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Local democracy in the Republic of San Marino

Monitoring Committee

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Summary

This report follows the first monitoring visit to the Republic of San Marino since it ratified the Charter in 2013. Before that date, the situation of local democracy in the Republic of San Marino had already been the focus of Recommendation 63 (1999) adopted by the Congress in June 1999.

The report welcomes the recognition of the legal personality of the township councils and of their right to recourse to judicial remedies. The rapporteurs similarly welcome the establishing of the joint session of Township representatives.

They highlight however several areas of concern which need to be addressed by the government of San Marino, notably with regard to limited competences and decision-making powers of municipalities as a result of the concentration of nearly all public responsibilities at the central level.

In the same vein, the rapporteurs underline that local authorities' limited autonomy, inadequate financial resources and the lack of own professional staff do not permit them to perform their duties appropriately. Lastly, legally established consultation mechanisms and procedures are not effectively implemented and there is no established association of local authorities in San Marino.

Consequently, the Congress recommends a series of measures to San Marino to bring local self-government in line with the principles and requirements of the Charter and welcomes the launching of a reform process to achieve this goal.

Lastly, the government of San Marino is called on to consider signing and ratifying the Additional Protocol to the Charter on the right to participate in the affairs of a local authority.

1 L: Chamber of Local Authorities / R: Chamber of Regions
EPP/CCE: European People's Party Group in the Congress
SOC: Socialist Group
ILDG: Independent Liberal and Democratic Group
ECR: European Conservatives and Reformists Group
NR: Members not belonging to a political group of the Congress

RECOMMENDATION 418 (2018)²

1. The Congress of Local and Regional Authorities of the Council of Europe refers to:

a. Article 2, paragraph 1.b, of Statutory Resolution CM/Res(2015) 9 relating to the Congress, which provides that one of the aims of the Congress shall be “to submit proposals to the Committee of Ministers in order to promote local and regional democracy”;

b. Article 2, paragraph 3, of Statutory Resolution CM/Res(2015) 9 relating to the Congress, stipulating that “the Congress shall prepare on a regular basis country-by-country reports on the situation of local and regional democracy in all member states and in states which have applied to join the Council of Europe, and shall ensure, in particular, that the principles of the European Charter of Local Self-Government are implemented”;

c. Chapter XVII of the Rules and Procedures of the Congress on the organisation of the monitoring procedures;

d. Recommendation 63 (1999) on local democracy in the Republic of San Marino;

e. the present explanatory memorandum on local democracy in San Marino drawn up by Harald Bergmann, Netherlands (L, ILDG) and Gunnar Axel Axelsson, Iceland (R, SOC), rapporteurs, following a visit to the country from 13 to 14 June 2017.

2. With regard to the Republic of San Marino:

a. It joined the Council of Europe on 16 November 1988. It signed the European Charter of Local Self-Government (hereinafter “the Charter”) on 16 May 2013 and ratified it on 29 October 2013 with the exception of paragraphs 3 and 8 of Article 9 of the Charter;

b. When ratifying the Charter, it made an interpretative declaration with regard to Article 9 of the Charter, which reads as follows:

“The Republic of San Marino maintains that Article 9 of the Charter must be interpreted as an article establishing a general principle of financial autonomy, according to which local authorities are entitled to freely dispose, in the framework of the national economic policy, of the resources allocated to them for the exercise of their powers”;

c. The Charter entered into force in San Marino on 1 February 2014;

d. It has not signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207);

e. The Monitoring Committee decided to monitor the situation of local democracy in the light of the Charter and instructed Mr Harald Bergmann and Mr Gunnar Axel Axelsson, as rapporteurs, to draw up and submit to the Congress a report on local democracy in San Marino³;

f. The Congress delegation carried out a monitoring visit from 13 to 14 June 2017. During the visit the delegation met mayors and municipal councillors, representatives of the government and other public institutions of San Marino. The detailed programme of the visit is appended to the present report;

g. The rapporteurs wish to thank the Permanent Representation of San Marino to the Council of Europe, the Sammarinese delegation to the Congress and all the interlocutors met during the visit for their valuable co-operation, availability and for the valuable information they provided.

² Debated and adopted by the Congress on 28 March 2018, 2nd sitting (see Document [CG34\(2018\)17](#), explanatory memorandum), co-rapporteurs: Gunnar Axel AXELSSON, Iceland (L, SOC) and Harald BERGMANN, Netherlands (L, ILDG).

³ The rapporteurs were assisted by Dr Nikolaos-Komninos CHLEPAS, member of the Group of Independent Experts on the European Charter of Local Self-Government, and the Congress Secretariat.

3. The Congress notes with satisfaction:

- a. the launching of a reform process aimed at bringing local self-government in San Marino in line with the principles and requirements of the Charter;
- b. the recognition of the legal personality of the township councils (Giunte di Castello) and of their right to recourse to judicial remedies, and in accordance with Article 11 of the Charter;
- c. the establishing of the joint session of township representatives (consulta delle Giunte).

4. The Congress expresses its concern with regard to:

- a. limited competences and decision-making powers conferred to municipalities that hinders their ability to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population (Article 3.1) due to the concentration of nearly all public responsibilities at the level of the state (Article 4.3);
- b. the absence of autonomy of local authorities to exercise their competences (Article 4.2) which are not full and exclusive (Article 4.4.);
- c. the ineffective implementation of legally established consultation mechanisms and procedures (Articles 4.6, 9.6);
- d. inadequate financial resources available to local authorities for exercising their powers;
- e. the lack of own professional staff of local authorities (Article 6) to allow for effective management of local affairs;
- f. the absence of the explicit recognition of the principle of local self-government at the constitutional level.

5. The Congress recommends that the Committee of Ministers invite the authorities of San Marino to:

- a. allocate a substantial share of public affairs to the responsibility of local authorities in line with the principle of subsidiarity and ensure that local authorities dispose of the necessary legal and administrative means, property and finances to regulate and manage it;
- b. clarify the areas where the townships will have full and exclusive powers and give them full discretion to exercise their initiatives with regard to any matter within their competences;
- c. ensure proper implementation of consultation procedures and mechanisms in practice to permit effective consultations with local authorities, in due time and in an appropriate way on all matters that directly concern them;
- d. revise the financial basis of the functioning of local self-government so as to endow local authorities with adequate financial resources which should be commensurate with their responsibilities;
- e. promote the employment of professional staff in municipalities;
- f. establish, in close consultation with townships, a clear time-table and pursue the reform process of local self-government in San Marino in line with the principles of the Charter;
- g. enshrine the principle of local self-government at the constitutional level in order to strengthen the position of local government in line with the spirit of the Charter;
- h. consider signing and ratifying the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207).

6. The Congress calls on the Committee of Ministers to take account of this recommendation on local democracy in San Marino and the accompanying explanatory memorandum in its activities relating to this member State.

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1. INTRODUCTION: AIM AND SCOPE OF THE VISIT, TERMS OF REFERENCE

1. In accordance with Article 2 of Statutory Resolution CM/Res(2015)9 of the Committee of Ministers of the Council of Europe, the Congress of Local and Regional Authorities (hereinafter "the Congress") prepares regular reports on the situation of local and/or regional democracy in all member states of the Council of Europe.

2. San Marino joined the Council of Europe on 16. November 1988 and signed the European Charter of Local Self-Government (CETS No. 122, hereinafter "the Charter") on 16 May 2013 before ratifying it on 29 October 2013, declaring reservations to paragraphs 3 and 8 of Article 9 and making an interpretative reservation concerning the same Article. The Republic of San Marino has not ratified the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority.

3. The monitoring visit to review the state of local democracy in San Marino took place from 13 June to 14 June 2017. The Monitoring Committee appointed Mr Harald Bergmann (Netherlands, L, ILDG) and Mr. Gunnar Axel Axelsson (R, SOC), as co-rapporteurs on local democracy. The rapporteurs were assisted by Prof. Nicolaos-Komninos CHLEPAS, member of the Group of Independent Experts on the European Charter of Local Self-Government, and by the Congress Secretariat.

4. During this visit, the Congress delegation met mayors and municipal councillors, representatives of the government, ministries and other public institutions of San Marino. The detailed programme of the visit is appended to the present report.

5. The co-rapporteurs would like to thank the Permanent Representation of San Marino to the Council of Europe, who assisted with the organisation and smooth running of the visit. They also express their gratitude to all the interlocutors met during the visit for their excellent welcome, their availability and the valuable information. disponibilité

2. HISTORICAL BACKGROUND, POLITICAL SITUATION AND REFORMS

2.1. Historical background

6. San Marino was founded in AD 301 by a Christian stone cutter named Saint Marinus who fled persecution in Dalmatia. He settled on the mountain with a group of Christians during the fourth century. With the establishment of a monastery in the ninth century, the community grew and attracted newcomers. San Marino was first ruled by important and wealthy families who settled on its territory. The oligarchy, dating back to around the year 1000, was put in place through the *Arengo*, an assembly of all the family chiefs of San Marino, who held all the powers. They notably appointed the highest representatives of the state, including the Consuls (known today as Regent Captains). The Arengo launched the drawing up of the Statutes, a set of laws ruling the functioning of the city as far back as the 12th century.

