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## The honouring of membership obligations to the Council of Europe by San Marino

### Report<sup>1</sup>

Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

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### Summary

The Monitoring Committee takes stock of the honouring of membership obligations to the Council of Europe by San Marino and the functioning of its democratic and rule of law institutions. The committee pays tribute to San Marino's unique and well-developed system of democratic and rule of law institutions that are well adapted to its historical democratic heritage as well as to the particularities of it being a micro-State.

At the same time, it noted that the particularities of these unique governing structures have also raised concerns about the effectiveness of the system of checks and balances in the country and the potential vulnerability of its democratic institutions and office holders to corruption and conflicts of interest.

While welcoming the reforms already implemented to address these concerns, the committee makes a number of recommendations to strengthen the system of checks and balances and resilience of the democratic institutions, including by the improving the working conditions for members of the Great and General Council.

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1. Monitoring Committee decision. Reference to committee: Reference No. 4570 of 19 March 2021.



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## A. Draft resolution<sup>2</sup>

1. San Marino, a micro-State, the world's oldest extant sovereign State, as well as the world's oldest constitutional Republic, joined the Council of Europe in 1988. The Assembly pays tribute to its unique and well-developed system of democratic and rule of law institutions that are well adapted to its historical democratic heritage as well as to the particularities of it being a micro-State. While these structures have constantly been adapted to the needs of a changing society, its main tenets, collegiate governing structures which are shared among the citizens for limited terms, have remained in place. The Parliamentary Assembly notes that this has resulted in a very close proximity between the citizens and their political and governing structures, and an equally close distance between the different branches of powers which are often intertwined.

2. The Assembly recognises that these unique governing structures, combined with the particularities of San Marino being a micro-State, have generated concerns about the effectiveness of the system of checks and balances in the country and the potential vulnerability of its democratic institutions and office holders to corruption and conflicts of interest. The Assembly therefore welcomes the clearly present political will and the numerous reforms implemented to strengthen the functioning and resilience of its democratic and rule of law institutions. While these reforms have given these institutions a solid basis for their democratic functioning, the Assembly considers that continuing vigilance and openness to reform should remain a priority for the authorities.

3. In order to retain its independence as a sovereign State in an increasingly interconnected and interdependent world, San Marino has become an active member of the international community and has harmonised its institutions and legal framework with international norms and standards. The Assembly welcomes the continuous efforts by San Marino to ensure that its democratic institutions and legal framework adhere to international norms and standards, including its obligations as a member State of the Council of Europe.

4. San Marino is a parliamentary republic with a well-developed and pluralist multi-party political environment. The Great and General Council, the Sammarinese Parliament, in which the sovereignty of its people is vested, is at the centre of the country's democratic institutions and system of checks and balances. The Great and General Council is formally a part-time parliament whose members are not receiving a salary for their parliamentary work and are therefore dependent on secondary employment. However, the workload of a member of the Great and General Council is far from being part-time. The Assembly is concerned that there are no specific legal provisions for employers in the private sector to provide members of the Great and General Council with the necessary time off to pursue their parliamentary work with maintenance of their salary, in compensation for their working time. In order to ensure the possibility for members working in the public and private sectors to participate on an equal footing in the work of the Great and General Council, the Assembly recommends that such legal provisions be adopted.

5. The Assembly is concerned about the imbalance in the equality of arms between the legislative and executive powers in San Marino which has resulted in an executive that is too powerful and that in practice rules by decree, instead of waiting for the Great and General Council to guide policies and take legislative action. While the recommended improvement of the working conditions for members of the Great and General Council would go some way in alleviating this problem, addressing this issue on a more systemic level should be considered in the context of future institutional reforms.

6. The Assembly recognises and welcomes the democratic benefits of the close proximity and strong human links between executive, elected representatives and the San Marino citizens. At the same time, it is concerned about the impact of this proximity on the functioning of the system of checks and balances as well as the vulnerability of the democratic institutions and their office holders to corruption and potential conflicts of interest. The Assembly therefore welcomes the reforms that have been implemented with a view to addressing these vulnerabilities in respect of the legislative and judicial fields, in line with the recommendations of the Group of States against Corruption (GRECO). In this context the Assembly:

6.1. welcomes the adoption by the Great and General Council, of a Code of ethics for its members and urges the Council to ensure that the code is regularly updated and adapted to new developments;

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2. Draft resolution adopted unanimously by the committee on 21 March 2023.

