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(MONEYVAL)

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San Marino

3rd Compliance report

24 September 2009

San Marino is a member of MONEYVAL. The third compliance report was adopted at MONEYVAL's 30th Plenary Meeting (Strasbourg, 21-24 September 2009). For further information, please refer to MONEYVAL website: <http://www.coe.int/moneyval>.]

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I. INTRODUCTION

Evaluation of San Marino under the third round (April 2008)

1. MONEYVAL adopted the mutual evaluation report (MER) of San Marino under the third round of evaluation at its 26th Plenary meeting (31 March – 4 April 2008). As a result of the evaluation process, San Marino was rated Non compliant (NC) on 19 Recommendations and Partially compliant (PC) on 22 Recommendations, including on several core and key recommendations, as indicated in the table below:

Core Recommendations¹ rated NC or PC	
SR.II - Criminalisation of terrorist financing (PC)	
R.5 - Customer due diligence (NC)	
R.10 - Record keeping (NC)	
R.13 - Suspicious transaction reporting (NC)	
SR.IV - Suspicious transaction reporting related to terrorism (NC)	
Key Recommendations² rated NC or PC	
R.3 - Confiscation and provisional measures (PC)	
R.4 - Secrecy laws consistent with the Recommendations (PC)	
R.26 - The FIU (NC)	
R.35 – Conventions (PC)	
R.36 - Mutual legal assistance (PC)	
R.40 - Other forms of co-operation (PC)	
SR.I - Implementation of United Nations instruments (PC)	
SR.III - Freezing and confiscating terrorist assets (PC)	
SR.V - International co-operation (PC)	
Other Recommendations rated NC	
R.6 - Politically exposed persons	R.24 - DNFBP (regulation, supervision and monitoring)
R.7 - Correspondent banking	R. 25 - Guidelines & Feedback
R.12 - DNFBP (R.5, 6, 8-11)	R.34 - Legal arrangements
R.16 - DNFBP (R.13-15 & 21)	SR.VI - AML requirements for money/value transfer services
R.19 - Other forms of reporting	SR.VII - Wire transfer rules
R.21 - Special attention for higher risk countries	SR.VIII - Non-profit organisations
R.22 - Foreign branches & subsidiaries	SR.IX - Cross Border Declaration & Disclosure
Other Recommendations rated PC	
R.2 - Criminalisation of ML (mental element and corporate liability)	R.27 - Law enforcement authorities
R.8 - New technologies & non face-to-face business	R.30 - Resources, integrity and training
R.11 - Unusual transactions	R.31 - National co-operation
R.14 - Protection & no tipping-off	R.32 - Statistics
R.15 - Internal controls, compliance & audit	R.33 - Legal persons
R.17 - Sanctions	R.39 - Extradition
R.18 - Shell banks	

2. Following the adoption of the report, and in accordance with rules 41 and 45(1) of MONEYVAL's Rules of Procedures, the authorities of San Marino were required under Step 1 of the Compliance Enhancing Procedures to provide a report on measures that they have or are taking to address the deficiencies underlying all the recommendations which were rated Non-Compliant

¹ The core Recommendations as defined in the FATF procedures are R.1, SR.II, R.5, R.10, R.13 and SR.IV

² The key Recommendations are R.3, R.4, R.26, R.23, R.35, R.36, R.40, SR.I, SR.III and SR.V

(NC) or Partially Compliant (PC). San Marino reported back to MONEYVAL in July 2008, December 2008 and September 2009 under the Compliance Enhancing Procedures.

First compliance report (July 2008)

3. San Marino reported back to MONEYVAL at the 27th Plenary meeting (7-11 July 2008). The Plenary acknowledged that San Marino had taken promptly legislative action aimed at remedying several deficiencies identified in the mutual evaluation report. Nevertheless the legislation adopted was not in force at the time of discussion of the report and a significant number of additional implementing regulations were planned to be adopted in the near future. This transitional process raised a number of unanswered questions and concerns on how this would be achieved. Therefore MONEYVAL decided to retain San Marino under the Compliance Enhancing Procedures and requested that it should report back to the Plenary in December 2008 on additional progress that had been made, not only in relation to the subsequent secondary legislation issued in relation to the new AML/CFT legislation (Law no. 92) but also in the implementation of AML/CFT measures in force and the effectiveness of the AML/CFT system³.

