

San Marino

Fifth Round Mutual Evaluation Report (MER) – April 2021

Executive Summary

1. This report summarises the anti-money laundering (AML) and combating the financing of terrorism (CFT) measures in place in San Marino as at the date of the on-site visit (28 September – 9 October 2020). It analyses the level of compliance with the Financial Action Task Force (FATF) 40 Recommendations and the level of effectiveness of San Marino's AML/CFT system and provides recommendations on how the system could be strengthened.

Key Findings

- 1) San Marino adopted its second national money laundering (ML) and terrorist financing (TF) risk assessment (NRA) in 2019. The National AML/CFT Action Plan (AML/CFT Action Plan) and the national AML/CFT Strategy (AML/CFT Strategy) were adopted in 2020 to address the main risks identified in the NRA. The objectives and activities of San Marino authorities are broadly in line with the NRA, AML/CFT Action Plan and AML/CFT Strategy and the competent authorities co-operate and co-ordinate on ML and TF matters with good spirit. The private sector is aware of the results of the 2019 NRA due to their involvement in the risk assessment exercise and outreach provided by the Sammarinese authorities. Overall, the understanding of ML/TF risks identified by the 2019 NRA is generally good among the competent authorities (the Financial Intelligence Agency (FIA), the law enforcement agencies (LEAs) and the Investigating Judges). However, these authorities demonstrated a mixed understanding of the ML presented to San Marino which bears the characteristics and features of a regional financial centre. The understanding of ML/TF risks by the Central Bank of San Marino (CBSM) is confined to the 2019 NRA and prudential supervision. Some obstacles have a negative impact on the understanding of risks, namely the lack of strategic analysis of complex ML cases, and no assessment of virtual asset services providers (VASPs).
- 2) The FIA is reasonably well equipped and structured to perform its core functions, nevertheless inadequate number of human resources impedes the effectiveness of the FIA. It produces financial intelligence which supports to some extent the operational needs of relevant LEAs. The LEAs are using financial intelligence to a certain extent to develop evidence and trace criminal proceeds. The Investigating Judges are interacting actively with the FIA. Financial intelligence is fed by good quality suspicious transaction reports (STRs), which lead to a high percentage of cases opened by the FIA. However, some material designated non-financial businesses and professions (DNFBPs) submit a low number of STRs, thus impeding the quality of financial intelligence. The FIA carries out operational and strategic analysis to support the LEAs, Investigating Judges, the CBSM and others. San Marino was able to provide a few examples of complex ML cases. Moreover, no meaningful strategic analysis of ML trends and patterns, and the potential use of San Marino as a transit jurisdiction for laundering was provided to the assessment team (AT). Lack of such analysis has a negative impact on understanding how such cases may be investigated and on the understanding of ML/TF risks. The size

- of the jurisdiction allows prompt information exchange and consultation among the competent authorities. The exchange of information is carried out in a way to ensure confidentiality.
- 3) In general, San Marino's legal framework enables the effective investigation and prosecution of ML, including the ability to prosecute both self and third-party ML and to achieve convictions in standalone ML prosecutions. The investigation and prosecution of ML is both prioritised and effective. The types of ML activity investigated and prosecuted are consistent with San Marino's threats and risk profile and AML policies. The investigation and prosecution of ML is adequately resourced by the number of Investigating Judges, judicial police and clerks. Such cases are managed effectively and often a ML conviction is achieved in San Marino before the trial of the predicate offence in foreign jurisdictions. The sentences available for legal persons are not sufficient or persuasive. Where natural persons are convicted of ML, sentences are passed which (if served) would be considered to be effective, proportionate and dissuasive. There are however difficulties arising from the failure to extradite convicted defendants so that they serve the sentence for ML passed upon them. If custodial sentences are imposed but not served, that can only be a factor which tends to undermine the effectiveness of the AML sanctioning regime.
 - 4) San Marino has a comprehensive legal framework on seizures and confiscation. It provides adequate tools for the detection, restraint and confiscation of the instrumentalities and proceeds of crime, both for domestic and international criminal cases. The confiscation of criminal proceeds is pursued as a policy objective although some improvements in the field of asset management could be envisaged. The courts routinely order the confiscation of assets previously seized over the course of a criminal investigation. There have been cases of non-conviction-based confiscations. San Marino requests the repatriation of assets seized abroad. No request to recognise a confiscation judgment from abroad has been received during the period under review. The number of controls regarding the cross-border movements of cash is relatively high and seems to be adapted to the country's current situation. The authorities in charge of the detection of cash could however benefit from additional investigative means. The confiscation results do generally reflect the assessment of ML/TF risks and the national AML/CFT policies and priorities.
 - 5) San Marino's legal framework to fight TF is broadly in line with the international standards. There have been no prosecutions for TF in San Marino. The other initiatives by the Sammarinese authorities, category encompassing a few TF investigations, appear to correspond to the country's TF risk profile. San Marino has the tools to identify and investigate cases of TF. Although there is a low number of investigations for TF, the AT did not come across any fundamental problems regarding the identification and investigation of actual or potential TF offenses. Other initiatives taken by San Marino in the field of CFT show a reasonable degree of commitment and awareness by the competent authorities. The actions undertaken by San Marino are supported by the national counter-terrorism (CT) Strategy. San Marino authorities generally demonstrated a good understanding of TF risks. The TF analysis performed in the NRA is rather exhaustive and explains well the different actions undertaken by San Marino and how the conclusions were reached.
 - 6) San Marino legislation ensures immediate implementation of targeted financial sanctions (TFS) related to TF and proliferation financing (PF) through decisions of the Congress of State (Government of San Marino). Updates to the lists are in effect immediately when received by the Ministry of Foreign and Political Affairs (MFA) and FIA from the respective UN Commissions. Understanding of TFS related obligations varies between the private sector representatives. Apart from banks, FIs forming part of a group and accountants/auditors, there is no clear understanding among obliged entities (OEs) on their freezing obligations. Smaller FIs and most of the DNFBPs do not have sufficient understanding of the freezing obligations apart from STR reporting. In addition, there was a misunderstanding among the OEs that freezing obligations would extend to funds only, thus not covering other assets. The FIA and Office for Control Activities (OCA) have identified the subset of non-profit organisations (NPOs) falling under the definition of FATF and applied risk-based