6.2. recommends that the authorities adopt the necessary legislation that would allow for Sammarinese citizens to formally notify the authorities of discrepancies in the declarations of interests of members of the Great and General Council that are posted on the Great and General Council's website;

6.3. recommends the introduction of sanctions by the Great and General Council, for more serious violations of the Code of ethics or deliberate omissions and discrepancies in the declarations of interests by its members;

6.4. recommends that GRECO considers initiating, as soon as possible, its evaluation in respect of San Marino in the framework of its fifth evaluation round on "Preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies" and calls upon the Sammarinese authorities to fully and promptly address any possible recommendations and concerns that may stem from this evaluation.

7. The Assembly welcomes the recent implementation of far-reaching reforms of the judiciary with a view to strengthening its independence and resilience against external interference. It welcomes the conclusions of GRECO in its compliance report that these reforms address practically all of its recommendations made in its evaluation report in respect of San Marino in the framework of its fourth evaluation round on "Prevention of corruption in respect of members of parliament, judges and prosecutors". The Assembly calls upon the authorities to consistently monitor the independence and efficiency of the judiciary and adopt further reforms if necessary to ensure them fully. In order to further raise judicial efficiency and impartiality, the Assembly suggests that the authorities explore the possibility to establish the Office of a Prosecutor General.

8. San Marino has historically a well-developed institutional and legal system for the protection of fundamental human rights. However, this should not be a reason for complacency, especially as in a number of cases the legal framework for the protection of human rights has run behind the existing developments and acceptance of rights in the Sammarinese society. In this context the Assembly:

8.1. calls upon the Great and General Council to adopt the relevant legislation to allow all religious denominations to register, with equal rights, as religious organisations in San Marino;

8.2. calls upon the Great and General Council to lower the residency requirement for foreign residents to participate in local elections, to five years, in line with European standards;

8.3. recommends that the authorities establish an independent specialised body to combat racism and discrimination, in line with the Paris Principles, and provide this body with sufficient resources to adequately execute its tasks;

8.4. recommends that the authorities ensure the adequate collection of statistical data with regard to important social matters such as minorities, discrimination and intolerance, as well as women's rights, in order to guide the drafting of policies in these areas;

8.5. given the dependence of the authorities on civil society organisations and citizens initiatives to implement human rights and social policies, invites the authorities to ensure adequate access to funding and resources for these organisations in order to execute their tasks.

9. The Assembly welcomes the diverse and pluralistic media environment in San Marino. At the same time, it is concerned that strict privacy laws and the continuing criminalisation of defamation hinder access to public information and could lead to self-censorship by journalists. The Assembly therefore calls upon the authorities to:

9.1. decriminalise defamation in line with European standards;

9.2. amend the applicable legislation to ensure the genuine independence of the media Authority;

9.3. ensure in law and in practice the unhindered access to public information by journalists and Sammarinese citizens.

10. The Assembly lauds San Marino for its wide and impressive range of institutional consultation mechanisms and instruments of direct democracy. At the same time, it expresses concern about the numerous reports that indicate that these consultation mechanisms are not always used as foreseen by law, or that its results are ignored or not implemented. Given the importance of these instruments for the functioning of democratic institutions in San Marino, the Assembly urges the authorities to continue to ensure, and where necessary strengthen, the effectiveness of the various consultation mechanisms and instruments of direct democracy.

## B. Explanatory memorandum by Mr Andrej Hunko and Mr Joseph O'Reilly, co-rapporteurs

### 1. Introduction

1. Under its terms of reference as defined in [Resolution 1115 \(1997\)](#) (as modified), the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) is seized to carry out a regular periodic review of the compliance of the obligations entered into upon their accession to the Council of Europe by member States that are not already under a full monitoring procedure or engaged in a post-monitoring dialogue. Since the adoption of [Resolution 2261 \(2019\)](#), these periodic review reports are submitted for debate as separate reports accompanied by specific resolutions for each country. The order and frequency of the countries selected for periodic review are decided upon by the Monitoring Committee in accordance with its internal working methods based on substantive grounds, with the objective of producing, over time, periodic review reports on all member States.

