicious transaction reports allegedly involving relationships with shell banks. Representatives of the FIA, in turn, advised that the analysis of these STRs did not prove that the banks in question were shell banks. Nevertheless, that fact that the CBSM decided to file STRs on the mentioned business

[50] That is, within the acceptable two-month period after the on-site visit

[51] As pointed out in the Instruction, the AML/CFT Questionnaire is based on "The Wolfsberg Group" - AML Questionnaire (http://www.wolfsberg-principles.com) and amended by the Financial Intelligence Unit of San Marino on the basis of the FATF "Methodology for Assessing Compliance with the FATF 40 Recommendations and FATF 9 Special Recommendations" paper (http://www.fatf-gafi.org).

relationships leads to the conclusion that the respective Sammarinese banks failed to "satisfy themselves" and, consequently, produce sufficient analysis and evidence to the supervisors, that the banks in question were not shell banks.

3.9.2 Recommendation and comments

708. It is thus recommended to:

709. Revise the definition of "shell bank" to incorporate the notion that, for qualifying as a non-shell bank, the subjects of the definition should "be subject to effective consolidated supervision".

710. Introduce an explicit requirement on prohibiting approval of establishment or acceptance of continued operations of shell banks.

711. Redefine the notion of "at the earliest convenience" so as to provide for a proactive and immediate termination of relationships with entities that are found to be shell banks.

712. Remove the exceptions from the rule to use the AML/CFT Questionnaire in the case of countries, jurisdictions and territories included in the Decision No 9 (2009) of the Congress of State, and when establishment of business relationships is initiated by foreign counterparts.

3.9.3 Compliance with Recommendations 18

	Rating	Summary of factors underlying rating
R.18	**PC**	• The definition of "shell bank" does not comprise the element of "be subject to effective consolidated supervision" • Lack of direct requirement on prohibiting approval of establishment or acceptance of continued operations of shell banks • The notion of terminating relationships with entities that are found to be shell banks "at the earliest convenience" lacks explicitness and provides space for different interpretations and implementation • Exceptions from the rule for financial institutions "to satisfy themselves" that their respondent institutions comply with the requirement not to permit the use of their accounts by shell banks

Regulation, supervision, guidance, monitoring and sanctions

3.10 The Supervisory and Oversight System - Competent Authorities and SROs / Role, Functions, Duties and Powers (Including Sanctions) (R. 23, 29, 17 and 25)

3.10.1 Description and analysis

Summary of 2008 MER factors underlying the rating and developments

713. San Marino was previously rated Largely Compliant in respect of Recommendation 23, with concerns raised given the low level of on-site inspections carried out by the CBSM and the fact that the effectiveness of the powers of the CBSM had not been fully tested.

714. Under the new AML/CFT Law, the Financial Intelligence Agency has become the competent authority for supervising that obliged entities comply with the AML/CFT requirements as set out in the Law and the FIA implementing Instructions (as opposed to the CBSM at the time of the third round evaluation).

Recommendation 23 (23.1, 23.2) (rated LC in the 3rd round report)

Regulation and Supervision of Financial Institutions (c. 23.1); Designation of Competent Authority (c. 23.2)

715. Since the last evaluation, the legislative framework providing for the supervision and regulation of financial institutions in terms of AML/CFT has significantly changed. With the adoption of the AML/CFT Law, the FIA assumed the total responsibility to supervise AML/CFT compliance of all obliged parties including financial parties, non-financial parties, and professionals as defined under the law. Article 85 of the AML/CFT Law introduced changes to the Law No 96 (2005) on the statute of the CBSM abrogating all direct references to its regulatory and supervisory powers in respect of AML/CFT, and to the Law No 165 (2005) on banking and other financial activities to add the FIA as a supervisory authority in this field[52].

716. Furthermore, Article 4 of the AML/CFT Law directly assigned to the FIA the function of "supervising compliance with the obligations under this law and the instructions issued by the Agency" and "issuing instructions regarding the prevention and combating of money-laundering and terrorist financing". To enable implementation of this function, Article 5 empowered the FIA "to order obliged parties to exhibit or hand over documents, also in original copy, or to communicate data and information, according to the procedures and time limits laid down by the Agency" (off-site surveillance), as well as to "to carry out on-site inspections at obliged parties' premises" (on-site supervision).

717. Nevertheless, the CBSM has still retained general powers "to verify the adequacy of the organizational and procedural structures of authorized parties" (Article 14, Paragraph 3 of the AML/CFT Law)[53], with the aim of exercising its supervisory functions including that of "the prevention of financial crime in matters of money laundering, the funding of terrorism and other offences of a financial nature, in co-operation with other competent authorities" (Article 37,

[52] It also entitled the FIA to obtain information constituting bank secrecy for the exercise of its functions of preventing and countering money laundering and terrorist financing.

[53] This paragraph has been abrogated by the Decree Law no. 187 of 26 November, 2010 and amended as follows "The Agency shall also cooperate with the Central Bank, also by exchanging information, on the basis of ad-hoc memoranda of understanding".

Paragraph 1, Letter [c] of the Law no. 165 (2005)). Particularly, various sector-specific regulations, such as the CBSM Regulation no. 2007-07 *(Regulation on Collection of Savings and Banking Activities),* the CBSM Regulation no. 2006-03 *(Regulation on Collective Investment Services)* and the CBSM Regulation no. 2008-01 *(Regulations on Life Insurance Operations)* provide for the power of the CBSM to conduct regular controls for verifying compliance of financial institutions' activities with applicable laws, regulations, and internal procedures[54].

718. To summarize, according to the legislation in force, the FIA acts as the only supervisory authority directly designated the power and responsibility to ensure that obliged entities adequately comply with the requirements of applicable legislation on combating money laundering and terrorist financing. The role of the CBSM, as of the general supervisor of the financial sector, in relation to supervision of specific AML/CFT-related matters has been confined to: a) filing suspicious transaction reports – in line with STR reporting rules as defined under the law – with the FIA in case of identifying transactions or business relationships that arise ML/FT suspicions; and b) notifying the FIA in case of identifying irregularities/ violations of the requirements of the Law and the instructions issued by the FIA. Such exchange of information takes places on basis of ad hoc memoranda of understanding concluded under the amended text of Article 14, Paragraph 3 of the AML/CFT Law.

719. The authorities advised that the STRs filed by the CBSM are treated by the FIA, from a procedural point of view, just as any other STR received from obliged entities (that is subject to analysis and dissemination, as appropriate), whereas the notifications from the CBSM are taken as a "signal" on the possible existence of an irregularity/ violation of the applicable AML/CFT framework, usually considered for the planning of the FIA subsequent actions (e.g., inquiries to the obliged entity, on-site inspections etc.) and in any case needing further verification before further supervisory action might be taken, particularly a sanctioning measure might be applied.

720. Based on the above-mentioned, the applicable criteria under recommendations 23, 29 and 30 are considered with regard to the FIA only, with the respective data on the CBSM provided in footnotes, as necessary, for informative purposes only.

Recommendation 30 (all supervisory authorities) (rated PC in the 3rd round report)

Adequacy of Resources (c. 30.1); Professional Standards and Integrity (c. 30.2); Adequate Training (c. 30.3)[55]

721. The basics of the structure, funding, staffing, and technical resources of the FIA are laid down in the Delegated Decree No. 146 /2008, which sets out in sufficient detail the requirements in terms of logistical independence, custody and protection of data, requirements of professionalism, fit and proper criteria, and independence for the Director and Vice Director, their remuneration, standards for the selection of staff (also by means of external transfers) including the requirements for the professional qualities and experience necessary to carry out their specific functions or duties, observance of official secrecy rules, as well as operational independence and conduction of financial investigations. Additional provisions on confidentiality, integrity and appropriate skills

[54] The authorities advised that the CBSM Regulation no.2011-03 (in force since 1st July 2011) articulated similar powers of the CBSM with respect to fiduciary and investment firms. However, due to its adoption time, the regulation is not taken into account for the purposes of this assessment.

[55] The IMF FSAP report published in October 2010 arrived at the following conclusions: "The assessment of the observance of Basel Committee Core Principles (BCP) showed that the Central Bank of San Marino (CBSM) will need substantially strengthened independence and resources. Although the CBSM has made significant progress, there are still gaps in the regulatory regime and supervisory practices. The CBSM should upgrade its financial regulation in alignment with the EU framework, while strengthening supervision and enforcement". The report also found out that albeit the absence of a formal methodology, the CBSM shows good understanding of the risks facing the banks (CP 19, Supervisory Approach), that the limited staff and distraction by other duties has limited the number of full bank inspections, with supervisory manuals not yet complete (CP 20, Supervisory Techniques), and that there are as yet no comprehensive provisions for consolidated supervision (CP 24, Consolidated Supervision).

of the employees can be found in the AML/CFT Law, as well as in the internal procedures for hiring personnel (e.g. job contracts awarded through competitive selection process etc.).

722. As of the time of the on-site visit, the FIA had four divisions *(Regulation and Legal Services, Financial Intelligence Analysis Service, AML/CFT Supervision Service, and Organization and Administration Service)* and a staff of 12 (Director, Vice-Director, 1 legal specialist, 3 analysts, 3 inspectors, 1 IT specialist, and 2 administrative staff). In determining the number of staff (set at 12 for the first 2 years of operation), the FIA advised that it had followed a phased approach taking into account the start up period and a test of performance in the implementation of its functions. The assessment team was informed that the FIA was conducting a reassessment of the need of additional staff (supposedly, 3 more positions), given the increase in the workload as the level of implementation of AML/CFT requirements by the reporting entities increased. Nevertheless, lack of human resources appears to be a major hindrance for the FIA to properly perform its functions, particularly the supervisory function (as articulated in detail under the analysis of Criterion 23.4).

723. There was a dedicated software (*AIF-Database*) used within the FIA for performing its main functions, including the receipt of STR-s and other disclosures, collection, analysis, and dissemination of information, and maintaining updated statistics. The software was also used for managing other routine activities (i.e. on-site inspections, international co-operation requests etc). For the analysis, the FIA makes use of commercial databases such as *CERVED* – the largest Italian commercial database on legal and natural persons, *Daily Compliance* – a Swiss database containing information on natural and legal persons whose names have been mentioned in newspapers for events connected to possible criminal activities, *World Check* etc. Moreover, the FIA advised of having also direct on-line access to the public administration database.

724. The budget of allocated for funding the FIA activities totalled EUR 1.67 million in 2009 and EUR 1.62 million in 2010, with roughly half of it dedicated to staff remuneration, which seems to provide for wages competitive enough to prevent unwanted staff turnover.

725. As advised by the FIA, great importance was attached to trainings especially in the start-up period of its activities, with special focus on the efforts required to "build" a new AML/CFT system. Educational events were reported to be organized by the FIA jointly with domestic authorities (including law enforcement bodies) and international partners. In general, meetings with the FIA employees revealed a quite adequate level of professionalism and skilfulness necessary for performing their tasks.

Authorities' powers and sanctions

Recommendation 29 (rated LC in the 3rd round report)

Power for Supervisors to Monitor AML/CFT Requirement (c. 29.1)

726. As already indicated under Recommendation 23 (Criteria 23.1 and 23.2), with the adoption of the current AML/CFT Law in 2008, the FIA acts as the only supervisory authority directly designated the power and responsibility to ensure that obliged entities adequately comply with the requirements of applicable legislation on combating money laundering and terrorist financing. Accordingly, Article 4 of the AML/CFT Law assigns to the FIA the function of "supervising compliance with the obligations under this law and the instructions issued by the Agency" and of "issuing instructions regarding the prevention and combating of money laundering and terrorist financing"[56].

[56] Regulatory, monitoring, and supervisory powers of the CBSM to ensure general compliance by financial institutions are defined under Article 34 of the Law No 96 (2005) on the statute of the CBSM and under Articles 39-44 of the Law No. 165 (2005) on banking and other financial activities.

Authority to Conduct AML/CFT Inspections by Supervisors (c. 29.2)

727. Article 5 of the AML/CFT Law empowers the FIA "to carry out on-site inspections at obliged parties' premises". Moreover, the same article defines that "if an obliged party relies on external parties for the fulfillment of the obligations set forth in this law, inspections may also be conducted in the premises of said parties" (Paragraph 1, Letter [c])[57].

728. A document titled "Operating Manual for Inspecting Designated Persons with the Purpose of Combating Money Laundering and Terrorist Financing" (hereinafter: the FIA Inspections Manual) endorsed by the FIA Director on January 2010 sets out rules for the planning and implementation of various types of on-site inspection activities by the FIA. Under the activities to be carried out in case of general inspections, the FIA Inspections Manual provides for the examination of internal policies and regulations, corporate books and individual records of the inspected entity, also specifying the methods and procedures for sample testing of business relationships and transactions.

Power for Supervisors to Compel Production of Records (c. 29.3 & 29.3.1)

729. The ability of the FIA to compel production of or obtain access to all records, documents or information relevant to monitoring compliance is provided for under Article 5 of the AML/CFT Law establishing that the FIA is empowered "to order obliged parties to exhibit or hand over documents, also in original copy, or to communicate data and information, according to the procedures and time limits laid down by the Agency"[58]. The FIA Inspections Manual also requires that inspectors verify the reports prepared by the compliance officer in terms of review of "critical" transactions, operational control over the handling of customers, and any reports provided to the top management on the results of implemented analysis.

730. Moreover, under Article 36 of the Law no. 165 (2005), banking secrecy may not be invoked the FIA in the exercise of its functions of preventing and countering money laundering and terrorist financing. At that, Paragraph 1 of the said article defines that "by 'banking secrecy' is meant the prohibition on authorised parties to reveal to third parties the data and information acquired in the exercise of the reserved activities referred to in Attachment 1", which means that the term "banking secrecy" is conventional and virtually covers the totality of information related to all types of reserved financial activities.

731. Article 38 of the AML/CFT Law, in turn, sets out that "professional secrecy cannot be invoked against the Judicial Authority, the Agency and the Police Authority in the exercise of their functions of preventing and combating money laundering and terrorist financing, except for the case provided for in the first paragraph [i.e. the case when the legal professional privilege is applicable]". Hence, the legislation in force does not limit the access of the FIA to relevant information and documents by the need to require a court order.

[57] Article 42 of the Law No 165 (2005) sets out relevant inspection powers for the CBSM, by stating that the it may conduct inspections at the offices and branches of financial institutions, request information, order disclosure of documents, and carry out the checks and verifications deemed to be necessary.

[58] Article 42 of the Law No 165 (2005) confers similar powers on the CBSM, by establishing that "it may have access to the company's accounts and all its books, notes and documents; it may question the directors and any employee or officer within the sphere of each one's duties, with a view to obtaining information and clarification".

Powers of Enforcement & Sanction (c. 29.4)

732. In view of the fact that the legislation in force provides for both administrative and criminal sanctions for the violation of the requirements to prevent money laundering and terrorist financing, the FIA is the designated body to impose sanctions for administrative violations, whereas the Law Commissioner (criminal section of the court) is responsible for applying criminal sanctions. According to Article 14 of the AML/CFT Law, the CBSM is no more authorised to enforce AML/CFT regulations and sanction obliged parties for incompliance; nevertheless, it still retains the power "to verify the adequacy of the organizational and procedural structures of authorized parties" [59] and, once having detected violations of AML/CFT regulations, has to promptly inform the Agency in written form.

733. Thus, Article 74 of the AML/CFT Law establishes that "the Agency shall detect the administrative violations and apply the sanctions set forth in this law". Article 70 setting out joint and several liability of the subjects under the law establishes that "if the violation is committed by a person subject to another authority, direction or control, the person vested with the authority or having the responsibility for the direction or control shall be held jointly and severally liable for the payment of the amount owed by the perpetrator of the violation, unless the person proves that he/she could not have prevented the violation". Hence, administrative penalties can be imposed by the FIA both on obliged parties and on their management[60].

734. Further details on the sanctioning regime and practice are presented in the analysis of the relevant criteria under Recommendation 17.

Effectiveness and efficiency (R. 23 [c. 23.1, c. 23.2]; R. 29, and R. 30 (all supervisors))

735. Supervisors met during the assessment visit, particularly the FIA staff, did not express any concerns with the possible inadequacy or irrelevance of their powers to monitor and control activities of the financial institutions, including those related to the prevention of money laundering and terrorist financing. The representatives of the private sector, in turn, demonstrated full recognition and appreciation of the supervisory functions and empowerments exercised by relevant authorities.

736. Overall, the current situation of the FIA in terms of adequacy of technical resources, professional standards and staff integrity, as well as of training seems to be on a quite acceptable level, especially in view of the FIA management's clear vision and dedication to further improve the Agency's performance.

737. Nevertheless, given the radical change – also in terms of supervisory functions – of the FIA's responsibilities under the AML/CFT Law on one hand, and the increase in the workload with the improving reporting performance of obliged parties on the other hand, the capacities of the national FIU, and particularly those related to human resources, do not appear to provide for a full-scale functioning of the FIA to ensure an adequate supervision of compliance by relevant obliged parties with the requirements of the legislation in force. Such conclusion is further supported by the facts on supervisory arrangements and performance of the FIA under the analysis of Criterion 23.4.

[59] This paragraph has been repealed by the Decree Law no. 187 of 26 November, 2010 and amended as follows: "The Agency shall also cooperate with the Central Bank, also by exchanging information, on the basis of ad-hoc memoranda of understanding".

[60] Similar powers of the CBSM for imposing sanctions on financial institutions and their management (presumably, for violations related to the "adequacy of the organizational and procedural structures of authorized parties") by means of specific, individual decrees of the CBSM are provided for under Article 31 of the Law No 96 (2005) on the statute of the CBSM and under Article 141 of the Law No 165 (2005) on banking and other financial activities. The institute of joint liability of the legal entity and its officers is applicable in this case, as well.

Recommendation 17 (rated PC in the 3rd round report)

Availability of Effective, Proportionate & Dissuasive Sanctions (c. 17.1); Range of Sanctions—Scope and Proportionality (c. 17.4)

738. The legislation of San Marino establishes both criminal and administrative liability for those who commit the offenses of money laundering or terrorism financing, as well as administrative for those who infringe the obligations aimed at preventing the risk of such offences to be committed.

739. In particular, criminal liability with regard to natural persons for the offence of money laundering is established under Article 199 bis of the Criminal Code, which provides for a punishment by terms of fourth-degree imprisonment[61], a second-degree daily fine[62] and third-degree disqualification[63] from public offices and political rights (these can be increased or decreased by one degree depending on the circumstances of the case). Article 337ter of the Criminal Code, in turn, criminalizes terrorism financing and establishes a respective punishment by terms of sixth-degree imprisonment[64] and fourth-degree disqualification [65]from public offices and political rights.

740. The AML/CFT Law contains provisions stipulating for both criminal and administrative liability of natural persons. Hence, under Title VI of the law:

- Chapter I on criminal violations (Articles 53 through 62bis) establishes criminal liability in the form of imprisonment, daily fine or disqualification from public offices and political rights[66]. In some cases, criminal liability goes along with administrative pecuniary sanctions ranging from EUR 2.000 to 50.000. At that, in many cases liability is established not only for the violation of the provisions of the law by the subjects of the law (that is, by obliged parties), but also for the misconduct of persons which are not subjects of the law (that is, of the customers of obliged parties): examples of such misconduct are the customer's failure to provide reliable CDD data, the attempts to delay or prevent reporting of STR etc.\
- Chapter II on administrative violations (Articles 62ter through 67) establishes administrative liability for the violation of different provisions and requirements of the law. At that, with a few exceptions[67], all violations of the obligations and requirements established under the law are punished with a pecuniary administrative sanction ranging between EUR 3.000 to 100.000.
- Chapter III defines the concepts of the subjective element of administrative violations, the complicity of persons, joint liability of the perpetrator and their higher management, the criteria for the application of pecuniary administrative sanctions, and the voluntary settlement of sanctions (consisting in the immediate payment of half of the sanctioned amount).

741. Furthermore, the recently adopted Law no. 6 (2010) has introduced the concept of administrative liability of legal persons. In particular, a legal person "shall be held liable for administrative offences resulting from the perpetration of offences committed, attempted or failed in the Republic of San Marino, on its behalf or for its benefit, by one of its bodies or anyone

[61] That is, from 4 to 10 years
[62] That is, from 10 to 40 days, translated into monetary terms on the basis of the money the convict can save every day living parsimoniously and fulfilling his/her family maintenance obligations.
[63] That is, from 1 to 3 years
[64] That is, from 10 to 20 years
[65] That is, from 2 to 5 years
[66] This chapter establishes criminal sanctions for, *inter alia*, the violations of secrecy requirements, omitted or false statements regarding customers, non-compliance with reporting requirements, non-compliance with the orders issued by the FIA, CDD and abstention, registration and recordkeeping requirements etc.
[67] Such as the violation of the rules for dealing with shell banks, anonymous accounts and bearer securities, and freezing of funds, for which the range of applicable sanctions is between EUR 2000 to 50.000.

performing representative, management and administration functions"[68]. This provision is applicable in relation to offences referred to, *inter alia*, in Articles 199 bis and 337 ter of the Criminal Code.

742. According to Article 2 of the Law No 6 (2010), liability of legal persons shall apply even when the offender has not been identified or cannot be charged. At that, legal persons shall not be held liable if the offence was committed by fraudulently circumventing the measures referred to in the organizational model adopted by the legal person. The sanctions applicable for administrative offences of legal persons arising from crime include: a) pecuniary administrative sanctions (ranging between EUR 3.000 and 500.000); disqualification (for a period from 3 months to 1 year)[69]; and c) revocation of authorizations, licenses or grants concerning the activity and the rights deriving thereof. Also, when the guilt of the legal person is proven, the judge may apply the confiscation referred to in Article 147 of the Criminal Code.

743. Article 72 of the AML/CFT Law provides that, in determining the amount of the pecuniary administrative sanction, "the seriousness of the violation, the behavior subsequent to the violation aimed at aggravating or attenuating the consequences of the violations, the behavior and economic conditions of the perpetrator of the violation shall be taken into account".

Designation of Authority to Impose Sanctions (c. 17.2)

744. The FIA is the designated authority empowered to apply the administrative sanctions defined under the AML/CFT Law, whereas the Law Commissioner of the criminal section of the court is responsible for applying criminal sanctions under this law.

745. Jurisdiction and decisions concerning administrative offences of legal persons [under the Law No 6 (2010)] are assigned to the judge dealing with the crimes from which the administrative offences derive, in compliance with the provisions of criminal procedure, insofar as they are consistent therewith. When there are concrete elements to establish that the legal person is liable under the law, the judicial authority may apply, pending criminal proceedings, the suspension of the license for the activity of the legal person as a precautionary measure.

Ability to Sanction Directors and Senior Management of Financial Institutions (c. 17.3)

746. Article 70 of the AML/CFT Law provides for the joint liability of management or control positions for the violation of the requirements of the Law. Particularly, Paragraph 1 of the law defines that "if the violation is committed by a person subject to another authority, management or control, the person vested with the authority or having the responsibility for the management or control shall be held jointly liable for the payment of the amount owed by the perpetrator of the violation, unless the person proves that he could not have prevented the violation". Paragraph 2 goes on saying that "if the violation is committed by the representative or an employee of a legal person or entity without legal personality, of a sole proprietor or professional in the exercise of his own functions or duties, the legal person, entity, entrepreneur or professional shall be held jointly and severally liable for the payment of the amount owed by the perpetrator of the violation".

[68] As advised by the authorities, the liability introduced by the Law no. 6 (2009) is not a liability in damages for facts committed by others, but it is a specific liability of the legal person, which has not been given an organisational structure suited to prevent the commission of offences on the part of those persons operating on its behalf. In this case, the legal person not only suffers from property consequences, based on the relationship between legal person and offender, but it is also subject to disqualifications, withdrawals of authorizations, etc. Statistical data on judgments related to vicarious liability of supervisory party (such as an employer or a legal person) for actions of an employee, agent, or instrumentality under its control, even though the supervisory party has not directly committed an act of infringement is the following: 2005 – 6; 2006 – 1; 2007 – 3; 2008 – 2 ; 2009 – 4; 2010 – 5.

[69] At that, disqualification of the legal person would entail exclusion from grants, funding, contributions or State benefits; revocation of grants, funding, contributions or State benefits already provided; inability to contract with the Public Administration.

747. According to Paragraph 3 of the same article, "in the cases envisaged in the previous paragraphs, anyone being held jointly and severally liable for the payment shall be bound to claim against the perpetrator of the violation". At that, the joint liability referred to in Paragraphs 1 and 2 shall apply even when the perpetrator of the violation has not been identified (Paragraph 4)[70].

Market entry

Recommendation 23 (rated LC in the 3rd round report)

Recommendation 23 (c. 23.3, c. 23.3.1, c. 23.5, c. 23.7, licensing/registration elements only)

Prevention of Criminals from Controlling Institutions, Fit and Proper Criteria (c. 23.3 & 23.3.1)

748. Market entry rules have improved since the last evaluation. The Law no. 165 (2005), which is the basic legal act regulating involvement in any type of financial activities, defines the authorisation process and sets out the requirements to be met by applicants for conducting financial business defined as "reserved" activities listed in Annex 1 of the Law. "Reserved" activities include banking, granting of loans, fiduciary activity, investment services, collective investment services, insurance, reinsurance, payment services, electronic money issue services, exchange intermediation and the taking of holdings represented by securities in the capital of other undertakings.

749. In the Law no. 165 (2005), provisions on the access to "reserved" activities are set out in Part I, Title II, while the requirements in respect of substantial participations and company members (senior management) are articulated in Part I, Title III and Title IV. Financial promotion and insurance intermediation are regulated under Part I, Title V of the Law.

750. Furthermore, the Delegated Decree no. 49 (2008) amended the Law no. 47 (2006) *(Company Law)* by the definition of "unfit party", thus introducing clean criminal record and other "fit and proper" requirements with regard to company members. Then, the Law no. 98 (2010) on the identification of beneficial ownership structure of companies established that fiduciary companies should provide written communication to the supervisory authorities (CBSM) containing the identification data of the settlors, the shareholdings of each of them as well as, in case they are not natural persons, the identification data of their beneficial owners. In addition, any subsequent change relating to their settlors and/or beneficial owners shall be notified.

751. Certain sector-specific regulations, such as the CBSM Regulation no. 2007-07 *(Regulation on Collection of Savings and Banking Activities)*, the CBSM Regulation no. 2006-03 *(Regulation on Collective Investment Services)* and the CBSM Regulation no. 2008-01 *(Regulations on Life Insurance Operations)* provide further details of market entry and "fit and proper" criteria for the respective "reserved" activities[71]. According to Article 13 of the Law no. 165 (2005), authorisation is granted only when all conditions – including those on substantial participations and company members (senior management) – determined by the law and specified by regulations are satisfied.

Licensing or Registration of Value Transfer/Exchange Services (c. 23.5)

752. Money or value transfer, as well as money or currency changing services are considered as "reserved" activities under the Law No 165 (2005). The authorities advised that the only type of financial institutions entitled to involve in such activities are banks. However, in practice at least

[70] Sanctions available in relation to the management of financial institutions under the Law no. 165 (2005) may also be applied in a broader context of the CBSMs powers to sanction obliged parties for the inadequacy of their organizational and procedural structures.

[71] The authorities advised that the CBSM Regulation no.2011-03 (in force since 1st July 2011) articulated similar market entry and "fit and proper" criteria for fiduciary and investment firms. However, due to its adoption time, the regulation is not taken into account for the purposes of this assessment.

one more type of entities, that is post offices, provide certain money and value transfer services (rendered on behalf of *Poste Italiane S.p.A*). In this regard, the evaluation team was advised, that no licensing/ registration requirements apply to post offices in relation to money and value transfer services provided by them, with the reasoning that San Marino Post is wholly state owned and, as such, licensing requirement are not applicable to it (for further details see the analysis under SR VI).

Licensing of other Financial Institutions (c. 23.7)

753. All persons and entities (other than those specified under Criterion 23.4 and post offices) carrying out "reserved" activities are licensed by the CBSM under the relevant provisions of the Law No 165 (2005).

On-going supervision and monitoring

Recommendation 23 & 32 (c. 23.4, c. 23.6, c. 23.7, supervision/oversight elements only & c. 32.2d)

Application of Prudential Regulations to AML/CFT (c. 23.4); Statistics on On-Site Examinations (c. 32.2(d))

754. Criterion 23.4 requires that for financial institutions subject to the Core Principles – i.e. banks, insurance undertakings and collective investment schemes and intermediaries – the regulatory and supervisory measures applied for prudential purposes and also relevant to ML/TF, should apply in a similar manner for anti-money laundering and terrorist financing purposes. With regard to this, the Law No 165 (2005) covers all requirements related to: a) licensing and structure – Part I, Titles II, III and IV, b) risk management processes – Part II, Title I, c) ongoing supervision – Part II, Title I; and d) consolidated supervision – Part II, Title I. Such requirements apply to all persons and entities involved in "reserved" activities as defined under the law, and are further specified in relevant implementing regulations.

755. Adequacy of the regulatory and supervisory measures is also assessed in consideration of the supervisory approach and techniques (including planning procedures and methodologies for both off-site surveillance and on-site inspections) as defined by the Core Principles and relevant guidance on the risk based approach, and contrasted to the factual performance in terms of the off-site surveillance measures, coverage and frequency of on-site inspections, identified irregularities, and imposed sanctions.

Supervisory Approach and Techniques

756. An effective supervisory system requires that supervisors develop and maintain a thorough understanding of the operations of financial institutions. It consists of off-site surveillance and on-site inspections, for which the strategy and procedures applied by the supervisors are considered[72].

757. At that, the methodology adopted by supervisors to determine allocation of resources should cover the business focus, the risk profile and the internal control environment of supervised entities. It will need updating on an ongoing basis so as to reflect the nature, importance and scope of the risks to which individual financial institutions are exposed. Consequently, this prioritization would lead supervisors to demonstrate increased attention to financial institutions that engage in activities assessed to be of higher ML/FT risk[73].

[72] See: BCBS, "Core Principles for Banking Supervision" (October 2006)
[73] See: FATF, "Guidance on the Risk-Based Approach to Combating Money Laundering and Terrorist Financing" (June 2007)

758. From among the basic principles for implementing the risk-based approach in AML/CFT supervision, the authorities of San Marino have not conducted a national risk assessment so as to understand and appropriately respond to the threats and vulnerabilities in the system. This means that key risk factors influencing the risk of ML/FT in the country, such as the size, composition and geographical spread of the financial services industry, corporate governance arrangements in financial institutions and the wider economy, types of products and services offered by financial institutions etc have not been comprehensively assessed and contrasted against critical indicators of ML/FT risks such as the types of predicate offences, amounts of illicit money generated/ laundered domestically, sectors of the legal economy affected etc.

759. Coming to other important principles for implementing the risk-based approach in AML/CFT supervision, such as the design of the supervisory framework supportive for the application of the risk-based approach, the FIA Inspections manual basically articulates business processes for the planning and implementation of on-site inspections; hence, the programmatic approach (in terms of planning and implementation) to off-site surveillance activities of the FIA is missing.. Nonetheless, representatives of the FIA advised about having taken certain off-site surveillance measures over 2009-2010, such as the survey on the compliance of financial institutions to applicable laws/ regulations (as of July, 2009), the survey on business relationships with and occasional transactions by customers of certain countries (as of April 2010), the questionnaire on activities of the Boards of Auditors of financial institutions (as of May 2010), the survey on the use of bearer passbooks (as of July 2010) etc.

760. Overall, the above-stated surveys and questionnaires were reported not to discover any significant irregularities in or concerns with respect to respondent financial institutions and, without access to the input data and the results of analysis of those off-site surveillance measures, the assessment team could not arrive at a well-grounded conclusion on the effectiveness of those measures.

761. As far as the planning and implementation of on-site inspection activities is concerned, according to the FIA Inspections Manual at the beginning of each year the FIA Direction will convene a meeting with all staff involved in on-site inspection and financial analysis, and in drafting the plan they would consider the following key aspects:

- The need for on-site inspections at all types of designated persons, taking into account their size (small, medium, large), age (compared to the market presence), the risk and concerns that different services of the Agency might have identified based on their direct experience of individual financial institutions (STR reporting, requests from foreign FIUs etc.), presence of publicly available information (press, official reports, letters rogatory), corporate behavior etc;
- Timing of maximum access required for the inspections;
- Activities already underway and planned;
- Resources available.

762. Hence, the planning of on-site inspections seems to fall short of taking into account certain elements of risk profiling, such as the assessment of internal control environment of supervised entities. The assessment team was not provided information on whether risk profiling procedures are regularly updated so as to reflect the nature, importance and scope of the risks to which individual financial institutions are exposed, and to prioritize allocation of supervisory resources in order to demonstrate increased attention to financial institutions that engage in activities assessed to be of higher ML/FT risk.

Factual Performance

763. According to the FIA Inspections Manual, the annual plan of inspections must be approved by the management and communicated to the inspectors. It must necessarily be respected and can be varied by the Directorate, when unexpected factors make it impractical. The assessment team was provided annual inspection plans for 2009 and 2010, which were contrasted against the factual performance as per the relevant statistics submitted by the authorities, as follows:

Table 25: Statistics on inspections

	Total number of obliged parties	Number of planned general inspections	Number of carried out general inspections	Number of carried out specific inspections	Ratio, percent [2/1]	Ratio, percent [3/2]
	1	*2*	*3*	*4*	*5*	*6*
2009						
Banks	12	1	1	12	8%	100%
Financial/ fiduciary companies	49	6	6	0	12%	100%
Management and insurance companies	4	0	0	0	0%	0%
Insurance and other intermediaries	63	0	0	0	0%	0%
2010*						
Banks	12	3	1	12	25%	33%
Financial/ fiduciary companies	45	4	3	7	9%	75%
Management and insurance companies	4	0	1	0	0%	0%
Insurance and other intermediaries	64	0	0	0	0%	0%

* As of November 1, 2010

764. Without access to the names of financial institutions planned for inspection and those factually inspected[74], as well as lacking data on how exactly (on basis of which specific criteria/ risk factors) the selection of the financial institutions to be inspected took place, the assessment team could not arrive at a well-grounded conclusion that the planning procedure was a risk-based one entailing analysis and consideration of all risk factors pertinent to individual financial institutions. Moreover, the team was not provided data on the principles and practice for planning and carrying out specific inspections, which were reported to cover certain issues such as[75] verification of compliance with the requirements on bearer instruments, wire transfers, "critical" transactions and had resulted in a few irregularities identified and sanctions applied (see the tables below).

765. The coverage of financial institutions planned for general inspection varies between 8-25 percent for banks (inspection cycle of 4-12 years), 9-12 percent for financial and fiduciary companies (inspection cycle of 8-11 years), and is zero for management and insurance companies, as well as for insurance and other intermediaries (no inspection cycle). Moreover, the ratio of planned and implemented inspections for banks varies between 33-100 percent, for financial and

[74] Realistically, the case could be that the inspected financial institutions were not those planned for inspection, and that some financial institutions were inspected more than one time during a year.

[75] The authorities also refer to a separate type of on-site inspections – "accesses at financial institutions to obtain data and documents to perform financial analysis" – which are not taken as inspections for the purposes of this analysis.

fiduciary companies between 75-100 percent, and is zero for management and insurance companies, as well as for insurance and other intermediaries. Given this, certain concerns arise as to the reasons for not respecting the inspection plans and to the factors which made those plans impractical.

766. Based on the above-stated, the assessment team is of the opinion that on-site inspection practices of the FIA do not demonstrate consistency as far as the planning is concerned, and sufficient coverage as far as the factual performance is concerned.

767. As to the outcomes of on-site inspections, the assessment team was provided statistics on the findings of on-site inspections and the respective sanctions imposed on obliged entities, as follows:

Table 26: Summary of findings of on-site inspections and sanctions (as of November 1, 2010)

Main violations and /or deficiencies ascertained	Number of general inspections having identified violations		Administrative sanctions (EUR)		No. of specific inspections having identified violations		Administrative sanctions (EUR)		Total	
	2009	2010	2009	2010	2009	2010	2009	2010*	2009	2010
Law no. 92/2008 (AML/CFT Law)	**8**	**3**	**62,090**	**110,200**	**-**	**2**	**-**	**23,000**	**62,090**	**133,200**
Obligation of Customer Due Diligence	*7*	*3*	*40,340*	*66,000*	*-*	*1*	*-*	*3,000*	*40,340*	*69,000*
Registration and Reporting Obligations	*8*	*2*	*19,860*	*7,000*	*-*	*-*	*-*	*-*	*19,860*	*7,000*
Additional Measures	*1*	*3*	*1,890*	*37,200*	*-*	*1*	*-*	*20,000*	*1,890*	*57,200*
Instruction no. 01/2008	**-**	**2**	**-**	**21,000**	**-**	**-**	**-**	**-**	**-**	**21,000**
Instruction no. 03/2008	**6**	**4**	**4,650**	**24,000**	**-**	**1**	**-**	**6,000**	**4,650**	**30,000**
Instruction no. 04/2008	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**
Instruction no. 05/2008	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**
Instruction no. 02/2009	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**
Instruction no. 03/2009	**1**	**3**	**750**	**10,000**	**-**	**1**	**-**	**1,000**	**750**	**11,000**
Instruction no. 04/2009	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**
Instruction no. 05/2009	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**
Instruction no. 06/2009	**-**	**1**	**-**	**400**	**-**	**-**	**-**	**-**	**-**	**400**
Instruction no. 07/2009	**-**	**-**	**-**	**-**	**-**	**1**	**-**	**1,000**	**-**	**1,000**
Instruction no. 08/2009	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**
Instruction no. 09/2009	**1**	**1**	**500**	**600**	**-**	**-**	**-**	**-**	**500**	**600**
Instruction no. 10/2009	**-**	**1**	**-**	**4,000**	**-**	**-**	**-**	**-**	**-**	**4,000**
Instruction no. 11/2009	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**
Total	**8**	**7**	**67,990**	**170,200**	**-**	**3**	**-**	**31,000**	**67,990**	**201,200**

768. As one can see in the table above, the inspections never discovered violations of the requirements of, *inter alia*, the FIA Instructions No 2008-04 (on specific measures for electronic transfer of funds), 2008-05 (on operating rules and specific measures of AML/CFT), 2009-05 (on ways for the fulfillment of CDD requirements), 2009-08 (on enhanced due diligence procedures for customers resident or located in countries, jurisdictions or territories subject to strict monitoring), 2009-11 (on irregular cheques reporting) etc.

769. Based on the practical inapplicability of the presumption that over 125 financial institutions operating in the country have never violated the requirements of such key AML/CFT regulations, and

taking into consideration the obviously low level of sanctions applied for whatever irregularities as compared with the range of applicable monetary sanctions provided under the law and with the unknown number of identified irregularities, the assessment team could not arrive at a well-grounded conclusion that on-site inspections by the FIA are efficient enough to ensure compliance of obliged parties with the AML/CFT Law and relevant regulations.

770. Overall, based on the above articulated analysis of the supervisory approach, techniques and factual performance, the assessment team believes that supervisory activities of the FIA do not provide for fully ascertaining appropriate efficiency of implementation of applicable AML/CFT requirements by obliged parties.

Monitoring and Supervision of Value Transfer/Exchange Services (c. 23.6)

771. According to Article 18 of the AML/CFT Law, post offices are defined as financial parties in respect of their activities related to money or value transfer services. The assessment team was advised that the FIA carried out one on-site inspection at post offices in 2010, which did not result in any irregularity identified and sanction applied. Moreover, the team was not provided information on other (also off-site) supervisory measures applied to this type of obliged parties to ensure their compliance with the national AML/CFT requirements (for further details see the analysis under SR VI).

Supervision of other Financial Institutions (c. 23.7)

772. All persons and entities (other than those specified under Criterion 23.4) carrying out "reserved" activities are supervised by the FIA for AML/CFT purposes under the relevant provisions of the AML/CFT Law[76].

Statistics on On-Site Examinations (c. 32.2(d), all supervisors)

773. See above.

Statistics on Formal Requests for Assistance (c. 32.2(d), all supervisors)

774. There are no statistics on formal requests for assistance made or received by FIA in its capacity as supervisory authority. For further information, see Section 6 of this report.

Effectiveness and efficiency (market entry [c. 23.3, c. 23.3.1, c. 23.5, c. 23.7]; on-going supervision and monitoring [c. 23.4, c. 23.6, c. 23.7], c. 32.2d], sanctions [c. 17.1-17.3])

775. Market entry rules, including those on "fit and proper" criteria for the management of financial institutions subject to the Core Principles have improved since the last evaluation and seem to be applied in a consistent manner.

776. In the assessors opinion, that fact that the authorities of San Marino have not conducted a national risk assessment so as to understand and appropriately respond to the threats and vulnerabilities in the system, significantly impairs the overall efficiency of on-going supervision insofar as it fails to duly take into account the influence of certain key risk factors on the level of ML/FT risk in the country and allocate resources appropriately.

777. Albeit the properly established legislative and regulatory framework for the on-going supervision and monitoring of obliged parties, the implementing measures such as the FIA Inspections Manual need to be improved to incorporate all key elements of risk profiling and to provide for its updating on regular basis, thus enabling proper prioritization of supervisory resources. Similar measures should be introduced for off-site surveillance activities, as well.

[76] As well as, in more general terms, by the CBSM under the relevant provisions of the Law No 165 (2005)

778. Supervisory practices of the FIA also need to be improved both in terms of introducing programmatic approach in off-site surveillance, consistency in the planning and sufficiency in the coverage of on-site inspections. The small number of identified irregularities and the low level of applied sanctions are also indicative of the need for enhanced supervisory practices of the FIA.

779. The assessors concluded that supervisory activities of the FIA do not provide for fully ascertaining appropriate implementation of applicable AML/CFT requirements by obliged parties. Obviously, one of the reasons for this is the lack of resources at the FIA. Thus, the Agency employs a staff of 3 inspectors responsible for all supervisory activities – both off-site and on-site – carried out by the FIA. Taking into account the number of supervised financial institutions (around 125), it is less than probable that they will be able to carry out their duties in relation to off-site surveillance, general and specific inspections, and accesses at financial institutions for obtaining data and documents, as well as other related work in a comprehensive and appropriate manner.