Second compliance report (December 2008)

4. San Marino reported back again to MONEYVAL at the 28th Plenary meeting (8-12 December 2008), providing detailed information and supporting materials on progress made. MONEYVAL acknowledged that San Marino continued in a swift manner to take legislative action to address deficiencies identified in the mutual evaluation report in relation to the majority of the Recommendations. Considering that most of the measures had just entered into force or were about to enter into force, it appeared difficult for San Marino to demonstrate the effectiveness of the newly introduced system and as such it was not yet possible to assess the effectiveness of their implementation. Thus, MONEYVAL decided to give San Marino a reasonable time period to pursue the implementation of these measures and be in a position to gather information which would demonstrate that sufficient progress has been made to rectify the deficiencies in an effective manner. San Marino was requested to report back to MONEYVAL at its 30th Plenary meeting (September 2009)⁴.

First progress report (March 2009)

5. Furthermore, it is to be noted that San Marino reported back under MONEYVAL's Rules of Procedure for the third round and its first year progress report was examined and adopted in March 2009⁵.

II. OVERVIEW OF SAN MARINO'S PROGRESS AND REVIEW OF THE MEASURES TAKEN TO ADDRESS IDENTIFIED DEFICIENCIES

6. This desk review is carried out on the basis of the current Rules of procedures of MONEYVAL for the third evaluation round. It summarises the measures taken by San Marino since the adoption of mutual evaluation report in respect to the core and key Recommendations rated PC or NC as well as to the other Recommendations rated PC or NC. Given that it focuses only on the measures taken to address deficiencies in respect of the Recommendations that were rated PC or NC, it is not intended to cover comprehensively the San Marino AML/CFT system. As decided by MONEYVAL at its 30th Plenary meeting, San Marino was required to demonstrate that sufficient progress has been made to rectify the deficiencies in an effective manner.

³ See first compliance report: MONEYVAL(2008)17 REV

⁴ See second compliance report: MONEYVAL (2008)39

⁵ See first progress report: MONEYVAL (2009)5.

7. In preparing this paper, the Secretariat has taken into consideration the detailed report on progress and related annexes (covering laws, implementing regulations and guidance as well as data to assess effectiveness) provided by San Marino. It is to be noted that some of this information had already been provided as part of the two earlier compliance reports, however it has been complemented in a comprehensive manner with additional laws, implementing regulations and instructions as well as detailed statistics.
8. This paper provides a summary of the main conclusions of the review of the measures taken to address deficiencies of all Recommendations rated PC and NC, outlining the main changes to the AML/CFT system since the adoption of the second compliance report. It is particularly important to note that the effectiveness can be taken into account only through consideration of data and statistics provided by the authorities and as such, not all effectiveness aspects can be covered. Thus this paper does not attempt to re-rate compliance with the above-mentioned Recommendations nor form a definite opinion on the level of implementation of the standards, as this could only be objectively and thoroughly undertaken through a verification of the information received in the context of an on-site evaluation visit.

1. Overview of the measures taken in relation to the core Recommendations

9. **SR.II (rated PC in MER):** As explained previously, the Law no. 92 (2008) amended the Criminal Code, introducing Article 337ter –Financing of terrorism. Hence, *anyone who by any means, even through another person, 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 economically support terrorist individuals or groups, or provides them with a financial service or other connected services, shall be punished by terms of 6th degree imprisonment and 4th degree disqualification from public offices and political rights.* The Law no. 92 further defines the terms “terrorism”, “terrorist act” and “terrorist” have been defined (article 1 (p), (q), (j)). It also establishes the joint liability of the entity for the administrative violations committed by its representatives or employees. TF offences are predicate offences for money laundering. Furthermore, a draft law approved in first reading by the Congress of State (24 August 2009) is intended to address the issue of criminal liability of legal persons. There are no cases or prosecutions for FT.
10. **R.5 (rated NC):** Recommendation 5 was implemented through requirements set out in the AML/CFT law, as amended by Law no. 73 of 19 June 2008 in respect of sanctions for violations of CDD and abstention obligations and non compliance with or delay in fulfilment of registration and maintenance obligations. Requirements were further complemented with the Congress of State decision and through additional instructions, among which:
 - **Congress of State decision no. 9 of 26 January 2009** on List of countries which impose AML/CFT requirements equivalent to those set forth in Law 92/2008
 - **FIA instruction no. 2008-01 (12 June 2008)**
 - **FIA instruction no. 2008-05 (24 November 2008)**
 - **FIA instruction no. 2009-03 (22 May 2009):** Guidelines to obliged parties on CDD risk based verifications (in force in June 2009)
 - **FIA instruction no. 2009-04 (22 May 2009)** on CDD requirements relying on thirds parties (in force in June 2009)
 - **FIA instruction no. 2009-05 (22 May 2009)** on ways to fulfil obligations covered in article 22 (identification of beneficial owner and adoption of risk based and adequate measures to verify the identity) (in force in June 2009)
 - **FIA instruction no. 2009-06 on requirements of CDD, record keeping and suspicious transaction reporting for professional practitioners** (in force June 2009)
 - **FIA instruction no. 2009-08 (5 August 2009):** enhanced due diligence procedures for customers resident or located in countries, jurisdictions or territories subject to strict monitoring (in force on 1 September).