- monitoring towards these entities. Nonetheless, the NPOs met on-site lacked knowledge of their TFS related obligations and ways in which they might be potentially be misused for TF.
- 7) San Marino applies TFS to persons designated by the United Nations (UN) pursuant to United Nations Security Council Resolutions (UNSCRs) 1718 and 1737. The implementation of TFS on PF and supervision of compliance with obligations arising from thereof follows a similar process as for TFS on TF. The OEs' understanding of their freezing obligations (apart from STR reporting) is limited throughout all the sectors (apart from banks) and there is a misunderstanding among the OEs of the scope of assets and persons towards which freezing obligations would apply.
 - 8) The knowledge, understanding and appreciation of the significance of ML/TF risks significantly varies amongst those within the private sector. Whilst those financial institutions (FIs) which are part of a group with the San Marino banks demonstrated good level of understanding of the ML/TF risks this level of understanding was not shared by the rest of the FIs and the DNFBP sector. Smaller FIs were aware of the NRA results, but could not elaborate on the practical risks their sector could be exposed to. Appropriate self-assessment of ML/TF risks is conducted by most of the OEs, however some sectors appear to limit their understanding to the customer risk classification and scoring systems/tools available for assessing certain risk factors only. The DNFBPs demonstrated a lower level of understanding, except for the accountants and auditors, which appear to have an adequate level of understanding of their risks and ways of being misused, as well as their respective obligations. Most of the sector representatives lack full appreciation of their exposure to ML risks.
 - 9) Banks and other FIs demonstrated a good knowledge of the applicable requirements in AML/CFT Law¹ and relevant regulations, including those related to customer due diligence (CDD) and record keeping. Nevertheless, there are concerns about most of the smaller FIs' and most of the DNFBPs' ability to properly identify and verify beneficial ownership information based on both their knowledge and accuracy of the sources used. The vast majority of DNFBPs have a basic understanding of CDD measures. FIs and DNFBPs have in general a good understanding of the STRs' legal requirements and of tipping off measures. Most of the STRs are filed by the banking sector, while the level of reporting by some sectors does not seem to be commensurate with the risks they face.
 - 10) Registration and licensing of FIs and professional trustees (PTs) is conducted by the CBSM. The CBSM performs fit and proper checks of shareholders, beneficial owners (BOs) and the senior management before granting entry into the market and also conducts ongoing assessment of fit and proper requirements. Even though for FIs and PTs the CBSM is required to assess adverse media, origin of funds and their transparency, potential association with criminals is not always considered to be a stand-alone ground to decline market entry. For DNFBPs a two-pillar market entry control upon registration of companies is performed by lawyers/notaries and the Office for Economic Activities (OEA). During the establishment of companies in general, lawyers/notaries perform CDD measures and collect relevant documentation. The OEA performs controls during the establishment of companies and for natural persons in the context of issuing licenses for economic activity. No measures are taken to prevent associates of criminals from owning, controlling or managing DNFBPs, nor there are any ongoing checks on the fit and proper requirements by the OEA.
 - 11) The FIA, as AML/CFT supervisor for all FIs and DNFBPs in San Marino, has a good risk understanding of each of the sectors under its supervision. The FIA applies a risk-based approach (RBA) to AML/CFT supervision with offsite and on-site inspections. As for the on-site supervision of OEs, the FIA gives preference to thematic on-site inspections in relation to the higher risk areas/products identified in the NRA. In general, the number of on-site inspections for higher risk DNFBPs is low. Over-reliance of FIA on thematic inspections for higher risk FIs allows FIA to inspect these entities more frequently, still this is not in line with what is expected from an effective risk-based

¹ Law No. 92 of 17 June 2008 on the Prevention and Combating of Money Laundering and Terrorist Financing.

