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# FIFTH EVALUATION ROUND

Preventing corruption and promoting integrity in  
central governments (top executive functions) and  
law enforcement agencies

## EVALUATION REPORT

# SAN MARINO



Adopted by GRECO  
at its 98th Plenary Meeting (Strasbourg, 18-22 November 2024)



Group of States against Corruption  
Groupe d'États contre la corruption

COUNCIL OF EUROPE



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## I. EXECUTIVE SUMMARY

1. This report evaluates the effectiveness of the framework in place in San Marino to prevent corruption among persons with top executive functions (members of the Congress of State, Heads of Departments (including the Director of Civil Service), ministers' political staff members and consultants with similar functions, hereinafter "PTEFs") and members of the Gendarmerie, the Fortress Guard and the Civil Police (the "Police Corps"). It is intended to encourage reflection in the country as to how to strengthen transparency, integrity and accountability in public life.

2. San Marino does not have a national anti-corruption policy in place, but corruption prevention plans have been adopted in respect of some areas (e.g. building permits, recruitment of public officials and public procurement). In view of the executive powers exercised by PTEFs, it is necessary to develop a dedicated anti-corruption policy document after carrying out a comprehensive risk assessment specific to them. To prevent and manage any conflicts of interest, PTEFs should undergo integrity checks as part of their appointment and recruitment.

3. A Code of Conduct for members of the Congress of State has been in force since 2022. It is supplemented by a Code of Conduct for Public Officials, which has existed since 2014 and applies *mutatis mutandis* to PTEFs. For the sake of consistency and better effectiveness, the provisions of both codes ought to be harmonised (or consolidated if necessary) to cover all integrity-related matters and be supplemented by a practical guide with explanatory comments and concrete examples. The provision of dedicated awareness-raising activities necessitates the allocation of additional resources (in particular adequate staffing) to the Ethics Committee, which has been set up under the Code of Conduct for members of the Congress of State, and to the competent authorities. In addition, all PTEFs should be provided with an effective mechanism to obtain confidential counselling in relation to ethical issues.

4. A legal framework on access to information has been developed since 2011. It would benefit from a review to identify gaps and take the necessary legislative and practical measures to improve public access to information. The conduct of public consultations for draft legislation originating from the Congress of State is not regulated. Nor are there any rules governing the interaction of PTEFs with third parties/lobbyists who seek to influence the government's decision making. Rules on gifts need to be clarified and strengthened, as need the rules on post-employment restrictions which should be further coupled with an effective oversight mechanism. Lastly, the obligation to make declarations of assets ought to be extended to all PTEFs, including Heads of Departments, political staff members and consultants with similar functions.

5. Turning to the Police Corps, no analysis has been carried out on services and situations exposed to corruption. A comprehensive risk assessment of corruption-prone areas is warranted in view of the findings contained in the report. The Police Corps would greatly benefit from the setting up of a central autonomous body with internal oversight and control powers.

6. There is a Code of Conduct for members of the Police Corps, which needs updating and is not supplemented with specific guidance on all relevant integrity matters. A (single)

mechanism of confidential counselling ought to be established for law enforcement officers outside of the chain of command.

7. Members of the Police Corps should be subject to regular integrity checks throughout their career, which are not carried out. Women in the Police Corps are underrepresented, and dedicated measures must be taken to increase their numbers at all levels. Treatment of public complaints against misconduct of members of the Police Corps should be standardised and streamlined. The disciplinary system in respect of the Gendarmerie and the Fortress Guard ought to be reviewed to provide for an effective legal remedy.

8. Whistleblower protection measures should be introduced in the Police Corps and dedicated training conducted, not least because there are no cases of whistleblowing.

## II. INTRODUCTION AND METHODOLOGY

9. San Marino joined GRECO in 2010 and has been evaluated in the framework of GRECO's First and Second (in June 2011), Third (in September 2014) and Fourth (in September 2019) Evaluation Rounds. The resulting Evaluation Reports, as well as the subsequent Compliance Reports, are available on GRECO's website ([www.coe.int/greco](http://www.coe.int/greco)). This Fifth Evaluation Round was launched on 1 January 2017<sup>1</sup>.

10. The objective of this report is to evaluate the effectiveness of the measures adopted by the authorities of San Marino to prevent corruption and promote integrity in central governments (top executive functions) and law enforcement agencies. The report contains a critical analysis of the situation, reflecting on the efforts made by the stakeholders concerned and the results achieved. It identifies possible shortcomings and makes recommendations for improvement. In keeping with the practice of GRECO, the recommendations are addressed, via the Head of delegation in GRECO, to the authorities of San Marino, which determine the national institutions/bodies that are to be responsible for taking the requisite action. Within 18 months following the adoption of this report, San Marino shall report back on the action taken in response to GRECO's recommendations.

11. To prepare this report, a GRECO evaluation team (hereafter referred to as the "GET"), carried out an on-site visit to San Marino from 24 to 28 June 2024, and reference was made to the responses by San Marino to the Evaluation Questionnaire, as well as other information received, including from civil society. The GET was composed of Ms Panagiota VATIKALOU, Judge, Athens Court of Appeal (Greece), Mr Alexandru CLADCO, Prosecutor, International legal assistance and cooperation unit, General Prosecutor's Office (Republic of Moldova), Mr Ernst GNAEGI, Former Head of the International Criminal Law Unit, Federal Office of Justice (Switzerland), and Mr Seth JAFFE, Chief Ethics Law and Policy Branch, U.S. Office of Government Ethics (United States of America). The GET was supported by Ms Victoria CHERNIYCHUK and Mr Ylli PECO from GRECO's Secretariat.

12. The GET met with members of the Congress of State, the Director General of the Civil Service, Heads of Departments, political staff members of ministers' offices, members of the Ethics Committee of the Congress of State, the Head of the Court, judges, law commissioners and *Procuratore del Fisco*. It interviewed representatives from the Ministry of Foreign Affairs, the Ministry of Internal Affairs, the Ministry of Labour, the Ministry of Justice, the State Institutional Secretariat, the Public Finance and Control Commission, the Directorate of Public Finance, the Supervisory Authority for Information, the Gendarmerie, the Civil Police, the Fortress Guard and the Military Congress. Meetings were also held with journalists, academics, lawyers and trade unions.

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<sup>1</sup> More information on the methodology is contained in the Evaluation Questionnaire which is available on GRECO's [website](http://www.coe.int/greco).

### III. CONTEXT

13. San Marino has been a member of GRECO since 2010 and has undergone four evaluation rounds focusing on different topics related to the prevention of and fight against corruption. In summary, 100% of recommendations were implemented in the Joint First and Second Evaluation Round and 80% in the Third Evaluation Round. In the Fourth Evaluation Round, dealing with corruption prevention in respect of parliamentarians, judges and prosecutors, 72% of all recommendations were fully implemented, 21% partly implemented and 7% not implemented.

14. With a population reaching almost 34,000 inhabitants as of 30 June 2023<sup>2</sup>, San Marino is a landlocked republic, covering an area of 61.2 sq. km. It is a unitary multiparty republic, with a unicameral parliament. Due to its geographical position, institutional and economic relations with Italy play a particularly important role.

15. San Marino is one of GRECO's smallest member States. Although this characteristic might seem to increase the risks of collusion, nepotism and favouritism, it also fosters a certain mutual trust due to constant "moral scrutiny" by society: undue advantages are quickly known. The country has no civil-society organisations that monitor corruption specifically, nor is it covered by any corruption perception indices such as that of Transparency International. In 2022, however, San Marino was given a score of 88.679 (out of 100) for the "control of corruption" indicator developed by the World Bank<sup>3</sup>, which is more or less the same as the last score in 2017. It also received good anti-corruption and transparency scores in the annual Freedom House rankings<sup>4</sup>.

16. The phenomenon of corruption in San Marino appears to be limited, especially after the so-called *Conto Mazzini* case, which involved a large number of former politicians (including former ministers) who in 2017 were convicted of bribery, corruption, money laundering, and vote buying. The GET has been told that this and other similar cases have acted as a deterrent to corruption, as the sentences handed down were severe. These cases have also encouraged a focus on corruption prevention. Since 2020, there have been very few cases of corruption, while there are still several prosecutions for money laundering.

17. San Marino is not a member State of the European Union (EU). Since 2015, the EU and San Marino have been negotiating an Association Agreement<sup>5</sup>, which was finalised in December 2023<sup>6</sup>. It will enter into force upon its acceptance and signature by all parties concerned. The Association Agreement will provide for San Marino's participation in the EU internal market, including financial services. Also, it will establish a framework to develop and promote dialogue and cooperation in areas of common interest, such as research and development, education, social policy, the environment, consumer protection, culture or regional cooperation.

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<sup>2</sup> <https://www.visitsanmarino.com/pub1/VisitSM/en/contenuto/About-San-Marino/POPOLAZIONE-E-TERRITORIO.html>

<sup>3</sup> World Bank, Worldwide Governance Indicators: [WGI 2022 Interactive > Interactive Data Access \(worldbank.org\)](#)

<sup>4</sup> [San Marino: Freedom in the World 2023 Country Report | Freedom House](#)

<sup>5</sup> [https://www.eeas.europa.eu/un-rome/european-union-and-san-marino\\_en?s=65](https://www.eeas.europa.eu/un-rome/european-union-and-san-marino_en?s=65)

<sup>6</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_23\\_6522](https://ec.europa.eu/commission/presscorner/detail/en/ip_23_6522)

#### **IV. CORRUPTION PREVENTION IN CENTRAL GOVERNMENTS (TOP EXECUTIVE FUNCTIONS)**

##### **Status of government and top executive functions**

###### *System of government*

18. San Marino is a parliamentary representative democratic republic. According to Article 2 of the Declaration of the Citizens' Rights and Fundamental Principles of San Marino Legal System<sup>7</sup> (the Declaration of the Citizens' Rights), San Marino's "sovereignty shall be vested in the people, who shall exercise it through the statutory forms of representative democracy". Legislative power is vested in a unicameral Parliament, namely the Great and General Council, which is composed of 60 members who are elected by popular vote for a five-year term. The Great and General Council also provides policy direction and performs control functions. Executive power is exercised by the Congress of State, which constitutes the Government. The judiciary is independent of the executive and the legislature.

###### *Heads of State*

19. Article 3 of the Declaration of the Citizens' Rights provides that the office of the Head of State is held by two Captains Regent<sup>8</sup>, who are elected by the Great and General Council, usually amongst its members. They serve a six-month term and may not be re-elected until three years after the end of the previous mandate have elapsed. The Captains Regent exercise power collegially, with a reciprocal right of veto. They represent the State in its unity and are the supreme guarantors of the constitutional order. In this capacity, and from a *super partes* position, they oversee the functioning of public powers and State bodies and the conformity of their action with the legislation in force, without taking part in the decision-making process. In this context, they may address messages to State bodies and bring any conflict of powers with other State bodies before the Guarantors' Panel on the Constitutionality of Rules (see, also, paragraph 83 below).

20. Captains Regent promulgate laws adopted by the Great and General Council and regulatory acts adopted by the Congress of State (see, also, paragraph 28 below). However, they do not have the power to veto regulatory acts. They may also issue non-regulatory decrees which are to be counter-signed by the Minister of Internal Affairs. Their main duties include, amongst others: calling the parliamentary elections; directing and coordinating the procedures that precede the formation of the Government (the State Congress); presiding over the major bodies (the Great and General Council, the Council of the XII) without the right to vote; coordinating the work of the Congress of State; receiving petitions from the public; receiving complaints concerning the activities of State bodies and referring them to competent authorities for verifications. Within fifteen days after the conclusion of their mandate, every citizen registered on the electoral roll may lodge complaints against the Captains Regent, who may be held accountable, before the Guarantors' Panel on the Constitutionality of Rules, for acts performed or failure to perform acts in the exercise of their

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<sup>7</sup> <https://www.consigliograndeegenerale.sm/on-line/documento17134126.html>

<sup>8</sup> Also, see, Constitutional Law no. 185 of 16 December 2005 on the Captains Regent (<https://www.consigliograndeegenerale.sm/on-line/documento17134130.html>), and Qualified Law no. 186 of 16 December 2005 on the Captains Regent (<https://www.consigliograndeegenerale.sm/on-line/documento17134131.html>).



functions. This is without prejudice to any criminal and civil liability to be established under ordinary jurisdiction.

21. As agreed by GRECO, a Head of State would be covered in the 5th evaluation round under “central governments (top executive functions)” when s/he actively participates on a regular basis in the development and/or the execution of governmental functions or advises the government on such functions. These may include determining and implementing policies, enforcing laws, proposing and/or implementing legislation, adopting and implementing by-laws/normative decrees, taking decisions on government expenditure, taking decisions on the appointment of individuals to top executive functions.

22. The GET notes that Captains Regent are elected by the Great and General Council for a six-month, non-renewable term. They represent national unity and act as guarantors of the constitution. Their main role is to ensure that the rule of law is upheld and that the various institutions of the State work properly together. Captains Regent have no decision-making power and cannot interfere in the political sphere. Even though they coordinate meetings of the Congress of State, they are not Heads of Government, nor members of the Government. They do not have the right to vote or express an opinion or play a role in developing or implementing Government policies or functions, which is decided by the Congress of State. While they preside over the Great and General Council, they cannot block the passage, consideration and promulgation of a bill or propose amendments to it, nor can they raise points of order. They ensure that the public is informed that a bill has been passed. When promulgating an emergency decree passed by the Government, the Captains Regent only judge the need for urgent action, not the content of the decree. Decrees issued by the Captains Regent must be countersigned by the Minister of Internal Affairs. All stakeholders met on-site concurred that the Captains Regent have a role of high institutional representation and play a coordinating role. It follows that, for the purposes of this evaluation, the Captains Regent are not considered to be persons entrusted with top executive functions (PTEFs), as defined in the previous paragraph.

### *The Government*

23. According to Article 3 of the Declaration of the Citizens’ Rights, the Congress of State<sup>9</sup> is vested with the executive power, which it exercises in accordance with the principles of collegiality and accountability. According to Article 1 of Constitutional Law no. 183/2005, the Congress of State determines the general policy of the Government and, for the purpose of its implementation, it determines the general direction of the administration. Article 2 of Constitutional Law no. 183/2005 lays down the main functions of the Congress of State<sup>10</sup>.

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<sup>9</sup> Also, see, Constitutional Law no. 183 of 15 December 2005 on the Congress of State (<https://www.consigliograndeegenerale.sm/on-line/documento17134128.html>), and Qualified Law no. 184 of 15 December 2005 on the Congress of State (<https://www.consigliograndeegenerale.sm/on-line/documento17134129.html>).

<sup>10</sup> For the purpose of implementing the Government programme, the Congress of State will, amongst others, (i) collectively implement international policy guidelines and drafts of international treaties and agreements relating to matters of general international policy and relevant to the security of the State, without prejudice to the powers of the Great and General Council; (ii) establish general administrative policies, by identifying general objectives and programmes and by issuing the relevant general directives of the Public Administration in compliance with the autonomy provided to it by law; (iii) settle conflicts of powers amongst ministers; (iv) be entrusted with the legislative initiative by drafting laws to be submitted to the Great and General Council for

24. Qualified Law no. 184/2005 provides that the Congress of State is composed of (up to ten) ministers (Secretaries of State). Following parliamentary elections, the newly constituted Great and General Council appoints ministers from amongst its members. The parliamentary mandate of an appointed minister is subsequently suspended. Non-members of the Great and General Council are also eligible for appointment as ministers, provided that they meet the requisite requirements<sup>11</sup>; however, they must not account for more than one-third of the members of the Congress of State. Upon appointment, ministers take the oath before Captains Regent. By taking the oath, the appointed Congress of State acquires full powers.

25. The mandate of a minister cannot exceed a maximum of ten years (even non-consecutive) and re-appointment cannot take place before ten years have elapsed from the end of the last mandate. A minister may be removed from office by the Great and General Council if s/he no longer meets the requirements for appointment or engages in an activity that is incompatible with the office of minister.

26. Each minister is given political and administrative responsibility for the ministry assigned to him/her and is individually accountable before the Great and General Council. When implementing the Government's general policy, ministers may adopt administrative acts and measures within their respective sectors of competence. Currently, nine ministers are males, and one minister is female. In this connection, it is recalled that, under Recommendation Rec(2003)3 of the Committee of Ministers of the Council of Europe<sup>12</sup> to member States on balanced participation of women and men in political and public decision making, the representation of either women or men in any decision-making body in political or public life should not fall below 40%.

27. The Congress of State is politically accountable, both collectively and individually, to the Great and General Council, which approves the government programme. Under Article 3 of Constitutional Law no. 183/2005, the Congress of State will remain in office for the entire legislature, unless the same Congress of State resigns. If a motion of no confidence is passed, the Congress of State is required to resign. A minister is also required to resign if a motion of no confidence is passed against him or her. A motion of no confidence against an individual minister does not entail the resignation of the entire Government. A minister will be removed from office if for any reason s/he loses the requirements for appointment or if s/he finds her/himself in a situation of incompatibility, which constitutes grounds for removal from office.

28. Article 5 of Qualified Law no. 184/2005 provides that the meetings of the Congress of State, including the first or inaugural meeting, will be convened by the Captains Regent, who will set the agenda on the basis of proposals from ministers. Thus, the Captains Regent will coordinate the works of the Congress of State. Meetings will be valid if at least half of the members of the Congress of State are present. Secretariat functions are performed by the Minister of Internal Affairs, who normally draws up minutes of meetings. Under the

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approval; (v) control and implement expenditure plans and programmes and any single measure to check whether they are consistent with approved budgets.

<sup>11</sup> The eligibility requirements are the same as for the Members of the Great and General Council. A person should be at least 21 years old on election date, a citizen of San Marino and a resident of the territory of the Republic.

<sup>12</sup> [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016805e0848](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805e0848)

supervision of the Minister of Internal Affairs, the State Institutional Secretariat (the Congress of State Section) is responsible for keeping the minutes of each meeting, for recording the topics dealt with and for drafting and distributing the Congress of State decisions. Decision-making by the Congress of State is collegial. By virtue of its regulatory powers, the Congress of State adopts delegated decrees<sup>13</sup>, emergency decrees<sup>14</sup> and regulations<sup>15</sup>.

29. It is clear from the above provisions and the information received during the on-site visit that ministers are directly involved in the exercise of executive functions and must be covered by this report.

30. A minister's office is composed of political staff members<sup>16</sup> who report directly to the minister. Law no. 5/1981 on the Regulation of secondment and leave for political functions<sup>17</sup> entitles a minister to employ a personal assistant and a secretary. A fixed-term contract is established for these staff members, who may be dismissed by the minister any time. The appointment is formalised by a decision of the Congress of State, which is published on the website of the Congress. Further, the duration of their appointment cannot exceed the minister's term of office. However, if a minister resigns for personal or political reasons, it is possible for his/her successor to renew the appointment of the political staff already appointed by his/her predecessor. Employees of the Public Administration may also be seconded to a minister's office if they are selected by the minister<sup>18</sup>.

31. The GET notes that political staff are appointed on the basis of trust and have a fiduciary relationship with the relevant minister. They have no independent functions; they act under the direction of the minister concerned and may represent and deputise for the minister in his/her absence<sup>19</sup>. Although political staff members may not have executive powers *stricto sensu*, they have executive functions as they may either participate directly in the decision-making process on public policies or may have a decisive influence on their development. In accordance with GRECO's standing practice, political staff members are also considered to be PTEFs and should be covered by this report.

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<sup>13</sup> According to Article 3 bis of the Declaration of the Citizens' Rights, "the Great and General Council may, by means of a law, delegate to the Congress of State the adoption of decrees having force of law, which shall be ratified by the Great and General Council". Under Article 11 of Qualified Law no. 184/2005, the text of delegated decrees adopted by the Congress of State are transmitted to Captains Regent for promulgation.

<sup>14</sup> According to Article 2 (2) (b) of Constitutional Law no. 183-2005, "the Congress of State, in case of need and urgency, shall adopt decrees having force of law, which shall be submitted to the Great and General Council for ratification within three months, under pain of nullity". The preamble to such "decree-law" will indicate the extraordinary circumstances determining the need and urgency of their adoption, as well as the relevant decision by the Congress of State.

<sup>15</sup> According to Article 2 (2) (h) of Constitutional Law no. 183/2005, regulations lay down the forms and modalities for the implementation of laws, as well as the rules governing the organisation and functioning of public offices. They are to be submitted by the Congress of State to the Captains Regent for promulgation and will indicate in the preamble the relevant decision by the Congress of State and the relevant reference legislation.

<sup>16</sup> For example, the staff of the Ministry of Foreign Affairs, International Economic Cooperation and Telecommunications currently comprises: a personal assistant to the Minister, a secretary and four experts (<https://www.esteri.sm/pub2/EsteriSM/en/Segreteria/Staff.html>). Likewise, the staff of the Ministry of Internal Affairs includes: a personal assistant to the Minister, a secretary and four officials (<https://www.interni.sm/pub1/InterniSM/Segreteria-di-Stato/Staff.html>).

