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FOURTH EVALUATION ROUND

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FOURTH EVALUATION ROUND

Corruption prevention in respect of members of parliament, judges and prosecutors

EVALUATION REPORT

SAN MARINO

Adopted by GRECO at its 85th Plenary Meeting
(Strasbourg, 21-25 September 2020)

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EXECUTIVE SUMMARY

1. In recent years, San Marino has been implementing targeted measures to develop its anticorruption policy. It has also shifted its growth model away from reliance on bank secrecy and low taxation. Its economic situation has deteriorated significantly since the 2008 global crisis, which exposed weaknesses rooted in the domestic banking system threatening, today, the financial stability and fiscal sustainability of the country. San Marino is currently negotiating an association agreement with the European Union to access the internal market.

2. In June 2017, a large number of the political elite of San Marino were convicted for their participation in what has been the biggest corruption scheme in the country's history, i.e. the so-called *Conto Mazzini or Sammarinese Tangentopoli* case. The ramifications of this case, together with the economic downturn, have put the actions and behaviours of individual politicians under closer public scrutiny.

3. In terms of the focus of the Fourth Evaluation Round, the transparency of the legislative process is good: information is available at every stage of the process and both plenary and committee sessions are public. Likewise, decisions are, as a general rule, taken by open vote. Exceptions to the principle of publicity are strictly regulated (and narrowed down) by law. Because of the part-time status of MPs in San Marino and the natural proximity between citizens and politicians, the regulation of conflicts of interest is a heightened challenge. Consequently, preventative measures in the Great and General Council would benefit from further development. Such an effort needs to be tailored to the size of the country and its corresponding particularities, in terms of specific risks and available resources. A system of public declaration of assets and interests is yet to be established. Likewise, a code of ethics or conduct for parliamentarians needs to be elaborated. These arrangements should be supplemented by both awareness-raising and enforcement measures to ensure appropriate internalisation and abidance thereby.

4. The principle of unity of the judiciary applies. There is no difference between judges and prosecutors; they belong to the same professional corpus of officials. There is currently controversy in the country as to the perceived interference of politics in judicial work. This concern relates to the Judicial Council composition in its plenary configuration, as well as to the appointment, mandate renewal, revocation and responsibilities of the head of the court (particularly, when the person comes from outside the judicial career, i.e. *dirigente non magistrato*). Further measures should be taken to better regulate recruitment through internal career advancement processes, as well as for the appointment of the highest ranks of the judiciary (Highest Judges of Appeal, the Judges of Extraordinary Remedies and the Judges for the Civil Liability of Magistrates).

5. Moreover, the annual reports on justice highlight dysfunctions in the court which have led to internal friction. This unfortunate situation has emerged in public, tarnishing the sound image, otherwise traditionally enjoyed by the judiciary (especially after the convictions issued in relation to the *Conto Mazzini* case), in citizens' eyes. Case backlog, particularly in civil matters, is also a salient concern. Part of the problem is also related to available resources and how their use meets the actual needs of the court. A substantial amount of judges' work is taken up with non-jurisdictional tasks and the principle of the monocratic judge, which has prevailed until now for case management in San Marino, no longer suits the complexity of many cases arriving at the bench, including economic crime. Technical means also need to be substantially upgraded for both efficiency and transparency purposes. Additional steps are needed to assure publicity of court decisions and to strengthen case assignment criteria for consistency, objectivity, transparency and fairness purposes. This context of change in and modernisation of the judiciary can, at the end of the process, result in positive improvements on several fronts, including transparency, integrity and accountability.

6. A comprehensive approach to judicial integrity is yet to be developed in San Marino. Owing to the controversies surrounding the judiciary, as highlighted above, the time appears ripe to do so. A code of conduct is yet to take off in the judiciary; it will need to be coupled with complementary measures for its implementation. More can also be done to enhance the professional and public accountability of judges; in particular, the disciplinary regime would benefit from further regulation to better ensure its objectivity, proportionality and effectiveness.

I. INTRODUCTION AND METHODOLOGY

7. San Marino joined GRECO in 2010. Since its accession, San Marino has been subject to evaluation in the framework of GRECO's Joint First and Second Evaluation Rounds (December 2011) and the Third Evaluation Round (March 2016). The relevant Evaluation Reports, as well as the subsequent Compliance Reports, are available on GRECO's homepage (www.coe.int/greco).

8. GRECO's Fourth Evaluation Round, launched on 1 January 2012, deals with "Corruption Prevention in respect of Members of Parliament, Judges and Prosecutors". By choosing this topic, GRECO is breaking new ground and is underlining the multidisciplinary nature of its remit. At the same time, this theme has clear links with GRECO's previous work, notably its First Evaluation Round, which placed strong emphasis on the independence of the judiciary, the Second Evaluation Round, which examined, in particular, the public administration, and the Third Evaluation Round, which focused on corruption prevention in the context of political financing.

9. The same priority issues are addressed in respect of all persons/functions under review, namely:

- ethical principles, rules of conduct and conflicts of interest;
- prohibition or restriction of certain activities;
- declaration of assets, income, liabilities and interests;
- enforcement of the applicable rules;
- awareness.

10. As regards parliamentary assemblies, the evaluation focuses on members of national Parliaments, including all chambers of Parliament and regardless of whether the Members of Parliament are appointed or elected. Concerning the judiciary and other actors in the pre-judicial and judicial process, the evaluation focuses on prosecutors and on judges, both professional and lay judges, regardless of the type of court in which they sit, who are subject to national laws and regulations.

11. In preparation of the present report, GRECO used the responses to the Evaluation Questionnaire (GrecoEval4Rep(2019)3) by San Marino, as well as other data available from open sources. In addition, a GRECO evaluation team (hereafter referred to as the "GET"), carried out an on-site visit to San Marino from 9-13 September 2019. The GET was composed of Mr Manuel ALBA NAVARRO, Clerk of Congress of Deputies, Congress of Deputies (Spain); Mr José IGREJA MATOS, Court of Appeal's Judge in Oporto, First Vice President of the International Association of Judges and President of the European Association of Judges (Portugal); Ms Anca JURMA, Counsellor or the Chief Prosecutor, International Cooperation Service, National Anticorruption Directorate, Prosecutors' Office attached to the High Court of Cassation and Justice (Romania); Mr Stefan SINNER, Head of Division PM 1, Remuneration of Parliamentarians, Administration of the Bundestag (Germany). The GET was supported by Ms Laura SANZ-LEVIA from GRECO's Secretariat.

12. The GET held interviews with representatives of the Ministry of Foreign Affairs, the judiciary (Constitutional Court, head of the court and judges, *Procuratore del Fisco*), and the Great and General Council, including its Institutional Secretariat, members of the Permanent Parliamentary Committee for Justice and leaders of political parties (Gruppo Misto, Lista PDCS, Movimento Civico R.E.T.E., Partito dei Socialisti e dei Democratici, Partito Socialista, and Sinistra Socialista Democratica). The GET also met with interlocutors from the San Marino Legal Institute, the Bar Association of Lawyers and Notaries Public, media and several associations and NGOs (Associazione Bancaria Sammarinese, Associazione Camera Penale, Ephedra, Movimento Sammarinese per i Diritti del Malato, Società Unione Mutuo Soccorso, Unione Consumatori Sammarinesi, Unione Sammarinese Lavoratori, Confederazione Democratica Lavoratori Sammarinesi, Confederazione Sammarinese del Lavoro).

13. The main objective of this report is to evaluate the effectiveness of measures adopted by the authorities of San Marino to prevent corruption in the case of members of parliament, judges and prosecutors and to further their integrity both in appearance and in reality. The report contains a critical analysis of the situation in the country and considers the efforts made by the players concerned and the results achieved. It also identifies possible shortcomings and makes recommendations for improving the situation. In keeping with GRECO's practice, the recommendations are addressed to the authorities of San Marino, which should determine the relevant institutions/bodies responsible for taking the requisite action. San Marino is asked to report back on the action taken in response to the recommendations within 18 months of the adoption of this report.

II. CONTEXT

14. With a population of 33 419 inhabitants[1], San Marino is one of the smallest members of GRECO and the Council of Europe. The approximate proportion of foreign residents – mostly European Union (EU) citizens – is 18.5% (of the order of 6 000).

15. San Marino's economy is based on services (60,7%), mainly banking and tourism; industry (39,2%), notably the production of speciality items, including fabrics, electronics, tiles/ceramics, furniture, paints, and spirits/wines; and – to a much lesser degree, agriculture (0,1%). The economic situation of San Marino has deteriorated significantly since the onset of the global economic recession. San Marino's GDP fell by 25% between 2008 and 2011. The domestic economy experienced moderate recovery in 2017, but has stagnated since then. Seven banks have closed within the past decade with the last five standing saddled with debts of around 1.7 billion EUR, equalling about 117% of San Marino's GDP. In 2019, the International Monetary Fund (IMF) noted that difficulties in the banking system are threatening financial stability and fiscal sustainability. It therefore called for a deep restructuring of the banking system to restore its viability, as well as for a credible fiscal consolidation strategy[2]. San Marino is considering asking the IMF for a loan of up to 250 million EUR to shore up its banking system.

16. San Marino has been shifting its growth model away from reliance on bank secrecy and low taxation; a positive development unequivocally welcomed by the international community, which also came with a cost at domestic level for the banking industry. Since 2009, San Marino is no longer in the OECD list of tax havens. In February 2019, the EU Finance Ministers recognised San Marino as a fully cooperative country for tax purposes; such a decision was based on compliance with tax transparency and fair taxation criteria and with OECD measures on transparency and exchange of information for tax purposes.

17. San Marino maintains close ties with its only neighbouring country, Italy, and consequently with the EU, regarding its customs and monetary systems. In 1991, San Marino and the EU concluded a Cooperation and Customs Union Agreement. Following a monetary agreement with the EU, in 2012, San Marino started to use the EUR and mint its own EUR coin (to a specified maximum value). Further, negotiations between San Marino and the EU, aiming at improving economic integration through the internal market, have been on-going since 2015. The conclusion of an association agreement to this effect is pending.

18. San Marino is not covered by the indexes published periodically by the NGO Transparency International, and no other comparable international surveys on corruption perception have been carried out in respect of the country. Following a recommendation issued by GRECO in its Joint First and Second Evaluation Round, a national study on the characteristics of corruption in its various forms and risk-areas was carried out in 2014. An ad-hoc questionnaire was sent to all families residing in the national territory. At the time, politicians were perceived as those most at risk of corruption, followed by public officials. Even the judiciary, police forces and employees of private companies were not considered free from corruption vulnerability. This perception scenario changes, however, as interviewees were questioned on actual occurrence of corruption: over 80% of those surveyed had never come across specific incidents, over 50% had never reported corruption cases, and only 5-6% reported one or more incidents[3].

19. San Marino has been subject to three GRECO evaluation rounds focusing on different topics linked to the prevention of and fight against corruption[4]. In summary,

[1] Data as of 31 December 2018.
[2] IMF Country Report No. 19/85. Republic of San Marino. 2019 Article IV Consultation.
[3] Addendum to the Joint First and Second Evaluation Rounds' Compliance Report on San Marino. GRECORC1/2(2016)3.
[4] Evaluation round I: Independence, specialisation and means available to national bodies engaged in the prevention and fight against corruption / Extent and scope of immunities; Evaluation round II: Identification,

100% of recommendations were implemented in the Joint First and Second Evaluation Round, and 50% in the Third Evaluation Round. The compliance procedure in respect of the pending recommendations (one partly and four not implemented) in the Third Evaluation Round is still on-going. It is expected that GRECO will deal with this matter at its 86th plenary meeting in October 2020.

20. In June 2017, a large number of former politicians were convicted of money laundering and other corruption charges. Several former captains regent (5) and ministers (8) received prison sentences ranging from two to nine years. This so-called *Conto Mazzini or Sammarinese Tangentopoli* case shook San Marino's society given the number of persons (100 to 150) and the monetary sums (around 800 to 1 100 million EUR) involved in the corruption schemes. The case is currently undergoing its second appeal phase.

21. The ramifications of the aforementioned case have brought San Marino to a crossroads where additional anticorruption measures are called for, especially on the prevention front. There is a need to recapture public confidence in its institutions. GRECO trusts that the recommendations included in this report will serve as a roadmap for reform in areas that may need further development or enhancement.

seizure and confiscation of corruption proceeds / Public administration and corruption / Prevention of legal persons being used as shields for corruption / Tax and financial legislation to counter corruption / Links between corruption, organised crime and money laundering; Evaluation round III: Criminalisation of corruption / Transparency of party funding.