AML/CFT supervision. This is the case, as the FIA's human resources for conducting supervisory activities are not commensurate with the supervisory workload. The FIA has a range of sanctions available for breaches of AML/CFT obligations but the overall level of fines available and issued are relatively low. The CBSM is a prudential supervisor and is only responsible for performing licensing and market entry controls for FIs and PTs.

- 12) Information on the creation, types and features of legal persons and legal arrangements that may be established under Sammarinese law is publicly available. Processes for the creation of those legal persons, as well as for obtaining and recording basic ownership information are described in the legislation and on the public websites. San Marino has not conducted a comprehensive and systematic identification and assessment of ML/TF risks associated with all types of legal persons created in the country. Nevertheless, the authorities showed an adequate understanding of the risks.
- 13) San Marino established Registers of Beneficial Owners of Legal Persons and Trusts. The authorities have timely access to basic and beneficial ownership information of legal persons and legal arrangements. The information is adequate, as it contains sufficient and valuable data on BOs. However, concerns remain whether the relevant data is accurate and up to date for all types of legal persons and arrangements.
- 14) San Marino has a sound legal framework for MLA and other forms of international cooperation. San Marino demonstrated effective cooperation in providing and seeking international cooperation, using both formal and informal channels.

Risks and General Situation

2. The Sammarinese authorities completed its second NRA in 2019² (2019 NRA). The level of ML risk varies from "medium" to "medium-high" depending on whether the proceeds had derived from domestic or foreign crimes. The criminal proceeds derived from predicate offences committed domestically are mainly deposited at FIs and reinvested in financial instruments and/or used for personal needs. The proceeds of crimes committed abroad and laundered in San Marino derive mainly from swindling/fraud (including tax evasion), misappropriation, (fraudulent) bankruptcy and the "ancillary" offence of criminal association (criminal conspiracy and a mafia-type criminal association). As noted in the 2019 NRA during the analysed period (2015-2019) the proceeds of crime generated by foreign predicate offences constituted over 90% of all ML convictions in San Marino.

3. According to the 2019 NRA the sectors mostly exposed to ML risk are the banking sector (medium-high exposure to ML risk) followed by the insurance sector, the financial fiduciary company sector, dealers in precious metals and stones (DPMS), providers of services related to games, accountants and lawyers/notaries (medium exposure to ML risk).

4. In its 2019 NRA San Marino deems the TF risk to be "low". It is based on a thorough analysis of TF threats and vulnerabilities. There are no active terrorist groups or individual terrorists operating in San Marino.

Overall Level of Compliance and Effectiveness

5. Since the adoption of the 4th round MER of San Marino in 2011 there have been a number of legislative developments, including and not limited to the following: the criminalisation of self-laundering and introducing the criminal liability for legal persons which applies to all ML predicates. San Marino ratified additional international instruments (e.g. conventions on the suppression of

² 2019 NRA was approved in July 2020 by Congress of State.

terrorist acts) and transposed into the legal order a number of related offences. The definition of a politically exposed person (PEP) was brought in line with the FATF standards.

6. The San Marino authorities have demonstrated a broad understanding of the vulnerabilities within the AML/CFT system, but some factors, in particular, misuse of legal persons, VASP sector and complex ML cases, appear to be insufficiently analysed or understood.

7. A high level of effectiveness has been achieved in international cooperation (Immediate Outcome (IO) 2), and a substantial level of effectiveness has been achieved in risk, national AML/CFT policies and coordination (IO.1), in the use of financial intelligence (IO.6), in the confiscation of criminal proceeds, instrumentalities and property of equivalent value (IO.8) and in investigating and prosecuting TF (IO.9). A moderate level of effectiveness has been achieved in other areas covered by the FATF standards (IO.3; IO.4; IO.5; IO.7; IO.10 and IO.11).

Assessment of risk, coordination and policy setting (Chapter 2; IO.1, R.1, 2, 33 & 34)

8. San Marino completed its first formal and comprehensive NRA in 2015 (2015 NRA) followed by adoption of 2019 NRA. Both the 2015 NRA and the 2019 NRA analyse ML threats and vulnerabilities to which the country is exposed and resulted in the assessment of an overall ML risk level of “Medium” to “Medium-High” in San Marino.

9. The understanding of the main ML risks and of the ML methods identified in the 2019 NRA is equal across all competent authorities given the close involvement in the NRA exercise. The FIA is the key authority in relation to the organisation and development of the NRA. Nevertheless, the representatives of the FIA, LEAs and Investigating Judges demonstrated a mixed understanding of the ML risk presented to San Marino which bears the characteristics and features of a regional financial centre. The reason for this mixed understanding is the lack of strategic analysis of complex ML schemes where San Marino is or might be misused as one of several jurisdictions to ML. There are two areas which require further improvement: the VASP sector and the misuse of legal persons.

10. Acts of terrorism have never taken place within Sammarinese borders. According to 2019 NRA San Marino’s overall TF risk is low given the low TF threat level and the low level of TF vulnerabilities. The TF risk analysis is based on different variables than the ML risk assessment and contains an analysis of financial flows, a cash study conducted by San Marino between 2010 and 2018 and statistics related to a set of specific jurisdictions.