780. A solution to the mentioned problem would be relying on other involved stakeholders, and particularly on the Supervision Department of the CBSM, for doing a part of the job and providing ready-to-use input for further supervisory action. Currently, the notifications received from the CBSM on irregularities identified in the course of their on-site inspections at financial institutions are taken as a "signal" on the possible existence of an irregularity/ violation of the applicable AML/CFT framework, usually considered for the planning of the FIA subsequent actions (e.g., inquiries to the obliged entity, on-site inspections etc.) and in any case needing further verification before further supervisory action might be taken.

781. This means that the FIA misses a fairly good chance to use the highly professional and comparatively well-staffed personnel of the CBSM as "manpower" to properly perform its supervisory function. In that regard, the relations between the FIA and the CBSM currently regulated under the amended Article 13, Paragraph 3 of the AML/CFT Law stating that "the Agency shall also cooperate with the Central Bank, also by exchanging information, on the basis of ad-hoc memoranda of understanding" would need to be further implemented to provide for material collaboration in supervising compliance of financial institutions with applicable AML/CFT legislation, and particularly for an extensive use of notifications from the CBSM as a full-capacity input to entail further supervisory action.

782. The Criminal Code, the AML/CFT Law, as well as the recently introduced Law No 6 (2010) on administrative liability of legal persons in combination provide a wide range of sanctions applicable to those having violated the national AML/CFT requirements. Whereas the range of applicable sanctions is broad enough to be dissuasive if, as stipulated by the law, applied proportionately to the severity of the violation, the available statistics on the sanctions randomly applied in the period following the adoption of relevant laws do not demonstrate a consistent and system-wide application of punitive measures aimed at effective realization of the sanctioning regime.

783. Moreover, meetings with obliged parties revealed a general concern of the industry about the excessive severity of the sanctions, which, if not applied proportionately, would create unnecessary tension and add to the "defensive" pattern of behavior of supervised entities. This, in turn, challenges the FIA management to have clear-cut internal rules and practices ensuring an even and balanced approach towards all types of obliged parties when determining the amounts of to-be-applied sanctions.

Guidelines

Recommendation 25 (c. 25.1 – guidance for financial institutions other than feedback on STR-s)

784. The situation related to the provision of guidance to assist the financial institutions in the implementation of and compliance with their respective AML/CFT obligations has significantly improved since the last assessment. Instead of a few circulars and standard letters issued as of that time, the available guidance now comprises more than twenty topical instructions issued by the FIA as enforceable regulations implementing various provisions of the law.

785. The FIA also assists the financial institutions through interactive communication, answering to specific questions and requests of interpretations raised by these entities. Some of the responses are also available on the FIA website (under the section *Frequently Asked Questions*). The website also contains useful links to relevant international papers (such as UN and CE Conventions) and organizations (such as FATF, MONEYVAL, the Egmont Group, UNODC etc).

786. The FIA's regularly published annual reports contain sanitized cases and some typologies of transactions (including attempted ones) also aimed at assisting financial institutions in implementing their respective AML/CFT obligations.

Effectiveness and efficiency (R. 25)

787. While acknowledging that the FIA has made significant efforts to elaborate and guidance to financial institutions, general comment from all representatives of the financial sector met during the on-site visit was the need for additional guidance on the application and interpretation of the more clear terms of reference (case-specific interpretations) to implement the laws and regulations.

3.10.2 Recommandations and comments

788. It is recommended to:

Recommendation 23

789. Conduct a national risk assessment so as to understand and appropriately respond to the threats and vulnerabilities in the system.

790. Improve implementing measures (such as the FIA Inspections Manual) to incorporate all key elements of risk profiling and to provide for its updating on regular basis; introduce similar measures for off-site surveillance activities.

791. Improve supervisory practices both in terms of introducing programmatic approach in off-site surveillance, consistency in the planning and sufficiency in the coverage of on-site inspections.

792. Consider relying on other involved stakeholders, such as the Supervision Department of the CBSM, to provide ready-to-use input for further supervisory action.

Recommendation 17

793. Develop internal rules and practices for the FIA ensuring an even and balanced approach towards all types of obliged parties when determining the amounts of to-be-applied sanctions.

794. Provide for consistent and system-wide application of punitive measures aimed at effective realization of the sanctioning regime.

Recommendation 25(c. 25.1 [Financial institutions])

795. Focus guidance efforts on providing clear terms of reference (case-specific interpretations) to implement the laws and regulations and consider consolidating, when appropriate, the numerous instructions issued to all obliged entities.

Recommendation 29

796. This Recommendation is fully observed.

Recommendation 30 (all supervisory authorities)

797. Take appropriate measures aimed at enhancing the capacities of the FIA in its supervisory function (including that through recruiting additional staff) so as to ensure that it is able to adequately fulfil this function.

Recommendation 32

[no recommendation]

3.10.3 Compliance with Recommendations 23, 29 , 17 & 25

	Rating	Summary of factors relevant to s.3.10. underlying overall rating
R.17	**LC**	• Lack of consistent and system-wide application of punitive measures raises effectiveness concerns.
R.23	**PC**	• In the absence of a risk assessment, the implementation of an adequate risk based supervision is not demonstrated • Implementing measures (e.g. the FIA Inspections Manual) do not incorporate all key elements of risk profiling and do not cover off-site surveillance • Lack of programmatic approach in off-site surveillance, consistency in the planning and sufficiency in the coverage of on-site inspections • Supervisory arrangements and performance fail to provide for efficient implementation of the supervision function
R.25	**LC**	• Reported need of clear terms of reference (case-specific interpretations) to implement the laws and regulations.
R.29	**C**	This Recommendation is fully observed.

3.11 Money or value transfer services (SR. VI)

3.11.1 Description and analysis

Special Recommendation VI (rated NC in the 3rd round report)

Designation of registration or licensing authority (c. VI.1), adequacy of resources – MVT registration, licensing and supervisory authority (R. 30)

798. In the 3rd round report San Marino has received a NC rating with regard to SR.VI due to the lack of implementing measures on provision of MVT services by San Marino post offices. Furthermore evaluators emphasised that there was no provision for the application of administrative, civil or criminal sanctions.

799. As laid out in the 3rd round report MVT services are performed only by San Marino Post Offices, which are entirely state-owned and form part of the Public Administration. They provide a limited range of services on behalf of Poste Italiane S.p.A. (the privatised Italian postal administration). According to the authorities this relation can be considered as an "agency contract" or similar to a branch office. 6 out of the 10 post offices operating in San Marino are technologically equipped (PGOs) to offer MVT services. In offering these services, they act exactly like branches of the Poste Italiane S.p.A. The range of MVT services that may be offered in San Marino is however much more limited and includes:

- ordinary money orders (vaglia) for a maximum of € 2,500;
- international money orders (vaglia) only to/from Italy for a maximum of € 2,500;[77]
- urgent money orders for a maximum of € 2,500;
- regular payments (e.g. pensions);
- deposits (but not withdrawals) for a maximum of € 2,500 on postal current accounts held at Poste Italiane.

800. It should be noted that money or value transfer services are considered as "reserved" activities under the Law No 165 (2005). In that regard, such services provided by San Marino Post Office (on behalf of *Poste Italiane S.p.A*) should be subject to licensing as a clearly distinguishable type of "reserved" activity. However, the authorities advised that no licensing/ registration requirements apply to post offices in relation to the said services with the reasoning that San Marino Post Office is wholly state owned and, as such, licensing requirement are not applicable to it.

801. As such, the authorized body for licensing/ registration of financial institutions, i.e. the CBSM does not maintain a current list of (the only) MVT service operator and is not responsible for ensuring compliance with licensing and/or registration requirements.

Application of the FATF 40+9 Recommendations (applying in particular R. 4 – 11, 13 – 15 & 21 – 23 and SR VII (c. VI.2))

802. Post offices are subject to the AML/CFT Law, whenever they establish business relationships or carry out occasional transactions that require the fulfilment of the obligations prescribed by the AML/CFT Law (Art. 18 (1) (c) AML/CFT Law). More precisely Post offices shall apply CDD measures when they establish business relationships or carry out occasional transactions and when they act as intermediaries or in any event, they are party to the transfer of

[77] Poste Italiane representatives reported that international money orders between San Marino and countries other than Italy for a maximum of € 2'500 have been prohibited by Poste Italiane in June 2009 and have not yet been reactivated.

cash or bearer securities, in Euros or foreign currency, carried out on whatever basis, between different for a total amount exceeding 15,000 EUR (Art. 21 (1) and (2) AML/CFT Law).

803. Accordingly Post Offices are subject to the applicable FATF Forty Recommendations (in particular R.4-11, 13-15 & 21-23) and FATF Nine Special Recommendations (in particular SR.VII) as described in this report under the respective Recommendations.

804. However, it should be noted that many of the FIA instructions, which are legally binding , do not apply to post offices, since they either a) are addressed to specific obliged persons (such as the FIA Instruction no. 2009-10 addressed to banks, management companies and insurance undertakings), or b) do not recognize post offices as subjects of their regulation (such as the FIA Instruction no. 2008-04, insofar as San Marino Post Offices are not considered as "financial operators authorised to perform the reserved activity identified in subparagraph I) of Attachment 1 to Law no. 165 of 17 November 2005" referred to in the Instruction).

Monitoring MVT services operators (c. VI.3)

805. According to Art. 4 (1) (e) the FIA is assigned with the obligations under the AML/CFT Law and the instructions issued by the FIA. As Post Offices are subject to the AML/CFT Law the FIA is responsible for the monitoring of their operations. The powers of FIA to fulfil this function are mentioned in Art. 5 AML/CFT Law and include in particular the power to carry out on-site inspection at Post Offices premises.

Lists of agents (c. VI.4)

806. The 6 San Marino post offices are the only MTV service operators in San Marino and are branches of the San Marino Post Offices entity. The legal framework does not provide for the application of agents.

Sanctions (applying c.17 – 1 – 17.4 & R. 17 (c. VI.5))

807. Both criminal and civil sanctions are foreseen under Art. 53 seq. AML/CFT Law in case of non compliance with the relevant provisions.

Additional elements – applying Best Practices paper for SR. VI (c. VI.6)

808. The measures set out in the Best Practices Paper for SR. VI have not been implemented.

Effectiveness and efficiency

809. The representatives met demonstrated good understanding and awareness for their responsibilities under the AML/CFT Law. According to the representatives met policies and procedures are in place and have been adapted to the new AML/CFT Law. However, the fact that a formal compliance officer has been appointed only few months before the onsite visit raised concerns.

810. San Marino post offices are subject to two AML/CFT frameworks, on the one hand to domestic regulation and on the other hand to Italian regulation, which appears to strengthen the effective implementation. Poste Italiane S.p.A. has carried out inspections in 2008 and 2010, which included an analysis of the implementation of AML/CFT requirements. According to the representatives interviewed no major deficiencies could be identified. Poste Italiane S.p.A. also provided training on AML/CFT measures.

811. Evaluators have certain concerns about the lack of licensing/ registration requirements of post offices in relation to the money and value transfer services provided by them, which appear to be out of the regulatory framework of Sammarinese authorities.

812. Moreover, as advised by the authorities, only one inspection has been recently carried out by the FIA in post offices, having resulted in no identified irregularities and, consequently, no imposed sanctions.

3.11.2 Recommendations and comments

813. The authorities should establish licensing/ registration requirements for post offices in relation to money and value transfer services provided by them.

814. FIA should issue implementing regulations for Post offices.

815. Measures should be taken to strengthen the effective and efficient implementation of the obligations under the AML/CFT Law by post offices.

3.11.3 Compliance with Special Recommendations VI

	Rating	Summary of factors relevant
SR. VI	**PC**	• No licensing/ registration requirements for post offices in relation to money and value transfer services provided by them. • Lack of implementing regulations (the FIA Instructions) for Post offices. • Effectiveness concerns (also in relation to only recent appointment of a formal compliance officer)

4 PREVENTIVE MEASURES – DESIGNATED NON FINANCIAL BUSINESSES AND PROFESSIONS

Generally

816. Except for casinos, all FATF designated non-financial businesses and professions (DNFBPs) currently exist in San Marino. All FATF DNFBPs are subject to the provisions of the new AML/CFT Law. Furthermore, the obligations have been extended to several other business and professionals likely to be used for money laundering or terrorist financing purposes.

817. According to 19 (1) AML/CFT Law the "Non-financial parties" professionally carrying out the following activities are covered by the requirements under the AML/CFT Law:

a) professional office of the trustee in conformity with the trust legislation;

b) assistance and advice concerning investment services;

c) assistance and advice on administrative, tax, financial and commercial matters;

d) credit mediation services;

e) real estate mediation services;

f) running of gambling houses and games of chance;

g) offer of games, betting or contests with prizes in money through the Internet and other electronic and telecommunication networks;

h) custody and transport of cash, securities or values;

i) management of auction houses or art galleries;

j) trade in antiques;

k) purchase of unrefined gold;

l) manufacturing, mediation and trade in precious stones and metals, including export and import thereof;

m) selling and rental of registered movable goods.

818. FIA may with its own instructions establish what kind of transactions, services or relationships are included among the above-mentioned activities or may be excluded from such activities on the basis of the degree of risk of money laundering or terrorist financing (Art. 19 (3) AML/CFT Law).

819. Furthermore the following "Professionals" are subject to the AML/CFT Law (Art. 20 AML/CFT Law):

a) accountants;

b) external auditors and auditing companies, and actuaries;

c) lawyers and notaries

820. In addition to the AML/CFT Law the following guidance has been issued for DNFBPs so far:

a) *FIA Instruction no. 2009-09*: Obligations of customer due diligence, data registration and suspicious transaction reporting to be fulfilled by "non-financial parties" referred to in Art. 19 AML/CFT Law

b) *FIA Instruction no. 2009-06*: Requirements of customer due diligence, record keeping and suspicious transaction reporting for the professional practitioners referred to in Art. 20 AML/CFT Law.

4.1 Customer due diligence and record-keeping (R.12)
(Applying R.5 to R.10)

4.1.1 Description and analysis

Recommendation 12 (rated NC in the 3rd round report)

821. As described in the 3rd round evaluation report San Marino had received a Non Compliant rating for Recommendation 12. Evaluators have emphasized that the implementing regulations for DNFBPs have not been adopted, thus the requirements of R. 12 are not being applied to DNFBPs at that time. Furthermore evaluators referred to the same deficiencies regarding CDD requirements as identified for financial institutions in the 3rd round report.

822. As mentioned above, the new AML/CFT Law applies to all DNFBPs mentioned in the FATF glossary. Therefore the provisions described under R. 5 to R. 10 apply as well to DNFBPs. Deficiencies identified under those Recommendations for financial institutions are also applicable to DNFBPs. The following sections therefore only highlight sector-specific differences.

Applying Recommendation 5(c. 12.1)

Casinos (Internet casinos / Land based casinos)

823. The operation of casinos is prohibited according to Art. 1 (5) Law No. 67 of 25 July 2000 and the authorities reported that no such entities (including internet casinos) operate in the Republic of San Marino. The only games allowed in San Marino are covered by the Law No. 67 of 25 July and include games of chance, prize contests, lotteries, lotto, games of chance and ability and betting. The operation of internet casinos is also prohibited.

824. Gambling houses (such as bingo) and games of chance as well as persons offering games, betting or contests with prizes in money through the Internet and other electronic and telecommunication networks have to comply with the requirements under the AML/CFT Law (Art. 19 (1) (f) and (g) AML/CFT Law). At the moment one Bingo entity is licensed in San Marino, no other gambling houses or games of chance exist according to the authorities.

825. According Art. 23 (5) AML/CFT Law gambling houses and games of chance are required to identify and verify the identity of the customer immediately on entry (into the gambling houses), regardless of the amount of gambling chips purchased, sold or exchanged. They shall also register, according to the provisions of Art. 34 AML/CFT Law, the transactions of purchase or exchange of gambling chips or other means of gambling with a value of EUR 2,000 or more. Winnings above EUR 2´000 are paid out in non-transferrable checks (Art. 4 Bingo regulation and Art. 3 Keno regulation).

826. FIA has carried on site inspection at the (currently sole) Gambling House (Bingo) where a special computer program for record keeping is used. The following information is recorded and stored: name, date of birth, place and country of residence, address or the type and number of identity document, date and time entry and photograph of the player. The San Marino Gambling House (Bingo) is not permitted to open accounts, to execute wire transfers nor to exchange

currency. Such financial activities may be carried out exclusively by subjects authorised by the CBSM.

Real estate agents

827. Real estate agents fall within the scope of the AML/CFT Law according to Art. 19 (1) (e) AML/CFT Law. Therefore the CDD requirements as described under R.5 apply, which set up a comprehensive framework. However, the further guidance (e.g. FIA Instruction no. 2009-09 for "non-financial parties") should be tailored better to sector-specific needs by clarifying how CDD requirements shall be applied by real estate agents in their day to day business.

828. FIA Instruction 2009-09 contains however useful directives regarding ongoing control. Accordingly the ongoing monitoring has to be performed even when implementing simplified CDD, in order to assess any possible changes in the risk profile associated with the customers. Furthermore a number of basic suggestions for the performance of ongoing monitoring are provided as an example. Accordingly it is suggested to periodically request in writing the confirmation or any changes in the data, establish automatic mechanisms of the update of data (e.g. expiry of identification documents), to arrange meetings with the customer when critical situations arise, etc.)

829. According to Art. 18 of FIA Instruction no. 2009-09, real estate agents have to update the data, information and documents acquired from the customer at least every 12 months.

Dealers in precious metals and dealers in precious stones

830. According to Art. 19 (1) (k) and (l) AML/CFT Law the manufacturing, mediation and trade in precious stones and metals, including export and import thereof as well as the purchase of unrefined gold on a professional basis are subject to the requirements under the AML/CFT Law. Therefore the CDD requirements as described under R.5 apply, which set up a comprehensive framework.

831. Furthermore it has to be borne in mind that according to Art. 31 (1) AML/CFT Law the transfer between different parties of cash is exclusively permitted to parties authorized to conduct banking, fiduciary or payment services, when the value of the transaction (or actually linked transactions) is more than EUR 15,000. Therefore dealers in precious metals and precious stones are not allowed to accept cash above EUR 15,000.

832. However, the further guidance (e.g. FIA Instruction no. 2009-09 for "non-financial parties") should be tailored better to sector-specific needs by clarifying how CDD requirements shall be applied by dealers in precious metals and precious stones in their day to day business.

833. It also has to be noted that the FIA Instruction specifies the obligation in Art. 95 (4) AML/CFT Law regarding the performance of CDD on customer relationships established prior to the entry of the new AML/CFT Law. According to the FIA Instruction these requirements must be fulfilled at the earliest available opportunity, but in any event within 12 months at the latest from the entry into force of AML/CFT Law. In addition the data, information and documents acquired from the customer have to be updated at least every 12 months.

Lawyers, notaries and other independent legal professionals and accountants

834. Pursuant to Art. 17 (1) (c) "Professionals" are obliged parties and therefore subject to CDD requirements. Pursuant to Art. 20 AML/CFT Law "Professionals" are defined as follows:

a) those enrolled in the Register of Accountants (holding a university degree or holding a high school certificate) of the Republic of San Marino;
b) those enrolled in the Register of External Auditors and Auditing companies and of the Register of Actuaries of the Republic of San Marino;
c) those enrolled in the Register of Lawyers and Notaries of the Republic of San Marino, when they carry out, on behalf of or for their client, any financial or real estate transaction, or when they assist in the planning or carrying out of transactions for their client concerning the:
   1. transfer at any title of rights in rem in relation to real estate or companies;
   2. managing of client money, securities or other assets;
   3. opening or management of bank, savings and securities accounts;
   4. creation, operation or management of companies, trusts or similar arrangements, with or without legal personality;
   5. organisation of contributions necessary for the creation, operation or management of companies;
   transfer at any title of shares in a company

835. This provision could be interpreted to imply that the CDD requirements are applicable to accountants, external auditors and auditing companies only when they provide accounting or auditing services, but not when they assist a customer in the planning or execution of the above mentioned transactions as required by the FATF Recommendation.[78]

836. According to the authorities the common understanding of Art. 20 AML/CFT Law is that all professional activities provided by accountants, external auditors and auditing companies (including those explicitly mentioned with respect to lawyers and notaries) are subject to CDD requirements and that the AML/CFT Law therefore goes beyond the FATF requirements. From the evaluators perspective, this interpretation is supported by the fact that FIA Instruction no. 2009-06 regarding CDD, record keeping and STR for professional practitioners, in its article 5 clearly sets out that the professional services subject to the requirements of the AML/CFT Law are listed in Annex A of the Instruction. This list is only an example and is not intended to be exhaustive. The list includes largely all activities mentioned in the above mentioned Art. 20 (c) AML/CFT Law (which applies to lawyers and notaries) and also further services.

837. The FIA Instruction No. 2009-06 obliges Professional Practitioners to apply CDD requirements to customer relationships established prior to the entry of the AML/CFT Law at the earliest available opportunity, but in any event within 12 months at the latest from the entry into force of AML/CFT Law. In addition the data, information and documents acquired from the customer has to be updated at least every 12 months.

Trust and company service providers

838. Trust and company services, such as the holding of title to the assets of third parties are provided by fiduciary companies, which are mentioned in the financial institutions section.

839. Relevant services are also provided by professional trustees. These are natural or non-natural persons authorized to the professional exercise of the office of trustee according to the Delegated Decree no. 49 of 16 March 2010 (hereafter: "professional trustees"). According to 19 (1) (a) AML/CFT Law these persons are subject to the obligations under the AML/CFT Law. The

[78] Art. 20 AML/CFT Law appears to be modelled on Art. 2 (1) (3) (a) of the 3rd EU AML/CFT Directive.

holding of the trustee office in a plurality of trusts is regarded as a "professional exercise", while the holding of a single trustee office is considered as "non-professional exercise" [79]. At the end of 2010 there were 5 professional trustees, 1 foreign professional trustee and 12 non-professional trustees.

840. Only the professional exercise of trustee office is subject to all the obligations under the AML/CFT Law (Art. 2 (1) Delegated Decree No. 49/2010). Non-professional trustees (i.e. trustee of a one single trust) are however required to keep any document relating to the trust of which they hold the office and to report suspicious transactions under Art. 36 AML/CFT Law (Art. 4 (2) and (3) Delegated Decree No. 49/2010). [80]

841. According to the authorities the distinction between professional and non-professional trustees (i.e. trustee of one single trust) shall allow for the handling of individual family assets without being subject to the full range of AML requirements but to record keeping and STR requirements.

842. According to the Glossary of the FATF Methodology the term Trust and Company Service Providers refers to all persons or businesses that are not covered elsewhere under these Recommendations, and which as a business, provide any of the services listed in criterion 12.1 (d). However, a further specification of the term "as a business" is not provided.

843. Evaluators consider the fact that non-professional trustees are only allowed to administer one single trust to be a strong indication that this activity is not provided as a business. In addition Sammarinese authorities state that 11 out of the 12 trusts administered by non-professional trustees at the end of 2010 are established within a family context (e.g. inheritance planning, execution of wills, protection of incapable persons, etc). This family context contrasts a customer relationship as a typical element for a business and therefore provides another important indication for a non-business character. Furthermore, the level of remuneration received by non-professional trustees also appears to indicate that the services are not provided as a business and therefore not subject to the extensive requirements under Recommendation 12.

844. However, it should be clearly stipulated in the law or regulation that the office of non-professional trustee may not be carried out as a business .

845. The Trust Act also allows for non-resident trustees but they are required co-operate with a so called "resident agent (a professional registered in the Roll of Lawyers and Notaries Public or Certified Accountants of the Republic of San Marino), who is entrusted by law with the responsibility for carrying out various responsibilities relating to the trusts (in particular notification requirements). Both are subject to the AML/CFT Law, the non-resident trustee based on Art. 19 (1) AML/CFT Law[81] and the resident agent due to this capacity as a lawyer, notary or accountant, who are covered by Art. 20 AML/CFT Law.

846. Accordingly they have to - inter alia - identify the beneficial owner of the trust and adopt adequate and risk-based measures to verify his/her identity (Art. 22 (1) (b) AML/CFT Law. Pursuant to Art. 1 (1) (r) (II) (2) and (3) AML/CFT Law the beneficial owner of a trust is natural person(s):

[79] The office of non-professional trustee may only be held in one single trust subject to San Marino Law by a natural or legal person according to Art. 18 (1) Trust Act.

[80] In addition, like professional trustees they have to comply with the obligations of the Trust Act Law (e.g. Art 26 (Accounting and inventory), 27 (Communications) and 28 (Book of events) and are subject to the respective sanctions under Articles 60 (Violation of accountability requirements) and 61 (False accounting records relating to the trust).

[81] According to the authorities also non-resident trustee qualify as a party carrying out the professional office of the trustee in conformity with the trust legislation as defined in 19 (1) (a) AML/CFT Law and are therefore subject to the same domestic AML requirements as resident trustees.

- who is beneficiary of more than 25% of the trust in case of a determined beneficiary
- in whose principal interest the trust is established or acts whenever the beneficiaries have not been determined

- who is able to control more than 25% of the trust.

847. The FIA has issued on 8 July 2010 the Instruction 2010-06 regulating the procedures to identify the beneficial owners of trusts. The Instruction specifies in great detail how the abovementioned definition of beneficial owner has to be applied for different types of trust. From the Instruction it can be concluded that San Marino trust legislation provides for the possibility that a subject is given the power to choose the beneficiary at his own discretion - even without any category - to whom allocate the fund in trust and to which extent. According to the Instruction the person who is able to control more than 25% of the property has to be identified as beneficial owner in such cases.

Applying Recommendations 6, 8, 9, 10 and 11 (c. 12.2)

848. The requirements regarding PEPs contained in Art. 27 (2) and (4) AML/CFT Law apply to DNFBPs the same way as to financial institutions, and the same strengths and weaknesses are present (see write-up to R.6).

849. DNFBPs are also required to comply with Art. 27 (2) (a) and (3) AML/CFT Law which set forth detailed provisions in case of non face-to-face business relationship (see write-up to R.8)

850. DNFBPs are as well required to comply with Art. 29 AML/CFT Law and Instruction 2009-04 (see write-up to R.9).

851. Record-keeping requirements apply to DNFBP-s equally and identically with those applicable to financial institutions. As already set forth in the analysis under Recommendation 10, Article 34 of the AML/CFT Law establishes that obliged parties shall register the data and information obtained for meeting CDD requirements, as well as the supporting evidence and records of business relationships and occasional transactions (original documents or copies) admissible in court proceedings, which all are to be is maintained for a period of at least five years following completion of the transaction, provision of the service, or termination of the business relationship.

852. Article 21, Paragraph 4 of the AML/CFT Law also establishes that "those enrolled in the Register of Accountants *(holding a university degree or a high school certificate)* shall not be required to fulfill customer due diligence and record-keeping requirements in relation to the execution of the mere activity of drafting or filing income tax returns". Bearing in mind that drafting or filing income tax returns is not a financial transaction and does not constitute a designated activity as defined under Criterion 16.1, this provision does not appear to fail meeting the requirements of relevant FATF Recommendations.

853. The FIA Instruction no. 2009-09[82] is specifically addressed to the "non-financial parties" as defined under Article 19, Paragraph 1 of the AML/CFT Law and further details the rules for these obliged parties relative to customer due diligence, recordkeeping, and suspicious transaction reporting requirements, generally in line with those specified for financial institutions. Particularly, under Article 21 of the instruction, non-financial parties are obliged to "record the data and information set out below in a specific AML Register in paper form, which may consist of loose-leaf sheets, provided that they are duly numbered and initialled on each page by the Non-financial Party or a collaborator

[82] Instruction on "Obligations of customer due diligence, data registration and suspicious transaction reporting to be fulfilled by "non-financial parties" referred to in Article 19 of the AML/CFT Law".

or an employee authorised in writing, with the last sheet showing the number of pages that make up the register and bearing the signature of the aforesaid persons". The AML Register may be also run in electronic form, in which case obliged parties shall have to "ensure the continuity and updating of records, the inability to amend or delete the records without keeping a trace of the actions taken, and the possibility to reconstruct the historical data and the chronological order of the records".

854. The FIA Instruction no. 2009-06 is addressed to the "professionals" as defined under Article 20, Paragraph 1 of the AML/CFT Law and, in a way very similar to that of the FIA Instruction no. 2009-09, further details the rules for these obliged parties relative to customer due diligence, recordkeeping, and suspicious transaction reporting requirements.

855. ***Record–keeping requirements of non-professional trustees.*** Non-professional trustees are required to keep any document relating to the trust for 5 years from the termination of the office of non-professional trustee. Upon request of the FIA, this documentation shall be immediately made available to the Agency. (Art. 4 (2) Decree no. 49/2010). According to Art. 4 (4) of Decree no. 49/2010 any non-professional trustee that does not comply with these obligations is subject to sanctions under the AML/CFT Law. However, there is no sanction for the violation of Art. 4 (2) Decree no. 49/2010 stipulated in the AML/CFT Law. Art. 62 AML/CFT Law only refers to record keeping obligation envisaged under Art. 34 AML/CFT Law. However, there are sanctions set forth in Art. 60 and 61 of Law no. 42/2010 (Trust Act) for the violation of accountability requirements and false accounting records, which are also applicable to non-professional trustees.

856. As already expounded in the analysis under Recommendation 11, the AML/CFT Law does not contain a direct reference to the obligation to pay special attention to complex and unusually large transactions, as well as to unusual patterns of transactions, which have no apparent or visible economic or lawful purpose. On the other hand, the FIA Instruction no. 2008-03 providing for the obligation of certain subjects of the law to pay special attention to the so-called "critical" transactions does not extend to DNFBP-s.

857. The FIA Instructions No 2009-06 and 2009-09, which detail the rules for DNFBP-s, i.e. for non-financial parties and professionals as defined under Articles 19 and 20 of the AML/CFT Law, relative to customer due diligence, recordkeeping, and suspicious transaction reporting requirements, provide some non-limiting examples of indicators of anomaly to be taken into account by DNFBP-s for the identification of suspicious transactions. Whereas some of those indicators might be considered as referring to unusual or unusually carried out transactions (with formulations such as "use of accounts or other continuous relationships by the customers that are unusual or not justified on the basis of the customers' normal activity or other circumstances"), these indicators and their practical application do not amount to a clearly articulated and without failure implemented requirement on paying special attention to the transactions defined under Criterion 11.1.

Effectiveness and efficiency

858. Overall, the representatives of the DNFBPs met demonstrated a good knowledge and awareness of the preventive measures under the new AML/CFT framework.

859. Professionals, including accountants, auditors, lawyers and notaries, seem to be most advanced in implementing the preventive measures. Representatives met have developed policies and procedures for CDD compliance. In particular accountants and auditors appear to have integrated those procedures well in their ordinary work routine. Notaries benefit from the fact that certain aspects of CDD are a core element of their work.

860. Implementation appears to be further strengthened by the proactive role by the various professional associations and their close dialogue with FIA. Trainings with regard to the implementation of CDD have been organized by the associations and FIA, some of them with the participation of foreign experts.

861. FIA has carried out some inspections with regard to beneficial ownership information held by notaries and lawyers, who are important in size. According to authorities no infringements have been detected. However a more comprehensive analysis of the quality of CDD measures applied by professionals is lacking.

862. Other DNFBPs, including inter alia real estate brokers and dealers in precious metals and stones appear to represent the most critical sector as regards efficient implementation. This has also been confirmed by FIA, who has ascertained several non-compliances in this sector. Apart from the more general FIA Instruction No. 2009-09, more sector specific guidelines have been developed in collaboration with the auctioneers. Representatives of other sectors indicated their need for similar guidance.

863. Doubts remain whether beneficial ownership identification and verification is properly carried out by all non-financial parties in the case of complex ownership and control structures and whether the clarification of the source of funds (if necessary) or PEP checks are properly applied. Access to and use by real estate brokers and dealers in precious metals and stones of relevant databases or other reliable sources appears to be limited.

864. Almost all DNFBP representatives interviewed informed about seminars and trainings held with respect to the application of the CDD requirements, which were widely judged as supportive and adequate. Most of them were organized by FIA. All sectors appear to be in close dialogue with FIA on questions arising from the application of the AML/CFT obligations. However, outreach to some sectors (e.g. real estate mediation) appears to be impaired to a certain extent.

865. Not all DNFBP representatives met appeared to be fully aware of the prohibition to accept cash payments above EUR 15´000 stipulated in Art. 31 (1) AML/CFT Law. This is a concern to evaluators, as this prohibition is an important element of the preventive system in San Marino.

866. In the gambling sector adequate measures appear to be implemented. The authorities assured that customers are identified and verified immediately on entry into the gambling house as required by the FIA Instruction 2009-09 and that adequate monitoring systems are in place. Compliance with the requirements regarding PEPs is impaired by the lack of access to appropriate databases. The fact that there are no regular controls for possible internet casino activities with a nexus or connection to San Marino that would fall under the scope of internet casinos is considered under R. 24.

867. Meetings with the representatives of DNFBP-s also revealed a varying level of understanding and comprehension of the recordkeeping requirements under the law and implementing regulations, with a rather “advanced” position of auditors, accountants, and lawyers and notaries unlike the one of real estate agents, auction houses, dealers in precious metals and stones etc. Some of them were not even aware of the need to run a specific AML Registers, and there were complaints that overall the AML/CFT-related requirements appear to hinder economic growth.

868. Representatives of DNFBP-s met during the on-site visit appeared to have a certain understanding of the “critical” transactions and the indicators of anomaly used to identify such transactions. However, in the absence of a clear requirement to pay special attention to complex and

unusually large transactions, as well as to unusual patterns of transactions, which have no apparent or visible economic or lawful purpose, the effectiveness of implementation cannot be a subject of consideration.

869. While the measures applied so far, including the developing of guidance and awareness raising through seminars and trainings point in the right direction, continued efforts are required to ensure that DNFBPs are adequately complying with the AML/CFT requirements. Overall, the AML/CFT regime for DNFBP-s seems to be in the early stages of implementation with the consequent outcomes in terms of efficiency.

4.1.2 Recommendations and comments

870. The recommendations made under R. 5, 6, 8-11 regarding financial institutions should be applied as well to DNFBPs.

871. Authorities should take measures to ensure that the requirements on identification and verification of beneficial ownership and the clarification of the source of funds (if necessary) are appropriately applied by all DNFBPs.

872. Authorities should continue their efforts to update professionals and non-financial parties on sector specific AML/CFT risks.

873. Authorities should ensure effective outreach to all real estate brokers and dealers in precious metals and stones..

874. Authorities should clarify in law or regulation that the office of non-professional trustee may not be held as a business..

875. Authorities should increase awareness for the prohibition to accept cash payments above EUR 15´000.

876. Authorities should review the Instructions in place and include more sector specific guidance regarding the application of CDD requirements. The Instructions should further clarify how these requirements shall be applied in the day to day business of the different DNFBPs.

877. The adequate application of PEP checks by all DNFBPs should be strengthened and reviewed.

878. Provide for sufficient frequency and coverage of on-site inspections to satisfactorily ascertain compliance and implementation of relevant requirements by DNFBP-s.

879. Provide for the obligation of DNFBP-s to pay special attention to complex and unusually large transactions, as well as to unusual patterns of transactions, which have no apparent or visible economic or lawful purpose.

4.1.3 Compliance with Recommendation 12

	Rating	**Summary of factors relevant to s.4.1 underlying overall rating**

R.12	**PC**	**Recommendation 5** • The deficiencies identified in the framework of Recommendation 5 are applicable to DNFBPs • Concerns whether the requirements on identification and verification of beneficial ownership and the clarification of the source of funds (if necessary) are appropriately applied by all DNFBPs. • No effective outreach to real estate brokers and dealers in precious metals and stones. • Awareness for the prohibition to accept cash payments above EUR 15 000 not evenly established. **Recommendation 6** • The concerns expressed under R. 6 regarding financial institutions apply equally to DNFBPs (i.e. PEP definition is not fully in line with the FATF standard). • Concerns remain in respect of the adequate and effective implementation of the PEP related requirements, and whether PEP-checks are adequately carried out by all non-financial parties **Recommendation 8** • The concerns expressed under R. 8 regarding financial institutions apply equally to DNFBPs (i.e. it is not specified which supplementary measures are considered to be adequate to verify the identity of a customer who is not physically present). **Recommendation 9** • The concerns expressed under R. 9 regarding financial institutions apply equally to DNFBPs (i.e. no requirement for financial institutions to take adequate steps to satisfy themselves that copies of identification data or other relevant documentation will be made available from the third party upon request without delay). **Recommendation 10** • Concerns remain in respect of the adequate and effective implementation of the record keeping requirements by DNFBPs, in particular real estate agents, auction houses, dealers in precious metals and stones. **Recommendation 11** • Lack of requirement to pay special attention to complex and unusually large transactions, as well as to unusual patterns of transactions, which have no apparent or visible economic or lawful purpose.

		• Concerns remain in respect of the adequate and effective implementation of the requirements by DNFBPs.

4.2 Suspicious transaction reporting (R. 16)
(Applying R.13 to 15 and 21)

4.2.1 Description and analysis

Summary of 2008 MER factors underlying the rating and developments

880. As described in the 3rd round evaluation report San Marino had received a Non Compliant rating for Recommendation 16. Though DNFBPs were covered by the scope of the AML legislation, the evaluators had deplored the lack of implementing regulatory provisions for the reporting requirements, the lack of requirements to establish internal procedures, policies and controls and to pay special attention to business relations and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations.

881. The AML/CFT Law has introduced a number of changes aimed at implementing the requirements under R. 13 (see article 36), R.14 (see article 39 and 52), R.15 (see articles 41-45), and R.21 (see articles 25 and 27, as complemented by the Congress of State decision no. 9 of January 26, 2009 on Countries, jurisdictions and territories that are considered equivalent to the San Marino AML/CFT framework). In addition, the following Instructions are relevant in this context: FIA Instruction no. 2009-06 dated 27 May 2009 (Requirements of customer due diligence, record keeping and suspicious transaction reporting for the professional practitioners referred to in Art. 20 AML/CFT Law); FIA Instruction no. 2009-09 dated 1 September 2009 (Obligations of customer due diligence, data registration and suspicious transaction reporting to be fulfilled by "non-financial parties" referred to in Art. 19 AML/CFT Law).

Recommendation 16 (rated NC in the 3rd round report)

882. There are two categories of DNFBP-s under Sammarinese law:

a) the "non-financial parties" as defined under Article 19, Paragraph 1 of the Law No 92 (2008), which includes trust service providers; advisors on investment, administrative, tax, financial and commercial matters; credit mediation service providers; real estate agents; gambling houses and casino (including those operated through the Internet); entities involved in the custody and transport of cash, securities or values; management of auction houses or art galleries; trade in antiques; purchase of unrefined gold; manufacturing, mediation and trade (including export and import) in precious metals or stones; and selling and rental of registered movable good; and

b) the "professionals" as defined under Article 20, Paragraph 1 of the Law No 92 (2008), which includes those enrolled in the Register of Accountants (holding a university degree or holding a high school certificate); those enrolled in the Register of External Auditors and Auditing Companies and of the Register of Actuaries; and those enrolled in the Register of Lawyers and Notaries. Obviously, the above categories fully encompass the definition of DNFBP under the FATF Recommendations.

883. The law does not establish specific thresholds or types of activity, in case of which the "non-financial parties" as defined under the law (including, for example, dealers in precious metals or stones, trust service providers etc) would be considered as obliged parties and, therefore, subject to requirements of the law. This means that, for example, recordkeeping or STR reporting

requirements apply to dealers in precious metals or stones irrespective of the amount involved; or to trusts irrespective of the type of services provided[83].

884. Nevertheless, the FIA Instructions No. 2009-09 determines the cases when "non-financial parties" are obliged to fulfil CDD, those basically being the cases defined under Criterion 5.2 (except for the case of "carrying out transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR. VII")

Applying Recommendations 13-15

Requirement to Make STR-s on ML/FT to FIU (c. 16.1; applying c. 13.1 & c.13.2 and SR. IV to DNFBPs)

885. The Law No. 92 (2008) establishes for DNFBP-s reporting requirements equal and identical with those applicable to financial institutions. As already set forth in the analysis under Recommendation 13, Article 36, Paragraph 1 of the Law establishes that obliged parties should report without delay to the FIA: a) any transaction - even if not carried out – which, because of its nature, characteristics, size or in relation to the economic capacity and activity carried out by the customer to which it is referred, or for any other known circumstance, arouses suspicion that the economic resources, money or assets involved in said transaction may derive from offences of money laundering or terrorist financing or may be used to commit such offences; b) anyone or any fact that, for any circumstance known on the basis of the activity carried out, may be related to money laundering or terrorist financing; c) the funds that obliged parties know, suspect or have grounds to suspect to be related to terrorism or may be used for purposes of terrorism, terrorist acts, terrorist organisations and by those financing terrorism or by an individual terrorist.

886. Two FIA Instructions – No 2009-06 and 2009-09 – detail the rules for DNFBP-s, i.e. for non-financial parties and professionals as defined under Articles 19 and 20 of the AML/CFT Law, relative to, *inter alia*, suspicious transaction reporting requirements. These instructions define for DNFBP-s standard reporting forms, as well as, by way of non-limiting examples, certain indicators of anomaly to be taken into account for the identification of suspicious transactions. The FIA Instruction no. 2010-04, which expounds in detail the reporting obligation in relation to suspicions of terrorism financing by means of defining indicators of anomaly linked to certain types of customers, transactions, and behaviors, is equally applicable by DNFBP-s as well. Nevertheless, representatives of the FIA advised that DNFBPs use the reporting form defined by the FIA Instruction no. 2009-07, which is applicable to all obliged entities.

887. Legal (or professional) privilege of auditors, accountants, and lawyers and notaries is defined under Article 38 of the AML/CFT Law establishing that these professionals "may invoke professional secrecy, against the Judicial Authority, the Financial Intelligence Agency and the Police Authority, with respect to the information they acquire while defending and representing their client during judicial or administrative proceedings or in relation to such proceedings, including advice on the possibility that proceedings are commenced or avoided, where the information is received or obtained before, during or after such proceeding".

[83] As advised by the authorities, with reference to trusts, Article 4 of Delegated Decree no. 49 of 16 March 2010 establishes that anyone exercising the office of professional trustee other than the financial parties referred to in Article 18 of the AML/CFT Law shall be an obliged party under Article 19 of Law no. 92/2008, and this applies to all activities carried out in relation to the trust. Article 6 of Decree Law no. 134 of 26 July 2010 (ratifying Decree Law no. 126 of 15 July 2010) has confirmed this qualification by including professional trustees other than financial parties among the non-financial parties referred to in Article 19 of the AML/CFT Law.