III. CORRUPTION PREVENTION IN RESPECT OF MEMBERS OF PARLIAMENT

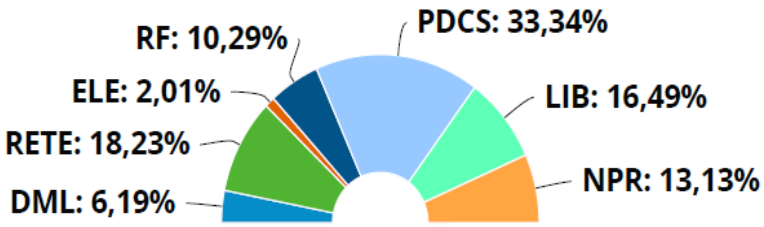
Overview of the parliamentary system

22. San Marino is a parliamentary republic. Legislative power is exercised by a unicameral Parliament, i.e. the Great and General Council, which is composed of 60 members who are elected by popular vote for a five-year term. More particularly, members of Parliament (MPs) are elected under a two-round proportional system from a nationwide constituency, with three preferential votes. With a view to ensuring a stable government, the winning list is assigned a minimum of 35 seats through a so-called "stability reward". It is difficult for any party to gain an absolute majority and most of the time the Government is run by a coalition. After the on-site visit, a government crisis led to the Parliament being dissolved on 23 September 2019 and early elections called for 8 December 2019.

Configuration of the Great and General Council – general elections 2019

First Round – Results				
		Votes	**%**	**Seats**
Domani in Movimento (DML)	Domani Motus Liberi (DML)	1 112	6.19 %	4
	RETE	3 276	18.23 %	11
	Coalition Votes	57	0.32 %	
	Total coalition	4 445	24.74%	15
Elego (ELE)		361	2.01%	0
Repubblica Futura (RF)		1 849	10.29%	6
Partito Democratico Cristiano Sammarinese (PDCS)		5 991	33.34%	21
Libera (LIB)		2 963	16.49%	10
Noi per la Repubblica (NPR)		2 360	13.13%	8

Final Results



23. Qualified Law No. 1 of 5 August 2008 provides that each party list shall not include more than two thirds of candidates from the same gender. Furthermore, being a woman represents an advantage if candidates of the same list obtain the same number of votes. Nevertheless, as voters may freely choose their preferred candidate from a list, this does not guarantee women's elected representation. Following the 2019 elections, 40.1% of candidates were women; however, there are only 18 women in Parliament (24% ratio out of total of seats). In this respect, GRECO draws attention to the Committee of Ministers' Recommendation Rec(2003)3 on balanced participation of women and men in political and public decision-making, according to which balanced participation of women and men is taken to mean that the representation of either women or men in any decision-making body in political or public life should not fall below 40%.

24. San Marino citizens may stand as candidates in general elections by means of their inclusion on the local electoral rolls. In addition to the requirements for being a voter (being

a Sammarinese citizen who is at least 18 years old on election date, including those residing abroad permanently), the law requires candidates to be at least 21 years old on election date and a resident of San Marino. Once elected, MPs are required to represent the entire San Marino people, being the Great and General Council the expression of all people of San Marino.

25. MPs lose their mandate due to resignation, removal or death. In particular, MPs are removed from their mandate when:

a) they no longer meet the candidacy requirement provided for by the electoral law, i.e. having reached the age of 21 by the election day; having domicile in the territory of the Republic; not being a member of the Gendarmerie, Civil Police and Uniformed Unit of the Fortress Guard; not being a diplomatic agent in accordance with Law No. 105, 16 September 1993; not being a diplomatic or consular agent in accordance with Law No. 13, 19 April 1979; not being a diplomatic and/or consular agent of a foreign State, including honorary assignments; not holding the position of judge, *Procuratore del Fisco* (Public Prosecutor) or member of the Constitutional Court;
b) they no longer meet the requirements to be a voter, i.e. persons disqualified for mental health reasons; those against whom bankruptcy proceedings were opened, but only for the duration thereof; persons convicted by a final judgment and of an intentional offence, who were sentenced to a measure involving deprivation of personal liberty or disqualification from public offices and political rights for a period longer than one year; persons convicted of offences against political rights; persons sentenced to disqualification from political rights. The electoral rights of the above mentioned persons convicted are reinstated if the extinction of the offence occurred after the conviction, in the cases governed by Article 52, paragraph 2 of the Criminal Code, or if the extinction of the penalty occurred pursuant to Article 112 of the Criminal Code, excluding the case in Article 112, sub-paragraph 1;
c) they do not participate in sittings for more than six consecutive months, without having requested and obtained a waiver from the Great and General Council, with the exception of cases of force majeure (Article 5, Qualified Law No. 3 of 3 August 2018);
d) they fall under an incompatibility clause pursuant to Art. 10 of Qualified Law No. 1/2007, i.e. being legal representatives and/or having been elected within the governing bodies of Trade Unions and in the Executive Body of the National Olympic Committee; being presidents and/or secretaries general of professional associations and members of administrative and supervisory bodies of the Central Bank, Public Entities and State Corporations, as well as being presidents of banking foundations and sports federations; being legal representatives and/or having been elected within the board of directors of banking and financial institutions;
e) they are members of a secret association (e.g. masonry).

Transparency of the legislative process

26. Legislative initiatives can come from the Government, an MP(s), township councils or by popular initiative. In connection to the latter, the citizens of San Marino can submit draft laws to the Office of the Institutional Secretariat of the Great and General Council, accompanied by an explanatory report and indicating how expenditure is to be covered. The draft law must be signed by at least 60 voters. According to Law No. 1 of 29 May 2013, a popular initiative follows the same procedure of discussion and adoption as draft laws proposed by the Great and General Council. The rapporteur of the draft law is invited to participate in the discussion of the law at the Great and General Council and can defend the proposal.

27. Referendum procedures are defined by Law No. 101 of 28 November 1994 and Law No. 1 of 29 May 2013. There are three types of referendum procedures. Voters can propose the guidelines and principles under which a law shall regulate the matter which is the

subject of the referendum (*referendum propositivo o di indirizzo*). If the entry into force of a law is subject to popular consent, a confirmative referendum must take place (*referendum confermativo*). Finally, a referendum can be held to repeal a law or a part of it (*referendum abrogativo*). Voters are then asked to confirm the enactment of a law. Referendums cannot be invoked to abolish institutional organs or fundamental principles enshrined in the Declaration of the Citizen's Rights and other Constitutional Laws. They cannot be invoked for issues relating to taxes, the national budget, the granting of amnesty or pardon, and the ratification of international conventions and treaties. As for public consultation procedures, and in addition to the aforementioned rules on referenda, they may be held in connection with popular legislative initiatives, or legislative initiatives submitted by the township councils (*Giunte di Castello*), or on popular petitions (*Istanze d'Arengo*).

28. Draft laws are published on the website of the Great and General Council, in a special section (www.consigliograndeegenerale.sm - Works of the Council - Consultation of archives - Draft laws), immediately after their filing at the Institutional Secretariat. Details regarding the date of submission, submitter, explanatory report, examination phase, amendments submitted, link to the session of the parliamentary committee that examined them, link to the session of the plenary sitting that adopted or rejected them, are provided. All data are updated in real time.

29. Committee meetings are, as a general rule, open to the public, save for limited exceptions (e.g. Anti-mafia Committee)[5]. The website of the Great and General Council includes information on their composition, functions and activities, including the notice of meetings, minutes, topics under examination and related decisions. The website also allows consultation of archives, where the relevant procedure for each topic (submitter, preliminary documentation, decisions, etc.) can be found.

30. Likewise, the sittings of the Great and General Council are public. The only exception to this principle is regulated by Law No. 21 of 11 March 1981 and refers to matters concerning international relations or issues requiring particular confidentiality where a closed-door session may be required. However, a final decision in this respect is to be made by the Bureau of the Great and General Council (a body consisting of the Chairpersons of the different parliamentary groups), which decides by qualified majority.

31. Parliamentary sittings are broadcasted live on radio frequencies and in live streaming on the website of the Great and General Council (www.consigliograndeegenerale.sm). Since 2009, it is not only possible to listen, but also to access all materials needed as background of the parliamentary debate. The Great and General Council's website contains institutional information concerning the Great and General Council and its parliamentary committees (permanent and special), as well as the regulations governing the composition and functioning of these bodies. Moreover, the following information is available online: the notice of meetings of the Great and General Council and of its committees and their agendas; all initiatives, requests, proposals submitted to the examination of the bodies referred to in the previous point with the relative procedure, the relative preliminary documentation, if any, and the relative decisions; and the minutes of the aforementioned bodies, drawn up in accordance with specific laws.

32. The Great and General Council adopts its decisions, as a rule, by open vote, unless otherwise specified by law. The results of open votes can be consulted at any time through the minutes of the Council and the Committees published on the website or by consulting the respective decisions published on the website too. Appointments are excluded from open voting. Draft laws relating to matters of high ethical content (e.g. abortion, end of

[5] Practice has developed in such a way that three committees hold sessions in closed meetings, but this constitutes an exception since committee work in the Great and General Council is otherwise open to the public.

life care) and concerning fundamental human rights, as well as acts relating to specific persons may be excluded from an open vote by a two-thirds majority vote of the Bureau (Article 53 of Qualified Law No. 3 of 3 August 2018 on Internal Regulation of the Great and General Council). The GET has reserves about secret voting in relation to some fundamental issues, such as what San Marino considers "laws of high ethical content". Likewise, the GET has misgivings as to whether the criteria for qualifying a law of "high ethical content" are always clear. In the GET's view, it would be desirable that, by virtue of the democratic principle, voters are aware of their representatives' views on these particular matters. Furthermore, the Internal Regulation of the Great and General Council should define more closely, which fields of legislation are subject to this category. **GRECO recommends considering further restricting the exceptions to public voting.**

33. The GET was able to ascertain that transparency of legislative work is strong both in law and in practice, as also confirmed by media and civil society representatives met on-site. Moreover, openness of parliamentary work does not only refer to law making, but also, more generally, to other activity, e.g. petitions, interpellations, appointments, substitutions, regulations, establishment of bodies, etc. There is no institutionalised lobbying in San Marino. Therefore, this issue was not specifically raised as a matter of concern on-site. Rather, the main thrust of comments put to the GET focused on the appearance or reality of bias or influence resulting from MPs' wide and long-standing personal and professional relationship networks. Thus, while the GET encourages the authorities to keep an eye on the issue of lobbying with a view to responding to it when necessary, the GET reserves its specific comments for the sections on ethical rules, conflicts of interest and the disclosure of members' interests.

Remuneration and economic benefits

34. The average gross annual salary in San Marino was 29 887 EUR in 2017[6].

35. MPs in San Marino are not professional politicians, but "part-time" politicians: i.e. they participate in plenary/committee sittings and/or parliamentary bodies to which they belong and they are remunerated on the basis of this participation. For such participation, MPs receive an attendance fee as follows:

i. MPs who are public employees or retiree receive (a) on weekdays, morning and afternoon sessions: 16.8 EUR morning and 16.8 EUR afternoon – total 33.6 EUR; only morning sessions or afternoon sessions: 33.6 EUR; evening or night sessions: 103.3 EUR; (b) on public holidays: 103.3 EUR (one attendance fee for the morning and one for the evening).
ii. MPs working as self-employed persons, private sector employees or students receive (a) on weekdays, holidays or weekly rest days: 51.6 EUR morning and 51.6 EUR afternoon – total 103.2 EUR; only morning sessions or afternoon sessions: 103.3 EUR; evening or night sessions: 103.3 EUR; public holidays 103.3 EUR (one attendance fee for the morning and one for the evening). All of the aforementioned sums are gross.

36. MPs also receive a monthly allowance equal to 103.3 EUR gross. The average yearly remuneration paid to MPs in 2018 was 14 040 EUR gross. In addition, a severance pay applies for those who, at the age of 60, have been but are no longer MPs: this is a monthly allowance which varies according to the number of parliamentary terms served up to a maximum of 301 EUR per month. Remuneration to MPs is paid monthly, usually on the 27th of each month, by the General Accounting Office and refers to attendance in the previous month.