7. During the 15th century the city-state succeeded in safeguarding its independence from the conquests of neighbouring families, such as the Malatesta family, which ruled over the seaport of Rimini, and the Borgia family, from Rome. Due to a growth in population, however, it was becoming increasingly difficult to get all of the family chiefs to come to agreements and rule over the city⁴. By the middle of the 15th century, San Marino became a republic ruled by a Council of the LX, composed of 60 members from the Arengo, an assembly of the important families of San Marino. Around 1600 the Statutes established the institutional system of San Marino and defined the role and the activities of the main institutional organs of the Republic.

4 *San Marino Business Law Handbook*, International Business Publications, USA, 2013, p.31-32
https://books.google.fr/books?id=Aotl1IQX4z0C&pg=PA36&pg=PA36&dq=township+councils+san+marino&source=bl&ots=ruteCOWe72&sig=8EV6VRTbLM0L39-ZTz-e7FR5hwA&hl=en&sa=X&ved=0ahUKEwjGhejcp7_XTAhXJShQKHR_yRDKMQ6AEIQD_AH#v=onepage&q=township%20councils%20san%20marino&f=false

8. In 1631, papal recognition officially gave San Marino independent status. By the end of the 18th century, during the conquest of Italy by Napoleon, San Marino remained independent. On 23 May 1798, San Marino concluded a treaty of friendship and commerce with Napoleon's Roman Republic. San Marino was then brought under the protection of the French Republic. Napoleon even offered San Marino the opportunity to extend its territory in 1797, which it refused. San Marino also concluded a treaty on extradition and imports with the Italian Republic on 10 June 1802, which was renewed with the Kingdom of Italy on 29 October 1808. Even though the Congress of Vienna, at the end of the Napoleonic Wars in 1815, did not explicitly define the status of San Marino, the city-state considered its independence to be implicitly recognized.

9. During the 19th century movement for Italian unification, San Marino offered asylum to revolutionaries, among them Giuseppe Garibaldi. The unification of Italy confirmed the independence of San Marino. The city-state concluded a treaty with Italy on 22 March 1862, granting it the protection (the "*amicizia protettiva*") of the King of Italy. During both World Wars, San Marino declared its neutrality. However, San Marino was bombed by the Allied forces in 1944 and shortly occupied by both the German forces and the Allies during the same year.

10. The post-war period was marked by economic growth and prosperity (mainly due to tourism and the banking sector), as well as by San Marino's extensive international relations with other countries and many international organisations. San Marino became a member of the Council of Europe on 16 November 1988. The State also became a member of the United Nations on 2 March 1992. San Marino also used to rely on bank and tax secrecy to support its growth⁵ but it has undertaken a set of measures to harmonize its fiscal laws with European and international standards. In 2000 San Marino avoided being placed on the OECD list of tax havens by making a high level commitment to eliminate harmful tax practices within the following five years⁶. San Marino subsequently signed multiple Tax Information Exchange Agreements with most major countries between 2009 and 2010.

11. As the only neighbouring country of San Marino is Italy, San Marino has a special relationship with this country, and consequently with the European Union, regarding its monetary and customs systems. After a border agreement was adopted in 1991, borders between Italy and San Marino were abolished. The European Union and San Marino signed a Cooperation and Customs Union Agreement in 1991⁷. An agreement on the taxation of savings came into force in 2005. Something which was very symbolic for the European integration was that San Marino started to use the euro and mint its own euro coins (to a specified maximum value) in 2009, following a monetary agreement⁸. Further negotiations with San Marino and two other small size countries, namely Andorra and Monaco, have been carried out since 2013 to improve their economic integration⁹.

12. San Marino is not part of the Schengen agreement and it did not sign and ratify the 1951 United Nations Convention relating to the Status of Refugees and its 1967 Protocol. Furthermore, its legal system does not provide for a specific procedure for the granting of asylum or refugee status. The recent Law No. 118/2010 and Decree No. 186/2010 (Art.15) introduced a new "stay permit" for humanitarian and social protection reasons. This permit, issued by the Congress of State, may be granted in case of special humanitarian needs and entitles the holder to receive health assistance and temporary economic benefits from the Social Security Institute.

5 Website of the CIA, <https://www.cia.gov/library/publications/the-world-factbook/geos/sm.html>

6 OECD Annual Report 2001, p.63,

https://books.google.fr/books?id=auGhSHP_3EC&pg=PA63&pg=PA63&dq=a+high+level+commitment+to+eliminate+harmful+tax+practices+san+marino&source=bl&ots=GT-OaP6QzQ&sig=AlS3_RRE-Xb7qnvdpJDGyavcF4M&hl=en&sa=X&ved=0ahUKEwiRmK6-mJjUAhUNlxQKHSizC7AQ6AEIPTAF%20-%20v=onepage&q=a%20high%20level%20commitment%20to%20eliminate%20harmful%20tax%20practices%20san%20marino&f=false#v=onepage&q&f=false

7 Agreement on Cooperation and Customs Union between the European Economic Community and the Republic of San Marino, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:084:0043:0052:EN:PDF>

8 Communication from the Commission to the Council Report on the functioning of the Monetary Agreements with Monaco, San Marino and Vatican, <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52009DC0359>

9 Different options were proposed by the European Commission in 2012 for a deeper integration of the Microstates : <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0680:REV1:FR:HTML>

13. During the past decade, San Marino has made extensive efforts to comply with international human rights standards. In this regard, San Marino has signed and ratified many of the human rights conventions adopted by the Council of Europe and the United Nations.

2.2. Political situation and reforms

14. San Marino is a parliamentary representative democratic republic (also integrating strong elements of direct democracy), whereby the Captains Regent are the heads of state and heads of government, while it is characterized, in spite of the very small size of the country, by a well-developed and pluralist multi-party system. The two main parties are the Sammarinese Christian Democratic Party (PDCS) and the Party of Socialists and Democrats (PSD, a merger of the Socialist Party of San Marino and the Party of Democrats) in addition to several other smaller parties. It is difficult for any party to gain an absolute majority and most of the time the government is run by a coalition.

15. The Sammarinese Christian Democratic Party-PDCS (Italian: *Partito Democratico Cristiano Sammarinese*), joined the European People's Party (EPP) in 1993. Its internal left-wing faction left in 2006 to form the Centre Democrats and was joined by the social democrats of Arengo and Freedom.

16. The Party of Socialists and Democrats-PSD (Italian: *Partito dei Socialisti e dei Democratici*) was formed in 2005 by a merger of the Sammarinese Socialist Party (PSS), the oldest political party in the country, and the Party of Democrats (PD). The PSS long governed as the junior partner in a coalition with the Sammarinese Christian Democratic Party, while PD had its origins in the Sammarinese Communist Party.

17. The elections of the Great and General Council are mainly regulated by the Declaration on the Citizen's Rights (the main Constitutional Law, see below) and Electoral Law No. 6 of 31 January 1996 (last amended in 2016). The 60 members of the Great and General Council are elected every five years by a two-round proportional system with national majority bonus (the winning coalition receives at least 35 seats out of 60) from a nationwide constituency, with a single preferential vote. In order to increase women's representation in politics, Law No. 1 of 5 August 2008, amending Law No. 6 of 31 January 1996, provides that each party list shall not include more than two thirds of candidates of the same gender¹⁰.

18. The procedures and the financing of electoral campaigns are regulated by Law No. 6 of 31 January 1996 and Law No. 170 of 23 November 2005. The official campaign starts 20 days before the elections and direct campaigning outside of this period is prohibited. Political parties are mainly funded thanks to public funds and receive annual subsidies in proportion to their parliamentary representation. They can also receive private contributions, for which there is no particular ceiling. There is no requirement for candidates and lists to disclose their campaign income and expenditure prior to the elections. However, after the registration of candidates, their tax declaration and sources of income are made public. An audit committee, composed of three members, is tasked with the supervision of electoral finances.

19. For the 2008 general election the Christian-Democratic Party PDCS was part of the *Pact for San Marino* coalition and included in its list some candidates of the Euro-Populars for San Marino and Arengo and Freedom. The electoral coalition of the Pact for San Marino won 35 seats out of 60 in the Great and General Council gaining 54.22% of the national vote and becoming the new government of San Marino, which soon had to face the repercussions of global financial crisis in 2008, the global recession and the Eurozone sovereign debt crisis in 2010. A political crisis in 2011 dissolved the old majority, and the PDCS formed a government of national unity with the Party of Socialists and Democrats, whose ancestors had worked with the PDCS for decades. The new alliance, San Marino Common Good, won the Sammarinese election of 2012, the PDCS securing 21 seats together with their electoral running-mates, *We Sammarinese*.