<sup>17</sup> <https://www.consigliograndeegenerale.sm/on-line/home/archivio-leggi-decreti-e-regolamenti/documento17019707.html>

<sup>18</sup> Article 49 § 1(c) of Law no. 188 of 5 December 2011

<sup>19</sup> However, a minister may not be replaced within the commissions and bodies established and governed by a regulatory act and of which the minister is a member, unless expressly provided for.

32. In addition to the staff of a ministry, a Minister may appoint technical experts, referred to as temporary consultants. In accordance with Article 73 of Law no. 168 of 21 December 2009, the Congress of State may appoint temporary consultants with proven specialisation, for the purposes of a specific project or task not covered by the activities of the Public Administration<sup>20</sup>. The work of these consultants is governed by contracts. Expenditure on temporary consultancy services is subject to approval by the Congress of State and legitimacy control<sup>21</sup> (see paragraph 84 below).

33. The GET learnt from the on-site meetings that the San Marino Legal Institute designates such consultants to assist working groups set up for the preparation of draft laws. In all other cases, the Congress of State autonomously designates its own consultants. In general, they do not have any high-level functions. As stated in paragraph 52 below, they are bound by the Code of Conduct for Public Officials. At the same time, like the tasks of political staff, the duties of consultants can vary and cover sensitive areas (e.g. negotiations with the European Union). Their assignment may include, for example, legal research and advice, drafting or updating laws and other regulations, and working with authorities in international negotiations<sup>22</sup>. The GET considers that consultants whose duties are similar to those of the political staff members should be assimilated to PTEFs. On the other hand, consultants hired for a very limited period of time and who do not advise directly or work closely with a minister should not be regarded as PTEFs.

34. Each ministry supervises and monitors the functioning of the administrative bodies and sectors of the Public Administration<sup>23</sup> for which it is responsible (art. 5, para. 3, letter b) of the Constitutional Law no. 183/2005). In accordance with article 18, last paragraph, of Law no. 184 of 15 December 2005, the Public Administration departments are independent of the areas of competence resulting from the formation of the Government (article 1 of Law no. 3 of 7 November 2011). The Congress of State and ministers, within their respective areas of competence, interact with the departments and organisational units for which they are responsible pursuant to articles 4 and 5 of Constitutional Law no. 183 of 15 December 2005 (art. 11 of Law no. 188/2011). The Public Administration interacts with the Congress of State on the basis of the principle of separation of political and administrative functions. The Public Administration is thus entrusted with purely administrative responsibilities and enjoys autonomy in implementing the programmes and directives adopted by the Congress of State.

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<sup>20</sup> See the guidelines adopted by Congress of State Decisions no. 8 of 29 June 2020, no. 7 of 22 March 2021 and no. 12 of 27 September 2021. As a general rule, professional consultancy assignments should not exceed 12 months.

<sup>21</sup> Article 107, paragraph 3, letter d) of law no. 30 of 18 February 1998; Article 44, paragraphs 3, 4, 5 and 6 of Law no. 150 of 21 December 2012.

<sup>22</sup> See, for example, the Congress of State decisions no. 29 of 8 August 2023; no. 23 of 5 September 2022; no. 32 of 20 September 2021; no. 20 of 28 December 2023.

<sup>23</sup> Law no. 188-2011 on the Reform of the Structure and Organisational Model of Public Administration states that “Public Administration shall mean only all the organs of the Civil Service, as well as the Departments, the Organisational Units into which they are divided and the Authority referred to in the other Annex A” appended to the Law (<https://www.consigliograndeegenerale.sm/on-line/home/archivio-leggi-decreti-e-regolamenti/documento17047067.html>). It consists of Departments, Entities of the Overall Public Sector and Offices and Services. Currently, it counts eight Departments: Foreign Affairs; Institutional Affairs and Justice; Finance and Budget; Economy; Territory and Environment; Education; Tourism and Culture; and Civil Service. For example, the Ministry of Foreign Affairs is responsible for the [Department of Foreign Affairs](#). The [Ministry of Internal Affairs](#) is responsible for the Department of Institutional Affairs and Justice and the Civil Service Department.

35. Heads of Departments<sup>24</sup> of the Public Administration are appointed by the Congress of State for a renewable term of three years. They report to the competent minister and to the Congress of State. They are not members of the Congress of State. Nor are they competent to take political decisions. Their decision-making powers concern budgetary matters, human resources, administrative management and implementation of the activities of the Department. They coordinate the work performed by the structural units of the Department, while respecting the autonomy and exclusive competence of the Units' Managers (*dirigenti*)<sup>25</sup>. Heads of Departments convene and chair the meetings of the Department Council, an advisory body composed of Units' Managers. In any event, their term of office terminates automatically at the end of the legislature. In the event of a loss of confidence, the Congress of State may terminate the appointment of a Head of Department with at least one month's notice. A Head of Department may be removed from office by the Congress of State<sup>26</sup> if s/he no longer meets the requirements for appointment or engages in an activity that is incompatible with this office.

36. The GET was told that a Head of Department is an executive position with large powers. A Head of Department is in a fiduciary relationship with the relevant minister, and his/her term of office is usually the same as that of the relevant minister. They may be recruited from within or outside the public administration and are subject to the obligations of civil servants. Their appointment is announced on the government website. Heads of Departments provide technical support to and work very closely with the ministers, who may delegate expenditure powers to them (by decision of the Congress of State and within the limits set by law). The GET considers that the functions performed by Heads of Departments justify considering them to be closely linked to the decision-making process and therefore to be PTEFs for the purposes of this evaluation.

37. Diplomatic and consular officials and agents are governed by Law no. 14 of 1 February 2023<sup>27</sup>. They implement the foreign policy lines expressed by the Great and General Council, the Congress of State and the Secretariat of State for Foreign Affairs. The GET does not regard these officials as PTEFs for the purposes of this report (they carry out decisions and policies of the government in a very specific field).

38. To sum up, the GET takes the view that the following are to be regarded as PTEFs for the purposes of the present evaluation: members of the Congress of State (ministers), Heads of Departments, ministers' political staff members and consultants whose duties are similar to those of political staff members.

39. The GET notes that the legal status and conditions for recruitment of certain PTEFs would benefit from better regulation. The regulatory framework covering political staff members has not been revised since 1981. Their tasks can be diverse (for example, they can include preparing ministerial agendas, drafting laws and decisions); however, there is no specific regulation defining the tasks that can be assigned to them. The *curricula vitae* of

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<sup>24</sup> Law no. 188 of 5 December 2011; Law no. 105 of 31 July 2009; Law no. 108 of 31 July 2009

<sup>25</sup> Units' Managers (*dirigenti*) were covered in GRECO's Second Evaluation Round (see paragraphs 111, 127, 128, 134, 142 152 and 161 *in fine* of the [Evaluation Report](#)). See also Law no. 108 of 31 July 2009.

<sup>26</sup> Article 20 § 4 of Law no. 188 of 5 December 2011

<sup>27</sup> <https://www.consigliograndeegenerale.sm/on-line/home/archivio-leggi-decreti-e-regolamenti/documento17137497.html>

political staff members are normally available on the websites of the relevant ministries. However, the ministerial websites do not mention their responsibilities. Given that political staff members may be given a wide range of tasks by ministers, may handle confidential information and may be involved in the political decision-making process, the GET considers that there is a need to ensure greater transparency of their status, conditions for recruitment and competences. The same applies to consultants whose duties are similar to those of political staff members and who advise directly or work closely with a minister. The authorities ought to develop an appropriate legal framework and, in the interests of transparency, to ensure that information on the main and secondary activities of political advisers, their areas of expertise and salaries, as well as their curricula vitae, are available online.

40. The GET further observes that persons with top executive functions are not subject to any specific integrity checks upon their appointment or recruitment, other than verification of pending criminal charges and convictions. In this connection, some of the GET's interlocutors referred to self-declarations. Indeed, public officials, including all categories of PTEFs, are required to declare the nature and extent of any personal or private interests that could be related to their official duties at the time of their appointment and at regular intervals thereafter. They are also required to declare any membership of associations, foundations or organisations which may give rise to a conflict of interest. Such declarations are made to the official's immediate superior (see Article 10 of the Code of Conduct for Public Officials, paragraph 96 below). It is also common practice for Heads of Departments appointed from outside the public sector to certify the absence of any incompatibilities when signing the employment contract. However, these self-declarations are not made public; they do not cover all types of conflicts of interest and there does not appear to be any verification mechanism.

41. The GET considers in this respect that integrity checks are intended to prevent corruption by making it possible to detect conflicts of interest of potential candidates for a given public office and thus to boost public confidence in these high-level posts. This is particularly important in the case of consultants and experts who are recruited at the discretion of the minister they serve (some of whom may come from the private sector, working on fixed-term or consultancy contracts, and may return to the private sector at the end of their government service). Integrity checks should be formalised, based on clear criteria and cover the candidates' financial position, outside activities, previous jobs, links to lobbyists or third parties who may wish to influence decision-making, inner circle (interests of close family members) and personal connections etc. Integrity checks could also be useful in order to verify that candidates really meet all the requirements for a given post. Therefore, **GRECO recommends (i) that detailed rules be developed and adopted setting out the conditions for appointment and recruitment of political staff members and consultants with similar functions as well as their tasks, rights and obligations; (ii) that their names, functions, areas of expertise, remuneration (for the tasks performed for the government) and any outside activities be made public and kept up to date; and (iii) that all persons with top executive functions undergo integrity checks as part of their appointment or recruitment in order to prevent and manage conflicts of interest.**

#### *Remuneration of persons with top executive functions*

42. The remuneration of members of the Congress of State (including special allowances) is regulated by Law no. 149 of 28 October 2009 (see Annex F) and Law no. 118 of 23 October

1990 (see point 1 of Annex). The remuneration and related allowances for political staff members of ministers is governed by Law no. 149 of 28 October 2009<sup>28</sup>. A distinct tax (12%) is applicable to allowances or similar remuneration paid to members of the Congress of State and public officials<sup>29</sup>.

43. The remuneration of Heads of Departments of the Public Administration is set out in Article 19 of Law no. 108 of 31 July 2009, its implementing decree (no. 21 of 6 March 2013 updated by Delegated Decree no. 38 of 29 February 2024) and Article 1 of Law no. 113 of 23 August 2016 (as subsequently amended)<sup>30</sup>. The remuneration consists of (i) base salary (3,100 euros (€) in 2020); (ii) additional (position-based) salary (€ 550 in 2020); (iii) performance-related bonus; (iv) an allowance for fixed-term contracts (a maximum of € 500 in 2020). There are ten seniority steps with a two-year progression. The bonus for each step is equal to € 85. In any event, yearly remuneration (including allowances and consulting fees and excluding severance pay) must not exceed € 100,000 gross. The above limit may only be exceeded in respect of performance-related bonus (if based on objective parameters), but in no case may such remuneration exceed fifty per cent of the base salary.

44. The range of salaries<sup>31</sup> for PTEFs (including allowances and excluding performance-related bonuses) is as follows:

Relevant PTEF		Salary €/month GROSS	Salary €/month NET
Minister ( <i>Segretario di Stato</i> )	Beginning of legislature	€ 3,585.30 (basic remuneration) € 5,905.87 (total amount including allowances)	€ 4,729.60
	End of legislature	€ 3,585.30 (basic remuneration) € 6,089.11 (total amount including allowances)	€ 4,858.43
Head of Department of the Public Administration	Beginning of legislature	€ 3,290.00 (basic remuneration) € 4,340.00 (total amount including allowances)	€ 3,473.27
	End of legislature	€ 3,290.00 (basic remuneration) € 4,510.00 (total amount including allowances)	€ 3,588.57
Personal assistant to a minister	Beginning of legislature	€ 2,751.48 (basic remuneration) € 2,837.44 (total amount including allowances)	€ 2,379.93
	End of legislature	€ 2,751.48 (basic remuneration)	

<sup>28</sup> See also Delegated Decree no. 38 of 29 February 2024 "Provisions on the remuneration of State personnel excluded from collective bargaining in the public service and the adjustment of the remuneration of State lawyers, ministers, political staff and magistrates".

<sup>29</sup> Article 13 of Law no. 166 of 16 December 2013.

<sup>30</sup> As amended by Article 30 of Law no. 113 of 7 July 2020.

<sup>31</sup> The average gross monthly salary in San Marino amounts to approximately € 2,257 per month.

Relevant PTEF		Salary €/month GROSS	Salary €/month NET
		€ 2,943.34 (total amount including allowances)	€ 2,460.72
Secretary of a minister	Beginning of legislature	€ 2,005.09 (basic remuneration) € 2,062.40 (total amount including allowances)	€ 1,778.43
	End of legislature	€ 2,005.09 (basic remuneration) € 2,137.12 (total amount including allowances)	€ 1,833.77
Consultant to a minister (expert etc)		“Remuneration per post”, to be established according to the consultancy services, within the limits set by Law no. 113/2016 and subsequent amendments.	

## Anticorruption and integrity policy, regulatory and institutional framework

### *Anti-corruption policy*

45. San Marino does not have a general anti-corruption policy. Following a recommendation to develop a comprehensive anti-corruption work programme, made by GRECO in its Joint First and Second Evaluation Round, the Government identified four priority areas prone to high corruption risks : (i) recruitment and promotion of public officials; (ii) public procurement; (iii) administrative acts triggering direct and immediate economic effects for the persons concerned (e.g. undue granting of unemployment benefits to citizens not complying with legal requirements); and (iv) administrative acts with no direct and immediate economic effect on the persons concerned (e.g. placement of an authorisation request at the top of a waiting list). The Government further defined the relevant risk assessment criteria and mandated the competent Directors of the Public Administration (*dirigenti*) to develop and implement tailored corruption prevention programmes for these areas<sup>32</sup>. To date, corruption prevention plans have been adopted for the areas of building authorisations and permits<sup>33</sup> and the recruitment of public officials<sup>34</sup>. Moreover, a new legislative framework is now in place to govern public procurement<sup>35</sup>.

46. During the on-site meetings, the GET was informed that corruption prevention plans have been made to identify and mitigate corruption risks within and for the public administration, but that there are no such plans focusing on political activities and specifically targeting PTEFs. In this context, the GET underlines that the accountability of PTEFs has

<sup>32</sup> Decision of the Congress of State no. 17 of 10 November 2015.

<sup>33</sup> Decision of the Congress of State no. 22 of 26 April 2016.

<sup>34</sup> Decision of the Congress of State no. 13 of 17 April 2023.

<sup>35</sup> It consists of specific transparency measures for publicity and publication on the Government Portal regarding intended supplies of goods and services, announcements of tenders including award criteria, final decisions, as laid out in Delegated Decree No. 143/2014. Other key improvements made in this domain refer, *inter alia*, to the establishment of a single public procurement authority and a suppliers register, introduction of principles of affordability and money for value, etc.



become an increasingly sensitive issue in GRECO member States, given their executive powers or proximity to the exercise of these powers, as well as the specific corruption risks to which they are exposed (e.g. risks of nepotism, favouritism or those arising from the interface between business and political actors; risks related to lobbying, asset ownership or post-governmental employment). Addressing these specific risks in a transparent, coordinated and systematic manner, in particular by adopting a dedicated policy document (e.g. a strategy or an action plan) covering all PTEFs, would clearly provide added value. Such a document should be subject to public consultations and published (including on official websites). It should also be based on a comprehensive risk assessment specific to PTEFs and include concrete steps to mitigate the risks identified in relation to them. It should also be regularly reviewed and updated. Consequently, **GRECO recommends that a dedicated policy document be drawn up and made public, based on a systemic analysis of corruption and integrity-related risks covering all persons with top executive functions and identification of corresponding remedial measures.**

#### *Regulatory and institutional framework*

47. San Marino does not have a specialised anti-corruption agency. The Ethics Committee<sup>36</sup>, which was established pursuant to the Code of Conduct for members of the Congress of State (Article 7), deals with ethical issues concerning ministers.

48. Pursuant to the Code of Conduct for Public Officials, the Directorate General of Civil Service (DGFP) is responsible for promoting integrity and preventing corruption within the Public Administration and the Overall Public Sector.

49. Repression of corruption is heavily based on criminal law provisions<sup>37</sup>. In addition to the relevant Codes of Conduct which are described below, the rules of ethical conduct applicable to public officials are set out in the following legislation: Law “On Senior Managers”, no. 108 of 31 July 2009; Law “On the Public Administration”, no. 188 of 5 December 2011; Rules of Procedure of the Congress of State (Regulation no. 3 of 22 March 2017); Qualified Law “On the Congress of State”, no. 184/2005; Law “On Incompatibilities relating to public employment”, no. 38 of 8 September 1967; Law no. 41 of 22 December 1972 on “State employees”. Some rules are also contained in the Collective Agreement for Civil Servants.

#### *Ethical principles and rules of conduct*

50. A Code of Conduct for members of the Congress of State has been in force since 1 July 2022. It was adopted by the Congress of State Decision no. 16 of 29 June 2022 and amended by Decision no. 14 of 14 November 2022. The Code applies to all ministers and contains 12 provisions covering general rules principles, the role of the Ethics Committee, as well as specific issues relating to conflicts of interest, declaration requirements, gifts, duty of confidentiality and duties after the termination of a minister’s mandate. The Code is published and made accessible on the website of the Congress of State<sup>38</sup>. No report on the application of the Code has been prepared to date.

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<sup>36</sup> <https://www.congressodistato.sm/pub1/CongressoSM/Codice-di-condotta/Il-Comitato-Etico.html>

<sup>37</sup> See GRECO’s First Round [Evaluation Report](#) (paragraphs 9-13) and Third Round [Evaluation Report](#) (Theme I)(paragraphs 9-57).

<sup>38</sup> <https://www.congressodistato.sm/pub1/CongressoSM/Codice-di-condotta/Normativa-di-riferimento.html> and <https://www.consigliograndeegenerale.sm/on-line/documento17136176.html> for the English version.

51. 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, declaration requirements, incompatibilities, ancillary activities and post-employment. The Code was published and made accessible on the governmental internet portal<sup>39</sup>. The explanatory report on the draft Code of Conduct, which clarifies its scope of application, is also available online<sup>40</sup>.

52. The Code of Conduct for Public Officials applies, in particular, to Heads of Departments of the Public Administration, political staff of the ministries, as well as consultants with similar functions<sup>41</sup>. The Code of Conduct for Public Officials applies also to ministers, to the extent that it is compatible with the Code of Conduct for members of the Congress of State and other rules specific to this category. It provides “reference principles” for ministers’ conduct<sup>42</sup>.

53. The GET welcomes the adoption of the Code of Conduct for members of the Congress of State, as it demonstrates the willingness of the Sammarinese authorities to take into account the recommendations made by GRECO to other member States and thus to comply with international standards and practices. Drawing from on-site meetings and having compared the provisions applicable to different categories of PTEFs, the GET wishes to make the following observations.

54. In the first place, the GET notes certain gaps in the material scope of the Code of Conduct for members of the Congress of State and the Code of Conduct for Public Officials. Neither of them covers the issue of contacts with third parties or lobbyists seeking to influence government policy. The Code of Conduct for members of the Congress of State does not deal with incompatibilities and outside activities of ministers. Whilst the main text regulating these issues is Qualified Law No. 184/2005 on the Congress of State (Articles 9 and 10), the GET maintains that, in line with established practice, all integrity related issues and standards should be consolidated in a single document. If information is scattered, the likelihood of it being ignored is high. The Code of Conduct for Public Officials does address incompatibilities (in Article 11), which are also regulated by several other Laws (see paragraph 97 below). However, for the sake of clarity and effective implementation, it would be preferable to bring together all the provisions dealing with these issues, for example, in a practical guide to be developed.

55. In this connection and secondly, the GET believes that both Codes of Conduct would benefit from relevant definitions, clarifications, detailed explanations and concrete real-life examples, covering all relevant integrity issues and specific risk areas to be identified, which could be compiled in a practical guide supplementing their interpretation and application. For

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<sup>39</sup> <https://gov.sm/pub1/GovSM/Amministrazione-Trasparente/Atti-di-carattere-normativo-ed-amministrativo-generale/Codici-di-Condotta.html> and <https://www.consigliograndeegenerale.sm/on-line/documento17134143.html> for the English version.

<sup>40</sup> <https://www.consigliograndeegenerale.sm/on-line/home/archivio-leggi-decreti-e-regolamenti/documento17065462.html>; Progetto di legge “Codice di condotta per gli Agenti Pubblici” - Consiglio Grande e Generale

<sup>41</sup> Article 2 paragraphs 4 and 5 of the Code of Conduct for Public Officials and paragraph 8 of the guidelines adopted by Congress of State Decision no. 8 of 29 June 2020. The relevant contract (e.g. a consultancy agreement) contains a provision whereby a consultant undertakes to comply with the above Code of Conduct.