37. Other than the aforementioned sums, MPs are not allowed to receive additional support for their parliamentary functions from outside sources, whether national or foreign,

[6] IT, Technology, Data and Statistics Office of the Republic of San Marino. Data on the income of self-employed professionals are not available.

public or private. The 2019 Budget Law, adopted in December 2018, provided for the allocation of a total of one million EUR for "duty allowance and attendance fee" for MPs.

Ethical principles and rules of conduct

38. There is no specific code of ethics or conduct in the Great and General Council. The Rules of Procedure (Qualified Law No. 3 of 3 August 2018 on Internal Regulation of the Great and General Council) require all MPs to swear an oath of allegiance prior to taking office. This oath reads as follows: *"I swear and promise eternal loyalty and obedience to the constitution of the Republic, to support and defend freedom with all my strengths, to strictly respect old, new and future Statutes and Decrees; to appoint and vote only for persons who I believe are capable, faithful and able to provide a good service to the Republic in any Institution and Public Offices, without letting myself get carried away by any passion of hate or love, or by any other consideration".* The Rules of Procedure also include some rules on order and decorum.

39. In addition, the Statutes of the XVII Century (Chapter IX, Book XI), which are still in vigour today, provide for the unlawfulness of the parliamentarians' conduct aimed at obtaining for themselves or for others any kind of favour by virtue of their function. The Statues also provide for criminal sanctions and disqualification from public office for those who asked for votes or promised votes in exchange for favours.

40. A Code of Conduct for Public Officials was adopted in 2014 (Law No. 141 of 5 September 2014), following a recommendation made by GRECO in its Joint First and Second Evaluation Round. It contains rules regarding integrity and corruption prevention, including in connection with, *inter alia*, conflicts of interest, gifts, ancillary activities and post-employment. MPs are considered public officials (Article 149, Penal Code) and the Code of Conduct for Public Officials states that its provisions should serve as "reference principles" for the conduct of other branches of government, as long as the ethical rules are compatible with their own regulations and without prejudice to other rules which may be specifically applicable to them (Article 2, paragraph 5, Code of Conduct for Public Officials).

41. In connection with the above, the Rules of Procedure of the Great and General Council establish that the Bureau is the competent body to adopt a code of conduct; a provision that has not yet materialised. Moreover, the Declaration on the Citizen's Rights and Fundamental Principles of San Marino's Constitutional Order (Article 3, paragraph 8) foresees the development of a specific liability regime for MPs; however, this has not happened to date.

42. The GET considers that the current ethical framework for parliamentarians needs to be beefed up, notably, through the development of a code of conduct. The existing provisions in this respect are limited in depth and breadth, scattered and not fully adjusted to the contemporary challenges and specificities of the parliamentary function. While a Code of Conduct was elaborated in 2014 for public officials, the authorities themselves recognise that, although inspirational in nature, its concrete enforceability vis-à-vis MPs may pose difficulties in practice given the different nature of the parliamentary mandate, as compared to that of civil servants (i.e. political role rather than administrative/managerial, non-hierarchical). In point of fact, it was recognised that the 2014 Code has never been used for MPs.

43. GRECO has constantly stressed in its reports that it is absolutely necessary that a code or rules of conduct be adopted by MPs. Ideally, such an instrument would go hand in hand with practical comments and/or examples, through an accompanying practical guide. It should encompass provisions on conflicts of interest, misuse of confidential information and third party contacts, misuse of public resources, the acceptance of gifts, invitations and other benefits, accessory activities and financial interests. The code should also be a "living" document, updated in keeping with the evolving context and values on what is

acceptable conduct and what is not. MPs themselves must be involved in the process of drawing up a code and keeping it up to date, thereby promoting ownership over the final result and, eventually, internalisation and abidance by the commonly agreed standards. It is also just as important that the public knows what is expected of their elected representatives. **GRECO recommends that a code of conduct, accompanied by explanatory comments and/or concrete examples (including provisions and guidance on e.g. conflicts of interest, gifts and other advantages, misuse of information and of public resources, contacts with third parties and lobbyists, preservation of reputation, as well as limitations on certain activities), be adopted for the members of the Great and General Council and that it be brought to the knowledge of the public.**

Conflicts of interest

44. There is no specific regulation on conflicts of interest regarding MPs. The Code of Conduct for Public Officials defines a conflict of interest as a situation in which a personal interest prevails over the impartial and objective exercise of the public function. The limitations of this public administration regime with respect to parliamentarians have already been highlighted.

45. There is an obligation for MPs to abstain from voting and discussing matters where they have a personal and direct interest (Article 55, Rules of Procedure of the Great and General Council). This requirement fully rests on the criteria of the individual member. Finally, the abuse of office for private gain is punishable under Article 375 of the Criminal Code.

46. The issue of conflicts of interest is of particular relevance for the case of San Marino where a natural proximity exists between citizens and politicians, as a consequence of which personal interests and interpersonal relationships permeate the political and public domain. Moreover, while there is certainly added value in parliamentarians coming from different backgrounds, such as the private sector, because of the practical knowledge they bring into politics, such an advantage may also entail conflicts of interest risks, which cannot be neglected. A reasonable balance is to be struck in order not to paralyse parliamentary work, but at the same time ensure greater transparency and consistency of action in this area.

47. At present, the requirement for MPs to abstain from voting and discussing matters where they have a personal and direct interest fully rests on the criteria of the individual member. Practice is at variance and controversy has been raised in this respect, with particular examples (real cases) brought to the attention of the GET, e.g. in relation to decisions taken for the banking sector and the blockchain and digital industry (which are also linked to the lack of more stringent controls in State-owned companies). The lack of a definition of conflicts of interest specifically adapted to the parliamentary mandate and of guidelines on the circumstances that call for an ad-hoc declaration are evident shortcomings of the current system. MPs should have a clear understanding as to whether a conflict exists and what steps, if needed, they should take as a result. Some situations may require no action, but others may call for an ad-hoc disclosure and possibly recusal from a duty, inquiry or vote. Further, the current ad-hoc disclosure requirement poses practical challenges as regards its monitoring and enforcement; the authorities should pay attention to this particular point when implementing recommendation v, in paragraph 57. **GRECO recommends introducing clear written rules, guidance and support mechanisms for ad-hoc disclosure when a conflict may emerge between the specific private interests of a member of parliament and a matter under consideration in parliamentary proceedings (in plenary and committee work).**

Prohibition or restriction of certain activities

Gifts and other benefits

48. There is no specific regulation on gifts and other benefits regarding MPs. The Code of Conduct for Public Officials includes rules on gifts and indications on how public officials should react if undue advantages are offered to them (Articles 14 and 15, Code of Conduct for Public Officials). The GET considers that the discussions to be held in connection with the preparation of a code of conduct, as recommended (see paragraph 43), should also encompass the questions of acceptability and transparency with regards to gifts and invitations.

Incompatibilities

49. There are several governmental and non-governmental positions which are incompatible with the parliamentarian status (Articles 18bis and 19, Electoral Law). These include judges, *Procuratori del Fisco*, diplomatic or consular agents, members of police and military corps. In addition, MPs cannot be members of a local council, or hold executive positions in labour unions, trade associations, audit bodies of the Central Bank and of public entities and agencies, governing boards of banking and financial institutions, banking foundations, the Olympic Committee, and sport federations. The following activities are also incompatible with the parliamentary function: activities involving discretionary assessments in the field of inspection and licensing; management activities that have an influence on recruitment in the public and private sectors and staff management activities in the overall public sector; and activities that ensure the functioning of constitutional and institutional bodies, and of elections. Finally, relatives by first degree or marriage, including *de facto* relationships, cannot be MPs at the same time.

50. The Institutional Secretariat of the Great and General Council checks the declarations of MPs on incompatibilities. Incompatibility is verified along the entire legislature. The role of the Institutional Secretariat is to scrutinise members' declarations, then it is passed to the Secretariat of the Great and General Council (which is a political body composed of three MPs and presided by the Captains Regent) and, finally, it is the plenary that declares a situation of incompatibility. The parliamentarian found to be in a situation of incompatibility has three months to sort it out, i.e. to choose between one or the other function; otherwise, his/her parliamentary mandate will be terminated. False declarations are punishable under criminal law. If a citizen believes incompatibility exists with one of its representatives, s/he can file an *azione di sindacato* before the Constitutional Court.

Accessory activities, financial interests, contracts with public authorities, post-employment restrictions

51. Other than the aforementioned incompatibilities, parliamentarians are free to carry out any accessory function and to hold any financial interest. In point of fact, most parliamentarians carry out their mandate part-time and continue to engage in their occupational activities. There are no restrictions on their employment after the end of their mandate. The GET can well understand the reasons for enabling a more flexible framework in this area (rather than through restrictive regulation of non-parliamentary activities), which is a legitimate option, all the more given the size of the country and the need to have an operational/workable system.

52. Although there is nothing wrong in parliamentarians having other occupations, there are, however, inherent risks creating conflicts of interest with the full exercise of their public duties and a danger that decision-makers cross the line into becoming advocates of private interests. In such a context, the principle of transparency acquires even greater importance. In this situation, the recommendation that has been made on ad-hoc

disclosure becomes all the more important (see paragraph 47). Furthermore, the authorities are encouraged to think expansively regarding further regulation in this area, as necessary. Depending on how the situation develops, the time will come to examine the opportunity to introduce additional rules on parallel professional activities of parliamentarians, restrictions on entering into contract (either directly or through a business interest) with the State, or applicable safeguards after they leave office. In any event, these are issues that merit thorough consideration when implementing recommendation ii, paragraph 43.

Misuse of confidential information

53. Articles 192 and 377 of the Criminal Code on breach of professional secrecy, as well as Article 305 of the Criminal Code on market rigging (*aggiotaggio*), apply. Other than these, there is no administrative regulation/guidance that addresses the misuse of confidential information by MPs or how they should appropriately deal with third parties attempting to affect parliamentary actions before those attempts reach the level of corruption or undue influence. The GET believes that guidance in this area could significantly assist in ensuring MPs understand what is expected of them when dealing with third parties and provide the public with information regarding the potential links of those third parties to the members' election and subsequent actions. This is therefore another area to be covered when implementing recommendation ii, paragraph 43.

Misuse of public resources

54. Article 371 of the Criminal Code on embezzlement applies. The GET noted, during the interviews it carried out on-site, that interlocutors frequently referred to criminal law provisions. In the GET's view, a change of paradigm is necessary, so that anticorruption tools are approached from a preventive, rather than a purely repressive/criminal, angle. This again is a matter that should be tackled when implementing recommendation ii, paragraph 43.

Declaration of assets, income, liabilities and interests

55. There is no mechanism in San Marino applicable to MPs requiring them to make a public declaration of their assets, income, debts or financial interests. An obligation to declare exists, nevertheless, for election candidates. More particularly, on the day of nomination, candidates standing in elections to the Great and General Council must submit, to the State Electoral Office, a copy of their income tax return referring to the tax period preceding that of the elections, as well as a statement relating to any additional income and company shareholdings. These documents are then published on the website of the Ministry of Internal Affairs dedicated to elections and on the website of the Great and General Council. Failure to submit these documents excludes candidates from elections, as it is a prerequisite for application to stand as candidate.

56. The GET was further told that some political parties were publishing their members' accounts on their respective websites. This is a practice, which however, is not shared by all. In this connection, the GET notes that the absence of a financial and interest disclosure regime for parliamentarians, which is aimed at enhancing transparency with regard to possible conflicts of interest is an important gap in the Sammarinese system and constitutes an exception among GRECO membership. The part-time status of the members of the Great and General Council, and their various accessory or principal activities, necessitate sufficient transparency regarding income, assets and debts, ensured by means of easily accessible and regularly updated public declarations. The GET was told that in such a relevant case as *Conto Mazzini*, it was difficult or impossible to clarify the source of assets or income of the MPs involved in the criminal proceedings. **GRECO recommends (i) that a system for the public declaration of parliamentarians' assets, income, liabilities and interests be introduced and (ii) that consideration be given to**

including information on spouses and dependant family members (it being understood that such information would not necessarily need to be made public).

Supervision and enforcement

57. There is currently no real supervision or enforcement of the few integrity-related rules that apply to parliamentarians. The GET believes that the recommendations made above regarding the introduction of a financial disclosure system, ad-hoc disclosure, and more generally, the adoption of tailor-made standards of conduct for parliamentarians, should encompass effective measures to monitor compliance with those rules, as well as appropriate sanctions in the event of infringement. In doing so, San Marino will also have to decide which body is best suited to carry out supervision. **GRECO recommends that measures be taken to ensure effective supervision and enforcement of integrity-related rules (declaration requirements and standards of conduct) for parliamentarians**.