11. Based on the ML/TF risks identified in the 2019 NRA San Marino has adopted an AML/CFT Action Plan and a AML/CFT Strategy for 2020 – 2022.³ The objectives and activities of San Marino’s authorities are broadly in line with the NRA and the National AML/CFT Strategy. Following the adoption of 2015 and 2019 NRAs no exemptions or simplified customer due diligence (SCDD) measures were adopted. San Marino adopted regulatory risk mitigating measures, which are loosely linked to the 2015 NRA. National AML/CFT policies are determined by the Credit and Savings Committee (CSC) and ultimately the Congress of State. The CSC is informed and assisted by the Technical Commission of National Coordination (TCNC).

Financial intelligence, ML investigations, prosecutions and confiscation (Chapter 3; IO.6, 7, 8; R.1, 3, 4, 29–32)

12. The FIA is reasonably well developed and structured to perform its core function as the national centre for the receipt and analysis of suspicious activity reports and other related information. The

³ AML/CFT Strategy for 2020-2022 was approved by the Congress of State on 14 July 2020.

LEAs and the FIA enjoy a wide range of sources of financial intelligence and other relevant information that is frequently used to develop evidence and trace criminal proceeds related to ML, associated predicate offences and TF. The FIA carries out operational and strategic analysis. Its financial analysis and dissemination support the operational needs of judicial authorities to a considerable extent. This includes the investigation and prosecution of ML and to some extent - predicate offences and the confiscation of criminal proceeds. Intelligence disseminated by the FIA generally leads to successful investigations into ML and related predicate offences. Nevertheless, despite some positive results of strategic analysis there seems to be no strategic analysis of complex ML trends and patterns on whether San Marino is used as a transit jurisdiction through which to pass laundered property. In addition, although the FIA's function is well understood, LEAs rarely approach the FIA for assistance in obtaining financial intelligence. The allocated resources are also not adequate to perform all FIA's functions properly (e.g. its strategic analysis).

13. San Marino's legal framework enables the effective investigation and prosecution of ML. The authorities conduct complex financial investigations which address the ML risks faced by San Marino. The ability to prosecute both self and third-party ML and to achieve convictions in standalone ML prosecutions was demonstrated. Most of the ML convictions involve the ML of foreign predicates and most of these predicates are recorded as committed in Italy. Where ML convictions are achieved, sentences of natural persons are passed which (if served) would be considered to be effective, proportionate and dissuasive. San Marino allows for the trial of an alleged money launderer in his/her absence if legally represented. Convictions are obtained in such cases where the defendant is in another jurisdiction. There are however difficulties arising from the failure to extradite convicted defendants so that they serve the sentence for ML passed upon them (if custodial sentences are imposed but not served, that can only be a factor which tends to undermine the effectiveness of the AML sanctioning regime). The sentences available for legal persons could not be said to be sufficient to be proportionate or dissuasive.

14. San Marino's legal system provides adequate tools to the competent authorities for the detection, seizure and confiscation of instrumentalities and proceeds of crime, both in domestic and international cases. The confiscation of criminal assets appears to be pursued as a policy objective which is supported by a comprehensive legal framework and the methodology followed by the competent authorities in identifying assets. The Sammarinese courts routinely order the confiscation of assets previously seized over the course of a criminal investigation. A judicial debate exists in the jurisdiction as regards the confiscation "by equivalent value", some recent decisions from the Court of Appeal having considerably reduced the amounts confiscated by the first instance judge. The repatriation of assets seized abroad is routinely requested. The confiscation results, including amounts confiscated, reflect the assessment of ML/TF risks and the national AML/CFT policies and priorities. Some improvements are still possible, such as for instance in relation to the management of seized and confiscated assets. As regards cross-border transactions of currency, the AT notes that the controls by the competent authorities are frequent, but the number of sanctions applied does not allow for a final opinion on the effectiveness and dissuasiveness of the system.

Terrorist and proliferation financing (Chapter 4; IO.9, 10, 11; R. 1, 4, 5-8, 30, 31 & 39.)

15. In its 2019 NRA San Marino deems the TF risk to be "low". The determination of the threat level is based *inter alia* on the analysis of MLA requests, STRs, cases and the flow of funds to and from high-risk jurisdictions and the fact that San Marino has so far not been affected by the foreign terrorist fighters (FTF) phenomenon or other radicalisation movements. The TF analysis performed in the NRA is rather exhaustive and explains well the different actions undertaken by San Marino and how the conclusions were reached. The authorities' generally good understanding and commitment was confirmed during the on-site interviews.