11. As mentioned in the previous compliance report, the Congress of State had adopted Delegated Decree no. 136 (31 October 2008) setting out transitory regulations applicable to bearer passbooks. Under the AML/CFT act, banks shall perform CDD on any deposits and withdrawals from bearer passbooks, regardless of the amount of transactions. Statistics provided by the authorities on the number of bearer passbooks indicated that as of June 2009, banks held 31.228 bearer passbooks whose credit balance was equal or below 15.000 Euros for 45.131.700 Euros while 1.170 bearer passbooks above 15.000 Euros amounted to a total figure of 123.628.253 Euros. There has been a decrease in amounts and number of bearer passbooks since 2008.
12. On 14 September 2009, the Congress of State adopted a decision to anticipate the date of closure of bearer passbooks. However, the Bureau during this Plenary reiterated their serious concerns regarding the length of time foreseen which enabled the continuation of opening of bearer passbooks until December 2010, and the issue related to their transferability characteristic.
13. The MONEYVAL Bureau are now satisfied, as a result of the exchanges held during this Plenary, that the San Marino authorities have reviewed their position and have adopted this week, on 22 September 2009, the Law - Decree no. 136⁶, which addresses the MONEYVAL Bureau's concerns and provides that:
 - The continued issuing of bearer passbooks shall be prohibited with immediate effect.
 - All bearer passbooks, regardless of their balance, shall be closed or converted to nominative accounts by 30 June 2010.
 - No further deposits on bearer passbooks are accepted and bearer passbooks shall be converted to nominative accounts at the first transaction to withdraw funds.
 - The withdrawal of funds from and closure of all bearer passbooks are accompanied by full customer identification and verification procedures on each transaction.
 - All withdrawals or closure or conversion of bearer passbooks over €15,000 are reported to the Compliance Officer as potential suspicious transactions.
 - Clear sanctions shall be applied for non compliance with the obligations set out in this act.
 - Clear procedures are introduced to enforce these requirements.
14. **R.10 (rated NC in MER)** : As previously indicated, the deficiencies appear to be addressed by the provisions set out in the AML/CFT law (see article 34) which require obliged entities to record data and information obtained under the CDD requirements and keep the records and copies of documents obtained for at least 5 years from the closure of the business relationship or execution of the occasional transaction. Such data is to be made available to the FIA without any delay in the exercise of its functions. Several instructions were issued in 2008 (01, 03 and 04) to further clarify the requirements. The FIA indicated that a draft instruction on data and information that shall be registered and maintained pursuant to article 34 of the AML/CFT law was circulated for consultation until 14 August and is due to be enacted in September 2009. Implementation of these requirements was so far assessed through a questionnaire sent to banks only, the results of which indicated that all banks implement IT software to register and keep the records and registration of CDD and information, as well as business relationships and occasional transactions. The FIA also carried out since January 2009, 10 general inspections and 8 specific inspections to check compliance with the implementation of requirements.
15. **R.13 (rated NC in MER) and SR.IV (rated NC in MER)**: San Marino has revised its reporting system and requirements (article 36 of the AML/CFT law), as mentioned in earlier compliance reports to ensure compliance with these Recommendations. The reporting obligation exists regardless of the offence, thus applying also to tax matters. Since the previous report, the following additional measures were taken:

⁶ This Law decree has been published and entered into force on 23 September 2009.

- the FIA issued Instruction 2009-07 (8 July 2009) which includes guidelines on suspicious transactions, information on the procedures for the examination of transactions as well as the standard reporting form for financial and non financial reporting entities.
 - Several trainings were organised for obliged entities (see annexes for details)
16. The analysis of the questionnaire disseminated to banks indicated that all banks have defined procedures to be followed regarding STRs and to ensure the confidentiality of the identity of the reporting person, 9 out of 12 banks had formalised these procedures through internal regulations.
17. Figures provided indicate a clear increase of disclosures: while in the period 2003-2006 the financial intelligence unit received on average 20 disclosures (unusual and suspicious transaction reports), statistics up to August 2009 indicate 136 reports. Interestingly, around 20% of the reports from banks and respectively 50% of the reports from financial and fiduciary companies relate to attempted transactions. Over 50% of cases opened are indicated as being under analysis, while 40% were closed. 4 cases were disseminated to the Court. These statistics appear to concur with the authorities' position that the number of reports had increased in terms of numbers and one can expect also in quality. Other effectiveness related aspects cannot be assessed.