<sup>42</sup> Article 2 paragraph 5 of the Code of Conduct for Public Officials.

example, while both Codes provide a general definition of a conflict of interest, they do not explain the difference between an apparent, potential and actual conflict of interest (see, also, paragraph 87 below). Also, the Code of Conduct for members of the Congress of State uses the term "direct [and] personal interest" to define a conflict of interest, which appears to be narrower than the term "personal interest" used in the Code of Conduct for Public Officials (see, for further details, paragraphs 88-89 below). In addition, there is no definition of a courtesy and protocol gift or conventional hospitality (see paragraph 104 below). In this respect, the GET underlines the importance of not only supplementing or clarifying the codes where necessary, but also keeping them up to date. The Code of Conduct for Public Officials has not been updated since 2014. The value of any code of ethics lies partly in its open-ended nature and its ability to adapt to the ethical issues that may arise over time. Regular review and updating of a code of ethics is essential to ensure that its principles are truly reflected in the day-to-day work of its addressees. Such updating should follow a regular assessment of the impact and effectiveness of both Codes and go hand-in-hand with the identification of risk areas.

56. Lastly, as regards the enforcement mechanism, Article 8(4) of the Code of Conduct for members of the Congress of State empowers the Congress of State to sanction a minister by means of a warning. In this connection, the Congress of State consults the Ethics Committee and takes its opinion into account. The Congress of State may also make the warning public "if appropriate". The GET has been informed that no such warning has yet been issued. The GET is of the opinion that a public warning can have a very strong impact on the career of state politicians, similar to other forms of sanctions. The Code of Conduct for members of the Congress of State could be strengthened by either making all warnings public or by clearly specifying the criteria that would render a violation of its provisions sufficiently serious to trigger the publication of the warning. The GET also believes that a serious breach of the Code by a minister should trigger an open government debate.

57. Supervision over compliance with the Code of Conduct for Public Officials is entrusted to the Administration's line managers<sup>43</sup>, the Directorate General of Civil Service (*Direzione Generale della Funzione Pubblica – DGFP*) and the Disciplinary Commission. Failure to comply with this Code may result in disciplinary action against Heads of Departments (ministers, political staff members and consultants with similar functions are not subject to disciplinary rules applicable to public officials). In the event of a breach of this Code, the contracts of political staff members and consultants with similar functions may be terminated by a minister, even if the misconduct in question would in principle require a less severe sanction. In such a case, a minister is entitled to consider that a breach of the ethical rules amounts to a breach of a relationship of trust on the part of the political staff or expert concerned.

58. The GET considers that, for the sake of consistency and better effectiveness, PTEFs should be subject to similar rules of conduct, addressing all the gaps, inconsistencies and other shortcomings identified in this report. Such rules should be complemented by necessary definitions, detailed clarifications and explanatory materials as well as practical guidance and

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<sup>43</sup> Article 20 of the Code of Conduct for Public Officials requires managers to ensure that their staff comply with the Code and take necessary measures to prevent staff from engaging in corrupt acts related to their duties. They shall be liable for the acts and omissions of their staff that violate the Code of Conduct if they have failed to take the reasonable measures required of a person in the exercise of his or her duties to prevent such acts or omissions. In this regard, it has been explained to the GET that managers may be held liable for inadequate control of their staff; they are not directly responsible for any type of violation committed by their subordinates.

their effective supervision and enforcement ought to be strengthened. **GRECO recommends (i) that the codes of conduct applicable to persons with top executive functions be harmonised (or consolidated if necessary) and updated so as to cover all integrity related matters (e.g. conflicts of interest, incompatibilities, gifts, outside activities, third party contacts, post-employment restrictions, financial declarations, handling of confidential information and misuse of resources); (ii) that the codes of conduct be complemented by practical guidance with necessary definitions, detailed clarifications, explanatory materials and illustrative examples regarding conflicts of interest and other integrity-related matters; and (iii) that the supervision and enforcement of the codes of conduct be strengthened and become effective.**

#### *Awareness*

59. The Code of Conduct for members of the Congress of State has set up an Ethics Committee, the main functions of which include organisation of awareness-raising activities, publication and regular updating of guidelines (including practical examples, good practices etc), examination of matters relating to the interpretation and application of the Code of Conduct<sup>44</sup>, provision of confidential advice on gifts, potential conflicts of interest and other issues concerning the interpretation and application of the Code of Conduct. It is composed of three members: the Director of the State Institutional Secretariat, the Director of the State Litigation Service (*Avvocatura dello Stato*) and a legal expert appointed by Captains Regent. Ministers are required to comply with the opinions of the Ethics Committee. If a minister disagrees with such an opinion, s/he is entitled to submit a reasoned argument. The argument will be published on a dedicated website alongside the Ethics Committee's opinion.

60. The GET notes that the Ethics Committee, despite having a significant number of responsibilities, is composed of only three members and has no secretariat or other resources. Even though it receives certain assistance from the State Institutional Secretariat in respect of administrative work and collaborates with different authorities, they do not provide sufficient support for all its activities. During the visit, the Ethics Committee indicated that it lacked resources to adequately perform all the awareness-raising, counselling and conflict-of-interest preventative tasks assigned under its responsibility. It bears noting in this connection that the Ethics Committee has issued only one recommendation since its establishment and that the required annual report on the implementation of the Code of Conduct for members of the Congress of State has not yet been issued. The GET emphasises that the provision of dedicated full-time staff with the necessary expertise (e.g. a permanent office/secretariat made available to the Ethics Committee to carry out the training, consultation and other tasks) is essential for the effective implementation of a large number of the recommendations in this report. Consequently, **GRECO recommends that the Ethics Committee be adequately provided with sufficient (human, budgetary and administrative) resources to perform the important tasks entrusted to it by law.**

61. During the visit, the Ethics Committee acknowledged that awareness-raising activities had not yet taken place. While the Code of Conduct and related documents (declaration forms, etc.) had been distributed to ministers, no dedicated briefing or training had been provided. It is envisaged to start such activities with the new ministers (who were appointed in July 2024). The Ethics Committee is also empowered to provide confidential advice. During

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<sup>44</sup> For example, on 24 April 2024, the Ethics Committee issued a recommendation clarifying the requirement of confidentiality.

the on-site visit, the Ethics Committee informed the GET that no confidential advice had been sought and that they intended to provide advice in a collegial manner. Its members further did not exclude the possibility of taking a proactive approach in this respect, if needed. In this connection, the GET recalls that GRECO has consistently recommended that the counselling and enforcement (or supervisory) functions should be entrusted to different institutions so as not to inhibit any requests for advice and to avoid conflicts of interest on the part of the body discharging both functions. The GET therefore considers that the authorities ought to fine-tune the confidential counselling mechanism made available to ministers given the role of the Ethics Committee in enforcement matters (see paragraph 56 above).

62. DGFP provides technical and legal support for the application of the Code of Conduct for Public Officials and acts as a point of reference for individual employees<sup>45</sup>. It also provides guidance on the application of the Code (through circulars, guidelines<sup>46</sup> and Intranet pages) and annual training courses on ethics and anti-corruption matters for all staff of the Overall Public Sector (including Heads of Departments). In particular, DGFP prepares three-year training plans focusing on the following priority areas: ethics and incompatibilities; transparency and prevention of corruption; administrative documents, procedures and administrative measures. Moreover, induction training is provided for persons applying for positions in the Overall Public Sector<sup>47</sup>. This training includes professional ethics, incompatibilities and the Code of Conduct. Such training was provided in 2021 and 2024.

63. Several provisions of the Code of Conduct for Public Officials require public officials to report any issues to, and seek advice from, their respective line managers (for example, Article 14 on gifts and Article 11 on incompatibilities, as well as Article 23 (1)). In accordance with Article 20 of the Code, line managers are tasked with providing appropriate anti-corruption training to their staff. Heads of Departments may seek guidance from DGFP (from the Director in particular). To date, DGFP has processed four such requests from the Heads of Departments.

64. The GET did not receive any details on the content of the programme of regular training by DGFP, its timing and modalities. Nor was it provided with the attendance rates of PTEFs. In particular, no integrity briefing or training appears to have been organised for Heads of Departments, with a particular focus on their specific role. The GET notes that this may be particularly important for Heads of Departments who are appointed from outside the Overall Public Sector. Furthermore, after interviewing several political staff members, it appears that they are not covered by DGFP's training programme. The GET sees a need for a training programme specifically designed for PTEFs and organised in such a way as to ensure their full participation.

65. The GET notes that the Code of Conduct for Public Officials does not provide for a dedicated formalised mechanism for confidential counselling on ethical issues. The GET has not been informed of any other regulation establishing such a mechanism for public officials, including PTEFs. During the on-site discussions with the authorities, it became clear that political staff members and consultants with similar functions do not currently have the

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<sup>45</sup> Article 27 § 1(c) of Law no. 188 of 5 December 2011.

<sup>46</sup> <https://www.gov.sm/pub1/GovSM/Amministrazione-Trasparente/Atti-di-carattere-normativo-ed-amministrativo-generale/Direttive-Circolari-Istruzioni-Interpretazioni-di-norme-di-diritto/Area-Gestione-Personale-Pubblico/Deontologia-e-Incompatibilit%C3%A0.html>

<sup>47</sup> Article 67 of Law no. 188 of 5 December 2011.

possibility to seek confidential advice. They used to receive such advice from the DGFP, but after the establishment of the Ethics Committee, there was a need to clarify the roles of these institutions with regard to ethical counselling and to ensure consistency thereof. In the meantime, none of them provides advice to political staff members. The authorities have further informed the GET that Heads of Departments can seek confidential advice from the DGFP's Director. In this regard, the GET points out that the Director of DGFP can initiate disciplinary proceedings against Heads of Departments and can directly impose less severe disciplinary sanctions. The GET can only reiterate its view expressed in paragraph 61 above.

66. In view of the above observations, the GET considers that PTEFs ought to be provided with compulsory initial briefings and periodic refresher courses on the ethical framework upon taking up duties and at regular intervals. Such briefing and courses will have to build on the practical guidance that will be produced in implementation of the recommendation made in paragraph 58 above. Furthermore, confidential counselling channels should be made available to them (a single channel may be more appropriate). The GET recognises the unique difficulties that a country - the size of San Marino - has in providing adequate resources and staffing for conflict-of-interest prevention mechanisms, in particular in separating the role of the provision of confidential advice from the role of supervision and enforcement of rules. But dividing these roles would likely increase the confidence of all parties in the decisions ultimately reached when enforcing disciplinary related rules. Therefore, the GET stresses again that the provision of dedicated full-time staff with the requisite expertise within all the authorities concerned is of crucial importance in this respect. **GRECO recommends (i) that compulsory dedicated briefings or trainings on integrity standards be effectively provided to persons with top executive functions upon taking office and at regular intervals thereafter, and (ii) that an effective mechanism be developed to provide consistent confidential counselling to all persons with top executive functions.**

## **Transparency and oversight of executive activities of central government**

### *Access to information*

67. San Marino is not a party to the Council of Europe Convention on Access to Official Documents (the Tromsø Convention). However, the Declaration of the Citizens' Rights provides for the obligation to ensure transparency and publicity of the acts of the Congress of State (Article 3). The only exception to the above applies to confidential decisions dealing with State security and international relations, as necessary. Qualified Law no. 184/2005 on the Congress of State (Article 15), Rules of Procedure no. 11-2010 of the Congress of State, as well as Regulation no. 3 of 22 March 2017 (Articles 33-35), further articulate the principle of publicity of administrative acts.

68. Decisions of the Congress of State are published<sup>48</sup> and disseminated on the website of the Ministry of Internal Affairs<sup>49</sup> and that of the Congress of State<sup>50</sup>. By contrast, the minutes of the Congress of State are confidential (selected parts of the minutes may be disclosed upon

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<sup>48</sup> The authorities clarified that that the decisions of the Congress of State are adopted collegially and not by majority vote. While the operative part of decisions is made public, the political positions of individual ministers remain confidential in order to protect them from outside influence.

<sup>49</sup> [www.interni.sm](http://www.interni.sm)

<sup>50</sup> <https://www.congressodistato.sm/pub1/CongressoSM/Delibere-del-Congresso-di-Stato/Delibere-del-Congresso-di-Stato-libera.html>

request by an interested party, subject to prior authorisation by the Congress of State). Regulatory acts of the Congress of State (delegated decrees, emergency decrees and regulations) are published on the website of the Congress of State and that of the Great and General Council.

69. The Congress of State has staff in charge of communications. Press conferences are organised after its sessions to explain the issues discussed and the decisions taken. The authorities further refer to information of public interest which is available on the relevant Government websites, such as decisions to award consultancy and professional collaboration contracts, curricula vitae of ministers and political staff members, salaries of ministers and other public officials, etc.

70. Law no. 160 of 5 October 2011 on Administrative Procedure and Access to Administrative Documents provides for transparency and legal certainty of administrative procedures by, *inter alia*, articulating the public's right to access administrative information<sup>51</sup>. In particular, Article 31 of the above Law requires the Administration to publish and disseminate administrative documents produced or received by it and to make public directives, circulars, instructions and other documents which contain interpretative or explanatory guidance in respect of law provisions, administrative procedures or administrative organization.

71. Regulation no. 16 of 2 December 2015 develops the requirements of publicity, transparency and dissemination of information by the Administration. In particular, the principle of transparency is understood as full accessibility of data, documents and information concerning the organisation and activities of the Public Administration. The requirement for publicity applies to a list of documents and information<sup>52</sup>. The information is published in an open format on the Administration institutional websites. Undisclosed information may be obtained through civic access, free of charge and without any need to motivate the request (Article 9 of Regulation no. 16/2015). Such request is to be submitted to the competent officer in charge of transparency (as a rule, it is a director of the relevant office or service). The information requested must be transmitted within 30 days of receiving the request. Any restriction or denial of civic access to non-confidential information may be challenged before the administrative court within 60 days. The judge of first instance may issue a decision within 30 days from the date of the hearing. The decision of the court of first instance may be appealed within 30 days<sup>53</sup>.

72. Article 30 of Law No. 160/2011, however, lays down several limitations on the right of access<sup>54</sup>. Moreover, access is limited, deferred or denied also in the following cases: if it can

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<sup>51</sup> In a judgment of 5 October 2022 (case no. 3/2021), the Administrative Court of San Marino clarified that the right of access is subject to two conditions. First, the person requesting access should have a personal interest (for example, the information requested concerns an administrative measure directly affecting that person's rights). Secondly, the documents requested must be of an administrative nature. In particular, the right of access extends not only to documents drawn up or received by the Public Administration, but also to those drawn up or received by the Parliament or the Congress of State, provided that they are administrative in nature (for example, documents of a parliamentary inquiry commission are political and not administrative in nature).

<sup>52</sup> <https://www.gov.sm/pub1/GovSM/Amministrazione-Trasparente.html>

<sup>53</sup> Article 19 of Law no. 68/1989

<sup>54</sup> In particular, access is limited, deferred or denied if it can undermine the exercise of the sovereignty and the Republic's national defence, foreign policy or international relations; State security, public order and security of individuals; the appropriate implementation of effective measures by an authority; the prevention of crimes and

lead to the dissemination of information freely provided by third parties to an authority bound by the obligation of secrecy<sup>55</sup>; if it can lead to the disclosure of professional secrets or of secrets relative to productive, commercial or industrial activities or if it can damage the privacy of third parties<sup>56</sup>.

73. The GET appreciates the legal framework developed and further measures taken to ensure access to information of public interest and to implement proactive transparency. That said, the GET wishes to make the following observations. In the first place, the GET was informed that transparency was not fully implemented in practice and that journalists' work was hampered by the inability to obtain information. The GET's interlocutors from the media also mentioned difficulties arising from irregular, unstructured publication practices on the part of the authorities (information on a particular topic is published on a piecemeal basis at different intervals). They also referred to a case in which journalists had been tried, but not ultimately convicted, for publishing information that was in the public domain.

74. Secondly, the GET notes that the statutory 30-day deadline for the authorities to provide information is rather long. Furthermore, the representatives of the judicial authorities with whom the GET met stated that, although priority is given to cases concerning access to information, the overall duration of all court proceedings takes time. The authorities provided three judgments of the Administrative Court, two of which had found in favour of the complainant. The GET stresses that access to information must be timely; this is particularly true for corruption prevention purposes. When the information comes late, it may lose its relevance and serve little purpose.

75. Thirdly, there are no official statistics on the total number of requests for information processed, which could usefully be compared with the number of complaints lodged with the administrative court. To this, should be added the fact that the list of limitations to the right of access is very extensive and drafted in rather broad terms<sup>57</sup>. This could prevent the disclosure of important information of public interest if the numerous exceptions are not interpreted and applied in a restrictive manner, in line with the spirit and overall objectives of the freedom of information legislation. The GET appreciates the cautious and thorough approach taken by the administrative judge in such cases, as evidenced by the three judgments submitted by the authorities after the on-site visit.

76. The GET believes that the applicable legislation would benefit from a review, not least because the relevant legislation dates from 2011, and the development of relevant guidelines in order to better equip the officials dealing with access-to-information requests. The involvement of independent experts and representatives of the mass media or civil society in

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investigations aimed at identifying and countering criminal, administrative, tax, customs or currency offences, or in any case resulting from the violation of law provisions or regulations; the Republic's economic and financial policy; the carrying out of all investigation, control and supervision activities.

<sup>55</sup> In a judgment of 29 September 2017 (case no. 20/2016), the Administrative Court of San Marino clarified that the obligation of secrecy cannot justify a refusal of access to documents of such an authority if the request for access is motivated by the need to defend one's rights in court.

<sup>56</sup> In the above-mentioned judgment, the Administrative Court of San Marino also clarified that the requirement of confidentiality concerns only "very sensitive data", i.e. data concerning health, sexual and family life, etc. Furthermore, if access to certain documents is necessary in order to defend one's rights in court, this interest overrides the need to protect the privacy of third parties.

<sup>57</sup> This has already been noted in the assessment of the implementation of Recommendation VII of GRECO's Joint First and Second Round (see paragraph 41 of the [Compliance Report](#)).



this process could provide significant added value. This is particularly important, as an efficient system of access to public documents and information is an essential tool for holding governments accountable and fighting corruption through knowledge. **GRECO recommends (i) carrying out an independent assessment of the regulatory framework regarding access to information and its implementation, with a particular focus on the use of exceptions, the timeliness of responses, the length of judicial proceedings and the practice of proactive disclosure; and (ii) in light of the findings of this analysis, taking the necessary legislative and practical measures to improve public access to information.**

#### *Transparency of the law-making process*

77. The legislative initiative may be exercised by, amongst others, the Congress of State, which may decide on draft laws to be submitted to the Great and General Council for approval. Moreover, the Congress of State may adopt delegated decrees, emergency decrees and regulations. There are no public consultation procedures for regulatory acts that fall within the competence of the Congress of State; nor is there a statutory obligation for it to carry out public consultations (with the sole exception of the General Town Planning Scheme<sup>58</sup>).

78. Trade union representatives told the GET that, although there is no legal obligation to do so, draft acts can be submitted to them for consultation. This is not done systematically: the Congress of State has wide discretion to decide whether a particular act requires consultation. Consultations may be held if it needs public approval for a particular measure. At the same time, consultations are not held if the Congress of State prefers to act quickly, even though a given decree may be of particular interest to trade unions. They also stated that, in their experience, the draft legislation that is finally adopted can differ significantly from the version that was submitted earlier for comments, with no opportunity for them to submit additional comments on the amended version.

79. In the GET's view, transparency of the legislative process is an important component of an anti-corruption policy. The guiding principle for public consultations is proportionality between the nature and extent of the consultation and the potential impact of the proposal or decision. Rules and procedures should be adopted, introducing appropriate timeframes and modalities (e.g. a dedicated platform) for conducting meaningful public consultations. Criteria for identifying which draft legislative acts should be subject to public consultation would also be desirable. Finally, transparency should extend to the proposals made by the public and their outcome. The contributions received and the parties involved should be documented and the outcome of public consultations should be made public in a timely manner. Therefore, **GRECO recommends (i) establishing rules and procedures regulating the conduct of meaningful and effective public consultation for draft legislation emanating from the Congress of State and (ii) introducing a legal obligation to publish the outcomes of public consultation procedures in a timely and easily accessible manner.**

#### *Third parties and lobbyists*

80. There appears to be no institutionalised lobbying in San Marino. There are no rules or procedures regulating disclosure of contacts between PTEFs and third parties or lobbyists

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<sup>58</sup> After the first reading by the Great and General Council, the draft can be viewed at the Town Planning Office for 40 days. Any observations can be submitted to the Town Planning Commission within the following 60 days (Art. 3 of Law no. 87 of 19 July 1995).

seeking to influence the decision-making process. There is also no practice of disclosure of contacts with third parties by ministers or the public administration. Furthermore, there are no rules or guidance on how PTEFs should interact with these persons.