16. There have so far been no prosecutions or convictions for TF in San Marino. There have been some investigations for TF, mostly triggered by STRs and the AT has been provided with a few illustrations thereof - no suspicion of TF was confirmed. In addition, San Marino uses different tools and techniques to work on the detection and preventive side of TF, as outlined in more detail in the report. Inter-authority cooperation is facilitated by the small size of the jurisdiction and the number of actors involved in the fight against TF. Some improvements as regards the gathering and keeping of intelligence could however be envisaged. The actions undertaken by San Marino in the field of the prevention and detection of possible TF offending are generally integrated with and support national CT strategies. The effectiveness, dissuasiveness and proportionality of sanctions could not be assessed in the absence of any convictions for TF. No criminal justice, regulatory and other measures to disrupt TF have so far been employed when a TF conviction could not be secured.

17. San Marino has recently amended national legislation for combatting TF in line with the FATF recommendations, which ensures immediate implementation of TFS related to TF through decisions of the Congress of State. In addition, the Committee for Restrictive Measures (CRM) has been established, which acts as the national enforcing and coordinating body in this field and is chaired by the MFA.

18. Banks and other FIs use robust systems to screen their existing and potential clients against the UN designations and to detect funds. Other FIs also screen their clients against TFS related lists using special IT tools. Nonetheless, the FIs, which do not belong to a group, could not demonstrate the ability to analyse and independently decide in relation to cases of partial matches of their clients' data with the ones under TFS related lists. As regards DNFBPs, the understanding of their TFS related obligations differs among the sectors. Most of the representatives have occasional clients, thus do not conduct a regular review of the client base. In general, the understanding of the freezing obligations by the DNFBPs was limited to STR reporting, while the representatives of the real estate sector stated, that if they identified a designated client they would conduct an enhanced customer due diligence (ECDD) or contact the FIA for further instructions. In addition, there was a misunderstanding among the OEs that freezing obligations would extend to funds only, thus not covering other assets. As regards the measures in place for the identification of the BOs aiming at identifying persons indirectly controlling or owning the assets involved in transactions, doubts remain as to whether most of the FIs (apart from some banks) and DNFBPs are able to effectively establish the beneficial ownership structure.

19. A dedicated survey on the NPO sector, its vulnerabilities and TF related risks was conducted by the FIA together with the OCA. Based on the results of the analysis of the data, the country has identified the sub-set of NPOs which may be vulnerable to TF abuse. The assessment concluded that the TF risks associated with NPOs is considered "low", which is in line with overall risk assessment of TF at country level. Based on the outcomes of the survey a risk-based approach towards these NPOs has been implemented. Nonetheless, the NPOs met on-site lacked knowledge on their respective TFS related obligations and risks.

20. San Marino applies TFS to persons designated by the UN pursuant to UNSCRs 1718 and 1737. The implementation of TFS on PF and supervision of compliance with obligations arising from thereof follows similar process as for TFS on TF. The CRM acts as the national coordinating and policy-making body in the field of countering PF TFS. In addition, a working group has been established with the aim of identifying interested parties and the mandatory actions to be implemented to combat proliferation (P) and PF. To date no such parties have been identified.

21. OEs are generally aware of the need to have measures in place to freeze assets without delay as part of the implementation of PF TFS. Most private sector participants rely on commercial databases to screen their customer base. The ones that do not use IT tools use the FIA lists and screen their customers manually. In general, the understanding of the freezing obligations for PF TFS by the DNFBPs was limited to STR reporting, while the representatives of the real estate sector stated, that where they identified a designated client they would conduct an ECDD or contact the FIA for further

instructions. In addition, there was a misunderstanding among the OEs that freezing obligations would extend to funds only, thus not covering other assets.

22. Apart from some banks, there are certain doubts as to whether most FIs and DNFBPs are able to detect funds or other assets that are wholly or jointly owned or controlled, directly or indirectly, by designated persons or entities as there seems to be an overreliance on software systems or lists for detecting persons targeted by financial sanctions. This is supported by deficiencies in the measures in place for identification of the BOs, described in IO.4, IO.5 and IO.10, aiming at identifying persons indirectly controlling or owning the assets involved in transactions. The concerns described therein respectively reflect also on the ability to identify the PF designated person or entity that would be indirectly owning or controlling funds or other assets involved in transactions.

Preventive measures (Chapter 5; IO.4; R.9–23)

23. The level and understanding of ML/TF risks and AML/CFT obligations varies across sectors depending on their size, the products and services they provide and their customer base. In general, the level of understanding of the ML/TF risks and application of RBA is more sophisticated in the banking sector, followed by the investment and insurance sectors. Smaller FIs have an uneven risk understanding. As regards the understanding of their AML/CFT obligations, banks and most of the FIs demonstrated a good level of awareness and application of their obligations, as compared to some of the smaller FIs, which did not have satisfactory understanding of certain obligations. The DNFBPs (apart from accountants and auditors) showed a lower level of understanding of their ML/TF related risks and obligations than the FIs.