¹⁰ OHCHR ICCPR Country Report 2015, p.7, paragraph 23, https://digitallibrary.un.org/record/804714/files/CCPR_C_SMR_3-EN.pdf

Table 1: Sammarinese general election, 11 November 2012 – Summary of Results

Coalition	Party	Votes		Seats	
		#	%	#	+/-
San Marino Common Good	Sammarinese Christian Democratic Party–NS	5,828	29.47	21	–
	Party of Socialists and Democrats	2,832	14.32	10	–
	Popular Alliance	1,319	6.67	4	–3
	<i>Direct coalition votes</i>	49	0.25	–	–
Agreement for the Country	Socialist Party	2,393	12.10	7	New
	Union for the Republic	1,651	8.35	5	New
	Sammarinese Moderates	340	1.72	0	–2
	<i>Direct coalition votes</i>	23	0.12	–	–
Active Citizenship	United Left	1,808	9.14	5	0
	Civic 10	1,325	6.70	4	New
	<i>Direct coalition votes</i>	46	0.23	–	–
RETE Movement		1,244	6.29	4	New
For San Marino		556	2.81	0	New
San Marino 3.0		364	1.84	0	New
Invalid/blank votes		1,360	–	–	–
Total		21,138	100	60	0
Registered voters/turnout		33,106	63.85	–	–

Source: San Marino State Secretary of Internal Affairs

20. The next (and most recent) general election took place on 20 November 2016. Three major coalitions competed during these elections: San Marino First (Centre-right); Adesso.sm (Centre-left) and Democracy in Motion (Civic and environmental movements). Pursuant to the law, the 60 members of the Great and General Council are elected by proportional representation, with seats allocated using the d'Hondt method. The electoral threshold is calculated by multiplying the number of parties running in the elections by 0.4, with a maximum possible threshold of 3.5%. If no list or coalition of lists obtains an absolute majority, a run-off election is held between the two most popular lists or coalitions of lists, of which the winner will obtain a majority prize – a seat bonus ensuring a majority. This is precisely what happened in this general election, since no coalition obtained the absolute majority during the first run-off: The *San Marino First* alliance (led by PDCS) received the largest share of the votes, but fell short of a majority in the Great and General Council, initially being allocated 25 seats. As no single bloc had won a majority of seats, a run-off was held on 4 December 2016 between the top two coalitions, San Marino First and Adesso.sm, to determine the winner of the majority prize. The second round saw Adesso.sm (led by the Democratic Socialist Left) win with 58% of the vote, resulting in seats being reallocated and the winning alliance receiving 35 seats.

Table 2: Sammarinese general election 2016 – Summary of Results (first and second round)

Coalition	Party	1. Round 20.11.2016			2. Round 4.12.2016			
		Votes	%	Seats	Votes	%	Seats	+/-
San Marino First	Sammarinese Christian Democratic Party	4,752	24.5	16	6,889	42.1	10	-11
	Socialist Party	1,496	7.7	5			3	-4
	Party of Socialists and Democrats	1,392	7.2	4			3	-7
	Sammarinese (NS-SsC)	414	2.1	0			0	-
	<i>Direct coalition votes</i>	44	0.2	0			0	-
	<i>Total</i>	8,098	41.7	25			16	-22
Adesso.sm	Democratic Socialist Left (SU-PR-LabDem)	2,352	12.1	8	9,482	57.9	14	+9
	Future Republic (AP-UR)	1,865	9.6	6			11	+6
	Civic 10	1,800	9.3	6			10	+6
	<i>Direct coalition votes</i>	88	0.5	0			0	-
	<i>Total</i>	6,105	31.4	20			35	+21
Democracy in Motion	RETE Movement	3,561	18.3	12			8	+4
	Democratic Movement – San Marino Together	872	4.5	3			1	New
	<i>Direct coalition votes</i>	70	0.4	0			0	-
	<i>Total</i>	4,503	23.2	15			9	+4
List of Free People		412	2.1	0			0	New
Sammarinese Democratic Revival		309	1.6	0			0	New
Invalid/blank votes		849	-	-	653	-	-	-
Total		20,276	100	60	17,024	100	60	0
Registered voters/turnout		33,985	59.7	-	33,985	50.1	-	-

Source: San Marino State Secretary of Internal Affairs

21. As regards the democratic institutions of the country and especially the status and the situation of local government in San Marino, various changes and reforms were introduced after the last Congress information Report on the situation of local democracy in the Republic of San Marino (1999). Notably:

- Since the “constitutional” reform of 2002 and the establishment of the *Collegio Garante della Costituzionalità delle Norme* (Legge No. 36, 26.02.2002, now Art. 16 of the declaration), some powers and responsibilities of this body also concern the local government: When at least five of the 9 *Giunte di Castello* act together, they have authority to challenge an ordinary law before the *Collegio* for constitutional review. The same number of *Giunte di Castello* (minimum 5 of 9) can initiate the procedure for “legislative” referenda. Furthermore, Art. 4 of the Constitutional Law 36/2002 introduced the legislative initiative of the *Giunte die Castello* (township councils) by means of Art. 3 bis of the Declaration ;
- Since the enactment of Constitutional Law No. 183/2005 and in order to implement a system of checks and balances, the members of the Congress of State are also accountable to Parliament. The Great and General Council can adopt a motion of no-confidence. If the motion is approved by absolute majority by the Council, the Congress of State has to stand down. The motion can target the Congress of State as a whole or a single Secretary of State. It is obvious that no-confidence can also refer to policies or attitudes affecting local government. The Congress of State remains in office until the appointment of a new Congress of State;

- In order to increase women's representation in politics, Law No. 1 of 5 August 2008, amending Law No. 6 of 31 January, provides that each party list shall not include more than two thirds of candidates of the same gender;
- Law No. 1 of 29 May 2013 provides for the legislative initiative of the electorate. The citizens of San Marino can submit to the Office of the Secretariat of the Great and General Council, draft laws, accompanied by an explanatory report and indicating how expenditure would be covered. The draft law must be signed by at least Sammarinese 60 voters. In conformity with Article 30 of Law No. 1 of 29 May 2013, the popular initiative follows the same procedure of discussion and enactment as laws proposed by the Great and General Council. The rapporteur of the draft law is invited to participate in the discussion of the law at the Great and General Council and can defend the proposal;
- In the light of the ratification of the Charter, the Parliamentary Act (*Legge No. 127*) of 27th September 2013 granted the status of legal person to the *Giunte di Castello* (the nine local entities of self-government), which can henceforth be parties to any judicial dispute;
- The same Act No. 127 of 2013 has given more autonomy to the *Giunte di Castello*, regarding road traffic issues, where their opinion is binding, as well as regarding green spaces and parks (Art. 28). Furthermore, this act introduced (Art. 25) the obligation for public authorities to answer within 90 days to queries of the *Giunte*, as well as the obligation to create a list and a timetable of public works (Art. 31) in close co-operation with the affected *Giunte*;
- Act No. 127 of 2013 (Art. 30) also established a Conference of the township councils (*Giunte*), which can discuss issues relating to the interests of the Townships. They can submit proposals and legislative initiatives to the Congress of State. The members of the Conference appoint a spokesperson by absolute majority for one year, with a possibility of renewal, as long as his mandate as Head of a township council is still running;
- Law No. 1 of 17 March 2016 amending the Electoral Law introduced the right of voters residing abroad to vote during elections, although these voters still need to travel to San Marino to vote, as electronic voting has not been provided for. It also established access to a special polling station for voters who permanently reside in medical facilities or retirement homes.

2.3. Previous reports and recommendations

22. The Congress information report CPL(6)4 Part II on local democracy in San Marino, adopted in 1999¹¹, recognized the specific characteristics of the Republic, which are linked to its history, the nature of its law, its small size and its low population. Yet the main conclusion was that, in spite of reforms, the Republic of San Marino was still a highly centralised unitary State:

"The Giunte di Castello chaired by the Capitani are bodies that enjoy limited local autonomy in the political sense of the term. In particular:

- *they have no legal personality [...];*
- *they have no real decision-making powers or responsibilities in specific fields and have little scope for action in public affairs, being limited to an advisory role and the executive management of public services;*
- *they have an advisory role in the administrative process [...];*
- *they have no property of their own and no independent taxation system but all the funds allocated to them are used at their own discretion and they oversee the use of the larger sums of money that are channelled through state services;*
- *they have no staff of their own and their members receive vouchers for attending meetings;*
- *they have no legal means of appealing to an administrative or judicial authority against potentially harmful acts and decisions of the central institutions or decisions that take no account of their opinion;"*

¹¹ See doc. [CPL \(6\) 4](#), presented by Mr Vallejo De Olejua on behalf of Mr Manueco Alonso, Rapporteur.

23. Furthermore the above-mentioned report¹² stated:

- *“In practice it is the central institutions, namely the Consiglio Grande e Generale (the Parliament) and the Congresso di Stato (the government), which organise and manage virtually all public affairs, taking decisions on community life [...];*
- *Foreigners who have had their main residence in San Marino for many years do not have the right to vote or stand in local elections;”*

24. The information report on local democracy in the Republic of San Marino considered that:

- *the present organisation of San Marino is far removed from local self-government as defined by the European Charter of Local Self-Government (ECLSG) or practiced in other European countries;*
- *The small size of the State of San Marino and the small number of residents do not constitute an obstacle to the implementation of the principle of local self-government, which requires that independent, democratic local bodies should exist regardless of the size or nature of States;*
- *There seem to be no constitutional or political barriers to consolidating and elaborating on a local government system which is currently still in its infancy by extending the powers of the Giunte di Castello in areas that are important to the local communities;*
- *It is desirable and possible to strike a balance between the Republic of San Marino's specific features and the need to bring the local government system into line with the principles that prevail in neighbouring countries and are set out in the ECLSG;”*

3. HONOURING OF OBLIGATIONS AND COMMITMENTS

25. San Marino signed the Charter on 16 May 2013 and ratified it on 29 October 2013. The Charter entered into force on 1 February 2014. San Marino has not yet ratified the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority.