Immunities

58. MPs enjoy non-liability, i.e. freedom of speech, for votes and opinions they express in the course of their duties (Article 36, Rules of Procedure of the Great and General Council). On the other hand, they have no immunity that would protect them from criminal investigation/prosecution or require authorisation in order for a prosecution to be brought or continued. This is good practice which could serve as inspiration for other GRECO members.

Advice, training and awareness

59. After the oath, MPs are given all pertinent laws and regulations pertaining to the activity and role of parliamentarians. They are also made aware of judicial decisions concerning the activity and role of parliamentarians and of the recommendations made in this regard by the international bodies to which San Marino belongs.

60. The Institutional Secretariat is responsible for supporting the activities of the Great and General Council in every aspect. It also provides advice to parliamentarians on the behaviour expected from them. For more legally complex aspects, the Institutional Secretariat relies on the State Lawyers' Office.

61. The website of the Great and General Council contains a section dedicated to its composition, responsibilities and functioning. This section also contains the legislation which governs parliamentary work.

62. During the interviews on-site, interlocutors frequently pointed at the 2014 Code of Conduct for public officials being the standard, also for parliamentarians. The latter had, however, not received any training on it, nor was it distributed at the beginning of a legislature, as it was understood that all new (or more veteran) members should be aware of the Code's provisions given it constitutes a key piece of San Marino legislation. The Code was frequently referred to in its value as a law rather than as a more workable/practical tool. Some political parties had developed their own internal codes; they were of a voluntary nature.

63. The GET notes that introduction of a code of conduct, ad-hoc disclosure and a declaration of assets and interests, as recommended, will most evidently require an effort to provide training and make MPs well acquainted with these novelties. This would be particularly important at the beginning of a legislature to enable MPs (especially the newly elected) to incorporate the rules into their day-to-day working habits. Likewise, the formal institution of a counsellor or reference person to advise on matters of ethics and professional conduct can prove to be of value. This is all the more significant in San Marino

because parliamentarians are not full-time professional politicians and keep close links with sectoral private interests. **GRECO recommends (i) that training and awareness-raising measures be introduced for parliamentarians on corruption prevention and integrity-related matters and (ii) that a dedicated source of confidential counselling be established to provide advice on ethical questions and possible conflicts of interest in relation to their functions and duties.**

IV. CORRUPTION PREVENTION IN RESPECT OF JUDGES AND PROSECUTORS

Overview of the system

64. In San Marino, the principle of unity of the judiciary applies. There is no difference between judges and prosecutors; they belong to the same professional corpus of officials and are governed by the Judicial Council.

65. San Marino's legal system is unique. It is a civil law system, without codifications, except for criminal legislation. A Criminal Code was adopted in 1974 and the Code of Criminal Procedure dates back to 1878. The latter sets in place an inquisitorial system. More recently, Law No. 93 of 17 June 2008 introduces important rules on due process (*giusto processo*). At the investigation stage, a single judge is responsible for gathering both prosecution and defence evidence on the accused; a (different) deciding judge resolves the case thereafter. The principle of monocratic judge applies, although the use of a pool of judges (two or more investigators and one coordinator), during the investigative stage, is becoming more and more common due to the complexity of cases arriving at the bench.

The principle of independence

66. Based on the principle of separation of powers, the Declaration on the Citizens' Rights and Fundamental Principles of San Marino Constitutional Order (Article 3) guarantees to the judicial bodies, established by constitutional law, full independence and freedom of judgment in the fulfilment of their functions. Under Constitutional Law No. 144 of 30 October 2003, as amended, the judicial bodies are exclusively subject to the law and shall strictly interpret and apply the existing laws. Judges are appointed, and remain in office, on the basis of their professional skills, objectivity and impartiality.

67. Several safeguards are in place to guarantee the serene, harmonious, autonomous and independent development of the judicial function, including, by assuring indefinite tenure and irremovability, prohibiting reforming work conditions for the worse (e.g. salaries), etc. The legal status and the salary conditions of judges are set in law.

Court

68. Law No. 145 of 30 October 2003 on the Judiciary, as amended, describes the relevant institutional framework[7]. In particular, the Court is divided according to the following matters: civil, criminal, administrative, minors' protection and family, to which individual Law Commissioners are assigned by the head of the court. All judges exercise full jurisdiction and therefore can be freely replaced in the exercise of their functions and competence. Jurisdiction is entrusted to: the Highest Judge of Appeal, the Judge of Extraordinary Remedies, the Judge of Appeal, the Law Commissioner (*Commissario della Legge*) and the Law Commissioner's Clerk (*Uditore Commissariale*). There are three

[7] Law No. 145 of 30 October 2003, as amended by Law No. 2 of 16 September 2011, Law No. 1 of 26 February 2019 and Law No. 1 of 20 February 2020. The last amendment took place after the on-site visit and the authorities report that it was introduced in order to rebalance the number of members of the Judicial Council having the right to vote, with a view to making the votes of judges and non-judges equal.

instances available for judicial review. Appeals can be filed by the defendant, the plaintiff or the *Procuratore del Fisco*.

69. The Law Commissioner (*Commissario della Legge*) performs jurisdictional functions in the court of first instance, in civil, administrative and criminal matters. With regard to criminal matters, the Law Commissioner is vested with investigating functions and makes decisions in the first instance. Article 2 of the Code of Criminal Procedure stipulates that the Law Commissioner is responsible for the conduct of criminal action, while Article 24 of Law No. 83 of 28 October 1992 further specifies that judgments shall be made by a Law Commissioner other than the investigating judge in order to ensure the impartiality of the former. The Law Commissioner's Clerk (*Uditore Commissariale*) assists the Law Commissioner in his/her activities; the Law Commissioner can delegate or entrust the Clerk with preliminary investigation functions both in civil and criminal matters.

70. The Judges of Appeal and the Administrative Judge of Appeal decide on any appeal against the decisions made by the Law Commissioners in civil, administrative and criminal matters, pursuant to Article 3 of Law 145/2003, as amended. Appellate judges have jurisdiction to deal with points of fact and law; in particular, Article 196 of the Code of Criminal Procedure provides that the appellate judge has jurisdiction to deal with all aspects of a case (*piena cognizione del giudizio*), including by deciding directly on the administrative sanction to be imposed, without other means of redress. If an appeal is lodged solely by the accused, the judge may neither impose a harsher penalty nor withdraw any advantages granted.

71. In criminal matters, the Highest Judge of Appeal decides on appeals concerning the legitimacy of precautionary measures involving both people and property and on the execution of penalties. In civil matters, the Highest Judge of Appeal decides on pleas for lack of competence, and in civil and administrative matters s/he decides in the third degree. The Judge of Extraordinary Remedies decides on civil, criminal and administrative matters, on the abstention and objection of judges, on appeals for the review of criminal judgments and on *querela nullitatis* (complaint for an annulment) and *restitutio in integrum* (reinstatement) extraordinary remedies against final civil judgments.

72. There are currently two High Judges (one Highest Judge of Appeal and one Judge of Extraordinary Remedies), four Judges of Appeal[8], 10 Law Commissioners and five Law Commissioner's Clerks. The judicial system in San Marino required, until the reform introduced by Constitutional Law No. 144 of 30 October 2003, as amended, that the country's lower court judges be non-citizens (San Marino nationals could only hold the positions of Conciliating Judge and Law Commissioner's Clerk); this requirement no longer applies. Therefore, at present, there are 6 Italians and 4 Sammarinese citizens who are Law Commissioners (they must all reside in San Marino in any event), all Law Commissioner's Clerks are from San Marino and all high judges are Italian. Out of the overall number of judges, there are 14 male and 7 female.

Procuratori del Fisco

73. Generally speaking, the *Procuratore del Fisco* is conceived as the guarantor of the proper enforcement of law and the defender of the public interest. The institution historically finds its roots in the need to protect Sammarinese interests in all judicial cases. This was deemed to be an additional safeguard of the system given that, formerly, lower court judges could not be Sammarinese citizens.

74. Pursuant to Article 2 of the Constitutional Law No. 144 of 30 October 2003, as amended, the role of *Procuratori del Fisco* is to put forward questions to a judge - be it an inquiry or on the merits of the case - in order to safeguard and guarantee the rights of the

[8] The appointment procedure for two judges of appeal suffered some delay, from 1 July 2019 until end February 2020, as it pended acknowledgement by the Great and General Council.

public as well as those of all parties to the proceedings. In criminal proceedings, they represent the public party in the proceedings and, if they believe that there are some elements leading to criminal liability, they support the charge, but they can also depart therefrom and request, for example, that the defendant be acquitted. They are also responsible for evaluating requests for case dismissal. They are also entrusted with supervising the good functioning of civil proceedings (i.e. adoptions, disqualifications, support administrations).

75. There are two *Procuratori del Fisco*, a man and a woman, both of them Sammarinese. Plans have been discussed, since 1996, to abolish this position, in the context of a possible reform of the Code of Criminal Procedure, which would introduce more up to date provisions, better adapted to current challenges (while the country remains small, the magnitude of the cases is bigger; this is particularly true, as has been experienced, in relation to economic crime). In the context of such a reform, which has been dragging on, it was proposed that the *Procuratore del Fisco* would rather become a public prosecutor according to the accusatory model.

76. The GET notes the *sui generis* nature of *Procuratore del Fisco*, and the ongoing discussion as to how this position may evolve or even disappear in time. However, until that happens and as the situation stands now, it must be understood that the recommendations issued in this report regarding the strengthening of the prevention of corruption in respect of the judiciary, i.e. recommendations xi (paragraph 125), xiii (paragraph 137) and xiv (paragraph 164) also cover and refer to the *Procuratore del Fisco*.

Constitutional Court

77. The Constitutional Court (*Collegio Garante della costituzionalità delle norme*) was established by Law No. 36 of 26 February 2002. Its organisation, functioning and incompatibility regime are regulated by Qualified Law No. 55 of 25 April 2003. It is composed of three standing judges and three alternate judges, appointed by the Great and General Council at a 2/3 majority, from among university professors of legal subjects, judges and law graduates with at least 20 years' experience in the field of law. They start serving a four-year term. The Court verifies that laws, acts and provisions that are given the force of law are consistent with the constitutional principles; it also determines the admissibility of any referendum, decides in case of conflicts between constitutional institutions and verifies and assesses any institutional liability of the Captains Regents (so-called *Sindacato della Reggenza*)[9], and decides on disciplinary action (*azione di sindacato*) regarding judges.

Judicial Council

78. The Judicial Council is entrusted with the competence to appoint, assign, move, promote and discipline holders of judicial office. It also performs representation functions and acts as a guarantor of the judiciary. The Judicial Council sits in ordinary and plenary sessions.

[9] All acts of the Captains Regent, including those carried out in their capacity as Presidents of the Great and General Council, are subject to the "Regency Syndicate" (*Sindacato sui Capitani Reggenti*). Notably, at the end of their mandate, the Captains Regent are subject to a Syndicate, which judges what they have or have not done, i.e. what they might have done beyond their powers in violation of statutory rules or what they might not have done which it was their duty to do. The "Regency Syndicate", of ancient origin, is a remedy granted to all San Marino citizens and can be resorted to ex post, also in case of presumed violations of the rules safeguarding the secrecy of parliamentary votes. The Syndicate is competent to establish the so-called "institutional liability" of Captains Regent, who may also be liable for their actions under criminal and/or civil jurisdiction, as appropriate.

79. Ordinary sessions are attended by judges (first, second and third instance), as well as the head of the court[10]. Law Commissioners' Clerks and *Procuratore del Fisco* are not included. The Minister of Justice also participates in ordinary sessions although without voting rights. Ordinary sessions are chaired by the Captains Regent, who have no voting rights; the head of the court may chair by delegation. Ordinary sessions mainly deal with the general administration of justice and the organisation of work (e.g. issues on the distribution of workload whenever submitted to the attention of the Judicial Council by the head of the court or the Minister of Justice).