24. Banks and other FIs demonstrated varying degrees of effectiveness in applying CDD requirements, whereas the record-keeping requirements were generally well understood and implemented. While the banks demonstrated their ability to properly identify BOs, the AT has doubts in relation to smaller FIs' ability to properly identify and verify beneficial ownership information, especially in cases of complex structures. Most OEs rely on the information held within registers, which might not always be accurate and up to date as further provided under IO.5. The level of compliance with the CDD requirements varies among DNFBPs, with the accountants and auditors having a better level of compliance, followed by trust and company service providers (TCSPs) and lawyers/notaries. Issues in relation to beneficial ownership identification similarly apply. In addition, based on the interviews, a gaming house would only identify the customers entering the premises, while checks on the veracity of information and checks against some sanctions lists and geography would only be done in case of a winning. Some issues were noted in relation to the application of ECDD measures by smaller FIs and some of the DNFBPs.

25. The vast majority of the STRs filed with the FIA are from the banks, consistent with its materiality and with their risk. Among other FIs, the number of reported STRs seems to be low as regards asset management companies and insurance and reinsurance intermediaries. As for the DNFBPs, while the accountants and auditors were aware on their obligations and reporting typologies, this was not confirmed for the rest of the sector. The reporting rates seem not to be fully commensurate with the sector specific risks they face.

Supervision (Chapter 6; IO.3; R.14, R.26–28, 34, 35)

26. Core Principle institutions, other FIs, money or value transfer services (MVTs) are required to be authorised by the CBSM to provide financial services in San Marino. For all these authorised entities, the CBSM verifies fit and proper requirements. The CBSM performs fit and proper checks of shareholders, BOs and the senior management before granting entry into the market and performs ongoing assessment of fit and proper requirements. When checking the good repute of the owners of substantial holdings in FIs, the CBSM verifies the provision of criminal record certificates, information

on any pending charges, and confirmation on the lack of administrative penalties for actions taken as a corporate officer in the last 5 years. The applicant must provide self-declarations of their good repute and sound and proper management, that have been authenticated by a public notary. In the case of applications for new establishment or for acquisition of qualifying holdings, as part of sound and prudential management checks, the CBSM establishes the source of funds together with the transparency of the jurisdiction where the applicant resides. With respect to BOs of an applicant, the CBSM carries out checks regarding the source of wealth of the ultimate BO. Moreover, in relation to sound and prudent management checks, the CBSM carries out both in-depth reviews of the business plan submitted by the applicants and analyses the viability of the applicant's business model. Adverse media is checked during market entry by CBSM, if any negative information is found, further controls are applied. While determination of association with criminals could be performed by the sound and prudential management assessment and adverse media checks, legislation and internal documents do not prescribe *expressis verbis* a standalone requirement to determine association with criminals and to refuse market entry based thereon.

27. The measures taken for DNFBP's other than casinos depend on the legal formation and the type of DNFBP. Legal entities in San Marino are subject to "unfit person" checks upon establishment. None of the persons acting as shareholders, BOs and senior manager shall be persons, who have been convicted of certain criminal acts or whose activities have resulted in liquidation or revocation of a licence. This information is collected and verified upon establishment by lawyers/notaries, who perform CDD measures and collect documentation during the establishment of companies in general. Once the company is established, it becomes operational only with the obtaining of the license. The OEA performs controls during the establishment of companies and for natural persons in the context of issuing licenses for economic activity. Criminal record and pending charges are checked upon obtaining a commercial activity licence also. Professions are subject to professional requirement checks. The controls during market entry for DNFBPs' association with criminals are limited to checks for criminal convictions and pending charges.

28. The CBSM is the prudential supervisory authority for banking, financial and insurance services in San Marino. The FIA supervises AML/CFT compliance of all OEs, FIs and DNFBPs, by adopting a RBA based on their risk based supervision (RBS) Tool. The CBSM and FIA coordinate their supervisory measures and have signed a MoU.

29. Supervision of FIs and DNFBPs is based on the Supervisory Plan and triggering events. The Annual Supervisory Plan is prepared by the Management of the FIA and it is based on ML/TF risk factors, NRA results and RBS Tool. The FIA uses targeted and thematic on-site inspections instead of full scope in cases of higher risk, which does not seem fully explained by the risk-based supervisory approach. A limited view of the AML/CFT system of an obligated entity with higher risks may not yield a comprehensive view of existing systemic risks and deficiencies. This way the FIA may have only a limited knowledge on the level of compliance with the AML/CFT obligations of higher risk sectors and in particular of specific entities.

30. Based on the low number of FIs the FIA considers supervision workload to be manageable with the current level of human resources. Nevertheless, the number of entities supervised for AML/CFT requirements by the FIA is 463, whereas the number of inspectors is 4. Therefore, even if the 4 FIA inspectors do not deal with the non-supervisory functions and even with the opportunity to use secondment of non-AML/CFT specialists, the human resources of FIA seems insufficient.

31. The amounts of fines available to the FIA are rather low and are in the same range for all sectors. Therefore, the same level of sanctions is available for banks as it is for accountants, which leads to a disparity in terms of dissuasiveness of specific measures. In relation to sanctioning individual employees for AML/CFT violations, the maximum fine applied for one violation does not exceed €10 000. This could be dissuasive to lower-level staff but not in the case of management of the FI. The

overall amount of fines issued for FIs and in particular banks seems to be disproportionate from the point of view of materiality of the sector and their ML risk.