No Reporting Threshold for STR-s (c. 16.1; applying c. 13.3 to DNFBPs)

888. The legislation does not establish a (lower) threshold for reporting suspicious transactions. Article 36, Paragraph 1 of the AML/CFT Law is also clear on the requirement that all transactions – even if not carried out – should be reported, if considered suspicious.

Making of ML/FT STR-s Regardless of Possible Involvement of Tax Matters (c. 16.1; applying c. 13.4 to DNFBPs)

889. The definition of the reporting obligation under Article 36, Paragraph 1 of the AML/CFT Law refers to assets, which come "from offences of money laundering or terrorist financing or may be used to commit such offences"; whereas the definition of money laundering under Article 1, Paragraph 2, Letter [a] refers to property coming "directly or indirectly from criminal activity or from an act of participation in said activity"; hence involvement of tax matters is not specified as an exclusion from the reporting requirement.

Reporting through Self-Regulatory Organisations (c.16.2)

890. This criterion is not applicable since Article 36 of the AML/CFT Law requires that all obliged parties – both financial institutions and DNFBP-s – send STR-s directly to the FIA.

Legal Protection and No Tipping Off (c. 16.3; applying c. 14.1 to DNFBPs) Prohibition against Tipping-Off (c. 16.3; applying c. 14.2 to DNFBPs)

891. The same provisions apply in respect of DNFBPs. See comments made in previous section in this respect. As mentioned previously, changes to the legal provisions were introduced with the adoption of the AML/CFT law (in particular articles 39, 40 and 53) as amended subsequently. It has also to be pointed out that after the on-site visit, San Marino introduced further amendments to those provisions, through Decree Law no. 181 dated 11 November 2010, which entered into force the same day.

Establish and Maintain Internal Controls to Prevent ML/FT (c. 16.3; applying c. 15.1, 15.1.1 & 15.1.2 to DNFBPS)

892. Article 44, Paragraph 1 of the AML/CFT Law, which establishes that obliged parties should have policies and procedures in compliance with the requirements of the law and with the instructions of the FIA, is equally and identically applicable to DNFBP-s. In that relation, the deficiency in terms of the limitation set by the said article on the minimum required scope and coverage of relevant policies and procedures is also attributable to them. Hence, there are no explicit requirements that the procedures, policies, and controls of DNFBP-s should cover, inter alia, CDD, record retention, the detection of unusual and suspicious transactions and the reporting obligation, as set forth under Criterion 15.1.

893. Moreover, unlike financial institutions, which are required to develop internal compliance management arrangements by means of appointing a compliance officer, DNFBP-s, and particularly non-financial parties as defined under the law, are not required to have such arrangements if having staff of three persons or less. Article 43 of the AML/CFT Law defines that "audit firms and other non-financial parties organised as incorporated businesses shall appoint a compliance officer. This obligation may be derogated from in case of companies whose number of

employees does not exceed three. In case of appointment, the provisions referred to in Article 42 shall apply"[84].

894. Hence, in relation to the above-mentioned derogation from the obligation to have internal compliance management arrangements, the AML/CFT Law appears to interpret the risk-based approach as provided in the introductory part of Recommendation 15[85] solely within the context of the number of employees. However, the size of the business of an entity should not take into account the number of employees only and leave aside other key determinants such as the balance sheet size, quantity and volume of transactions, range and diversity of products offered to customers etc. Moreover, in such a derogation based on the number of employees the Law, appears to ignore all other important factors relating to the risk of money laundering and terrorist financing.

895. The Law is also silent about whether sole practitioners in non-financial activities need not at least to act themselves as the reporting officer. Currently, sole practitioners appear to be legally exempted from the obligation of having a designated compliance function with specific duties and responsibilities as defined under the Law. As advised by the authorities, it is assumed that, with respect of every professional (sole practitioner) under Article 20 of the AML/CFT Law, it is under his/her own responsibility to comply with AML/CFT Law. However, such assumption does not amount to a legally defined obligation as set forth above. Moreover, the Law is silent about any requirements regarding internal compliance management arrangements of professionals organized as incorporated business – other than audit firms – that is accounting and law firms.

Independent Audit of Internal Controls to Prevent ML/FT (c. 16.3; applying c. 15.2 to DNFBPs)

896. Article 41 of the AML/CFT Law defines that "obliged parties... and those persons that perform management, administration and control functions of obliged parties...shall, according to their respective tasks and responsibilities: ... b) make arrangements for and verify the fulfillment of said obligations on the part of employees and collaborators".

897. In the case of financial institutions, this obligation is realized by means of various sector-specific regulations, which transform the said provision into a requirement to have an adequately resourced and independent audit function to test compliance with the internal procedures, policies, and controls aimed at preventing ML/TF. However, the assessment team was not provided any regulations stipulating identical provisions for DNFBP-s. Hence, the legislation in force does not specifically require that DNFBP-s have an audit function, as required under Criterion 15.2.

898. In this regard, the authorities refer to Article 63 of the Law no. 47 of 23 February 2006 (the Company Law), which provides for the sole auditor or the board of auditors of a company to "supervise, to ensure compliance with the law, the articles of association and the principles of correct administration by the bodies of the company". In the authorities' interpretation, this means that every company is obligated to have an internal audit function. However, Article 58 of the same law defines that nomination of the sole auditor in a company is obligatory when, for example, the company capital exceeds EUR 77.000, which means that a large number of DNFBPs with their capital below that amount will not be obligated to assign such position within the company.

899. Moreover, the definition of the duties of auditors under Article 63 of the Company Law does not amount to a requirement that the audit function is adequately resourced and has independence

[84] As amended by Article 16 of Decree-Law no. 187 of 26 November 2010 (ratifying Decree Law no. 181 of 11 November 2010)

[85] Which reads as follows: "The type and extent of measures to be taken for each of the requirements set out below should be appropriate having regard to the risk of money laundering and terrorist financing and the size of the business".

to test compliance (including sample testing) with policies, procedures and controls to prevent ML/TF. By way of comparison, should Article 63 of the company Law amount to a sufficient requirement ensuring compliance with the requirements of Criterion 15.2, there would be no need to define numerous detailed provisions in respective sector-specific regulations of the CBSM for different types of financial institutions,

Ongoing Employee Training on AML/CFT Matters (c. 16.3; applying c. 15.3 to DNFBPs)

900. Article 44, Paragraph 3 of the AML/CFT Law, which establishes that obliged parties should promote ongoing employee training, is equally and identically applicable to DNFBP-s. In that relation, the deficiency in terms of the lack of defined focus of such training is also attributable to them.

Employee Screening Procedures (c. 16.3; applying c. 15.4 to DNFBPs)

901. The requirements in place do not oblige DNFBP-s to put in place screening procedures to ensure high standards when hiring employees.

Additional Element—Independence of Compliance Officer (c. 16.3; applying c. 15.5 to DNFBPs)

902. Article 43 of the AML/CFT Law establishes that, in case of appointment of a compliance officer at an auditing firm or non-financial party, the provisions referred to in Article 42 shall apply. As expounded under the analysis of Criterion 15.5, the latter provides for the independence of compliance officers of obliged parties.

Applying Recommendation 21

Special Attention to Persons from Countries Not Sufficiently Applying FATF Recommendations (c. 16.3; applying c. 21.1 & 21.1.1 to DNFBPS)

903. The FIA Instructions No 2009-06, which details the rules for professionals as defined under Articles 20 of the AML/CFT Law relative to customer due diligence, recordkeeping, and suspicious transaction reporting requirements, also contains provisions requiring that the respective obliged parties "pay particular attention to the continuous or occasional professional services conducted with persons (including legal persons and other financial institutions) resident or located in countries, jurisdictions or territories subject to strict monitoring by the FATF or the MONEYVAL Committee. With regard to the above, please refer to the provisions of Instruction 2009-01 as amended". However, the said FIA Instruction no. 2009-01 has been repealed by the FIA Instruction no. 2009-08 without making respective changes in the FIA Instructions No 2009-06; therefore, the mentioned reference is void.

904. Then, the FIA Instruction no. 2009-09, which provides similar rules for the other category of DNFBP-s (i.e. non-financial parties), does not contain the above-mentioned provision on paying special attention to relations with persons under strict monitoring. This leads the assessment team to the conclusion that the legislation in force does not provide for the requirement, as specified under Criterion 21.1, in respect of DNFBP-s.

905. Then, the FIA Instruction No 2009-09, which provides similar rules for the other category of DNFBP-s (i.e. non-financial parties), does not contain the above-mentioned provision on paying special attention to relations with persons under strict monitoring. This leads the assessment team to the conclusion that the legislation in force does not provide for the requirement, as specified under Criterion 21.1, in respect of DNFBP-s.

906. As a way to advice DNFBP-s of concerns about weaknesses in the AML/CFT systems of other countries, the FIA refers to having arranged that every public statement issued by the FATF or an FSRB is promptly posted on its website, under a specific section.

Examinations of Transactions with no Apparent Economic or Visible Lawful Purpose from Countries Not Sufficiently Applying FATF Recommendations (c. 16.3; applying c. 21.2 to DNFBPS)

907. For the reasons expounded under the analysis for Criterion 21.2, the assessment team believes that the applicable legislation does not provide for examining the background and purpose of transactions with persons from or in countries, which do not or insufficiently apply the FATF recommendations, if such transactions have no apparent economic or visible lawful purpose.

Ability to Apply Counter Measures with Regard to Countries Not Sufficiently Applying FATF Ability to Apply Counter Measures with Regard to Countries Not Sufficiently Applying FATF Recommendations (c. 16.3; applying c. 21.3 to DNFBPS)

908. The FIA Instruction no. 2009-08 providing for some countermeasures applicable to countries, jurisdictions or territories subject to strict monitoring does not extend on DNFBP-s. Hence, the legislation does not provide for any countermeasures to be applied through DNFBP-s with regard to countries, which continue not to apply or insufficiently apply the FATF Recommendations.

Additional Elements – Reporting Requirement Extended to Auditors (c. 16.5)

909. Pursuant to Article 20 of the AML/CFT Law, auditors are defined as obliged parties subject to the requirements of the law.

Additional Elements – Reporting of All Criminal Acts (c. 16.6)

910. The reporting requirement is the same for all obliged entities and, as defined under Article 36, Paragraph 1 of the AML/CFT Law refers to assets, which come "from offences of money laundering or terrorist financing or may be used to commit such offences"; whereas the definition of money laundering under Article 1, Paragraph 2, Letter [a] refers to property coming "directly or indirectly from criminal activity or from an act of participation in said activity".

Effectiveness and efficiency

Applying Recommendation 13

911. Since the last evaluation, reporting performance of DNFBP-s has somewhat improved; thus, the number of STR-s has increased from nil in 2007 to 4 in 2008, 21 in 2009 and 12 within the first eight months of 2010, all of them filed by auditors/ accountants and lawyers/ notaries. Hence, majority of DNFBP-s as defined under the law are still "silent" as far as identification and submission of STR-s is concerned. No STR-s on terrorism financing-related suspicious have been filed so far.

912. The information provided to the assessors did not enable to conclude on the concentration of the reporting performance even among DNFBP-s; that is to understand whether the majority of STR-s come from a few non-financial parties and professionals, with the others being quite inactive in terms of STR identification and submission.

913. Concerns about the "defensive" reporting pattern and the low quality of STR-s, as articulated under relevant parts of the analysis and recommendations for Recommendation 13 and

Special Recommendation IV with respect to "non-silent" DNFBPs comprising a minority among all designated non-financial businesses and practices are also relevant.

Applying Recommendation 14

914. The Recommendation is fully observed.

Applying Recommendation 15

915. DNFBP-s met during the on-site visit had little, if any, knowledge and understanding of the requirements to have internal procedures, policies, and controls aimed at preventing ML/TF. The absolute majority of them referred to the small sizes of their business and, therefore, the absence of the need to have such arrangements in place.

Applying Recommendation 21

916. Meetings with the representatives of DNFBP-s revealed some understanding that the countries included in "black" lists and customers from such countries are not the best ones to have business with. However, only a few of the representatives had an idea about how these countries are figured out and what specific measures should be taken with respect to them.

4.2.2 Recommendations and comments

917. San Marino authorities should:

Applying Recommendation 13

918. Take measures for enhancing the efficiency of reporting and the quality of STR-s, by means of, *inter alia*, better outreach and guidance aimed at reducing "defensive" reporting patterns and at ensuring conduction of comprehensive analyses and submission of substantiated suspicions by DNFBP-s.

Applying Recommendation 14

919. This Recommendation is fully observed.

Applying Recommendation 15

920. Introduce additional requirements (in the law, regulation or other enforceable means) for DNFBPs to adopt procedures, policies and controls as defined under Criterion 15.1, since the current language of the law seems to limit them to cover only certain types of high-risk activities and customers.

921. Establish a requirement that DNFBPs, which are not incorporated businesses, assume the responsibilities and perform the duties of the compliance officer.

922. Establish a requirement that all DNFBP-s should develop appropriate compliance management arrangements, i.e. designate duly empowered compliance officers.

923. Establish a requirement for DNFBP-s to have an adequately resourced and independent audit function.

924. Establish a requirement for DNFBP-s to put in place screening procedures to ensure high standards when hiring employees.

Applying Recommendation 21

925. Establish a requirement for DNFBPs to pay special attention to transactions with persons from or in countries covered by Recommendation 21.

926. Establish a requirement for DNFBPs to examine the background and purpose of transactions with persons from or in countries covered by Recommendation 21 and to make written findings of the analysis available to assist competent authorities and auditors.

927. Introduce appropriate countermeasures to be applied in respect of countries covered by Recommendation 21.

928. Take measures to ensure the effective implementation of relevant requirements by DNFBP-s, also through additional guidance on "black" and "white" lists of countries and the practical application thereof.

4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	**PC**	**Applying Recommendation 13** • Effectiveness issues: (1) "defensive" reporting patterns seem to prevail in the banking sector (2) low level or no reporting by DNFBPs raises questions on the quality of reporting and the effective implementation of the reporting requirement **Applying Recommendation 14** N/A **Applying Recommendation 15** • The requirement on internal procedures, policies and controls needs improvement • Lack of requirement that DNFBPs which are not incorporated businesses assume the responsibilities and perform the duties of the compliance officer • Lack of requirement to develop appropriate compliance management arrangements (i.e. designate duly empowered compliance officers) • Lack of requirement to have an adequately resourced and independent audit function • Lack of requirement to put in place screening procedures to ensure high standards when hiring employees **Applying Recommendation 21** • Lack of requirement to pay special attention to transactions with persons from or in countries covered by Recommendation 21

		• Lack of requirement to examine the background and purpose of transactions with persons from or in countries covered by Recommendation 21, if such transactions have no apparent economic or visible lawful purpose • Lack of appropriate countermeasures in respect of countries covered by Recommendation 21

4.3 Regulation, supervision and monitoring (R. 24-25)

4.3.1 Description and analysis

Recommendation 24 (rated NC in the 3rd round report)

929. San Marino received a non-complaint rating in the 3rd round report due to the fact that there was no supervision or monitoring for AML/CFT requirements in place for DNFBPs (except for casinos). Furthermore the implementing regulations on AML/CFT for DNFBPs were not effective at the time of the 3rd round evaluation.

Regulation and Supervision of Casinos (c. 24.1, c.24.1.1, 24.1.2 & 24.1.3)

930. The only games allowed in San Marino are covered by the Law No. 67/2000 and include games of chance, prize contests, lotteries, lotto, games of chance and ability and betting. No gambling chips are in use and no certificates of winnings are issued for any of those games. Pursuant to Art. 1 (5) Law No. 67/2000 "gambling" remains forbidden in any form it may be exercised. "Gambling" is defined as the running of any activity that is not covered by the Law, that amounts to gain and that allows winnings to be obtained or payment of prizes or in kind when the result is also partly uncertain. According to authorities this refers in particular to the operation of casinos (including internet casinos). Casino and internet casinos are therefore prohibited in San Marino. San Marino authorities stated that no such entities (including internet casinos) operate in San Marino.

931. However, as already criticised in the 3rd Round Report, San Marino has not taken any measures to identify whether there are any San Marino residents/citizens who own or operate: (1) an internet casino; (2) a company that runs an internet casino; or (3) a server that is located in the Republic of San Marino and which hosts an internet casino.

932. Licensing of gambling houses, games of chance: Law no. 67 of 25 July 2000 has been modified by Law no. 173 of 2 December 2005, which establishes that "the organisation or running of games, prize contests, lotteries, lotto, games of chance and ability and betting are reserved to the Public Administration, which may deal with these matters directly".

933. In application of this provision, Law no. 143 of 27 December 2006 has established the Public Institution for Gaming Activities (Ente di Stato dei Giochi, ESG), which is responsible for the exclusive operation of the games referred to in Law no. 67 of 25 July 2000, through the conclusion of contracts with private-law companies, where the State is the majority shareholder. Pursuant to Delegated Decree 10 January 2007 No. 1 these private-law companies are entrusted with the task of running the seats and operative structures where the games take place.

934. The fiduciary ownership of such a private law company's shares is not admitted and anonymous companies are not allowed to subscribe the capital of the company. In case of transfer

of the company's shares *inter vivos*, the transferor is required to preventively obtain the express agreement of the Congress of State, which shall first hear the opinion of the ESG.

935. Furthermore, the Delegated Decree 10 January 2007 No. 1 lists certain persons who shall neither be shareholders, nor perform functions relative to the management, direction and control of such a private-law company (e.g. anyone who has suffered convictions, including non-final, for intentional crimes committed over the last 15 years). In addition, the company´s shareholders and managers have to demonstrate good repute. The respective procedures have been established by the ESG in regulation no.1/2007. At the time of the onsite visit the State was the only shareholder of the single company (BINGO) running the games.

936. As part of its general surveillance and control responsibilities, the Public Institution for Gaming Activities is in particular assigned the granting of authorizations, ensuring compliance of the authorized parties with the law and the agreements drawn up, informing the Commissioner of Law about respective failures with a view to applying penal sanctions, and applying administrative sanctions.

937. AML/CFT supervision of gambling houses, games of chance: Gambling houses (such as bingo) and games of chance as well as persons offering games, betting or contests with prizes in money through the Internet and other electronic and telecommunication networks have to comply with the requirements under the AML/CFT Law (Art. 19 (1) f and (g) AML/CFT Law). Therefore they are subject to the AML/CFT regulatory and supervisory regime of the FIA described earlier. At the moment one Bingo entity is licensed in San Marino, no other gambling houses or games of chance exist according to the authorities.

Monitoring and Enforcement Systems for Other DNFBPS-s (c. 24.2 & 24.2.1)

938. The authorities have not performed a comprehensive risk assessment that would enable them to determine whether the system for monitoring and ensuring compliance of the other DNFBPs is appropriate. There is currently no documented risk analysis for each of the sectors that would help determine the extent of required measures.

939. All other DNFBPs mentioned under Recommendation 12, i.e. real estate mediation services, dealers in precious metals and stones, lawyers, notaries auditors/ auditing companies, accountants as well as Trust and Company Service Providers are subject to the monitoring and enforcement by the FIA.

940. The functions and powers of FIA are regulated in Art 4 and 5 AML/CFT LAW and are described in detail in the previous sections. FIA has adequate powers to perform its functions, including powers to monitor and sanction. However, there are concerns regarding the effectiveness and efficiency of the monitoring and enforcement and the adequacy of resources (see section on effectiveness and efficiency below).

Recommendation 25 (rated NC in the 3rd round report)

Guidance for DNFBPs other than feedback on STR-s (c. 25.1)

941. The situation related to the provision of guidance to assist DNFBP-s in the implementation of and compliance with their respective AML/CFT obligations has significantly improved since the last assessment. As compared with the "no guidance" reality as of that time, the available guidance now comprises around ten topical instructions issued by the FIA as enforceable regulations implementing various provisions of the law.

942. The FIA also assists DNFBP-s through interactive communication, answering to specific questions and requests of interpretations raised by these entities. Some of the responses are also available on the FIA website (under the section *Frequently Asked Questions*). The website also contains useful links to relevant international papers (such as UN and CE Conventions) and organizations (such as FATF, MONEYVAL, the Egmont Group, UNODC etc). It also has a *Non-Profit Sector* section comprising useful information and links to applicable legislation/ best practices.

943. The FIA's regularly published annual reports contain sanitized cases and some typologies of transactions (including attempted ones) also aimed at assisting DNFBP-s in implementing their respective AML/CFT obligations. However, DNFBPs would certainly benefit from receiving sectoral specific information and guidance, in particular on ML/TF risks related to their specific sectors, as well as on methods and trends, as most guidelines issues are generic and not tailored to their specific sectors.

Adequacy of resources supervisory authorities for DNFBPs (R. 30)

944. Comments made earlier in respect of the lack of adequacy of human resources of the supervisory authority are also applicable in this context.

Effectiveness and efficiency (R. 24-25)

945. There is a very close dialogue between FIA and most of the DNFBP sectors, in particular Professionals and their respective associations. Questions emerging from the practical implementation of the AML/CFT Law are discussed on a regular basis. FIA has also organised an impressive amount of seminars and trainings.

946. Nevertheless, all concerns related to supervisory arrangements and performance, are relevant also in respect of DNFBPs.

4.3.2 Recommendations and comments

Recommendation 24

947. The staffing of the supervisory authority should be increased significantly in order to enable the FIA to adequately perform its supervisory functions, in addition to its numerous further functions[86].

948. Authorities should carry out a comprehensive analysis of the quality of CDD measures with regard to an adequate number of professionals and non-financial parties.

949. San Marino should take measures to identify whether there are any San Marino residents/citizens who own or operate: (1) an internet casino; (2) a company that runs an internet casino; or (3) a server that is located in the Republic of San Marino and which hosts an internet casino.

950. Ensure supervisory arrangements and performance to provide for adequate implementation of applicable AML/CFT requirements by DNFBPs.

[86] Such as receiving, analyzing and disseminating STRs, carrying out financial investigations, issuing instructions, taking part in national and international bodies as well as promoting professional training of police officers regarding ML/TF prevention.

Recommendation 25 (c.25.1 [DNFBPS])

951. Competent authorities should develop and disseminate sectoral information and guidance, in particular on ML/TF risks related to the specific sectors, as well as on methods and trends.

4.3.3 Compliance with Recommendations 24 and 25 (Criteria 25.1, DNFBPs)

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R.24	**PC**	• FIA lacks adequate resources to perform its supervisory functions in addition to its numerous further functions • Very low level and limited coverage of supervisory activities. No comprehensive analysis of the quality of the CDD measures applied by DNFBPs • No measures taken to identify whether there are any San Marino residents/citizens who own or operate: (1) an internet casino; (2) a company that runs an internet casino; or (3) a server that is located in the Republic of San Marino and which hosts an internet casino.
R.25.1	**LC**	• Insufficient sector specific guidelines on sectoral ML/TF risks, techniques and methods

5 LEGAL PERSONS AND ARRANGEMENTS AND NON-PROFIT ORGANISATIONS

5.1 Legal persons – Access to beneficial ownership and control information (R.33)

5.1.1 Description and analysis

Recommendation 33 (rated PC in the 3rd round report)

Legal framework

Summary of 2008 MER factors underlying the rating and developments

952. As described in the 3rd round evaluation report, San Marino had received a Partially Compliant rating for Recommendation 33. The evaluation team had recommended to review the legislation in order to ensure a wider transparency of legal persons, given that the Register of companies did not contain information on beneficial owners and that there were no appropriate measures to ensure transparency of shareholders, in particular with reference to anonymous companies and requirements in place, as well as due to the absence of appropriate measures to ensure transparency in cases of transfers of bearer shares.

953. Since then, San Marino has indicated having made important changes to its legal framework to ensure the transparency of information on beneficial ownership and control of companies. The changes introduced by the new legal provisions are detailed below.

Measures to prevent unlawful use of legal persons (c. 33.1)

954. Legal entities are now regulated under the Company Law (Law no. 47 of 23 February 2006 as amended by Law no. 98 of 7 June 2010 on provisions for identification of beneficial ownership structures of companies under San Marino law). Furthermore, several other acts are also relevant for this section: Law no. 95 of 18 June 2008 on the reorganisation of the supervisory services over economic activities, Law no. 100 of 22 July 2009 introducing measures for the transferability of bearer shares of anonymous companies, Law no. 129 of 23 July 2010 regulating licences to pursue industrial, service, handicraft and commercial activities; Congress of State Decision no. 55 of 2 February 2009 amending the Regulation governing the keeping of the electronic register of legal persons.

955. Law no. 47 established that companies could be established in one of the following forms: a) partnerships (including unlimited partnerships) and companies with share capital (including joint stock companies, public limited companies and limited liability companies). With the amendments introduced by Law no. 98 of 7 June 2010, public limited companies can no longer be established and the Law explicitly repeals all regulatory provisions referring to anonymous companies. Thus, it is no longer possible to set up an anonymous company while those previously established became joint stock companies by 30 September 2010 with only registered shares.

956. San Marino has a central registry for companies constituted and operating in San Marino which is held with the Single Court's register office, as established under article 6 of the Company Law as subsequently amended. This Register includes the following data:

a) details of the memorandum of association and the authorization of the State Congress when required by special laws and by any subsequent authorization measures or their revocation;

b) the registered office and any successive variations;
c) the subscribed and paid-up capital, and any variations;
d) the corporate purpose and any successive variations;
e) the personal particulars of the legal representatives of the company, of the directors, the auditors, any external auditing parties that may have been nominated and the liquidators, along with a list of their powers;
f) the date on which the balance sheet was approved;
g) the details of measures concerning any transformations, mergers or divisions;
h) measures taken by the judicial authorities concerning the liquidation of the company, granting of periods of moratorium or opening of proceedings for composition with creditors, as well as all other measures that the Judicial Authorities consider it necessary to indicate;
i) existence of a sole partner, if the company has not issued bearer shares;
j) existence of company holdings lodged as collateral;
k) existence of seizures or restraints on shares.

957. A company is also required to file with the Register's Office the minutes of its shareholders' meetings within 30 days from the date of the public instrument or the date of the meeting in question. Failure to comply with the obligations to communicate and lodge the instruments and documents prescribed by Law no. 98 and the Company law as amended are punishable with an administrative fine of 5000 Euros for each offence, which is applied by the Office of Industry, Handicraft and Trade, following a report by the Commercial Register's Office.

958. Information on ownership and control details for companies are available in the memorandum of association as well as in the stock ledger which is required to be kept by each company in application of article 72 of the Company law. The stock ledger includes details on the number of holdings or shares, the personal details of the holders of the registered shares and holdings must be indicated as well as the relative transfers and encumbrances. Furthermore, all companies with share capital, other than those with anonymous bearer shares, having their registered office in San Marino were required under Law no. 78 to provide by 31 July 2010 to the Commercial Registry of the Single Court, also through a notary public belonging to the professional association of San Marino, a certified abstract of their Register of Shareholders, which clearly outlines their ownership structure.

959. Under San Marino law, the establishment of companies must take place only through a public deed signed by a notary who is an obliged entity under the AML/CFT , and thus required to apply the respective CDD obligations when assisting his/her client to set up a company.

960. Article 22, paragraph 1, letter b) of Law no. 92 of 17 June 2008 sets forth that while fulfilling customer due diligence obligations, obliged parties shall – if necessary – identify the beneficial owner (as defined by Article 1, paragraph 1, letter r) of the same Law) and adopt risk-based and adequate measures to verify the identity. FIA has also issued instruction 2009-05 of 22 May 2009 to assist obliged entities in the implementation of the requirements under article 22. This instruction clearly sets out that for companies, the identification of the beneficial owner requires that the obliged party shall reconstruct the shareholding structure of the company up to its top management, on the basis of information provided by the legal representative or empowered person which shall be assessed on the basis of objective documents and comprehensive data available. In addition to the formal ownership of stocks and participating shares, obliged parties shall consider situations where the relevant threshold is though to be exceeded because of particular relations between natural persons or specific powers concerning the management (i.e. shareholders' agreement, family ties or ties due to business relationships, financing constraints, power to appoint one or more directors, position as sole director, etc.). The instruction also gives

examples on how these measures should be carried out for mutual investment fund management companies, public entities, etc.

961. As regards fiduciary companies, whether foreign or Sammarinese, they are required to communicate to the Supervision Department of the CBSM within 30 days of entry into force of the Law no. 98 (2010) or of the registration of the participated company in the Register of shareholders, a written communication with the identification data of the settlers, the shareholdings of each of them as well as, in case of legal persons, the identification data of their beneficial owners. Any subsequent changes relating to their settlors and or beneficial owners is also required to be notified (article 2). Failure to do so entails also an administrative sanction of € 5,000.00 for any single violation, following a report by the CBSM. The Central Bank has issued Circular 2010-03 on Disclosure requirements in relation to fiduciary activities (dated 21 October 2010), and entities were required to provide information by 15 December 2010. This circular covers both communication of information on ownership and control for fiduciary companies with respect to participation in domestic and foreign companies.

962. The communication of information on ownership and control for fiduciary companies with respect to participation in foreign companies is also possible in San Marino based on Article 41 of LISF which refers to the power of the CBSM to request any type of information. Namely, Art. 41 of the LISF ("Powers to request information or obligations of information") refers instead to supervisory activities ("The supervisory authority may request the authorised parties to notify, if necessary on a periodical basis, data and information and to forward deeds and documents in accordance with the procedures and within the terms that it has established"). According to the information provided by San Marino authorities, with particular reference to shares held by San Marino fiduciary companies in foreign companies, the CBSM has carried out an investigation, also with a view to identifying the relevant geographical areas, and obtained useful information to carry out further in-depth analysis during on-site supervision. Pursuant to the same information, the CBSM has ordered the compilation on a quarterly basis of shareholdings by San Marino fiduciary companies in foreign companies and it carries out in-depth analysis on specific mandates, requesting the supervised party to transmit the documents concerning the mandate.

963. The Office for Control and Supervision of Economic Activities and the Central Liaison Office have access to the information collected and kept by the Central Bank under Law no 98. and are entitled to use such information to perform their functions of control and supervision of companies and to exchange information in accordance with the Law and the international agreements in force (article 7 of Law no. 98(2010).

964. Based on the information available, the evaluation team could not determine whether there are any requirements in place to ensure that foreign partnerships which have their management or administration in San Marino are also bound by legal requirements to keep information on ownership and control information, and whether such information would be available to competent authorities. The authorities indicated that this issue has been regulated under article 11 of Law no. 129 of 2010 which governs the set up of a permanent establishment and authorisation to perform economic activities are also bound by legal requirements to keep ownership and control information, and to make it available to competent authorities. According to the above-mentioned article foreign companies which intend to carry out activities in SM must through a public deed have a stable organisation and provide all the information pursuant to article 6 of the Company Law N° 47/2006. This information is kept in the company register.

Timely access to adequate, accurate and current information on beneficial owners of legal persons (c. 33.2)

965. The Congress of State Decision no. 55 of 2 February 2009, amending the Regulation governing the keeping of the Electronic Register of Legal Persons has also previously clarified that "no restriction shall be applied to the investigation activities and inquiries carried out or ordered by the Secretariats of State and the Public Offices involved, the Judicial Authority, the Supervising Authorities of the Central Bank and over economic activities, the Financial Intelligence Agency and the Police Forces performing the functions of judicial police". This clarification grants all competent authorities listed in this article access to all the information (and not only public information) contained in the Electronic Register. The same Decision mandates to indicate the identification data of the shareholders of limited liability companies and joint stock companies in a special section of the Register of Companies, to which the above mentioned authorities are granted access (except for the Secretariats of State and the Public Offices involved).

966. Competent authorities have thus access to the information necessary to identify anyone who is responsible for the management, direction and control of companies as well as any member in these companies. Such access is possible to both the electronic and paper based documentation.

967. With respect to bearer shares of anonymous companies deposited with the notary public, the latter is required under the law to provide information on shareholders or anyone holding or owning share certificates, as well as any document, to the Judicial Authority in the course of criminal proceedings and to the FIA under its AML/CFT functions (article 6, Law no. 100 (2009)). This is a positive development, as under the third round, the financial intelligence unit did not have access to such information, as notaries were permitted to show identification data of shareholders only to the judicial authority upon request in the course of criminal proceedings.

Prevention of misuse of bearer shares (c. 33.3)

968. The authorities have taken several measures to prevent the misuse of bearer shares. Law no. 100 of 22 July 2009 has set out specific provisions regulating the holding and transfer of bearer shares of anonymous companies. In application of article 2 of the Law, shareholders of anonymous companies, as well as any other holder or owner of bearer share certificates, are required to deposit them with a San Marino notary public, who may deliver them exclusively to the notary public entrusted by the shareholder, holder or owner. The transfer of shares takes place in the form of an authenticated private agreement. Shareholders or holders or owners of share certificate can exercise corporate rights only if a document attesting his/her status has been issued by the depository notary public.

969. Under the law, the notary public is required to :

- undertake due diligence measures upon deposit of share certificates (article 3)
- authenticate the private agreement of the transfer of bearer shares (article 4)
- record share certificate deposits and deliveries and share transfers in a specific book authenticated by the FIA, in chronological order for each single company, and indicate the percentage of the capital stock represented by the shares held by each shareholder or any holder or owner, as well as the names concerning the delivery and deposit of share certificates. (article 6)
- Inform the FIA or any violation of the omission or delays to deposit bearer certificates of which they have become acquainted ex officio.

970. The Law included a transitional period: shareholders of anonymous companies had until 31 December 2009 to deposit their bearer share certificates. Any omissions or delays to deposit the certificates entail an administrative sanction of Euro 10000, imposed by the FIA.

971. The authorities have also set out, under Law no. 98 dated 7 June 2010 a clear requirement for anonymous companies which are already registered into the Register of Companies to convert their shares into registered shares by 30 September 2010 and to deposit a certified abstract of the Register of Shareholders with the Commercial Registry of the Single Court by 30 November 2010 (article 1). Anonymous companies thus become joint stock companies and are required at the earliest possible meeting to amend their articles of association and the corporate name to eliminate any reference to anonymous company. Upon expiry of the timeline set in legislation, and following a mandatory time limit of 30 days which is granted by the Law Commissioner to the companies to conform with the provisions and file the missing documentation with the Commercial Registry, companies shall be subject to winding up measures.

Additional element - Access to information on beneficial owners of legal persons by financial institutions (c. 33.4)

972. Information maintained in thru Register of the Court is publicly available. Access to the Register by any person is possible through an IT work station without presenting a formal request to the Registrar. The Head Magistrate of the Court has made it clear that consultation of the Register must take place in real time, in the sense that it must be made immediately available to a person requesting access, who can freely consult and extract the required information (No. 401 MD/PV/08, issued on 20 November 2008). Information maintained by the notaries or the companies themselves is available only in cases set out under the law for the public authorities.

973. The authorities provided the statistics below, to update the 2008 MER information on companies and procedures :

Table 27: Existing companies (as of 5 November 2010)*

Anonymous companies	349	(625 out of which 277 have been adjusted to Law no. 98/2010)
Joint-stock companies	425	(149 + 277 adjusted to Law no. 98/2010)
Limited Liability Companies	4742	
Total	**5516**	

* Note: the figures above include only operational companies

Table 28: Companies registered in the public register(as of 5 November 2010)

	UNTIL 31/12/2006	**2007**	**2008**	**2009**	**2010** (as of 5 November 2010)
Anonymous companies	823	5	1	/	
Joint-stock companies	129	17	15	13	26

Limited Liability Companies	3577	596	544	329	189
Unlimited partnerships	9	/	/	/	/
Entities	1	/	/	/	/
Partnerships among professionals	1	/	/	/	/
ANNUAL TOTAL NUMBER	**4540**	**618**	**560**	**342**	**215**
Total n. 6.275					

Table 29: Companies struck off (as of 5 November 2010)

	TYPE	YEAR				
		UNTIL 31/12/2006	2007	2008	2009	2010
MERGER	Anonymous companies	26	/	1	1	3
	Joint-stock companies	1	/	/	1	/
	Limited Liability Companies	15	1	1	3	3
LIQUIDATION	Anonymous companies	34	1	5	11	2
	Joint-stock companies	9	1	2	3	1
	Limited Liability Companies	144	37	44	57	29
	Unlimited partnerships	1	/	/	/	/
INSOLVENCY	Anonymous companies	9	1	/	1	2
	Joint-stock companies	2	/	/	/	/
	Limited Liability Companies	14	5	4	2	2
CONVERTED	Anonymous companies	25	4	5	8	63
	Joint-stock companies	23	2	/	1	4

	Limited Liability Companies	97	8	5	3	3
	Unlimited partnerships	7	/	/	/	/
	Limited partnership	1	/	/	/	/
	Partnerships among professionals	1	/	/	/	/
LICENCE REVOKED	Limited Liability Companies	1	/	/	/	/
SUB-TOTAL		**410**	**60**	**67**	**91**	**112**
TOTAL NUMBER OF STRIKING-OFF		**740**				

Table 30: Companies subject to insolvency proceedings and bankruptcy (as of 5 November 2010)

	Until 31/12/2006	2007	2008	2009	2010	Total	Company type	No.
Voluntary liquidation	146	30	65	193	309	743	Anonymous companies	93
							Joint-stock companies	17
							Limited liability companies	631
							Unlimited partnerships	1
							One-man partnerships	1
Formal liquidation	23	20	34	27	3	107	Anonymous companies	15
							Limited liability companies	92
Compulsory liquidation	2	/	/	/	/	2	Anonymous companies	1
							Limited liability companies	1
Compulsory administrative liquidation	/	1	/	1	1	3	Anonymous companies	3
Judgement ordering the liquidation of assets	10	/	1	2	/	13	Anonymous companies	6
							Limited liability companies	7

Concurrence of creditors	92	23	11	23	17	166	Anonymous companies	31
							Joint-stock companies	4
							Limited liability companies	131
Arrangement with creditors	1	/	/	1	/	2	Anonymous companies	1
							Joint-stock companies	1
							Limited liability companies	/
TOTAL NUMBER OF PROCEDURES						**1036**		

Effectiveness and efficiency

974. The San Marino authorities have demonstrated their determination to address the risks involved with the use of corporate vehicles and have undertaken efforts to implement the measures described above. Given that some of the requirements were subject to transitional periods which had only recently expired at the time of the evaluation visit or were due to expire by end of November 2010, the evaluation team was not able to assess the effectiveness of the implementation of all newly introduced requirements.

975. However, it should also be noted in this context that the authorities have re-organised the supervisory services over economic activities, with the adoption of Law no. 95 of 18 June 2008. The Office for Control and Supervision of Economic Activities was established and began its activities on the 2nd of April 2009. By March 2010, the Office had reported having monitored approximately 232 companies, and having made a report to the Congress of State which led to the revocation of 11 licenses and the initiation of revocation proceedings in respect of 2 companies. Furthermore, the Office made a number of reports/information requests to the other competent authorities (Tax Office, FIA, Court, CBSM, Police forces) in respect of several business entities.

976. From 2007 to 2010, the Congress of State has ordered the revocation of the licence of 38 companies for doing business against the prestige and interests of the Republic of San Marino. The measure withdrawing the licence was mainly based on the involvement of the companies in facts being investigated by the Judicial Authority. In the same period (years 2007-2010), licences have been suspended for 1979 companies. The order of suspension enforced as a sanction ensues, for instance, from the absence of an actual centre of administration, irregular conduction of a business activity, failure to comply with hiring requirements or situations that prove an irregular activity.

977. Following the expiry of the transitional period of Law no. 100 (2009), the authorities have detected 9 cases of incompliance with the requirements of the law regarding bearer shares and have imposed administrative sanctions, as detailed in the table below:

Table 31 : Administrative sanctions for incompliance

2010	Violations ascertained	Natural persons	Administrative sanctions	Legal entities
Jan-Oct	9	9	90000	8

Source: FIA

5.1.2 Recommendations and comments

978. San Marino should pursue efforts to ensure that the relevant information on legal persons is adequately and on a timely basis included in the Registry and that adequate sanctioning measures are applied in cases of non compliance with the respective legal requirements.

5.1.3 Compliance with Recommendations 33

	Rating	Summary of factors underlying rating
R.33	**LC**	• At the time of the on-site visit, effectiveness could not be fully demonstrated, given the recent adoption of the requirements as well as the transitional period for the implementation of the legislation, and thus information accessible by authorities may not be up to date in all cases.

5.2 Legal arrangements – Access to beneficial ownership and control information (R.34)

5.2.1 Description and analysis

Recommendation 34 (rated NC in the 3rd round report)

Legal framework

Summary of 2008 MER factors underlying the rating and developments

979. As described in the 3rd round evaluation report San Marino had received a Non Compliant rating for Recommendation 34. The deficiencies mentioned included lack of a clear definition of beneficial ownership of trust in San Marino as well as lack of information at the Register of Trust on beneficiaries or settlors. The evaluators also noted that at the time of the visit, there were indications that the legislation had not yet been implemented; there were doubts that the Register was physically in place and whether the established trusts had been registered.

980. At the end of 2010 there were 39 trusts registered in San Marino. The legislation governing trusts, that was enacted in 2005, has been largely revised in 2010, namely by the introduction of the following acts:

- Law No. 42/2010 (Trust Act)
- Delegated Decree No. 49/2010 on Office of Professional Trustee
- Delegated Decree No. 50/2010 on Registration and Keeping of the Trust register and Procedures for the Authentication of the book of events

- Delegated Decree No. 51/2010 on identification of the methods and procedures necessary to keep the accounts of administrative facts relating to trust assets.

981. Furthermore, FIA issued on 8 July 2010 Instruction no. 2010-6 on the Identification of the Beneficial Owner of Trusts.

Measures to prevent unlawful use of legal arrangements (c. 34.1)

982. As the legal framework for trust has been described extensively in the 3rd round report, the following description focuses mainly on the amendments introduced by the above mentioned legislation.

Office of Professional Trustee

983. The new Trust Act now draws a distinction between non-professional and professional exercise of the office of trustee (Art. 18 Trust Act). The holding of the trustee office in a plurality of trusts is regarded as a "professional exercise", while the holding of a single trustee office is considered as "non-professional exercise" (for further information with regard to non-professional trustees please refer to the analysis under R. 12).

984. Only the professional exercise of trustee office is subject to the authorization and monitoring of the Supervisory Authority, which is the CBSM (Art. 2 (1) Decree No. 49/2010). While pursuant to the previous law (Law No. 37/2005) authorization was only granted to financial institutions or joint-stock companies having their registered office and administrative seat in the Republic of San Marino, and whose ownership structure is identified by the CBSM, this possibility is now extended to certain natural persons: members of the Bar Association (including both lawyers and notaries) and of the Accountants' Association (holding a university degree or a high-school certificate) in the Republic of San Marino (Art. 2 (3) Decree No. 49/2010).