2. Review of the measures taken in relation to the key Recommendations

18. **R.3 (rated PC in MER):** The first compliance report highlighted the main legal changes introduced by the AML/CFT Act (subsequently amended in June 2009), which address the deficiencies identified in respect of the implementation of Recommendation 3 (amendment of the Criminal Code' provisions on confiscation, extension of value based confiscation, new powers of the FIA to block funds, economic resources assets held by an entity or person, provisions on avoidance of acts evidencing a title to assets which may be subject to confiscation). These provisions are now in force. The FIA has made use of the new powers and in one case, it blocked suspicious funds held by a bank (155.776,21 Euros), the measure being confirmed through seizure by the Court. Additionally the authorities provided detailed statistics for seizures and confiscation related to prosecutions in 2009 and 2009 for other proceeds generating offences which demonstrate the application of the current seizure and confiscation measures.
19. **R.4 (rated PC in MER):** In accordance with the AML/CFT law, banking secrecy cannot be opposed to the FIA in the exercise of its functions of preventing and combating ML and TF. The FIA has issued an instruction 2009-02 (in force on 9 February 2009) to all obliged entities which clarifies that obliged entities shall communicate with foreign counterparts the requested information when the latter performs the CDD obligations, provided that this is equivalent to CDD obligations set out under the San Marino legislation and necessary and essential to establish a continuing relationship or to carry out an occasional transaction or to provide a professional service. Recent developments, which are welcome, include the adoption on 14 September 2009 by the Congress of State of a decision aimed at amending the Law no. 165 of 17 November 2005 on companies and banking, financial and insurance services and at modifying the bank secrecy so as to enable information sharing also between administrative authorities.
20. **R.26 (rated NC in MER) R. 30 & 32 (rated PC in MER):** The second compliance report highlighted the main changes to the institutional framework resulting from the entry into force on 23 September 2008 of the new AML/CFT law as well as the implementing delegated decree no. 146 of 28 November 2008 on regulations of the FIA, which addressed on paper the major deficiencies identified during the on-site visit. Since the second compliance report, the following developments are to be noted:
- The FIA issued guidelines on suspicious transactions and procedures, it implemented an electronic reporting system and introduced a standardized electronic STR reporting form for all reporting entities (Instruction no. 2009-07, in force 20 July 2009)

- The FIA counts 3 additional staff members (10 in total: the Director, the Vice-Director, 2 financial analysts, 2 on-site inspectors, 1 regulatory and legal specialist, 1 IT person and 2 administrative staff) and intends to recruit 2 additional persons in the near future.
 - The FIA is now located in separate premises from the Central Bank and has developed internal procedures and ICT solutions to address the issue of protection of information held by the FIA.
 - The 2009 budget had been approved for 1.670.000 Euros.
21. In the light of the overall developments, San Marino has made real progress to meet the requirements of R. 26 and address the shortcomings identified in the mutual evaluation report regarding its core functions, powers, operational independence and autonomy, etc. It has also strengthened its FIU by increasing the number of staff and technical resources.
22. Some remaining concerns had previously been raised regarding the autonomy and operational independence of the FIA from the Central Bank, in particular whether the secondment of staff from the personnel of the Central Bank to the FIA could be further strengthened through written agreements or through an extension of the memorandum of understanding which they have concluded on 6 February 2009, so as to prevent any risks of these staff members being taken away from the FIA without the Agency's control on this matter. The authorities consider that this issue has been addressed, however whether in practice this will continue to be an issue can only be assessed on the longer term.
23. **R.35 (rated PC in MER) & SR.I (rated PC in MER):** As noted in the previous report, San Marino has not yet ratified the Palermo Convention nor its additional protocols. The AML/CFT act as amended, delegated decrees and decisions of the Congress of State address most of the deficiencies raised in the context of the criminalization of the ML and TF offence, special investigative methods, cooperation arrangements, detection of physical cross-border transport and the implementation of the UNSC resolutions. Law no. 98 of 21 July 2009 (wire-tapping) will be applied as of 2010. Draft legislation on criminal liability of legal persons is pending approval. San Marino has set out several necessary steps which would enable it to implement the Vienna Convention, the Palermo Convention and the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism (the Terrorist Financing Convention). It should thus proceed with ratifying the Palermo convention and its additional protocols.
24. **R.36 (rated PC in MER) & SR.V (rated PC in MER):** San Marino has ratified the European Convention on mutual assistance in criminal matters in March 2009 (in force as of June 2009). Provisions of bilateral agreements with Contracting Parties regarding legal assistance in criminal matters will remain in force insofar as they are not inconsistent with the provisions of this Convention. Furthermore on 30 July 2009, the Parliament adopted Law no. 104/2009 on rogatory letters⁷ and the authorities reported that requests shall be analysed by the judiciary without any involvement of the political authority. According to the new legislation, direct relations between the national judicial authority and that of the foreign requesting country are permitted to facilitate the procedure for mutual legal assistance. In 2008 the San Marino court received 8 requests regarding ML (out of 229 in total) which were all granted smoothly, as indicated in annex 9. In 2009, 12 requests regarding ML (out of 89 as of 31.07.2009) and 11 were dealt with in a reasonable time, as shown by the table in annex 8. The authorities reported that such requests are handled by 2 law commissioners, one of whom is responsible specifically for ML and TF cases. No requests were sent or received regarding TF.
25. **R.40 (rated PC in MER):** As mentioned previously, the AML/CFT law modified substantially the framework for international cooperation and the roles of the various institutions. Concerns had previously been raised particularly in respect of the FIU's ability to exchange information with