81. The GET's several interlocutors acknowledged the existence of *de facto* interest groups (both economic and political) and the lack of transparency regarding their activities. As a possible example of such activity, they referred to a recent award of substantial benefits to a foreign economic operator doing business in San Marino. The GET notes that the Sammarinese authorities have already been encouraged to keep an eye on the issue of lobbying with a view to responding to it when necessary<sup>59</sup>. The GET wishes to stress the importance of regulating lobbying activities for avoiding any improper influence over PTEFs. While PTEFs may sometimes consider that their contacts with third parties is purely private, GRECO has consistently called for proper guidance to be provided to PTEFs so as to clearly differentiate what qualifies as strictly private exchanges from meetings that may influence, or may be seen as seeking to influence, the decision-making process. The latter should be duly reported and accessible to the public. Therefore, **GRECO recommends (i) that detailed rules on how persons with top executive functions engage in contacts with lobbyists and other third parties who seek to influence the government's decision-making processes, decisions and other activities be introduced, and (ii) that sufficient information about the purpose of these contacts be disclosed, as well as the identity of the person(s) with whom (or on whose behalf) the meeting(s) took place and the specific subject matter(s) of the discussion.** The Ethics Committee will be instrumental in providing guidance to point or define lobbyists and lobbying activities.

#### *Control mechanisms*

82. In accordance with Article 3 of the Declaration of the Citizens' Rights, the Great and General Council exercises control functions over the Congress of State in one of the following ways<sup>60</sup>: (i) questions (which are put to the Government to request data, documents and information or to verify the veracity and accuracy thereof); (ii) interpellations (in order to request explanations regarding a specific domestic or foreign policy activity); (iii) motions (in order to launch a discussion after receiving an answer to an interpellation); (iv) decisions (in order to formulate a position; these are not legislative acts, but instruments of control and political guidance that politically bind the Congress of State or another competent body; the Congress of State is required to submit a report on the implementation of a decision within 20 days); (v) inquiries, including through parliamentary commissions; and (vi) a motion of no confidence (a motion proposal may be submitted against the Congress of State or a particular minister – see also paragraph 27 above).

83. The Guarantors' Panel on the Constitutionality of Rules (the Constitutional Court) has been established by Article 16 of the Declaration of the Citizens' Rights. It is responsible for, amongst other things: verifying the conformity of laws, regulatory acts having the force of law and rules, including customary rules having the force of law, with the fundamental principles of the legal system referred to in the Declaration of the Citizens' Rights; deciding on the admissibility of referenda; deciding on conflicts between constitutional bodies; determining and assessing any institutional liability relating to acts or omissions committed by the Captains

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<sup>59</sup> See paragraph 33 of the GRECO's [Fourth Round Evaluation Report](#).

<sup>60</sup> Articles 41-52 and 97 of Qualified Law no. 3 of 3 August 2018 on the Rules of Procedure of the Great and General Council.

Regent during their six-month term of office, etc. As stated in paragraphs 19-20 above, Captains Regent may bring conflicts of power with other constitutional bodies before the Guarantors' Panel on the Constitutionality of Rules. They can also order verifications following complaints by private citizens against activities of State bodies and public administration offices and entities<sup>61</sup>.

84. The Public Finance and Control Commission<sup>62</sup> acts as the central internal audit (there are no internal audit units in the Public Administration Departments). The Commission performs legitimacy controls relating to budget management and implementation of expenditure plans and programmes. These controls are carried out either as a preventive measure (*ex ante*) or after the administrative act in question (*ex post*). They are of an administrative-accounting nature and not of a political or institutional one. They are aimed at assessing the regularity, effectiveness and cost-efficiency of management, as well as the functionality of the entire accounting and organisational structure. The Commission has the power to declare a transaction illegitimate and suspend a payment. Failure to comply with the accounting rules may result in disciplinary action and other forms of liability. During the on-site visit, the GET learnt that the Directorate of Public Finance, responsible for the technical and administrative support of the Commission's activities, would be merged with the Accounting Office and will be entrusted with additional responsibilities. Its staff will be increased accordingly.

85. The preventive legitimacy control<sup>63</sup> is carried out by the Law Commissioners<sup>64</sup> regarding decisions of the Congress of State and acts of the Public Administration, when their content is subject to it by an explicit legal provision.

86. There is no Ombudsman in San Marino.

### **Conflicts of interest**

87. A definition of a conflict of interest is provided in Article 4 of the Code of Conduct for members of the Congress of State and Article 9 of the Code of Conduct for Public Officials. The Code of Conduct for members of the Congress of State deals with actual or potential conflicts of interest, while the Code of Conduct for Public Officials refers to actual, potential or apparent conflicts of interest. As noted in paragraph 55 above, the codes do not provide any definitions or clarifications in this respect. Both Codes of Conduct require public officials to avoid any such situation and not to allow themselves to be influenced by personal interests<sup>65</sup>.

88. Ministers are considered to be in a situation of conflict of interest if, in the exercise of their powers, they have a *direct* [and] personal interest that may influence the impartial and objective performance of their duties; there is no conflict of interest if a minister is involved exclusively as a member of a broad class of persons. The Code of Conduct for Public Officials

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<sup>61</sup> Articles 2 and 6 of the Constitutional Law [No. 185-2005](#)

<sup>62</sup> Law No. 30 of 18 February 1998 on General Rules on the State Accounting System. Relevant control is also carried out by the State General Accounting Office and the Directorate of Public Finance.

<sup>63</sup> Article 24 of the Regulation no. 3 of 22 March 2017; Articles 22-27 of Law no. 68 of 28 June 1989. See also Qualified Law no. 2 of 16 September 2011 "New rules on the judicial system", Article 10 (*Transitional and coordination provisions*).

<sup>64</sup> The Law Commissioner (*Commissario della Legge*) performs jurisdictional functions in the court of first instance, in civil, administrative and criminal matters. Regarding criminal matters, the Law Commissioner is vested with investigating functions and makes decisions in the first instance.

<sup>65</sup> Article 3 of the Code of Conduct for members of the Congress of State and Article 8 of the Code of Conduct for Public Officials, as well as paragraph 2 of Article 16 of Law "On Senior Managers" no. 108 of 31 July 2009.

refers to a conflict of interest as a situation in which a public official has a personal interest<sup>66</sup> influencing, or apparently influencing, the impartial and objective exercise of duties. In this context, a personal interest is defined as a benefit for oneself or for one's spouse; cohabiting partner; blood relatives and relatives by affinity up to the fourth degree; persons with whom the official concerned has - or has had - business or political relations in the last preceding years; organisations in which he holds - or has held - management or control positions in the last two years.

89. When defining a “personal interest”, unlike the Code of Conduct for Public Officials, the Code of Conduct for members of the Congress of State does not include the following beneficiary categories: persons with whom the official concerned has - or has had - business or political relations in the last preceding years; organisations in which he holds - or has held - management or control positions in the last two years. Article 5 of the Rules of Procedure of the Congress of State, which governs the withdrawal of a minister from a session, provides an even narrower definition of a personal interest than that of the Code of Conduct for members of the Congress of State: it does not include registered<sup>67</sup> or unregistered partners among the categories of beneficiaries. The GET considers it important to clarify which definition is used for the purposes of determining the necessity to withdraw from the sitting. The GET refers to its recommendation in paragraph 58 above, which calls on the authorities to supplement both codes with the necessary clarifications, definitions, explanatory material and practical guidance.

90. Where a minister becomes aware of a conflict of interest prior to a meeting, s/he must inform the Congress of State, which will either refer the matter to another minister or examine it in a collegial manner. In case of doubt as to the existence of a conflict of interest, a minister must consult the Ethics Committee<sup>68</sup>, after informing the Congress of State. If the Ethics Committee confirms the existence of a conflict of interest, the matter in question is either reassigned, or examined collegially. If a minister detects a conflict of interest during a sitting of the Congress of State, s/he must take all the necessary measures to remove it without delay. If the minister is unable to do so, s/he must inform the Congress of State and withdraw from the sitting when the relevant matter is discussed. His/her temporary withdrawal is recorded in the minutes of the sitting and announced on the dedicated website<sup>69</sup> or in the preamble of the relevant decision<sup>70</sup>. In the event of doubt, a minister must inform the Congress of State and seek advice from the Ethics Committee, if the latter has not yet provided any guidelines on similar issues. Pending the opinion of the Ethics Committee, the discussion on the matter in question will be postponed, unless it is impossible to do so. The GET takes the view that the Code of Conduct would benefit from clarifying whether the minister

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<sup>66</sup> Unlike the Code of Conduct for members of the Congress of State, the Code of Conduct for Public Officials does not refer to a “direct” personal interest.

<sup>67</sup> The authorities clarify that this provision should be understood as including registered partners by analogy with spouses, by virtue of Article 12 of Law No. 147 of 20 November 2018 regulating registered civil partnerships.

<sup>68</sup> To date, the Ethics Committee of the Congress of State has not been asked for an opinion on the existence of a conflict of interests.

<sup>69</sup> Since 1 July 2022, there have been seven withdrawals due to a conflict of interest, according to the website of the Congress of State.

<sup>70</sup> Article 4 (4) of the Code of Conduct for members of the Congress of State. Under Article 5 of the Rules of Procedure (Regulation no. 3 of 22 March 2017), ministers are required to withdraw from the sitting when the discussion concerns matters in which they have a direct personal interest or which concern their spouse, blood relatives and relatives by affinity up to the fourth degree.

concerned can still take part in or attend the discussion, without having the right to vote, when the relevant matter is examined collegially.

91. Heads of Departments must inform DGFP<sup>71</sup> of a conflict of interest and comply with any decision taken in relation to the conflict of interest in which they find themselves. Such a decision may require them to remove themselves from a conflict-of-interest situation and/or to refrain from taking any action in relation to the administrative procedure or activity in respect of which the conflict of interest has been identified. This may include a requirement not to attend all or part of a meeting of a committee or decision-making body dealing with a matter in which they have a personal interest<sup>72</sup>.

92. Regarding political staff members and consultants with similar functions, the GET has not been able to obtain a clear understanding which official or body this category of PTEFs must inform in the event of a conflict-of-interest situation. Nor has the GET been provided with information or statistics regarding the monitoring of such situations. This is particularly important, given that political staff members and consultants with similar functions are not subject to disciplinary rules (see paragraph 57 above). In this connection, the GET refers to its recommendations in paragraphs 41, 58 and 66 above regarding the need to regulate conditions for employment and obligations of this category, to strengthen the supervision and enforcement of the rules of conduct and to establish a single counselling mechanism for all PTEFs.

## **Prohibition or restriction of certain activities**

### *Incompatibilities, outside activities and financial interests*

93. The main text regulating incompatibilities of members of the Congress of State is Qualified Law no. 184/2005 (Articles 9 and 10). The office of ministers is incompatible with: any office in trade unions or in professional, industrial, craft or commercial associations; activities of self-employed professionals; business activities in industry, handicraft or trade; holding any operating licence; any position of president, legal representative, director, member of the Board of Directors, liquidator, auditor, director general, legal or administrative consultant in any company or association carrying out business activities in industry, handicraft or trade; any kind of business relationship, even on an occasional basis, with the Public Administration, also through persons associated in professional, commercial, craft and industrial business activities. The office of ministers is also incompatible with membership of occult associations. Upon assuming office, a minister must submit a declaration of non-membership (both current and former) of occult associations to the State Institutional Secretariat. Submission of a false declaration entails criminal liability<sup>73</sup>. Moreover, all the incompatibilities relating to the office of the member of the Grand and General Council also apply to the members of the Congress of State<sup>74</sup>.

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<sup>71</sup> To date, the DGFP has not yet received any such reports from the Heads of Departments.

<sup>72</sup> To date, there have been no cases where a Head of Department has abstained from taking action due to a conflict of interest. There have also been no cases where a breach of the duty to abstain has been established.

<sup>73</sup> Articles 1 and 4 of Qualified Law no. 2 of 18 June 2015 on Rules of incompatibility for membership of occult associations (<https://www.consigliograndeegenerale.sm/on-line/home/archivio-leggi-decreti-e-regolamenti/documento17076280.html>).

<sup>74</sup> Paragraph 49 of the GRECO's [Fourth Round Evaluation Report](#); Articles 18bis and 19 of the Electoral Law and Article 10 of Qualified Law no. 1 of 11 May 2007; Article 19 of Law no. 158 of 24 September 2020.

94. There are no measures to prohibit or restrict the holding of financial interests by ministers, however, they are subject to declaration requirements<sup>75</sup>. Ministers who, at the time of their appointment, are self-employed professionals or are engaged in industrial, craft or commercial activities, must cease to exercise such activities within 30 days of taking the oath. If, at the time of their appointment, they hold one of the aforementioned positions (see the preceding paragraph), they are required resign within five days of taking the oath, failing which they will be removed from office.

95. Heads of Departments exercise their functions on a full-time and exclusive basis. In accordance with Article 16 of Law “On Senior Managers” no. 108 of 31 July 2009, Heads of Departments are prohibited from engaging in the following activities: the exercise of professional, commercial, craft or industrial activities, or the provision of services in a subordinate capacity in private companies; consultancy or any other remunerated activity, either on their own behalf or on behalf of natural or legal persons governed by private law; direct or indirect business relations with the State and public entities; holding managerial or supervisory positions in private companies and entities that are profit-making or whose purpose is to carry out economic activities; any service or assignment, even of an occasional nature, whether free of charge or remunerated, on behalf of private companies and entities that are profit-making or otherwise engaged in economic activities; the direct or indirect holding of shares in the capital of profit-making companies operating in sectors within the competence of the department to which s/he is assigned or which have commercial relations with the Public Administration<sup>76</sup>; representing the rights of third parties against the State.

96. The position of Heads of Departments is also incompatible with the mandate of the member of the Great and General Council, mandates in the governing bodies of professional associations and associations of self-employed workers, trade unions and political parties and movements<sup>77</sup>. The Heads of Department are required to promptly notify DGFP of any incompatibilities, as well as of potential conflict of interest. They may be removed from office by the Congress of State<sup>78</sup> if they engage in an activity that is incompatible with this office. The position of Heads of Department is also incompatible with membership of occult associations. Upon assuming office, the Heads of Departments must submit a declaration of non-membership (both current and former) to the State Institutional Secretariat. Submission of a false declaration entails criminal liability<sup>79</sup>.

97. Ministers and Heads of Departments are also subject to incompatibilities that apply to all civil servants, as set out in Articles 1 of Law no. 38 of 8 September 1967 “On Incompatibilities relating to public employment”, Article 30 of Law no. 41 of 22 December 1972<sup>80</sup> “On Public Employment” and the Collective Agreement for Civil Servants for 2022 –

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<sup>75</sup> For more detail, see the section “Declaration requirements” below.

<sup>76</sup> More generally, they are also prohibited from holding more than 25% of the units or shares or, in any case, significant shareholdings in any company, as well as from holding company offices and licences/authorisations to carry out business, self-employed or professional activities (Article 15, paragraph 6 of the Agreement between the Government and the Trade Unions on the renewal of the Collective Agreement for Public Employees for 2022 – 2024; Article 99 of Decree-Law no. 139 of 11 December 2017; Article 30, paragraph 2 of Law no. 41 of 22 December 1972)

<sup>77</sup> Article 20 (5) of Law no. 188 of 5 December 2011.

<sup>78</sup> Article 20 § 4 of Law no. 188 of 5 December 2011.

<sup>79</sup> Articles 1 and 4 of Qualified Law no. 2 of 18 June 2015.

<sup>80</sup>

<https://www.consigliograndeegenerale.sm/on-line/home/archivio-leggi-decreti-e-regolamenti/documento17019030.html>

2024 (paragraph 6 of Article 15). Finally, without prejudice to the incompatibilities provided for ministers and Heads of Departments (above), all PTEFs are subject to incompatibilities that apply to all public officials, which are covered by Article 11 of the dedicated Code of Conduct (Law no. 141/2014). Hierarchical superiors are tasked with providing advice, notably where it is unclear whether a particular activity is compatible with a civil servant's institutional duties.

98. Consultants to ministries are allowed to work part-time and to engage in parallel activities. During the on-site interviews, the GET was informed that this category of PTEFs is not subject to a strict incompatibility regime. While Article 11 of the Code of Conduct for Public Officials is in principle applicable to them, in practice the relevant prohibitions are not strictly applied. This lack of clarity is exacerbated by the fact that it is not specified which official or authority is to be considered the "hierarchical superior" of this category of PTEFs and whom they must consult in case of doubt. In this respect, the GET refers to its recommendation in paragraph 41 above and considers that the incompatibilities applicable to consultants need to be clarified, when elaborating regulations on their conditions for employment and obligations. Furthermore, referring to its recommendation in paragraph 66 above, the GET underlines that the provision of adequate training and counselling by dedicated full-time staff members is necessary in this regard.

#### *Contracts with state authorities*

99. As stated above, PTEFs are prohibited from entering into business relations with the public administration either directly or indirectly. During the on-site meetings with the authorities, the GET was told that there is no official list of companies doing business with the Public Administration. However, all contracts awarded by the Public Administration are published on the Government's web portal.

#### *Gifts*

100. In accordance with Articles 14-16 of the Code of Conduct for Public Officials, a PTEF must not allow others to oblige him, or cause him to appear obliged, to return a favour to any natural or legal person. PTEFs are further not allowed to request or accept any benefit that may influence or appear to influence the impartiality with which they perform their duties, or that may constitute, or appear to constitute, a reward in relation to their duties. Ministers are specifically prohibited from soliciting or accepting any undue advantage or benefit in exchange for influencing a legislative or administrative act of the Congress of State<sup>81</sup>.

101. This prohibition covers gifts, favours, invitations or any other advantage intended for a PTEF or for his/her spouse, cohabiting partner, relatives and relatives in law up to the fourth degree, persons with whom the PTEF concerned has - or has had - business or political relations in the last preceding years; organisations in which he holds - or has held - management or control positions in the last two years. The prohibition does not apply to traditional hospitality or gifts with a value of less than €100, which must always be of an occasional nature. As regards ministers, this limit also applies to the sum of the value of multiple gifts, presents or benefits of the same kind or otherwise attributable to the same donor during the same calendar year.

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<sup>81</sup> Article 3 (3) of the Code of Conduct for members of the Congress of State.

102. In accordance with Article 6 of the Code of Conduct for members of the Congress of State, ministers are allowed to accept the following benefits: gifts or similar benefits offered in accordance with the customs of courtesy or the duty of hospitality to representatives of the Congress of State in their official capacity (within the limits mentioned above); offers of accommodation in accordance with diplomatic and courtesy customs; reimbursement by third parties of expenses related to the participation of ministers, in the exercise of their functions, in events organised by such parties (travel, board, lodging and subsistence expenses).

103. Gifts, the value of which exceeds the established ceiling, and which cannot be refused as a matter of courtesy, must be handed over to the State (perishable goods must be given to public administration units or donated to non-profit organisations)<sup>82</sup>. Ministers must inform the Ethics Committee which will decide on such gifts. Other PTEFs must give them to their line manager. In all cases where a PTEF accepts an invitation or a benefit that cannot be refused or returned, s/he must inform his/her line manager in writing. If an undue advantage is offered, public officials must: refuse the offer, inform their line manager as soon as possible or the competent criminal authority directly, treat the case in which the undue advantage was offered in the same way as any other case and follow any instructions given by the line manager.

104. Following discussions with the authorities, the GET notes that the legal framework suffers from a few gaps. Necessary clarifications and clear definitions of key terms should be provided, for example in relation to conventional hospitality, protocol and courtesy gifts. There is no requirement to report any admissible gifts or benefits received (such a requirement only applies to prohibited gifts that cannot be refused for some reason and are therefore handed over to the State). There is no internal or public register of gifts received. Even if some gifts are reported (e.g. to DGFP), there is no obligation to inform the public. The GET stresses the importance of transparency in this respect. Indeed, the public should be regularly informed about gifts to PTEFs and the identity of the donors. The GET therefore considers that a system of declaration and registration of gifts made to all PTEFs in the performance of their duties should be introduced. There is no procedure for determining the nature and value of a gift. The GET was informed that DGFP may, upon request, consult the Accounting Section on the value of a gift that is considered to be high. This basically means that the value of gifts is mainly estimated by the PTEFs themselves and is not verified. During the on-site meetings, the authorities, while noting that cases of gifts are not frequent, acknowledged the need for more precise guidance on this issue and for better coordination between the institutions dealing with it. Referring to its recommendations in paragraphs 60 and 66 above, the GET reiterates that adequate staffing of the competent authorities is needed to provide the requisite and timely guidance.

105. Taking into account the above elements, **GRECO recommends that (i) rules on gifts applicable to all persons with top executive functions be clarified and strengthened; and (ii) information about the receipt of gifts, invitations and other advantages by persons with top executive functions be recorded in a central register and be made available to the public in a timely manner.**

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<sup>82</sup> Since the entry into force of the Code of Conduct, there has been one case of a donation of a TV monitor to a minister: the asset was handed over to the State Accounting Office - State Property Unit, entered in an inventory and catalogued under State Property.