80. Plenary sessions are attended by 10 judges (two third instance judges, three judges of appeal and five law commissioners – they are chosen from among those confirmed in office on a permanent basis with more seniority in the position, or in the event of equal seniority, the eldest in age)[11], the head of the court, 10 parliamentarians who are members of the Permanent Parliamentary Committee for Justice, and the Minister of Justice, who is vested with voting rights. Plenary sessions are chaired by the Captains Regent, in their capacity of *super partes* and supreme guarantors of the Constitution; they have no voting rights. In the absence of the former, the President of the Permanent Parliamentary Committee for Justice would chair the plenary session, without voting rights. The President of the Association of Lawyers and Notaries participates in the discussion of the Annual Report on the State of Justice, without the right to vote.

81. The Judicial Council meets in ordinary session at least twice a year (every six months) and in plenary session at least once a year (for the adoption of the Annual Report on the State of Justice). However, ordinary and plenary sessions may be convened whenever deemed necessary. In both cases, the Council is convened by the Captains Regent on their own initiative or at the request of the Minister of Justice, of the head of the court or of at least one third of its components. For the Judicial Council's ordinary and plenary sessions to be valid, the presence of at least half the members shall always be required. Decisions are taken by the majority of those present (although before the XXIX legislature, the practice was for decisions to be taken by unanimity).

82. The Permanent Parliamentary Committee for Justice *(Commissione Consiliare per gli Affari di Giustizia)* is composed of 10 parliamentarians, appointed by the Great and General Council, at the beginning of the legislature, by at least a two-thirds majority. The Minister of Justice is an *ex officio* member. The Committee examines the Annual Report on the State of Justice, oversees the deliberations of the plenary sessions of the Judicial Council which are to be put before the Great and General Council or which require administrative measures (e.g. launching recruitment processes or formalising appointments), and may turn to the head of the court for clarifications (*riferimenti*), advice (*pareri*) or a hearing (*convocazione per audizione*). Members of the Committee cannot be lawyers, notaries or accountants.

83. Minutes are drawn after the relevant sessions of the Judicial Council; a secretary is appointed at the beginning of the meeting to this end.

84. In all cases of liability, incompatibility or non-qualification of individual judges, the latter shall be heard personally or through a special attorney, but they cannot participate

[10] After the on-site visit, the GET was informed that, pursuant to an amendment introduced by Law No. 1 of 20 February 2020, the head of the court, when s/he comes from outside the judicial career, has no voting rights. The authorities refer to the fact that Law No. 1 of 26 February 2019 (which was approved two months after the appointment of a head of the court coming from outside the judicial career), introduced for the first time ever in San Marino the right to vote for a head of the court coming from outside the judicial career.

[11] Pursuant to the amendments of Law No. 1 of 20 February 2020, if the judges of appeal have not been confirmed in office on a permanent basis, they are replaced by law commissioners who have been confirmed on a permanent basis. In any event, the number of judges with voting rights must be equal to the number of other (non-judicial) members of the Judicial Council with voting rights. In the absence of judges who have been confirmed on a permanent basis, the Council is supplemented with temporarily employed judges (i.e. in their probation period) of the same instance as the lacking judges, according to a criterion of highest seniority in that position; in case of equal seniority, old age prevails.

in or be present at the discussions and decisions. Similarly, in case of candidature of judges for the appointment to higher jurisdictional positions or in case of confirmation of the office and in all cases concerning them, the interested judges and the members of the Judicial Council, who were members of the selection board for their appointment, shall not participate in the discussions and decisions.

85. The GET considers that substantial amelioration must follow with regard to the Judicial Council composition and operation. The current system has important flaws as compared to international standards[12]. Regarding the composition of the Judicial Council in ordinary session, the presence of the Minister of Justice, although without voting rights, in sittings of all-judges where the organisation of work is discussed, looks problematic, particularly, by virtue of the key democratic principle of separation of powers. GRECO has repeatedly advised abolishing the *ex officio* membership of the Minister of Justice in judicial councils.

86. The problems are, however, more acute in relation to the Judicial Council in plenary. At the start, the GET notes that mixed membership in judicial councils is not a problem *per se*. However, when this is the case, there should be a majority of judges. Furthermore, caution should be exerted in order to ensure that the real and perceived independence of the judiciary is not only safeguarded, but also strengthened at all times. Particular attention must be paid to political membership. In this connection, the functioning of judicial councils should allow no concession at all to the interplay of parliamentary majorities and be free from any subordination to political party consideration. This is a particularly relevant concern in the case of San Marino where the number of active politicians appointed automatically to the Judicial Council equals the number of judges.

87. Furthermore, the GET underscores that the election of members of judicial councils is a crucial moment to infuse transparency and accountability to this central body within the judiciary. When non-judicial members are appointed by Parliament, the procedure related to this appointment must be conducted in a transparent and non-political manner. The GET finds these requirements difficult to reconcile with the current procedure where members of a parliamentary committee, i.e. the Permanent Parliamentary Committee for Justice, are automatically made members of the Judicial Council. Thus, in practice, election criteria are more connected to parliamentarian activities (politically driven and motivated) than to judicial duties and knowledge.

88. Moreover, the GET stresses that standards call for members, whether judges or not, to be selected on the basis of their competence, experience, understanding of judicial life, capacity for discussion and culture of independence. Besides, regarding the selection of judges, these should be elected by their peers aiming at ensuring widest representation of the judiciary at all levels; all interference of the judicial hierarchies in the process should be avoided. In San Marino, the primary criterion for the appointment to the plenary of the Judicial Council is confirmation in office on a permanent basis. As for non-judicial members, in addition to the concerns already expressed in the preceding paragraphs, nothing is said on their merits and qualities, other than that they cannot be lawyers, notaries or accountants.

89. Regarding the operation of the Judicial Council in San Marino, no rules of procedure have been adopted. It was also brought to the attention of the GET that nothing is said in the law as to the different liability rules applied to members of the Council: MPs are covered by non-liability[13], but this is not the case for judges. Therefore, the line is thinner for the latter as to the statements, and the legal consequences those may have, in Judicial Council meetings.

[12] For European standards on councils of the judiciary, see Opinion No. 10 (2007) of the Consultative Council of European Judges (CCJE) on Council for the Judiciary in the Service of Society.
[13] Non-liability exempts members of parliament from legal proceedings for acts carried out, statements made, votes cast or opinions expressed in a parliament or in the discharge of their parliamentary duties.

90. As to the sessions of the Judicial Council, there is one fixed meeting per year, for the adoption of the Annual Report on the State of Justice, and the Judicial Council may meet on other occasions, the most common being in relation to appointment and removal decisions. In the GET's view the Council will benefit from greater institutionalisation.

91. In light of the shortcomings identified above, the GET is of the firm view that a comprehensive reform of the Judicial Council's architecture must be taken as a matter of priority. Accordingly, in order to enshrine the role of the Judicial Council as a guarantor of the independence of judges and the judiciary, **GRECO recommends (i) changing the composition of the Judicial Council by providing that at least half of its members are judges elected by their peers, and, for non-judicial members, by excluding *ex officio* membership of members of the executive and the legislative; (ii) establishing objective and measurable selection criteria and a transparent selection procedure to endorse the professional qualities and impartiality of all members; and (iii) putting in place operational arrangements to ensure the effective performance of its functions in an institutionalised manner.**

Recruitment, career and conditions of service

Selection and appointment

92. In San Marino, judges enjoy security of tenure. A request to start procedures to appoint judges is made to the Great and General Council, through a reasoned report drawn up by the head of the court with the consent of the Judicial Council. After having taken note of the request, the Great and General Council decides by absolute majority.

93. All judges, except clerks, are recruited through competition or, preferably, through internal career. There are two possible procedures to recruit the judge of appeal: internal career (between judges who have served as Law Commissioners for at least 10 years) and competition (which is open to candidates having the status of Judge of Appeal or being tenured professors of law aged no less than 45). For the competition of Law Commissioners, candidates must be judges or tenured professors of law, or lawyers who have practiced the profession for at least six years. Clerks having served at least four years can also become Law Commissioners (an exam is not foreseen by the law). The *Procuratori del Fisco* are recruited among attorneys over 30 years old and professors of law who are employed in a University (tenured or law professors working in a faculty subsequent to a public competition). Clerks having served at least two years can also sit the exam. Lastly, Law Commissioner's Clerks are chosen through open competition from among those having a university degree in law, who are less than 40 years old.

94. A Selection Board is responsible for carrying out the corresponding recruitment processes. It is composed of three members, one of whom acts as president, chosen by the Judicial Council from among legal experts of the highest repute, including outside the San Marino judiciary, or from among the Judges of Appeal or higher judges. Rules are in place to prevent conflicts of interest from permeating the relevant judicial selection procedures. In particular, lawyers and accountants (in possession either of a university degree or high school diploma), as well as spouses, cohabiting partners and relatives up to the third degree of consanguinity and affinity of anyone enrolled in such registers, shall not be members of the Selection Board.

95. The ranked lists resulting from the competitions, with indication of the successful candidates, are transmitted to the Great and General Council for its acknowledgment (the parliamentary procedure in this respect does not provide for a vote). The GET was made aware of some challenges in the delayed appointment of two judges of appeal because of the early dissolution of the Great and General Council in 2019 (see also footnote 8).

96. Following their appointment, the Judges of Appeal, the Law Commissioners, the Clerks and the *Procuratori del Fisco* are required to serve a three-year probationary period. The Judicial Council evaluates the activity carried out by them on the basis of a detailed report drawn up by the head of the court. Subsequently, the Judicial Council decides whether to confirm the office, on a permanent basis, or to terminate it, and informs the Great and General Council thereafter for its acknowledgment. The judges on duty on a permanent basis, who are appointed to perform higher functions, are not required to serve a probationary period.

97. The Highest Judges of Appeal, the Judges of Extraordinary Remedies and the Judges for the Civil Liability of Magistrates are chosen from law experts from undisputed reputation, who meet the selection requirements for Judges of Appeal (see paragraph 93 above). They are appointed by the Judicial Council by a two-thirds majority to serve a five-year term and their mandate may be renewed by the former. There is no limit on the number of term renewals. All judicial appointments' decisions may be challenged before the Administrative Judge.

98. The GET considers that the recruitment system by means of competition is sound: it depends upon objective success in competitive examination. Further improvements could, however, be taken as regards appointments through internal career progression. Both the requirements of the post and the selection procedure would benefit from further articulation. The law requires a law degree, a number of years of experience and undisputed reputation. In the GET's view, the current set of selection criteria can be further refined and developed to define more clearly the qualities required for the post so that integrity, ability and efficiency are best met. That would also allow for an easier scrutiny of candidates' qualifications, i.e. the manner in which the various skills and qualities are assessed and balanced against each other, during the evaluation process. When career advancement/recruitment to higher positions are not exclusively based on seniority, but also on other qualities and merits, these must be clearly defined and objectively assessed.

99. Appointment follows through a qualified majority decision of the Judicial Council (on the basis of a report from the head of the court, when the appointment is made through internal career progression). However, aside from the cases when a prior report from the head of the court is required, nothing is said in law or regulation as to how this decision is reached (e.g. evaluation criteria), nor is the appointment decision required to be reasoned. The considerations made before in this report as to the composition and operation of the Judicial Council are of critical importance in this area. Additional steps must be taken to fully ensure an appointment process which is vested (both in reality and in appearance) with sufficient guarantees of objectivity, transparency, independence and impartiality.

100. Furthermore, the GET has concerns as to the deviation from the principle of permanent tenure for the highest ranks of the judiciary (Highest Judges of Appeal, the Judges of Extraordinary Remedies and the Judges for the Civil Liability of Magistrates). Permanent tenure until retirement constitutes a fundamental protection for the independence of all judges, according to international standards and GRECO practice. Consequently, **GRECO recommends ensuring that the appointment of judges, as well as the confirmation of permanent employment after the completion of a probationary period, as applicable, are thoroughly regulated according to clear and objective criteria, based on merit having regard to qualification, integrity, ability and efficiency, following a transparent procedure, which is sufficiently reasoned.**

101. In San Marino, the head of the court can come from inside the judicial career (head magistrate or *magistrato dirigente*), or in exceptional circumstances, from outside the judicial career (*dirigente non magistrato*). The head magistrate is appointed for a five-year term by the plenary session of the Judicial Council from among Law Commissioners having served for at least five years, or Judges of Appeal or High (third instance) Judges. A

substitute head magistrate replaces the head magistrate, as necessary. The substitute head magistrate is chosen among judges, at the proposal of the head magistrate, by the plenary session of the Judicial Council.