985. Art. 2 (5) of the Delegated Decree No. 49/2010 determines instances, where the CBSM is required to revoke the trustee authorization. Art. 2 (7) Delegated Decree No. 49/2010 empowers the Supervisory Authority to adopt measures to establish the further terms and conditions for the granting and revocation of authorizations (specified in CBSM Regulation no. 2010-01). Anyone exercising the office of professional trustee without fulfilling the respective requirements is subject to punishment with second-degree imprisonment and a fine from € 8,000 to € 12,000 (Art. 3 (1), Delegated Decree No. 49/2010).

986. The work of a professional trustee is subject to the supervision of both the Supervisory Authority (CBSM) and the FIA. While the CBSM grants and revokes the license and monitors the licensing requirements, the FIA supervises compliance with the provisions of the AML/CFT Law, as all parties carrying out the professional office of the trustee in conformity with the trust legislation are obliged parties under the AML/CFT Law (Art. 19 (1) (a), AML/CFT Law).

987. A new feature by comparison with the previous legislation in force is the exercise of the office of a trustee by a non-resident, who has to be a natural or legal, subject to "substantially equivalent" AML regulations. In addition, the non-resident trustee has to comply with the same authorization requirements as a resident trustee, which have been described above. Furthermore a non-resident trustee is required to co-operate with a resident agent, who is charged by law with several duties, in particular with the drafting of the trust certificate based on the information provided by the non-resident trustee (Art. 7 Trust Act). A resident agent has to be a professional who is member of the Association of Lawyers and Notaries or of the Accountants' Association of

the Republic of San Marino. The non-resident trustee has several obligations towards the resident agent.

Trust register

988. Delegated Decree No. 50/2010 provides detailed rules regarding the registration and keeping of the Trust Register. In contrast to the previous law in force, the Trust Register is now kept with Office of the Trust Register established within the CBSM, which therefore is responsible for the related tasks. The Register is kept in a hardcopy and in an electronic format (Article 4 (1), Delegated Decree No. 50/2010)

989. The Office of the Trust Register has to register the trust, by transcribing the *trust certificate* (Art. 8 (4) Trust Act)[87]. Such a trust certificate has to be drawn up by the resident trustee or the resident agent within 15 days of the date of creation of a trust (Art. 7 (1) Trust Act). The new law has increased the amount of information to be provided in the trust certificate and, consequently, to be transcribed in the Trust Register. The trust certificate has to contain in particular:

- details of the trustee and any limitations placed upon his powers
- details of the protector, where applicable, and the nature of his powers
- details of the settlor
- in the case of beneficiary trusts or also for beneficiaries, details of the beneficiaries with an existing interest[88] (*"con diritti attuali"*) in the trust fund
- a description of the purpose in the case of a purpose trust
- an indication as to whether the trust is revocable or irrevocable

990. According to Art. 6 of the Trust Act, the trust deed has to include in the case of beneficiary trusts either the identification of the beneficiaries, or the criteria which enable them to be identified, or the identification of the person who has the power to identify the beneficiaries. However, according to the above-mentioned provision, only the beneficiaries with an existing interest have to be included in the trust certificate and consequently to be transcribed in the Trust Register.

991. While the criteria which enable them to be identified or the identification of the person who have the power to identify the beneficiaries is available to the notary public who has to certify the correctness of the trust certificate with a authenticated signature pursuant to Art. 7 (2) Trust Act, such information is not apparent from the trust certificate/Trust Register.

992. However, based on Art. 5 (1) (a) AML/CFT Law FIA is able to obtain this information in a timely fashion from the notary public, who is an obliged party under the AML/CFT Law..

993. It also has to be mentioned that in addition to the notary public, the professional trustee acting for the trust is also subject to the AML/CFT Law and has to identify as well the beneficial owner of the trust in conformity with Art. 1 (1) (r) AML/CFT Law, specified by Instruction 2010-06, according to which the beneficial owner of a trust has to be identified on the basis of the following criteria:

[87] Art. 3 (4) of Delegated Decree No. 50/2010 uses a slightly different terminology: "The Trust Register shall carry out the registration, by transcribing the authenticated *abstract* of the trust instrument." However, authorities confirmed that the "*trust certificate"* (Art. 7 Trust Act) is the same and therefore contains the same information as the *"abstract"* referred to in Art. 3 of Delegated Decree No. 50/2010.

[88] i.e. persons who have been granted interests (conditional or unconditional) in the trust fund or its income (Art. 1 (1) (e) Trust Act..

- In case of determined beneficiary the beneficial owner is "the natural person(s) who is beneficiary of more than 25% of the property".
- Whenever the beneficiaries have not been determined, the beneficial owner is "the natural person(s) in whose principal interest the trust is established or acts; or
- The natural person(s) who is able to control more than 25% of the property.

994. The trust certificate/Trust Register do not provide information on the information on individuals owning or controlling the legal person acting as beneficiaries, settlors or trustees to be included in the trust certificate as recommended in the 3rd round report. San Marino authorities point to the fact that this information is held by the notary public certifying the correctness of the trust certificate given that notaries are obliged parties under the AML/CFT Law. Accordingly the notary public has to meet due diligence obligation in relation to his "customers". San Marino authorities state that the settlor, the trustee and the beneficiary with a fixed interest have to be considered as customers. Accordingly, their beneficial owner have to be identified and verified in conformity with the beneficial owner definition provided in Art. 1 (1) (r) of the AML/CFT Law, which is further specified by FIA Instruction 2010-06.

995. The mechanism outlined above appears to meet the requirements of Recommendation 34 given that

a) the competent authority (FIA) is able to obtain the beneficial owner information based on Art. 5 (1) (a) AML/CFT Law in a timely fashion from the notary public, who is an obliged party under the AML/CFT Law.
b) the beneficial owner information can be considered adequate, accurate and timely provided that the notary public has duly fulfilled the above mentioned CDD requirements, and
c) FIA is able to share the beneficial owner information domestically based on Art. 11 to 15 AML/CFT Law or internationally based on Art. 16 AML/CFT Law.

996. According to Art. 6 of the Delegated Decree No. 50/2010 any amendment relating to the elements specified in the trust certificate have to be notified to the Office of the Trust Register in the Register, in the same forms and according to the same procedures envisaged for the registration of the certificate. The resident trustee or the resident agent is required to notify in writing such amendments to the Office of the Trust Register within fifteen days from the date when amendments were made or received. However, there is neither a clear obligation for the non-resident trustee to notify amendments relating to the element specified in the trust certificate in a timely manner nor is the resident agent required to ask the non-resident trustee about such amendments in appropriate intervals. This could have a negative impact on the accuracy or up-to-dateness of the relevant information as required by Recommendation 34.[89]

997. If the parties involved (the notary public, the resident trustee or the resident agent) do not timely fulfil their obligations and duties (registration and cancellation of the trust) within the time-limits established in the Law, the authority keeping the Trust Register shall apply an administrative sanction of € 2,000 (Art. 8 (8) of the Trust Act). A resident trustee or a resident agent who fails to notify amendments relating to the elements specified in the certificate within the relevant time limits is also subject to an administrative sanction of € 2,000 (Art. 13 (5) of the Trust Act). It is questionable whether these sanctions, considering the amount, is sufficiently dissuasive.

[89] Art, 28 Trust Act contains an obligation for the resident agent to ask the non-resident trustee to inform him of any fact or act which should result from the Book of Events (see further below). However, this obligation has to be fulfilled only once a year and does not cover all the elements specified in the trust certificate.

998. According to Art. 64 of the Trust Act, trustees of trusts already established under the former legislation (Law no. 37 of 17 March 2005) have been required to make any necessary amendment to the trust instruments by 31 December 2010 so that such trusts can comply with and be subject to the regime set out in the new Trust Act. At the time of the on-site visit, this deadline was on-going.

999. The Trust Register shall also include a specific section for foreign trusts with their main administration office in San Marino. The obligation to draw up a trust certificate and to register the trust in the Trust Register by transcribing the certificate are also applicable to foreign trusts. At the end of 2010 one foreign trust with a professional trustee has been registered in San Marino.

Book of Events

1000. In line with the legislation previously in force, the new Law also sets forth the obligation of the resident trustee or resident agent to create, update and keep a Book of Events of the trust, where the resident trustee or resident agent shall note down, in chronological order, "the acts and events relating to the trusts of which they are aware" (Article 28 Trust Act). Amongst other elements the Book of Events shall in any case contain a description of the events regarding the beneficiaries or changes in the trustees or protectors. Every year the resident agent is required to ask the non-resident trustee to inform him of any fact or act which should result from the Book of Events (Art. 28 (2) Trust Act).

Timely access to adequate, accurate and current information on beneficial owners of legal arrangements (c. 34.2)

1001. According to Article 2 (4) of the Delegated Decree No. 50/2010, the Trust Register shall not be subject to any limitation with respect to searches carried out or ordered by the Judicial Authority, the FIA and the Law Enforcement Authorities performing the functions of judicial police.

1002. In addition the information contained in the Book of Events has to be shown, upon request, to the protector and the Judicial Authority, as well as to the Supervisory Authority (Art. 28 (5) of the Trust Act) and the FIA (Art. 14 (2) of the Delegated Decree No. 50/2010).

1003. Pursuant to Art. 4 (2) Delegated Decree No. 49/2010 non-professional trustees .are required to keep any document relating to the trust of which they hold the office for five years from the termination of the office. Upon request of the Financial Intelligence Agency, this documentation has to be immediately made available to FIA.

1004. Information on the beneficial owners of trusts held by obliged parties (in particular public notary and trustee) can be obtained by FIA based on Art. 5 (1) AML/CFT Law.

Additional element - Access to information on beneficial owners of legal arrangements by financial institutions (c. 34.3)

1005. The new Law expressly provides that the Trust Office may issue certificates on the data and information contained in the Register not only to the trustee applying therefore, but also to parties other than a trustee, upon prior authorization by the Judicial Authority (Art. 5 (2) Delegated Decree No. 50/2010). In this regard, on 5 July 2010, the Judicial Authority drew up a letter (Ref. 4/2010) sent to the Office of the Trust Register that establishes the criteria to be followed by the Office in order to issue certificates to parties other than a trustee. According to this document,

certificates shall be issued every time that data are necessary to fulfil customer due diligence requirements on the part of obliged parties "without the need of another specific authorisation by the Judicial Authority". Evaluators take the view that a codification of the content of this letter in the Delegated Decree No. 50/2010 could further raise the public awareness of this right and would therefore strengthen the effectiveness and efficiency of this mechanism.

1006. So far no certificates have been requested or issued. Authorities informed that the CBSM, which keeps the Trust Register, has made public such instruction during the training courses for professional trustees and it is disclosed to the public in the premises of the Registry Office and also the office of the Judicial Authority. Authorities further stress that certificates have not been issued at the request of the obliged parties because the trust acts, that is to say carries out transactions, always and exclusively through the trustee (as the trust does not have any legal personality). Therefore obliged parties are usually able to obtain the trust certificate from the trustee, as the transactions in the interest of the trust are requested by the trustee. If such certificate is not obtained, the obliged party shall refrain from executing the transaction.

5.2.2 Recommendations and comments

1007. Authorities should review the level of sanctions applicable for failure by a resident trustee or a resident agent to fulfil their obligations and duties (registration and cancellation of the trust as well as notification of amendments relating to the elements specified in the trust certificate) within the time-limits established in the Law in order to ensure that they are proportionate and dissuasive.

1008. Authorities should introduce a clear legal requirement for the resident agent to ask the non-resident trustee in appropriate intervals about amendments relating to the elements specified in the trust certificate and/or a obligation of the non-resident trustee to notify such amendments in a timely manner.

1009. Authorities should consider codifying in the law the criteria to be followed by the Office of the Trust Register in order to issue certificates on the data and information contained in the Register to parties other than a trustee.

5.2.3 Compliance with Recommendations 34

	Rating	Summary of factors underlying rating
R.34	**LC**	• The sanctions for failure of a resident trustee or a resident agent to fulfil their obligations and duties (registration and cancellation of the trust as well as notification of amendments relating to the elements specified in the trust certificate) within the time-limits established in the Law cannot be considered dissuasive • No clear obligation for the resident agent to ask the non-resident trustee in appropriate intervals about amendments relating to the elements specified in the trust certificate.

5.3 Non-profit organisations (SR.VIII)

5.3.1 Description and analysis

Special Recommendation VIII (rated NC in the 3rd round report)

Summary of 2008 MER factors underlying the rating and developments

1010. As described in the 3rd round evaluation report, San Marino had received a Non Compliant rating for Special Recommendation VIII. This was due to the absence of reviews of the adequacy of domestic laws and regulations relating to the non profit sector and of regular reviews of the sector's vulnerabilities, the absence of a clear legal basis to implement measures to ensure the accountability and transparency of the non profit sector, the lack of outreach to the sector, no record keeping requirements to ensure that detailed records are kept for a period of at least 5 years, as well as no points of contact and procedures to respond to international requests regarding NPOs.

1011. A number of measures were adopted since 2008 to address the deficiencies identified above as detailed below, which include provisions of the Law no. 129 (2010) the Congress of State (Decisions no. 34 and 55 of February 2009), by the Council of Twelve (Decision 30 of 27 May 2009), by the FIA (review of the sector and FIA Instruction no. 2010-05 of 8 July 2010), the conclusion of a Memorandum of Understanding between the Council of Twelve, the Judge of Supervision of NPOs and the FIA (2009, as renewed in 2010), and various outreach measures and supervisory measures were undertaken.

1012. Since the third round, the size of the sector has also changed, with the number of operating associations and foundations having increased, as shown by the statistics provided by the authorities.

Review of adequacy of laws and regulations (c.VIII.1)

1013. San Marino has initiated the review of the adequacy of laws and regulations regarding the NPO sector. In February 2009, the Congress of State adopted a decision that mandated the drafting of new legislation in the light of the requirements of SR VIII and MONEYVAL's recommendations (Decision no. 34 of 16 February 2009 - Awarding of a Contract for Consulting and Assistance Services in Drafting Regulations on Non-profit Associations, Foundations and Entities to Mr. M.S., J.). The draft was submitted to the Great and General Council and was pending adoption at the time of the on-site visit. Though the evaluation team did not see the draft text, it was informed that the draft law on the non profit sector covered the following elements:

1) Regulation of the Registers of non-profit organisations (associations, foundations);
2) Requirements of good repute and integrity of participants and promoters;
3) Record keeping of management bodies at the main offices of non-profit organizations;
4) Establishment of the Authority for the Third Sector performing the following functions:
    a) Management of the Registers of Non-profit Organizations;
    b) Verification that participants and promoters satisfy the relevant requirements;
    c) Supervision of non profit organisations, by ordering controls and requesting the production of documents;
    d) Checking of the keeping of accounting records, as well as of financing and investment transactions;
    e) Reporting suspicious transactions related to money laundering or terrorist financing to the FIA;

f) Proposing the dissolution of non-profit organizations;

1014. Pending the adoption of the above-mentioned act, San Marino has adopted Law No. 129 of 23 July 2010 on Regulations governing licenses to pursue industrial services, handicraft and commercial activities, which included specific provisions under Title VII on Foundations and non profit associations. This act entered into force in August 2010.

1015. San Marino has initiated a study on the funding sources and the use of funds of the NPOs. This action was undertaken in application of Resolution no. 30 of 27 May 2009 of the Council of Twelve, which required to initiate a study of the financial resources of the associations, foundations, and other bodies in conjunction with the FIA, and the Judge of Supervision, and to draw a questionnaire for all NPOs, for the purpose of assessing the risks of abuse of the NPO sector, and its vulnerabilities. A questionnaire was prepared and sent out to all NPOs in order to collect information on the characteristics and types of NPOs and identify high risk organisations, and at the time of the visit, the finalisation of the analysis based on the responses to the questionnaire was under way. However, the Judge for Supervision had already undertaken a first control of the financial flows of the NPOs that had been required to provide data and information, following its request (letter of June 2010), and the results of this exercise have led to the identification of 7 organisations at risk, which were reported to the FIA.

1016. The 2010 MOU, under article 5, sets out the principle of updating the study carried out, in order to analyse the risk of abuse and vulnerabilities of the non-profit sector to money laundering and terrorist financing, taking account of the legislative changes implemented in the meantime. For this purpose, the competent authorities undertook to send on a regular basis questionnaires to all associations, foundations and non profit organisations.

Outreach to the NPO Sector to protect it from Terrorist Financing Abuse (c.VIII.2)

1017. Decision no. 30 of 27 May 2009 of the Council of Twelve entrusted the Bureau of the Great and General Council with the task of contacting the Consulta (Advisory Board) of associations and most representative NPOs in order to promote, together with the FIA, an awareness campaign and information campaign of the risks of ML and TF associated with the NPO sector. The campaign targeted all non profit organisations in San Marino. The information campaign was conducted by providing all NPOs with information materials on the international standards and best practices. Furthermore, on 23 July 2009, a meeting was organised with the most representative NPO entities in this context.

1018. FIA has also created a specific section on its website with information on possible risks of misuse of NPOs for ML/TF and informed the representatives of the sector of this publication.

Supervision or monitoring of NPO-s that account for significant share of the sector's resources or international activities (c.VIII.3)

1019. Article 4 of the Memorandum of Understanding between the Council of Twelve, FIA and the Judge of Supervision, the Judge of Supervision and the FIA (dated 14 September 2009), as supervisory authorities over associations and foundations, have committed to regularly controlling the records of the data and information on the financing of funds received and their use and to inform the Council of Twelve, through the Bureau of the Great and General Council, on the results and checks conducted. The legal provisions setting out the role of the Council of Twelve covers explicitly only foundations and associations.

1020. The FIA has indicated having developed a strategy which enables it to supervise and review the sector's vulnerabilities. This strategy includes on-site and off-site supervisory measures which would cover inspection of information on customers such as associations and foundations and transfers of funds; national co-operation with other authorities in order to control the activity carried out by some associations or foundations, also by using information provided by foreign counterparts or international organisations; the development of specific instructions relating to the abuse of NPOs to assist obliged entities in their reporting obligations, etc.

1021. At the time of the on-site visit, there were 50 ecclesiastic entities and 2 no profit organisations. The non-profit organisations in San Marino are 2 banking foundations regulated by Law no. 130 of 29 November 1995 and resulting from the conversion of two banking entities which did not have the legal form of a company (Cassa di Risparmio and Cassa Rurale di depositi e prestiti di Faetano). Today, such foundations have control (they own the majority of or all the shares) of Cassa di Risparmio della Repubblica di San Marino s.p.a. and Banca di San Marino s.p.a. Under Art. 3 of Law no. 130/1995, these foundations "maintain the juridical nature of non-profit making body or company. In view of their nature, they are subject to the surveillance and control of the Office of Banking Supervision"(today, the CBSM), Decree-Law no. 22 of 24 February 2004 provides that banking foundations are required to contribute to the reimbursement of "all direct and indirect costs borne by the Central Bank itself for the aforesaid supervision and control activities" (art. 1).

1022. With respect to the ecclesiastic entities, their functioning is regulated by the Agreement between San Marino and the Holy See ratified through the Great and General Council's Decree no. 47 of 30 June 1992. Article 5 of the agreement requires the Republic of San Marino to recognise the civil legal status of canonically erected parishes and of other bodies or associations established or approved in San Marino by ecclesiastic authorities.Upon request of the ecclesiastic authorities, accompanied by the canonical decree establishing or approving the entity or association, the Court, according to the laws in force and without prejudice to this Agreement, shall issue the decree granting civil recognition, order its publication in the Official Gazette of the Republic of San Marino and its registration in a specific Register with the Registry of the Court. This legal recognition shall be valid until it is revoked by the Court in conformity with generally applicable ordinary laws and subject to the provisions of this Agreement, or upon request of the ecclesiastic authorities having applied for such recognition. The Republic of San Marino confirms the legal recognition of the parishes and other ecclesiastic entities existing at the time of signing this Agreement.

1023. Such parishes and entities, by virtue of the Court's Decree, are entered in the Register at the Registry of the Court within 30 days following the entry into force of this Agreement. Once the purpose of the entities and associations established or approved by the ecclesiastic authorities has been checked and profit-making goals have been excluded, the said entities and associations shall be considered equal to civil entities pursuing a similar purpose and subject to the same laws and regulations, without prejudice to the provisions of this Agreement. The Additional Protocol to the Agreement includes a list of the parishes and ecclesiastic entities existing at the time of the entry into force of the Agreement (no. 46). On the basis of the foregoing, the ecclesiastic entities, entered in the relevant register in application of the Agreement, are subject in all respects to the laws governing associations and foundations and, in particular, to Art. 4 of Law no. 68/1990 and the provisions subsequently introduced. Therefore, they are subject to the supervision of the Council of the Twelve and to the same obligations envisaged for associations and foundations.

Information maintained by NPO-s and availability to the public thereof (c.VIII.3.1)

1024. In accordance with article 4 of Law no. 68/1990, non profit organisations applying for legal recognition are required to specify the purposes and objectives of their activities and the identity of the persons who own and control their activities (President and member of the board of directors and the board of auditors), the founder and the persons responsible for the management of the foundation (members of the Board of directors), as well as any changes to the above.

1025. Law no. 129 of 23 July 2010 (article 37) requires also associations, foundations and other non profit organisations to register data and information regarding funding and funds received and their use. Furthermore, they are also required to keep at their registered office a Register containing the names of their associates and members. By 31 December of every year, foundations are also required to submit a list of their members to the Commercial registry of the Single Court so as to allow the Court to update the Registry containing the names of members of associations, foundations and NPOs. Article 38 sets out additional requirements for foundations, such as the reporting of the initial contributions making up the endowment fund and to deposit with the Commercial Registry the documentation attesting that contributions have been made within 60 days from their allocation or from the date when the will was made public, as well as any deed relating to further contributions enlarging the fund within the same time limit.

1026. The Judge of Supervision is competent to request NPOs to report any changes to the data contained in the Register. Such a request was made through a letter on 18 June 2010, with changes to be reported by 30 July 2010 and non compliant entities reported to the FIA and the Council of Twelve.

Measures in place to sanction violations of oversight rules by NPO-s (c.VIII.3.2)

1027. Under article 4 of the Law no. 68/1990, recognised foundations and non profit associations are subject to control and oversight over their administration by the Council of Twelve, whose powers in this regard include also the appointment of a special commissioner whenever this is necessary for the proper functioning of the entity or its liquidation.

1028. Foundations and non profit associations are also subject to monitoring by a magistrate from the Single Court acting as supervising magistrate, whose duties include the legal recognition of an organisation, after determining that the conditions set out in article 4 of Law no. 68/1990 (Corporate Law) are fulfilled. Legal recognition and provisions for winding up or cancellation are published in the Official Bulletin of the Republic of San Marino.

1029. The Judge of Supervision monitors all associations and foundations to verify that funds have been invested in accordance with the purpose of the entity. He prepares a detailed report on the activity of these entities which is submitted to the Council of Twelve as the supervisory authority of the sector, with proposals for the removal of non operating entities or entities operating in breach of the legal requirements.

1030. On the basis of reports prepared by the Judge of Supervision, the Council of Twelve ordered the dissolution and cancellation of 2 associations and 5 foundations. In 2009, 5 associations and 3 foundations were under voluntary liquidation. In 2010, the Judge of Supervision ordered the cancellation of 1 association from the public register. Before that date, the Council of Twelve had provided for the extinction of 10 associations and 18 foundations.

1031. Furthermore, pursuant to article 37 of Law no. 129 of 23 July 2010, failure to comply with the information reporting, keeping and filing requirements under the law entails an administrative sanction of Euros 2000 applied by the Office of Industry, Handicraft, and Trade of the Republic of San Marino for any single violation, following a report by the Commercial Registry authorities of the Single Court. The non profit sector was given until 31 December 2010 to comply with the requirements of the Law (which was subsequently extended by Decree Law to 31 July 2011). The procedure requires the Commercial Registry to submit to the Law Commissioner the deeds relating to foundations that have not complied with the obligations, and the latter shall give them a time limit of 30 days within which they are required to comply with the new provisions or file the missing documentation. Non complying entities shall be subject to winding up measures.

1032. As regards requirements introduced in respect of foundations under article 38 of the Law no. 129, cases of non compliance entail a decision by the Judge of Supervision to terminate the non compliant foundation ex-officio.

1033. At the time of the on-site visit, the transitional period set under Law no. 129 had not elapsed.

1034. The following statistics were provided by the authorities, which reflect the data on registered foundations, associations and other non profit bodies, as well as the procedures undertaken in their respect.

Table 32: Foundations (as of 5 November 2010)

	No.	TYPE		UNTIL 31/12/2006	2007	2008	2009	2010
REGISTERED	**103**	/	**Tot.**	55	15	15	14	4
PROCEDURES*	**8**	FORMAL LIQUIDATION	**1**	/	/	1	/	/
		VOLUNTARY LIQUIDATION	**7**	/	/	/	1	6
STRUCK OFF	**20**	VOLUNTARY LIQUIDATION	**3**	1	/	/	2	/
		STRUCK OFF	**1**	1	/	/	/	/
		CEASED TO EXIST	**16**	2	9	5	/	/
EXISTING	**83**	/	**/**	/	/	/	/	/

*considered as "existing" until the end of the struck off procedure.

Table 33: Associations (as of 5 November 2010)

	No.	TYPE		UNTIL 31/12/2006	2007	2008	2009	2010
REGISTERED	**364**	/	**Tot.**	254	22	37	21	30
SUBJECT TO PROCEDURES*	**9**	**FORMAL LIQUIDATION**	**1**	/	/	/	1	/
		VOLUNTARY LIQUIDATION	**8**	1	/	/	/	7
STRUCK OFF	**38**	**APPROVAL OF THE COMPOSITION AGREEMENT WITH CREDITORS**	**1**	/	/	1	/	/
		VOLUNTARY LIQUIDATION	**10**	6	1	1	1	1
		STRUCK OFF	**4**	2	/	1	1	/
		CEASED TO EXIST	**23**	4	15	2	1	1
EXISTING	**326**	/	**/**	/	/	/	/	/

*considered as "existing" until the end of the struck off procedure.

Table 34: Registered non profit entities and procedures (as of 5 November 2010)

REGISTER TYPE	NUMBER OF REGISTERED ENTITIES	EXISTING ENTITIES	ENTITIES SUBJECT TO PROCEDURES	STRUCK OFF		
				LIQUIDATION	CONVERSION	PROCEDURES
Ecclesiastic entities	**50**	**50**	/	/	/	/
Professional associations	**8**	**8**	/	/	/	/
Non-profit organisations	**2**	**2**	/	/	/	/

Licensing or Registration of NPO-s and availability of this information (c.VIII.3.3)

1035. Pursuant to article 4 of the Law no. 68/1990, a non profit organisation wishing to obtain legal personality to operate shall be granted legal recognition by decision of the Single Court. Such recognition is followed by registration of the entity in the relevant register. The data in the Register, as explained above, is public and available for any person and competent authority, through the Commercial Registry. The Court's decision providing legal recognition to the entity is published in the Official Bulletin of the Republic.

1036. Article 37 of the Law no. 129/2010 provides also that without prejudice to Art. 4 above, and complementing what envisaged by this same Article, the creation, administration and liquidation of Associations, Foundations and other non-profits organisations are subject to the provisions on companies contained in the Company Law (Law of 23 February 2006 n. 47), and subsequent amending and supplementing acts, to the extent they are compatible. They are also subject to the provisions, to the extent they are compatible, relating to the obligations, accountability and suitability requirements imposed on directors and auditors. The latter are not subject to the professional requirements provisions.

1037. Since the third round, San Marino has implemented a centralised registration system with a Public Register of Associations, Foundations, ecclesiastical bodies and non profit organisations, which is kept both electronically. This Register is kept as set out in article 6 of the Companies Act and the Regulation governing the keeping of the electronic register of legal persons (Resolution of the Congress of State dated 25 October 2004 as amended by Resolution no. 55 of 2 February 2009). A register of members and founders of associations and foundations is also kept, to which any authority may have access upon simple request.

1038. The registers are held at the Court's Commercial Registry and contain the following data:

a) Name of the entity
b) Essential features of the memorandum and articles of association
c) Date of establishment
d) date of legal recognition
e) Registered office and subsequent changes
f) Corporate purpose and subsequent changes
   (1) Identification data of the founders, members of the governing bodies of the entity, auditors, external auditors, or auditing firms where appointed, and any subsequent changes
   (2) Date of balance sheet approval

(3) Any order issued concerning the voluntary liquidation or compulsory winding up, identification data or the liquidator and removal from the register.

1039. The data contained in the Register is public and available for consultation through the Commercial Registry, pursuant to article 4 of the Decision no. 55. Under this decision, separate databases are created for all registers related to legal persons (associations, foundations, cooperatives, consortiums, etc) which are kept at the Registrar's Office of the Single Court. These databases are set up with the same characteristics and consultation modalities as the ones for companies (article 63 Company Law N° 47/2006) and are available for public consultation.

1040. Furthermore, article 4 of the Regulation governing the keeping of the electronic register of legal persons, as amended by Decision no. 55 of the Congress of State of 2 February 2009, provides that for the purpose of transparency, the Judge of Supervision and the FIA may, without any limitation, order and carry out searches relating to the information stored in the Register kept with the Single Court. This grants them immediate access to the Register.

Maintenance of records by NPO-s, and availability to appropriate authorities (c.VIII.3.4)

1041. The Council of Twelve, in its Decision no. 30 of 27 May 2009, decided that associations, foundations and other organisations shall register data and information regarding funding and funds received as well as their use. Such data, information and relevant documents are required to be kept for at least 5 years from the date on which funds were granted or the transaction relating to the use of funds was conducted. Two specific forms (1-"Detailed funding and use" and 2-"Summary of funding and uses" were attached to the decision for that purpose. Every year, NPOs are required to deposit to the Judge of Supervision their balance sheet and the form 2.

1042. This provision was later introduced in Law no. 129 of 23 July (Article 37) with similar requirements.

1043. These records are kept by the NPOs and are provided, upon written request, to the Judge of supervision in its supervisory functions and to the FIA under its functions set out under the AML/CFT Law.

Measures to ensure effective investigation and gathering of information (c.VIII.4)

Domestic co-operation, coordination and information sharing on NPO-s (c.VIII.4.1); Access to information on administration and management of NPO-s during investigations (c.VIII.4.2); Sharing of information, preventative actions and investigative expertise and capability, with respect to NPO-s suspected of being exploited for terrorist financing purposes (c.VIII.4.3)

1044. The Memorandum of Understanding between the Council of the Twelve, the Judge of Supervision over non profit entities and the FIA sets out the basis for domestic co-operation, coordination and information sharing on NPOs.

1045. Under article 4 of the 2009 MOU, the Council of Twelve and the Judge of Supervision bound themselves to report immediately to the FIA when they have a suspicion or there are reasonable grounds to suspect that an entity of the non profit sector a) may be used as a front for a terrorist organisation to collect funds, b) may be exploited as a conduit for terrorist financing; c) may conceal or execute in a non transparent way the transfer of funds or assets intended for legitimate purposes but used for the benefit of terrorists or terrorist organisations; d) may be

involved in facts or circumstances covered under the reporting obligation set out in article 36 of the AML/CFT Law.

1046. The competent authorities have access to information on the administration and management of a particular NPO during the course of an investigation. The legislation clearly sets out that no restriction shall be applied to the investigation activities and inquiries carried out or ordered by the Secretariats of State and the Public Offices involved, the Judicial Authority, the Central Bank and the Supervisory Authority over economic activities, the Financial Intelligence Agency and the Police Forces performing the functions of judicial police. As regards the members of the non profit sector, the 2009 decision had required the establishment of separate databases with information on members and associates, including for the NPO sector. As regards financial and programmatic information, this data is recorded in application of Decision no. 30 of May 2009, as confirmed by the provisions of the 2009 MOU which included specific forms for that purpose. The balance sheets can be consulted through the Commercial Registry.

1047. Article 4 of the 2010 MOU sets out provisions on information sharing: the Judge of Supervision and the Financial Intelligence Agency undertake to inform the Council of the Twelve, through the Bureau of the Great and General Council, of the results of the verifications and controls carried out while similarly, the Council of the Twelve, undertakes to inform the Financial Intelligence Agency and the Judge of Supervision of the checks conducted and the measures adopted.

1048. Furthermore, under article 6 of the Memorandum, the FIA shall inform of the Technical Commission for National Coordination of the analysis of the sources of funding and use of funds, as well as of results of controls and supervision activity. Minutes of the TCNC meetings that the evaluation team has seen included information on discussions held within the TCNC on the control activity and analysis undertaken in respect of the NPO sector.

Responding to international requests regarding NPO-s – points of contacts and procedures (c.VIII.5)

1049. The competent authority to respond to international requests for information regarding NPOs would be the FIA, which would be competent to exchange information under article 16 of the AML/CFT Law.

Effectiveness and efficiency

1050. San Marino has initiated several initiatives in order to address the concerns previously identified in the third round evaluation, to identify the features and types of non profit organisations that are at risk of being misused for terrorist financing purpose and to undertaken outreach to the NPO sector. Steps have also been taken to promote supervision and monitoring of the sector.

1051. The effective implementation of the newly adopted requirements by the NPO sector and of administrative penalties by the authorities could not be assessed given their recent adoption and the fact that the transitional period envisaged for the NPO sector to comply with the requirements under Law no. 129 was still ongoing, despite the fact that some of these requirements had already been introduced in 2009. This raised questions also as regards the up to datedness of the Registries and of the data kept by the non profit sector entities, given that technically speaking, the transitional period had not elapsed. It was also not demonstrated that the supervisory action had been fully effective.

1052. The evaluation team also considered that the NPO sector would benefit from a consolidation of the newly introduced requirements, as these are set out in various legal texts (decisions of the Congress of State, MOUs, Law no. 129/2010, etc), in order to avoid any risks of confusion among the sector as to their obligations.

5.3.2 Recommendations and comments

1053. San Marino should pursue initiatives to promote effective supervision of NPOs, in particular those that account for a significant portion of the financial resources under the control of the sector and a substantial share of the sector's international activities.

1054. Competent authorities should ensure that following the lapse of the transitional period, relevant measures are taken to ensure that the NPOs comply with the requirements set out in the legislation and otherwise, that relevant sanctions are promptly applied.

5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	**LC**	• Effectiveness issues: the effective implementation of the newly adopted requirements by the NPO sector and of administrative penalties could not be assessed given the recent adoption of those requirements and the fact that the transitional period under the new legislation was still on-going. This could have impacted on the up to datedness of the information kept by the NPOs and by the Registries. It was also not demonstrated that the supervisory action has been fully effective.

6 NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National Cooperation and Cordination (R. 31 and R. 32)

6.1.1 Description and analysis

Recommendation 31 (rated PC in the 3rd round report) & Recommendation 32.1 (rated NC in the 3rd round report)

Summary of 2008 MER factors underlying the rating and developments

1055. At the time of the third round evaluation, San Marino had received a Partially Compliant rating in respect of Recommendation 31 on the basis that there was a clear lack of policy coordination at national level and no formal mechanism was established to enable competent authorities to cooperate and coordinate their actions in the AML/CFT sphere. In addition, there was no collective review of the AML/CFT system and its performances which would have enabled the set the basis for future developments and implementation of policies and activities to combat money laundering and terrorist financing.

Legal Framework

1056. The San Marino authorities have reviewed the legal and institutional framework in order to address the concerns expressed during the last evaluation and foster co-operation and coordination at national level. This is reflected by the new provisions adopted since 2008 and which govern various aspects of national co-operation and coordination, including the ability of specific agencies and institutions to make disclosures to enhance the ability of other agencies to fulfil their functions:

- the AML/CFT Law (Law no. 92/2008), which now includes specific provisions regulating co-operation between the FIA and public administrations, Police authorities, Central Bank and Professional Associations (Chapter II - National Co-operation (articles 11-15) and has amended the role of the Credit and Savings Committee, setting a framework for consultation at national level between competent authorities, the financial sector and other sectors that are subject to the AML/CFT Law (article 85)
- Congress of State Decision no. 17 of 11 May 2009 on Co-operation of Law enforcement authorities in preventing and countering ML and TF
- Law no. 92 of 29 June 2005, with amendments introduced in article 85 of the Law no. 92/2008 (Article 48)
- Congress of State Decision No. 6 of 29 May 2009 on Establishment of a Technical Commission for National Coordination, as subsequently amended by Decision no. 39 of 7 December 2009
- Memorandum of Understanding between the Supervision Department of the Central Bank and the FIA, dated 26 November 2008
- Delegate decree no. 146/2008 of 28 November 2008 on Regulations of the Financial Intelligence Agency (in particular article 15 on assistance to the Judicial Authority).

Mechanisms for domestic co-operation and coordination in AML/CFT (C. 31.1)

Policy mechanisms

1057. At the time of the third round evaluation, San Marino did not have a policy coordination mechanism. The authorities have taken measures as of June 2008 and modified the functions of the **Committee for Credit and Savings (CCS)**, which is now entrusted under Article 48 of the Statute of the Central Bank (Law no 96 of 29 June 2005, as amended by article 85 of the Law no. 92/2008) with the function of "promotion of national and international co-operation for effectively preventing and combating money laundering". According to article 48 as amended, the CCS shall convene on a regular basis for that purpose and those meetings. The CCS is chaired by the Secretary of State for Finance and consists of other 4 Secretaries of State who are members of the Government. When covering AML/CFT issues, its meetings include the participation of a magistrate appointed by the Judicial Council, the Director of the FIA and a representative appointed by the Commanders of the Police Forces. Representatives of Professional Associations, Public Administrations, and the obliged parties envisaged by the law on the prevention and combating of money laundering and terrorist financing may also be invited to take part in such meetings, depending on the issues under the agenda.

1058. The Congress of State, by Decision No. 6 of 29 May 2009 (as amended by Decision no. 39 of 7 December 2009) established a **Technical Commission for National Coordination** (TCNC) in order to assist the Credit and Savings Committee to identify and develop AML/CFT technical lines of actions and policies. The TCNC is also entrusted with the task to report on a regular basis to the CCS with regard to legislative and administrative measures required and which are deemed necessary to improve the effectiveness of the AML/CFT system. The legislator has subsequently

confirmed the establishment of the TCNC (Decree Law no. 134/2010). The Commission, which is headed by a magistrate appointed by the Judicial Council, is composed of 11 members: the Head Magistrate of the Single Court, the Director and Vice Director of FIA; a member of the Supervision Committee of the CBSM and a member of the on-site inspection Service of the CBSM; the commanders of the Police Forces and two representatives of the Police forces, 1 representative of the Secretariat of State of Foreign Affairs, Justice and Finance. Depending on the agenda items, the Commission may invite other representatives of public authorities or offices to attend the meetings.

1059. The Commission is entrusted with the following tasks:

a) coordinate the activity of combating money laundering and terrorist financing carried out by the above indicated authorities;
b) effect the communications referred to in Article 49, paragraph 7 of Law no. 92 of 17 June 2008;
c) report to the Credit and Savings Committee referred to in Article 48, paragraph 4 of Law no. 96 of 29 June 2005 about the tasks performed;
d) propose to the Credit and Savings Committee any useful initiative aimed at effectively preventing and combating money laundering and terrorist financing;
e) monitor financial activities carried out on a limited basis, not required to fulfil the obligations referred to in Title III of this Law, according to a specific law provision.

1060. The TCNC has held regular meetings discussing national priorities, the development of new legislation, regulations and other measures, as well as issues related to changes regarding human and organisational resources of the national authorities.

1061. The work undertaken by the Technical Commission is reflected by the numerous legislative and institutional proposals that were made in order to strengthen the AML/CFT system in the period 2008-2010 (see also the chart provided by the authorities, in the Introduction part of this report) and which have subsequently received the political support of the Credit and Savings Committee for their adoption and implementation.

Operational co-operation

1062. The competent authorities have also developed close working relationships on the operational level. This is facilitated by the new legal provisions which regulate such co-operation and implementing measures adopted on this aspect.

1063. Specific provisions on co-operation between the FIA and other authorities are set out in Chapter II of the AML/CFT Law. The basis for co-operation among the FIA and competent domestic authorities are laid down in Article 11, which establishes that public administrations, the Police Authority, the CBSM, and professional associations shall co-operate with the FIA in the prevention and combating of money laundering and terrorist financing by, *inter alia*, providing, upon reasoned request, the data and information held by them.

1064. Co-operation between the FIA and the Police authorities and the National Central Office of Interpol is covered under article 12 of the AML/CFT Law and includes also the exchange of information.

1065. Co-operation between the FIA and the Judicial Authority is set out under article 15 of Delegated Decree no. 146/2008 of 28 November 2008 on assistance to the Judicial Authority, according to which FIA may perform upon delegation of the Judicial authority inquiries and evidence taking and assist the Judicial Authority in proceedings relating to crimes of ML and FT and to the offenses and administrative violations set out under the AML/CFT legislation.

1066. Co-operation between the FIA and the Central Bank is covered under Article 14 of the AML/CFT Law, which provides that whenever the CBSM, in performing its supervision tasks

over financial parties, detects violations of the law or facts/ circumstances that might be related to ML/TF, it shall immediately inform the Agency in written form. Moreover, the law requires that the CBSM provides the FIA with "data regarding financial parties, as well as information useful for carrying out financial investigations upon reports of suspicious transactions and for analyzing financial flows". In implementation of the legislative provisions above, in November 2008, the FIA and the Supervisory Department of the CBSM have signed a Memorandum of Understanding, which regulates their respective competences aimed at strengthening the fight against ML/TF. As advised by the authorities, the FIA and the CBSM exchange information on a regular basis and coordinate with each other their respective supervisory efforts. The FIA reports supervisory irregularities, if any, and the CBSM highlights any organisational failures/gaps identified, as well as other pertinent facts and circumstances possibly related to AML/CFT.

Additional element – Mechanisms for consultation between competent authorities and the financial sector and other sectors (including DNFBPS) (c. 31.2)

1067. Article 85 of the AML/CFT Law sets out that the President of the CSC can invite representatives of professional associations, public administrations and the obliged parties under the AML/CFT law to take part in its meetings. This mechanism includes thus both financial institutions and DNFBPs. However such mechanisms for consultation appear to be in place only at the highest level, as opposed to the technical level - TCNC's work – where policy and legal measures that involve the financial sector and other sector are discussed and developed.