### *Misuse of public resources*

106. Pursuant to Article 19 of the Code of Conduct for Public Officials and Article 9 of the Code of Conduct for members of the Congress of State, PTEFs must ensure that the personnel, assets, facilities, services and financial resources entrusted to them are managed and used effectively, efficiently and economically and not for private or personal purposes, except as authorised by law. The general provisions of the Criminal Code on economic crimes such as theft, fraud and embezzlement apply to PTEFs.

### *Misuse of confidential information*

107. Article 18 of the Code of Conduct for Public Officials establishes a primary obligation of confidentiality. PTEFs are required, *inter alia*, to disclose information only in compliance with the relevant rules, to take positive measures to ensure its security, not to seek access to information that is not appropriate or justified by their duties and to avoid improper use of information that they may obtain in the exercise of their duties. Ministers are specifically required not to disclose the content of the debates of the Congress of State, as well as any information that could jeopardise the national security, public order or international relations of the State (Article 9 of the Code of Conduct for members of the Congress of State).

108. In a general recommendation issued on 24 April 2024<sup>83</sup>, the Ethics Committee clarified that ministers are required not to disclose or make available to third parties any information or elements on facts and circumstances that they have learned during the sessions of the Congress of State; not to disclose or communicate information and documents that they have obtained during the examination and processing of acts and during the related discussions; not to make improper use of information that may be obtained during or as a result of the exercise of their functions; to use it in accordance with their official duties and to allow access to such information by those entitled to it; and to exercise care and diligence to avoid involuntary disclosure of information in their possession.

109. PTEFs remain bound by the duty of confidentiality after their term of office has ended<sup>84</sup>. Moreover, the following provisions of the Criminal Code are applicable: Articles 192 and 377 on breach of professional secrecy, as well as Article 305 on market rigging (*aggiotaggio*).

### *Post-employment restrictions*

110. PTEFs are prohibited from taking improper advantage of their official position to obtain employment outside the public service. They must not allow the prospect of other employment to create for them an actual, potential or apparent conflict of interest. A PTEF must immediately inform his/her superior of any concrete offer of employment that could give rise to such a conflict, as well as its acceptance. For a period of two years after leaving office, a PTEF may not act on behalf of any person or organisation in relation to any matter which was affected by his/her decisions, and which would confer a special advantage on that person or organisation. Contracts concluded and tasks assigned in violation of the afore-

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<sup>83</sup> <https://www.congressodistato.sm/pub1/CongressoSM/dam/jcr:f01145a1-c499-4919-bbae-439df3f60d9b/Delibera%20n.1%20del%2024-04-2024%20-%20Comitato%20Etico.pdf>

<sup>84</sup> Article 21 (4) of the Code of Conduct for Public Officials; Article 11 (2) of the Code of Conduct for members of the Congress of State.

mentioned prohibition are to be null and void. In addition, the private persons who concluded these contracts or assigned these tasks will be prohibited from contracting with the Administration for the following two years, with the obligation to repay any remuneration received and identified as relating thereto<sup>85</sup>.

111. During the on-site interviews, the GET was informed that there were few cases of "revolving doors" and that there was no institutionalised mechanism to monitor post-employment activities of former PTEFs. To that, the GET wishes to add that the two-year ban on acting on behalf of any person or organisation in relation to matters affected by decisions taken by a former PTEF is limited in scope. It does not extend, for example, to cover lobbying of the Congress of State immediately after leaving office. Furthermore, there is little guidance on how to interpret the relevant concepts of Article 21 § 3 of the Code of Conduct for Public Officials (in particular "matters which have been influenced by decisions" of the person concerned, "activity which confers a special advantage" on a particular person or organisation). The fact that PTEFs remain bound by the duty of confidentiality and discretion, even after their term of office has ended, does not mitigate the importance and potential use of any "insider" information acquired during the term of office and its use after they leave office. Various measures could be envisaged to strengthen the system, such as temporarily restricting/prohibiting certain types of activity (e.g. lobbying), developing a specific procedure to seek prior approval and/or an obligation to report planned or current activities after leaving public office and ensuring that dedicated staff members are required to provide effective post-government employment advice and secure supervision. **GRECO recommends (i) that rules on post-employment restrictions be strengthened and broadened in scope as well as apply to all persons with top executive functions, and (ii) that an effective supervision mechanism regarding these rules be established.**

## **Declaration of assets, income, liabilities and interests**

### *Declaration requirements*

112. Under Article 5 of the Code of Conduct for members of the Congress of State, ministers are required to disclose and submit for publication, on a yearly basis, the following elements: an income tax return; a DAPEF declaration (in respect of property and financial assets held abroad and of shares in companies held abroad); data on debt exposure to banks or credit institutions (only regarding non-performance), recorded in the Credit Risk Register by the Central Bank of the Republic of San Marino<sup>86</sup>; whether they hold shares or units in resident companies; and whether they hold the position of settlor or beneficiary of trust assets<sup>87</sup>. The State Institutional Secretariat ensures the publication of the above information on the dedicated website<sup>88</sup>. The information is removed from the website two years after the minister leaves office.

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<sup>85</sup> Articles 21 and 23 (4) of the Code of Conduct for Public Officials; Article 11 (3) of the Code of Conduct for members of the Congress of State.

<sup>86</sup> This includes information submitted by all banking and financial institutions which participate in the centralised credit risk information service (Article 42 of Law no. 94 of 24 June 2022).

<sup>87</sup> The relevant declaration forms, as well as procedural matters, were approved by the Ethics Committee of the Congress of State at its meeting on 7 December 2022.

<sup>88</sup> <https://www.congressodistato.sm/pub1/CongressoSM/Codice-di-condotta/Curriculum-e-dichiarazioni-dei-Segretari-di-Stato.html>

113. Ministers are also required to disclose the same information in respect of their spouse, registered or unregistered cohabiting partner and any dependent family members (on a yearly basis as well). However, this information is not published but is made available to all ministers and the Ethics Committee. The Ethics Committee is responsible for providing guidance to ministers on the above declaration requirements. Its opinions will be published on the dedicated website<sup>89</sup>.

114. Unlike members of the Congress of State, Heads of Departments and political staff members are not obliged to submit for annual publication their income tax return, which also includes property held in San Marino. Nor are they obliged to make public the DAPEF declaration which they submit in respect of property and financial assets held abroad and of shares in companies held abroad. They do not disclose data on debt exposure to banks or credit institutions (only regarding non-performance), recorded in the Credit Risk Register by the Central Bank of the Republic of San Marino. Heads of Departments and political staff members, like all taxpayers, are required to file a general income tax return each year for income earned during the previous calendar year. However, these income tax returns are not public, but are available to the Tax Office for inspection and assessment. Depending on the amount of unpaid tax, failure to file a tax return or filing a false tax return is punishable either by imprisonment and fines (pursuant to Article 389 of the Criminal Code of 1974) or by administrative fines pursuant to Articles 139-142 of Law No. 166 of 16 December 2013.

115. Heads of Departments who were not employed in the Enlarged (Overall) Public Sector prior to their appointment must certify the absence of any incompatibilities (regarding shareholdings, outside activities, etc.) when signing the employment contract. However, such a declaration is neither registered nor made public.

116. In addition, Article 10 of the Code of Conduct for Public Officials requires public officials, including PTEFs, to declare the nature and extent of personal or private interests, which could be linked to their official duties, to their immediate superior, at the time of appointment and, thereafter at regular intervals. Furthermore, PTEFs are required to inform in writing their immediate superiors of their adherence to or membership of associations, foundations or organisations, whose areas of interest might create situations of conflicts or affect the conduct of the public activity.

117. The GET notes that, unlike ministers, Heads of Departments, political staff members and consultants with similar functions are required to file annual income tax returns, which are not made public. Also, they file the DAPEF declaration in respect of property and financial assets held abroad and of shares in companies held abroad. However, they do not disclose data on debt exposure to banks or credit institutions. Given the role of these PTEFs in the decision-making process, the obligation to disclose debts and liabilities should also be extended to them. In the interests of transparency, all declarations of assets, interests and liabilities should be subject to appropriate verification and made public. Furthermore, in line with GRECO's established position, it is recommended that the authorities consider including an obligation for spouses, partners, children and any other dependents of all PTEFs to declare their liabilities, assets and interests (held both in San Marino and abroad), even if these are not subsequently made public in order to protect their privacy. In view of the above, **GRECO recommends (i) that all persons with top executive functions be obliged to submit**

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<sup>89</sup> To date, the Ethics Committee has not yet adopted any opinion (<https://congressodistato.sm/pub1/CongressoSM/Codice-di-condotta/Il-Comitato-Etico.html>).

**declarations of assets, interests and liabilities, which ought to be made accessible to the public and (ii) consideration be given to extending the obligation for persons with top executive functions to submit declarations of assets, interests and liabilities to their spouses, partners and dependants (it being understood that such information would not necessarily have to be made public).**

#### *Review mechanisms*

118. DGFP and the Personnel Management Office are required to verify the truthfulness of the declarations submitted by Heads of Departments to certify the absence of any incompatibilities.

119. The Ethics Committee of the Congress of State provides advice to ministers in respect of declaration requirements. During the on-site meetings, the GET was informed that the Ethics Committee would carry out some checks on the veracity of the ministers' declarations (in particular, on discrepancies, unexplained differences between the declarations of two consecutive years). This task is also partly carried out by the tax authorities. In this respect, the GET notes that the respective roles of these institutions are not defined, and the scope of the verifications is also unclear. Moreover, the review itself does not seem to be formalised in any way. It is also not specified what sanctions a minister may face for submitting a false or incomplete declaration. In this regard, the Ethics Committee referred to its possibility of filing a criminal complaint in such a case.

120. The GET considers that the mechanism for reviewing ministers' declarations should be significantly strengthened. The GET recalls its earlier recommendation (in paragraph 60 above) that the Ethics Committee be provided with adequate staffing and other resources to enable it to carry out all its functions, including the review of declarations. The GET considers it important to complement this recommendation by specifying the requirements for such review. Indeed, declarations should be systematically and thoroughly checked. In this connection, the GET underlines that the objective of such checks goes beyond establishing compliance with tax legislation. Such checks aim to properly identify conflicts of interest, to detect unexplained wealth and to maintain public confidence in the authorities, which should be reflected in the methodology used. The verification mechanism should be formalised and accompanied by effective, proportionate and dissuasive sanctions to ensure the accuracy of the information provided and that declarations are actually made. The competent authorities should also have the power to refer cases to the relevant authority for investigation, where appropriate. Finally, GRECO notes that an equivalent mechanism with dedicated personnel needs to be put in place for the verification of declarations to be submitted by other PTEFs (Heads of Departments, political staff members and consultants with similar functions). Consequently, **GRECO recommends that declarations of assets, interests and liabilities of all persons with top executive functions be subject to regular substantive checks and that effective, proportionate and dissuasive sanctions be applied in case of breach.**

#### **Accountability and enforcement mechanisms**

##### *Criminal proceedings and immunities*

121. PTEFs do not enjoy immunity nor any other procedural privilege. The investigation and prosecution of corruption offences is based on the provisions of the Code of Criminal

Procedure (as revised by Law no. 24 of 2 March 2022). The limitation period for the conclusion of a prosecution with a final judgement depends on the maximum duration of the sanctions that can be imposed for the offence in question (Article 54 of the Criminal Code)<sup>90</sup>. The limitation period for prosecution of the offence of corruption (Article 373 of the Criminal Code) is five years.

122. Between 2019 and 2023, criminal proceedings were initiated in four cases of corruption, one case of extortion and 27 cases of abuse of public office. Two corruption cases were discontinued, while the proceedings in the remaining two cases are still pending. The case of extortion is likewise pending. As for the cases of abuse of public office, the proceedings were discontinued in 17 such cases; 9 cases are pending, and one case resulted in a criminal conviction. There have been no cases where a PTEF has been removed from office for corruption or related offences, or where public allegations have led to the resignation of a PTEF.

#### *Non-criminal enforcement mechanisms*

123. Members of the Congress of State have political responsibility, both collectively and individually. The most extreme form of political responsibility is a vote of no confidence by Parliament. If such a vote is passed, either the government as a whole or the minister concerned must resign. Ministers may be sued in civil, criminal and administrative proceedings.

124. As stated in paragraph 56 above, violation of the dedicated Code of Conduct by a minister is to be sanctioned by a warning issued by the Congress of State, taking into account the opinion of the Ethics Committee. Where appropriate, the Congress of State may make the warning public<sup>91</sup>. A statement by the minister disagreeing with the opinion of the Ethics Committee will be published on the dedicated website of the Congress of State together with the opinion. To date, no such warning has been issued.

125. In accordance with Article 23 (3) of the Code of Conduct for Public Officials, non-compliance with the Code entails disciplinary liability. Disciplinary proceedings and the imposition of sanctions are governed by Law no. 145 "On the Reform of the Rules of Discipline for Public Employees" of 21 October 2022. As far as PTEFs are concerned, this law is applicable to Heads of Departments, but not to ministers and political staff members (including experts)<sup>92</sup>.

126. In accordance with the law, depending on the seriousness of the misconduct, four sanctions may be imposed: warning, censure (reprimand), suspension and dismissal. The initiation of disciplinary proceedings and the related investigation are normally the responsibility of the Director of the service concerned, who has the power to issue a warning and, with the approval of the Director of Human Resources, a censure (reprimand). A warning or a censure (reprimand) against a Head of Department is issued by the Director of DGFP. Suspension and dismissal are imposed by a decision of the Disciplinary Commission. The limitation period depends on the maximum duration of the sanctions that can be imposed for the misconduct in question. Disciplinary action is time-barred after two years if the applicable

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<sup>90</sup> For more detail, see GRECO's Third Round [Evaluation Report](#) (Theme I)(paragraphs 58-61).

<sup>91</sup> Article 8 (4) of the Code of Conduct for members of the Congress of State.

<sup>92</sup> See paragraph 57 above.

sanction is a warning or a censure (reprimand), and after five years if it is suspension or dismissal (Article 4 of Law no. 145/2022).

127. The Disciplinary Commission is appointed by the Great and General Council. It is composed of members representing the trade unions (one member from each) and an equal number of members representing the Public Administration, including the Director of the Civil Service, who chairs the Disciplinary Commission. The Disciplinary Commission takes decisions by a majority of votes, and in the event of a tied vote, the President has the casting vote. An alternate shall be appointed for each full member; the alternate shall replace the full member if the latter is prevented from attending or has a conflict of interest, or if the full member has initiated the disciplinary action being examined by the Commission. The alternate for the Director of the Civil Service shall be appointed by the Great and General Council, on the proposal of the Congress of State, from among the Directors acting as Head of Personnel (Article 13 paragraph 3 of Law no. 145/2022). The meetings of the Disciplinary Commission are valid if at least two thirds of its members (including the President or his/her substitute) are present.

128. Disciplinary sanctions are immediately enforceable. However, they can be challenged in court. Decisions imposing disciplinary sanctions are not published. They are subject to rules of access laid down by Law no. 160 “On Administrative Procedure and Access to Administrative Documents” of 5 October 2011. Transfer or suspension may also be imposed as a precautionary measure against a public official facing disciplinary sanctions of suspension or dismissal or criminal charges<sup>93</sup>, pending the outcome of the disciplinary or criminal proceedings.

129. Disciplinary and criminal procedures can run in parallel. Evidence acquired during criminal proceedings may be used in the disciplinary context also with a view to bringing disciplinary proceedings. It is possible to impose both a criminal and a disciplinary sanction if the act of the public official involves the infringement of both disciplinary and criminal provisions. The outcome of criminal proceedings is not binding in disciplinary proceedings, except in cases of dismissal or preventive suspension, as provided for by law (Article 3 of Law no. 145/2022).

130. To date, there have been no cases of disciplinary action taken against Heads of Department for breaches of the Code of Conduct for Public Officials.

131. The GET notes that the Director of DGFP, who initiates disciplinary proceedings against a Head of Department, does not chair the disciplinary commission examining the case, but is replaced by an alternate member. However, the Director of DGFP can sanction a Head of Department single-handedly by issuing a warning or a censure. The GET did not hear criticism about the conduct of disciplinary proceedings, the lack of impartiality or the use of powers by the DGFP Director in imposing a sanction. Be that as it may, and in spite of the fact that such a decision is open to appeal to the administrative court which carries out a full review of facts and law in a disciplinary case, the GET encourages the authorities to assess the legal arrangement whereby the DGFP Director decides on the institution of disciplinary proceedings and the imposition of a warning or a censure in order to introduce further safeguards, as appropriate.

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<sup>93</sup> Charges relating to an offence punishable by disqualification from holding public office or by imprisonment for a term of at least one year.

## V. CORRUPTION PREVENTION IN LAW ENFORCEMENT AGENCIES

### Organisation and accountability of law enforcement authorities

#### *Overview of various law enforcement authorities*

132. The law enforcement authorities, which will be the subject of this report, comprise the Gendarmerie Corps (the Gendarmerie - *Gendarmeria*), the Uniformed Unit of the Fortress Guard (the Fortress Guard – *Guardia di Rocca*) and the Civil Police Corps (the Civil Police – *Polizia Civile*). The Gendarmerie and the Fortress Guard belong to the Military Corps of the Republic of San Marino (*Corpi Militari*). For the purpose of this report, the term “law enforcement authorities/agencies – LEAs” and/or “the Police Corps” has been used to refer jointly to the Gendarmerie, the Fortress Guard and the Civil Police, and the term “law enforcement officers – LEOs” has been used to denote all staff members/employees/officers of LEAs.

133. A Police Department (*Dipartimento di Polizia*), which is a technical, organisational, administrative body, to which the three LEAs belong, has been established by Law no. 30 of 17 March 1994<sup>94</sup>, as amended, to operationalise the guidelines issued by the Congress of State on public security and public order, to increase the efficiency of the LEAs and to encourage effective action to combat crime through a proper organisation of available professional resources. Also, the Police Department organises vocational training courses for LEAs. A Department Council (*Consiglio di Dipartimento*), composed of the Commanders of LEAs, has been established to conduct police operations.

#### *Organisation and accountability of selected law enforcement authorities*

134. The Gendarmerie is governed by its regulation, as adopted by Law no. 131 of 12 November 1987<sup>95</sup>, as amended (the Gendarmerie Regulation). Pursuant to Article 2, its mission is, amongst other things, to prevent and repress crimes, maintain public order, guarantee security and safety of citizens and protect property. Also, the Gendarmerie is responsible for escorting, accompanying and assisting detainees, as requested by a judicial authority. It is accountable to the Captains Regent for public order and security, the Minister of Foreign Affairs for recruitment, administration, equipment, etc., the Judiciary for the tasks related to the judicial police and the Military Congress<sup>96</sup> for anything concerning military discipline.

135. The Gendarmerie is composed of Units, Offices and Squads and Brigades. Units are operational directorates, directly responsible to the Commander of the Gendarmerie, and are headed by Officers. There are four units: the Command Unit, the Operational and Judicial Police Unit, the Territory Prevention and Control Services Unit and the Administrative Police, Social Police, Studies and Statistics unit. Offices and Squads are basic operational divisions,

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<sup>94</sup> <https://www.consigliograndeegenerale.sm/on-line/home/archivio-leggi-decreti-e-regolamenti/documento17021559.html>

<sup>95</sup> <https://www.consigliograndeegenerale.sm/on-line/home/archivio-leggi-decreti-e-regolamenti/documento17020660.html>

<sup>96</sup> The Military Congress presides over the service of the Military Corps and is an advisory body to the minister responsible for the Military Corps. It is composed of the Senior Commander, the Inspector General, the Chief of Staff and a number of senior officers.

which carry out the tasks relating to the Gendarmerie's functions in order to pursue its objectives in its areas of competence. They report to one of the four units and, depending on their relevance, are headed by Marshals, Brigadiers or Deputy Brigadiers. The overall coordination is entrusted to the Command Unit. At present, the Gender Violence and Child Abuse Office, the Foreigners' Office and the Weapons Office have been established. For organisational reasons, offices may be merged. Brigades are basic operational divisions, which carry out the tasks in specific peripheral territorial areas and, depending on their relevance, are headed by Marshals or Brigadiers or Deputy Brigadiers. With the exclusion of the Commander, the staff members of the Gendarmerie have the status of judicial police officers.