102. The Judicial Council may, in exceptional circumstances (which are not specified by law), if the administration of justice urgently requires a specific professional profile or a particular expertise, designate as a head of the court a person who comes from outside the judicial career and who has uncontested reputation and outstanding competence in the direction of judicial structures and bodies. His/her term of office is to be established by the Judicial Council and may be shorter than five years. There are no limits to possible re-election. S/he is subject to the same rights and obligations as any other judge. Remuneration is fixed on the basis of that envisaged for Law Commissioners, except for special allowances other than that of the head magistrate. S/he does not have any jurisdictional function but is rather vested with organisational and managerial responsibilities (e.g. coordination of work, distribution of caseload, assignment of a file to a pool of judges). Further clarification on the role of the *dirigente non magistrato* was put forward to the Constitutional Court as legislation did not seem unequivocal in this respect[14]. The head of the court in charge at the time of the evaluation visit came from outside the San Marino judiciary[15].

103. The appointment system of the head magistrate (*magistrato dirigente*) follows the same path as that for the selection and appointment of higher judges. The concerns expressed above in this regard apply here. Concerning the appointment of a head of the court from outside the judicial career (*dirigente non magistrato*), there is no determination in the law as to the exceptional circumstances leading to his/her appointment. Nothing is said in the law as to mandate revocation, an issue that has triggered heated debate inside and outside the judiciary files[16]. Likewise, the law is not clear about the number of possible reappointments. All these aspects need to be clearly defined in legislation. Moreover, a compromise should be reached so that the term of office of the head of the court is long enough to gain sufficient experience and to permit the realisation of projects to improve justice services and, yet, not so long that it generates routine or hinders the development of new ideas. A head of the court, properly appointed and with a limit of reappointments, should have, on the other hand, clear and undisputed competences to implement projects to improve justice. To do so efficiently, s/he must be provided with appropriate tools and means. In this connection, the GET was informed of the managerial efforts displayed by the head of the court, who was in office at the time of the on-site visit, from the very start of his mandate[17]. **GRECO recommends thoroughly regulating the system of selection, appointment, mandate renewal and revocation, as well as the responsibilities of the head of the court (whether s/he comes from inside or outside the judicial career).**

[14] The Constitutional Court established in a recent judgement (No. 12 of 20 November 2019) that the head of the court (when coming from outside the judicial career) is entrusted with an administrative role and ruled against the attribution of jurisdictional tasks. It further declared unconstitutional Article 6(4) of Law No. 93/2008 (regarding the so-called *avocazione dei fascicoli*).
[15] The GET was informed that, on 24 July 2020, through an *ex officio* annulment of the decision of the Judicial Council that dismissed in 2018 the former head magistrate (*magistrato dirigente*) from her post, the mandate of the head of the court (*dirigente non magistrato*), who was in office at the time of the on-site visit, ceased (the relative appointment decision having been annulled).
[16] The Council of Europe has received communications on this respect in two occasions in 2018 and in 2020.
[17] See footnote 16.

Career advancement

104. Career advancement follows criteria that combine seniority and merit. The assessment of the professional skills acquired in service is carried out by the Judicial Council in plenary session, to which the head of the court submits a relevant report. Both quantitative (e.g. number of judgments issued) and quality (complexity of the cases) criteria apply. It should be noted that the "promotion" of judges is not provided for as such: only the advancement from Clerk to Law Commissioner is envisaged. The transfer of a judge to higher functions is considered as a career advancement.

Salaries and benefits

105. The following salary scales (in EUR) apply in the Sammarinese judiciary:

Function	Basic remuneration[18]	Judicial allowance	Allowance for civil availability	Allowance for criminal availability	Head Magistrate's allowance	Amount of seniority advancements 1-6	Amount of seniority advancements 7	Amount of seniority advancements 8	Amount of seniority advancements 9-10
Judges of Appeal	3 139	2 304				57.8	69.3	75.1	112.7
Law Commissioners	3 139	2 630	897	1 495	1 196	57.8	69.3	75.1	112.7
Procuratori del Fisco	2 868	879				51.6	61.9	67.1	100.7
Clerks	2 593					41.4	49.7	53.8	80.7

Note: The amount of seniority advancements is in EUR per month; advancement takes place on a biannual basis.

106. Due to their specific function, the salary of a judge is also made up of a judicial allowance (which is added to the basic remuneration, which is that received for all employees in public administration). This allowance is not foreseen for Law Commissioners' Clerks.

107. The Judge of Extraordinary Remedies is paid with a token for each case dealt with (1 178 EUR per case). In particular, a fee is paid to the State by the party as s/he files the appeal.

108. Judges are not entitled to any other additional benefit (e.g. a specific taxation regime or arrangement, or housing benefits).

Termination

109. Judges remain in office until the age of 68 (excluding resignation or dismissal for disciplinary action). The Judicial Council may extend this term by two years upon request of the interested party, if required by the service, as substantiated by a detailed report of the head of the court.

<u>Case management and procedure</u>

110. San Marino's criminal system is based on the principle of mandatory prosecution. Such action is taken by the investigating judge. If a case is dismissed, the offended person or the complainant is entitled to lodge an appeal before the judge of appeal, who may order the case to be reopened by a different investigating judge. The investigating judge cannot be the sitting judge deciding on the same matter.

111. Judges enjoy full independence and are subject exclusively to law in the exercise of their functions. No person or institution is authorised to provide any kind of directive or indication on specific cases (Article 1, paragraph 1 of Constitutional Law No. 144 of 30 October 2003).

[18] Law No. 149/2009.

Distribution of cases

112. The organisation and supervision of the tribunal activities are entrusted to the head of the court. When a head of the court is appointed, s/he establishes case allocation criteria, which s/he can change or vary, as the situation evolves and depending on the needs of the service if s/he sees that the workload needs to be redistributed.

113. Qualified Law No. 145 of 30 October 2003 (Article 5(2)), as amended, only establishes that cases must be allocated according to professional qualification and experience but does not further elaborate on those. The assignment of dossiers is made by the Court Registry on the basis of the criteria in force, but not in an automated random manner. The Court Registry has no autonomy or discretion in this respect.

114. The Law Commissioners and the Clerks are required to punctually and promptly fulfil official duties and to comply with the instructions given by the head of the court. The GET was told that these instructions are of a general nature (criminal policy) and do not interfere with the autonomy of the judge in handling the individual case.

115. With regard to cases assigned to judges in the second instance, the head of the court establishes the criteria for work distribution among the Judges of Appeal, in agreement with them. In case such agreement cannot be reached, work distribution is established by the Judicial Council in ordinary session.

116. Judges cannot be removed from a case, unless in instances of abstention, recusal or suspension. All judges exercise full jurisdiction and therefore they may be substituted in the performance of their functions and duties. The Judges of Appeal may mutually replace each other in case of impossibility or incompatibility of one of them. Substitutions are decided in accordance with predetermined criteria, established by the Judicial Council, in respect of the principle of the tribunal established by law.

117. Regarding the two *Procuratori del Fisco*, their workload is divided on the basis of equity principles with a view to ensuring the efficiency and expediency of proceedings; in case of disagreement, criteria are to be established by the ordinary session of the Judicial Council (Article 1, Qualified Law No. 145 of 30 October 2003, as amended).

118. The head of the court can give instructions under Article 16 of Law No. 100 of 29 July 2013 in case of a pool of judges carrying out investigations relating to some specific offences, including corruption and money laundering related offences. In such cases, if the head of the court does not supervise and coordinate the investigating judges directly, s/he entrusts one of the designated judges with these tasks. The delegated judge shall ensure, in particular, that all investigating judges comply with the instructions given by the head of the court for the coordination of investigations and the use of the judicial police, auxiliary staff and technical resources. However, each judge shall provide the head of the court with timely information on the progress of the investigations, as requested. The GET was told that resorting to a pool of judges is becoming more and more frequent in light of the complexity of the cases and the matters at stake.

119. The GET was made aware of long-enduring challenges regarding case allocation, and more generally, organisation of court work. The most recent annual Reports on the State of Justice (2016-2018), and in particular the latest one (2018), point at different performance levels in the tribunal, as well as to worrying backlogs leading to some cases being time-barred for procedural reasons (*prescrizioni processuali*). The problem is particularly acute regarding civil cases, but it also spreads to criminal cases with up to 500

penal proceedings time-barred in 2017[19]. This state of affairs comprises two critical aspects: on the one hand, the denial of justice emanating from malfunctions of the system, and on the other hand, the validity of the mechanisms for efficiency and accountability within the system when such a situation persists. It was the perception of some interlocutors that some cases were pushed forward, while others would linger. While this can be only a perception, with no substantiated basis, the fact is that, in the justice area, perceptions bear an important role, particularly, for public trust purposes.

120. One of the problems behind this backlog relates to working practices and work distribution, such as a heterogeneous allocation of cases, including situations where judges are given cases distant from their area of specialisation or expertise, sudden re-assignments for organisational needs, and more generally, unequal distribution of workload. Some additional steps need to be taken in this area. Such an effort should meet a triple aim (a) to diminish or abolish special (and particular) decisions for the allocation of concrete cases; b) to have formal assignment criteria known by everyone (including external judicial operators, e.g. lawyers) and with an extended period of validity (beyond the tenure of the individual head of the court); c) to have precise rules in hand ensuring that each judge has a similar workload as his/her colleague next door. While it is generally accepted that there should be some flexibility enabling judges and/or cases to be transferred relatively easily between courts in order to cater for fluctuations in workload, the GET observes that sufficient legal guarantees must also be in place to ensure that this is done on an exceptional basis and that it does not affect the quality of judicial work. The GET was informed, after the on-site visit, that a new reorganisation of work was made with urgency, on 24 July 2020, including *inter alia* a reallocation of subject matters. According to European standards, the allocation of cases within a court should follow objective pre-established, determined in advance, criteria in order to safeguard the right to an independent and impartial judge[20]. **GRECO recommends ensuring consistency, objectivity, transparency and fairness of case allocation, including by strengthening assignment criteria.**

121. Staffing levels are considered by judicial sources themselves as adequate. However, judges are increasingly required to deal with non-jurisdictional work regarding, for example, international commitments, legality control of administrative acts, participation in thematic commissions, disciplinary matters involving public officials, naturalisation and civil status related proceedings, training activities, etc. For example, the GET notes that the court receives a significant number of legality control requests from administrative bodies. In this connection, whilst the situation has improved in recent years and the number of requests has dropped from 5 000 to 2 000, the GET still considers this figure burdensome. This task in itself could easily swamp a court. A solution must be found to this situation and the GET understood that some steps have already been taken, including through recently enacted legislation, i.e. Law No. 88/2019 which reduces the administrative tasks of the court. The GET was further told, at the time of the on-site visit, that the head of the court was looking into this matter with a view to reducing non-judicial functions to the maximum extent possible; the GET found this to be a positive development to be pursued. In the meantime, other avenues have been proposed to streamline judicial work, including through the decriminalisation of minor offences, the introduction of on-line trials, the specialisation of Judges of Appeal, etc.

122. The staffing situation of the *Procuratori del Fisco* is also challenging: they are only two (the second having been appointed in 2016), but they have an extensive role in the current legislative framework as to guarantee the enforcement of the law and intervene in all the phases of the criminal proceedings, as well as in civil cases. The extensive functions

[19] After the on-site visit, the authorities indicate that the issue of backlogs had started to be addressed, also thanks to an interpretative and operational clarification provided by a Constitutional Court's decision.
[20] Recommendation CM/Rec(2010)12 on Judges : Independence, Efficiency and Responsibilities. See also Venice Commission Report on the Independence of the Judicial System Part I: the Independence of Judges CDL-AD (2010)004.

and workload of the *Procuratori del Fisco* make it very difficult for them to attend all their duties; concrete concerns have been raised as to the need to increase the available resources. The situation is even more complicated because discussions are dragging since 1996 on the reform of the criminal procedure, which envisages the replacement of *Procuratori del Fisco* by a Public Ministry *stricto sensu*.

123. Moreover, the use of digital means is a pending task of the court; this obviously requires resources, but also a change of mentality for some. The GET was told that the court has now embarked on an inevitable modernisation process, including by engaging in greater openness of judicial work (the publication of case assignment criteria makes prove in this respect) and developing more collaborative approaches beyond the traditional role of the monocratic judge (such as through the investigation of complex cases by a pool of judges). Human resources of the court have been progressively increasing along the years (from two to 20 at present), but delays are sometimes experienced regarding effective appointments.