32. Nevertheless, based on the on-site and off-site inspections, a review of the internal procedures and input of the obligated entities (OEs) to the RBS Tool via self-assessment questionnaires, the FIA has seen an increase of the effectiveness of both the systems and controls and the awareness of OEs. Moreover, the FIA, on a continuous basis, provides the OEs as well as domestic partners with targeted training and guidance on new practices and areas of higher ML/TF risks. As a result of these promotional activities of the FIA and as elaborated under IO.4, the banking sector and most FIs have demonstrated a clear general understanding of their sector specific risks and a good level of understanding of their AML/ CFT obligations. On the other hand, DNFBPs, aside from the accountants and auditors, demonstrated a lower level of understanding of their risks and ways of being misused, as well as their obligations. Therefore, some sectors of the non-financial parties would benefit from further guidance and training on their AML/CFT obligations as further articulated under IO.4.

Transparency and beneficial ownership (Chapter 7; IO.5; R.24, 25)

33. There is no comprehensive and systematic identification and assessment of ML/TF risks associated with all types of legal persons created in the country. Nevertheless, Sammarinese authorities showed an adequate understanding of what they consider ML risks related to legal persons.

34. The 2015 NRA refers to the abuse of legal persons only in two instances. The 2019 NRA deals with ML threats related to legal persons, but it does not touch upon ML vulnerabilities related to legal persons. The main threat identified in the 2019 NRA in relation to legal persons is swindling/fraud. It provides several statistics on the number of companies and the structure of shareholdings including nationality of shareholders. The main type of legal person misused – both foreign and domestic – is the limited liability company (SRL) due to its wide-spread use and to its structural characteristics. However, the information provided in the 2019 NRA falls short of a fully-fledged ML/TF risk analysis of legal persons, which should present the threats and vulnerabilities of each type of legal person in a systematic manner based on quantitative and qualitative data eventually leading to a conclusion of the final risk (ie the residual risk after having applied existing risk mitigating measures) and, if necessary, subsequently proposing additional risk mitigating measures to be applied in the future in order to decrease the risk to an acceptable level. There are also no risk categories assigned to all types of legal persons. The 2019 NRA also does not analyse TF threats and vulnerabilities associated with each type of legal person. It also does not establish TF risk categories.

35. San Marino has taken several measures to prevent the misuse of legal persons and legal arrangements, amongst which are the establishment of Registries of Beneficial Owners of Legal Persons and Trusts, the prohibition of bearer shares and the establishment of a Register of Fiduciary Shareholdings, which goes beyond what is required by the FATF standards.

36. Competent authorities have access to basic and beneficial ownership information of legal persons and trusts through information held by registers, through information held by the legal persons concerned and through information held by OEs. In general, these three mechanisms provide the authorities with access to adequate basic and beneficial ownership information without impediment in a timely manner. However, concerns remain whether the beneficial ownership information available for all types of legal persons and arrangements held by the Registers is accurate and up to date.

37. The low amount of administrative fines for violating the CDD obligations in relation to beneficial ownership and the low amount of administrative fines for failure to comply with the obligations to communicate beneficial ownership information to the Register of Beneficial Owners of Companies do

not represent proportionate and dissuasive sanctions. Consequently, the regime of administrative fines does not represent an effective deterrent.

International cooperation (Chapter 8; IO.2; R.36–40)

38. San Marino has a sound legal framework for international cooperation and demonstrated effective cooperation in seeking and providing mutual legal assistance (MLA) and other forms of international cooperation. San Marino provides generally timely and constructive MLA across the range of international co-operation requests. The jurisdiction receives a relatively small number of requests and such requests are responded to efficiently and within a reasonable timeframe. The case management system is effective, and the resources made available for responding to MLA requests seem to be sufficient. There are no practical or legal obstacles and according to the provided cases and general feedback from other countries, San Marino provides MLA in timely manner, particularly in respect of tax matters, criminal investigations, and all forms of international cooperation to its neighbouring country.

39. The FIA spontaneously disseminates and pro-actively seeks information exchange with its counterparts concerning information related to beneficial ownership, basic information on legal persons, accounts, business relationships and criminal records. The LEAs participate in formal and informal co-operation directly or via Interpol and other co-operation platforms. There is also co-operation between supervisors and foreign counterparts regarding market entry.