1068. FIA and other authorities have for the past two years been actively involved in training seminars that include representatives from credit and financial institutions and DNFBPs, and consultation takes place in this context as well as through informal contacts. These trainings provide an opportunity to address issues and hear feedback. FIA has also developed its website which contains very useful information for these sectors. While financial sector representatives with whom the team met referred to having been consulted and involved in some initiatives, the involvement of DNFPBs representatives whom the team into the development of the AML/CFT policies and measures appear to be less frequent. The evaluation team was of the view that the formal consultation mechanisms should further focus on consulting obliged parties before the development of new measures.

Effectiveness and efficiency

1069. The effectiveness of the co-operation and coordination mechanisms among all domestic AML/CFT authorities has clearly improved since the third round evaluation. One has also to consider in this context the small size of the country and of the institutions involved, as well as the close relationship between the competent players involved in this process. The improvement of co-operation at national level is also demonstrated by statistics kept by FIA on disclosures and spontaneous information received and sent to the other competent agencies. In the period January to October 2010 ,FIA has received from other authorities 112 disclosures /spontaneous sharing of information out of which 69 were considered disclosures of STRs. Out of 112 disclosures, the majority were received from the CBSM (46 from the Inspection Department, and 4 from other Services); 30 from the Police authorities (20 from Fortress Guard, 5 and 5 from Gendarmerie and respectively Civil Police), 3 from Interpol, and 29 from other agencies (16 from the Office for Control and Supervision of Economic Activities, 12 from other Government Agencies and 1 from the Central Liaison Office). FIA has also sent 43 requests/spontaneous sharing of information: 4 to the CBSM; 15 to the Police Forces (10 to Gendarmerie, 5 to Civil Police), 6 to Interpol and 18 to other Offices (out of which 10 to the Office for Control and Supervision of Economic Activities). As regards co-operation with the Judicial authorities, in 2010, FIA has received a

delegation for financial investigations in 11 criminal proceedings and 3 rogatory letters and has received information in 16 cases (rogatory letters).

1070. Meetings during the visit with the representatives of the FIA and the CBSM (including two joint meetings) revealed a rather high level of co-operation between these agencies. This might also reflect the fact that the FIA, as such, has physically "departed from" the Central Bank only recently. The discussions were indicative of a close co-operation between the agencies in their supervision efforts, including an intense exchange of information on AML/ CFT related matters.

1071. As regards operational co-operation between FIA and the law enforcement authorities, as explained in Section 2 of the report, these agencies work cooperatively on ML cases, and the feedback on the co-operation instituted was very positively assessed by these agencies. Regular meetings are held between FIA and law enforcement authorities including the Investigating Judges, on specific issues, as needed, including on analysis of issues arising from specific cases.

1072. As regards the work of the TCNC, it has clearly undertaken its task very seriously, this being evidenced by the high number of measures proposed and which resulted in important changes to the AML/CFT system. In order to further implement role of improving the effectiveness of the AML/CFT system, the TCNC should enhance its work related to the examination of trends and emerging money laundering risks, as well as develop the formal consultation mechanism regarding the development and implementation of AML/CFT policies and legislation.

Review of the effectiveness of the AML/CFT system on a regular basis (Recommendation 32.1)

1073. The mandates of the Credit and Savings Committee and of the Technical Commission for National Coordination include the review on a regular basis of the effectiveness of the AML/CFT system, in order to be able to take any corrective measures as deemed appropriate to strengthen effectiveness and plan strategic directions. Considering the changes that were undertaken since 2008, it appears clearly that the San Marino authorities have initiated the development of a common vision in this field, and that regular attention to AML/CFT issues is being given not only at expert technical level, but also at the highest political level. Minutes of the meetings held by the TCNC show that the Commission has to date discussed results achieved by several competent authorities as well as specific issues of implementation. However, given the recent establishment of the TCNC, it had not yet the opportunity to fully analyse the overall effectiveness of the AML/CFT system, including through an analysis of statistics available to evaluate the adequacy of the preventive and other measures.

Recommendation 30 (Policy makers – Resources, professional standards and training)

1074. The resources of the policy makers are adequate and enable them to fully perform their functions. The Credit and Savings Committee is composed of 5 Secretaries of State. The Technical Commission for National Coordination is composed of 9 members, all of them being high level officials experienced with AML/CFT issues. They are bound by the requirements of their administration/institution as regards the confidentiality standards and are appropriately skilled. For the TCNC's meetings, they avail themselves of the FIA's resources, the latter also acting as its secretariat.

6.1.2 Recommendations and Comments

Recommendation 31

1075. The Technical Commission of National Coordination should enhance its role by examining jointly trends and emerging money laundering risks, and, once FIA will have finalised the ML/TF risk assessment, undertake regular reviews of the AML/CFT strategic direction in the light of the risks identified, and as appropriate make necessary adjustments to applicable policies.

1076. The Technical Commission of National Coordination should consider developing further the formal consultation mechanisms of the financial sector and other relevant sectors, as appropriate, to ensure an appropriate level of consultation of financial institutions and DNFBPs when developing AML/CFT policies and legislation.

Review of the effectiveness of the AML/CFT system on a regular basis (Recommendation 32.1)

1077. The Technical Commission of National Coordination should analyse the overall effectiveness of the AML/CFT system on a regular basis (i.e. bi-annually), including by reviewing the statistics available and the results achieved by the competent authorities, in order to evaluate the adequacy of the preventive and other measures that were implemented and develop proposals which would form the basis for further improvements of the system.

6.1.3 Compliance with Recommendations 31 and 32 (criterion 32.1 only)

	Rating	Summary of factors underlying rating
R.31	**LC**	• Effectiveness issues: given that the TCNC was established only recently, full effectiveness of the co-operation and coordination mechanism could not be fully established; examination of trends and emerging money laundering risk does not appear to be jointly examined within this mechanism, and policies and strategic directions reviewed on the basis of the risk assessment when developed.

6.2 The Conventions and United Nations Special Resolutions (R. 35 and SR.I)

6.2.1 Description and analysis

Recommendation 35 (rated PC in the 3rd round report)& Special Recommendation I (rated LC in the 3rd round report)

Ratification of AML Related UN Conventions (c. R.35.1 and of CFT Related UN Conventions (c. SR I.1)

1078. San Marino was already a Party to the Vienna Convention since 2001 and to the United Nations International Convention for the Suppression of the financing of terrorism since March 2002.

1079. After the third round evaluation, San Marino has ratified on 1 June 2010 the United Nations Convention against Transnational Organised Crime (hereinafter Palermo Convention) and its additional protocols, and those became applicable in its respect on 20 July 2010.

Implementation of Vienna Convention (Articles 3-11, 15, 17 & 19, c. 35.1) and of Palermo Convention (Articles 5-7, 10-16, 18-20, 24-27, 29-31 & 34, c.35.1)

1080. The provisions of the Vienna and Palermo Conventions that require criminalisation of ML have been implemented in the Sammarinese legal system, as described under the analysis of implementation of R.1. The requirements of the convention in this respect have been implemented, with a few technical issues as described earlier remaining such as some physical elements of the money laundering offence not explicitly covered in article 199bis though these were clarified by the case law, and the categories of offences of terrorism, financing of terrorism and piracy not fully covered as predicate offences to money laundering, no extension to self laundering and criminal liability of legal persons.

1081. The amendments to the existing legislation that were introduced through the AML/CFT Law, the Delegated Decrees and decisions of the Congress of State bring numerous improvements to the legal framework implementing other aspects of the Conventions, such as the liability of legal persons (only administrative), joint investigations, special investigative means, international co-operation in criminal matters, in particular MLA and extradition, the detection of physical cross border transport.

1082. Under Law No.28/2004, law enforcement authorities have the ability to apply, under judicial authorization, special investigative techniques, such as controlled deliveries and undercover operations. Article 15 of the Law No.28/2004 as amended by Article 84 of the Law No.92/2008 sets out that the Law Commissioner may authorize special agents of the Police Forces to conduct undercover operations, intervene in intermediation activities, simulate the purchasing of goods, materials and things aimed at suppressing the offences under articles 199bis (money-laundering), 207 (usury), 337bis (terrorist association) and 337ter (terrorist financing) of the Criminal Code.

1083. Law No.98 of 21 July 2009 sets out the application of wire tapping in the context of investigations. These special investigative techniques are authorised for money laundering or terrorism financing offences, as well as for other offences related to banking, financial and insurance activities, however the authorities have made limited use of those techniques.

1084. Delegated Decree no. 74/2009 ("Ratification of Delegated Decree no.62 of 4 May 2009-Cross-border transportation of cash and similar instruments") has been adopted and established a declaration system with requirements related to physical transportations of cash and bearer negotiable instruments.

1085. The limitations in the implementation of the Convention's provisions are described in the relevant sections of this report.

Implementation of the Terrorist Financing Convention (Articles 2-18, c.35.1 & c. SR. I.1)

1086. The provisions of the Terrorist Financing Convention relating to the criminalisation of FT have been implemented through amendments to the Criminal Code (see Article 337 Ter - Financing of Terrorism), definitions under the Law no. 92/2008 (defining under the AML/CFT legislation the terms " terrorism", " terrorist act" and terrorist") and through Law no. 6 of 21 January 2010 setting out the measures and sanctions for the administrative liability of legal persons for offences under articles *337 bis* (Associations for the purpose of terrorism or

subversion of the constitutional order) and *337 ter* (terrorist financing) of the Criminal Code. Those provisions implement a number of the Convention's requirements, as described under the analysis related to SR.II. However, as discussed earlier, the legislation does not criminalise a large majority of the acts that are required to be criminalised under the treaties annexed to the FT Convention, and this impacts negatively also on the definitions of a terrorist and of a terrorist organisation. Corporate criminal liability for FT has not been established. The limitations for confiscation and in the context of mutual legal assistance and extradition are also described in the relevant sections of this report.

Implementation of UNSCRs relating to Prevention and Suppression (c. SR.I.2)

1087. The implementation of UNSC Resolutions is described under Special Recommendation III. San Marino has taken adequate measures aimed at establishing a system that can effect freezes in respect of UNSCR 1267 designations. However the measures aimed at implementing UNSCR 1373 suffers from a number of gaps such as clearly establishing in the designating authority for the purpose of UNSCR 1373 and relevant procedures for designation, delisting, unfreezing etc in respect of the persons designated under UNSCR 1373; the limited scope of assets subject to the freezing mechanism under UNSCR 1373, shortcomings arising from a cascading effect of deficiencies noted under SR.II in respect of criminalisation of terrorist acts, etc. Generally the freezing mechanism under UNSCR 1373 and 1267 does not extend to funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons, terrorists, those who finance terrorism or terrorist organisations. There remain a few effectiveness issues, arising from a limited awareness of the obligations by all obliged entities as well as the implementation issues, which cannot be fully ascertained in the absence of adequate supervision of compliance with the requirements.

Additional element – Ratification or Implementation of other relevant international conventions

1088. Since the third round evaluation, San Marino has signed and ratified a number of other relevant Council of Europe and other conventions, including the 2005 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (in force as of 1 November 2010).

6.2.2 Recommendations and comments

1089. San Marino authorities should:

- Take additional measures, as relevant to implement fully the Vienna and Palermo Conventions.
- Take additional measures, as relevant to implement fully the CFT Convention, in particular by addressing the shortcomings identified in SR II
- Address the shortcomings identified in relation to the implementation of UNSCR 1373 and 1267.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	**LC**	• A few shortcomings remain in the implementation of the Palermo and Vienna Conventions as outlined in the respective sections of this report
SR.I	**PC**	• Shortcomings remain in the implementation of the FT Convention as outlined in the respective sections of this report (i.e. criminalisation of a

		large majority of terrorist acts, lack of corporate criminal liability, limitations for confiscation, related gaps in the context of MLA and extradition). • Shortcomings remain in respect of the implementation of S/RES/1373 as outlined in the respective section of this report as well as in respect of the scope of assets as regards UNSCR 1267.

6.3 Mutual legal assistance (R. 36, SR. V)

6.3.1 Description and analysis

Recommendation 36 (rated PC in the 3rd round report)

Summary of 2008 MER factors underlying the rating and developments

1090. San Marino was rated Partially Compliant, shortcomings including the absence of clear specific national provisions on mutual legal assistance processes and procedures; concerns about the efficiency of the process of execution of MLA requests and possible delays, the difficulty to ascertain whether there were grounds for refusal of MLA requests in the context of secrecy or confidentiality requirements for DNFBPs, the absence of a mechanism to consider the best venue for prosecutions in cases that are subject to prosecution in more than one country, and deficiencies in ML and FT impacting on dual criminality. No comprehensive statistics were kept on an annual basis on MLA requests with appropriate breakdowns and related information.

Legal framework

1091. Where bilateral or multilateral treaties have been concluded between San Marino and other states, mutual legal assistance is primarily governed by these treaties, subject to applicable declarations and reservations notified by San Marino upon ratification. If international treaties or bilateral agreements do not stipulate specific rules, or provide otherwise, mutual legal assistance shall be provided pursuant to the rules set out in Law no. 104 on 30 July 2009, as amended by Law no. 128 of 23 July 2010. For the purpose of this law, international rogatory letters shall concern requests related to criminal proceedings in order to procure evidence or transmit articles to be produced as evidence, records or documents. Furthermore, it is to be noted that as regards transfer of sentenced persons, new provisions were introduced by law no. 92/2008 (article 82).

Widest possible range of mutual assistance (c.36.1)

1092. San Marino can provide a wide range of mutual legal assistance in investigations, prosecutions and related proceedings concerning money laundering and the financing of terrorism, in application of the multilateral and bilateral agreements to which it is a Party or otherwise based on the national legal framework provisions. The national legislation explicitly requires that "the provisions contained in the international conventions applicable to the Republic and the rules of Law no.104 must be construed ion the most favourable sense to the international co-operation".

1093. Mutual legal assistance measures under relevant international conventions. San Marino is a party to the following international conventions, including sectoral offense-related conventions which have specific provisions on mutual assistance:

Table 35: Treaties of the Council of Europe on international co-operation in criminal matters and sectoral aspects

Treaty	Entry into force for San Marino (in **bold** new ratifications)
European Convention on Extradition	**16/6/2009**
European Convention on the International Validity of Criminal Judgments	18/7/2002
Convention on the Transfer of Sentenced Persons	1/10/2004
Additional Protocol to the Convention on the Transfer of Sentenced Persons	1/10/2004
European Convention on Mutual Legal Assistance	**16/6/ 2009**
European Convention on the Suppression of Terrorism	18/7/2002
Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS no.141)	1/2/2001
Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS no.198)	**1/11/2010**

Table 36: Selected multilateral treaties of the United Nations

Treaty	Entry into force for San Marino (in **bold** new ratifications)
Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances	10 Oct 2000
Convention against Transnational Organised Crime	**20 Jul 2010**
Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children	**20 Jul 2010**
Protocol against Smuggling of Migrants by Land, Air and Sea	**20 Jul 2010**
International Convention for the Suppression of the financing of terrorism	12 March 2002

1094. San Marino has, upon submission of the ratification instruments, also introduced a number of declarations and reservations to the above mentioned conventions.

1095. In this context, it is noted that San Marino had made a declaration upon accession to the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances indicating that "the establishment of "joint teams" and "liaison officers", under article 9, item 1, letter c) and d), as well as "controlled delivery" under article 11 of the [...] Convention, are not provided for by San Marino legal system". Considering the changes introduced to its legal framework, which now permits for instance controlled deliveries, and in order to enable the widest range of assistance in application of this Convention, the authorities should review and withdraw /amend this declaration as appropriate.

1096. Mutual legal assistance under a bilateral treaty. San Marino is also a Party to the following bilateral agreements

i. **Italy:** Convention on friendship and good neighbourhood (31.03.1939)
ii. **France:** Convention on judicial co-operation in civil, commercial and criminal matters and on the execution of sentences in civil and commercial matters (25.05.1967, ratified on 18.09.1968) . This convention has a limited scope and covers, as regards co-operation in criminal matters, the notification of judicial acts, the summons and appearance of witnesses before the judicial authority of the other State.
iii. **Cuba:** agreement on the execution of criminal sentences between the Republic of San Marino and the Republic of Cuba (13.07.2004)

1097. The relevant provisions of the Convention signed with Italy, which is the mostly used treaty, are set out below:

> Art. 29.
> The Judicial Authority of each Contracting Party shall, at the request of the judicial Authority of the other Party, serve documents, carry out investigations, including the seizure of the *corpus delicti*, and any other act relating to criminal proceedings taking place before the aforesaid authorities. With regard to the matter covered by the paragraph above, the judicial authorities of the two States shall directly communicate to each other. In case of lack of competence of the requested Authority, the letter rogatory shall be transmitted ex officio to the competent Authority of the same State according to its legislation.
> The execution of a letter rogatory may be denied only when it does not fall within the competence of the Judicial Authority of the requested State.
>
> Art. 30.
> When, in the framework of criminal proceedings taking place in one of the Contracting States, the Judicial Authority considers that it is necessary to review documents held by the authorities of the other Contracting Party, it shall submit a relevant request to said Authorities, which shall transmit the requested documents, subject to the obligation of the requesting Party to return them as soon as possible. The same provision shall apply to the corpus delicti and any other item that may be used to convict or acquit the defendant.
>
> Art. 31.
> If, in criminal proceedings before the judicial authority of one of the two States, a witness or expert who is in the territory of the other State shall appear, said other State shall serve the summons on him/her anticipating, if necessary, travel expenses, subject to the obligation of the requesting State to refund such expenses.
> When the witness or expert, without legitimate reason, does not appear before the Court, the requested State shall apply to him/her the measures envisaged by its legislation in the event of non-appearance of witnesses or experts before the national judicial authority.
> For the entire period required to testify or to perform his/her task and return to his/her Country the witness or expert shall not be prosecuted or arrested in the territory of the requesting State for previous facts or convictions or for involvement in facts to which the proceedings refer.
>
> Art. 32
> If, in criminal proceedings before the judicial authority of one of the two States, the confrontation with individuals imprisoned in the other State is deemed useful, said other State shall, upon request of the aforesaid authority, hand over the prisoners, with the obligation to return them as soon as possible.

1098. As shown by the statistics provided by the authorities, the majority of the requests received from Italy are based on the 1939 bilateral convention, either independently or also in combination with ETS no. 030, and for requests received from other countries, they are based on CETS no. 141.

1099. Mutual legal assistance based on reciprocity. Article 10 of Law no. 104 on 30 July 2009 provides that assistance can be provided also to States with which no international convention exist on these matters, subject to a decision by a political body (Congress of State), based on a technical report prepared by the Law Commissioner, and subject to adequate guarantees of reciprocity received from the requesting State.

1100. According to the legislation of San Marino, assistance may include: the production, search and seizure of information, documents, and evidence in general from banking or financial institutions, or other natural or legal persons, even if not involved in the offence; interviews and

taking of testimony; the obtaining of documents relevant to the offence; the servicing of judicial acts also to "encourage" people in possession of relevant information for the requesting State to show up spontaneously (to this end the San Marino judge may impose penalties on a witness unreasonably refusing to appear or provide testimony); identification, seizure and confiscation of property or proceeds laundered or intended to be laundered.

1101. San Marino eliminated the restrictive requirement set out under Article 13(2) of Law no. 104 whereby "the acquisition of copies of documents constitutes seizure", by repealing the provision through the amendments introduced through Law no. 128 of 23 July 2010, thus the mandatory legal notification of the exequatur order will no longer be necessary.

1102. As regards providing originals or relevant documents and records, Article 15 of Law no. 104 sets out clearly that the Law Commissioner can transmit certified copies or photocopies of records and documents requested. If the requesting State expressly requests the transmission of originals, such requests are executed only if it is possible, and the requesting State shall be required to return them as soon as possible, unless San Marino no longer requires them. When acquisition of originals is requested, this is carried out through seizure, and in such cases dual criminality is applied.

1103. The Law no.104/2009 as amended in July 2010 now provides that the Law Commissioner may authorize, following the express request of the foreign State, that the requesting authority be present at the execution of the letters rogatory (article 16 amended).

Ability to provide assistance in timely, constructive and effective manner (c. 36.1.1) and Clear and efficient processes (c. 36.3)

Processes

1104. Mutual legal assistance measures under relevant international conventions. The channels for **incoming mutual legal assistance requests** varies, as shown by the declarations or reservations made by San Marino upon ratification of the Convention:

- European Convention on Mutual Legal Assistance (CETS 033): any requests for legal assistances and documents should be submitted directly to the relevant judicial authority with a copy to the Secretary of State for Justice (declaration concerning article 15)
- Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (CETS 141), service of judicial documents can be effected only through its central authority, without prejudice to what is provided for in bilateral treaties, that is the Secretariat of State for Foreign Affairs (reservation concerning article 21)
- Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and the financing of terrorism(CETS 198): serving of judicial documents to persons affected by provisional measures and confiscation can be delivered only through its central authority, that is the Secretariat of State for Foreign Affairs (declaration concerning article 31).

1105. Mutual legal assistance under a bilateral treaty: The Convention between Italy and San Marino enables direct communication between judicial authorities. Under the agreement with France, requests are sent and received through respectively the Secretary of State for Foreign Affairs of San Marino and the Ministry of Justice of France. As for the Convention with Cuba, the central authorities are the respective Secretary of State and Minister of Justice.

1106. Mutual legal assistance measures under the national legislation (in the absence of any Convention setting out specific rules or providing otherwise). As regards **incoming requests**, Law no. 104/2009 enables direct relations between the national judicial authority and that of the

foreign country with a view to facilitating the procedure for mutual legal assistance: article 6 provides that the request and annexed documents shall be addressed directly by the judicial authority of the requesting State to the Single Court of the Republic of San Marino, and at the same time a copy shall be sent to the Secretariat of State for Justice.

1107. As regards **outgoing requests**, Law no. 104/2009 provides that, subject to international conventions' provisions which permit direct communication, the **investigative judge** shall forward to the competent foreign authority the requests relating to criminal proceedings by sending the request to the **Secretariat of State for Justice**, which sends them to the Ministry of Justice of the requested State through diplomatic channels. In practice, it was indicated that the modalities for transmission indicated in the request received from the foreign authority are used or otherwise the ones indicated in respect of the Convention on the basis of which the request was made. Outgoing requests do not require transmission via diplomatic channels (i.e. Secretariat of State for Foreign Affairs), they are transmitted by the Secretariat of State for Justice. Transmission is carried out on the same day of receipt from the Court, the Secretariat recording the timelines of execution of requests (both incoming and outgoing) and keeping track of the timelines for execution.

1108. There are clear processes for the receipt and execution of mutual legal assistance requests, as set out under the declarations to the respective conventions as complemented by the legislation.

Execution of requests and time limits

1109. Reciprocity. As regards requests submitted by a State with which San Marino does not have an agreement in place, the Law Commissioner is required under the law to submit within 30 days of the receipt of the request, a technical report stating whether the request complies with the legal requirements. The Congress of State is the authority taking a decision as to whether assistance should be granted or denied, following which the Secretary of State for Justice shall require the foreign state a guarantee of reciprocity. The Secretary of State may refuse to execute the letter rogatory in the absence of adequate guarantee. The same deadline –i.e. within 60 days of receipt – applies to the Law Commissioner for the execution of the letter rogatory, starting from the moment of receipt of the communication by the Secretary of State. There were no cases where the execution of a letter rogatory was refused.

1110. Mutual legal assistance measures under relevant international conventions. The provisions under international conventions do not set out specific time limits for execution of requests. When executing requests, the Sammarinese rules governing mutual legal assistance as explained below would be applied.

1111. Mutual legal assistance under a bilateral treaty: there are no specific provisions about the timing of execution of requests, thus the deadlines mentioned above would also apply.

1112. Mutual legal assistance measures under the national legislation (in the absence of any Convention setting out specific rules or providing otherwise). Ordinary rules governing mutual legal assistance set out specific time limits for responding to incoming mutual legal assistance requests. Article 8 of Law no. 104/2009 requires the Law Commissioner to rapidly execute letters rogatory (except for cases which are suspended), within and no later than 60 days of receipt, by adopting an order of exequatur.

1113. In cases where the information contained in the request is not sufficient, and additional information is required, the time limit shall run from the receipt of the amendments and/or information requested to complete the request. The legislation does not specify any time limit for

the Law Commissioner to contact the foreign authority with a request to complete or modify its request, however the authorities indicated that this is undertaken within the timelines set out in the legislation, and that if no action is taken by the Law Commissioner, this constitutes a ground for disciplinary sanction. If the foreign authority does not modify the request within 1 year, the request is filed.

1114. The execution of a letter rogatory can also be suspended, by motivated order, if it is likely to be detrimental to investigations in criminal proceedings pending in San Marino (article 10). Again, there is no provision explicitly requiring the Law Commissioner to rapidly execute the letter rogatory, once the grounds for suspension have ceased to exist, however the authorities clarified that once the grounds for suspension have disappeared, the time limit for execution remains 60 days, from which the number of days spent before the suspension are deducted. There have been no instances of suspension in practice.

1115. Chapter II of Law no. 104/2009 includes specific provisions regarding appeals. Orders of exequatur of mere notifications cannot be challenged. Orders of exequatur involving coercive measures can be challenged by the parties involved to the Judge of Appeal in Criminal Matters, within 10 days of receipt of service of the order of exequatur. The Judge of Appeal will take a decision upon expiry of the deadlines set under the legislation (i.e. up to 45 days in total between the time when parties can examine the request, the time when the request is sent by the Law Commissioner to the competent judge and the time for submission of remarks by the parties and the decision of the Judge of Appeal).

1116. Lodging of appeals suspended the execution of the letters rogatory, and this provision was amended in July 2010 to indicate that lodging of appeals is no longer an automatic ground for suspension but constitutes a ground for suspension of the transmission of documents relating to the execution of a letter rogatory to a foreign authority. The authorities indicated that the lodging of appeals do not prevent the investigating judge from collecting the evidence as requested by the foreign authority, but only suspends the transmission until the Judge of Appeal has taken a decision. The average time for an appeal, including the decision by the judge, is on average up to 20 days.

1117. Article 33 of Law no. 104/2009 included a second level of appeal procedure before the Judge of Third instance in criminal matters, for appeals on grounds of legality related to the order of the Judge of Appeal (appeals which could be formulated within 30 days of receipt of service of the order, with 10 additional days to provide remarks, and subsequent 20 days for decision making). This provision was repealed as of July 2010, and is a positive development, as it seems now to warrant conditions for an efficient process for dealing with and executing MLA requests.

1118. The authorities indicated that the average time for execution of requests (from the date of receipt till the date of transmission, including appeal if relevant) in 2009 was 65 days while in 2010 this was reduced to 54 days. The statistics provided by the authorities indicate that requests are being dealt with in a good time, without incurring undue delays, with some complex cases having been carried out in 30 days.

No unreasonable or unduly restrictive conditions on mutual assistance (c.36.2)

1119. The Law Commissioner is the authority entrusted with the execution of letters rogatory and thus who assesses the requirements in order to determine whether, on the basis of existing legislation, their form is in conformity with the applicable conditions. Execution of requests is subject to the dual criminality principle as a precondition for granting MLA or certain forms of

assistance. The authorities indicated that for less intrusive and non mandatory measures, mutual legal assistance can be provided even in the absence of dual criminality.

1120. In order for the Law Commissioners to acquire the relevant documents, they delegate the execution of the actions covered by the request to the Nucleo Interforze and/or the FIA and/or the Central Bank, in the framework of their respective competences. Examples of orders received referred for instance to cases where FIA was appointed to carry out "investigations" pursuant to articles 2 and 5 of Law no. 92/2008, such as the identification of the beneficial owner of a trust account, while in addition, investigations would also be ordered and delegated to the Central Bank, in the event of alleged illegal practices of financial activities, so as to identify all the orders illegally collected and the relevant beneficial owners, and both would be required to review the overall operations related to the trust deeds. For the acquisition of documents, the Law Commissioner usually required the financial institution to make available all documents requests to the police/judge and when doubts arise as to the completeness of documents and if the documents are not handed in within the timeframe indicated, additional measures of search and seizure can be ordered.

1121. Mutual legal assistance measures under relevant international conventions. The execution of rogatory letters is undertaken in application of the grounds for refusal set out in the respective conventions. It is noted that, as permitted by the Convention, San Marino introduced a declaration upon ratification of the European Convention on Mutual Legal Assistance whereby it reserved the right to accept requests for judicial assistance in respect of search or seizure of property depending on the conditions that a) the offence motivating the letters rogatory is punishable under both the law of the requesting Party and the law of the requested Party and c) the execution of the letters rogatory is consistent with the law of the requested Party. Also, in respect of service of a summons on an accused person who is in its territory, it will only grant assistance if summons are transmitted to the competent authority 40 days before the date set for the appearance of the accused person.

1122. Mutual legal assistance under a bilateral treaty. The Convention with France requires dual criminality for requests. The Convention between San Marino and Italy provides in article 29 paragraph 3 that the execution of a letter rogatory may be denied only when it does not fall within the competences of the Judicial authority of the requested State.

1123. For requests based on the 1939 bilateral agreement with Italy, the San Marino authority verifies the existence of certain pre-requisites, such as 1) the double criminality principle, 2) that the actions requested do not conflict with the provisions of the breach of peace laws or with the sovereignty and safety of the country to which the request is addressed and 3) that the requesting authority accompanies its request with an analytical presentation of the fact in order to verify the correspondence of the offence. In addition, the judicial authority verifies that the grounds set out in Law no. 104 are also respected (see below).

1124. Mutual legal assistance measures under the national legislation (in the absence of any applicable agreement or provisions stipulating otherwise). Sammarinese legislation sets out in Article 8 (Law no. 104 on 30 July 2009, as amended by Law no. 128 of 23 July 2010) six specific grounds which are cumulative, pursuant to which mutual legal assistance may not be provided:

1) if the acts requested are contrary to the principles enshrined in the Declaration of Citizens' Rights and Fundamental Principles of San Marino constitutional order;

2) if the acts requested are expressly prohibited by law;

3) if the acts requested prejudice the sovereignty, security or other essential interests of the Republic of San Marino;

4) if the request concerns an offence considered a political offence or an offence connected with a political offence under San Marino Law. In no case shall the offences of association for the purposes of terrorism, terrorist financing and the offences committed for the purpose of terrorism or subversion of the constitutional order be deemed political crimes;"
5) if the request concerns the same fact and the same person against whom the San Marino judicial authorities have issued a final judgement.
"6) if the letter rogatory concerning search or seizure of property is submitted on the basis of offences that are not punishable under both the law of the requesting State and the law of the Republic of San Marino, or if the request is not consistent with the law of San Marino, unless the fact against which the foreign Judicial Authority takes action is connected with offences for the purposes of terrorism, terrorist financing, as well as with offences committed for the purpose of terrorism or subversion of the constitutional order;
7) if the letter rogatory concerns the summons of a witness, expert or defendant before the foreign judicial authorities and the requesting State does not provide any appropriate guarantee in regard to the immunity of the summoned person.

1125. Based on the information received, it does not appear that these are unreasonable, disproportionate or unduly restrictive. The amendments made in July 2010 to Law no. 104, abrogating the double appeal procedure have eliminated a restrictive condition for the execution of mutual assistance requests. The lodging of an appeal no longer constitutes an automatic ground for suspending the execution of a request, it is now only a ground to suspend the transmission of documents to the foreign authority until the Judge of Appeal takes a decision.

1126. The deficiencies in the ML offense, noted under Recommendation 1 (i.e. absence of criminalisation of self laundering) may impact on the ability of San Marino to provide certain forms of international co-operation where dual criminality is required. No requests involving ML were refused so far on the basis of the dual criminality requirements.

Provision of assistance regardless of possible involvement of fiscal matters (c. 36.4)

1127. As mentioned in the third round MER, the fact that a predicate offense is also considered to involve tax matters is not sufficient to deny assistance. Dual criminality applies. The authorities indicated that Law no. 99 of 7 June 2010 has introduced the crimes of false invoicing and false statements through the use of forged invoices, which extended the possibility of San Marino to offer foreign authorities legal assistance also in fiscal matters, in addition to conducts qualified as fraud to the detriment of the inland revenue of a foreign state which were already covered.

Provision of assistance regardless of existence of secrecy and confidentiality laws (c. 36.5)

1128. Law no. 5 of 21 January 2010 amended article 36 paragraph 5 of Law no. 165 of 17 November 2005, providing inter alia that banking secrecy cannot be evoked against the Law Commissioner in criminal cases as well as of other San Marino public bodies and offices responsible for the direct exchange of information with foreign counterparts in accordance with the international agreements in force. Production of all information and documents held by banking or financial institutions may be compelled in the framework of a rogatory commission. Article 37 of Law no. 104 also clarifies that under Article 36 paragraph 5 of LISF, bank secrecy cannot be invoked in the hearing.

1129. Professional secrecy cannot be invoked against the Judicial authority: article 38 of Law no. 92 of 17 June 2008 expressly establishes that official and professional secrecy shall not be invoked against the Judicial Authority, the Agency and the Police Authority in the exercise of their functions, except for information that lawyers and accountants acquire while defending and

representing their client during judicial or administrative proceeding. The provision applies both to domestic proceedings and proceedings involving a letter rogatory, since Art. 13, paragraph 1 of Law no. 104 of 30 July 2009 establishes that the judge shall carry out the requested acts according to the modalities set forth in national legislation. Lawyers (art. 17, Decree no. 56 of 26 April 1995) and accountants (art. 15, Decree no. 57 of 26 April 1995) are allowed to abstain from giving evidence on facts in Court. In practice, the acquisition of copies, searches and seizures executed at the offices of professionals (especially accountants, but also notaries) takes place very frequently, as indicated by the authorities, and professional secrecy has never been invoked in any domestic proceedings or proceedings initiated after the receipt of a letter rogatory.

Availability of powers of competent authorities (applying R.28, c. 36.6)

1130. In response to mutual legal assistance requests, the same investigation powers and techniques may be used as for domestic proceedings. As noted in the third round MER, the investigating judge and the three law enforcement units have adequate powers required to carry out investigations and take statements concerning any crime (with the exception of certain tax related cases and self money laundering cases which are not deemed to be predicate underlying offences).

Avoiding conflicts of jurisdiction (c. 36.7)

1131. The situation remained unchanged. Under Articles 5, 6 and 7 of the Criminal Code specifying the domestic criminal jurisdiction, anyone - either foreigner or stateless - committing an offence on San Marino territory is subject to its domestic legislation, except where otherwise stipulated in international agreements. The offence is deemed to have been committed in San Marino when the perpetrator committed criminal acts or if the conduct occurred therein. The same principle applies to anyone committing outside the territory of San Marino a particularly serious offence, e.g. felony, including terrorist association or financing of a terrorist association, or any other offence which San Marino is obliged to suppress - even if committed abroad - under an international treaty. Where the same individual has been already convicted abroad for the same conduct, then in determining the punishment to be imposed domestically, account is taken of the sentence rendered and served, as the case may be, abroad.

Additional element – Availability of powers of competent authorities required under R. 28 (c. 36.8)

1132. The powers of the competent authorities may be used in the event that a direct request is made by foreign judicial or law enforcement authorities to domestic San Marino counterparts. The bilateral conventions (e.g. Italy, France) provide also for this possibility.

Special Recommendation V (rated PC in the 3rd round report) - International Co-operation under SR. V (applying 36.1 – 36.6 in R.36, c.V.1)

1133. The provisions described above apply equally to the fight against terrorism and TF. It should be noted however that the deficiencies described under Special Recommendation II impact on San Marino's ability to provide mutual legal assistance in cases where dual criminality is a precondition.

1134. Also, it is important to note that as regards the grounds for refusal, that article 8 (4) provides explicitly that "in no case shall the offences of association for the purposes of terrorism, terrorist financing and the offences committed for the purpose of terrorism or subversion of the constitutional order be deemed political crimes". Article 8(6) also covers specifically letters rogatory concerning search or seizure of property.

1135. There have been no (incoming or outgoing) requests of assistance involving terrorism or FT offences.

Additional element under SR V (applying c. 36.7 & 36.8 in R. 36, c.V.6)

Effectiveness and efficiency

1136. The evaluation team welcomes the legal changes introduced by San Marino. The international instruments ratified have strengthened the legal basis upon which co-operation in criminal matters and extradition can be provided. The internal legal framework has also been improved and clarified, which is a very positive step.

1137. The total number of requests sent and received, and in particular requests regarding ML cases and other banking and financial crimes, has notably increased, with instances involving very complex requests and detailed assistance measures, and sensitive cases involving organised crime, as shown by the tables of statistics provided by the authorities.

1138. These arrangements for delegating a number of tasks to the Central Bank and the FIA, in close co-operation with the Police officials, are peculiar to the situation of San Marino and appear to result in an efficient process for executing the mutual legal assistance requests, though adding an important workload which impacts on the limited resources of these authorities.

Recommendation 30 (Resources – Central authority for sending/receiving mutual legal assistance/extradition requests)

1139. As regards the 'central authority', as mentioned above, for the purposes of some of the international conventions, this task is carried out by the Law Commissioners of the Single Court. Transmission is also ensured in limited cases by the Secretariat of State for Foreign Affairs.

1140. As regards the Secretariat of State for Foreign Affairs, this activity is carried out by the Economic and Social Affairs Director of the Foreign Affairs Department and, if absent, by the Political Affairs Director. They both rely on two collaborators. As regards the letters rogatory received by the Secretariat of State for Foreign Affairs, they amount to 10 in 2009 and 8 in 2010, out of which 8 and respectively 6 involved money laundering cases. As regards outgoing letters rogatory, there have been only 5 letters sent abroad in 2009-2010, out of which 1 related to a money laundering request. The Secretariat indicated that its staff devote 5-10 days per year of their working time to this activity.

1141. Incoming letters rogatory were assigned to two magistrates until December 2009, when following the recruitment of new magistrates, the Single Court has reviewed the division of workload related to international legal assistance and at the time of the on-site visit, the execution of incoming letters rogatory were divided among 3 magistrates. This is a very much welcome development, considering that at the time of the third round evaluation, only one magistrate was responsible for the execution of mutual legal assistance requests. One Law Commissioner is responsible for executing letters rogatory concerning money laundering and those requesting investigations and acquisition of documents held by obliged entities, another Law Commissioner deals with proceedings involving extradition and the remaining incoming letters rogatory, except those which, regardless of the offence exclusively request the identification of the person having cashed cheques with San Marino banks, which are handled by a different judge. When the requests for legal assistance made by foreign authorities concern offences for which domestic

criminal proceedings have already been initiated, the letter rogatory falls within the competence of the Investigating Judge who has been assigned to the domestic proceedings.

1142. As regards the execution of the requests, based on the information received, the FIA was delegated to execute acts for 10 requests in 2009, and for 8 requests by November 2010. This task is undertaken by the FIA Director and Deputy Director, who are assisted in some cases also by Police Forces. Though no information was made available on the time spent by them on this activity, the evaluation team remained under the impression that this was rather resource intensive, considering the other duties that the management of the FIA has to carry out as their core activity.

1143. In 2009, the CBSM was required to execute activities in respect of 18 requests and in 2009 in respect of 9 requests. This task is undertaken by the Head of the on-site supervision department together with staff members (on average 3 persons), who receive support on-site by the Police, and the total time spent in 2009 on execution of such delegations absorbed about 30% of their total working time, and approximately half of that in 2010.

1144. As regards the Police authorities, in 2009, they were delegated to carry out activities in respect of 99 cases of letters rogatory, out of which 10 related to ML, while in 2010, these amounted to 97, out of which 9 related to ML offences. This data does not include the cases where the Judicial Police was entrusted with the task of serving documents. The Police staff carrying out this task is composed of the Inter-Force Group (1 inspector of the Civil Police, a sergeant of the Civil Police and an assistant of the Civil Police, a sergeant of the Fortress Guard and a sergeant of the Gendarmerie) and the Fraud Squad within the Civil Police (led by an inspector and composed of 8 members). In relation to specific investigations, also the divisions of the various corps are employed. On average, the Inter-Force devoted 50% of its working time to execution of acts related to letters rogatory, the Fraud Squad about 30% of its working time, and other Police personnel 3-5%.

1145. Considering the statistics provided by the Single Court on the number of letters rogatory the evaluation team remains reserved on the adequacy of human and technical resources of the Judicial Authority which performs the role of 'central authority'. Furthermore, the evaluators were also concerned by the cascading effect and impact on the workload of the officials of the FIA and the Central Bank, which are being delegated to execute an increasing number of assistance acts necessary for the execution of those requests. The evaluators consider that the competent authorities continue to commit themselves in this sector, by increasing the number and efficiency of the staff supporting magistrates to enable them to carry out the tasks assigned independently.

1146. It was not demonstrated that the adequate technical means and equipment (e.g. ICT equipment, equipment for video/telephone conference, technical means required for special investigative measures) are available for competent authorities enabling them to adequately respond to mutual legal assistance requests.

Recommendation 32 (Statistics – c. 32.2)

1147. The authorities provided detailed statistics concerning ML related incoming and outgoing mutual legal assistance requests, as well as requests related to other offences. The tables regarding incoming requests include information as to whether the requests were granted or refused, the legal basis on which they were based, the response times, as well as if they involved seizures or confiscation measures.

1148. As regards requests for assistance, the information received clearly shows that the large majority of criminal proceedings at preliminary investigations stage on money laundering involve an outgoing rogatory letter. Thus the authorities have sent to foreign authorities 5 rogatory letters in 2008 (out of 8 notitia criminis), 7 out of 10 in 2009 and 4 out of 9 in the first half of 2010, totalling 16 rogatory letters in respect of preliminary investigations. These requests are being made by the individual investigating judges dealing with the criminal proceedings to which the requests refer (i.e. 4 investigating judges and the Uditore commissariale).

1149. As regards the total letters rogatory sent to foreign judicial authorities in ML cases, in 2009 there have been **22 requests for ML** (out of a total of 200 requests). The other categories of offences involved for which rogatory letters are sent abroad involve the following: misappropriation (53), bad cheques (34), unlawful impersonation of a person (22), and swindling (16). 2010 statistics total 261 letters rogatory, out of which **36 for ML**, and the largest numbers involve misappropriation (51), fraud (45), theft (35). Considering the numbers, there is clearly an increase of outgoing letters rogatory for ML cases. The authorities indicated that the average time for processing such requests took on average about 4 months.

