

Anti-money laundering and counter-terrorist financing measures

San Marino

1st Enhanced Follow-up Report & Technical Compliance Re-Rating

May 2024

Follow-up report



The Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism - MONEYVAL is a permanent monitoring body of the Council of Europe entrusted with the task of assessing compliance with the principal international standards to counter money laundering and the financing of terrorism and the effectiveness of their implementation, as well as with the task of making recommendations to national authorities in respect of necessary improvements to their systems. Through a dynamic process of mutual evaluations, peer review and regular follow-up of its reports, MONEYVAL aims to improve the capacities of national authorities to fight money laundering and the financing of terrorism more effectively.

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The 1st Enhanced Follow-up Report and Technical Compliance Re-Rating on San Marino was adopted by the MONEYVAL Committee through written procedure (21 May 2024).

San Marino: First Enhanced Follow-up Report

I. INTRODUCTION

1. The mutual evaluation report (MER) of San Marino was adopted in April 2021. Given the results of the MER, San Marino was placed in regular follow-up.¹ The report analyses the progress of San Marino in addressing the technical compliance (TC) deficiencies identified in its MER. Re-ratings are given where sufficient progress has been made. Overall, the expectation is that countries will have addressed most if not all TC deficiencies by the end of the third year from the adoption of their MER.

2. The assessment of the request of San Marino for one technical compliance re-rating and the preparation of this report were undertaken by the following Rapporteur team (together with the MONEYVAL Secretariat):

- Bulgaria

3. Section II of this report summarises the progress of San Marino's made in improving technical compliance. Section III sets out the conclusion and a table showing which Recommendations have been re-rated.

II. OVERVIEW OF PROGRESS TO IMPROVE TECHNICAL COMPLIANCE

4. This section summarises the progress made by San Marino to improve its technical compliance by addressing the technical compliance deficiencies identified in the MER for which the authorities have requested a re-rating (Recommendation (R.) 35).

5. For the rest of the Recommendations rated as partially compliant (PC) (R.15, R.24, R.26 and R.28) the authorities did not request a re-rating.

6. This report takes into consideration only relevant laws, regulations or other AML/CFT measures that are in force and effect at the time that San Marino submitted its country reporting template – at least six months before the follow-up report (FUR) is due to be considered by MONEYVAL.²

II.1 Progress to address technical compliance deficiencies identified in the MER and applicable subsequent FURs

7. San Marino has made progress to address the technical compliance deficiencies identified in the MER. As a result of this progress, San Marino has been re-rated on R.35.

8. Annex A provides the description of the country's compliance with the Recommendation that is reassessed, set out by criterion, with all criteria covered. Annex B provides the consolidated list of remaining deficiencies of the re-assessed Recommendation.

1. Regular follow-up is the default monitoring mechanism for all countries. Enhanced follow-up involves a more intensive process of follow-up.

2. This rule may be relaxed in the exceptional case where legislation is not yet in force at the six-month deadline, but the text will not change and will be in force by the time that written comments are due. In other words, the legislation has been enacted, but it is awaiting the expiry of an implementation or transitional period before it is enforceable. In all other cases the procedural deadlines should be strictly followed to ensure that experts have sufficient time to do their analysis.

III. CONCLUSION

9. Overall, in light of the progress made by San Marino since its MER was adopted, its technical compliance with the Financial Action Task Force (FATF) Recommendations has been re-rated as follows:

Table 1. Technical compliance with re-ratings, May 2024

R.1	R.2	R.3	R.4	R.5
LC	C	LC	C	LC
R.6	R.7	R.8	R.9	R.10
LC	LC	LC	LC	LC
R.11	R.12	R.13	R.14	R.15
C	C	C	LC	PC
R.16	R.17	R.18	R.19	R.20
C	LC	LC	C	C
R.21	R.22	R.23	R.24	R.25
C	LC	LC	PC	LC
R.26	R.27	R.28	R.29	R.30
PC	LC	PC	C	C
R.31	R.32	R.33	R.34	R.35
C	C	C	C	LC (FUR1 2024) PC
R.36	R.37	R.38	R.39	R.40
LC	C	C	C	LC

Note: There are four possible levels of technical compliance: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC).