⁷ A copy of this act was provided to the Secretariat in Italian, hence it was not possible to examine its full scope and provisions.

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. Requests for cooperation cannot be refused on the grounds of laws that impose secrecy requirements on DNFBPs as such information cannot be opposed to the judicial authority, FIA and police according to the AML/CFT Law.

26. The FIA provided updated information on incoming and outgoing requests in 2009: out of 32 requests received from foreign FIUs, 30 were executed and 2 pending execution, indicating that such requests were satisfied in average in up to 10 days (one case was dealt with in 116 days due to the complexity of the case and the need of a wide on-site inspection). The FIA had sent 21 requests to a foreign FIU, out of which 3 were satisfied and 18 were pending execution. The FIA has also provided information spontaneously in 5 cases. Comparing with figures from previous years, when the FIU received on average between 4-9 requests/year, it is visible that the international co-operation activity of the FIA has increased.
27. **SR.III (rated PC in MER):** Articles 46-50 of Law no. 92/2008 set out new procedures to cover the implementation of SR.III. Article 49 sets out the functions of the Committee for Credit and Saving as the designating authority as well as relevant procedures. Furthermore, the Congress of State adopted 5 decisions implementing the Security Council UN Resolutions 1267, 1373 and 1737 and following. A delegated decree from 31 October 2008 regulates the procedure for the administration and management of frozen assets. These measures appear to address the main deficiencies. The FIA has disseminated the lists and decisions of the Congress of State to obliged entities. Furthermore, under information gathered, the FIA concluded that 11 out of 12 banks had adopted specific procedures with a view to establishing whether a customer is included in the lists. The FIA reported that in order to monitor and check compliance, it has adopted an on-site inspection plan for the forthcoming months where specific controls will be carried out, including on designations and related procedures.

3. Review of the measures taken in relation to other Recommendations rated NC or PC

Legal system and related institutional measures

28. **R.2 (rated PC in MER) :** The new legal framework modified the sanctions regime and increased the level of sanctions (ML offence penalty was increased by 2 degrees – from 6 months to 3 years as originally prescribed to 4-10 years). A draft law was approved in first reading by the Congress of State (24 August 2009) and is intended to address the issue of criminal liability of legal persons.
29. **R.27 (rated PC in MER):** The previous compliance report did not enable to assess progress in the absence of relevant information. The authorities indicated that as a result of the legal changes, the law enforcement authorities have now started playing a more active role in AML/CFT efforts. Furthermore, the Congress of State decision no. 17 of 11 May 2009 appointed 6 members of the police forces to cooperate with the investigating judge on ML, TF and financial crimes. Training courses have been carried out by the FIA and the judicial authority on a regular basis and also in the context of on-going cases. Additional trainings are under discussion in the context of the co-operation with the Italian Guardia di Finanza.
30. **SR.IX (rated NC in MER):** As indicated in the second compliance report, the authorities had taken action to address the issue of cross-border transportation of cash and other instruments, through the adoption of the Congress of State delegated decree no. 138 (31 October 2008) which introduced a disclosure system with the following characteristics: any person entering or leaving San Marino with cash and/or bearer instruments above 10.000 Euros should declare, upon request

of the Police at the points of entry/exit from the territory a) his/her name and address, b) name and address of the subject on behalf of whom the transfer may be made, c) the cash and similar instruments being transferred and corresponding amount, d) the origin and destination of cash or similar instruments.