Table 37: Statistics outgoing letters rogatory

Outgoing letters rogatory		
Type of offence	**year 2009**	**year 2010**
Money Laundering	22	36
Banking and financial crime		3
Offences against the person	30	26
Theft	8	35
Robbery	2	1
Extortion	3	3
Misappropriation	53	51
Damage	3	2
Fraud		45
Bad cheques	34	12
Bankruptcy	2	7
Crimes against public faith	12	
Illicit trafficking in narcotic drugs and psychotropic substances	1	1
Forgery		11
Unfaithful administration		5
Other offences	12	23
Total	**200**	**261**

1150. As regards requests related to ML received from foreign authorities, in 2009, out of **21 requests**, 13 came from Italy, and others from Switzerland, the Netherlands, Belgium, France and Great Britain. The majority of predicate offences involved related to fraud, with 3 cases involving

mafia type criminal conspiracy, and 3 instances related to trafficking in narcotic drugs. As regards the first half of 2010, San Marino had received **5 requests** (4 requests from Italy and 1 from France), all of which have been executed. The statistics show that there has been 1 case in 2009 where the request was not fully executed, and that assistance was not granted in respect of certain types of assistance (i.e. identification of the shareholders of a bank, a fiduciary and foundation, and hearing of the banks' and fiduciary's officials to obtain information on accounts and beneficial owners).

1151. The total number of letters rogatory received from foreign judicial authorities in 2009 other than for ML amounted to 189, the large majority of which concerned the offences of receiving stolen goods (85), swindling (24) and bankruptcy (14). ML requests represent 10% of total requests. As regards 2010, San Marino had received 176 requests for offences other than ML. The authorities indicated that assistance was granted for all these requests.

Table 38: Statistics incoming letters rogatory

Incoming letters rogatory		
Type of offence	**year 2009**	**year 2010**
Receiving of stolen goods	88	71
Bankruptcy	14	14
Extortion	1	1
Swindling	24	25
Exploitation of prostitution	1	1
Corruption	2	1
Violation of official secrecy	1	1
Murder and other offences against the person	22	16
Sexual violence	0	1
Child abduction	1	0
Theft/misappropriation	7	8
Robbery	0	1
Counterfeiting of marks	4	0
Drugs	3	0
Falsehood	4	1
Association to commit offences	1	1
slander/perjury	0	5
Usury	5	6
Illicit trade in pharmaceuticals	0	2
Tax offences	0	8
Weapons	0	1
Smuggling	0	1
Construction crimes	0	1

Other crimes	11	10
Total	**189**	**176**

1152. The statistics received regarding appeals in respect of incoming letters rogatory show that in 2009 4 appeals were lodged (2 in ML related requests, 1 in a request involving bankruptcy offences, 1 in usury) while in 2010 there were 6 appeals (3 for ML related requests, 1 in a bankruptcy request, 1 in usury, 1 in a fraud case) .

1153. No requests were received or sent regarding terrorism or financing of terrorism offences.

6.3.2 Recommendations and comments

Recommendation 36 and SR.V

1154. San Marino should:

- rectify deficiencies in the ML and TF offences to ensure that they are able to provide fully assistance when dual criminality applies;
- review and withdraw /amend the declaration made, considering the changes introduced to its legal framework, which now permit for instance controlled deliveries, and in order to enable the widest range of assistance in application of the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances;
- publicise on an appropriate government website (i.e. 'central authority's website) the legislation applicable to mutual legal assistance and extradition requests and any other relevant related information in English, so as to assist foreign authorities which may wish to formulate such requests with information on the criteria for such requests, grounds of admission and processes and procedures applicable in this respect.

1155. San Marino should consider:

- ratifying the additional protocols to the European Convention on Mutual Assistance and Criminal Matters.
- keeping the reservations entered to CETS no. 198 to provisions intended to broaden AML/CFT international co-operation under review and at an appropriate time consider whether they are in a position to lift them with a view to granting such assistance in relations with Parties to CETS 198.

Recommendation 30

1156. San Marino should:

- continue to ensure that the Judicial authority is adequately funded and staffed to fully and effectively perform its functions in respect of MLA and extradition requests, through regular reviews of its resources and workload, as well as of the allocation of tasks among relevant judges.
- ensure that judges who are involved in MLA and extradition requests are adequately trained through on-going internal training but also external training in order to develop their expertise and know-how in handling international legal requests;
- review the impact on the workload of the FIA and of the Central Bank management derived from the execution of the mutual legal assistance requests, to ensure that this does not affect

negatively the performance of their core functions and their relationship with the supervised entities;
- review existing technical resources available and take appropriate measures to ensure that proper technical means and equipment (e.g. ICT equipment, equipment for video/telephone conference, technical means required for special investigative measures) are available for competent authorities enabling them to adequately respond to mutual legal assistance requests.

1157. San Marino should consider:

- promoting trainings in foreign languages for relevant professionals, in order to enable direct communication between judicial authorities, other than with Italy.
- reviewing technical resources available enabling it to keep track of incoming and outgoing requests and implement, if appropriate, an automated system.

Recommendation 32

1158. This Recommendation is fully observed.

6.3.3 Compliance with Recommendations 36 to 38 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.3. underlying overall rating
R.36	**LC**	• The money laundering offence still does not cover self-laundering, which could have a negative effect on the execution of mutual legal assistance requests and granting of extradition, in the context of the application of the dual criminality requirement. • Effectiveness concerns (until shortly before the visit, the procedure of double exequatur impacted on the effectiveness of execution of requests).
SR.V	**LC**	• In TF cases, the shortcomings identified under SR.II may limit San Marino's ability to provide mutual legal assistance.

6.4 Extradition (R. 39, SR. V)

6.4.1 Description and analysis

Recommendation 39 (rated PC in the 3rd round report)

Legal framework

Summary of 2008 MER factors underlying the rating and developments

1159. San Marino was rated Partially Compliant, shortcomings including concerns due to the limitations in the legal framework regarding extradition, specific concerns as regards the processes and procedures for such requests, and also the limitations arising from deficiencies of the ML and terrorism offences.

1160. The following developments have occurred since the third round evaluation:

- Law no. 92/2008 introduced specific provisions regarding extradition for terrorist crimes and transfer of persons (articles 81 and 82)
- San Marino ratified the European Convention on Extradition (with effect as of 16 June 2009).

ML as extraditable offence (c. 39.1)

1161. For requests from other Parties to the European Convention on Extradition, as the latter applies to offenses that are punishable with imprisonment of twelve months or more, both ML and TF qualify as extraditable offenses.

1162. It is to be noted that the reservation entered to Article 28 indicates that all bilateral agreements on extradition with the contracting parties of the Convention will remain in force (i.e. in San Marino's case, with Belgium, France, Italy, United Kingdom, the Netherlands). According to San Marino's case law (Law Commissioner, Decree of 11 September 2009, Judge of Appeal, Order of 7 September 2009), the provisions of the European Convention shall take precedence over the provisions contained in the Convention between Italy and San Marino. This is due to the fact that San Marino has not followed the provisions under Article 28 paragraph 4 of the Convention. The European Convention admits derogating bilateral agreements, provided that this is notified to the Secretary General of the Council of Europe through a declaration of all contracting parties or of both States having concluded a bilateral agreement.

1163. For extradition requests in ML cases received from other countries, the authorities confirmed the previous approach that extraditions could be executed on the basis of reciprocity subject to a political assessment involving the Captains Regent. For extradition requests in terrorism and FT cases received from other countries, the provisions set out under article 81 of Law no. 92/2008 would apply. The latter provides that "for crimes of association for purpose of terrorism, terrorist financing as well as any crime committed for the purpose of terrorism, in the absence of specific international treaties, the extradition of a person who is in the territory of San Marino is regulated by the International Convention for the suppression of the financing of terrorism". In such cases, the conditions for granting extradition set forth in article 8 paragraphs 2, no. 1, 2 and 3 of the Criminal Code shall apply.

1164. Dual criminality as explained in the third MER is a key principle for extradition. The reservations formulated previously are reiterated (i.e. execution of extradition requests for ML on the basis of self laundering, gaps in the incrimination of the terrorism and FT offence as noted under SR.II, etc).

Extradition of nationals (c. 39.2) and Co-operation for prosecution of nationals (c. 39.3)

1165. The rules regarding extradition of nationals are unchanged. San Marino does not extradite its own nationals, as confirmed by the declaration made to article 6 paragraph 1a of ETS 024, unless agreed by an international treaty. The term national applies to any San Marino citizen regardless of how he/she acquired the nationality.

1166. In application of the Convention's provisions, San Marino shall, at the request of the requesting Party, submit the case to its competent authorities in order that proceedings may be taken if they are considered appropriate. For this purpose, the files, information and exhibits relating to the offence shall be transmitted without charge by the means provided for in Article 12, paragraph 1. The requesting Party shall be informed of the result of its request. The authorities indicated that in a request received in 2009 where extradition of a San Marino citizen was sought

for supply of narcotic drugs, the request was not accepted, however the person voluntarily surrender himself to the foreign authority.

1167. As regards other ML requests which are not based on the Convention or other bilateral treaties (except for Italy and France), prosecution is discretionary. In such cases, there is no specific provision in the national legislation requiring to submit the case to the authorities for the purpose of prosecution if an extradition request is denied purely on the basis of nationality. However this would have a very limited impact in the Sammarinese context.

Efficiency of extradition process (c. 39.4)

1168. Extradition requests are transmitted and received through the Secretary of State. It was indicated that requests for extradition are examined by a judge different from the judge dealing with ML and TF rogatory letters. Upon receipt, the judicial authority verifies if the legal requirements are met and if son provisional arrest can be immediately ordered. For requests involving the Captains' Regent authorisation, the authorities indicated that according to the consolidated practice, the political examination consists of confirming the judge's acceptance of the request for extradition, and that the opinion is rendered within a few hours difference from the judge's opinion.

1169. There are no legal provisions setting out in detail how and the timeframes within which extradition requests are to be dealt with.

1170. Grounds for refusal of extradition requests are set out in Article 8 of the Criminal Code, which reads as follows:

"Extradition shall be governed by international conventions and, for any other aspect not covered by the conventions, by San Marino law.
The extradition of people in the territorial jurisdiction of the Republic shall be granted solely where:

1) *the felony or crime committed is considered as such both under San Marino law and the law of the requesting State;*
2) *the crime, punishment or security measure has not already been extinguished under the legislation of both States;*
3) *the crime is prosecutable under the legislation of both States;*
4) *the request does not refer to a San Marino national, except where expressly provided for by international conventions;*
5) *the request does not refer to a political offence or an offence connected with a political offence, to offences punished under military law and it has been ascertained that the request is not based on political reasons.*

Any offence detrimental to a political interest of the State or a political right of a citizen shall be considered as a political offence. For the purposes of extradition only, even an offence committed for political reasons shall be regarded as a political offence. In no case shall the crimes envisaged by Articles 337bis, 337 ter and the crimes committed for the purpose of terrorism or subversion of the constitutional order be deemed political crimes."

Additional elements – Existence of simplified procedures relating to extradition (c. 39.5)

1171. There are no simplified procedures relating to extradition.

Special Recommendation V (rated LC in the 3rd round report) - International Co-operation under SR. V (applying 39.1 – 39.4 to* ex*tradition proceedings related to terrorist acts and FT in R.39, c.V.1)

1172. The provisions described above equally apply to ML and FT.

Statistics (R.32)

1173. In 2009, the San Marino authorities received 4 requests for extradition (the first case concerned money laundering and bank crimes, the second case fraud to the detriment of a public body, money laundering and receiving stolen goods, the third case drug trafficking and the fourth case supply of narcotic drugs). With regard to the first three cases, the request was accepted, provisional arrest was order the day after and extradition was granted after a few days. The last case concerned the extradition of a San Marino citizen, and extradition was denied.

1174. In 2010, the San Marino authorities requested the provisional surrender of two persons in detention abroad (one for crimes concerning weapons and the other for misappropriation). Both requests were accepted by the foreign authority.

Table 39 Statistics related to extradition requests

Extraditions 2009				
Number of requests	**Offence**	**Provisional arrests**	**Granted**	**Surrender of the person to be extradited**
4	1) Money laundering, receiving stolen goods, fraud; 2) money laundering, bank crimes; 3) drug trafficking 4) supply of narcotic drugs	3	3	4

Effectiveness and efficiency

1175. Considering the limited number of requests for extradition received by San Marino, it is difficult to formulate firm conclusions as regards effectiveness. There were only two cases relating to ML and no case relating to TF, and those appear to have been executed adequately and timely.

6.4.2 Recommendations and comments

1176. San Marino should adopt legal provisions setting out in detail how and the timeframes within which extradition requests are to be dealt with, including establishing requirements for authorities to prosecute a suspect domestically in cases where an extradition request is denied purely on the basis of nationality.

1177. San Marino should take corrective measures to ensure that the application of dual criminality does not limit its ability to extradite in certain situations, particularly in the context of identified deficiencies with respect to the ML and FT offences;

1178. San Marino should consider becoming a Party to the additional protocols to the European Convention on Extradition, particularly as they include also provisions on simplified procedures.

6.4.3 Compliance with Recommendations 39 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.3. underlying overall rating
R.39	**LC**	• The money laundering offence does not cover self-laundering, which could have a negative effect on granting the extradition requests, in the context of the application of the dual criminality requirement. • San Marino may, though such circumstances would be limited, refuse to extradite its nationals without undertaking to prosecute the offence for which extradition is sought; • Effectiveness cannot be assessed given the limited number of extradition requests received
SR.V	**LC**	• The shortcomings identified under SR II may limit San Marino's ability to extradite in certain TF cases; • San Marino may, though such circumstances would be limited, refuse to extradite its nationals without undertaking to prosecute the offence for which extradition is sought; • Effectiveness cannot be assessed in the absence of FT related extradition requests.

6.5 Other Forms of International Co-operation (R. 40 and SR.V)

6.5.1 Description and analysis

Recommendation 40 (rated PC in the 3rd round report)

Summary of 2008 MER factors underlying the rating and developments

1179. San Marino had received under the third round a Partially Compliant rating in respect of Recommendation 40. Deficiencies included a number of gaps and restrictions as regards the provisions on FIU co-operation, as well as limitations arising from the professional secrecy provisions as well as lack of transparency regarding beneficial ownership of legal persons.

1180. San Marino has since taken several measures to eliminate the deficiencies identified under the previous evaluation round, which are set in detail below. In particular, the AML/CFT Law includes amended provisions on the exchange of information with other FIUs (article 16 as amended by article 6 of the Law no. 73/2009, and specific provisions regarding the disclosure of professional secrecy (article 38 of the AML/CFT Law). Furthermore, new institutions (the Office for Control and Supervision of Economic Activities and the Central Liaison Office) are responsible for liaising with foreign offices of countries for administrative co-operation with a view to preventing and combating fraud and are also competent to exchange information on legal entities in application of the respective legislation.

Financial Intelligence Unit

Wide range of international co-operation (c.40.1); Provision of assistance in timely, constructive and effective manner (c.40.1.1); Clear and effective gateways for exchange of information (c.40.2), Spontaneous exchange of information (c. 40.3); and (c.SR.V)

1181. The FIA is empowered by Art. 16 (1) AML/CFT Law to exchange information with foreign FIUs on the basis of reciprocity. The foreign FIUs shall guarantee the same conditions of confidentiality of information, as ensured by the Agency**.**

1182. Article 16, Paragraph 1 of the AML/CFT Law sets out that the FIA shall "cooperate with foreign financial intelligence units on the basis of reciprocity, also by exchanging information".

1183. FIA does not need to sign international agreements, so long as reciprocity is guaranteed. Nevertheless, paragraph 2 of article 16 enables it to do so, if necessary: "the Agency, with the aim of regulating the co-operation activity referred to in paragraph 1, may stipulate appropriate protocols of agreement [Memorandum of Understanding] which shall be notified to the Committee for Credit and Savings". At the time of the evaluation, FIA had signed MoU-s with counterparts from 36 countries[90] and several additional MoUs were being negotiated.

1184. As member of the Egmont Group, the FIA exchanges information with foreign counterparts via the Egmont Secure Web, both spontaneously and upon request. Under Article 16 of the Law No 92 (2008), there is no limitation on the scope and contents of exchanged information, except for the "limitation" that the information should be related to AML/CFT; therefore, information may be exchanged in relation to both money laundering and the underlying predicate offences. The authorities advised that any request for information at least containing a brief statement of the underlying facts and the reasons for making the request is honoured pursuant to the Egmont Group Best Practices for the Exchange of Information and other reference documents. It was also indicated that FIA exchanges information with non Egmont Group members and had done so in certain circumstances.

1185. The table below shows the overall picture of incoming and outgoing requests for co-operation since FIA's establishment:

Table 40: International co-operation per year
Period: From 24th November 2008 to 31th October 2010

International co-operation	**2008**	**2009**	**2010**	**Total**
Requests of co-operation received by FIA (incoming requests)	0	41	21	**62**
Spontaneous sharing of information received by FIA	0	2	1	**3**
Incoming information (Total)	**0**	**43**	**22**	**65**
Requests of co-operation sent by FIA (outgoing requests)	0	38	37	**75**
Spontaneous sharing of information sent by FIA	1	6	37	**44**
Outgoing information (Total)	**1**	**44**	**74**	**119**

1186. FIA has implemented a system which enables it to keep track of the timelines in which assistance is provided upon receipt of a foreign request.

[90] Including Czech Republic, Monaco, Peru, Slovenia, Israel, Liechtenstein, Luxemburg, Sweden, Switzerland, Norway, Russian Federation, Poland, Serbia, Ukraine, "the former Yugoslav Republic of Macedonia", Georgia, Armenia, Andorra, Eulex-Kosovo, Malta, Latvia, Isle of Man, Saint Vincent and the Grenadines, Belgium, Portugal, Colombia, Venezuela, Moldova, Estonia, Aruba, Bermuda, Republic of Korea, India, Albania, Philippines and Montenegro.

1187. Thus, in the period from November 2008 to 31 May 2010, the average time of response by FIA to requests was approximately of 16 days, with a maximum time of about 35 days in certain complex cases. For fishing requests (requests addressed to all FIUs), the average time of response was approximately 23 days (maximum 35 days). No requests were refused. The feedback received from a number of countries do not raise any particular issues as regards the timeliness of receipt of information requested and assessed positively the co-operation and quality of responses received. As regards outgoing requests, FIA had sent 74 requests to 17 States, out of which 52 to Italy. The time of response to its requests ranged between 6 to 114 days, and by October, FIA was still waiting responses to 14 requests, while 17 had only been partially responded.

1188. Since its establishment, FIA has exchanged information both upon request and spontaneously. In case of attempted transactions or when the FIA was not able to carry out the financial analysis due to lack of information, it has spontaneously reported the case to the relevant foreign FIU. This is evidenced by the statistics below:

Table 41: Statistics on spontaneous sharing of information
Period: From 24th November 2008 to 31th October 2010

	Incoming	**Outgoing**	**Total**
Austria - AT	-	1	1
Belgium - BE	-	1	1
Czech Republic - CZ	-	1	1
France - FR	-	1	1
Germany - DE	-	3	3
Greece - GR	-	1	1
Italy - IT	-	28	28
Kosovo - KO	1	-	1
Latvia - LV	-	1	1
Luxembourg - LU	1	1	2
Romania - RO	-	1	1
Slovenia - SI	-	1	1
Switzerland - CH	-	4	4
Thailand - TH	1	-	1
Total	**3**	**44**	**47**

Making inquiries on behalf of foreign counterparts (c.40.4), FIU authorised to make inquiries on behalf of foreign counterparts (c. 40.4.1), Conducting of investigation on behalf of foreign counterparts (c. 40.5)

1189. FIA can make inquiries on behalf of foreign counterparts and conduct investigations. The AML/CFT Law, particularly Article 8, establishes that the FIA shall have access to the data and information available in registers, archives, professional registers kept by the Central Bank, public administrations and professional associations (Paragraph 1) to be made available to the FIA immediately upon simple reasoned request, as well as by the Police Authority and the Single Court (Paragraph 3), including data regarding criminal records. The access to the evidence in pending individual cases kept by the Single Court requires prior authorization by the judge, and the authorities indicated that it has always been granted when requested. In both cases, the

information may be used only for AML/CFT purposes. Articles 11 through 14 of the law confer similar powers on the FIA within the framework of national co-operation. On the other hand, the FIA is not limited in the scope and contents of the information which may be searched for and exchanged with international counterparts. Hence, the legislation in force enables the FIA to make searches in its own databases (including those on STR-s) and other databases which it has access to, and to communicate such information as deemed necessary. Furthermore, FIA can carry out specific inspections on obliged parties to acquire documents and additional information and data and adopt any useful measure as necessary.

1190. For these same purposes specified in the preceding paragraph, the Agency, upon simple request, shall have access to registers, archives, data or information kept by the Police Authority and the Single Court, including data regarding criminal records. The data and information regarding judicial activity shall be provided to the Agency, upon prior authorization by the judge only for the purposes of preventing and combating money laundering and terrorist financing.

No unreasonable or unduly restrictive conditions on exchange of information (c.40.6)

1191. Concerns had been raised by MONEYVAL particularly in respect of the FIU's ability to exchange information with foreign FIUs, particularly in the light of the limitation imposed by the AML/CFT law that "*protocols of agreement or conditions of reciprocity shall provide that the foreign financial intelligence unit informs the Agency whether international judicial assistance procedures have been initiated in relation to a fact being the subject of a request for information. In this case, the Agency shall not exchange the information, unless otherwise ordered by the judicial authority of San Marino*" (article 16 paragraph 5). Law no. 73/2009 of 19 June 2009 repealed this requirement.

1192. The basic condition for the exchange of information with foreign counterparts, as defined under Article 16 of the Law No 92 (2008) is "on the basis of reciprocity" so long as "the foreign financial intelligence units shall guarantee the same conditions of confidentiality of information" (Paragraph 1). Also, the same article requires that "the information exchanged may be used by the foreign financial intelligence units for investigations aimed exclusively at combating money-laundering and terrorist financing", and that "the information may not be sent to third parties without prior written consent by the Agency and is covered by official or professional secrecy" (Paragraph 3). The new provisions appear to be in line with the usual requirements and do not amount to disproportionate or unduly restrictive conditions.

Provision of assistance regardless of possible involvement of fiscal matters (c.40.7) & Provision of assistance regardless of existence of secrecy and confidentiality laws (c.40.8)

1193. Article 16 does not set out any limitation to the information that the FIU can exchange , thus any information to which the FIU has access can also be subject to an exchange of information. Furthermore, the recent introduction of the crime of false invoicing and false statement has considerably extended the possibility to offer legal assistance also on tax matters (Law no. 99 of 9 June 2010).

1194. As set out for banking secrecy under the LISF (Article 36) or for professional secrecy under the AML/CFT Law (article 38 – with the exception of information held in circumstances where legal professional privilege applies), secrecy provisions cannot be invoked against the FIA in pursuance of its AML/CFT functions. FIA has never refused requests on the grounds of laws that impose confidentiality requirements on financial institutions or DNFBP.

Safeguards in use of exchanged information (c.40.9)

1195. Article 9, Paragraph 1 of the Law No 92 (2008) defines that all data and information acquired by the FIA shall be covered by official secrecy, without prejudice to the cases of communication or exchange of information set forth in the law. Paragraph 2 of the same article further provides that the FIA shall "implement, also through the use of computer tools, measures ensuring that the data and information acquired cannot be accessed by third parties". And finally, Article 16 of the law requires that "foreign financial intelligence units shall guarantee the same conditions of confidentiality of information, as ensured by the Agency".

1196. Furthermore, under the AML/CFT Law (article 53 bis as amended in July 2010), anyone who discloses the existence of and/or the results of investigations, inspections or requests for information by the FIA concerning this Law or, in any case, covered by official secrecy, shall be punished by terms of second-degree imprisonment and disqualification.

1197. To the knowledge of FIA, there has never been any problem with information communicated by a foreign FIU to FIA which was subsequently publicly disclosed and FIA has never been informed of any such problems by its foreign counterparts.

Additional elements – Exchange of information with non counterparts (c.40.10 and c.40.40.1); Exchange of information to FIU by other competent authorities pursuant to request from foreign FIU (c.40.11)

1198. The authorities indicated having experienced 2 cases where FIA and the former AML Service of the Central Bank exchanged information with non counterparts. The two requesting FIUs disclosed themselves the national authorities on whose behalf such requests were made. The FIA has indicated that it would have the ability to obtain from other competent authorities relevant information requested by a foreign counterpart FIU.

Supervisory authorities

Wide range of international co-operation (c.40.1); Provision of assistance in timely, constructive and effective manner (c.40.1.1); Clear and effective gateways for exchange of information (c.40.2), Spontaneous exchange of information (c. 40.3) ; No unreasonable or unduly restrictive conditions on exchange of information (c.40.6) and (c.SR.V)

1199. FIA, in its capacity as supervisory authority, indicated to have the ability to exchange information on the basis of the provisions set out in detail in the paragraphs above.

1200. However, the evaluation team consider that those provisions are limited to exchange of information with financial intelligence units, thus they may not constitute an adequate basis for the direct exchange of information with supervisory authorities which are not established within an FIU. Furthermore, article 16 in its current drafting clearly refers to the use of transmitted information by the foreign FIU for "investigations", this restricting once more the scope of co-operation in its supervisory authority capacity.

1201. As regards the CBSM, Article 47 of the Statute of the Central Bank sets out that the CBSM shall be the institutional reference point in dealings with the international financial institutions and foreign central banks and supervision or similar foreign authorities.

1202. According to Art. 103 LISF, the CBSM is authorized to transmit to foreign supervisory authorities the information and documents required in the performance of their respective tasks,

subject to the prior conclusion of a co-operation agreement with the respective authority. Such an agreement may be conclude on condition that:

a) the information communicated is covered by guarantees as to official secrecy, at least equivalent to those laid down in the Central Bank's Statute;
b) the exchange of information shall be for the purpose of contributing towards the performance of the supervisory task by the said authorities;
c) the competent authority receiving the confidential information may use that information only in the exercise of its functions (the prevention of the crimes of ML and TF is explicitly mentioned as such a function);
d) the information received may not be disseminated without the explicit written consent of the CBSM, in that case, only for the purposes for which the said authorities have given their consent.

1203. Article 29 of the CBSM statute lays down the official secrecy provisions which are considered for this purpose:
"1. The members of all the Central Bank's organs, its consultants and its entire staff will be under an obligation to observe the strictest secrecy on all matters pertaining to the activities of the Central Bank and its relations with third parties. All particulars, information and data in the Central Bank's possession by reason of its activity of supervision over intermediaries will be official secrets. The obligation of observing official secrecy will persist even after leaving office or employment with the Central Bank.
2. In the same way, all those who, on the occasion of any relationship with the Central Bank, acquire - even involuntarily - information on the Central Bank, its activities or the data in its ownership or under its control, will be bound by the ties of secrecy.
3. Such confidentiality may not be relied upon against the judicial authority if the information requested is necessary for investigations into infringements liable to criminal sanctions and to the Financial Intelligence Agency in the exercise of its functions of preventing and countering money laundering and terrorist financing."

1204. The abovementioned requirements for the exchange of information are as well in other countries common elements of the rules governing information exchange. A co-operation agreement is already in force between the Croatian National Bank and the CBSM since September 2009[91]. With respect to the competent Italian authority, who is the principal counterpart in this regard, the evaluation team was informed that there is no agreement in place, and that the CBSM proposed to them the conclusion of such an agreement with the Bank of Italy.

1205. The legal framework in place does not appear to allow the CBSM to exchange information spontaneously. The CBSM has however in practice exchanged information spontaneously, for instance in the case of insurance activities carried out by non authorised parties in San Marino and in Italy. The authorities indicated that this practice has been established in order to promote the conclusion of an agreement covering the exchange of information.

1206. The evaluation team was informed that information collected by CBSM in its prudential supervisory function which may include AML/CFT aspects was rarely requested. According to CBSM, no such requests have ever been rejected due to secrecy laws. However, the evaluation

[91] The agreement in place with the Croatian National Bank is aimed at co-operating on the basis of mutual trust and understanding in the field of banking supervision The scope of co-operation in force covers authorisations (issuance, change and withdrawal of authorisations), prior approval for share acquisition (ownership control) and ongoing supervision of cross-border establishments, including mutual exchange of information and on-site examinations. The authorities agreed to advise each other on cross-border establishments in or from the respective other country, upon specific request, to the extent permitted by law, and on any other relevant information that might be required to assist with the supervisory process.

team did not receive any further information nor statistics in respect of international co-operation carried out by the CBSM which would enable it to assess whether then CBSM had provided assistance in those cases in a rapid, constructive and effective manner.

1207. *Making inquiries on behalf of foreign counterparts (c.40.4), FIU authorised to make inquiries on behalf of foreign counterparts (c. 40.4.1 –N/A), Conducting of investigation on behalf of foreign counterparts (c. 40.5)*

1208. There appear to be no provisions in the national legislation governing the CBSM's powers and functions explicitly providing for the possibility of making inquiries on behalf of foreign counterparts.

Provision of assistance regardless of possible involvement of fiscal matters (c.40.7) & Provision of assistance regardless of existence of secrecy and confidentiality laws (c.40.8)

1209. The fiscal nature of the predicate offence or information does not constitute grounds for refusal.

1210. Under Article 36, paragraph 5 b) of Law No 165 (2005), banking secrecy may not be invoked against either the CBSM in the exercise of its functions of supervision. Communication to third parties (including foreign authorities) may not to be considered as a breach of the banking secrecy under paragraph 6a) of article 36, which refers to the fulfilment of obligations arising from a contract to which the interested person is a party. [92]

[92] *Article 36 (Obligation of banking secrecy)*
1. By "bank secrecy" is meant the prohibition on authorised parties to reveal to third parties, without the specific and express authorisation in writing of the party concerned, the data and information acquired in the exercise of the reserved activities referred to in Attachment 1. [...] 5. Banking secrecy cannot be evoked against the following parties in the exercise of their public functions:
a) the Law Commissioner in criminal cases;
b) the Central Bank of the Republic of San Marino in the exercise of its supervisory functions;
c) the Financial Intelligence Agency;
d) the Central Liaison Office and other San Marino public bodies and offices responsible for the direct exchange of information with foreign counterparts in accordance with the international Agreements in force.
6. No breach of banking secrecy will be deemed to have occurred if:
a) communication to third parties is necessary in order to fulfil obligations arising from a contract to which the interested person is a party or in order to comply, before the conclusion of the contract, with that person's specific, express requests;
b) communication to third parties takes place in the context of a litigation between the interested person and the authorised party. In this case, communication to third parties may regard any relationship between the parties, even if it is not the subject-matter of the dispute but it is related to legal defence;
c) communication is being made to the parent company, whether a San Marino or of a foreign State with which a relevant international agreement is in force, and is directed to comply with the rules concerning consolidated supervision referred to in Part II, Title I, Chapter III of this Law;
d) communication is being made to parties carrying out the reserved activity referred to in section H of Attachment 1, who are so authorised according to this Law, and its subject is the information strictly necessary in arriving at a proper assessment of the risks and to fulfil obligations entered into in the exercise of that reserved activity;
e) communication is directed towards the performance of the services described in articles 50 and 51 and complies with the provisions of those articles.
7. In the event of the decease of the party concerned or the opening of insolvency or interdictory or disqualification proceedings against him, the heir, receiver in insolvency, tutor and guardian respectively, together with those persons commissioned to draw up an inventory of the assets of the incompetent or disqualified party, may obtain the data and information covered by banking secrecy, covering the period prior to the death or judicial measure by which they have been appointed.
8. The obligation of maintaining banking secrecy will persist even after the cessation of the employment relationship, office, function or exercise of the profession.
9. The supervisory authority will monitor the strict observance of banking secrecy.

Safeguards in use of exchanged information (c.40.9)

1211. The provisions related to the official secrecy in respect of the CBSM are set out in article 29 of the CBSM statute. The only exception under which the CBSM appears not to be able to guarantee confidentiality to the foreign authority is in respect of information necessary for investigations of criminal offences requested by the judicial authority and by the FIA in the exercise of its functions of preventing and countering money laundering and terrorist financing.

1212. Furthermore, under the AML/CFT Law (article 53 bis as amended in July 2010), anyone who discloses the existence of and/or the results of investigations, inspections or requests for information by the Central Bank of the Republic of San Marino, concerning this Law or, in any case, covered by official secrecy, shall be punished by terms of second-degree imprisonment and disqualification.

Additional elements – Exchange of information with non counterparts (c.40.10 and c.40.40.1); Exchange of information to FIU by other competent authorities pursuant to request from foreign FIU (c.40.11)

1213. Considering the provisions applicable to the CBSM, the latter would not be in a position to exchange information with non counterparts.

Law enforcement authorities

Wide range of international co-operation (c.40.1); Provision of assistance in timely, constructive and effective manner (c.40.1.1); Clear and effective gateways for exchange of information (c.40.2), Spontaneous exchange of information (c. 40.3); No unreasonable or unduly restrictive conditions on exchange of information (c.40.6) and (c.SR.V)

1214. Article 12 paragraph 7 of the AML/CFT Law (as amended after the visit by Decree Law no. 181 of 11 November 2010) explicitly sets out that for the purposes of this Law, the Police Authority shall cooperate, also by exchanging information with foreign counterparts on the basis of specific co-operation agreements. The Police Authority may also exchange information through the National Central Bureau of INTERPOL.

1215. During the visit, it was explained that the police authorities may exchange information with foreign counterparts either spontaneously or upon request, provided that police intelligence is involved. The exchange of information through Interpol extends to ML, FT and predicate offences. If a procedure in respect of any of these offences is started by a judicial authority, then the exchange of information occurs at the judicial level or through the channels of Interpol, if ordered by the Judicial authority.

1216. It remains unclear whether there are any specific provisions in the legal acts governing the scope of co-operation with foreign authorities by the three police forces that may pose unreasonable or unduly restrictive conditions.

1217. The evaluation team received statistical data covering requests received by the San Marino Interpol Bureau for the period 2008-2010, which included information on the type of offence concerned as well as a breakdown of requests per country. No information was available as regards outgoing requests. The statistics provided show that the number of requests received have remained stable: 17 in 2008, 22 in 2009 and 8 for the first half of 2010. Out of those, the large majority come from Italy, followed primarily by other EU member states. As regards money

laundering, 2 requests were received in 2008, 4 in 2009 and 1 in the first half of 2010. The information available does not enable it to assess whether assistance was provided in those cases in a rapid, constructive and effective manner or whether it was denied.

Making inquiries on behalf of foreign counterparts (c.40.4), FIU authorised to make inquiries on behalf of foreign counterparts (c. 40.4.1 – N/A), Conducting of investigation on behalf of foreign counterparts (c. 40.5)

1218. Both the Judicial authority and the Interpol Bureau are authorised to make inquiries on behalf of foreign counterparts and conduct related investigations.

Provision of assistance regardless of possible involvement of fiscal matters (c.40.7) & Provision of assistance regardless of existence of secrecy and confidentiality laws (c.40.8)

1219. Article 38 of the AML/CFT Law clearly provides that professional secrecy and official secrecy cannot be involved against the Judicial authority and the Police authority in their functions of preventing and combating ML and TF. As regards banking secrecy, Article 36 LISF does not include the Police among the parties against which banking secrecy cannot be evoked, however, as noted under R.4, in practice banking secrecy cannot be opposed to the Police in the context of investigations, as they always act under the direction of the Law Commissioner.

Safeguards in use of exchanged information (c.40.9)

1220. Police agents and officers are subject to confidentiality and secrecy rules provided in the regulation of their respective corps and to the relevant provisions of the Criminal Code. Law enforcement authorities may establish similar conditions in their exchanges with foreign counterparts to ensure the confidentiality of the exchanged information.

<u>International co-operation in respect of cross border physical transportation of currency</u>

1221. As mentioned under the Section related to implementation of SR.IX, information exchange would be carried out through FIA (article 10 of the Delegated Decree no. 74/2009, as amended) for exchanges with foreign FIUs and through the Fortress Guard in respect of exchange of information with the Italian Guardia di Finanza regarding the import/export of goods as well as on individual cases.

<u>Other competent authorities</u>

1222. Law no. 95 dated 18 June 2008 regulating the monitoring of economic activities and establishing the Office for Control and Supervision of the economic activities and the Central Liaison Office has also established specific provisions regarding international administrative co-operation. Under the Law, the Central Liaison Office (CLO), has the competence to contact the competent foreign authorities for administrative co-operation with a view to implementing the international co-operation agreements adopted by San Marino. The CLO is thus the competent authority to exchange information on tax related matters. CLO sends to the Office for Control and Supervision of Economic Activities, for preliminary matters, all tax information requests. Bank secrecy provisions cannot be invoked against the CLO. In practice such requests come almost exclusively from Italy, in the context of the Administrative Partnership with Italy (Department II of the Revenue Guard Corps and Tax Agency) and cover primarily regarding the exchange of information on the commercial trade of goods between businesses in San Marino and Italy. The requests are transferred for action to the Office for Control and Supervision of the economic activities, which processes them directly or by calling upon the Civil Police Corp. The commercial

sectors involved in the administrative partnership are primarily the electronic and electric sector, cine-optics followed by food and beverages, clothing and vehicles.

1223. In the period from 2 April 2009 to 31 March 2010, the CLO has received 200 co-operation requests from Italy, the large majority being from the Revenue Guard Corp. As for the Office for Control and Supervision of the economic activities, it reported having received 58 requests in the same period, out of which 42 had been processed. Those 58 requests involved in total 194 requests for fiscal and commercial documentation from 94 San Marino based businesses. The Office has also sent requests for information to Italian companies that work with San Marino businesses through the CLO, in order to obtain information on their existence and operations as well as on the effectiveness of commercial transactions with San Marino companies (approx. 106 requests for the same period).

International co-operation under SR. V (applying 40.1-40.9 in R.40, c.V.5) (rated LC in the 3rd round report)

1224. The shortcoming identified in respect of R.40 apply equally in the context of international co-operation under SR.V.

Recommendation 32 (Statistics – other requests made or received by the FIU, spontaneous referrals, requests made or received by supervisors)

1225. The statistics reflecting international co-operation are included as set above. FIA keeps comprehensive statistics on requests for assistance received or sent, as well as on spontaneous exchange of information. There were no statistics available on formal requests for assistance made or received by the CBSM relating to or including AML/CFT. The police appears to keep statistics on formal requests for assistance received each year, however those did not include information whether the request was granted or refused.

Effectiveness and efficiency

1226. Meetings with the FIA management revealed a fairly high level of understanding and comprehension of the importance of international co-operation. The FIA officials assured their strong commitment to further expansion of their relations with foreign counterparts, primarily within the framework of the Egmont Group, to which the FIA is a member since 2005. Statistics on international co-operation, as provided by the authorities, demonstrate an expanding and intensifying pattern of such co-operation in terms of geographical coverage and intensity of activities. Reflections from other FIU-s did not reveal any concerns about the co-operation and exchange of information with the Sammarinese FIU; instead, all responses referred to a satisfactory performance of the FIA both in terms of timing and quality of responses to sent requests.

1227. As regards international co-operation by the CBSM and Police authorities on AML/CFT related matters, the evaluation team was not able to form an opinion on the adequacy of co-operation mechanisms with foreign counterparts and the timeliness of their responses.

6.5.2 Recommendation and comments

1228. San Marino authorities should clarify the legal basis for co-operation between FIA, in its capacity as supervisory authority, and foreign supervisory authorities, other than FIUs and ensure

that in that context, a wide range of assistance can be provided in a timely, constructive and effective manner.

1229. The legislation should provide that the CBSM can exchange information spontaneously.

1230. San Marino should take measures, as relevant, to ensure that Police forces and CBSM are capable of providing rapid, constructive and effective assistance to their counterparts, including through keeping information on response times and feedback from its foreign partners on the quality of data provided.

1231. Detailed statistics should be kept on international co-operation relating to or including AML/CFT by the CBSM, and if possible, the Police forces.

6.5.3 Compliance with Recommendation 40 and SR. V

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
R.40	**PC**	• The basis for co-operation between FIA and foreign supervisory authorities which are not financial intelligence units is not clearly established in the legislation and the scope of information appears to be limited to information related to FIU investigations. • The legal framework in place does not clearly authorises the CBSM to spontaneously exchange information • The adequacy of co-operation mechanisms and effectiveness of the co-operation with foreign authorities was not demonstrated by the CBSM and the Police forces
SR.V	**PC**	• Shortcomings identified under R.40 are also valid for SR.V

7 OTHER ISSUES

7.1 Resources and Statistics

1232. The text of the description, analysis and recommendations for improvement that relate to Recommendations 30 and 32 is contained in all the relevant sections of the report i.e. all of section 2, parts of sections 3 and 4, and in section 6. There is a single rating for each of these Recommendations, even though the Recommendations are addressed in several sections. Section 7.1 of the report contains only the box showing the ratings and the factors underlying the rating.

	Rating	Summary of factors underlying rating
R.30	**PC**	Financial intelligence unit • It was not demonstrated that FIA has adequate capacities and resources to undertake its core functions, considering its workload and numerous functions • Training of FIA staff on operational and strategic analysis, financial investigations, economic crime, etc. appears to be rather limited • No policy or requirement to update the fit and proper checks during the period of employment to ensure high integrity of staff

		Law enforcement authorities (including the Court) • The skills of law enforcement and judiciary need further enhancement as the training of the judiciary and law enforcement on ML and financial crimes investigations appears to be insufficient • Law enforcement authorities do not have the necessary equipment to be able to make use of special investigative techniques • The adequacy of the resources of the Court remains to be demonstrated • Limited information to assess whether there are adequate requirements in place to ensure that the Fortress Guard is required to maintain high professional standards and that there are adequate measure covering integrity aspects; • It was not demonstrated that Fortress Guard officials have received adequate training to develop technical expertise and capacity to detect cash movements. Supervisory authority[93] • The lack of adequate human resources appears to be a major hindrance for the FIA to properly perform its functions, particularly its supervisory function. Resources of policy makers • The Recommendation is fully observed Central authority • Competent authorities for sending/receiving and executing mutual legal assistance/extradition requests are not sufficiently staffed, resourced – including with necessary technical resources – and trained to effectively perform their functions.
R.32	**LC**	• The review of the effectiveness of the AML/CFT system appears to have been conducted partially by the TCNC and does not cover comprehensively the overall AML/CFT system. • There were no statistics available on formal requests for assistance made or received by the CBSM relating to or including AML/CFT.