26. Due to its small size and its particularities, when ratifying the Charter San Marino declared that was not bound by paragraph 3 of Article 9 of (*“Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate”*) and by Article 9 paragraph 8 (*“For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law”*).

27. Furthermore, when ratifying the Convention San Marino made an interpretative declaration concerning Article 9 of the Charter: *“The Republic of San Marino maintains that Article 9 of the Charter must be interpreted as an Article establishing a general principle of financial autonomy, according to which local authorities are entitled to freely dispose, in the framework of the national economic policy, of the resources allocated to them for the exercise of their powers”*.

3.1. The Constitution and the basic legislative framework

28. There is not a unique constitution in San Marino. The constitutional order derives from a number of legislative instruments of which the most significant are the Statutes of 1600 and the Declaration of Citizen Rights of 1974 as amended in 2002. The constitutional system has been influenced by *the Corpus Juris Civilis* and Roman customary law. On 8 October 1600, the government of San Marino gave binding force to a compilation of *Statuti* written by Camillo Bonelli¹³, covering the institutions and practices of Sammarinese government and justice at that time. It was written in Latin and was set out in six books (*“Statuta Decreta ac Ordinamenta Illustris Reipublicae ac Perpetuae Libertatis Terrae Sancti Marini”*). The new system was an update on the *Statuti Comunali* (Town Statute), which had served San Marino from about 1300. Existing institutions, such as the Council of the Sixty, were carried forward from this period. The Statutes form the basis of all law in effect until today. So they could be considered as the oldest constitution in Europe still in force.

¹² Rapporteur: Mr. Manueco Alonso (Spain).

¹³ Miller, William (1901), The Republic of San Marino, *American Historical Review* 6 (4): 633–649.

29. In July 1974 the Captains-Regent signed a law (59/1974) enacted by the Great and General Council containing a declaration of citizen rights and the fundamental principles of the juridical order of San Marino. The Declaration begins with a repudiation of war. It states that the people are sovereign and explains how the doctrine of the separation of powers is applicable to San Marino. Citizens are guaranteed certain rights including equality, inviolability, freedom, and universal suffrage. The Declaration was amended in 2002 (Law No. 36 of 26 February 2002), providing further constitutional detail on the organisation of government and establishing the Guarantors' Panel on the Constitutionality of Rules, a court responsible for assessing the compliance of laws with the Declaration of Rights. The Statutes of 1600 and the Declaration of 1974 define the State of San Marino as a Parliamentary Republic, whose "sovereignty is vested in its people, who shall exercise it through the statutory forms of representative democracy" (Article 2).

30. The Declaration, the "fundamental law" of the Republic, can be qualified as a "rigid constitution", as it only can be amended under exceptional circumstances. In conformity with Article 4 of the Declaration, the Declaration can only be amended by a law approved by the Great and General Council (acting as the Parliament of the country) by at least a two-thirds majority of its members, subsequently confirmed by a referendum to be held within 90 days of the approval of the amending law.

31. Legislative power is exercised by the *Great and General Council* ("*Consiglio Grande e Generale*", Art. 3 of the Declaration), a legislative body of a unicameral and collegial nature, composed of 60 members of parliament, who, since the enactment of Law of 25 March 1906, are elected democratically, by universal and direct suffrage, every five years, under a proportional representation system in all 9 administrative districts. The Captains Regent preside over the Great and General Council but do not have the right to vote and enact laws.

32. As provided by the Electoral Law No. 6 of 31 January 1996, last amended by Law No. 1 of 17 March 2016, individuals who are citizens of San Marino and are at least 18 years old are allowed to vote in San Marino. The law provides for an important number of incompatibilities with the mandate of member of parliament: Individuals who are first-degree relatives, spouses or cohabitants of current members of the Council cannot be elected. The office of Head or member of a township council is also incompatible with the mandate of member of the Council.

33. The Parliament is also assisted in its daily work by the *Council of the Twelve*. This organ is elected by the Great and General Council for the entire legislature and serves as a jurisdictional body that also acts as a third instance court of appeal. Two Government syndics represent the State in financial and property issues.

34. In San Marino legislative initiative ("popular" or "citizens'" initiative) can also come from the electorate, as provided by Law No. 1 of 29 May 2013. The citizens of San Marino can submit draft laws to the Office of the Secretariat of the Great and General Council, accompanied by an explanatory report and indicating how expenditure is to be covered. The draft law must be signed by at least 60 voters. In conformity with Article 30 of Law No. 1 of 29 May 2013, the popular initiative follows the same procedure of discussion and adoption as laws proposed by the Great and General Council. The rapporteur of the draft law is invited to participate in the discussion of the law at the Great and General Council and can defend the proposal.

35. Several draft laws must be enacted following a procedure of *referendum*. The referendum procedures were defined by Law No. 101 of 28 November 1994 and Law No. 1 of 29 May 2013. There are three types of referendum procedures: Voters can propose the guidelines and principles under which a law shall regulate the matter which is the subject of the referendum (*referendum propositivo o di indirizzo*). If the entry into force of a law is subject to popular consent, a confirmative referendum must take place (*referendum confermativo*). Finally, a referendum can be held to repeal a law or a part of it (*referendum abrogativo*). Voters are then asked to confirm the enactment of a law. Referendums cannot be invoked to abolish institutional organs or fundamental principles enshrined in the Declaration of the Citizen's Rights and other Constitutional Laws. They cannot be invoked for issues relating to taxes, the national budget, the granting of amnesty or pardon, and the ratification of international conventions and treaties.

36. The *Captains Regents* (according to Article 3 of the Declaration and Article 1 of the Law No. 185) are both Heads of State and rule jointly over San Marino. Because of this specificity, the form of government of San Marino is called a diarchy. The Captains Regent are the supreme guarantors of the Sammarinese constitutional system. They make sure that all the Sammarinese institutions comply with the Declaration and current legislation. They may also bring attention to conflicts with other constitutional bodies before the Guarantors' Panel on the Constitutionality of Rules.

37. Since the reform of the electoral procedures of the Captains Regent, adopted by Law No. 15 of 24 March 1945, the Captains Regent are elected by absolute majority of the votes cast by members of parliament in a secret ballot. The two first candidates to obtain the absolute majority of votes are elected for a term of six months, starting either on 1st of April or 1st of October of every year. The short duration of their mandate dates back to the Middle Ages and is designed to prevent powerful leaders from holding the highest positions in this very small country for too long. Potential candidates for the post of Captain Regent should be citizens of San Marino, no less than 25 years old, who have not held this position in the preceding three years.

38. The Captains Regent (Art. 5 of Constitutional Law No. 185/2005) promulgate and order the publication of decrees that come within their jurisdiction. The decrees must be countersigned by the Secretary of State for Internal Affairs. Furthermore, they have the power to promulgate and order the publication of the laws approved by the Great and General Council. If the Captains Regent deem that certain laws do not respect the principles contained in the Declaration of the Citizens' Rights, they can ask for their amendment. Laws are only promulgated with the final agreement of the Captains Regent.

39. The Captains Regent are chairs of several important institutions: They chair the Great and General Council, but do not have the right to vote. They convene and preside over the plenary and ordinary sessions of the Judicial Council and the Council of Twelve. They also preside over the Conference of the Heads of township councils and fix the dates of the elections of the Heads and members of township councils. The Captains Regent also have the important task of receiving requests for popular initiatives such as referendum proposals, for which they fix the dates.

40. The Captains Regent have political immunity during their mandate and cannot be condemned in any matter whatsoever (Art. 7 of Constitutional Law No. 185/2005). However, the Captains Regent are accountable before the people at the end of their mandate, through a procedure called the "Regency Syndicate" (Title V, qualified law n°55/2003). Within the first fifteen days of the end of the six-month term of the Captains Regent, every citizen registered on the electoral lists can submit complaints relating to the activities carried out during their mandate.

41. In San Marino, the equivalent of the government in other countries is the *Congress of State*. It is vested with the executive power and is accountable, both collegially and individually, before the Great and General Council (as provided by Article 3 of the Declaration and Constitutional Law No. 183/2005). The Congress of State is composed of no more than ten members. In fact the Congress of State is nowadays composed of seven "Secretaries of State" (equivalent to Ministers)¹⁴, the most important for local government being the Secretary of State for Internal Affairs, Public Functions, Justice and Relations with Townships.

14 a. Foreign Affairs, Political Affairs and Justice; b. Internal Affairs, Public Functions, Justice and Relations with Townships; c. Health and Social Security, Equal Opportunities, Providence and Social Affairs; d. Territory, Environment, Agriculture, Tourism and Civil Protection; e. Finances and Budget, Transport and Economic Planning; f. Education, Culture and University, Research, Information, Sport, Technological Innovation; g. Industry, Artisanship, Trade, Labour, Cooperation and Telecommunications.