Priority Actions

- 1) San Marino should ensure additional allocation of human resources to the FIA to conduct its mandate more effectively regarding analytical work and supervisory activities.
- 2) The FIA should enhance its work on strategic analysis of ML specific trends, patterns and of complex ML schemes where San Marino might be used as one of the several jurisdictions to ML bearing in mind the characteristics and features of a regional financial centre and provide awareness training to competent authorities.
- 3) The FIA should increase their supervisory activities for OEs identified as having a higher risk to ML/TF as well as the number and range of on-site inspections to include general on-site inspections in FIs with higher risk taking a RBA.
- 4) San Marino should establish and apply a criminal justice policy on investigating and prosecuting ML which addresses the following risks: the ML of the widest range of foreign predicates; San Marino being used, or at risk of being used, in complex arrangements in which the ML operation is spread across a range of stacked jurisdictions. Proactive parallel ML investigations should also be actively promoted and conducted as a policy objective. A solution should be found for the lack of prison capacity.
- 5) San Marino's authorities should take appropriate measures to increase risk understanding of all FIs and DNFBBs, in particular distinct risks facing each sector and relevant mitigating measures to be taken, including by providing further guidance, training and feedback from the supervisors. In addition, authorities should ensure that all categories of the private sector conduct regular assessments of their business specific ML/TF risks for customers, products and services which are not only limited to customer risk classification. These assessments should be commensurate with the type and size of the business and the findings of the NRA.
- 6) The competent authorities should work more closely with smaller FIs and DNFBBs, to strengthen their understanding and controls in relation to CDD (particularly with regard to identification of

BOs) and ECDD for PEPs and TFS for TF and PF. For TFS authorities should provide outreach to all OEs focusing on the scope of persons and assets towards which TFS should be applied. In relation to STR reporting, FIA should provide guidance to the sectors where reporting appears not to be commensurate with the risks they are exposed.

- 7) San Marino should enhance market entry controls to prevent criminals and their associates from potentially holding or being the beneficial owner (BO) of a significant or controlling interest or holding a management function in DNFBPs and VASPs. For FIs, San Marino should clarify the internal procedures of the CBSM in relation to checking association with criminals.
- 8) San Marino should enhance remedial activities and sanctions available to the FIA. In particular, SM authorities should: i) increase the sum of pecuniary penalties to a level that is proportionate and dissuasive, ii) extend remedial measures to include permanent bans on managers or other persons and revoking authorizations fully or partially, and iii) provide the FIA with the power to stop or demand certain activities immediately upon penalty payments and in addition to (rather than instead of) other types of measures or sanctions.
- 9) San Marino should take measures to ensure better access to the basic information of trusts and to ensure that BO information held for all types of legal persons and arrangements is accurate and up to date.
- 10) San Marino should further enhance the awareness of the NPO sector, including through outreach and/ or guidance to the NPOs and the donor community, with a focus on possible risks of being misused for TF and their respective obligations in this regard.

Effectiveness & Technical Compliance Ratings

Effectiveness Ratings⁴

IO.1 – Risk, policy and coordination	IO.2 – International cooperation	IO.3 – Supervision	IO.4 – Preventive measures	IO.5 – Legal persons and arrangements	IO.6 – Financial intelligence
SE	HE	ME	ME	ME	SE
IO.7 – ML investigation & prosecution	IO.8 – Confiscation	IO.9 – TF investigation & prosecution	IO.10 – TF preventive measures & financial sanctions	IO.11 – PF financial sanctions	
ME	SE	SE	ME	ME	

Technical Compliance Ratings⁵

R.1 - assessing risk & applying risk-based approach	R.2 - national cooperation and coordination	R.3 - money laundering offence	R.4 - confiscation & provisional measures	R.5 - terrorist financing offence	R.6 - targeted financial sanctions – terrorism & terrorist financing
LC	C	LC	C	LC	LC
R.7 - targeted financial sanctions - proliferation	R.8 -non-profit organisations	R.9 – financial institution secrecy laws	R.10 – Customer due diligence	R.11 – Record keeping	R.12 – Politically exposed persons
LC	LC	LC	LC	C	C
R.13 – Correspondent banking	R.14 – Money or value transfer services	R.15 – New technologies	R.16 – Wire transfers	R.17 – Reliance on third parties	R.18 – Internal controls and foreign branches and subsidiaries
C	LC	PC	C	LC	LC
R.19 – Higher-risk countries	R.20 – Reporting of suspicious transactions	R.21 – Tipping-off and confidentiality	R.22 – DNFBPs: Customer due diligence	R.23 – DNFBPs: Other measures	R.24 – Transparency & BO of legal persons
C	C	C	LC	LC	PC
R.25 – Transparency & BO of legal arrangements	R.26 – Regulation and supervision of financial institutions	R.27 – Powers of supervision	R.28 – Regulation and supervision of DNFBPs	R.29 – Financial intelligence units	R.30 – Responsibilities of law enforcement and investigative authorities
LC	PC	LC	PC	C	C
R.31 – Powers of law enforcement and investigative authorities	R.32 – Cash couriers	R.33 - Statistics	R.34 – Guidance and feedback	R.35 - Sanctions	R.36 - International instruments
C	C	C	C	PC	LC
R.37 – Mutual legal assistance	R.38 – Mutual legal assistance: freezing and confiscation	R.39 – Extradition	R.40 – Other forms of international cooperation		
C	C	C	LC		

⁴ Effectiveness ratings can be either a High- HE, Substantial- SE, Moderate- ME, or Low – LE, level of effectiveness.

⁵ Technical compliance ratings can be either a C – compliant, LC – largely compliant, PC – partially compliant or NC – non-compliant.

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