31. A number of concerns had been raised in respect of this system. Subsequently, the San Marino authorities have issued a new delegate decree on cross border transportation of cash and similar instruments (June 2009) which abrogates the previous delegate decree and addresses the gaps noted previously. It introduces a declaration system of cash and similar instruments for a total amount exceeding 10.000 Euros or the equivalent value. The declaration is made in writing and should be submitted to the commands or branch offices of the police forces. Administrative sanctions have increased. Failure to declare or false or inaccurate information is punished with an administrative fine up to 40% of the amount of the value exceeding 10.000 Euros, with a minimum fine of 200 Euros. Incomplete or false declaration on the name and address of the beneficiary may be punished with imprisonment or second degree arrest or with a third degree fine. Administrative seizure is also foreseen in case of violation of the declaration obligation, in the amount exceeding the equivalent value of 10.000 Euros, within the limit of 40%. Assets seized are deposited with the FIA within the next working day. Furthermore, a copy of all declarations received are transmitted to the FIA. The decree also sets out provisions regarding national and international cooperation.
32. The San Marino authorities indicated that regular meetings were held between the FIA and LEA to define procedures and address issues of concern in the interpretation of the delegated decree (eg. in cases of transfer of cheques without 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). The FIA has recorded declarations received in its own database. While in 2008, out of 64 controls, no violation were ascertained, in 2009 (up to 31 July), 778 controls were carried out and 8 violations were found (amounts varying between 18.000 Euros – 200.000 Euros) and administrative sanctions were applied of up to 22.000 Euros. Over 80% of cases related to transport of cash. These sanctions were applied on the basis of Delegate decree 138.

Preventive measures – Financial institutions

33. **R.6 (rated NC in MER), R.7 (rated NC in MER), R.8 (rated PC in MER):** requirements were introduced with the AML/CFT law as amended by Law no. 73 of 19 June 2009 which strengthened sanctions for non compliance. Instruction no. 2009-03 of 22 May 2009 on risk assessment and other evaluations is also to be noted in this context. On 22 June 2009, an AML/CFT seminar was organised for compliance officers and internal audit staff of financial institutions, covering new technologies and non face to face business.
34. **R.11 (rated PC in MER) & R.21 (rated NC in MER):** Measures have been taken to address the deficiencies identified in respect of R.11 through the Law no. 92/2008 (in force) and instruction no. 2008-03 (in force 15 December 2008) on identification, verification and assessment of critical transactions. Authorities reported that 75% of banks have formally approved a document with criteria for the analysis of unusual transactions and 10 out of 12 banks have in place IT instruments to identify and assess such transactions. As regards R.21, in addition to existing implementing measures to instructions no. 2008-02, and no. 2008-04 (in force from February 2009) examined previously, were also adopted the Decision no. 9 of the Congress of State on countries, jurisdictions and territories that are considered equivalent to the San Marino AML/CFT Framework and Instruction no. 2009-08 (5 August 2009 in force 1 September 2009). The replies to the questionnaire circulated by the FIA indicated that all banks have carried out an analysis on the existing customers located in countries which fall under enhanced CDD requirements, 4 of which have business relationships with customers located in countries under strict monitoring and have indicated that they implement adequate measures to mitigate ML/TF risks.

35. **R.14 (rated PC in MER), R.15 (rated PC in MER), R.18 (rated PC in MER), R.22 (NC in MER), SR.VI (rated NC in MER), SR.VII (rated NC in MER):** as noted in previous reports, requirements were introduced in the AML/CFT Law. As regards SR.VII, the instruction no. 2008-04 on specific measures for the electronic transfer of funds is in force from February 2009. A survey was carried out by the FIA with regard to R.22, from which it resulted that 5 financial parties holding controlling stakes in foreign companies established in countries listed in the Congress of State decision, while 2 financial institutions declared to hold holdings in companies established in countries not included in the list and that they've adopted additional measures to address specific ML/TF risks. The effective implementation of recommendations 15, 18, 22, SR.VII by financial institutions could only be derived from information obtained through the outcomes of supervisory action. The On-site Inspection supervision service of the Central Bank has scheduled special controls to monitor compliance with the requirements set forth in instruction 2008-04 and to date 1 control has been executed. The FIA reported having carried out controls for compliance with this instruction and results were positive. The FIA also conducted a survey on money transfers executed by the San Marino Post office (the unique MVT operator) to determine the size of the activity and organised specific training seminars for Post Office Staff.
36. **R.17 (rated PC in MER):** The sanctions regime for AML/CFT breaches has been updated by amending the AML/CFT Law in June 2009 (Law 73/2009) which strengthened sanctions for violations of CDD, registration and reporting obligations. Since January 2009, the FIA has carried out 10 general inspections and 8 specific inspections (8 banks, 6 financial and fiduciary companies, 3 professionals, and reported that main types of infringements related to shortcomings in collection of information concerning the customer and relating documents (updating documents, absence of certified copies) and insufficient staff training. The authorities appear to make use of the available sanctions. Administrative sanctions were applied for 12 subjects for a total amount of 38.000 Euros.
37. **R.19 (rated NC in MER):** As indicated previously a working group was established in July 2008 to conduct a study on the feasibility and utility of implementing a system where financial institutions would report all transactions in currency above a fixed threshold to a national central agency. The Supervision Committee of the Central Bank concluded that such a system would be feasible but not useful.
38. **R.25 (rated NC in MER):** Feedback mechanisms were introduced by the AML/CFT law. They were complemented through additional FIA instructions among which instruction No. 2009-07 of 8 July 2009 (on STRs and reporting procedures – in force as of 20 July 2009) and Instruction No. 2009-06 of 27 May 2009 (CDD requirements, record keeping and STR reporting – in force as of 6 June 2009). Comprehensive and updated guidance to assist financial institutions to implement and comply with the AML/CFT requirements was issued.