136. The Fortress Guard is governed by its regulation, as adopted by Law no. 132 of 13 November 1987<sup>97</sup> and as amended by Law no. 99 of 5 September 1997 and subsequent amendments<sup>98</sup> (the Fortress Guard Regulation). According to its Article 2, it is responsible for ensuring compliance with the laws, decrees and regulations of San Marino, as well as for supervising State borders, the Government Building, the seat of various Ministries, etc. The Fortress Guard contributes to, amongst others, the prevention and repression of crimes, the protection of public order, public security, customs regulation, currency and financial laws. It also performs representation services at State buildings, public offices, civil and religious ceremonies, or events of public interest. The Fortress Guard consists of the Central Command, Sections (which are basic operational divisions that carry out the tasks relating to the Fortress Guard's functions, in order to pursue the objectives of this Corps in its areas of competence) and Offices. It reports to the Captains Regent for public order and security, the Minister of Foreign Affairs for recruitment, administration, equipment, armament, etc., the Judiciary for the tasks of judicial police and the Military Congress for anything concerning military discipline. Staff members of the Fortress Guard are military staff in all respects and have the status of judicial police officers.

137. The Civil Police is governed by its regulation, as adopted by Law no. 142 of 21 November 1990 and subsequent amendments<sup>99</sup> (the Regulations of the Civil Police), and, unlike the Gendarmerie and the Fortress Guard, is a civilian corps. The Civil Police is responsible for, amongst others, protecting the exercise of freedoms and rights of citizens, supervising compliance with laws regulations and measures issued by public authorities, protecting public order and security, preventing and repressing crimes, providing assistance in the event of disasters and accidents. All staff members of the Civil Police are judicial police officials. It is divided into sectors: the road safety sector, the protection of life sector, the environment and settlements sector, the examination and control of economic activities sectors, and the judicial police intelligence and investigation sector. The Civil Police falls within the competence of the Ministry of Internal Affairs.

138. The GET observes that it is somewhat unusual for a country the size of San Marino to have three separate LEAs, as the potential for overlapping and unclear lines of responsibilities may arise. In fact, the LEAs representatives acknowledged that, in practice, there were situations where the overlapping competences of LEAs did occur. They stated that the judicial

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<sup>97</sup> <https://www.consigliograndeegenerale.sm/on-line/home/archivio-leggi-decreti-e-regolamenti/documento17020661.html>

<sup>98</sup> <https://www.consigliograndeegenerale.sm/on-line/home/archivio-leggi-decreti-e-regolamenti/documento17021996.html>

<sup>99</sup> <https://www.consigliograndeegenerale.sm/on-line/home/archivio-leggi-decreti-e-regolamenti/documento17021094.html>



authority decides which LEA has competence over a particular investigation when several reports have been filed with LEAs concerning the same set of proceedings. Also, they provided that they had coordinated their operations, through the Police Department, during the Covid-19 pandemic when they had jointly checked the movement of people to and from the country. The GET further learned that the Government has from time to time discussed the possibility of consolidating or reforming the Police Corps, without reaching a conclusive outcome. In view of the specific situation prevailing in San Marino, the GET encourages the authorities to address the existence and cross-operation of several LEAs by either consolidating them in some manner, ensuring a greater degree of coordination, cooperation and specialisation, providing a clear determination of competences with a view to securing a greater rationalisation of resources and increased operational effectiveness.

139. By virtue of LEOs performing functions pertaining to the judicial police, they are responsible for carrying out criminal investigations, which may be instituted of their own initiative, subject to them subsequently informing the competent judicial authority (i.e. the Law Commissioner), or may be delegated on the basis of a specific measure of the competent judicial authority. It emerged from the meetings with trade unions and the authorities that, to the extent ordered by the judicial authority, the three LEAs enjoy operational autonomy in the conduct of criminal investigations; however, if the outcome of investigations leads to a potential criminal prosecution (*notitia criminis*), LEAs are obliged to notify the judicial authority, which will initiate the subsequent procedures. They are directly subordinate and answerable to the competent judicial authority, and none of them has ever received any political instructions or been under any pressure whatsoever from a minister or Commander (Commanding Officer). LEAs representatives met on-site reiterated that the competent judicial authority is responsible for resolving any issues of concurrent jurisdiction amongst the LEAs for the conduct of criminal investigations.

140. The three LEAs are exclusively funded from the State budget, and there is no private funding. The Gendarmerie and the Fortress Guard admitted having never received donations. Any in-kind donations to the Civil Police, if this were to occur, would have to go through the Public Finance and Control Commission and the donations would be registered as State assets/property. Accounting reports are made available to the Directorate of Public Finance and to the State Accounting Office. All budgetary expenses undergo *ex ante* and *ex post* checks carried out by the Public Finance and Control Commission (see also paragraph 84 above).

#### *Trade unions and professional associations*

141. The Gendarmerie has no dedicated trade unions. Article 26 of its Regulation provides that it will elect five delegates constituting its basic representation body. The Fortress Guard is not associated with any dedicated trade unions either. However, Article 27 of its Regulation provides that the Fortress Guard will elect three delegates who constitute its basic representation body. On the other hand, members of the Civil Police may join one of the three existing trade unions: the Democratic Confederation of San Marino Workers, the San Marino Labour Confederation and the San Marino Union of Workers (USL).

#### *Access to information*

142. Law no. 160/2011 on access to administrative documents applies to each LEA (see paragraph 70 above for more information).

143. As regards disclosure of information to the public and the press/media, the GET wishes to highlight the following three issues. To start with, each of the Gendarmerie and the Civil Police have designated a press officer (albeit not a full-time position) to disclose information to the media, while the Fortress Guard has not appointed a person responsible for communication with the public and the media. Such a part-time position hardly amounts to the function of a genuine press/media officer who should be the main focal point for the press/media on any matters, in spite of the urgency thereof, not least because of concerns raised by journalists about obstacles in receiving information from a specifically designated point of contact. Secondly, information on specific operations is disclosed via press communiques, in press conferences or through social media, by the concerned press officer, who collects it from the specific unit that handled the operation, after consultation with the Commander (Commanding Officer). The journalists whom the GET met highlighted the difficulty in obtaining information from the Police Corps on sensitive cases. Thus, there appears to be no consistent policy throughout the LEAs to proactively disclose information (in lieu of reactive communication), without restricting it to specific cases/operations. Thirdly, the Gendarmerie has a dedicated website<sup>100</sup>, with limited content available to the public, while information on the composition, mission and functions of the Civil Police and the Fortress Guard can be found on social media pages of the San Marino's Government portal<sup>101</sup>, the latter two lacking dedicated websites<sup>102</sup>.

144. In view of the above, the GET considers that the authorities should improve access to information through a dedicated (unified) contact point, the creation of dedicated websites containing regularly updated information and the proactive (instead of reactive) dissemination of information to the public and the press/media. **GRECO recommends that dedicated measures be designed and implemented to enhance transparency and strengthen proactive disclosure of information by the law enforcement agencies.**

#### *Public trust in law enforcement authorities*

145. There exist no surveys or other benchmarking tools measuring the level of public trust in LEAs. When asked whether the public had a high, medium or low level of trust in their services, representatives of the LEAs could only speculate based on individual interactions that they had with members of the public, including schoolchildren. They also contemplated that the community outreach that they conducted, including with schoolchildren, was sufficient to create an appropriate level of trust in the integrity of their services. Be that as it may, in the absence of any figures, it is not for the GET to guesstimate the level of public trust in the Police Corps. In order to break through – what appears to be - a perceived sense of complacency, the GET would nevertheless encourage the authorities to carry out nationwide surveys/opinion polls from time to time, as the results may prove useful to identify risks, formulate plans/campaigns to increase the citizens' confidence in the LEAs, improve the relations with the press/media and implement the recommendations contained in this report.

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<sup>100</sup> <https://www.gendarmeria.sm/on-line/home.html>

<sup>101</sup> (<https://www.gov.sm/pub1/GovSM/poliziacivile/> and <https://www.gov.sm/pub1/GovSM/guardiadirocca/>)

<sup>102</sup> The authorities maintain that information is published on the social media pages and websites of the Ministry of Foreign Affairs with regard to the Military Corps and of the Ministry of Internal Affairs with regard to the Civil Police, respectively.

## Anti-corruption and integrity policy, regulatory and institutional framework

### *Anti-corruption and integrity policy*

146. There is no anti-corruption or integrity policy in respect of LEAs.

### *Risk management measures for corruption prone areas*

147. LEAs do not undertake any formal risk assessment, on either an *ad hoc* or regular basis, to identify services or activities to be most likely prone to corruption and breaches of integrity. There are no procedures or guidelines in place for this purpose. Faced with such a situation, and given the absence of any surveys measuring the level of public trust in the Police Corps as well as other gaps identified in this report (e.g. with respect to integrity checks, conflicts of interest, and post-employment restrictions), the GET considers that the authorities should pay particular attention to develop a procedure to carry out a mapping of risks in relation to corruption and breaches of integrity. This would serve as a basis to identify corresponding risk management measures and would have to be updated regularly in line with emerging risks and integrity breaches. Such a mapping could form the basis of a stand-alone (integrity) strategy or as part of a future general anti-corruption strategy which could be made known to law enforcement officers and published. For these reasons, **GRECO recommends that (i) a comprehensive risk assessment of corruption-prone areas and activities be carried out to identify challenges and emerging threats, and (ii) in light of the findings, a strategy be developed covering all law enforcement agencies, which ought to be communicated to law enforcement officers and the public.**

### *Handling undercover operations and contacts with informants and witnesses*

148. According to Law no. 28 of 26 February 2004<sup>103</sup>, the Law Commissioner may authorise specialised personnel of the Police Corps to carry out undercover operations. The specialised personnel must immediately and exclusively inform the Law Commissioner of the outcome of the activities carried out and may not extract copies and duplicate documents relating to the activities carried out, unless expressly authorised by the Law Commissioner. Any breach of those provisions or the disclosure of information obtained in the course of the performance of undercover operations is punishable by (second degree) imprisonment, together with (second-degree) disqualification from public offices and political rights. Evidence obtained through undercover operations may be valid for the trial of offences related to the conduct of the undercover operations.

149. Representatives of the judiciary explained to the GET that the authorities have faced no obstacles in prosecuting various criminal cases and have made use of available investigative techniques. However, wiretapping, which is regulated by Law no. 98/2009<sup>104</sup>, has not been relied upon owing to technical difficulties in seeking the assistance and cooperation of Italian communications providers operating in San Marino, which is not an EU member State. The situation will improve on the entry into force of the Association Agreement

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<sup>103</sup> Law no. 28/2004 on provisions of combating terrorism, money laundering and abuse of privileged information.

<sup>104</sup> <https://www.consigliograndeegenerale.sm/on-line/home/archivio-leggi-decreti-e-regolamenti/documento17024291.html>

(see paragraph 17 above). That said, environmental wiretapping, such as video camera surveillance, has been deployed to prosecute offences allegedly committed by LEOs.

### *Ethical principles and rules of conduct*

150. The Code of Conduct for members of the Police Corps (*Codice di Condotta per gli appartenenti ai Corpi di Polizia*) was adopted by Delegated Decree no. 59 of 29 April 2015<sup>105</sup> (Code of Conduct for the Police Corps). Article 1 provides that it applies to the three LEAs. It consists of 12 Articles, covering civil and moral integrity requirements, qualifications and recruitment, training, preventing and combating corruption, conflicts of interest and incompatibilities, reporting, respect for institutions and neutrality. The content of certain provisions has been set out in paragraphs 151, 155, 162, 167, 179, 183, 184, 186-188 below. In addition, it expressly refers to several provisions of the Code of Conduct for Public Officials (particularly, Articles 4, 7-11, 14-17, 19 and 21-22), as adopted by Law no. 141/2014, which becomes directly applicable to LEOs.

151. According to Article 6, LEOs will act with integrity and respect towards citizens, observing the principles of legality, utmost fairness, impartiality, confidentiality, courtesy and a sense of responsibility. Article 7 provides for the establishment of organisational arrangements, based on transparency and systematic control, to prevent and combat corruption. For this purpose, methodologies will be promoted and defined for the prevention of corruption and criteria, procedures and other measures will be defined.

152. Failure to comply with the provisions of the Code of Conduct for the Police Corps may entail the application of disciplinary sanctions. The Civil Police informed that, for the last three years, there had been three disciplinary cases unrelated to corruption offences: a warning/reprimand had been imposed in the first case, a 20-day suspension from work had been imposed in the second case on account of lack of impartiality and an LEO had been suspended from his/her functions, pending the outcome of the criminal proceedings, in the third case. LEOs may turn to their hierarchical superior in case of doubts as to the procedures they have to implement for the application of the provisions contained in the Code of Conduct for the Police Corps. In addition, the Department Council of the Police Department may issue instructions for its application.

153. The GET received confirmation during the on-site visit that LEAs were bound by both the Code of Conduct for the Police Corps and the Code of Conduct for Public Officials, which are available online. It considers that the provisions found therein address complementary issues (e.g. the Code of Conduct for Public Officials contains provisions dealing with gifts (Article 14), use of public and official resources (Article 19), post-employment restrictions (Article 21), to mention but a few, which are not covered by the Code of Conduct for the Police Corps – see also paragraph 187 below as regards third-party contacts and treatment of confidential information). The GET is of the view that it would be more beneficial to have all relevant provisions consolidated/updated in the Code of Conduct for the Police Corps (instead of cross-referencing to the Code of Conduct for Public Officials), not least because both Codes were adopted more than nine years ago.

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<sup>105</sup> <https://www.consigliograndeegenerale.sm/on-line/documento17144621.html>

154. What is more critical is that, as acknowledged by the authorities, both Codes are not accompanied by practical guidance, containing day-to-day examples drawn from real scenarios of breaches of the provisions, which would help LEOs to apply the codes of ethics in their daily work. Such guidance, which must be produced with the involvement of representatives of each LEA (not least because the Gendarmerie and the Fortress Guard do not have any trade unions associated with them), should further serve as a basis for LEOs' initial and periodic in-service training. This is all the more necessary given that LEAs have a unique position amongst public authorities: they are in everyday contact with citizens, they have authority to issue instruction and, in case of non-compliance therewith, they are authorised to use coercive measures to execute such instructions. **GRECO recommends that (i) the codes of conduct applicable to law enforcement officers be harmonised (or consolidated if necessary) and updated so as to cover all integrity related matters (e.g. conflicts of interest, incompatibilities, gifts, outside activities, third party contacts, post-employment restrictions, handling of confidential information, and misuse of resources) and (ii) the updated Code of Conduct for the Police Corps be supplemented with specific guidance, drawing on practical examples covering all relevant integrity matters (such as conflicts of interest, gifts, contacts with third parties, outside activities, handling of confidential information, etc.), which ought to be made known to police officers and used in initial and in-service training.**

*Advice, training and awareness*

155. Article 5 of the Code of Conduct for the Police Corps provides that LEOs will undergo on-the-job training and specialist training courses, which will also target management and executive functions. DGFP organises training for all employees of the public administration on ethics and prevention of corruption. Also, the Police Department organises vocational training courses for LEAs.

156. The GET heard on-site that all new recruits go through an induction training course, which covers, amongst others, issues pertaining to both codes of conduct. In-service trainings appear to be organised for LEOs by, amongst others, the DGFP, dealing with ethical and integrity matters. A training plan, together with a schedule, is drawn up and shared with LEAs each year. Be that as it may, the GET maintains that, in view of the recommendation contained in paragraph 154 above, the initial and in-service training should be delivered on the strength of the updated Code of Conduct for the Police Corps and the practical guidance that will be produced to complement and explain it.

157. There is no dedicated mechanism for providing confidential advice on ethics and integrity in practice. That said, LEOs may seek advice from the hierarchical superior, Commanders (Commanding Officers) or DGFP. The GET considers that, while a superior should lead by example, s/he should not have a direct role in confidential counselling, as this could deter requests for advice being made by LEOs, not least because superiors are involved in disciplinary proceedings. This gap should be filled by designating a person of trust, who is independent from the LEO's chain of command. Other possibilities may exist for LEOs to turn to, should they face any ethical dilemmas in their daily work (e.g. an expert body or an association). Consequently, **GRECO recommends establishing a mechanism of confidential counselling on ethics and matters of professional conduct for law enforcement agencies outside of the chain of command.**

## Recruitment, career and conditions of service

### Recruitment requirements

158. LEAs' personnel are divided into three categories: officers, non-commissioned officers and troops. These categories are made up of (management) ranks/grades, which define the hierarchical relationships in the LEAs' organisation, as shown in the table below.

<b>Gendarmerie</b>	<b>Fortress Guard</b>	<b>Civil Police</b>
<u>Officers</u> - General - Colonel - Lieutenant Colonel - Major - Captain - Lieutenant - Under-lieutenant	<u>Officers</u> - General - Colonel - Lieutenant Colonel - Major - Captain - Lieutenant - Under lieutenant	<u>Officers</u> - Commander - Officers
<u>Non-commissioned officers</u> - Marshals ( <i>Marescialli</i> ) - Brigadiers ( <i>Brigadieri</i> ) - Deputy Brigadiers ( <i>Vice Brigadieri</i> )	<u>Non-commissioned officers</u> - Assistant Sergeants-Major - Sergeants-Major - Sergeants	<u>Non-commissioned officers</u> - Inspectors - Superintendents
<u>Troop</u> - Corporal - Gendarmerie Agent	<u>Troop</u> - Major Corporals - Guards	<u>Troop</u> - Assistant Chiefs - Assistants - Agents

159. Recruitment of LEOs is governed by Delegated Decree no. 159 of 31 August 2021 which sets out common procedures and requirements. Recruitment for the military ranks of Gendarmerie Agent and Guard and for the job specification of Agent, is ordered by the Congress of State, upon request by the Commanders of LEAs, through the publication of a recruitment notice for a public training course followed by a competition. The recruitment notice outlines the recruitment requirements, the procedures for submitting the applications, the documents to be submitted, the course and the competition procedure. The training course has a minimum duration of 60 hours. Recruitment is based exclusively on objective and non-discriminatory criteria and takes into account personal qualification and experience of each candidate.

160. At the end of the public competition, a final ranked list of candidates is drawn up and remains valid for three years. The winners of the competition have to pass a twelve-month probationary period, during which the recruits are required to attend theoretical and practical training courses. They undergo an intermediate evaluation after six months of service and a final test at the end of the twelve months. If the recruit fails to pass the probationary period, s/he will be excluded from the merit ranked list. After the successful competition of the probationary period, the Commander of the respective LEAs appoints the recruits as Gendarmerie Agent in the case of the Gendarmerie, as Agent in the Civil Police and as Guards in the case of the Fortress Guard.

161. San Marino citizens or residents may apply for the public competition, provided that: they are between 18 and 35 years of age in case Agents, Gendarmerie Agents and Guards are recruited; they meet the requirements of civil and moral integrity (see paragraph 162 below); they are psychologically and physically fit for service and for possessing and using weapons;

they have not been subject to disciplinary measure of expulsion from LEAs or of dismissal pursuant to the rules for public official; they are not in situations of incompatibility referred to in the Code of Conduct for the Police Corps and the Code of Conduct for Public Officials (see paragraphs 183 below), etc.

162. The civil and moral integrity requirements to be met by LEOs are set out in Article 3 of the Code of Conduct for the Police Corps. Thus, LEOs should not have been finally convicted of a wilful or unintentional criminal offence, for which a punishment entailing restriction of personal liberty or disqualification from public offices or not less than one or two years has been imposed; and they should behave irreproachably in all circumstances. In addition, under Article 4, periodic checks on LEOs are carried out to verify that they continue to meet the integrity requirements.

163. The GET heard on-site that, as part of the initial competitive recruitment process, LEAs carry out civil and moral integrity checks (i.e. they check criminal records, proceedings pending against new recruits, self-declarations submitted as part of the application, certificates of civil rights capacity, incompatibilities, etc.). This is effectively performed by DGFP in the case of the Civil Police, or the Commanders of the Gendarmerie and the Fortress Guard. That said, and even though the legislation provides for periodic checks of integrity requirements – as does the annual appraisal form which contains a section covering moral and character qualities (see paragraph 174 below), it became evident from the meetings with the authorities that this was not being done systematically in practice. The GET further considers that initial and periodic integrity checks should extend beyond checks of criminal records, and cover verification of the financial situation of LEOs as well as their close relatives/affiliated persons. This is all the more important in the case of promotions to higher positions, since personal circumstances are likely to change over time and, in some cases, may expose LEOs to possible corruption risks. The integrity checks may also include random drug tests as well as self-reporting to prevent and assess any risks. Regular vetting throughout LEOs' career is thus an indispensable tool for corruption prevention for the whole chain of command. **GRECO recommends that all law enforcement officers be subject to regular integrity checks throughout their career, particularly in the context of promotion or changes of positions, in accordance with a clear procedure which should be published.**

164. According to Article 10 of the Gendarmerie Regulation, its personnel is composed of officers (consisting of one Commander and one Deputy Commander), non-commissioned officers (including Marshals, Brigadiers, Deputy Brigadiers) and the troop (composed of Corporals and Gendarmerie Agents), such as *Comandante, Vice Comandante, Marescialli, Brigadieri, Vice Brigadieri, Appuntati and Gendarmi*. There are no limits to the number of Deputy Brigadiers, Corporals and Gendarmerie Agents. Article 4 of the Fortress Guard Regulation provides that its workforce comprises officers (one Commander and one Deputy Commander), non-commissioner officers (Assistant Sergeants-Major, Sergeants-Major, Sergeants) and the troop (one Major Corporal and Guards). Under Article 5 of the Civil Police Regulation and subsequent amendments, its corps consist of officers (one Commander), non-commissioner officers (Inspectors and Superintendents) and the troop (Assistant Chiefs, Assistants and Agents).