124. The GET was told that an internal reflection process had been launched to understand the causes that have led to malfunctions, internal conflicts and lack of trust inside the court. The latest Annual Report on the State of Justice (2018) already pointed out some of the problems. The GET can only welcome this reflection process given the erosive effect that the problems raised above have generated not only at the heart of the court, in terms of internal frictions, but also regarding the image of the judiciary as a whole in citizens' eyes. The GET heard very concrete concerns, which were expressed by those who work more closely with the courts (e.g. lawyers), in this respect. This is very unfortunate, especially given the determined role performed by the Sammarinese justice in the investigation of economic crime in recent years. The GET trusts that this context of change in and modernisation of the court can, at the end of the process, result in positive improvements on several fronts, including transparency, integrity and accountability. Internal dialogue, coordination and, to the extent possible, consensus will be crucial in this regard. The necessary discussions in this respect with other State powers must be undertaken in an atmosphere of mutual respect and have particular regard to the preservation of independence and impartiality of the judiciary[21]; it goes without saying that judges should be consulted and have a say in basic decisions about the shape of modern justice and the priorities involved[22]. Such a consultation process should be vested with adequate assurances of inclusiveness, transparency and accountability.

125. In light of the foregoing considerations, **GRECO recommends (i) conducting an analysis of the workload, internal procedures and resources (human and technical) of the judicial system, with a view to improving and streamlining its operation and guaranteeing that cases are allocated and adjudicated without undue delay and (ii) ensuring that appropriate implementation measures are taken thereafter. The process for carrying out such an analysis should be as inclusive as possible (including through consultation, first and foremost of judges themselves, as well as the legal profession and civil society) and that the results are publicised accordingly.**

Reasonable time

126. The right to a fair hearing shall be protected at all stages of judicial procedure. The law shall ensure the speediness, cost-effectiveness and independence of legal proceedings (Article 15 of the Declaration on the Citizens' Rights and Fundamental Principles of San Marino Constitutional Order).

[21] Opinion No. 18 (2015) of the Consultative Council of European Judges (CCJE) on the Position of the Judiciary and its Relation with Other Powers of the Statehttps://rm.coe.int/16807481a1 in a Modern Society.
[22] Opinion No. 6 (2004) of the Consultative Council of European Judges (CCJE) on Fair Trial Within a Reasonable Time and Judge's Role in Trials Taking into Account Alternative Means of Dispute Settlement.

127. Delay by a judge in the adoption of measures falling within his competence occurs when, after expiry of the statutory time-limit for taking the measure in question, a party has submitted an application for such a measure and, without valid reason, no measure has been taken within sixty days following the date on which the application was lodged with the Court Registry. If no time-limit is envisaged, ninety days shall in any case elapse without any measure being taken following the date on which the application for the measure was lodged with the Court Registry.

128. Unjustified delay by the judge may give rise to a civil liability action of the judge by the damaged party (Article 9, Constitutional Law No. 144 of 30 October 2003, as amended).

129. In the criminal field, the head of the court shall also immediately inform the ordinary Judicial Council and the Permanent Parliamentary Committee for Justice of the delay (Law No. 93 of 17 June 2008). Moreover, the investigating judge is required to complete the investigation within the time-limit provided in law (Article 6, Law No. 93 of 17 June 2008, statute of limitations of the proceedings).

130. The problems related to case backlog, which have become a most salient concern (particularly in relation to civil law cases), have already been discussed above and are subject to recommendation (see paragraph 125).

Transparency

131. Judicial proceedings are public, except in cases expressly provided for by law (e.g. in criminal proceedings against personal safety, personal liberty or mistreatment at the request of the offended person of legal age, child prostitution or pornography, and also in relation to witnesses of corruption cases, as provided by Decree Law No. 79 of 29 June 2016).

132. More generally, regarding transparency of judicial work, some steps are underway/have been developed to facilitate the publication of judgments on-line, a task that has not yet been fully accomplished. In this connection, a project to launch an online publication of the most relevant decisions in the field of civil/criminal law (but not in the field of administrative law) is under way. For the time being, the Constitutional Court is the only one publishing its judgments online (www.collegiogarante.sm). In December 2019, the San Marino Legal Institute issued a compilation of relevant judgments in different areas, which is made available online. The Bar Association has been, for years, compiling case-law for its members. The new management of the court is also working in this direction too, although the GET was told that the task involves its very own challenges. A new law on privacy entered into force this year and requires the anonymisation of judgments. Due to current budgetary restrictions, this task is being done manually, taking up time and resources. In addition to this, technical means and investment to keep a database up to date are yet to be secured and changes must also occur to move away from old paper routines to digitalisation. The GET was further informed that a Memorandum of Understanding had been signed with the San Marino Legal Institute to advance in this area.

133. GRECO has repeatedly underscored that the publication and dissemination of judgments plays a key role in assuring certainty in the law and uniformity and predictability in its application. Making final decisions and judgments publicly available online, with due observance of data protection and confidentiality needs, is likely to bring a distinct added value in terms of enhanced accountability of judges, better access to justice and wider transparency. This is critically important in San Marino given that it is a civil law system, but without codifications, and that there is no high court in charge of harmonising jurisprudence.

134. A Report on the State of Justice is to be issued on an annual basis. It is drawn up by the head of the court and presented, through the Minister of Justice, to the Great and General Council. It includes information on the judicial activity carried out throughout the year of reference by the judges of all instances. It refers to both quantitative and qualitative data. The most recent available reports refer to the activities performed in 2015, 2016 and 2017. Not only was there a delay in publication, but reports are difficult to locate online. The GET was told that the Annual Report corresponding to the activity carried out in 2018 had been transmitted to the Minister of Justice, as per established procedures, and awaits publication. In view of the foregoing, the GET considers that additional efforts must be displayed to enhance transparency of judicial work, both regarding the publication of judgments, the timeliness of the annual Report on the State of Justice, and more generally, the management of the court. **GRECO recommends (i) increasing the transparency and accessibility of information to the public on judicial activity; and (ii) ensuring that all court decisions are published in a user-friendly format, preferably by using IT technology, and made available to all the legal professions and to the public at large.**

Ethical principles and rules of conduct

135. Judges shall show professionalism, objectivity and impartiality in the development of the judicial function. In fulfilling their duties, they shall always have sound knowledge of legal matters, show great composure and have a blameless civil and moral behaviour (Article 2, Qualified Law No. 2 of 16 September 2011).

136. Judges assume office by taking an oath before the Captains Regent. That said, a comprehensive approach to judicial integrity is yet to be developed in San Marino. Owing to the controversies surrounding the judiciary that have been highlighted above, the GET is firmly convinced that time is ripe to do so. A Code of Conduct for judges was prepared in 2013 and submitted to the Judicial Council plenary for information, but it never took off. In this connection, when the GET explored this matter during the on-site visit, the interlocutors met were not certain of the status (draft or adopted), or even the mere existence of such a code. Many mentioned instead the 2014 Code of Conduct for Public Officials which reportedly served as a framework of reference.

137. GRECO has constantly held that judges should have their own code of conduct and that it should be fully embraced by the profession; to this end, the drafting process should be as inclusive as possible. The GET underscores the value of a tailor-made code of conduct, which would not only guide new recruits and more senior colleagues in ethical questions more specifically, but would also inform the general public about the existing ethical standards in the profession. Whilst the code is to be built on existing laws and regulations, it is a most valuable tool when it provides practical guidance on how principles apply and helps solve concrete situations and real-life scenarios, particularly in situations of conflicts of interest and to preserve the independence of the judiciary above all. The provision of induction and in-service training of a practice-oriented nature on these matters would be a further asset. **GRECO recommends that (i) an updated code of conduct for judges, accompanied by explanatory comments and/or practical examples (with a particular emphasis on conflicts of interests and incompatibilities), be adopted and made easily accessible to the public; (ii) that it be coupled with support measures for its supervision and enforcement; and (iii) that dedicated training on ethics and integrity matters be offered on induction and at regular intervals thereafter.**

Conflicts of interest

Incompatibilities, accessory activities and post-employment restrictions

138. Judges are subject to a strict incompatibility regime. Judges are required to carry out their mandate exclusively; any further tasks or duties may be carried out only in accordance with the requirements of the office and subject to the authorisation of the Judicial Council, sitting in ordinary session.

139. In particular, according to Article 2 of Qualified Law No. 145 of 30 October 2003, as amended, the office of judge is incompatible with positions in and membership of political movements or parties or trade unions, as well as with candidature for national and local elections, conduction of commercial or industrial activities and the position of director and auditor within companies.

140. The office of Law Commissioner, *Procuratore del Fisco* and Clerk is also incompatible with the practice of an independent profession, positions held in other offices and public or private employment both in San Marino and abroad, with the exception of the position as university professor, as far as compatible. The office of Judge of Appeal or higher judge is incompatible with the practice of the profession in the territory of San Marino.

141. Judges' spouses, cohabiting partners and relatives up to the third degree of consanguinity and affinity are prohibited from carrying out legal representation and defence before the Single Court.

142. For all cases of incompatibility, the procedures and guarantees provided for by the judicial system are applied, such as abstention, recusal and suspension of judges (see below).

143. There are no regulations that would prohibit judges from being employed in certain posts/functions or engaging in other paid or unpaid activities after exercising a judicial function. While the authorities did not see any problem in this respect, they also referred to situations where judges had left the bench to move to the private sector. Recently, for example, a judge who used to deal with money laundering cases left office to work at the Central Bank, assuming responsibility over the organisation of training courses and seminars on the subject.

144. There is no monitoring of incompatibilities and/or ancillary activities. This is left to the conscience of the individual judge, on the understanding that it is a small court in a small country where news spread fast. If someone notices there is a breach, s/he can report to the head of the court, to the Captains Regent, to the Permanent Parliamentary Committee for Justice or to the Judicial Council plenary. Misconduct in this regard would be subject to the enforcement regime described in paragraphs 157 to 160 and subject to a recommendation on its amelioration.

145. For the GET, some clarification would be most welcome as to the legitimacy of certain accessory activities and the need to set, if not an absolute ban, at least some safeguards on their exercise after the end of the judicial office. The authorities are also encouraged to think expansively about additional transparency and oversight measures in this domain (e.g. trough the publication of secondary activities of judges or, at the very least, made known to the participants in the judicial proceeding). These aspects are to be taken on board when implementing recommendation xiii (see paragraph 137).

Recusal, routine withdrawal and suspension

146. A judge must abstain when serious reasons exist, due to personal interests in the proceedings, existing relationships of family, marriage, non-marital cohabitation,

friendship, hostility, existing business or working relationships, between the judge himself/herself or one of his/her close relatives and one of the parties or their lawyers in civil or administrative proceedings, or the accused person, the victim of the crime or their lawyers, in criminal proceedings.

147. The judge must likewise abstain himself/herself if s/he gave advice and opinions, or, prior to the proceedings and in the exercise of his/her functions s/he illegitimately expressed his/her opinion on the facts/object of the proceedings.

148. The judge could also abstain himself/herself where it would be appropriate if circumstances exist which would compromise his/her impartiality and free judgment.

149. In all such cases, if the judge does not abstain on his/her own initiative, the parties may request his/her withdrawal. A request for the withdrawal of the judge competent to decide a request for withdrawal shall not be admitted. In criminal proceedings a request for the withdrawal of the prosecutor (*Procuratore del Fisco*) shall not be admitted. It emerged from the interviews carried out on-site that the recusal system, or rather the abstention of the judge concerned, generally functions well. The European Court of Human Rights has also considered the arrangements adequate in respect of one of its recent rulings on San Marino (*Case of Pasquini v. San Marino*, 2 May 2019).

150. Having said that, there is currently an unresolved question relating to cases where the accused and accuser are both judges (there are five of such cases currently pending in the court; they refer to defamation and one to the revocation of the mandate of a former head magistrate). These cases pose an additional challenge in such a small country as San Marino and risk that, at the end, all possible competent judges may recuse themselves because of the ties they have with the parties in conflict who are also colleagues (or superiors back in time or could become superiors in the future). One possible solution proposed was that this type of cases be dealt with by the Judge for the Civil Liability of Magistrates. The issue was initially sent to the Constitutional Court which referred it to the Great and General Council since it considered it deserved concrete legislative action; a draft on this matter passed its first reading on 1 June 2020. At the time of the on-site visit, the head of the court had established that all proceedings involving judges were dealt with by at least two investigative judges.