7.2 Other Relevant AML/CFT Measures or Issues

1233. None.

7.3 General Framework for AML/CFT System (see also section 1.1)

1234. None.

[93] As regards the resources of the CBSM, the IMF FSAP report published in October 2010 concluded that "The assessment of the observance of Basel Committee Core Principles (BCP) showed that the Central Bank of San Marino (CBSM) will need substantially strengthened independence and resources [...]". The Central Bank has informed the evaluation team after the visit that it had recruited 4 additional staff members for the Supervision units (2 junior staff, 1 insurance expert and 1 senior staff member).

IV. TABLES

Table 1: Ratings of Compliance with FATF Recommendations
Table 2: Recommended Action Plan to improve the AML/CFT system

8 TABLE 1. RATINGS OF COMPLIANCE WITH FATF RECOMMENDATIONS

The rating of compliance vis-à-vis the FATF 40+ 9 Recommendations is made according to the four levels of compliance mentioned in the AML/CFT assessment Methodology 2004 (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (N/A).

The following table sets out the ratings of Compliance with FATF Recommendations which apply to San Marino. *It includes ratings for FATF Recommendations from the 3rd round evaluation report that were not considered during the 4th round assessment visit. These ratings are set out in italics and shaded.*

Forty Recommendations	Rating	Summary of factors underlying rating[94]
Legal systems		
1. Money laundering offence	**LC**	• The categories of offences of terrorism, including the financing of terrorism and piracy are not fully covered as a predicate offence to ML • Self laundering is not criminalised in the case of conduct under Article 199bis, though it is not demonstrated that there are fundamental principles of domestic law preventing such criminalisation ; • Effectiveness issues: effectiveness of implementation of the ML offence cannot be demonstrated considering the small number of convictions achieved to date; disproportion between the number of investigations and prosecutions as well as low number of convictions and indictments for ML compared to the number of criminal investigations and convictions for serious offenses that generate proceeds .
2. Money laundering offence Mental element and corporate liability	**LC**	• Corporate criminal liability is not extended to legal persons; • Effectiveness of sanctions for ML applied in respect of natural persons cannot be fully established, while legislation covering the administrative liability of legal persons for

[94] These factors are only required to be set out when the rating is less than Compliant.

		ML was recently introduced and never applied in practice.
3. Confiscation and provisional measures	**LC**	• Deficiencies in criminalisation of predicate offences to ML (TF and piracy, noted in R.1) and of the FT offence (noted in SR.II) limit the ability to seize and confiscate • The list of offences in Article 147 does not encompass all offences listed as predicate offences to ML or TF • Effectiveness is not fully established as there were limited number of ML cases where these measures were applied
Preventive measures		
4. Secrecy laws consistent with the Recommendations	**LC**	• Uncertainties resulting from FIA Instruction no. 2009-02 regarding the exchange of information with foreign institutions which are not mentioned in the Congress of State Decision no. 9 of 26 January 2009 • Effectiveness and efficiency concerns resulting from an unclear wording contained in Art. 36 (6) (a) and (c) LISF with regard to information that can be exchanged with other financial institutions and with a parent company.
5. Customer due diligence	**PC**	• No domestic ML/TF risk assessment that allows for a proper verification of the adequacy of the risk based approach in place. • Rather than providing for minimum CDD (i.e. less detailed CDD), the AML/CFT Law creates blanket exemptions from the CDD requirements. • The AML/CFT Law allows for the application of simplified due diligence for cases where there is suspicion of ML or TF. • No requirement to adopt risk management procedures concerning the conditions under which a customer may utilize the business relationship prior to verification. • The risk classification required by FIA Instruction 2009-03 appears not to be adequate as enhanced CDD is only required for customers to whom four or more higher potential risks have been assigned. • Risk classification undertaken and the measures allocated accordingly by some financial institutions appear not to be appropriate.

		• FIA Instruction 2009-03 is not in line with the requirement to conduct ongoing due diligence. • No adequate IT systems supporting CDD procedures among financial institutions outside the banking sector. • Effectiveness and efficiency of implementation not fully demonstrated.
6. Politically exposed persons	**LC**	• PEP definition is not fully in line with the FATF standard. • Effectiveness and efficiency outside the banking sector not fully demonstrated.
7. Correspondent banking	**LC**	• The requirements regarding correspondent banking relationships are limited to respondent institutions located in a State not imposing equivalent AML/CFT obligations.
8. New technologies and non face-to-face business	**LC**	• It is not specified which supplementary measures are considered to be adequate to verify the identity of a customer who is not physically present.
9. Third parties and introducers	**LC**	• No requirement for financial institutions to take adequate steps to satisfy themselves that copies of identification data and other relevant documentation will be made available from the third party upon request without delay. • No requirement for financial institutions to satisfy themselves that the third party has measures in place to comply with CDD requirements.
10. Record keeping	**LC**	• No implementing regulations introduced for financial promoters and parties providing professional credit recovery services • The very recent[95] introduction of the relevant instruction for financial/ fiduciary companies does not allow to assess the effectiveness and efficiency of implementation of the respective measures
11. Unusual transactions	**LC**	• Lack of requirements for financial promoters and parties providing professional credit recovery services to pay special attention to complex and unusually large transactions, as well as to unusual patterns of transactions
12. DNFBPS – R.5, 6, 8-11	**PC**	**Recommendation 5** • The deficiencies identified in the framework of Recommendation 5 are applicable to

[95] As of the time of the on-site visit, i.e. September 2010

		DNFBPs • Concerns whether the requirements on identification and verification of beneficial ownership and the clarification of the source of funds (if necessary) are appropriately applied by all DNFBPs. • No effective outreach to real estate brokers and dealers in precious metals and stones . • Awareness for the prohibition to accept cash payments above EUR 15 000 not evenly established. **Recommendation 6** • The concerns expressed under R. 6 regarding financial institutions apply equally to DNFBPs (i.e. PEP definition is not fully in line with the FATF standard). • Concerns remain in respect of the adequate and effective implementation of the PEP related requirements, and whether PEP-checks are adequately carried out by all non-financial parties **Recommendation 8** • The concerns expressed under R. 8 regarding financial institutions apply equally to DNFBPs (i.e. it is not specified which supplementary measures are considered to be adequate to verify the identity of a customer who is not physically present). **Recommendation 9** • The concerns expressed under R. 9 regarding financial institutions apply equally to DNFBPs (i.e. no requirement for financial institutions to take adequate steps to satisfy themselves that copies of identification data or other relevant documentation will be made available from the third party upon request without delay). **Recommendation 10** • Concerns remain in respect of the adequate and effective implementation of the record keeping requirements by DNFBPs, in particular real estate agents, auction houses, dealers in precious metals and stones.

		Recommendation 11 • Lack of requirement to pay special attention to complex and unusually large transactions, as well as to unusual patterns of transactions, which have no apparent or visible economic or lawful purpose. • Concerns remain in respect of the adequate and effective implementation of the requirements by DNFBPs.
13. Suspicious transaction reporting	**LC**	• Effectiveness issues: (1) "defensive" reporting patterns seem to prevail in the banking sector (2) low level or no reporting by other parts of the financial sector (i.e. insurance, collective investment companies) raises questions on the quality of reporting and the effective implementation of the reporting requirement
14. Protection and no tipping off	**C**	
15. Internal controls, compliance and audit	**PC**	• Definition of the requirement on internal procedures, policies and controls needs improvement • Lack of requirement to designate compliance officers at management level • Lack of requirement that financial parties, which are not incorporated businesses, assume the responsibilities and perform the duties of the compliance officer • Lack of requirement for financial institutions (other than banks, management companies and insurance undertakings) to have an adequately resourced and independent audit function • Lack of terms of reference specifying the focus, coverage, and topics of employee training
16. DNFBPS – R.13-15 & 21	**PC**	*Applying Recommendation 13* • Effectiveness issues: (1) "defensive" reporting patterns seem to prevail in the banking sector (2) low level or no reporting by DNFBPs raises questions on the quality of reporting and the effective implementation of the reporting requirement *Applying Recommendation 14* This Recommendation is fully observed.

		Applying Recommendation 15 • The requirement on internal procedures, policies and controls needs improvement • Lack of requirement that DNFBPs which are not incorporated businesses assume the responsibilities and perform the duties of the compliance officer • Lack of requirement to develop appropriate compliance management arrangements (i.e. designate duly empowered compliance officers) • Lack of requirement to have an adequately resourced and independent audit function • Lack of requirement to put in place screening procedures to ensure high standards when hiring employees *Applying Recommendation 21* • Lack of requirement to pay special attention to transactions with persons from or in countries covered by Recommendation 21 • Lack of requirement to examine the background and purpose of transactions with persons from or in countries covered by Recommendation 21, if such transactions have no apparent economic or visible lawful purpose • Lack of appropriate countermeasures in respect of countries covered by Recommendation 21
17. Sanctions	**LC**	• Lack of consistent and system-wide application of punitive measures.
18. Shell banks	**PC**	• The definition of "shell bank" does not comprise the element of "be subject to effective consolidated supervision" • Lack of direct requirement on prohibiting approval of establishment or acceptance of continued operations of shell banks • The notion of terminating relationships with entities that are found to be shell banks "at the earliest convenience" lacks explicitness and provides space for different interpretations and implementation • Exceptions from the rule for financial institutions "to satisfy themselves" that their respondent institutions comply with the

		requirement not to permit the use of their accounts by shell banks.
19. Other forms of reporting	**C**	
20. Other DNFBPS and secure transaction techniques	*Largely Compliant*	• *While consideration has been given to this area, the relevant legislation adopted has not been implemented.*
21. Special attention for higher risk countries	**LC**	• Lack of appropriate countermeasures in respect of countries which continue not to apply or insufficiently apply the FATF Recommendations
22. Foreign branches and subsidiaries	**LC**	• There is no requirement to pay particular attention that AML/CFT measures consistent with home country requirements and the FATF Recommendations are observed with respect to branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations. • No specific requirement for financial institutions apply the higher AML/CFT standard when the AML/CFT requirements of the home and host country differ.
23. Regulation, supervision and monitoring	**PC**	• In the absence of a risk assessment, the implementation of an adequate risk based supervision is not demonstrated • Implementing measures (e.g. the FIA Inspections Manual) do not incorporate all key elements of risk profiling and do not cover off-site surveillance • Lack of programmatic approach in off-site surveillance, consistency in the planning and sufficiency in the coverage of on-site inspections • Supervisory arrangements and performance fail to provide for efficient implementation of the supervision function
24. DNFBPS - Regulation, supervision and monitoring	**PC**	• FIA lacks adequate resources to perform its supervisory functions in addition to its numerous further functions • Very low level and limited coverage of onsite inspections. No comprehensive analysis of the quality of the CDD measures applied by DNFBPs • No measures taken to identify whether there are any San Marino residents/citizens who own or operate: (1) an internet casino; (2) a company that runs an internet casino; or (3) a server that is located in the Republic of San Marino and

		which hosts an internet casino.
25. Guidelines and Feedback	**LC (composite rating)**	• Indication of the need to provide further general feedback tailored to particular types of financial institutions and sectoral risks • Reported need of clear terms of reference (case-specific interpretations) to implement the laws and regulations • [DNFBPs] Insufficient sector specific guidelines on sectoral ML/TF risks, techniques and methods
Institutional and other measures		
26. The FIU	**LC**	• Effectiveness issues: the numerous additional functions of FIA and current practice of overreliance on FIA by the judicial authority for financial investigations and implementation of MLA requests may impact on the performance of its core functions; such as the dissemination function, and on the adequacy of resources; this may also be reflected in the limited number of disseminated cases to the judicial authority .
27. Law enforcement authorities	**PC**	• Though the number of ML investigations is increasing, there are very few police generated ML investigations • Effectiveness: (1) the effectiveness and efficiency of the role of the Police in the investigation phase is not demonstrated; (2) it was not demonstrated that the Police has the ability to carry out autonomously (complex) financial investigations without the support of other authorities.
28. Powers of competent authorities	*Largely Compliant*	• *The investigating judge and the three law enforcement units have the powers required to carry out investigations and take statements concerning any crime with the exception of certain tax related cases and self money laundering cases which are not deemed to be predicate underlying offences*
29. Supervisors	**C**	
30. Resources, integrity and training	**PC (composite rating)**	<u>Financial intelligence unit</u> • It was not demonstrated that FIA has adequate capacities and resources to undertake its core functions, considering its workload and numerous functions • Training of FIA staff on operational and strategic analysis, financial investigations,

		economic crime, etc appears to be rather limited • No policy or requirement to update the fit and proper checks during the period of employment to ensure high integrity of staff <u>Law enforcement authorities (including the Court)</u> • The skills of law enforcement and judiciary need further enhancement as the training of the judiciary and law enforcement on ML and financial crimes investigations appears to be insufficient • law enforcement authorities do not have the necessary equipment to be able to make use of special investigative techniques • The adequacy of the resources of the Court remains to be demonstrated • Limited information to assess whether there are adequate requirements in place to ensure that the Fortress Guard is required to maintain high professional standards and that there are adequate measure covering integrity aspects; • It was not demonstrated that Fortress Guard officials have received adequate training to develop technical expertise and capacity to detect cash movements <u>Supervisory authority</u>[96] • The lack of adequate human resources appears to be a major hindrance for the FIA to properly perform its functions, particularly its supervisory function. Resources of policy makers • The Recommendation is fully observed Central authority • Competent authorities for sending/receiving and executing mutual legal assistance/extradition requests are not sufficiently staffed, resourced – including with necessary technical resources – and trained to effectively perform their functions.
31. National co-operation	**LC**	• Effectiveness issues: given that the TCNC

[96] As regards the resources of the CBSM, the IMF FSAP report published in October 2010 concluded that "The assessment of the observance of Basel Committee Core Principles (BCP) showed that the Central Bank of San Marino (CBSM) will need substantially strengthened independence and resources [...]". The Central Bank has informed the evaluation team after the visit that it had recruited 4 additional staff members for the Supervision units (2 junior staff, 1 insurance expert and 1 senior staff member).

		was established only recently, full effectiveness of the co-operation and coordination mechanism could not be fully established; examination of trends and emerging money laundering risk does not appear to be jointly examined within this mechanism, and policies and strategic directions reviewed on the basis of the risk assessment when developed.
32. Statistics[97]	**LC (composite rating)**	• The review of the effectiveness of the AML/CFT system appears to have been conducted partially by the TCNC and does not cover comprehensively the overall AML/CFT system. • There were no statistics available on formal requests for assistance made or received by the CBSM relating to or including AML/CFT.
33. Legal persons – beneficial owners	**LC**	• At the time of the on-site visit, effectiveness could not be fully demonstrated, given the recent adoption of the requirements as well as the transitional period for the implementation of the legislation, and thus information accessible by authorities may not be up to date in all cases.
34. Legal arrangements – beneficial owners	**LC**	• The sanctions for failure of a resident trustee or a resident agent to fulfil their obligations and duties (registration and cancellation of the trust as well as notification of amendments relating to the elements specified in the trust certificate) within the time-limits established in the Law cannot be considered dissuasive • No clear obligation for the resident agent to ask the non-resident trustee in appropriate intervals about amendments relating to the elements specified in the trust certificate.
International Co-operation		
35. Conventions	**LC**	• A few shortcomings remain in the implementation of the Palermo and Vienna Conventions as outlined in the respective sections of this report
36. Mutual legal assistance (MLA)[98]	**LC**	• The money laundering offence still does not cover self-laundering, which could have a negative effect on the execution of mutual legal assistance requests and granting of extradition, in the context of the application of the dual criminality requirement. • Effectiveness concerns (until shortly before

[97] The review of Recommendation 32 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3rd round report on Recommendation 38.

		the visit, the procedure of double exequatur impacted on the effectiveness of execution of requests).
37. Dual criminality	*Largely Compliant*	• *Due to gaps in the incrimination of offences in article 199bis and 337bis*
38. MLA on confiscation and freezing	*Largely Compliant*	• *Concerns related to requests for confiscation of laundered property and proceeds (not only instrumentalities)* • *No consideration given to establishing an asset forfeiture fund.*
39. Extradition	**LC**	• The money laundering offence does not cover self-laundering, which could have a negative effect on granting the extradition requests, in the context of the application of the dual criminality requirement. • San Marino may, though such circumstances would be limited, refuse to extradite its nationals without undertaking to prosecute the offence for which extradition is sought; • Effectiveness cannot be assessed given the limited number of extradition requests received
40. Other forms of co-operation	**PC**	• The basis for co-operation between FIA and foreign supervisory authorities which are not financial intelligence units is not clearly established in the legislation and the scope of information appears to be limited to information related to FIU investigations. • The legal framework in place does not clearly authorize the CBSM to exchange information spontaneously • The adequacy of co-operation mechanisms and effectiveness of the co-operation with foreign authorities was not demonstrated by the CBSM and the Police forces
Nine Special Recommendations		
SR. I Implement UN instruments	**PC**	• Shortcomings remain in the implementation of the FT Convention as outlined in the respective sections of this report (i.e. criminalisation of a large majority of terrorist acts, lack of corporate criminal liability, limitations for confiscation, related gaps in the context of MLA and extradition). • Shortcomings remain in respect of the implementation of S/RES/1373 as outlined in the respective section of this report as well as

[98] The review of Recommendation 36 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3rd round report on Recommendation 28.

		in respect of the scope of assets as regards UNSCR 1267
SR. II Criminalise terrorist financing	**PC**	• FT criminalisation does not comply with the standard in that: - the legislation does not criminalise a large majority of acts, as set out under the treaties that are annexed to the FT Convention and this impacts also on the definitions of a terrorist and of a terrorist organisation - the FT offence does not constitute a complete predicate offence to ML. • Criminal liability has not been extended to legal persons. • Effectiveness cannot be tested in the absence of FT investigations and prosecutions.
SR. III Freeze and confiscate terrorist assets	**PC**	• The designating authority for the purpose of UNSCR 1373 and relevant procedures for designation, de-listing, unfreezing, etc in respect of the persons designated under UNSCR 1373 are not clearly set out in legislation; • The scope of the freezing mechanism is more limited than the wider scope under UNSCR 1373 and the shortcomings identified in respect to SR II requirements impact negatively; • The freezing mechanism does not extend to funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons, terrorist, those who finance terrorism or terrorist organisations; • Effectiveness issues: limited awareness of the obligations by obliged entities, given the recent adoption of the acts, and the efficiency of implementation is thus not fully demonstrated
SR.IV Suspicious transaction reporting	**LC**	• Effectiveness issues: the implementation of the FT reporting requirement is not demonstrated
SR. V International co-operation[99]	**LC**	• In TF cases , the shortcomings identified under SR.II may limit San Marino's ability to provide mutual legal assistance. • The shortcomings identified under SR II may limit San Marino's ability to extradite in

[99] The review of Special Recommendation V has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3rd round report on Recommendations 37 and 38.

		certain TF cases; • San Marino may, though such circumstances would be limited, refuse to extradite its nationals without undertaking to prosecute the offence for which extradition is sought; • Effectiveness cannot be assessed in the absence of FT related extradition requests. • Shortcomings identified under R.40 are also valid for SR.V
SR. VI AML requirements for money/value transfer services	**PC**	• No licensing/ registration requirements for post offices in relation to money and value transfer services provided by them. • Lack of implementing regulations (the FIA Instructions) for post offices. • Effectiveness concerns (also in relation to only recent appointment of a formal compliance officer)
SR. VII Wire transfer rules	**C**	
SR. VIII Non-profit organisations	**LC**	• Effectiveness issues: the effective implementation of the newly adopted requirements by the NPO sector and of administrative penalties could not be assessed given the recent adoption of those requirements and the fact that the transitional period under the new legislation was still on-going. This could have impacted on the up to datedness of the information kept by the NPOs and by the Registries. It was also not demonstrated that the supervisory action has been fully effective.
SR. IX Cross Border declaration and disclosure	**PC**	• Though the administrative sanctions applicable have been increased and may appear substantial, the voluntary settlement rule substantially reduces the level of sanctions and may undermine the deterring scope of the sanction. • Effectiveness issues: (1) the declaration system has been recently introduced, while it was not demonstrated that the authorities responsible for overseeing its implementation were provided with sufficient training to effectively perform their functions, (2) the implementation of the declaration requirement at the time of the on-site visit was not very effective, considering that the declaration

		could be (and was) submitted to financial institutions[100] (3) no indication of undertaking risk assessment exercises at the border specifically targeting cash movements.

9 TABLE 2: RECOMMENDED ACTION PLAN TO IMPROVE THE AML/CFT SYSTEM

AML/CFT System	Recommended Action (listed in order of priority)
1. General	**No text required**
2. Legal System and Related Institutional Measures	
2.1 Criminalisation of Money Laundering (R.1 & 2)	***Recommendation 1*** • Extend the list of offences in the categories of terrorism and piracy as predicate offenses for money laundering; • Revisit the ML offence or enact a provision in order to cover the laundering of proceeds from one's own criminal activity. This could also be seen as having an additional deterrent effect and would certainly assist the work of the law enforcement agencies. • Examine the underlying reasons for the disproportion between the number of ML prosecutions and convictions and take measures as appropriate to enhance the effective application of the ML offence and sanctions; • Consider amending the legislation in order to criminalise negligent money laundering. As raised previously under the earlier evaluation rounds, in some jurisdictions a clearer subjective mental element of suspicion that property is proceeds (with appropriately lesser sentences than for an offence based on direct intention) has been useful and, if this would not be contrary to any fundamental legal principles in San Marino, it could be considered. • Ensure that judicial authorities take part on a regular basis in specialised training on ML and predicate offences, so as to enhance their skills and expertise and assist them to develop case law on autonomous money laundering and the aspects related to the gathering of evidence in such cases;

[100] This possibility has been abrogated by the amendments introduced after the visit through Ratifying Decree Law no. 181 of 11 November 2010 (subsequently Decree Law no. 187 of 26 November 2010.

	Recommendation 2 The authorities are recommended to: • As already mentioned under the third evaluation round, and given the absence of fundamental principles of domestic law, amend the existing legislation in order to extend criminal liability to legal persons, including for ML; • Reconsider the maximum threshold barrier in respect to the administrative liability for money laundering and as appropriate, extend the list of offences to which administrative liability applies; • Ensure that law enforcement and judicial authorities are adequately trained on the application of sanctions for ML to natural and legal persons as set out under the newly adopted legislation.
2.2 Criminalisation of Terrorist Financing (SR. II)	• Enact amendments to the Criminal Code to ensure that the FT offence covers the financing of all acts that are within the definition of a 'terrorist act" for the purposes of SR.II. • Amend the existing legislation in order to extend criminal liability to legal persons for FT, as already mentioned under the third evaluation round, and given the absence of fundamental principles of domestic law, • Ensure that adequate training is provided to relevant authorities, in particular law enforcement and judicial authorities, on the application of the newly adopted legislation in respect of the FT offence and recently adopted measures extending administrative liability of legal persons for FT.
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)	• Amend the legal framework to remedy the deficiencies raised under R.1 and SR II and ensure that, in respect of those conducts, instrumentalities used and to be used and proceeds can be seized and confiscated; and amend the legislation as appropriate to ensure that confiscation measures can be applied to all predicate offences; • Increase efforts to put in place comprehensive training programme for the judiciary and the law enforcement officials to further increase their skills and expertise in identifying and tracing, in both domestic and foreign cases proceeds and consequently in applying the provisions regarding provisional measures and confiscation; • Reconsider the consequences of the practice of relying on the FIA for conducting financial investigations, in the

	light of the staff and budgetary resources that this assistance involves, so that law enforcement authorities make full use of their powers under the criminal legislation in pursuing criminal assets in proceeds generating crime under investigation and prosecution.
2.4 Freezing of funds used for terrorist financing (SR. III)	• Clarify in legislation the designating authority for the purposes of UNSCR 1373 and the related designating procedures; • Extend the restrictive measures provided under article 46 paragraph 1 a) to persons and entities designated pursuant to UNSCR 1373 and to funds and other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons, terrorists, those who finance terrorism or terrorist organisations; • Establish effective and publicly known procedures for considering delisting requests and for unfreezing of funds and other assets of delisted persons or entities in a timely manner in respect of persons designated under UNSCR 1373, including for persons inadvertently affected by the freezing mechanisms • Provide more guidance and outreach to the private sector, especially the non banking financial industry and DNFBPs, on the freezing obligations, including the obligation to check client files and databases against those lists; • Take additional measures as necessary to monitor effectively all financial institutions for compliance with SR III requirements.
2.5 The Financial Intelligence Unit and its functions (R.26)	• Take measures to ensure that FIA staff are primarily responsible for carrying out duties in relation to the core functions of an FIU and review the current working methods and co-operation with the Judicial authority to ensure that the dissemination function of the FIU is adequately implemented, i.e. FIA should disseminate financial information to domestic authorities for investigation or action when there are grounds to suspect ML or TF;
2.6 Law enforcement, prosecution and other competent authorities (R.27)	The authorities should • make full use of the provisions of the AML/CFT Law and delegate decree to second Police officers to the FIA, as this could in the medium and long term impact positively on the capacity of the law enforcement agencies to develop their own pool of expertise to pursue complex financial crime investigations, rather than rely on another agency for a key aspect of the investigation; • take measures as appropriate to ensure that the San

	Marino police officials start playing an active role in AML/CFT efforts; • The authorities should consider placing an emphasis on the development of case law on standalone money laundering, based on evidence collected in San Marino;
2.7 Cross-Border Declaration & Disclosure (SR IX)	• Take stock of the sanctions applied and analyse whether the voluntary settlement provisions undermine the effectiveness and deterrent scope of the sanctions, and if appropriate, reconsider the statutory sanctions to ensure that these are proportionate;
3. Preventive Measures – Financial Institutions	
3.1 Risk of money laundering or terrorist financing	• A domestic ML/TF risk assessment should be conducted including an assessment of the adequacy of mandatory instances for enhanced due diligence.
3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)	***Recommendation 5*** • A domestic ML/TF risk assessment should be conducted in order to have a national understanding of the risks facing the country that allows for a proper verification of the risk based approach in place. • Authorities should set significantly higher standards for the risk classification required by FIA Instruction no. 2009-03 so that the application of enhanced to due diligence is not unduly restricted (enhanced CDD measures and enhanced monitoring should <u>at least</u> be required for customers to whom <u>two</u> higher potential risks have been assigned). • The reference in FIA Instruction no-2009-03 to the measures to be applied in enhanced risk situations should be more precise. Not all the measures mentioned in Art. 27 AML/CFT law are appropriate to mitigate the risks mentioned in the FIA Instruction. • Authorities should bring the FIA Instruction no. 2009-03 in line with Art. 22 (1) (d) of the AML/CFT Law. It should be clarified that financial institutions are required to conduct <u>ongoing</u> due diligence on the business relationship. • Authorities should take measures, as appropriate, to ensure that financial institutions are also obliged, the implement the new CDD requirements for existing customers within a set timeframe and verify that this has been adequately undertaken. • The authorities should address the exemptions for low-risk customers as adopted from the Third EU AML

	Directive by clarifying that minimum CDD (i.e. less detailed CDD) should nevertheless be accomplished. • It should be clarified that the exemptions from CDD requirements granted under Article 26 of the AML/CFT Law do not apply when there is a suspicion of money laundering or terrorist financing. • Financial institutions should be required to adopt risk management procedures concerning the situations where a customer is permitted to utilize the business relationship prior to verification. These procedures should include a set of measures such as limitation of the number, types and/or amount of transactions that can be performed. • Authorities should take measures to strengthen the effective and efficient implementation of CDD requirements across all financial institutions. • Authorities should take measures to ensure the appropriateness of risk classifications undertaken and the measures allocated accordingly by financial institutions. • Promote the implementation of adequate IT systems supporting AML/CFT procedures (in particular the monitoring of transactions) among financial institutions outside the banking sector. • Authorities should undertake an independent and autonomous risk assessment of the countries qualified as equivalent by the Congress of State decision and should take into account the specific risks for the San Marino environment. The list should also include an express indication that the list constitutes only a refutable presumption, based on risk, for the application of simplified CDD. ***Recommendation 6*** • The PEP definition should be extended to cover "senior politicians" and "important political party officials" and should refer to persons entrusted with prominent public functions in a foreign country irrespective of their residence. • Promote the use of adequate databases to determine whether a person is a PEP for the whole financial sector. • San Marino should consider to sign, ratify and fully implement the 2003 United Nations Convention against Corruption

	Recommendation 7 • According to the standard, the requirements regarding correspondent banking relationships have to be applied irrespective of whether the respondent institution is located in a State imposing equivalent obligations. Therefore Art. 27 (5) AML/CFT Law should be amended and be applied to correspondent institutions located in any foreign jurisdiction. ***Recommendation 8*** • Authorities should consider to issue guidance specifying which supplementary information or documents respectively which supplementary measures are considered to be adequate under Art. 27 (3) AML/CFT Law to verify the identity of a customer who is not physically present.
3.3 Third parties and introduced business (R.9)	• Financial institutions should be required to take adequate steps to satisfy themselves that copies of identification data and other relevant documentation will be made available from the third party upon request without delay. • Financial institutions should be required to take adequate steps to satisfy themselves that the third party has measures in place to comply with CDD requirements.
3.4 Financial institution secrecy or confidentiality (R.4)	• Authorities should introduce a clearer wording at the level of primary law with regard to the information that can be exchanged with other financial institutions and with a parent company. • Authorities should amend FIA Instruction no. 2009-02 in order to straighten out that the exchange of information with foreign institutions where this is required by R.7, R.9 or SR.VII is not limited to jurisdictions mentioned in the Congress of State decision no. 9 of 26 January 2009.
3.5 Record keeping and wire transfer rules (R.10 & SR. VII)	***Recommendation 10*** • Introduce implementing regulations for financial promoters and parties providing professional credit recovery services (identical with those applicable to other financial parties) to ensure appropriate implementation of recordkeeping requirements by these types of obliged parties. ***Special Recommendation VII*** This Recommendation is fully observed.

3.6 Monitoring of transactions and relationship reporting (R.11 and R.21)	***Recommendation 11*** • Introduce requirements obliging financial promoters and parties providing professional credit recovery services to pay special attention to critical transactions ***Recommendation 21*** • Introduce appropriate countermeasures in respect of countries which continue not to apply or insufficiently apply the FATF Recommendations.
3.7 Suspicious transaction reports and other reporting (R.13, 14, 19, 25, & SR.IV)	***Recommendation 13 and Special Recommendation IV*** • Take measures for enhancing the efficiency of reporting and the quality of STR-s, by means of, *inter alia*, better outreach and guidance aimed at reducing "defensive" reporting patterns and at ensuring conduction of comprehensive analyses and submission of substantiated suspicions by financial parties. ***Recommendation 14*** This Recommendation is fully observed. ***Recommendation 25/c. 25.2 [Financial institutions and DNFBPS]*** • Provide further general feedback to the obliged entities, in particular on ML/TF methods, techniques and trends, as well as sanitized examples of money laundering cases, that focus on specific vulnerabilities, and are tailored to particular types of financial institutions. ***Recommendation 19*** This Recommendation is fully observed.
3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)	***Recommendation 15*** • Introduce additional requirements (in the law, regulation or other enforceable means) for financial institutions to adopt procedures, policies and controls as defined under Criterion 15.1, since the current language of the law seems to limit them to cover only certain types of high-risk activities and customers. • Establish a requirement that financial parties which are not incorporated businesses, assume the responsibilities and perform the duties of the compliance officer. • Establish a requirement that compliance officers are to be designated at management level. • Establish a requirement for financial institutions (other than banks, management companies) and insurance undertakings to have an adequately resourced and independent audit function.

	• Introduce terms of reference specifying the focus, coverage, and topics of employee training in accordance with Criterion 15.3. • Provide for practical implementation of employee screening requirement (by way of introducing relevant instructions/ best practices/ other guidance). ***Recommendation 22*** • Introduce a specific requirement for financial institutions to pay particular attention that their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF Recommendations in countries which do not or insufficiently apply the FATF Recommendations. • Introduce a specific requirement for financial institutions to adopt the highest AML/CFT standard in case of branch subsidiaries or branches in foreign countries.
3.9 Shell banks (R.18)	• Revise the definition of "shell bank" to incorporate the notion that, for qualifying as a non-shell bank, the subjects of the definition should "be subject to effective consolidated supervision". • Introduce an explicit requirement on prohibiting approval of establishment or acceptance of continued operations of shell banks. • Redefine the notion of "at the earliest convenience" so as to provide for a proactive and immediate termination of relationships with entities that are found to be shell banks. • Remove the exceptions from the rule to use the AML/CFT Questionnaire in the case of countries, jurisdictions and territories included in the Decision No 9 (2009) of the Congress of State, and when establishment of business relationships is initiated by foreign counterparts.
3.10 The supervisory and oversight system - competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23, 29, 17, 25)	***Recommendation 23*** • Conduct a national risk assessment so as to understand and appropriately respond to the threats and vulnerabilities in the system. • Improve implementing measures (such as the FIA Inspections Manual) to incorporate all key elements of risk profiling and to provide for its updating on regular basis; introduce similar measures for off-site surveillance activities. • Improve supervisory practices both in terms of introducing

	programmatic approach in off-site surveillance, consistency in the planning and sufficiency in the coverage of on-site inspections. • Consider relying on other involved stakeholders, such as the Supervision Department of the CBSM, to provide ready-to-use input for further supervisory action. ***Recommendation 17*** • Develop internal rules and practices for the FIA ensuring an even and balanced approach towards all types of obliged parties when determining the amounts of to-be-applied sanctions. • Provide for consistent and system-wide application of punitive measures aimed at effective realization of the sanctioning regime. ***Recommendation 25(c. 25.1 [Financial institutions])*** • Focus guidance efforts on providing clear terms of reference (case-specific interpretations) to implement the laws and regulations and consider consolidating, when appropriate, the numerous instructions issued to all obliged entities ***Recommendation 29*** • This Recommendation is fully observed.
3.11 Money value transfer services (SR.VI)	• Establish licensing/ registration requirements for post offices in relation to money and value transfer services provided by them. • FIA should issue implementing regulations post offices. • Take measures to strengthen the effective and efficient implementation of the obligations under the AML/CFT Law by post offices.
4. Preventive Measures – Non-Financial Businesses and Professions	
4.1 Customer due diligence and record-keeping (R.12)	• The recommendations made under R. 5, 6, 8-11 regarding financial institutions should be applied as well to DNFBPs. • Authorities should take measures to ensure that the requirements on identification and verification of beneficial ownership and the clarification of the source of funds (if necessary) are appropriately applied by all DNFBPs. • Authorities should continue their efforts to update Professionals and non-financial parties on sector specific AML/CFT risks.

	• Authorities should ensure effective outreach to all real estate brokers and dealers in precious metals and stones.. • Authorities should clarify in law or regulation that the office of non-professional trustee may not be held as a business.. • Authorities should increase awareness for the prohibition to accept cash payments above EUR 15´000. • Authorities should review the Instructions in place and include more sector specific guidance regarding the application of CDD requirements. The Instructions should further clarify how these requirements shall be applied in the day to day business of the different DNFBPs. • The adequate application of PEP checks by all DNFBPs should be strengthened and reviewed. • Provide for sufficient frequency and coverage of on-site inspections to satisfactorily ascertain compliance and implementation of relevant requirements by DNFBP-s. • Provide for the obligation of DNFBP-s to pay special attention to complex and unusually large transactions, as well as to unusual patterns of transactions, which have no apparent or visible economic or lawful purpose.
4.2 Suspicious transaction reporting (R.16)	San Marino authorities should: *Applying Recommendation 13* • Take measures for enhancing the efficiency of reporting and the quality of STR-s, by means of, *inter alia*, better outreach and guidance aimed at reducing "defensive" reporting patterns and at ensuring conduction of comprehensive analyses and submission of substantiated suspicions by DNFBP-s. *Applying Recommendation 14* • This Recommendation is fully observed. *Applying Recommendation 15* • Introduce additional requirements (in the law, regulation or other enforceable means) for DNFBPs to adopt procedures, policies and controls as defined under Criterion 15.1, since the current language of the law seems to limit them to cover only certain types of high-risk activities and customers.

	• Establish a requirement that DNFBPs, which are not incorporated businesses, assume the responsibilities and perform the duties of the compliance officer. • Establish a requirement that all DNFBP-s should develop appropriate compliance management arrangements, i.e. designate duly empowered compliance officers. • Establish a requirement for DNFBP-s to have an adequately resourced and independent audit function. • Establish a requirement for DNFBP-s to put in place screening procedures to ensure high standards when hiring employees. *Applying Recommendation 21* • Establish a requirement for DNFBPs to pay special attention to transactions with persons from or in countries covered by Recommendation 21. • Establish a requirement for DNFBPs to examine the background and purpose of transactions with persons from or in countries covered by Recommendation 21 and to make written findings of the analysis available to assist competent authorities and auditors. • Introduce appropriate countermeasures to be applied in respect of countries covered by Recommendation 21. • Take measures to ensure the effective implementation of relevant requirements by DNFBP-s, also through additional guidance on "black" and "white" lists of countries and the practical application thereof.
4.3 Regulation, supervision and monitoring (R.24-25)	***Recommendation 24*** • The staffing of the supervisory authority should be increased significantly in order to enable the FIA to adequately perform its supervisory functions, in addition to its numerous further functions[101]. • Authorities should carry out a comprehensive analysis of the quality of CDD measures with regard to an adequate number of professionals and non-financial parties. • San Marino should take measures to identify whether there are any San Marino residents/citizens who own or operate: (1) an internet casino; (2) a company that runs an

[101] Such as receiving, analyzing and disseminating STRs, carrying out financial investigations, issuing instructions, taking part in national and international bodies as well as promoting professional training of police officers regarding ML/TF prevention.

	internet casino; or (3) a server that is located in the Republic of San Marino and which hosts an internet casino. • Ensure supervisory arrangements and performance to provide for fully ascertaining efficiency of implementation of applicable AML/CFT requirements by DNFBPs. ***Recommendation 25 (c.25.1 [DNFBPS])*** • Competent authorities should develop and disseminate sectoral information and guidance, in particular on ML/TF risks related to the specific sectors, as well as on methods and trends.
5. Legal Persons and Arrangements & Non-Profit Organisations	
5.1 Legal Persons–Access to beneficial ownership and control information (R.33)	• Pursue efforts to ensure that the relevant information on legal persons is adequately and on a timely basis included in the Registry and that adequate sanctioning measures are applied in cases of non compliance with the respective legal requirements
5.2 Legal Arrangements–Access to beneficial ownership and control information (R.34)	• Authorities should review the level of sanctions applicable for failure by a resident trustee or a resident agent to fulfil their obligations and duties (registration and cancellation of the trust as well as notification of amendments relating to the elements specified in the trust certificate) within the time-limits established in the Law in order to ensure that they are proportionate and dissuasive. • Authorities should introduce a clear legal requirement for the resident agent to ask the non-resident trustee in appropriate intervals about amendments relating to the elements specified in the trust certificate and/or a obligation of the non-resident trustee to notify such amendments in a timely manner. • Authorities should consider codifying in the law the criteria to be followed by the Office of the Trust Register in order to issue certificates on the data and information contained in the Register to parties other than a trustee.
5.3 Non-profit organisations (SR. VIII)	• Pursue initiatives to promote effective supervision of NPOs, in particular those that account for a significant portion of the financial resources under the control of the sector and a substantial share of the sector's international activities;

	• Ensure that following the lapse of the transitional period, relevant measures are taken to ensure that the NPOs comply with the requirements set out in the legislation and otherwise, that relevant sanctions are promptly applied.
6. National and International Co-operation	
6.1 National co-operation and coordination (R.31)	***Recommendation 31*** • The Technical Commission of National Coordination should enhance its role by examining jointly trends and emerging money laundering risks, and, once FIA will have finalised the ML/TF risk assessment, undertake regular reviews of the AML/CFT strategic direction in the light of the risks identified, and as appropriate make necessary adjustments to applicable policies. • The Technical Commission of National Coordination should consider developing further the formal consultation mechanisms of the financial sector and other relevant sectors, as appropriate, to ensure an appropriate level of consultation of financial institutions and DNFBPs when developing AML/CFT policies and legislation.
6.2 The Conventions and UN Special Resolutions (R.35 & SR. I)	• Take additional measures, as relevant to implement fully the Vienna and Palermo Conventions. • Take additional measures, as relevant to implement fully the CFT Convention, in particular by addressing the shortcomings identified in SR II • Address the shortcomings identified in relation to the implementation of UNSCR 1373 and 1267.
6.3 Mutual Legal Assistance (R.36 & SR. V)	***Recommendation 36 and SR.V*** San Marino should: • rectify deficiencies in the ML and TF offences to ensure that they are able to provide fully assistance when dual criminality applies; • review and withdraw /amend the declaration made, considering the changes introduced to its legal framework, which now permit for instance controlled deliveries, and in order to enable the widest range of assistance in application of the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; • publicize on an appropriate government website (i.e. 'central authority's website) the legislation applicable to mutual legal assistance and extradition requests and any other relevant related information in English, so as to assist foreign authorities which may wish to formulate

	such requests with information on the criteria for such requests, grounds of admission and processes and procedures applicable in this respect. San Marino should consider: • ratifying the additional protocols to the European Convention on Mutual Assistance and Criminal Matters.
6.5 Other Forms of Co-operation (R.40 & SR. V)	• San Marino authorities should clarify the legal basis for co-operation between FIA, in its capacity as supervisory authority, and foreign supervisory authorities, other than FIUs and ensure that in that context, a wide range of assistance can be provided in a timely, constructive and effective manner. • The legislation should provide that the CBSM can exchange information spontaneously. • San Marino should take measures, as relevant, to ensure that Police forces and CBSM are capable of providing rapid, constructive and effective assistance to their counterparts, including through keeping information on response times and feedback from its foreign partners on the quality of data provided. • Detailed statistics should be kept on international co-operation relating to or including AML/CFT by the CBSM, and if possible, the Police forces.
7. Other Issues	
7.1 Resources and statistics (R. 30 & 32)	***Recommendation 30*** <u>FIA</u> • San Marino authorities should ensure that FIA is adequately resourced so that it can focus its work primarily on the core FIU functions, as opposed to other additional functions, so that this does not impact on the timeliness of analysis and dissemination of reports to the Judicial Authority; • the authorities should consider making full use of the provisions under the AML/CFT Law and delegate decree so as to associate Police officers to the FIA, so that the current approach of overreliance on the FIA management in the context of investigations, collection and seizing of financial documentation in connection with ML and other banking and financial crimes is reviewed and does not constitute an additional burden on FIA's performance in relation to its core functions; • existing policies should be review to ensure that integrity checks are updated periodically during employment

	periods; • San Marino should ensure that FIA has the adequate technical resources and that its staff is participating in trainings on a regular basis, to enable it to enhance the quality of its STR operational and tactical analysis and conduct strategic analysis <u>Law enforcement authorities</u> • continue to take measures as appropriate, to ensure that law enforcement officials and judges can develop their skills and expertise, in particular through a regular participation in specialised trainings in San Marino or abroad, in particular as regards financial investigation, handling of complex criminal investigations of financial and banking offences, techniques for tracing proceeds and evidence gathering. • continue to review on a regular basis the resources of the Court and the judges' workload, also taking into consideration the specific case workload and complexity of pending cases, as well as the respective workload derived from mutual legal assistance requests, and take remedying measures as appropriate to ensure an efficient treatment of cases; • ensure that the law enforcement authorities have the necessary equipment and are trained to make use of it so as to have the ability to make full use of the special investigative techniques allowed by the legal framework. • ensure that the Police forces, including the Fortress Guard officials, are required to maintain high professional standards and that there are adequate measures covering integrity aspects. • ensure that comprehensive training is provided regularly to law enforcement authorities, and in particular to the Fortress Guard, on detection of cash couriers and further guidance on trends/risks/patterns associated with cross border transportation of cash and other instruments, as well as typologies are available. <u>Supervisory authorities</u> • Take appropriate measures aimed at enhancing the capacities of the FIA in its supervisory function (including through recruiting additional staff) so as to ensure that it is able to adequately fulfil this function. <u>Central authority</u> San Marino should:

	• continue to ensure that the Judicial authority is adequately funded and staffed to fully and effectively perform its functions in respect of MLA and extradition requests, through regular reviews of its resources and workload, as well as of the allocation of tasks among relevant judges. • ensure that judges who are involved in MLA and extradition requests are adequately trained through on-going internal training but also external training in order to develop their expertise and know-how in handling international legal requests; • review the impact on the workload of the FIA and of the Central Bank management derived from the execution of the mutual legal assistance requests, to ensure that this does not affect negatively the performance of their core functions and their relationship with the supervised entities; • review existing technical resources available and take appropriate measures to ensure that proper technical means and equipment (e.g. ICT equipment, equipment for video/telephone conference, technical means required for special investigative measures) are available for competent authorities enabling them to adequately respond to mutual legal assistance requests. San Marino should consider: • promoting trainings in foreign languages for relevant professionals, in order to enable direct communication between judicial authorities, other than with Italy. • reviewing technical resources available enabling it to keep track of incoming and outgoing requests and implement, if appropriate, an automated system. ***Review of the effectiveness of the AML/CFT system on a regular basis (Recommendation 32.1)*** • The Technical Commission of National Coordination should analyse the overall effectiveness of the AML/CFT system on a regular basis (i.e. bi-annually), including by reviewing the statistics available and the results achieved by the competent authorities, in order to evaluate the adequacy of the preventive and other measures that were implemented and develop proposals which would form the basis for further improvements of the system.
7.2 Other relevant AML/CFT measures or issues	None
7.3 General framework – structural issues	None

10 TABLE 3: AUTHORITIES' RESPONSE TO THE EVALUATION (IF NECESSARY)

RELEVANT SECTIONS AND PARAGRAPHS	COUNTRY COMMENTS

V. COMPLIANCE WITH THE 3RD EU AML/CFT DIRECTIVE

San Marino is not a member country of the European Union. It is not directly obliged to implement **Directive 2005/60/EC of the European Parliament and of the Council of 26 ctober 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing** (hereinafter: "the Directive") and the **Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of 'politically exposed person' and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis**.