10. To date, San Marino achieved a LC or C rating in respect of 37 recommendations, with three recommendations (R.24, R.26 and R.28) remaining rated partially compliant. Therefore, San Marino will remain in regular follow-up and will continue to report back to MONEYVAL on progress to strengthen its implementation of AML/CFT measures. Subject to application of Rule 22 of the Rules of Procedure for the 5th Round of Mutual Evaluations, San Marino is expected to report back in four years' time.

Annex A: Reassessed Recommendations

Recommendation 35 – Sanctions

	Year	Rating and subsequent re-rating
MER	2021	PC
FUR1	2024	↑LC (upgrade requested)

1. In the 2021 MER, San Marino was rated PC on R.35. The assessment identified some moderate shortcomings which would not always ensure that the sanctions in place were proportionate.

Criterion 35.1 – Financial institutions (FIs) and Designated non-financial businesses and professions (DNFBPs)

2. Title VI of the AML/CFT Law,³ provides sanctions for violation of AML/CFT requirements. These include criminal sanctions and sanctions for administrative violations. The Financial Intelligence Agency of San Marino (FIA) has the powers to act as judicial police when delegated to carry out Money laundering/terrorist financing (ML/TF) investigations, criminal offences and administrative violations by the Judicial Authority (JA). The FIA is competent to impose administrative sanctions relating to anti-money laundering and combating financing of terrorism (AML/CFT) infringements under Chapter II of title VI of the AML/CFT Law.

3. Administrative sanctions include pecuniary sanctions (fines) and other sanctions consisting of: (a) orders to eliminate violations or refrain from repeating them; (b) issuing public statements concerning the violation committed and the person responsible; (c) withdrawal of the authorisation, license or qualification to operate wholly or partially (as a permanent measure), or suspension of those for a period of not less than six months and not more than three years (as a temporary measure); (d) banning of persons discharging managerial responsibilities on a permanent and temporary basis; and (e) removing an AML/CFT Officer (Chapter II of Title VI of the AML/CFT Law, as amended in October 2023). Orders to eliminate violations or refrain from repeating them may be used in cases of rare offences or danger - as an alternative to a fine, in addition to a fine (Art. 67 ter, para 1bis of the AML/CFT Law), or in addition to a fine and other sanctions (Art. 67 ter, para 2 of the AML/CFT Law).

4. Fines are applicable to specific violations (e.g., violations of monitoring requirements, violations of the rules on self-assessment and risk mitigation, etc.) and to all other violations of other provisions of the AML/CFT Law as well as violations of instructions and circulars in general. Fines for administrative violations range from a minimum of EUR 500 to EUR 3 000 (depending on the specific violation) to a maximum of EUR 100 000 for any violation. When deciding upon the use of an applicable sanction, the FIA must take into consideration ten criteria, which includes consideration of the economic profile of the entity (i.e., the type of obliged entity) (Art. 72 of AML/CFT Law). If serious violations are also repeated or are systemic or multiple, the fine imposed can rise to twice any economic advantage (if this is determined or determinable) or to EUR 1 million, in all other cases. When these violations are committed by a financial entity, the maximum amount shall be up to EUR 5 million (Art. 61- 67bis of the AML/CFT Law). Therefore, there is a sufficient range of sanctions that can be applied proportionately to greater or lesser breaches of the requirements.

5. Criminal sanctions vary from first to third degree daily fines, imprisonment, disqualification from public offices and political rights and are subject to general criminal procedure. These sanctions, when applicable, are also cumulative. Criminal sanctions are applicable for violations of

3. AML/CFT Law, Art.-s 53, 53bis, 54, 54bis, 56, 57, 58, 60bis, 61, 62, 62bis, 63, 63bis, 65bis, 65 ter, 65 quarter, 66, 67, 67bis, 67ter, 68, 69, 70, 70bis, 71, 72, 73, 74, 74bis, and 75.

the AML/CFT Law, e.g., secrecy requirements, failure to provide information, provision of false information or non-compliance with reporting requirements, non-compliance with the orders and provisions issued by the FIA or non-compliance with restrictive measures in relation to TF, circumvention of freezing measures and non-compliance with or delay in implementing the blocking provision.