165. The headcount of LEOs in each LEA is presented below.

Gendarmerie			
Position	Men	Women	Total
Commander (General)	1	-	1
Captains	4	-	4
Marshals	2	-	2
Brigadiers	12	-	12
Deputy Brigadiers	34 (92%)	3 (8%)	37
Corporals	5	-	5
Gendarmerie Agents	17 (74%)	6 (26%)	23
<b>Total</b>	<b>75 (89%)</b>	<b>9 (11%)</b>	<b>84</b>

Fortress Guard			
Position	Men	Women	Total
Commander	1	-	1
Officers	-	-	-
Assistant Sergeants-Major	-	-	-
Sergeants-Major	6	-	6
Sergeants	17	-	17
Major Corporals		-	
Guards	9	2	11
<b>Total</b>	<b>33 (94.28%)</b>	<b>2 (6%)</b>	<b>35</b>

Police			
Position	Men	Women	Total
Commander	1	-	1
Officer	4	-	4
Inspector	2 (40%)	3 (60%)	5
Superintendent	15 (94%)	1 (6%)	16
Assistant Chief	30 (94%)	2 (6%)	32
Agent	14 (61%)	9 (39%)	23
<b>Total</b>	<b>66 (81.5%)</b>	<b>15 (18.5%)</b>	<b>81</b>

166. Whereas the Commander of the Civil Police used to be a woman from 1996 to 2019, and whereas there are currently two female inspectors heading the Fraud Squad and the Emergency Service in the Civil Police and one female deputy brigadier heading the Gender Violence and Child Abuse Office of the Gendarmerie, the GET considers that the figures indicated above call for measures in addressing the overall representation of women in LEAs, particularly in leadership positions. The authorities acknowledged on-site that consideration was being given to increase the level of women in LEAs. They pointed out that the recruitment process was fair and open to men and women and that certain eligibility requirements had been adapted to women's particularities (e.g. the height requirement for all male and female candidates to be recruited in the Police Corps has been lowered from 1.70 to 1.60 metres). As a result of the recent recruitment competition, two women had joined the Fortress Guard. The GET underlines the importance of promoting gender balance in LEAs and increasing the representation of women, as it contributes to avoiding groupthink and in turn corruption. Accordingly, the authorities should undertake to make the profession more attractive and promote the recruitment of women, the aim being to create a more inclusive environment. **GRECO recommends that dedicated measures be taken to increase the representation of women in each law enforcement agency at all levels.**

*Appointment procedure and promotion to a higher rank*



167. The Commander of the Gendarmerie is appointed by a nominal call by the Great and General Council, upon proposal of the Congress of State, once the curriculum vitae, professional skills and specialisation of the candidate have been assessed. After the successful completion of the one-year probationary period, as assessed by the Minister of Foreign Affairs, the Commander Officer is subject to five-year renewals. S/he will not hold the rank of judicial police officer. Under Article 13-bis, the Deputy Commander Officer is chosen from amongst the Officers of the Gendarmerie, and is appointed by decision of the Congress of State, upon proposal of the Minister of Foreign Affairs, after assessing a report drawn up by the Commander.

168. The GET was informed that the Commanders of the Civil Police and the Fortress Guard are appointed by the Congress of State, upon the examination of applications by a board, following a public competition. The Commander of the Fortress Guard may also be appointed on call.

169. Delegated Decree no. 159/2021 (see paragraph 159 above) sets out common procedures and requirements for the career advancement of LEOs, which takes place based on seniority or internal competitions. For the purpose of advancement by seniority for specific ranks, an LEO should: (i) have passed all training courses held at the request of the Commander (Commanding Officer); (ii) not have been subject to any disciplinary sanction higher than a warning for members of the Police, or a reprimand for military members, in the last five years; and (iii) have achieved over the last five years an average performance appraisal rating of, at least, "good". Agents and Guards are to remain in service for eight years before claiming the right to the first career advancement.

170. An internal competition for specific ranks is based on qualifications and exams<sup>106</sup> (such as for the military rank of Brigadier, Marshal and Lieutenant in the Gendarmerie, for the military rank of Sergeant Major, Assistant Sergeant-Major and Lieutenant in the Fortress Guard, for the job specifications of Superintendent, Inspector and Officer in the Civil Police). The requirements to be awarded a particular rank by way of internal competition vary and pertain to the seniority held in a preceding rank, the level of education, the rating received in the annual performance appraisal and the existence of any disciplinary sanction.

171. In the event of promotion to the position of officer, a LEO is requested to attend a training course, which may be organised in-house or externally, upon indication of the respective LEA.

172. Under Article 8, if career advancement by internal competition does not make it possible to fill vacant positions, they may be filled by means of a training course followed by a public competition. Candidates should have obtained a bachelor's degree or a master's degree in an administrative, accounting, or technical field related to the sector or operational unit identified in the recruitment notice or, alternatively, should have acquired at least ten years of experience in LEAs and/or in security companies. The duration and structure of the training will be defined by a protocol drawn up by the Commanders and approved by the Ministers of Foreign Affairs and Internal Affairs. No such protocol has been produced to date, since career advancement has always been covered by means of internal competitions.

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<sup>106</sup> Articles 5 and 6 of Delegated Decree 159/2021 lay down the detailed procedure for internal competition.

173. Article 8-bis provides for the procedure of “on-call recruitment” for specific profiles with special/exceptional skills (e.g. a highly qualified professional), according to which the Congress of State, upon request by the Commander of the Gendarmerie and the Fortress Guard, may temporarily recruit “on-call” a professional officer with a three-year assignment that may be renewed for a further term, without prejudice to the successful competition of a twelve-month probationary period. The person identified must have an excellent technical and professional background, outstanding qualities and proven experience gained in Military Academies or Police Corps as well as security companies, including foreign ones. A maximum of one person for each military rank may be recruited “on-call”. The identified person will train LEOs in the specialised subjects for which they are responsible. No “on-call recruitment” has taken place since the entry into force of Delegated Decree no. 159/2021.

#### *Performance evaluation*

174. Performance evaluations for LEOs are carried out annually on the basis of an appraisal form. According to Regulation no. 3 of 24 February 2022<sup>107</sup>, the form consists of three parts. The first part assesses physical, moral and character qualities, such as the outward appearance, the physical strength, mental strength and ability to concentrate, integrity, strength of character and determination, ability to deal with risks, and loyalty. The second part deals with intellectual skills and cultural awareness, such as problem-solving skills, communication skills, cultural updating, and commitment to learn and make use of foreign languages. The third part covers professional skills, such as professional preparation, personnel management, organisational capacity, ability to work in a team, interpersonal skills, work motivation and dedication, reliability, initiative, decision-making, confidentiality, and sense of discipline. A final section, which is to be filled out by the Commander, in reliance on reports of the heads of the operational units where LEOs are in service, includes the following ratings which need to be assigned to the evaluation form: excellent, very good, good, sufficient and insufficient. The evaluation sheet is entered into the LEO’s personal file. Pursuant to Article 1, paragraph 3 bis of Delegated Decree no. 159/2021, an LEO may appeal against the appraisal form to the administrative judge.

175. The GET heard on-site that the appraisal form is rather recent, and that meetings had been organised with LEOs to discuss its content. The form is rather detailed and contains components which a superior should know how to assess effectively. Because the annual performance appraisal affects LEOs’ career advancement, for it to be credible and effective, it would be necessary that guidance on its completion be provided to superiors on how to conduct appraisals, in particular how to objectively assess the appraisal forms’ components, including ethics and integrity, and consistently fill out the form. In turn, this would increase the confidence of LEOs that they are receiving evaluation and promotion decisions based upon the same objective criteria as their peers. The GET encourages the authorities to develop guidance on the conduct of annual performance evaluation and completion of appraisal forms, which should be made public to all law enforcement officers.

#### *Rotation*

176. The Gendarmerie’s Commander, for service needs or other justified reasons, may transfer all staff of any rank to any other dependent location, in accordance with Article 17 of

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<sup>107</sup>

<https://www.consigliograndeegenerale.sm/on-line/home/archivio-leggi-decreti-e-regolamenti/documento17130681.html>

the Gendarmerie’s Regulation. Rotation in the Gendarmerie takes place periodically. Regarding the Fortress Guard, rotation is not automatic but is decided based on necessity. As staff members belonging to one section or office are often called upon to perform services in other sections because of emerging needs, this may constitute a form of rotation. As to the Civil Police, officers work in pairs and rotate from time to time. Rotation of teams in patrol cars occurs each month. The GET encourages the authorities to consider introducing rotation for certain at-risk posts which will be identified as a result of the comprehensive risk assessment of corruption-prone areas and activities to be carried out in implementation of the recommendation made in paragraph 147 above.

*Termination of service and dismissal from office*

177. Article 8 of Law no. 47 of 18 March 2008 regulates the retirement of members of the Police Corps. Since 2007, LEOs have retired upon reaching a certain age indicated in a mechanism set out in that provision. As of 1 April 2025, they will normally retire upon reaching the age of 65. They may, at any time, hand in their voluntary resignation, in writing. Resignations from the Military Corps are notified to the Congress of State, which may order the resigning staff member to remain in service for a period of time ranging from one to six months, whereas resignations of members of the Civil Police Corps are notified to the Staff Management Office.

*Salaries and benefits*

178. Salary levels for each LEA are shown below. LEOs may be entitled to the following: allowance deriving from their ranks, duty allowance, allowance for command responsibilities, remuneration for overtime work, remuneration for ordinary service during night and holiday hours, family allowances, living allowance, thirteens month’s pay, and severance pay, in accordance with the law.

<b>Gendarmerie</b>		
<b>Position</b>	<b>Basic remuneration per month</b>	<b>Range of allowances per month</b>
Commander (General)	level 10 € 3,043.65 + seniority steps	Fixed allowance € 381.75 Progressive allowance € 76.35 per seniority step/max 8 steps Military allowance € 23.24 Duty allowance € 69.72
Deputy Commander	level 9 € 2,751.48 + seniority steps	- Duty € 69.72 -Actual Command Responsibility € 27.89 -Rank-related Command Responsibility € 18.59 - Military € 23.24 - Special Lieutenant € 309.65
Officers	level 8 € 2,532.38 + seniority steps	- Duty € 69.72 -Actual Command Responsibility € 27.89 -Rank-related Command Responsibility € 18.59 - Military € 23.24 - Special Lieutenant € 309.65
Marshal	level 8 € 2,532.38 + seniority steps	- Duty € 69.72

		-Actual Command Responsibility € 27.89 -Rank-related Command Responsibility € 18.59 - Military € 23.24
Brigadier	level 7 € 2,341.09 + seniority steps	- Duty € 69.72 -Actual Command Responsibility € 27.89 -Rank-related Command Responsibility € 18.59 - Military € 23.24
Deputy Brigadier	level 6 € 2,167.25 + seniority steps	- Duty € 69.72 -Actual Command Responsibility € 27.89 -Rank-related Command Responsibility € 18.59 - Military € 23.24 - Special Deputy Brigadier € 37.19
Corporal	level 6 € 2,167.25 + seniority steps	- Duty € 69.72 -Actual Command Responsibility € 27.89 -Rank-related Command Responsibility € 18.59 - Military € 23.24
Gendarmerie Agent	level 5 € 2,005.09 + seniority steps	- Duty € 69.72 -Actual Command Responsibility € 27.89 - Military € 23.24

<b>Fortress Guard</b>		
<b>Position</b>	<b>Basic remuneration per month</b>	<b>Range of allowances per month</b>
Commander	level 10 € 3,043.65 + seniority steps	Fixed allowance € 381.75 Progressive allowance € 76.35 per seniority step/max 8 steps Military allowance € 23.24 Duty allowance € 69.72
<b>Deputy Commander</b>	level 9 € 2,751.48 + seniority steps	- Duty € 69.72 -Actual Command Responsibility € 27.89 -Rank-related Command Responsibility € 18.59 - Military € 23.24 - Special Lieutenant € 309.65
Officer	level 8 € 2,532.38 + seniority steps	- Duty € 69.72 -Actual Command Responsibility € 27.89 -Rank-related Command Responsibility € 18.59 - Military € 23.24 - Special Officer € 309.65
Assistant Sergeant-Major	level 8 € 2,532.38 + seniority steps	- Duty € 69.72 -Actual Command Responsibility € 27.89 -Rank-related Command Responsibility € 18.59 - Military € 23.24
Sergeant Major	level 7 € 2,341.09 + seniority steps	- Duty € 69.72

Fortress Guard		
Position	Basic remuneration per month	Range of allowances per month
		-Actual Command Responsibility € 27.89 -Rank-related Command Responsibility € 18.59 - Military € 23.24
Sergeant	level 6 € 2,167.25 + seniority steps	- Duty € 69.72 -Actual Command Responsibility € 27.89 -Rank-related Command Responsibility € 18.59 - Military € 23.24 - Special Sergeant € 37.19
Major Corporal	level 6 € 2,167.25 + seniority steps	- Duty € 69.72 -Actual Command Responsibility € 27.89 -Rank-related Command Responsibility € 18.59 - Military € 23.24
Guard	level 5 € 2,005.09 + seniority steps	- Duty € 69.72 -Actual Command Responsibility € 27.89 - Military € 23.24

Civil Police		
Position	Basic remuneration per month	Range of allowances per month
Commander	Basic remuneration € 3,075.00 + seniority steps (€85 per step)	€ 1,100.00 position-based remuneration parameter 3 (Delegated Decree no. 21 of 6/3/2013).
Officer	level 8 € 2,532.38 + seniority steps	Duty allowance € 309.65
Inspector	level 8 € 2,532.38 + seniority steps	Duty allowance € 92.96
Superintendent	level 7 € 2,341.09 + seniority steps	Duty allowance € 92.96
Assistant Chief	level 6 € 2,167.25 + seniority steps	Duty allowance € 92.96 Allowance of Assistant Chief € 37.19
Assistant	level 6 € 2,167.25 + seniority steps	Duty allowance € 92.96
Agent	level 5 € 2,005.09 + seniority steps	Duty allowance € 92.96

### Conflicts of interest

179. Article 8 of the Code of Conduct for the Police Corps provides that LEOs have a duty to report to their hierarchical superior any conflicts of interest. It further refers to Article 9 of the Code of Conduct for Public Officials (see, also, paragraphs 87 and 88 above).

180. Public officials are personally responsible for identifying any actual, potential or apparent conflicts of interest; informing their immediate superior in writing about any conflict of interest from the moment they become aware thereof and complying with any final decision that requires them to get out of the situation in which they are, including, if applicable, the indication to refrain from any act relating to the procedure or administrative activity in relation to which a conflict of interest has been identified.

181. Article 10 of the Code of Conduct for Public Officials also applies to LEOs (see also paragraph 116 above). Consequently, the Gendarmerie's Commander Officer has issued

Directive no. 29 of 11 July 2018, according to which all military members are required to fill out a declaration to this effect. Declarations are not made public.

182. The GET welcomes the existence of rules on conflicts of interest within the Police Corps. It considers that this area, especially when conflicts of interest may affect decision-making and financial interests, should be covered by the practical guidance to be adopted in implementation of the recommendation made in paragraph 154 above. This area should also benefit from the initial and in-service training that will be delivered on the basis of the practical guidance (see also paragraph 156 above), not least because the GET has not been provided with information or statistics regarding the monitoring of situations of conflicts of interest, including the institution of any disciplinary enquiries/investigations and the imposition of disciplinary sanctions.

### **Prohibition or restriction of certain activities**

#### *Incompatibilities and outside activities*

183. With regards to incompatibilities, under Article 8 of the Code of Conduct for the Police Corps, LEOs may not hold shares in partnership and joint-stock companies, with the exception of shares held in companies listed on the stock exchange or in companies carrying out certain reserved activities referred to in national law, provided that such shareholding is exclusively for saving purposes. Reference is also made to Article 11 of the Code of Conduct for Public Officials, which applies to LEOs (see paragraph 97 above), according to which public officials will not be involved in any activity or operation, hold office or perform any functions, regardless of whether it is paid or not, which is incompatible with the proper exercise of their public duties or which would prejudice such exercise. In case of doubt, public officials will report the situation to their immediate hierarchical superior who is empowered to take a decision. In addition, Article 30 of Law no. 41/1972 applies to LEOs (see paragraph 97 above).

#### *Gifts*

184. The Code of Conduct for the Police Corps contains no specific provisions relating to the receipt and acceptance of gifts. However, the provisions regulating the receipt and acceptance of gifts under the Code of Conduct for Public Officials apply to LEOs (see paragraphs 100-101 above). In addition, Article 374 of the Criminal Code provides that the receipt of compensation by a public official for an official act already carried out is punishable by imprisonment or a fine.

185. The GET considers that, as in the case of rules on conflicts of interest within the Police Corps, this area should be covered by the practical guidance to be adopted to complement the Code of Ethics, which should include specific and sufficiently detailed examples in this respect, as well as by the initial and in-service training that will be delivered to LEOs (see also paragraph 156 above). In addition, the applicable rules should be clarified and strengthened, as recommended in paragraph 105 above. In this respect, the GET notes that representatives of the Civil Police stated that the statutory €100 threshold for gifts was not acceptable for them (they were in favour of a zero-gift policy).

#### *Misuse of public resources*

186. The Code of Conduct for the Police Corps contains no specific provisions relating to the misuse of public resources, while Article 19 of the Code of Conduct for Public Officials applies to LEOs (see paragraph 106 above). In addition, the Criminal Code provides for the offence of embezzlement.

#### *Third party contacts, confidential information*

187. The Code of Conduct for the Police Corps contains no detailed provisions regulating third-party contacts and the use of confidential information, other than a cursory reference to LEOs' compliance with the principle of confidentiality in Article 6 (5) (see also paragraph 151 above). While Article 18 of the Code of Conduct for Public Officials regulates treatment of confidential information (see paragraph 107 above), the said provision does not expressly apply to LEOs, who, by reference to Article 6 (6) of the Code of Conduct for the Police Corps, are required to comply with criminal procedural rules. The GET considers that this omission will have to be addressed in the process of updating the Code of Conduct for the Police Corps (see the recommendation given in paragraph 154 above). In addition, the disclosure of secrets constitutes an offence under Articles 192 and 377 of the Criminal Code and is punishable by imprisonment.

#### *Post-employment restrictions*

188. The Code of Conduct for the Police Corps contains no specific provisions relating to post-employment restrictions, while Article 21 of the Code of Conduct for Public Officials applies to LEOs (see paragraph 153 above). In addition, public officials will promptly report to their immediate superior any concrete offer of employment that could create a real, potential or apparent conflict of interest.

189. The GET heard that LEOs rarely give up their jobs to join a private company. There were sporadic cases of revolving doors in the country. However, the possibility for resigned or retired LEOs to work in or offer service to the private security sector cannot be flatly denied. This increases the probability of risks that resigned or retired LEOs can use sensitive or even classified information obtained during their career while they hold office. The fact remains that no information has been collected as to the number of LEOs who take up employment in the private sector once they leave the Police Corps. There is no requirement for LEOs to report any future employment after leaving office. Nor is there an effective enforcement mechanism in place to verify any potential or existing conflicts of interest and monitor cooling-off periods. Against this background, **GRECO recommends that a study be conducted concerning the activities of law enforcement officers after they leave the Police Corps and that, if necessary, in the light of its findings, specific rules be established to ensure transparency and mitigate the risks of any conflicts of interest.**

### **Declaration of assets, income, liabilities and interests**

#### *Declaration requirements and review mechanism*

190. There is no obligation for LEOs to declare assets, income and liabilities, other than the requirement to disclose personal or private interests which could be linked to their official duties, to their immediate superior, at the time of appointment and, thereafter at regular intervals (see paragraph 181 above). Following a specific order issued by the Commanders,

the members of the Police Corps concerned compile an ad hoc declaration, which will be repeated on a regular basis. Any false declaration is subject to both criminal and disciplinary sanctions.

191. The person responsible for checking the declarations of interest is the Commander of the relevant LEA. Regarding the Gendarmerie, in spite of a lack of financial resources, two verification cycles of declarations have been carried out.