42. The Secretaries of State are appointed by the Great and General Council by absolute majority among its members at the beginning of every legislature, that is to say every five years or following the dissolution of the Council, leading to the formation of a new government. According to the legislative reform of 2005, their mandate cannot exceed ten consecutive years (two consecutive mandates). The 2005 reform also introduced the possibility to appoint “technical ministers”. The Great and General Council may appoint, by a two-thirds majority San Marino citizens, who are not from among its members, provided that they meet the eligibility requirements and on condition that their number does not exceed one third of the members of the Congress of State.

43. The Congress of State has several important functions (Constitutional Law No. 183/2005): it determines the general policy of the government (Article 1 para. 2) and decides upon the direction administrative action should take with regard to its implementation. Furthermore, the Congress of State is also entrusted with initiating legislation: it can draft laws to be submitted to the Great and General Council for their approval, notably drafting the annual and pluriannual budget laws (Article 2, para.1-2). The Congress of State also adopts decrees that can have force of law, subject to ratification by the Great and General Council. Finally, the Congress of State adopts regulations concerning the forms and modalities of implementation of laws, and the organisation and functioning of public offices.

44. The *Judicial System* of San Marino is the subject of important safeguards included in the *Declaration*: Article 3 guarantees “*full independence and freedom of judgement*” of the judicial bodies “in the fulfilment of their functions”. Save for statutory exceptions, judges cannot be San Marinense citizens. The Declaration also guarantees the protection of subjective rights and legitimate interests before the competent courts for “*everyone*” (obviously also including legal persons, like the townships).

45. The *Council of the Twelve* (“*Consiglio dei XII*” in Italian) is one of the highest courts of San Marino. The organisation and the functions of the Council of Twelve are defined by Decree No. 34 of 13 October 1921 and Law No. 13 of 5 June 1923. It used to act as a third instance court for civil matters but today mostly provides administrative justice. The Council of the Twelve consists of a collegial body of 12 members, appointed by the Great and General Council from among its members. They serve a five-year term. The Council of Twelve is chaired by the Captains Regent.

46. The *Guarantor’s Panel* on the Constitutionality of Rules is nowadays the highest court, since it acts as the Constitutional Court of San Marino. It was established by Constitutional Revising Law No. 36 of 26 February 2002 (amending Article 16 of the Declaration). The Guarantor’s Panel is composed of three effective members and three substitute members. All members are elected by a two-thirds majority of the Great and General Council’s members from among “*university professors of legal subjects, magistrates and law graduates with at least twenty years of experience in the field of law*” (Article 16 of the Declaration).

47. The Guarantor’s Panel on the Constitutionality of Rules possesses a wide range of powers and responsibilities. It notably verifies the conformity of laws and regulations with the fundamental principles enshrined in the Declaration on the Citizen’s Rights and other Constitutional Laws. This procedure of verification can be initiated at the direct request of at least twenty members of the Great and General Council, of the Council of State, of five township councils, of a number of citizens making up at least 1.5% of the electorate and of judges or the parties involved. The Panel also decides on the acceptability of referenda proposals and acts in case of conflicts between constitutional bodies. It finally performs the function of Regency Syndicate, deciding on complaints lodged by citizens.

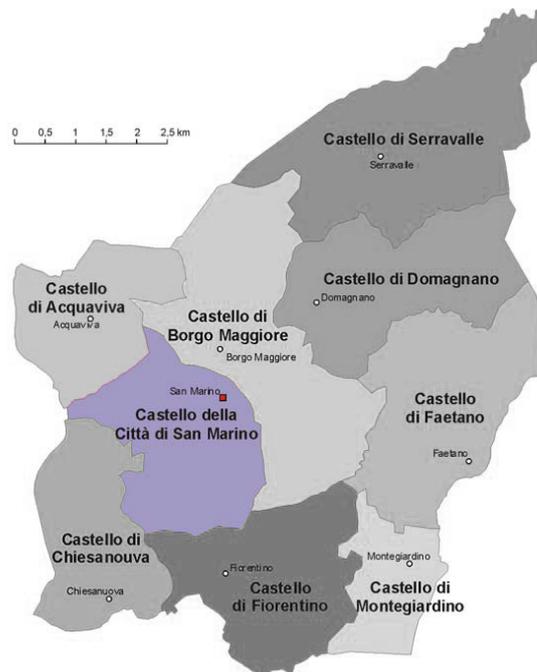
48. The principle of local self-government is not enshrined in the Declaration on the Citizen’s Rights of San Marino. The only mention of the township councils in the Declaration is in Article 3, relating to the enactment of laws, and Article 16, relating to the functioning of the Guarantor’s Panel on the constitutionality of rules. The organisation and the mandates of the township are therefore only defined in ordinary laws and decrees. The first regulation defining the organization of the modern townships Councils was enacted on 16 March 1925. Law No. 66 of 17 November 1945 and Law No. 36 of 25 October 1973 officialised the functions of the township councils.

49. Today, Law No. 127 of 27 September 2013 is the main legal instrument regulating the organisation, functions and electoral procedures of the township councils (*“Legge Sulle Giunte di Castello”*), and includes 4 chapters and 39 Articles. According to Article 2 para. 2, this law harmonises the content, the powers and responsibilities and the election system of Councils and Heads of townships with the established principles of the European Charter of Local Self-Government, in a way that is compatible with the specificity of the Republic of San Marino¹⁵

3.2. The local government system

50. The territory of the Republic of San Marino is sub-divided into nine administrative districts, called townships (castelli). Each township is now recognized (by Art. 1 para. 2 of Law No. 127 of 27 September 2013) as an *“institutional and territorial entity”* with legal personality and administrative, representative and consultative functions relating to the respective territory¹⁶.

51. There are currently nine townships, in San Marino:



15 (in Italian: *“La presente legge disciplina lo stato giuridico, le competenze e il sistema di elezione delle Giunte di Castello e dei Capitani di Castello, armonizzandone i contenuti, compatibilmente alle peculiarità della Repubblica di San Marino e del suo sistema giuridico, ai principi stabiliti dalla Carta Europea dell’Autonomia Locale del Congresso dei Poteri Locali e Regionali del Consiglio d’Europa”*).

16 (in Italian: *“con funzioni amministrative, di rappresentanza e di proposta concernenti il territorio al quale l’ente fa riferimento”*).

Name of the township	Number of inhabitants ¹⁷
San Marino City	4,053
Borgo Maggiore	6,917
Serravalle	10,848
Acquaviva	2,134
Chiesanuova	1,136
Domagnano	3,459
Faetano	1,180
Fiorentino	2,563
Montegiardino	934

52. Each township is ruled by a township council (“*Giunte di Castello*” in Italian). For townships of more than 2,000 inhabitants, the township council is composed of nine members. For townships of less than 2,000 inhabitants, namely *Chiesanuova*, *Faetano* and *Montegiardino*, the township council is composed of seven members. All township councils are ruled by a Head of the township council (“*Capitano di castello*” in Italian) who is elected as head of the winning list in municipal elections.

53. The electoral system of the executive bodies of the township council and the voting procedures are mainly regulated by Part II (Articles 8 to 12) and Part III (Articles 13 to 19) of Law No. 127 of 27 September 2013 and Law No. 6 of 31 January 1996. In conformity with Article 8 of the Law No. 127/ 2013, all of the members are elected every five years by universal and direct suffrage. All San Marino citizens residing in San Marino who are over 18 years old, are registered on the electoral lists of their area of residence and can vote for the candidates in their area. Voter registration is passive. However, in accordance with Article 2 of Law No. 6 of 31 January 1996 as well as for the legislative elections, citizens who are mentally ill or who have been convicted are deprived of their right to vote.

54. Even though the members of the township councils used to be appointed from among members of the Great and General Council, as stated in the regulation of 16 March 1925, they can no longer combine the two mandates. If the newly elected members of a township council are also members of the Great and General Council, they have to opt for one of the two mandates within fifteen days of the elections. Members of a same family (parents, brothers and sisters, husbands and wives, and people living together without being married) cannot be members of the same township council simultaneously.

55. The official electoral campaign starts 30 days before the day of the elections. The programme of each competing list must be made public at least 25 days prior to the elections. The discipline of the electoral campaign is regulated by decree.

56. The last municipal elections were held on 30 November 2014. 22 172 voters were registered for these elections: 2 988 in the City of San Marino, 4 584 in Borgo Maggiore, 7 059 in Serravalle, 1 331 in Acquaviva, 748 in Chiesanuova, 2 302 in Domagnano, 811 in Faetano, 1 715 in Fiorentino and 634 in Montegiardino¹⁸. Most of the townships presented two lists of candidates. Borgo Maggiore, Acquaviva, Domagnano and Montegiardino presented a single list. Nowadays, four out of nine Capitani are women.