Non-profit organisations

6. As described in Rec. 8(4)b, associations and foundations as well as the persons acting on behalf of them are subject to sanctions for violations of their obligations. Depending on the type of violation the Office for Control Activities has the power to penalise the governing council with a fine between EUR 1 000 and EUR 5 000 or the foundation itself with a fine between EUR 1 000 and EUR 10 000 (Art. 68 Law on Foundations, which by reference in paragraph 12 of Art. 6 of the Law on Associations is also applicable to associations). However, these sanctions are not proportionate or dissuasive.

Targeted financial sanctions (TFS) related to TF and terrorism

7. Title IV of Law 57/2019 provides sanctions for violation of TFS related to TF and terrorism requirements. These include criminal sanctions and sanctions for administrative violations. The FIA has the powers to act as judicial police when delegated to carry out ML/TF investigations, criminal offences and administrative violations by the JA. The FIA is competent to impose administrative sanctions relating to TFS requirements under Chapter II of title IV of the Law 57/2019.

8. Criminal sanctions apply to circumvention for freezing measures punished with third-degree imprisonment, daily fine and disqualification and a fine up to double the value of the frozen assets or funds, and non-compliance with or delay in implementing the blocking provision punished with first-degree imprisonment or second-degree daily fine. A fine from EUR 5 000 to EUR 1 000 000 and third-degree disqualification shall also apply. If violations of the obligations are perpetrated by using fraudulent means, the punishments shall be increased by one degree and the fine shall be doubled.

9. Administrative sanctions apply for violations for the provision of freezing, verification and reporting obligations. Administrative sanctions are also applied for the violations of instruction and circulars. Fines range from double the value of assets involved or from EUR 10 000 to EUR 100 000. Fine for violation of instructions or circulars is from EUR 500 to EUR 50 000. Terrorism and TF itself are crimes according to Art. 340 octies and 340 decies of the Criminal Code and are punishable by sixth-degree imprisonment and fourth-degree disqualification from public offices and political rights.

10. **Criterion 35.2** – Pursuant to AML/CFT Law administration of criminal sanctions or liability for administrative violations is not limited to FIs and DNFBP's and may be applied to natural persons. Joint and several liability is applicable Pursuant to Art. 70 of AML/CFT Law. According to Art. 25 (4) of Law 57/2019 the FIA applies sanctions in accordance with the provisions of Articles from 67 bis to 74 bis of AML/CFT Law and subsequent amendments, incl. aforementioned Art. 70 when applying sanctions for failure to comply with TFS requirements.

Weighting and Conclusion

11. San Marino ensures that there is a range of proportionate and dissuasive sanctions available to deal with natural or legal persons that fail to comply with the AML/CFT requirements of Recommendations 6, and 9 to 23. However, sanctions for R.8 are not proportionate and dissuasive.
R.35 is re-rated largely compliant.

Annex B: Summary of Technical Compliance – Deficiencies underlying the ratings

Recommendation	Rating	Factor(s) underlying the rating ⁴
35. Sanctions	PC (MER) LC (FUR1 2024)	<ul style="list-style-type: none">• Sanctions for R.8 are not proportionate and dissuasive (c.35.1)

4. Deficiencies listed are those identified in the MER.

GLOSSARY OF ACRONYMS

AML/CFT	Anti-money laundering and combating financing of terrorism
AML/CFT Law	Law No. 92 of 17 June 2008 on the Prevention and combating of money laundering and terrorist financing, as amended in October 2023
C	Compliant
DNFBPs	Designated non-financial businesses and professions
FATF	Financial Action Task Force
FIs	Financial institutions
FIA	Financial Intelligence Agency of San Marino
FUR	Follow-up report
JA	Judicial Authority
LC	Largely compliant
MER	Mutual evaluation report
ML/TF	Money laundering/terrorist financing
NC	Non-compliant
PC	Partially compliant
R.	Recommendation
TC	Technical compliance
TFS	Targeted financial sanctions

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Technical Compliance Re-Rating

This report analyses San Marino's progress in addressing the technical compliance deficiencies identified in the April 2021 assessment of their measures to combat money laundering and terrorist financing.

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