192. The GET considers that financial disclosure requirements can play a part in preventing risks of corruption in the Police Corps, for instance for top level positions (i.e. Commanders) or other senior posts or individuals who are vulnerable to conflicts of interest or may be exposed to a greater risk of corruption. Such LEOs may be required to file assets declaration at the beginning and at the end of their employment, and to update them at regular intervals or when significant changes in their assets occur. The introduction of an obligation to disclose assets, income and liabilities could further prove instrumental when implementing the recommendation on the conduct of a risk assessment of corruption-prone areas and the development of a strategy for the Police Corps (see paragraph 147 above) and the conduct of regular vetting for LEOs (see paragraph 163 above) and may further foster the public trust in the Police Corps. Thus, the GET encourages the authorities to assess the need whether an obligation ought to be introduced for certain law enforcement officers (top level positions and/or positions vulnerable to corruption risks) to declare assets and financial interests on a regular basis.

## **Oversight and enforcement**

### *Internal oversight and control*

193. Hierarchical superiors must ensure that LEOs who are members of their units observe the ethical principles laid down in both Codes of Conduct. LEOs are obliged to report misconduct.

194. The GET notes that there is no specialised internal control and oversight unit, inspectorate or staff in place in respect of the Police Corps. This is a fundamental gap that must be addressed as a matter of priority, by establishing a common internal and oversight mechanism for all LEAs, which must carry out proactive and reactive controls. Inspiration can be drawn from other GRECO member States as to its role, tasks, organisation and functioning. For example, such a mechanism may be empowered to carry out internal enquiries to ensure that rules of conduct and ethics are respected and to prevent cases of internal corruption or other related misconduct. Also, it may carry out objective assessments/audits of governance processes and risk management, monitor compliance with transparency requirements, publication obligations, freedom of information legislation. In addition, it can verify the implementation of and compliance with administrative and operational procedures and prepare independent studies which evaluate or help to improve the organisation and operation of LEAs. It must be provided with sufficient resources and expertise and enjoy organisational independence to play an effective, proactive and prominent role in internal integrity, risk management and oversight policies. Consequently, **GRECO recommends setting up or designating a central autonomous body for the Police Corps with internal oversight and control powers over law enforcement agencies.**



### *External oversight and control*

195. The Public Finance and Control Commission exercises *ex ante* and *ex post* checks on the financial expenses of LEAs.

### *Complaints system*

196. A citizen may file a complaint with either LEA. Anonymous complaints are not accepted. The complaint constitutes the ground for opening a formal investigation and LEOs prepare a report in response. A complaint against the actions or failure to act by an LEA may be filed with another LEA or directly with the court. A free anti-corruption number (800 783 797) of the Inter-Agency Operations Centre operates to report misconduct or corruption.

197. The GET was informed that (non-criminal) complaints were registered separately by each LEA, which also treated them independently. Representatives from the Civil Police mentioned that citizens complained to the Commander who instituted an enquiry into the matter. It transpired that, in practice, there are no standardised operating procedures to deal with non-criminal complaints, not least because an internal control or independent oversight mechanism over the Police Corps is absent (see paragraph 194 above). This hampers the effectiveness of the system. The public resorted to informal channels of complaints. Against this background, the GET considers that, in order to inspire trust in the public and increase coordination within the Police Corps, the authorities should standardise the process and procedures for accepting and dealing with complaints from the public. They may consider having one single entry point for complaints to ensure coordination amongst LEAs. In addition, they ought to inform the public of formal channels of filing complaints and of the outcome of complaints in order to increase transparency and accountability. **GRECO recommends (i) taking proactive measures to standardise and streamline the procedures for recording and dealing with public complaints on misconduct by law enforcement officers in order to ensure coordination and cooperation within the Police Corps; (ii) conducting public information campaigns about the existence of formal channels of complaints against law enforcement officers; and (iii) providing statistics on the outcome of complaints made against law enforcement officers at regular intervals, including actions taken and sanctions imposed (while respecting the anonymity of the persons concerned).**

### *Reporting obligations and whistleblowers' protection*

198. Article 9 of the Code of Conduct for the Police states that members of LEAs are required to report all forms of corruption, crime and unlawful activities (this is further reinforced by Article 7 of the Code of Conduct for Public Officials<sup>108</sup>). The complaint or report will be addressed in writing or in another form to the hierarchical superior, the judicial or police authority. LEAs will ensure the confidentiality of the identity of the whistleblower. The identity

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<sup>108</sup> Article 7 of the Code of conduct for Public Officials requires public officials to submit complaints and reports in the event that they believe or become aware that (i) they have acted contrary to the principles of ethics and good performance or otherwise in a way inconsistent with the Code of Conduct, (ii) other public officials have committed a breach of the Code of Conduct or committed a breach of the law or (iii) there is an element, indication or reasonable suspicion of illegal or criminal activity concerning the public function. The complaint is to be submitted to the immediate superior, the judicial or police authority in writing or in other specific forms envisaged by the legislation in force. The public authority will ensure that whistleblowers submitting complaints or reports based on reasonable suspicion and in good faith do not suffer any damage. The public authority is to take appropriate measures to ensure the confidentiality of the identity of the whistleblower.

will only be disclosed when the judicial authority deems it indispensable for the purposes of establishing the offences being prosecuted.

199. In addition, anyone, including a public official, may, even anonymously, report corruption by filling out an online form<sup>109</sup>, which is sent to the DGFP. If the report does not concern the Head of the Office in which the whistleblower works, the DGFP forwards it to the Head of the Office concerned, who promptly carries out an enquiry, taking care to ascertain as far as possible that it is well-founded and truthful. If the report directly concerns the Head of the Office, it is the DGFP that prepares the file while maintaining the confidentiality of the whistleblower. The report is archived (maintaining its confidentiality) if it is not sufficiently well-founded or if there is no real possibility of verifying its validity. If the report is manifestly well-founded, the manager initiates the procedures for disciplinary sanctions laid down by law and forwards the report to the DGFP. If there are grounds for a criminal offence, he also transmits the same report to the Court Registry, for the initiation of the procedures provided for by law.

200. There have been no cases of whistleblowing reports within the Police Corps.

201. It transpired from the meetings on-site that, other than what has been described in the preceding paragraphs, there is no special legislation devoted to the protection of whistleblowers, nor any detailed provisions elsewhere regulating this matter. Proper reporting channels for whistleblowers are absent in the Police Corps. Reporting a wrongdoing to the hierarchical superior is counterproductive as this gives rise to an identity protection issue. Also, identifying the kind of support measures on which whistleblowers may rely is missing. In addition, tailored training on whistleblowing and protection of whistleblowers is absent. Academics stated that there was confusion amongst LEAs between whistleblower protection and witness protection.

202. The GET acknowledges that a system of whistleblowing is a specific challenge in a country the size of San Marino where almost everyone knows everyone, and leaks of confidentiality may be likely to occur. In the GET's view, a single channel of reporting wrongdoing in the Police Corps may be established. Special care should be taken to ensure the confidentiality of whistleblowers, including the setting-up of an anonymous hotline. The authorities may consider empowering an independent institution to operate the reporting channel or briefly entrusting this role to a third party with as few links as possible to the Sammarinese society. Whistleblowers should be given support and protection against retaliation. The absence of any whistleblowing reports is a call to conduct targeted awareness trainings of LEOs about whistleblowing. **GRECO recommends (i) reviewing the existing legal framework on the protection of whistleblowers in order to adopt and implement whistleblower protection measures in the Police Corps (such as setting up reporting channels for wrongdoings, receiving and processing whistleblowers' reports, ensuring the protection of whistleblowers' identity, providing support to whistleblowers, etc.), and (ii) developing dedicated training and awareness-raising activities for all law enforcement officers and chains of command in the Police Corps.**

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<https://www.gov.sm/pub1/GovSM/Amministrazione-Trasparente/Prevenzione-della-corruzione/Prevenzione-alla-corruzione-Form-segnalazione.html>

### *Disciplinary and other administrative proceedings*

203. As regards the Civil Police, whose staff members are civil servants, a breach of the rules of conduct, rules on conflicts of interest, related prohibitions/restrictions and declarations requirements is punishable pursuant to Law no. 145/2022 and the procedure set out in paragraphs 125-128 above. As stated above, the initiation of a disciplinary action and the related investigation is the responsibility of the Commander, who may also impose the sanction of warning (a written and reasoned reprimand for the commission of a minor violation) and censure (a solemn written and reasoned reproach to the employee, after obtaining the binding positive opinion of the Director of Human Resources). Suspension from service or dismissal is imposed solely by the Disciplinary Commission.

204. The GET notes that domestic law provides for safeguards in the imposition of suspension from services and dismissal (i.e. the decision is taken by the Disciplinary Commission). However, the Commander can sanction an LEO single-handedly by issuing a warning or a censure. The GET did not hear criticism about the conduct of disciplinary proceedings, the lack of impartiality or the use of powers by the Commander in imposing a sanction. Be that as it may, and in spite of the fact that such a decision is open to appeal to the administrative court, which is empowered to carry out a full review and examine both issues of fact and law, the GET encourages the authorities to assess the legal arrangement whereby the Commander of the Civil Police decides on the institution of disciplinary proceedings and the imposition of a warning or a censure in order to introduce further safeguards, as appropriate.

205. Disciplinary proceedings in the Gendarmerie and the Fortress Guard are governed by Law no. 15/1990 regulating military staff and discipline, Article 79 of which sets out disciplinary breaches. Lighter sanctions will be imposed for minor misconduct, while more severe ones for misconduct that has caused damage to discipline or in cases of recidivism. According to Article 81, disciplinary sanctions consist of: a warning; a fine to the extent determined by the special regulation of the individual Military Corps, or in the absence thereof, by the Military Congress; a reprimand; a solemn reprimand; arrest; imprisonment; suspension from the duties of the rank; loss of military rank; and expulsion from the Military Rolls. Articles 82-90 provide several instances for the imposition of each disciplinary sanction. No appeal may be lodged against the imposition of a warning. Under Article 93, the disciplinary sanctions of fine and reprimand imposed by the chain of command may be challenged, within 20 days of notification, before the Military Congress, which decides on the case by a final decision. The disciplinary sanctions of solemn reprimand (censure), arrest, imprisonment, suspension, loss of military rank and expulsion may be appealed, within 30 days of notification, to Captains Regent, who decide on the case by a final decision.

206. The GET heard on-site that the arrangement by which Captains Regent decide on the imposition of a military sanction by a final decision stems from traditions harkening back to the 1600s. Owing to their appointment, term of office, role and duties, as described in paragraphs 19-20 above, the GET considers that Captains Regent cannot be regarded as “a tribunal”, nor are they capable of providing the guarantees of “a fair trial”, within the meaning of Article 6 of the European Convention on Human Rights<sup>110</sup> to which San Marino is a Party. The same applies to the Military Congress. In these circumstances, Article 93 of Law no.

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<sup>110</sup> See, amongst many other examples, *Guðmundur Andri Ástráðsson v. Iceland* [GC], no. 26274/18, 1 December 2020.

15/1990 ought to be amended. **GRECO recommends that the disciplinary system in respect of the Gendarmerie and the Fortress Guard be revised in order to (i) provide for an effective legal remedy against all disciplinary sanctions in conformity with the requirements of the European Convention on Human Rights, and (ii) exclude the possibility that Captains Regent and the Military Congress take a final decision on disciplinary proceedings.**

*Criminal proceedings and immunities*

207. LEOs enjoy no immunity or privileges against criminal prosecution. Criminal offences committed by public officials are prosecuted *ex officio*. Reports may be addressed to judicial authorities or LEAs, which are obliged to forward them to the Law Commissioner who has the right and obligation to prosecute all kinds of offences. Also, the Criminal Code provides for aggravating circumstances for offences committed by public officials.

208. From 2020 to 2023, thirteen criminal proceedings were opened against LEOs, and their outcome is presented in the table below.

No.	Prosecution under criminal law	Outcome
2020		
1.	Article 376 of the Criminal Code	The proceedings were discontinued because there was no case to answer. Indeed, it emerged from the proceedings that the suspect had never been on duty at the place where the alleged offence took place.
2.	Article 181-bis of the Criminal Code	Six-month imprisonment, with the benefit of suspended sentence and of not mentioning the conviction in the criminal record certificate. It is specified that this offence was not committed in the performance of the duties of LEO
2021		
1.	Law no. 139/1997 on narcotics	Proceedings against the LEO have been discontinued following the successful completion of the probation. It is specified that the proceedings are now in the trial stage only with regard to the position of the co-defendant, a civilian, who has been indicted.
2.	Articles 362, 73, 90 no. 2 of the Criminal Code	Proceedings are pending before the first instance court, and they involve an LEO and a civilian.
2022		
1.	Article 376 of the Criminal Code	Proceedings were discontinued for lack of <i>actus reus</i> and <i>mens rea</i> .
2.	Article 378 of the Criminal Code	Proceedings are pending before the first instance court.
3.	Articles 362 (aiding and abetting) and 199 (receiving stolen goods) of the Criminal Code	Proceedings are pending before the first instance court.
4.	Article 184(1) of the Criminal Code	Proceedings were discontinued, as the Judge stated that the reconstruction made by the complainant was unreliable and found, however, that in the event that the offence of threat had

		in fact taken place, the exemption of provocation would have been applicable.
2023		
1.	Article 376 of the Criminal Code	The proceedings were concluded with a criminal conviction.
2.	Article 377 of the Criminal Code	The proceedings were discontinued because there was no case to answer.
3.	Article 378 of the Criminal Code	The proceedings were discontinued. In particular, the judge found that the complaint - difficult to understand and confusing - was filed many years after the alleged facts.
4.	Article 377 of the Criminal Code	The proceedings were discontinued. The Judge found that there was an absolute lack of elements to support the complaint submitted by the self-proclaimed injured party, and also highlighted the extreme vagueness of the circumstances reported.
5.	Article 376 of the Criminal Code	The proceedings were discontinued. The Judge found that the facts were rather related to the offence of battery (Article 157 of the Criminal Code) and not to the alleged offence of abuse of office. Therefore, since, in the acts, i.e. in the injured party's complaint, there were no conditions for the crime to be proceeded against, the proceedings were discontinued

## **VI. RECOMMENDATIONS AND FOLLOW-UP**

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

*Regarding the central government (top executive functions)*

- i. (i) that detailed rules be developed and adopted setting out the conditions for appointment and recruitment of political staff members and consultants with similar functions as well as their tasks, rights and obligations; (ii) that their names, functions, areas of expertise, remuneration (for the tasks performed for the government) and any outside activities be made public and kept up to date; and (iii) that all persons with top executive functions undergo integrity checks as part of their appointment or recruitment in order to prevent and manage conflicts of interest (paragraph 41);**
- ii. that a dedicated policy document be drawn up and made public, based on a systemic analysis of corruption and integrity-related risks covering all persons with top executive functions and identification of corresponding remedial measures (paragraph 46);**
- iii. (i) that the codes of conduct applicable to persons with top executive functions be harmonised (or consolidated if necessary) and updated so as to cover all integrity related matters (e.g. conflicts of interest, incompatibilities, gifts, outside activities, third party contacts, post-employment restrictions, financial declarations, handling of confidential information and misuse of resources); (ii) that the codes of conduct be complemented by practical guidance with necessary definitions, detailed clarifications, explanatory materials and illustrative examples regarding conflicts of interest and other integrity-related matters; and (iii) that the supervision and enforcement of the codes of conduct be strengthened and become effective (paragraph 58);**
- iv. that the Ethics Committee be adequately provided with sufficient (human, budgetary and administrative) resources to perform the important tasks entrusted to it by law (paragraph 60);**
- v. (i) that compulsory dedicated briefings or trainings on integrity standards be effectively provided to persons with top executive functions upon taking office and at regular intervals thereafter, and (ii) that an effective mechanism be developed to provide consistent confidential counselling to all persons with top executive functions (paragraph 66);**
- vi. (i) carrying out an independent assessment of the regulatory framework regarding access to information and its implementation, with a particular focus on the use of exceptions, the timeliness of responses, the length of judicial proceedings and the practice of proactive disclosure; and (ii) in light of the findings of this analysis, taking the necessary legislative and practical measures to improve public access to information (paragraph 76);**

- vii. (i) establishing rules and procedures regulating the conduct of meaningful and effective public consultation for draft legislation emanating from the Congress of State and (ii) introducing a legal obligation to publish the outcomes of public consultation procedures in a timely and easily accessible manner (paragraph 79);
- viii. (i) that detailed rules on how persons with top executive functions engage in contacts with lobbyists and other third parties who seek to influence the government's decision-making processes, decisions and other activities be introduced, and (ii) that sufficient information about the purpose of these contacts be disclosed, as well as the identity of the person(s) with whom (or on whose behalf) the meeting(s) took place and the specific subject matter(s) of the discussion (paragraph 81);
- ix. that (i) rules on gifts applicable to all persons with top executive functions be clarified and strengthened; and (ii) information about the receipt of gifts, invitations and other advantages by persons with top executive functions be recorded in a central register and be made available to the public in a timely manner (paragraph 105);
- x. (i) that rules on post-employment restrictions be strengthened and broadened in scope as well as apply to all persons with top executive functions, and (ii) that an effective supervision mechanism regarding these rules be established (paragraph 111);
- xi. (i) that all persons with top executive functions be obliged to submit declarations of assets, interests and liabilities, which ought to be made accessible to the public and (ii) consideration be given to extending the obligation for persons with top executive functions to submit declarations of assets, interests and liabilities to their spouses, partners and dependants (it being understood that such information would not necessarily have to be made public) (paragraph 117);
- xii. that declarations of assets, interests and liabilities of all persons with top executive functions be subject to regular substantive checks and that effective, proportionate and dissuasive sanctions be applied in case of breach (paragraph 120);

*Regarding law enforcement agencies (the Gendarmerie, the Fortress Guard and the Civil Police)*

- xiii. that dedicated measures be designed and implemented to enhance transparency and strengthen proactive disclosure of information by the law enforcement agencies (paragraph 144);
- xiv. that (i) a comprehensive risk assessment of corruption-prone areas and activities be carried out to identify challenges and emerging threats, and (ii) in light of the findings, a strategy be developed covering all law enforcement agencies, which ought to be communicated to law enforcement officers and the public (paragraph 147);

- xv. that (i) the codes of conduct applicable to law enforcement officers be harmonised (or consolidated if necessary) and updated so as to cover all integrity related matters (e.g. conflicts of interest, incompatibilities, gifts, outside activities, third party contacts, post-employment restrictions, handling of confidential information, and misuse of resources) and (ii) the updated Code of Conduct for the Police Corps be supplemented with specific guidance, drawing on practical examples covering all relevant integrity matters (such as conflicts of interest, gifts, contacts with third parties, outside activities, handling of confidential information, etc.), which ought to be made known to police officers and used in initial and in-service training (paragraph 154);
- xvi. establishing a mechanism of confidential counselling on ethics and matters of professional conduct for law enforcement agencies outside of the chain of command (paragraph 157);
- xvii. that all law enforcement officers be subject to regular integrity checks throughout their career, particularly in the context of promotion or changes of positions, in accordance with a clear procedure which should be published (paragraph 163);
- xviii. that dedicated measures be taken to increase the representation of women in each law enforcement agency at all levels (paragraph 166);
- xix. that a study be conducted concerning the activities of law enforcement officers after they leave the Police Corps and that, if necessary, in the light of its findings, specific rules be established to ensure transparency and mitigate the risks of any conflicts of interest (paragraph 189);
- xx. setting up or designating a central autonomous body for the Police Corps with internal oversight and control powers over law enforcement agencies (paragraph 194);
- xxi. (i) taking proactive measures to standardise and streamline the procedures for recording and dealing with public complaints on misconduct by law enforcement officers in order to ensure coordination and cooperation within the Police Corps; (ii) conducting public information campaigns about the existence of formal channels of complaints against law enforcement officers; and (iii) providing statistics on the outcome of complaints made against law enforcement officers at regular intervals, including actions taken and sanctions imposed (while respecting the anonymity of the persons concerned) (paragraph 197);
- xxii. (i) reviewing the existing legal framework on the protection of whistleblowers in order to adopt and implement whistleblower protection measures in the Police Corps (such as setting up reporting channels for wrongdoings, receiving and processing whistleblowers' reports, ensuring the protection of whistleblowers' identity, providing support to whistleblowers, etc.), and (ii) developing dedicated training and awareness-raising activities for all law enforcement officers and chains of command in the Police Corps (paragraph 202);



**xxiii. that the disciplinary system in respect of the Gendarmerie and the Fortress Guard be revised in order to (i) provide for an effective legal remedy against all disciplinary sanctions in conformity with the requirements of the European Convention on Human Rights, and (ii) exclude the possibility that Captains Regent and the Military Congress take a final decision on disciplinary proceedings (paragraph 206).**

210. 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 May 2026. The measures will be assessed by GRECO through its specific compliance procedure.

211. GRECO invites the authorities of San Marino to authorise, at their earliest convenience, the publication of this report, and to make a translation of it into the national language available to the public.

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## About GRECO

The Group of States against Corruption (GRECO) monitors the compliance of its member states with the Council of Europe's anti-corruption 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 anti-corruption 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](http://www.coe.int/greco).