57. The multiple functions of the Head of the township council are listed in Article 20 of the 2013 Law. He/she notably represents the township council, plans meetings with the township council, prepares the agenda for the sessions, transmits the decisions of the Board to the Secretary of State of Internal Affairs and the other bodies concerned, celebrates civil marriages and attends the sessions of the Committee for territorial policies.

¹⁷ San Marino Statistics, “Popolazione Residente Per Castello”,

http://www.statistica.sm/contents/instance15/files/document/14092765tav_popolazione_.pdf

¹⁸ Website of the elections, <http://www.elezioni.sm/on-line/home/elezioni-giunte/elezioni-del-30112014/corpo-elettorale.html>

58. In accordance with Articles 22 and 23 of Law No 147/2013, the Township Councils are responsible for:

- managing the annual budget, preserving and managing the assets transferred to them;
- promoting the decisions of institutional bodies on general issues or on issues relevant to the Township by: (i) transmitting their own resolutions, agendas, requests and suggestions to public authorities and bodies; (ii) submitting interpellations, requests and proposals to the Congress of State, which is required to respond in writing within sixty days; (iii) inviting members of the Congress of State and of the Great and General Council as well as representatives of institutions or institutional organizations to attend their sessions to report on issues that fall under their direct competence and responsibility; (iv) publishing proposals, observations and documents; (v) organizing gatherings, public debates and meetings. Moreover they can report to the competent bodies any irregularities or delays in the processing of administrative procedures and can suggest means and solutions for their elimination.

The Township Councils adopt independent decision concerning:

- a. operation and functioning of the Council;
- b. activities of a humanitarian and social nature;
- c. financing cultural, recreational, sports and social initiatives within the Township;
- d. planning and carrying out public works within the territory of the Township (the types of public works are specified in Articles 28 and 32 of the Law);
- e. drawing up acts and contracts with regard to matters within their competence.

59. The Township Councils may establish direct relationships with bodies or administrations of other States, subject to approval both of the Ministry responsible for relations with the Township Councils and of the Ministry of Foreign Affairs. Moreover, Township Councils issue opinions, within thirty days of receipt of a request from the competent office, on: the identification of product sectors to be promoted or discouraged through the possible issuance of commercial permits; *Istanze d'Arengo*, if the petition is of a matter relating to the Township; intervention proposals for the prevention of disasters or the containment of damages; transfers and sales of properties located within the Township; development and commercial plans, if they affect the territory of the Township, especially its historical centre.

In addition, they can suggest the names of new streets and other areas as well as the change of the existing ones within the boundaries of the Township”.

60. As previously mentioned, the township council can also initiate laws, as guaranteed by Article 3 of the Declaration. However, it cannot submit draft laws and amendments on subjects relating to amnesty and pardon, taxes and the budget, and the ratification of treaties. The draft laws are examined by the Great and General Council within 90 days of their submission. The township Castles can also set popular referendums, as provided by Article 26 of the no 127/ 2013 law.

61. Finally, as already mentioned, at the request of at least five township councils, laws and regulations can be examined by the Guarantor's Panel on the Constitutionality of Rules, if there is reasonable suspicion of their failure to comply with the fundamental principles enshrined in the Declaration.

62. According to *consultation procedures*, the township council must be informed of all public and urban development projects concerning the territory of the township and, as previously mentioned in the paragraph on the functions of the township council, must give an advisory opinion on it within thirty days of receipt of the request from the competent office. In conformity with Article 23 of the 2013 Law, if the competent office takes a decision contrary to the opinion expressed by the township council, it must be justified in a written reply. In conformity with Article 25 of Law No. 127/ 2013, the township councils must also be informed by Public Administration Offices of reforms and new policies that concern the territory and the organisation of the Townships.

63. As regards *local finances*, it should be noted that townships do not have financial resources of their own. According to Article 24 of Law No.127/ 2013, the township councils can request the full documentation regarding the annual State budget. Before submitting the annual State budget to the Great and General Council, the Secretaries of State for Finance and Budget, for Territory and Environment, and for Internal Affairs and relations with the township councils, must hold a meeting with the township councils in order to carry out an analysis of the priorities of each Township.

4. ANALYSIS (ARTICLE BY ARTICLE) OF THE SITUATION OF LOCAL DEMOCRACY ON THE BASIS OF THE CHARTER

4.1. Articles 2 and 3: Foundation and concept of local self-government

Article 2 – Constitutional and legal foundation for local self-government

The principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution.

64. The principle of local government is not explicitly recognised in the constitution of San Marino. However, there is a provision in the *Declaration on the Citizens' Rights and Fundamental Freedoms* which seems to include safeguards for the benefit of local government:

- According to the last paragraph of Article 3: *"Each power of the State shall act in the mutual respect for their autonomy and competence"*

Furthermore, in Article 16 of this Declaration, *township councils* are explicitly mentioned among the parties which can file a request with the Guarantors' Panel for the verification of the conformity of laws with the Constitution:

- Art. 16...*"The Guarantors' Panel shall: a) verify the conformity... [...] upon direct request...[...] five township councils.."*

65. The principle of local government is explicitly recognized in Law No. 127 of 27 September 2013. Notably, Article 1 para. 2 of this law defines the township as an *"institutional and territorial entity to which the law confers legal personality and administrative, representative and consultative functions"*.

66. San Marino complies with Article 2 since the principle of local government is explicitly recognized in domestic legislation. Nevertheless, an explicit constitutional recognition of this principle would certainly upgrade the position of local government in this country and bring the legal status of local government closer to the spirit of the Charter, particularly in view of the possibilities for fostering judicial protection of local government through the Guarantors' Panel (see also below Art. 11 of the Charter).

Article 3 – Concept of local self-government

- 1 Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.
- 2 This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.

67. Taking into consideration the very small size of the country and the proximity of the state authorities to the citizens, it is obvious that local government in San Marino cannot have the range of responsibilities that is appropriate in other countries. This cannot mean, however, that local authorities should barely have any decision-making responsibilities. This seems, unfortunately, to be the case in San Marino: In this respect, very little has changed since the last Congress information report on San Marino (1999), when the rapporteur stated that the townships: *do not "...have decision-making powers or competency in certain specified areas of activity... they nevertheless participate in the administrative process by drawing up reports or preparing opinions (pareri) on various issues (opening of premises of plants, urban development etc.), the final decision being taken by the central authorities. In general, these reports and opinions have purely consultative status. In a few cases, for example travelling markets, the central authorities are obliged to comply with the parere"*.

68. Today Art. 22 of Law No. 127/2013 stipulates that the Council decides autonomously, within the limits of its annual budget, on:

- interventions of a humanitarian or social solidarity nature;
- financing of cultural, recreational, sporting and social initiatives, also in collaboration with other entities, institutions, institutes and associations, public and private;
- design and construction of public works as specified in Article 28 and Article 32 (green spaces and parks; maintenance of local roads, street lighting and paths by the state public works entity AASLP, and in emergency situations, also by private companies after decision of the Mayor ("*Capitano*")

The Councils are also responsible for co-ordinating cultural, recreational and social initiatives in their township and facilitating collaboration between the various operating agents in their territory. Social centres which benefit from state funding co-operate with the township councils on the basis of an annual schedule based on the joint agreement between the Councils and the responsible Secretary.

69. Furthermore, according to Art. 23 of the same law, the township councils submit binding opinions on travelling trade and issue directives on the organization and operation of markets and on the establishment of businesses in the case of a disruption in the supply of goods.

70. The democratic legitimacy of local government bodies is ensured through the direct election of Mayors (*Capitani*) and Councillors. As already mentioned, 22,172 voters were registered for the last municipal elections in 2014. The total population of the Republic is approximately 33,000 inhabitants, of whom nearly 5,000 (more than 15%) are foreigners, mostly Italians. The Republic of San Marino has not ratified the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority. The Republic of San Marino should be encouraged to ratify the Additional Protocol on the right to participate in the affairs of a local authority.

71. The ratification of the Additional Protocol is made easier by the fact that the Republic of San Marino has already developed a wide range of institutes of direct democracy, including direct accountability to the citizens ("*Instanza d' Arengo*"), legislative initiative by citizens (Art. 30 of Law No.1 of 29. May 2013) and the three different types of referendum procedures (*referendum propositivo o di indirizzo, referendum confermativo, referendum abrogativo*). Furthermore, the small size of the country and the small size of local authorities (only the biggest municipality, Serravalle, has more than ten thousand inhabitants) would further facilitate the introduction of additional participatory institutions

72. The rapporteurs conclude that there is a formal compliance with Article 2 of the Charter since the principle of local government is recognized in domestic legislation. In addition, Article 3 paragraph 2 is respected in San Marino, since the bodies of the townships are directly elected. There is also a strong institutional arsenal of instruments and procedures promoting direct democracy. The rapporteurs would therefore encourage further development of participatory institutions at local level, including the introduction of municipal voting rights for foreign residents in San Marino.

73. It should be noted that the townships still have very few decision-making powers. The law of 2013 bypassed this enormous deficit of municipal competence which cannot be overlooked because of the well-known particularities and the size of the country. Eighteen years ago, Recommendation 63 (1999) stated that there seemed to be no constitutional or political barriers to consolidating a local government system that includes municipal competence in areas that are important to the local communities. Unfortunately, the laws still prevent the townships from regulating and managing local affairs such as basic local infrastructure and services that belong to the standard repertoire of municipal competences in all European countries. The rapporteurs therefore conclude that Article 3, paragraph 1 is not respected in the Republic of San Marino.