Preventive measures – Designated non financial businesses and professions

39. **R.12 (rated NC in MER), R.16 (rated NC in MER), R.24 (rated NC in MER):** San Marino has brought DNFbps within the remit of the AML/CFT legislation and has developed additional measures to assist them in the implementation of the requirements. With the introduction of the AML/CFT act, the full application of the new provisions, issuance of subsequent instructions and implementation, subsequent supervision, concern had been expressed that DNFbps would not comply with AML/CFT requirements for an extended period of time. Since the second compliance report, the FIA issued Instruction no. 2009-03 of 22 May 2009 (risk assessment - in force in June 2009), Instruction no. 2009-07, Instruction no. 2009-08 of August 2009 (enhanced CDD - in force in August 2009), Instruction no. 2009-09 (CDD requirements, record keeping and STR reporting for non financial entities – in force on 1 September 2009). The FIA organised 5 training events in 2008 and 6 training events in 2009 (average of half-day to 1 full day). It is to be noted that while banks still report over 80% of total disclosures, lawyers, notaries and accountants have started reporting. As for monitoring and supervision, San Marino has designated the supervisory

authority. Some inspections have been carried out to legal professionals and one gambling house and sanctions were applied. While the data provided does not enable to assess comprehensively the effectiveness of the new system, the measures taken point into the right direction and continued efforts should be pursued in this area.

Legal persons and arrangements and non profit organisations

40. **R.33 (rated PC in MER), R.34 (rated NC in MER):** Clarifications had been reconsidered necessary regarding the measures taken to ensure transparency of legal persons and arrangements, in particular regarding data available in the Register of Companies, in the light of previously expressed concerns in the mutual evaluation report regarding transparency of information on beneficial ownership and control of companies, for instance as regards anonymous companies. San Marino authorities have adopted several additional measures to increase transparency of legal persons:

- Law no. 100 of 22 July 2009 introducing measures for the transferability of bearer shares of anonymous joint stock companies: the traceability of the bearer shares is 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.
- Congress of State Decision no. 55 of 2 February 2009 amending the Regulation governing the keeping of the electronic register of legal persons provides that data related to members of limited liability companies and joint stock companies are kept in a special section of the Register of Companies, clarifies the unrestricted access for relevant authorities.
- Law no. 73/2009 amending the AML/CFT law provides that failure to comply with CDD requirements is sanctioned with a criminal sanction.
- CBSM Regulation no. 2009-02 of 13 March 2009 (amending CBSM regulation 2006-01) provides that the list of shareholders of banks owing more than 5% of the capital shares are published on the website of the Central bank.
- Decision no. 13 of the Congress of State of 29 May 2009 provides that the office of the Trust register shall record the information on the settler and beneficiaries of trusts and sets out the procedure for depositing such information to the Office by trustees and notaries.
- On 18 February 2009, the Judge of Supervision on Trusts has 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 divulged, 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.

41. The number of registered trusts has doubled to 14 in 2009.

42. **SR. VIII (rated NC in MER):** Since the last compliance report, the San Marino authorities have reviewed the adequacy of laws and regulations related to NPOs and as a result of this process, the following additional measures were taken:

- A draft act on the NPO sector was prepared following 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.
- A separate database on members is 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).
- 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 co-ordination 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.