151. The Judicial Council may provisionally suspend the judge from his/her functions in case of temporary incompatibility, for a period of time deemed strictly necessary and, in any case, not exceeding six months. In this case, the remuneration is half the basic remuneration as established by law for that position. If, upon expiry of the suspension period, the incompatibility still applies, the Judicial Council orders the termination of the mandate.

Gifts

152. Judges must display blameless moral behaviour. The 2014 Code of Conduct for Public Officials provisions on gifts serve as inspirational guidance in this respect; any gift that exceeds the threshold set in the aforementioned Code, would constitute a bribe for which solicitation or acceptance is punishable pursuant to penal law. The GET notes that there are no detailed rules on the acceptance of gifts specifically by judges. There was consensus among the different interviewees on-site on the fact that, in practice, there is no culture of making gifts to judges. Although there is no problematic practice in this respect, the GET believes that gifts to judges should be excluded as a principle and clear

rules in this respect are necessary. This must be clearly stated, in writing, in the code of conduct recommended above (see paragraph 137).

Third party contacts, confidential information

153. The publication of documents protected by secrecy of investigations and the disclosure of official secrets constitutes a criminal offence (Articles 192bis and 377, Criminal Code).

154. Further, any inappropriate expression used by a judge could lead to an action of objection at the request of one of the parties, or to the abstention of the judge, by his/her own action, subject to secrecy obligations (violation of official secrecy and investigative secrecy obligations, as described above).

Declaration of assets, income, liabilities and interests

155. There are no arrangements for such declarations, other than the previously cited rules on incompatibilities and the obligation to submit a tax return to which judges, as any other tax payers, are subject.

Supervision and enforcement

156. The head of the court has the responsibility of supervising the correct performance of the tasks performed by judges. The head of the court periodically reports to the Judicial Council on the correct performance of the tasks entrusted to judges, both in qualitative and quantitative terms, and s/he proposes the adoption of any measures, if needed.

157. Disciplinary action (*azione di sindacato*) is performed before the Constitutional Court. It is initiated by the Judicial Council in ordinary session, by at least one third of the Judicial Council in plenary session or by at least one third of the members of the Permanent Parliamentary Committee for Justice.

158. The procedures to be followed are established by Law No. 138 of 16 September 2011. In particular, disciplinary action follows an adversary procedure in which the accused is heard and can be represented by a lawyer, thereby guaranteeing full rights of defence. The initiation and the adjudication phases of disciplinary proceedings are separated; an inquiring judge (*magistrato delle procedure di accertamento*) and a deciding judge (*magistrato decidente*) are designated by the President of the Constitutional Court to this effect.

159. The Judicial Council in plenary session may order the precautionary suspension of a judge as disciplinary proceedings take place and pending their conclusion. In this case, the judge is entitled to a maintenance payment, the amount of which is equal to half the basic remuneration established by law for that office.

160. The final decision on discipline is transmitted to the interested judge, the Permanent Parliamentary Committee for Justice, the Bureau of the Parliament and the Judicial Council in plenary session. The latter declares, in conformity with the decision, the judge's disqualification, if it is confirmed that the essential requirements for the fulfilment of the functions are no longer met, or it may decide to remove the judge from office if it is confirmed that he/she has compromised his/her moral and professional integrity, confidence, respect, or the prestige of the administration of justice.

161. The law does not establish a range of sanctions for disciplinary infringements (other than dismissal), but the Constitutional Court has developed some jurisprudence in respect of the *azione di sindacato* (not necessarily restricted to the case of judges) and the following sanctions apply: freezing of career, transfer, removal. There is no possibility to

appeal the decisions of the Constitutional Court, with the sole exception of *querela nullitatis*.

162. There is no information or statistics regarding discipline in the relevant annual reports on justice, but the GET was informed that, in the last thirteen years, there have been three cases (they mostly dealt with inefficiency and backlogs). A recent case, in 2012, dealing with the closure of a file by a judge, raised some public doubt as to the potential use of *azione di sindacato* for political reasons. The case was dropped as unfounded.

163. In the GET's eyes, the lack of more detailed regulation on breaches of professional ethics or duties, which are not serious enough to warrant removal, is a gap in the system[23]. The GET also heard that, in part because of the absence of a more nuanced range of sanctions depending on the seriousness of the misconduct, the system is perceived as ineffective in practice. Very few disciplinary measures have been taken in recent years. Furthermore, the grounds for disciplinary liability are too vague; a list of more specific grounds/disciplinary offences needs to be laid out in legislation. It will be central to ensure that, for corruption prevention and integrity enhancement purposes, both the grounds for disciplinary liability and the sanctioning criteria are defined in a clear and objective manner (thereby avoiding subjective descriptions of infringements by abstract concepts or definitions).

164. Similarly, the requirements for initiating disciplinary proceedings need to be further articulated in law to ensure that they are solely based on objective grounds. Concerns have been expressed as to the role of the Permanent Parliamentary Committee for Justice, a political body, to initiate disciplinary action against judges. Finally, effective appeal channels need to be built into the system. The need for further regulation is also foreseen in Sammarinese law, but has never materialised. **GRECO recommends that the legal framework for the disciplinary liability of judges be revised with a view to strengthening its objectivity, proportionality and effectiveness, including by (i) further articulating the requirements for initiating disciplinary proceedings; (ii) defining disciplinary infringements and coupling them with a nuanced range of sanctions; (iii) providing for appeal channels.**

165. Judges are not subject to special criminal proceedings and enjoy no immunities. There has never been a criminal case of corruption involving a judge in San Marino.

166. Judges are civilly liable for damage and prejudice caused wilfully in the performance of their duties; detailed procedures are laid out in Constitutional Law No. 144 of 30 October 2003 (Articles 7 and 9).

Advice, training and awareness

167. The San Marino Legal Institute offers some anticorruption training events, but the ones developed to date which have specifically dealt with ethics have targeted civil servants (public administration) and the seminars which judges attended were more focused on thematic areas, e.g. corporate liability in corruption offences. In July 2015, an agreement was signed with the Italian High Judicial School (*Scuola Superiore della Magistratura*), but no specific training on ethics and integrity-related matters has been organised so far. The GET was told that judges can choose a maximum of four courses per year from the catalogue offered by the Italian High Judicial School; therefore, they opt for specialisation modules rather than ethics.

168. The GET further heard that judges who are at the beginning of their careers would consult senior members of the bench when faced with an ethical dilemma. The GET further

[23] For European standards on disciplinary liability, see Opinion No. 3 (2002) of the Consultative Council of European Judges (CCJE) on the Principles and Rules Governing Judge's Professional Conduct, in particular Ethics, Incompatible Behaviour and Impartiality.

remarks that the sound basis for ethical judicial behaviour is currently pretty much left to the conscience of the individual judge. The GET considers that the absence of induction and support on judicial ethics and behaviour constitutes a shortcoming of the system which needs to be tackled; a recommendation has been issued to this end (see paragraph 137).

169. Recognising the constraints and opportunities provided in a small jurisdiction, awareness-raising measures should focus on pragmatic opportunities to share knowledge. For example, short events, at times and using methods that enable judges to attend or enhance their knowledge without adversely affecting court proceedings could be considered (short after-court sessions led by members of the judiciary, e-learning opportunities that can be completed at times that are convenient to the judge, etc.).

V. RECOMMENDATIONS AND FOLLOW-UP

170. In view of the findings of the present report, GRECO addresses the following recommendations to San Marino:

Regarding members of parliament

i. **considering further restricting the exceptions to public voting** (paragraph 32);

ii. **that a code of conduct, accompanied by explanatory comments and/or concrete examples (including provisions and guidance on e.g. conflicts of interest, gifts and other advantages, misuse of information and of public resources, contacts with third parties and lobbyists, preservation of reputation, as well as limitations on certain activities), be adopted for the members of the Great and General Council and that it be brought to the knowledge of the public** (paragraph 43);

iii. **introducing clear written rules, guidance and support mechanisms for ad-hoc disclosure when a conflict may emerge between the specific private interests of a member of parliament and a matter under consideration in parliamentary proceedings (in plenary and committee work)** (paragraph 47);

iv. **(i) that a system for the public declaration of parliamentarians' assets, income, liabilities and interests be introduced and (ii) that consideration be given to including information on spouses and dependant family members (it being understood that such information would not necessarily need to be made public)** (paragraph 56);

v. **that measures be taken to ensure effective supervision and enforcement of integrity-related rules (declaration requirements and standards of conduct) for parliamentarians** (paragraph 57);

vi. **(i) that training and awareness-raising measures be introduced for parliamentarians on corruption prevention and integrity-related matters and (ii) that a dedicated source of confidential counselling be established to provide advice on ethical questions and possible conflicts of interest in relation to their functions and duties** (paragraph 63);

Regarding judges and prosecutors

vii. **(i) changing the composition of the Judicial Council by providing that at least half of its members are judges elected by their peers, and, for non-judicial members, by excluding *ex officio* membership of members of the executive and the legislative; (ii) establishing objective and measurable selection criteria and a transparent selection procedure to endorse the professional qualities and impartiality of all members; and (iii) putting in place operational arrangements to ensure the effective performance of its functions in an institutionalised manner** (paragraph 91);

viii. **ensuring that the appointment of judges, as well as the confirmation of permanent employment after the completion of a probationary period,**

as applicable, are thoroughly regulated according to clear and objective criteria, based on merit having regard to qualification, integrity, ability and efficiency, following a transparent procedure, which is sufficiently reasoned (paragraph 100);

ix. **thoroughly regulating the system of selection, appointment, mandate renewal and revocation, as well as the responsibilities of the head of the court (whether s/he comes from inside or outside the judicial career)** (paragraph 103);

x. **ensuring consistency, objectivity, transparency and fairness of case allocation, including by strengthening assignment criteria** (paragraph 120);

xi. **(i) conducting an analysis of the workload, internal procedures and resources (human and technical) of the judicial system, with a view to improving and streamlining its operation and guaranteeing that cases are allocated and adjudicated without undue delay and (ii) ensuring that appropriate implementation measures are taken thereafter. The process for carrying out such an analysis should be as inclusive as possible (including through consultation, first and foremost of judges themselves, as well as the legal profession and civil society) and that the results are publicised accordingly** (paragraph 125);

xii. **(i) increasing the transparency and accessibility of information to the public on judicial activity; and (ii) ensuring that all court decisions are published in a user-friendly format, preferably by using IT technology, and made available to all the legal professions and to the public at large** (paragraph 134);

xiii. **that (i) an updated code of conduct for judges, accompanied by explanatory comments and/or practical examples (with a particular emphasis on conflicts of interests and incompatibilities), be adopted and made easily accessible to the public; (ii) that it be coupled with support measures for its supervision and enforcement; and (iii) that dedicated training on ethics and integrity matters be offered on induction and at regular intervals thereafter** (paragraph 137);

xiv. **that the legal framework for the disciplinary liability of judges be revised with a view to strengthening its objectivity, proportionality and effectiveness, including by (i) further articulating the requirements for initiating disciplinary proceedings; (ii) defining disciplinary infringements and coupling them with a nuanced range of sanctions; (iii) providing for appeal channels** (paragraph 164).

171. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of San Marino to submit a report on the measures taken to implement the above-mentioned recommendations by 31 March 2022. These measures will be assessed by GRECO through its specific compliance procedure.

172. GRECO invites the authorities of San Marino to authorise, at their earliest convenience, the publication of this report, to translate the report into the national language and to make the translation publicly available.

About GRECO

The Group of States against Corruption (GRECO) monitors the compliance of its 49 member states with the Council of Europe's anticorruption instruments. GRECO's monitoring comprises an "evaluation procedure" which is based on country specific responses to a questionnaire and on-site visits, and which is followed up by an impact assessment ("compliance procedure") which examines the measures taken to implement the recommendations emanating from the country evaluations. A dynamic process of mutual evaluation and peer pressure is applied, combining the expertise of practitioners acting as evaluators and state representatives sitting in plenary.

The work carried out by GRECO has led to the adoption of a considerable number of reports that contain a wealth of factual information on European anticorruption policies and practices. The reports identify achievements and shortcomings in national legislation, regulations, policies and institutional set-ups, and include recommendations intended to improve the capacity of states to fight corruption and to promote integrity.

Membership in GRECO is open, on an equal footing, to Council of Europe member states and non-member states. The evaluation and compliance reports adopted by GRECO, as well as other information on GRECO, are available at www.coe.int/greco.