4.2. Article 4: Scope of local self-government

Article 4 – Scope of local self-government

- 1 The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law.
- 2 Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.
- 3 Public responsibilities shall generally be exercised, in preference, by those authorities who are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.
- 4 Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.
- 5 Where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.
- 6 Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly.

74. In San Marino, the basic responsibilities and tasks of local government are prescribed by law (Art. 4 paragraph 1 of the Charter). The legislation of the country does not however include a general competence (Art. 4 paragraph 2 of the Charter) for townships (Art. 1 paragraph 2 of Law 127/2013 cannot be interpreted in that sense, since it refers only to the “territory”, not to “affairs” thereof and to a corresponding competence of townships).

75. The current situation in San Marino is also incompatible with Article 4 paragraphs 3 and 4: Public responsibilities are not exercised, in preference, by those authorities which are closest to the citizen (Art. 4. Paragraph 3). On the contrary, nearly all public responsibilities are exercised by the central state authorities. In San Marino there are certainly well-founded considerations for exercising many public responsibilities at the level of the state, since this country is very small and there are overriding considerations of efficiency and economy. After all, efficiency of public administration is also a constitutionally enshrined principle (Art. 14 paragraph 1 of the Declaration). However, this does not offer sufficient grounds for concentrating nearly all public responsibilities at the level of the state and excluding municipalities from decision-making powers (apart from a very small number of exceptions). Finally, even the extremely restricted powers of local government are not full and exclusive (Art. 4 paragraph 4 of the Charter).

76. As regards the right to be consulted (Art. 4, paragraph 6, Art. 5 and Art. 9, paragraph 6 of the Charter), domestic legislation includes a series of consultation procedures which have already been analysed in other parts of this report (see above). For instance, the Captains Regent, at the beginning of their term of office, meet the Mayors of the townships (Art. 29: “*Conferenza dei Capitani di Castello*”). There is a procedure of consultation for the state budget (Art. 24 of law 127/2013), a procedure of consultation for public works (Arts. 31 and 32 of the law), there are several consultative tasks and obligations (e.g. submitting an opinion within 30 days whenever requested to do so by the relevant public service (Art. 23 paragraph 5 of the law) and there is also the obligation of public administration services to respond to requests from the townships within 90 days (Art. 25 of the Law).

77. During the monitoring visit, however, several interlocutors from the townships complained that these rules and procedures were not respected. In fact, public offices do not answer within 90 days (actually, they usually do not answer at all) and the procedure of the public works’ list is not implemented according to the law. A Mayor complained that she had been asking the state authorities to do something to repair a ramp for disabled persons in front of her town hall for more than a year but nothing had happened and she hadn’t even received an answer to her written query. In the township of Borgo Maggiore, the interlocutors said that this year, the mayors decided not to prepare a list of public works in June in accordance with the law and instead held a press conference to against the persistent practice of central government of ignoring the list and the proposals of the townships. Many

mayors are allegedly tired of reiterating exactly the same problems and claims every six months to every new pair of Captains Regent who receive them when they take up office.

78. Some ministers challenge these claims by the townships. For instance, the Minister of Territory, Environment, Agriculture, Tourism and Civil Protection stressed the fact that the Mayors of townships meet every month for consultation (Art. 30: "*Consulta delle Giunte di Castello*") and they invite representatives from the responsible Ministries and other public offices who participate in these meetings. Furthermore he emphasized that the local Capitano (Mayor) is a member of the Environment Committee in his own Ministry, with the right to vote. The Committee Chair is the Minister himself and he allegedly always consults the Mayor first when a local project is coming up for discussion. If the Mayor rejects the project, the Ministry's plan is suspended.

79. To sum up, the rapporteurs conclude that San Marino does not comply with Article 4 paragraph 2 (general competence), 3 (subsidiarity principle and exercise of public responsibilities closer to the citizen) and 4 (full and exclusive powers of local authorities). In addition, the rapporteurs are concerned about the implementation of consultation procedures, which are quite developed in the legal framework but do not seem to be implemented accordingly, in many cases. The rapporteurs therefore conclude that there is partial compliance with Article 4 paragraph 6.

4.3. Article 5: Protection of local authority boundaries

Article 5 – Protection of local authority boundaries

Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute.

80. Changes in boundaries and amalgamations do not come into consideration in the old Republic of San Marino, where these borders and these townships have grown historically.

4.4. Article 6: Appropriate administrative structures and resources

Article 6 – Appropriate administrative structures and resources for the tasks of local authorities

- 1 Without prejudice to more general statutory provisions, local authorities shall be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management.
- 2 The conditions of service of local government employees shall be such as to permit the recruitment of high-quality staff on the basis of merit and competence; to this end adequate training opportunities, remuneration and career prospects shall be provided.

81. San Marino municipalities do not have their own professional staff. Municipal operation is based on the civic engagement of the elected politicians and of the citizens as a whole. However, the small size of the country and of the townships is no excuse for the absence of professional staff. Therefore, San Marino does not comply with Article 6 of the Charter.

4.5. Article 7: Conditions under which responsibilities at local level are exercised

Article 7 – Conditions under which responsibilities at local level are exercised

- 1 The conditions of office of local elected representatives shall provide for free exercise of their functions.
- 2 They shall allow for appropriate financial compensation for expenses incurred in the exercise of the office in question as well as, where appropriate, compensation for loss of earnings or remuneration for work done and corresponding social welfare protection.
- 3 Any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles.

82. Mayors and councillors in San Marino enjoy the free exercise of their functions. The law also provides for the remuneration of councillors for each session (35 Euros), the Mayor (an additional 200 Euros) and the Secretary (an additional 100 Euros), a council member elected as secretary from among the members of the Council (Art. 21 of the Law 127/2013). During the monitoring mission, the interlocutors complained to the rapporteurs that there were not sufficient provisions for special leave and social security, especially for the Mayors and the Secretaries who “do not simply do a full time job, but offer a 24 hour-service”.

83. In fact, Art. 35 of Law No. 127/2013 also provides for special leave for elected persons (“*Permessi Speciali*”), but the rapporteurs nevertheless suggest that more generous provisions be introduced offering leave and contributions (or parts thereof) to the Mayors and the Secretaries of the Townships.

84. The rapporteurs conclude that San Marino complies with Article 7 of the Charter.

4.6. Article 8 – Administrative supervision of local authorities’ activities

Article 8 – Administrative supervision of local authorities’ activities

- 1 Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute.
- 2 Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities.
- 3 Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.

85. Up to now, no system of state administrative supervision has been developed in San Marino, except for financial auditing by the respective bodies. In view of this legal and administrative reality, the rapporteurs conclude that there are no problems concerning the compliance of San Marino with Article 8 of the Charter.

4.7. Article 9: Financial resources

Article 9 – Financial resources of local authorities

- 1 Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.
- 2 Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.
- 3 Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.
- 4 The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks.
- 5 The protection of financially weaker local authorities calls for the institution of financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility.
- 6 Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.
- 7 As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.
- 8 For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.

86. As already mentioned in previous parts of this report, the Republic of San Marino declared that it was not bound by Article 9, paragraphs 3 and 8 of the Charter. Furthermore, San Marino made an interpretative declaration that: *"...Article 9 of the Charter must be interpreted as an Article establishing a general principle of financial autonomy, according to which local authorities are entitled to freely dispose, in the framework of the national economic policy, of the resources allocated to them for the exercise of their powers"*.

87. This "interpretative declaration" gives rise to the question whether parties to the Charter can make such declarations with regard to any matter of interpretation. The rapporteurs are of the opinion that Article 13 offers the possibility to specify the categories of local authorities to which it intends to confine the scope of the Charter or which it intends to exclude from its scope. Furthermore Article 16 of the Charter offers the opportunity of a territorial clause for states who wish to specify the territory or territories to which this Chapter shall apply. A possibility of such "interpretative declarations" is not explicitly provided for in the Charter, but it is not unusual in international practice, even though such interpretative declarations are neither explicitly foreseen as such by the Vienna Convention (1969, Art. 2). In effect, this interpretative declaration is almost a reservation, since the kind of *"general principle of financial autonomy"* it implies would simply mean that the authorities are free to dispose of the resources "given to them".

88. In San Marino, the resources given to the municipalities are barely worth mentioning. For instance, the annual budget for one of the biggest townships does not exceed 14,000 euros. However, Art.9 paragraphs 3 and 8 are not ratified and taking into consideration the interpretative declaration of San Marino, the authorities of San Marino are not committed by these provisions.

4.8. Article 10: Local authorities' right to associate

Article 10 – Local authorities' right to associate

- 1 Local authorities shall be entitled, in exercising their powers, to co-operate and, within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest.
- 2 The entitlement of local authorities to belong to an association for the protection and promotion of their common interests and to belong to an international association of local authorities shall be recognised in each State.
- 3 Local authorities shall be entitled, under such conditions as may be provided for by the law, to co-operate with their counterparts in other States.