The following sections describe the major differences between the Directive and the relevant FATF 40 Recommendations plus 9 Special Recommendations.

1.	**Corporate Liability**
Art. 39 of the Directive	Member States shall ensure that natural and legal persons covered by the Directive can be held liable for infringements of the national provisions adopted pursuant to this Directive.
FATF R. 2 and 17	Criminal liability for money laundering should extend to legal persons. Where that is not possible (i.e. due to fundamental principles of domestic law), civil or administrative liability should apply.
Key elements	The Directive provides no exception for corporate liability and extends it beyond the ML offence even to infringements which are based on national provisions adopted pursuant to the Directive. What is the position in your jurisdiction?
Description and Analysis	Natural and legal persons can be held liable for AML/CFT infringements in application of the AML/CFT Law as well as Law no. 6 of 21 January 2010 (see for further details the analysis under R.2 and R.17).
Conclusion	However, as explained in this report (see analysis under R. 2), there are reservations as to the proportionality and dissuasiveness of the administrative sanctions applicable to legal persons as set out under the legislation.
Recommendations and Comments	San Marino should consider reviewing the legislation, with a view to introducing corporate criminal liability to legal persons and reconsider the maximum threshold set out for administrative liability for money laundering.

2.	**Anonymous accounts**
Art. 6 of the Directive	Member States shall prohibit their credit and financial institutions from keeping anonymous accounts or anonymous passbooks.
FATF R. 5	Financial institutions should not keep anonymous accounts or accounts in obviously fictitious names.
Key elements	Both prohibit anonymous accounts but allow numbered accounts. The Directive allows accounts or passbooks on fictitious names but always subject to full CDD measures. What is the position in your jurisdiction regarding passbooks or accounts on fictitious names?
Description and Analysis	Article 30 of the AML/CFT Law prohibits to maintain anonymous accounts or accounts in fictitious names.

	Delegated Decree No. 136 dated 22 September 2009 prohibited the issuance of new bearer passbooks and the existing ones, regardless of their balance, had to be closed or converted to nominative accounts by 30 June 2010. CDD requirements had to be fulfilled when the bearer passbooks were closed or converted. Moreover withdrawals, closure or conversion of bearer passbooks of over € 15,000 had to be reported to the Compliance Officer as potential suspicious transactions. Furthermore, the issuance of all bearer instruments, other than passbooks, constituting savings deposits (= certificates of deposits in bearer form) has been prohibited as of 11 November 2009 (Delegated Decree No. 154). The payment of interest upon maturity of the existing ones for a total value of over EUR 15,000 has to be reported to the compliance officer. As soon as interests of such instruments are paid upon maturity, CDD measures have to be applied. Violations of the CDD requirements regarding bearer passbooks or bearer instruments constituting savings deposits is punishable under Art. 61 AML/CFT Law. Violations of the prohibition to issue new bearer passbooks or passbooks constituting savings deposits are punished by terms of an administrative sanction ranging from € 10,000 to € 50,000 and which is imposed by the FIA. The same applies to violations regarding the conversion respectively closure requirement. The AML/CFT Law does not explicitly prohibit numbered accounts. However, authorities indicated that numbered accounts do not exist in San Marino.
Conclusion	San Marinese Law neither allows for anonymous passbooks/ accounts nor for passbooks/ accounts on fictitious names.
Recommendations and Comments	N/A

3.	**Threshold (CDD)**
Art. 7 b) of the Directive	The institutions and persons covered by the Directive shall apply CDD measures when carrying out occasional transactions amounting to EUR 15 000 or more.
FATF R. 5	Financial institutions should undertake CDD measures when carrying out occasional transactions above the applicable designated threshold.
Key elements	Are transactions and linked transactions of EUR 15 000 covered?
Description and Analysis	The obligation to apply customer due diligence is set out in Article 21 AML/CFT. Amongst other situations CDD measures are required when carrying out occasional transactions or professional services for an amount exceeding € 15,000, whether the transaction is carried out in a single operation or in several operations which appear to be linked.
Conclusion	Occasional transactions and linked transactions amounting to € 15 000 are not covered.
Recommendations and Comments	San Marino should consider introducing a legal requirement for institutions and persons covered by the AML/CFT law to apply CDD measures when carrying out occasional transactions amounting to EUR 15 000 or more.

4.	Beneficial Owner
Art. 3(6) of the Directive (see Annex)	The definition of 'Beneficial Owner' establishes minimum criteria (percentage shareholding) where a natural person is to be considered as beneficial owner both in the case of legal persons and in the case of legal arrangements
FATF R. 5 (Glossary)	'Beneficial Owner' refers to the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or legal arrangement.
Key elements	Which approach does your country follow in its definition of "beneficial owner"? Please specify whether the criteria in the EU definition of "beneficial owner" are covered in your legislation.
Description and Analysis	The definition of "beneficial owner" in Art. 1 (1) (r) AML/CFT Law is largely modelled on the definition set out in the EU Directive: *(I) the natural person who ultimately owns or controls the customer, when the latter is a legal person or entity without a legal personality;* *(II) the natural person on whose behalf the customer acts. In any case, the following are considered beneficial owners:* *1) the natural person(s) that, directly or indirectly, owns more than 25% of the voting rights in a company or, at any rate, because of agreements or other reasons, is able to control voting rights equal to said percentage or has control over the management of the company, provided that it is not a company listed on a regulated market, and subject to disclosure requirements consistent with or equivalent to the European Union legislation;* *2) the natural person(s) who is beneficiary of more than 25% of the property of a foundation, trust or other arrangements with or without legal personality that administers funds; whenever the beneficiaries have not been determined, the natural person(s) in whose principal interest the entity is established or acts;* 3) *the natural person(s) who is able to control more than 25% of the property of an entity with or without a legal personality.*
Conclusion	The definition of "beneficial owner" covers the criteria set out under the EU Directive.
Recommendations and Comments	N/A

5.	Financial activity on occasional or very limited basis
Art. 2 (2) of the Directive	Member States may decide that legal and natural persons who engage in a financial activity on an occasional or very limited basis and where there is little risk of money laundering or financing of terrorism occurring do not fall within the scope of Art. 3(1) or (2) of the Directive. Art. 4 of Commission Directive 2006/70/EC further defines this provision.
FATF R. concerning financial institutions	When a financial activity is carried out by a person or entity on an occasional or very limited basis (having regard to quantitative and absolute criteria) such that there is little risk of money laundering activity occurring, a country may decide that the application of anti-money laundering measures is not necessary, either fully or partially (2004

	AML/CFT Methodology para 23; Glossary to the FATF 40 plus 9 Special Recs.).
Key elements	Does your country implement Art. 4 of Commission Directive 2006/70/EC?
Description and Analysis	By Decree-Law No. 187 of 26 November 2010 (ratifying Decree Law No. 181 of 11 November 2010) foreign exchange negotiation carried out on an occasional and limited basis has been exempted from the scope of application of the AML/CFT Law (Art. 26 bis AML/CFT Law) . The related conditions are largely specified along the lines of Art. 4 of Commission Directive 2006/70/EC. However, pursuant to the Commission Directive a maximum threshold per customer and single transaction shall be established at national level depending on the type of financial activity. It shall be sufficiently low in order to ensure that the types of transactions in question are an impractical and inefficient method for laundering money or for terrorist financing, and shall not exceed EUR 1'000. Art. 26 bis AML/CFT Law stipulates that the value of all transactions must not exceed a total of EUR 5'000 per month and that only 3 transactions may be carried out per month for each customer. Consequently the maximum threshold per customer and single transaction is above the maximum threshold of EUR 1'000 set by the Commission Directive.
Conclusion	San Marino provides an exemption for foreign exchange negotiation carried out on an occasional or very limited basis. The conditions are largely in line with Art. 4 of Commission Directive 2006/70/EC except for the maximum threshold per customer and single transaction.
Recommendations and Comments	Authorities should bring the maximum threshold per customer and single transaction in line with Art. 4 of Commission Directive 2006/70/EC.

6.	**Simplified Customer Due Diligence (CDD)**
Art. 11 of the Directive	By way of derogation from the relevant Article the Directive establishes instances where institutions and persons may not apply CDD measures. However the obligation to gather sufficient CDD information remains.
FATF R. 5	Although the general rule is that customers should be subject to the full range of CDD measures, there are instances where reduced or simplified measures can be applied.
Key elements	Is there any implementation and application of Art. 3 of Commission Directive 2006/70/EC which goes beyond the AML/CFT Methodology 2004 criterion 5.9?
Description and Analysis	Pursuant to Art. 26 (1) of the AML/CFT Law financial institutions are not required to meet the CDD requirements when the customer is: a) a domestic financial institutions (except for financial promoters, insurance intermediaries and credit recovery companies); b) a foreign institution that mainly carries out banking, granting of loans, fiduciary activity, investment services or collective investment located in a country which imposes equivalent AML/CFT requirements and provides supervision and control of compliance with those requirements c) a foreign party that carries out post office services that require the fulfilment of AML/CFT obligations and which is located in a country which imposes equivalent AML/CFT requirements and provides supervision and control of compliance with those requirements;

	d) company listed on a regulated market in a country, as long as this market is subject to regulations consistent with or equivalent to EU legislation; e) a public Administration. Pursuant to Art. 26 (2) of the AML/CFT Law financial institutions are as well exempted from applying CDD requirements in respect of the following products: a) life insurance policies where the annual premium is no more than € 1,000 or the single premium is no more than € 2,500; b) complementary pension schemes if there is no surrender clause and the policy cannot be used as collateral for a loan under the schemes set forth in current legislation; c) compulsory or complementary or similar pension schemes that provide retirement benefits, which contributions are made by way of deduction from wages and the scheme rules do not permit the transfer of beneficiaries' rights if not after the death of the holder.
Conclusion	The above-mentioned instances for simplified CDD are largely modelled on those provided in Art. 11 of the Directive. However, Art. 11 of the Directive allows for simplified CDD where the customer is a financial institution covered by the EU Directive or requirements equivalent to those laid down in the Directive. Different from this, Art. 26 AML/CFT Law refers to AML/CFT requirements equivalent to those laid down in the Sammarinese AML/CFT Law. Rather than providing for minimum CDD (i.e. less detailed CDD) as required by the FATF Recommendation the law creates blanket exemptions from the CDD requirements. However, it is important to note that pursuant to Art. 26 (4) AML/CFT Law financial institutions shall in any case collect sufficient data and information to establish if the customer falls into an exempted category. Due to this requirement obliged institutions presumably will in practice still need to "know their customers" to basic due diligence levels. However, it is not specified which data and information are considered to be sufficient in terms of Art. 26 (4) AML/CFT Law.
Recommendations and Comments	Address the exemptions for low-risk customers as adopted from the Third EU AML Directive by clarifying that minimum CDD (i.e. less detailed CDD) should nevertheless be accomplished, San Marino should consider referring in Art. 26 (1) (b) and (c) AML/CFT Law to financial institutions covered by the EU Directive or requirements equivalent to those laid down in the Directive.

7.	**Politically Exposed Persons (PEPs)**
Art. 3 (8), 13 (4) of the Directive *(see Annex)*	The Directive defines PEPs broadly in line with FATF 40 (Art. 3(8)). It applies enhanced CDD to PEPs residing in another Member State or third country (Art. 13(4)). Directive 2006/70/EC provides a wider definition of PEPs (Art. 2) and removal of PEPs after one year of the PEP ceasing to be entrusted with prominent public functions (Art. 2(4)).
FATF R. 6 and Glossary	Definition similar to Directive but applies to individuals entrusted with prominent public functions in a foreign country.

Key elements	Does your country implement Art. 2 of Commission Directive 2006/70/EC, in particular Art. 2(4), and does it apply Art. 13(4) of the Directive?
Description and Analysis	"Politically exposed persons" are defined in Art. 1 (1) (n) of the AML/CFT Law as individuals, residing in a foreign State, who are or have been entrusted, during the year preceding the establishment of the business relationship, the carrying out of the transaction or the provision of the professional service, with prominent public functions, as well as their immediate family members or persons known to be close associates of such persons as provided for in the Technical Annex to the AML/CFT Law. The list of persons mentioned in the Technical Annex and the definition of "immediate family members or persons known to be close associates" are in line with the definition in Art. 2 of the Commission Directive 2006/70/EC. In line with Art. 2 (4) of the Commission Directive 2006/70/EC, a person who has ceased to be entrusted with a prominent public function for a period of at least one year is not considered to be a politically exposed person. However, financial institutions are required to meet, on a risk-sensitive basis, enhanced customer due diligence requirements even if they have ceased to be entrusted with a prominent public function. In line with Art. 13 (4) of the Directive financial institutions are required to have (a) adequate procedures in order to determine whether the customer or beneficial owner is a politically exposed person , (b) have approval by the Director General for establishing business relationships or carrying out occasional transactions, (c) appropriate measures to establish the source of funds and wealth of the customer or beneficial owner identified as a politically exposed person, (d) to ensure ongoing an enhanced control over the relationship with the customer.
Conclusion	Art 2 of Commission Directive 2006/70/EC has been implemented. Art. 2 (4) has been implemented but, enhanced customer due diligence on a risk-sensitive basis is required even if they person has ceased to be entrusted with a prominent public function. Art. 13 (4) of the Directive has been implemented.
Recommendations and Comments	N/A

8.	**Correspondent banking**
Art. 13 (3) of the Directive	For correspondent banking, Art. 13(3) limits the application of Enhanced Customer Due Diligence (ECDD) to correspondent banking relationships with institutions from non-EU member countries.
FATF R. 7	Recommendation 7 includes all jurisdictions.
Key elements	Does your country apply Art. 13(3) of the Directive?
Description and Analysis	Beyond the option provided in Art. 13 (3) of the Directive, the AML/CFT Law limits the application of ECDD to correspondent banking relationships located in States not imposing obligations equivalent obligations to those in the AML/CFT Law and not providing for any supervision and control of compliance with such obligations, are required

	to adopt enhanced CDD (Art. 27 (5) AML/CFT Law). Different from Art. 13 (3) of the Directive correspondent banking relationships with Non-EU member-countries are therefore exempted from the application of ECDD when imposing obligations equivalent to those in the Sammarinese AML/CFT Law.
Conclusion	The scope of application of the provisions regarding correspondent banking relationships is neither in line with Art. 13 (3) of the Directive nor with Recommendation 7.
Recommendations and Comments	San Marino should consider extending the scope of application of the provisions regarding correspondent banking relationship.

9.	**Enhanced Customer Due Diligence (ECDD) and anonymity**
Art. 13 (6) of the Directive	The Directive requires ECDD in case of ML or TF threats that may arise from products or transactions that might favor anonymity.
FATF R. 8	Financial institutions should pay special attention to any money laundering threats that may arise from new or developing technologies that might favor anonymity [...].
Key elements	The scope of Art. 13(6) of the Directive is broader than that of FATF R. 8, because the Directive focuses on products or transactions regardless of the use of technology. How are these issues covered in your legislation?
Description and Analysis	In line with Art. 13 (6) of the Directive obliged parties are required by Art. 27 (7) AML/CFT Law to pay special attention to any money-laundering or terrorist financing threat that may arise from products or transactions that might favour anonymity, and take measures, if needed, to prevent their use for money-laundering or terrorist financing purposes.
Conclusion	The approach adopted in the AML/CFT Law is in line with the requirements set out in Art. 13 (6) of the Directive.
Recommendations and Comments	N/A

10.	**Third Party Reliance**
Art. 15 of the Directive	The Directive permits reliance on professional, qualified third parties from EU Member States or third countries for the performance of CDD, under certain conditions.
FATF R. 9	Allows reliance for CDD performance by third parties but does not specify particular obliged entities and professions which can qualify as third parties.
Key elements	What are the rules and procedures for reliance on third parties? Are there special conditions or categories of persons who can qualify as third parties?
Description and Analysis	According to Art. 29 of the AML/CFT Law, financial institutions are only allowed to rely on the CDD performed by domestic financial institutions (except for financial promoters, insurance intermediaries and credit recovery companies) and foreign institutions that mainly carry out banking services, granting of loans, fiduciary activity, investment services, collective investment or post office services located in a country which imposes equivalent AML/CFT requirements and provides supervision and control of compliance with those requirements. Art. 29 (5) of the AML/CFT Law empowers the FIA to identify, by

	means of instructions, other categories of third parties upon which the obliged parties may rely in order to avoid the repetition of the requirements envisaged by Art. 22 (1) (a), (b), and (c) AML/CFT Law. So far, the Agency has not yet identified, by means of instructions, other categories of third-parties.
Conclusion	The rules and procedures for reliance on third parties correspond to those set forth in Art. 15 of the Directive.
Recommendations and Comments	N/A

11.	**Auditors, accountants and tax advisors**
Art. 2 (1)(3)(a) of the Directive	CDD and record keeping obligations are applicable to auditors, external accountants and tax advisors acting in the exercise of their professional activities.
FATF R. 12	CDD and record keeping obligations 1. do not apply to auditors and tax advisors; 2. apply to accountants when they prepare for or carry out transactions for their client concerning the following activities: • buying and selling of real estate; • managing of client money, securities or other assets; • management of bank, savings or securities accounts; • organisation of contributions for the creation, operation or management of companies; • creation, operation or management of legal persons or arrangements, and buying and selling of business entities (2004 AML/CFT Methodology criterion 12.1(d)).
Key elements	The scope of the Directive is wider than that of the FATF standards but does not necessarily cover all the activities of accountants as described by criterion 12.1(d). Please explain the extent of the scope of CDD and reporting obligations for auditors, external accountants and tax advisors.
Description and Analysis	Pursuant to Art. 17 (1) (c) "Professionals" are obliged parties and therefore subject to CDD requirements. Pursuant to Art. 20 AML/CFT Law "Professionals" are defined as follows: a) those enrolled in the Register of Accountants (holding a university degree or holding a high school certificate) of the Republic of San Marino; b) those enrolled in the Register of External Auditors and Auditing companies and of the Register of Actuaries of the Republic of San Marino; c) those enrolled in the Register of Lawyers and Notaries of the Republic of San Marino, when they carry out, on behalf of or for their client, any financial or real estate transaction, or when they assist in the planning or carrying out of transactions for their client concerning the: 1. transfer at any title of rights in rem in relation to real estate or companies; 2. managing of client money, securities or other assets; 3. opening or management of bank, savings and securities accounts;

	4. creation, operation or management of companies, trusts or similar arrangements, with or without legal personality; 5. organisation of contributions necessary for the creation, operation or management of companies; 6. transfer at any title of shares in a company This provision could be interpreted to imply that the CDD requirements are applicable to accountants, external auditors and auditing companies only when they provide accounting or auditing services, but not when they assist a customer in the planning or execution of the above mentioned transactions as required by the FATF Recommendation. According to the authorities the common interpretation of Art. 20 AML/CFT Law is that all professional activities provided by accountants, external auditors and auditing companies (including those explicitly mentioned with respect to lawyers and notaries) are subject to CDD requirements and that the AML/CFT Law therefore goes beyond the FATF requirements. From the evaluators perspective this view is supported by the fact that Annex A of FIA Instruction no. 2009-06 regarding CDD, record keeping and STR for professional practitioners contains a exemplary list of services provided by accountants and auditors, which are subject to CDD. The list includes largely all activities mentioned in the above mentioned Art. 20 (c) AML/CFT Law and further services. Tax advisors are subject to the AML/CFT Law according to Art. 19 (1) (c) of the AML/CFT Law, when carrying out "assistance and advice on tax matters".
Conclusion	CDD and record keeping requirements are extended to auditors and tax advisors in line with Art. 2 (1)(3)(a) of the Directive and the CDD requirements are - in line with the FATF standard - applicable to accountants and auditors for all activities described by criterion 12.1(d).
Recommendations and Comments	N/A

12.	**High Value Dealers**
Art. 2(1)(3)e) of the Directive	The Directive applies to natural and legal persons trading in goods where payments are made in cash in an amount of EUR 15 000 or more.
FATF R. 12	The application is limited to those dealing in precious metals and precious stones.
Key elements	The scope of the Directive is broader. Is the broader approach adopted in your jurisdiction?
Description and Analysis	According to Art. 31 (1) of the AML/CFT Law the transfer between different parties of cash is exclusively permitted to parties authorized to conduct banking services, fiduciary or payment services, when the value of the transaction (or actually linked transactions) is more than EUR 15,000. Therefore dealers in precious metals and precious stones are not allowed to accept cash above EUR 15,000. Therefore the approach chosen in the AML/CFT Law is stricter than the Directive and the FATF Recommendation.

	In addition the manufacturing, mediation and trade in precious stones and metals, including export and import thereof as well as the purchase of unrefined gold on a professional basis are subject to the requirements under the AML/CFT Law irrespective of any thresholds (Art. 19 (1) (k) and (l) AML/CFT Law). Furthermore the scope of application of the AML/CFT Law is extended to the management of auction houses or art galleries, trade in antiques, the selling and rental of registered moveable goods.
Conclusion	The approach chosen in the AML/CFT Law is stricter than the requirements set forth in the Directive and the FATF Recommendation.
Recommendations and Comments	N/A

13.	**Casinos**
Art. 10 of the Directive	Member States shall require that all casino customers be identified and their identity verified if they purchase or exchange gambling chips with a value of EUR 2 000 or more. This is not required if they are identified at entry.
FATF R. 16	The identity of a customer has to be established and verified when he or she engages in financial transactions equal to or above EUR 3 000.
Key elements	In what situations do customers of casinos have to be identified? What is the applicable transaction threshold in your jurisdiction for identification of financial transactions by casino customers?
Description and Analysis	The operation of casinos (including internet casinos) is forbidden. According to Art. 19 (1) (f) AML/CFT Law the activity of running of gambling houses and games of chance as set forth in Law N° 67 of July 25, 2000 and subsequent amendments, is subject to the requirements under the AML/CFT Law. Parties carrying out such activities are required pursuant to Art. 23 (5) AML/CFT Law to identify and verify the identity of the customer immediately on entry [into gambling houses], regardless of the amount of gambling chips purchased, sold or exchanged. They shall also register, according to the provisions of Art. 34 AML/CFT Law, the transactions of purchase or exchange of gambling chips or other means of gambling with a value of EUR 2,000 or more.
Conclusion	The AML/CFT Law is modeled on Art. 10 (2) of the Directive by requiring customer identification on entry into gambling houses regardless of the amount of gambling chips purchased.
Recommendations and Comments	N/A

14.	**Reporting by accountants, auditors, tax advisors, notaries and other independent legal professionals via a self-regulatory body to the FIU**
Art. 23 (1) of the Directive	This article provides an option for accountants, auditors and tax advisors, and for notaries and other independent legal professionals to report through a self regulatory body, which shall forward STRs to the FIU promptly and unfiltered.
FATF Recommendations	The FATF Recommendations do not provide for such an option.
Key elements	Does the country make use of the option as provided for by Art. 23 (1) of

	the Directive?
Description and Analysis	Article 36 of the AML/CFT Law requires that all obligors (including accountants, auditors, tax advisors, notaries and other independent legal professionals) report directly to the FIA without delay. Nevertheless, Article 13 of the Law attaches an important role to the self-regulatory bodies (professional associations), by establishing that: "1. Professional Associations, in the exercise of their functions assigned by their respective memorandums of association, shall promote and oversee compliance of their members with the requirements and obligations prescribed by this Law. 2. Professional Associations shall promote training of their members, employees and collaborators to ensure proper compliance with the obligations prescribed by this Law."
Conclusion	San Marino has decided not to make use of the option as provided for under Article 23 (1) of the Directive.
Recommendations and Comments	N/A

15.	**Reporting obligations**
Arts. 22 and 24 of the Directive	The Directive requires reporting where an institution knows, suspects, or has reasonable grounds to suspect money laundering or terrorist financing (Art. 22). Obliged persons should refrain from carrying out a transaction knowing or suspecting it to be related to money laundering or terrorist financing and to report it to the FIU, which can stop the transaction. If to refrain is impossible or could frustrate an investigation, obliged persons are required to report to the FIU immediately afterwards (Art. 24).
FATF R. 13	Imposes a reporting obligation where there is suspicion that funds are the proceeds of a criminal activity or related to terrorist financing.
Key elements	What triggers a reporting obligation? Does the legal framework address *ex ante* reporting (Art. 24 of the Directive)?
Description and Analysis	The reporting obligation is defined under Article 36, Paragraph 1 of the Law No 92 (2008), which establishes that that obliged parties should "*report without delay to the FIA:* *a) any transaction - even if not carried out – which, because of its nature, characteristics, size or in relation to the economic capacity and activity carried out by the customer to which it is referred, or for any other known circumstance, arouses suspicion that the economic resources, money or assets involved in said transaction may derive from offences of money laundering or terrorist financing or may be used to commit such offences; b) anyone or any fact that, for any circumstance known on the basis of the activity carried out, may be related to money laundering or terrorist financing;* *c) the funds that obliged parties know, suspect or have grounds to suspect to be related to terrorism or may be used for purposes of terrorism, terrorist acts, terrorist organisations and by those financing terrorism or by an individual terrorist".* Article 24, Paragraph 3 of the AML/CFT Law further defines that "obliged parties shall abstain from carrying out transactions when there are reasonable grounds to believe that these transactions could be related to money laundering or terrorist financing... In these cases, a report shall

	be promptly sent to the Agency. Where abstention is not possible because there is a legal requirement to receive the document, or the carrying out of the transaction by its nature cannot be postponed, obliged parties shall inform the Agency immediately after carrying out the transaction, by taking every precaution to identify the destination of the funds involved in the transaction".
Conclusion	Article 24 paragraph 3 of the AML/CFT Law implements the ex ante reporting situation.
Recommendations and Comments	N/A

16.	**Tipping off (1)**
Art. 27 of the Directive	Art. 27 provides for an obligation for Member States to protect employees of reporting institutions from being exposed to threats or hostile actions.
FATF R. 14	No corresponding requirement (directors, officers and employees shall be protected by legal provisions from criminal and civil liability for "tipping off", which is reflected in Art. 26 of the Directive)
Key elements	Is Art. 27 of the Directive implemented in your jurisdiction?
Description and Analysis	According to Art. 40 (1) of the AML/CFT Law, obliged parties are required to adopt suitable measures to ensure the maximum confidentiality of the person that has detected the suspicious transaction. Furthermore FIA is required to adopt appropriate measures to guarantee the confidentiality of the identity of the person that detected the suspicious transaction. Requests for information to the obliged party, and requests for further investigation, as well as exchange of information related to suspicious transactions reported, shall be made with appropriate ways that guarantee the confidentiality of the person that has detected the suspicious transaction (Art. 40 (3) of the AML/CFT Law). Pursuant to Art. 40 (4) of the AML/CFT Law the identity of the person that has detected this suspicious transaction, even if known, shall not be mentioned, in case of communication, complaint or report to the Judicial Authority.
Conclusion	The confidentiality requirements in place appear to be appropriate to protect employees of reporting institutions from being exposed to threats or hostile actions, as required under Art. 27 of the Directive.
Recommendations and Comments	N/A

17.	**Tipping off (2)**
Art. 28 of the Directive	The prohibition on tipping off is extended to where a money laundering or terrorist financing investigation is being or may be carried out. The Directive lays down instances where the prohibition is lifted.
FATF R. 14	The obligation under R. 14 covers the fact that an STR or related information is reported or provided to the FIU.
Key elements	Under what circumstances are the tipping off obligations applied? Are there exceptions?
Description and Analysis	The prohibition on tipping off in the AML/CFT Law is modelled on Art.

	28 of the Directive. According to Art. 40 (6) of the AML/CFT Law the obliged parties shall not be permitted to inform the party concerned and third parties, except in the cases provided for in this law, that a suspicious transaction report has been made or that a money laundering or terrorist financing investigation is being or may be carried out. The exceptions are stipulated in Art. 40 (7)-(10). Of the AML/CFT Law, largely in line with the exceptions provided in Art. 28 (2)-(9) of the Directive. Communication about STRs shall be allowed between financial institutions located in the Republic of San Marino, belonging to the same group. (Art. 40 (7) of the AML/CFT Law). Furthermore, the communication is permitted between the accountants, auditors lawyers and notaries as referred to in Art. 20 AML/CFT Law, who carry out their professional services in an associated form (Art. 40 (8) of the AML/CFT Law). Any attempt to dissuade a customer from engaging in illegal activity, this shall not constitute a violation of the obligation of confidentiality (Art. 40 (9) AML/CFT Law). Where obliged parties disclose information to the party concerned by the blocking provisions ordered by the Agency, if the communication is necessary in connection with the prohibition of transfer, holding or use as referred to in article 6, paragraph 3, this shall not constitute a violation of the obligation of confidentiality (Art. 40 (10) AML/CFT Law).
Conclusion	The circumstances under which tipping off obligations are applied and the corresponding exceptions provided in Art. 40 AML/CFT Law comply with both the 3rd EU AML/CFT Directive and the FATF Recommendation.
Recommendations and Comments	N/A

18.	**Branches and subsidiaries (1)**
Art. 34 (2) of the Directive	The Directive requires credit and financial institutions to communicate the relevant internal policies and procedures where applicable on CDD, reporting, record keeping, internal control, risk assessment, risk management, compliance management and communication to branches and majority owned subsidiaries in third (non EU) countries.
FATF R. 15 and 22	The obligations under the FATF 40 require a broader and higher standard but do not provide for the obligations contemplated by Art. 34 (2) of the EU Directive.
Key elements	Is there an obligation as provided for by Art. 34 (2) of the Directive?
Description and Analysis	According to Art. 44 (6) of the AML/CFT Law financial institutions are required to extend their procedures and internal controls to all foreign branches. Majority owned subsidiaries are not covered by this requirement.
Conclusion	The requirement pursuant to Art. 34 (2) of the Directive is partially implemented in the AML/CFT Law.
Recommendations and Comments	Authorities should consider to extend the requirement set out in Art. 34 (2) of the Directive to foreign majority owned subsidiaries.

19.	Branches and subsidiaries (2)
Art. 31(3) of the Directive	The Directive requires that where legislation of a third country does not permit the application of equivalent AML/CFT measures, credit and financial institutions should take additional measures to effectively handle the risk of money laundering and terrorist financing.
FATF R. 22 and 21	Requires financial institutions to inform their competent authorities in such circumstances.
Key elements	What, if any, additional measures are your financial institutions obliged to take in circumstances where the legislation of a third country does not permit the application of equivalent AML/CFT measures by foreign branches of your financial institutions?
Description and Analysis	According to Art. 45 AML/CFT Law financial institutions are required to ensure that their foreign subsidiaries or controlled foreign companies comply with obligations equivalent to those set forth in the AML/CFT Law. In case the legislation of the foreign State does not provide for requirements equivalent to those set forth in the previous paragraph, the financial institutions are required to inform the FIA and the CBSM and adopt supplementary measures to effectively address the risk of money laundering or terrorist financing.
Conclusion	In line with Art. 31(3) of the Directive, the AML/CFT Law requires financial institution to take additional measures.
Recommendations and Comments	San Marino should consider issuing guidance to financial institutions specifying the additional measures that could be adopted.

	Supervisory Bodies
Art. 25 (1) of the Directive	The Directive imposes an obligation on supervisory bodies to inform the FIU where, in the course of their work, they encounter facts that could contribute evidence of money laundering or terrorist financing.
FATF R.	No corresponding obligation.
Key elements	Is Art. 25(1) of the Directive implemented in your jurisdiction?
Description and Analysis	Article 14, Paragraphs 1 and 2 of the AML/CFT Law defines the following: "1. Whenever the Central Bank, in performing its supervision tasks over the financial parties referred to in Article 18, paragraph 1, letters a), d) and e)[102], or in performing its other statutory functions, detects violations of this Law, or facts or circumstances that might be related to money laundering or terrorist financing, it shall immediately inform the Agency thereof in written form. 2. The Central Bank shall provide the Agency with data regarding financial parties as well as information useful for carrying out financial investigations upon reports of suspicious transactions and for analyzing financial flows."
Conclusion	The requirements under Article 14 implement corresponding obligations under Article 25(1) of the Directive.
Recommendations and Comments	N/A

[102] That is, banks, management companies and financial/ fiduciary companies as defined under the Law No 165 (2005), as well as insurance undertakings and financial promoters.

20.	Systems to respond to competent authorities
Art. 32 of the Directive	The Directive requires credit and financial institutions to have systems in place that enable them to respond fully and promptly to enquires from the FIU or other authorities as to whether they maintain, or whether during the previous five years they have maintained, a business relationship with a specified natural or legal person.
FATF R.	There is no explicit corresponding requirement but such a requirement can be broadly inferred from Recommendations 23 and 26 to 32.
Key elements	Are credit and financial institutions required to have such systems in place and effectively applied?
Description and Analysis	Article 34 of the AML/CFT Law on recordkeeping requirements establishes that obliged parties shall register the data and information obtained for meeting CDD requirements. Paragraph 2 of the same article defines that obliged parties shall register the supporting evidence and records of business relationships and occasional transactions (original documents or copies) admissible in court proceedings. In both cases, there is a requirement that the data and documentation is maintained for a period of at least five years following completion of the transaction, provision of the service, or termination of the business relationship. Paragraph 4 of Article 34 sets out that all data, information and documents registered and kept by obliged parties shall be made available to the FIA without delay so as to enable it to perform its AML/CFT tasks. Article 35 further elaborates that financial parties should equip themselves with electronic systems allowing them to respond timely and completely to the FIA's requests intended to determine whether these financial parties have had business relationships with certain customers during the previous five years and the nature of these relationships (this requirement is implemented through the AML-Archive).
Conclusion	The requirements set out are in line with the requirements under Article 32 of the Directive.
Recommendations and Comments	N/A

21.	Extension to other professions and undertakings
Art. 4 of the Directive	The Directive imposes a *mandatory* obligation on Member States to extend its provisions to other professionals and categories of undertakings other than those referred to in A.2(1) of the Directive, which engage in activities which are particularly likely to be used for money laundering or terrorist financing purposes.
FATF R. 20	Requires countries only to consider such extensions.
Key elements	Has your country implemented the mandatory requirement in Art. 4 of the Directive to extend AML/CFT obligations to other professionals and categories of undertaking which are likely to be used for money laundering or terrorist financing purposes? Has a risk assessment been undertaken in this regard?
Description and Analysis	The provisions of the AML/CFT Law have been extended to several other professionals and categories of undertaking than those referred to in A.2(1) of the Directive. This is applicable to all activities mentioned under Art. 19 (1) of the AML/CFT Law, except for the professional

	office of the trustee and assistance and advice on tax matters: b) assistance and advice concerning investment services; c) assistance and advice on administrative, financial and commercial matters; d) credit mediation services; f) running of gambling houses and games of chance as set forth in Law no 67 of 25 July 2000 and subsequent amendments; g) offer of games, betting or contests with prizes in money through the Internet and other electronic and telecommunication networks; h) custody and transport of cash, securities or values; i) management of auction houses or art galleries; j) trade in antiques; k) purchase of unrefined gold; l) manufacturing, mediation and trade in precious stones and metals, including export and import thereof; m) selling and rental of registered movable goods.
Conclusion	In line with Art. 4 of the Directive, the AML/CFT obligations have been extended to other professionals and categories of undertaking. However, no formal risk assessment has been undertaken in this regard.
Recommendations and Comments	Authorities should undertake a formal risk assessment in order to analyze whether all relevant professionals and categories of undertaking are covered by the obligations under the AML/CFT Law.

22.	**Specific provisions concerning equivalent third countries?**
Art. 11, 16(1)(b), 28(4),(5) of the Directive	The Directive provides specific provisions concerning countries which impose requirements equivalent to those laid down in the Directive (e.g. simplified CDD).
FATF R.	There is no explicit corresponding provision in the FATF 40 plus 9 Recommendations.
Key elements	How, if at all, does your country address the issue of equivalent third countries?
Description and Analysis	Countries imposing equivalent AML/CFT requirements are determined in the Congress of State Decision No. 9 of the 26 January 2009 upon suggestion of the FIA as prescribed in Art. 95 (5) AML/CFT Law. The countries contained in the list correspond to those mentioned in the common understanding of EU member states on third country equivalence of April 2008 plus the Member States of the EU/EEA and French and Dutch overseas territories and UK Crown Dependencies.
Conclusion	San Marino has adopted specific provisions concerning countries which impose requirements equivalent to those laid down in the Directive.
Recommendations and Comments	N/A

VI. LIST OF ANNEXES

11 ANNEX 1: LIST OF ACRONYMS

ABS	Banks Association of San Marino
AML/CFT Law	Law no. 92 of 17 June 2008 on " Provisions on preventing and combating money laundering and terrorist financing" as amended
CBSM	Central Bank of the Republic of San Marino
CC	Criminal Code
CCP	Code of Criminal Procedure
CDA	Central Depositary Agency
CDD	Customer Due Diligence
CETS	Council of Europe Treaty Series
CFT	Combating the financing of terrorism
CPC	Criminal Procedure Code
CRC	Collegio Ragionieri Commercialisti (Association of Accountants of San Marino)
CTR	Cash transaction report
DNFBPS	Designated Non-Financial Businesses and Professions
EC	European Commission
ETS	European Treaty Series [since 1.1.2004: CETS = Council of Europe Treaty Series]
EU	European Union
EUR	Euro
FATF	Financial Action Task Force
FCA	Financial Companies Association
FFC	Financial and Fiduciary Companies
FIA	Agenzia d'Informazione Finanziaria (Financial Intelligence Agency of San Marino)
FIU	Financial Intelligence Unit
FT	Financing of Terrorism
GRECO	Group of States against Corruption
LEA	Law Enforcement Agency
IN	Interpretative note
ISS	Inspection Supervision Service of the CBSM
IT	Information technologies
KYC	Know your customer

LISF	Law N° 165/2005 on companies and banking, financial and insurance services.
ML	Money Laundering
MLA	Mutual legal assistance
MoU	Memorandum of Understanding
MVT	Money Value Transfer
NCCT	Non-cooperative countries and territories
NPO	Non-Profit Organisation
OBS	Office of Banking Supervision
ODC	Ordine Dottori Commercialisti (Association of accountants)
OECD	Organisation for Economic Co-operation and Development
OFAC	Office of Foreign Assets Control (US Department of the Treasury)
PEP	Politically Exposed Persons
RIS	Rete Interbancaria Sammarinese
SAR	Suspicious Activity Report
SCSM	State Congress San Marino
SR	Special recommendation
SRO	Self-Regulatory Organisation
STRs	Suspicious transaction reports
SWIFT	Society for Worldwide Interbank Financial Telecommunication
TCSP	Trust and company service providers
UCITS	Undertakings for Collective Investment in Transferable Securities
UN	United Nations
UNSCR	United Nations Security Council resolution
UTR	Unusual Transaction Report

12 ANNEXES 2-3

See **MONEYVAL (2011) 20 ANN 1 and ANN 2**