- The FIA has initiated the analysis on financial flows on the funding sources of associations and foundations following the dissemination of a questionnaire to banks, financial and fiduciary companies.
- The FIA is preparing specific instructions on the abuse of associations and foundations to be sent to obliged parties to facilitate reporting obligations.
- 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 associations.

National and international co-operation

43. **R.31 (rated PC in MER)** – As regards the operational cooperation between the FIA, since the entry into force of the new AML/CFT act, the authorities reported that regular meetings are held between the investigating judge, and the FIA in order to analyse general issues, as well as to discuss suspicious transactions reports disseminated by the FIA to the Court or on ML cases reported to the Court by other authorities. As regards policy-level cooperation and coordination, the Law no. 92/2008 had assigned the Credit and Savings Committee as the national co-ordination mechanism. This measure was further supplemented with the Congress of State Decision no. 6 (29 May 2009) through the set up of a Technical Commission for National Coordination gathering representatives of the Single Court, the FIA, the Central Bank, law enforcement authorities. The Commission is established at the FIA. The authorities reported that several meetings were organised as a result of which priorities were decided and additional regulations were drafted.
44. **R.39 (rated PC in MER)** – San Marino ratified the European Convention on extradition in March 2009 (in force as of 16 June 2009). However it is important to note that all bilateral agreements on extradition made with the Contracting Parties of the Convention will remain in force, and these – except for Italy- take a list or enumerative approach to extraditable offences (extradition for money laundering offences under these treaties does not appear to be possible). The authorities nevertheless assured that the Court had recently clarified that the European Convention on extradition would prevail over bilateral treaties. The AML/CFT act provides for specific provisions on extradition for terrorist crimes (article 81) in the absence of applicable international treaties. No additional measures were taken to establish clear and detailed procedures on procedural and evidentiary aspects however the authorities indicated that they intend to adopt specific legislation regulating extradition. As regards resources, requests for extradition are examined by the judge responsible for rogatory letters concerning ML and TF issues, assisted by a clerk. In 2009, the authorities received only 2 requests for extradition from Italy and these were accepted and granted in 1 day, one of which covered ML.

Other issues – Resources and statistics

45. **R. 30 and R. 32 (rated PC in MER):** Overall, San Marino has improved its mechanisms for collecting statistics. As a result, detailed statistics were provided on ML investigations, STRs, property seized, rogatory requests, cross border controls and requests received or transmitted through Interpol offices, etc. Since January 2009, judicial authorities have started 6 prosecutions for ML originated from 2 cases disseminated by the FIU, 1 by the CBSM, 1 by the Interpol National Office and 1 case opened on the basis of a *notizia criminis* revealed by a rogatory letter.
46. The situation regarding resources, integrity and training has also improved for most key institutions. However, it is important to raise at this stage concerns about the workload of the magistrates responsible for complex ML cases, mutual legal assistance and extradition requests

(and who are also involved in the overall reform process, coordination meetings, trainings, etc) as this may negatively impact on the effectiveness of the system.

III. OVERALL CONCLUSION

47. One year and a half after the adoption of the mutual evaluation report, San Marino has demonstrated having taken clear action to reform significantly its anti-money laundering and counter-terrorism regime and to improve its compliance with the FATF Recommendations. This was reflected by San Marino authorities' continuous commitment to undertake the necessary legislative and institutional reforms in a swift manner to address the deficiencies and areas of concern raised by the MONEYVAL membership and Bureau in this context. The action taken by the key actors, namely the newly established Financial intelligence agency, the judiciary and the law enforcement authorities, has started producing clear results that indicate growing effectiveness. Continuous efforts will be required, including through allocating additional budgetary and human resources, in particular for the judiciary, and strengthening supervisory action, in order to ensure the long-term effectiveness of the AML/CFT system.
48. San Marino has made substantial progress on the overall number of the Recommendations rated NC and PC since the report was adopted. The speed with which San Marino recently responded to the Bureau's continuing concerns about the bearer passbooks demonstrates their political commitment to reform their system.
49. It is proposed therefore that, at this stage, the Compliance Enhancing Procedures at Step I can be lifted and that the situation should be revisited by an early 4th Round evaluation, particularly to examine effectiveness of implementation of the measures that have been introduced and resourcing issues. This evaluation will re-examine all the core and key Recommendations and all the NC/PC ratings in the third round report. The evaluation shall be subject to follow up procedures which mirror those of FATF currently.
50. San Marino has agreed in writing to an expedited mutual evaluation visit in the first half of 2010.

MONEYVAL Secretariat

Annexes. Supporting documentation supplied - See MONEYVAL (2009)32 Part 1 and Part 2