89. As already mentioned, townships can discuss issues relating to their own interests during a Joint Session of township representatives (the Mayors), established by Article 30 of Law No. 127/2013 (*“Consulta delle Giunte di Castello”*). They can submit proposals and legislative initiatives to the Congress of State. The participants in this session appoint a spokesperson by absolute majority for one year, with a possibility of renewal, as long as his/her mandate as Head of a township council is still running. The current spokesperson is the Mayor of Serravalle, Vittorio Brigliadori, and the Heads of the township councils therefore meet regularly at the Serravalle City Hall.

90. This session is an important institution of inter-municipal cooperation and coordination, but it is not an association with legal personality. Furthermore, it seems that international cooperation could be further regulated and encouraged.

91. The rapporteurs have come to the conclusion that San Marino partly complies with Article 10.

4.9. Article 11 – Legal protection of local self-government

Article 11 – Legal protection of local self-government

Local authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for such principles of local self-government as are enshrined in the constitution or domestic legislation.

92. Since Law No. 127/2013 grants the status of a legal person to the Townships, these institutions can be the challenging or opposing party in any judicial dispute. After the constitutional reform of 2002 and the establishment of the *Collegio Garante*, the township councils (at least five out of nine) are granted the power to challenge an ordinary law before the *Collegio* with a view to constitutional review. Furthermore, according to Art. 16 of the Declaration, the *Collegio Garante* has jurisdiction regarding disputes of competence between “constitutional bodies”. This provision can be interpreted as referring not only to the bodies of the central authorities but also to the local entities. However, as no case has so far arisen before the *Collegio*, the question of the legal standing of the townships in such a procedure has not yet been settled.

93. Another point is the status of the Charter in San Marino. Up to now, it has not been determined through case law whether the Charter should take precedence over ordinary legislation. This question remains open since there is no explicit norm prescribing the primacy of the Charter. Notwithstanding, Art. 1, the last paragraph of the Declaration provides that: *“International agreements protecting freedoms and human rights, regularly signed and made enforceable, shall prevail over domestic legislation in case of conflict”*. The question is therefore, whether the Charter fits into this definition, whether it can be considered as *“protecting freedoms and human rights”* or not.

94. Given the aforementioned, the rapporteurs conclude that local authorities have the right of recourse to a judicial remedy in order to secure their rights and therefore San Marino fully complies with Art. 11 of the Charter. Nevertheless, the rapporteurs recommend that the national authorities include an explicit provision concerning the precedence of the Charter in the next constitutional revision.

5. CONCLUSIONS

95. This report refers to the period after the adoption of the previous report on San Marino (1999) and its ratification of the Charter (2013). With regard to the points raised in Recommendation 63 (2011), it should be stressed that in San Marino many issues regarding compliance with the Charter remain open, but there were also some recommendations to which San Marino has since responded (partly or in full):

- the Charter has been ratified (2013);
- townships now have legal personality;
- as a result of the explicit recognition of legal personality in domestic law, townships have full access to judicial remedies and to the system of justice;
- several new consultation procedures and institutions have been introduced, although the implementation of consultation still faces many problems;
- an ordinary session of township representatives and the selection of a spokesperson have been established.

96. San Marino complies with Article 2 since the principle of local government is explicitly recognized in domestic legislation. Nevertheless, an explicit constitutional recognition of this principle would certainly upgrade the position of local government in this country and bring the legal status of local government closer to the spirit of the Charter, particularly in view of the possibilities for fostering the judicial protection of local government through the Guarantors' Panel.

97. There is formal compliance with Article 2 of the Charter since the principle of local government is recognised in domestic legislation. Article 3 paragraph 2 is also respected in San Marino, since the organs of the townships are directly elected. There is a strong institutional arsenal of instruments and procedures promoting direct democracy. The rapporteurs therefore encourage further development of participatory institutions at local level, and also the introduction of municipal voting rights for the foreign residents of San Marino.

98. The townships still have very few decision-making powers. The law of 2013 bypassed this enormous deficit of municipal competence which cannot be overlooked because of the well-known peculiarities and the size of the country. The laws still prevent the townships from regulating and managing local affairs such as basic local infrastructure and services that belong to the standard repertoire of municipal competences in all European countries. The rapporteurs therefore conclude that Article 3, paragraph 1 is not respected in the Republic of San Marino.

99. San Marino does not comply with Article 4 paragraphs 2 (general competence), 3 (subsidiarity principle and exercise of public responsibilities closer to the citizen) and 4 (full and exclusive powers of local authorities). There is also concern about the implementation of consultation procedures which are quite developed in the legal framework but, in many cases, do not seem to be implemented accordingly. The delegation therefore concludes that there is partial compliance with Article 4 paragraph 6 (consultation procedures).

100. San Marino municipalities do not have their own professional staff. Municipal operation is based on the civic engagement of the elected politicians and of the citizens as a whole. Nevertheless, the small size of the country and of the townships is no excuse for the absence of professional staff. San Marino does not comply with Article 6 of the Charter.

101. In San Marino, the resources given to the municipalities are barely worth mentioning. For instance, the annual budget for one of the biggest townships does not exceed 14,000 Euros. However, in view of the fact that Art.9 paragraphs 3 and 8 have not been ratified and taking into consideration the interpretative declaration of San Marino, the rapporteurs conclude that it cannot be concluded to a violation of Article 9 as the authorities of San Marino did not undertake to comply with these provisions in spite of the fact that the situation in San Marino is far from following the spirit of the Charter.

102. San Marino partly complies with Article 10.

103. Local authorities have the right of recourse to a judicial remedy in order to secure their rights and therefore San Marino fully complies with Art. 11 of the Charter.

104. Domestic case-law does not determine whether the Charter takes precedence over ordinary legislation. This question remains open since there is no explicit norm prescribing the primacy of the Charter. The delegation therefore recommends that the national authorities include an explicit provision concerning the precedence of the Charter in the next constitutional revision.

APPENDIX – Programme of the Congress Monitoring Visit to San Marino

**CONGRESS MONITORING VISIT TO THE REPUBLIC OF SAN MARINO
San Marino, Borgo Maggiore, Serravalle (13 – 14 June 2017)**

PRELIMINARY DRAFT PROGRAMME

Congress delegation:

Rapporteurs:

Mr Harald BERGMANN	Rapporteur on local democracy Chamber of Local Authorities, ILDG ¹⁹ Member of the Monitoring Committee of the Congress Mayor of Middelburg Netherlands
Mr Gunnar Axel AXELSSON	Rapporteur on local democracy Chamber of Local Authorities, SOC ¹ Member of the Monitoring Committee of the Congress Councillor of Hafnarfjörður Iceland

Congress secretariat:

Ms Stéphanie POIREL	Secretary to the Monitoring Committee of the Congress of Local and Regional Authorities of the Council of Europe
Ms Anaïs TARTARIN	Assistant to the Monitoring Committee of the Congress of Local and Regional Authorities of the Council of Europe

Expert:

Dr Nikolaos-Komninos CHLEPAS	Member of the Group of Independent Experts on the European Charter of Local Self-Government, Greece
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Interpreters:

Ms Paula BRUNO
Ms Valeria GUGLIELMI

19 L: Chamber of Local Authorities / R: Chamber of Regions
ILDG: Independent Liberal and Democratic Group
SOC: Socialist Group

**Tuesday 13 June 2017
City of San Marino**

Joint meeting with the National Delegation to the Congress and members of the Conference of the Heads of township councils (*Consulta delle Giunte di Castello*)

- **Ms Daniela GIANNONI**, *Capitano di Castello di Fiorentino*
- **Ms Federica BIZZOCCHI**, Member of the *Giunta di Castello di Città di San Marino*
- **Mr Alessandro BINDI**, Member of the *Giunta di Castello di Acquaviva*

City of San Marino, City Council (*Giunta di Castello*)

- **Mr. Tommaso ROSSINI**, Township Council Secretary

Guarantors' Panel on the Constitutionality of Rules

- **Mr Giovanni GUZZETTA**, President

Ministry of Internal Affairs

- **Mr Guerrino ZANOTTI**, Minister of Internal Affairs

- **Public Finance Control Commission (*Commissione di Controllo della Finanza Pubblica*)**

Dr Massimo TUMIETTO, Member of the Public Finance Control Commission
Dr Michele DI MARIO, Member of the Public Finance Control Commission

Ministry of Finances and Budget

- **Mr Simone CELLI**, Minister of Finances and Budget

Wednesday 14 June 2017
City of San Marino / Borgo Maggiore / Serravalle

Ministry of Territory, Environment, Agriculture, Tourism and Civil Protection

- **Mr Augusto MICHELOTTI**, Minister for Territory, Environment, Agriculture, Tourism and Civil Protection

Borgo Maggiore City Council (*Giunta di Castello*)

- **Mr Federico CAVALLI**, Mayor of Borgo Maggiore (*Capitano*)

Acquaviva Municipal Council (*Giunta di Castello*)

- **Ms Lucia TAMAGNINI**, Mayor of Acquaviva (*Capitano di Castello*)