2. On 3 February 2021, the Monitoring Committee selected for periodic review the second group of countries: France, the Netherlands and San Marino. On 19 March 2021, the Assembly ratified this selection and on 19 April 2021 Mr Andrej Hunko (Germany, UEL) and Mr Viorel-Riceard Badea (Romania, EPP/CD) were appointed as rapporteurs for San Marino. The fact-finding visit to San Marino, which is an essential component of the preparation of this report, took place from 24 to 26 October 2022. We wish to express our gratitude to the Great and General Council of San Marino and its delegation to our Assembly for the excellent programme, the support for this visit and the hospitality provided<sup>3</sup>. In addition to our visit, we also held exchanges of views with the members of the Sammarinese delegation, as well as with the Executive Secretary and members of the Secretariat of the Group of States against Corruption (GRECO). On 26 January 2023, the Committee appointed Mr Joseph O'Reilly (Ireland, EPP/CD) to replace Mr Viorel-Riceard Badea (Romania, EPP/CD) who had left the Assembly.

3. San Marino joined the Council of Europe on 16 November 1988. San Marino is a micro-State that is regarded as the world's oldest extant sovereign State and oldest constitutional Republic. It is the third smallest country in Europe after the Vatican and Monaco and 5th smallest country in the world.<sup>4</sup>

4. San Marino was founded by San Marinus who settled in what is now San Marino with a group of early Christians in order to flee prosecution. Its historical independence from external powers<sup>5</sup> and self-governance of its citizens are an important component of the Sammarinese national identity and reflected in the country's unique governing system which developed from the structures of the Roman Republic. While these structures have been adapted to the needs of a changing society, its main tenets, collegiate governing structures which are shared among the citizens for limited terms, have remained in place. Another important aspect defining the country's institutional structures is the already mentioned fact it is a micro-State with a surface of 62 sq. km and, at present, 34 000 inhabitants,<sup>6</sup> about 4 800 of which foreign residents. As a result, the proximity between the citizens and the political and governing structures is very close as is the distance between the different branches of powers which are often intertwined.

5. In order to maintain its independence in an increasingly interconnected world, San Marino started a drive to modernise its society and institutional structures in the second half of the last century, which resulted in an increasing integration in the international community and harmonisation of its institutions with international norms and standards. As mentioned, San Marino joined the Council of Europe in 1988 and the United Nations in 1992. In 1992 it also joined the International Monetary Fund, then the World Bank in 2000. Its foreign policy is guided by what the Secretary of State for Foreign Affairs of San Marino has described to us as "active neutrality, which implies no alignment with other countries but clear positions on principles of international law. This has, *inter alia*, allowed the country to join sanctions against the Russian Federation for its aggression against Ukraine, based on the principles of international law without aligning itself with any regional groupings or interests.

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3. The statement issued at the end of the visit is available here: <https://pace.coe.int/en/news/8877/pace-rapporteurs-welcome-the-reforms-to-strengthen-the-independence-of-the-judiciary-and-the-system-of-checks-and-balances-in-san-marino>.

4. Based on land surface.

5. The official motto of the country, reflected in its coat of arms is *Libertas* (or freedom) which refers not only to its long-standing independence and its origins as a refuge from political and religious prosecutions, but, reportedly, also to the alleged last words of the country's founder Saint Marinus: "*Relinquo vos liberos ab utroque homine*" (I leave you free from both men) allegedly referring to both Pope and King.

6. In addition, San Marino has a very sizable diaspora of approximately 13 000 citizens, or about a quarter of its population.

6. As a country that is fully surrounded by Italy, it has a special relationship with the European Union's monetary and custom systems. In 1991 a Cooperation and Customs Union Agreement was signed between the European Economic Community and San Marino. Law No. 124 of 16 December 1998 regulated the transition from the lira to the euro. Furthermore, on 29 November 2000, the Monetary Agreement between the Republic of San Marino and the Italian Republic on behalf of the European Community was signed and ratified by Decree No. 19 of 8 February 2001. The European Union and the three European micro-States (San Marino, Andorra, and Monaco) strive for an increasingly closer co-operation and integration, which for the moment focusses on a multilateral association agreement, as EU membership is currently not considered an option for these micro-States. Despite this close co-operation, San Marino was not invited to participate in the European Political Community that held its founding Summit in Prague on 23 and 24 June 2022. We hope that this will be rectified for future meetings and activities of the European Political Community.

7. The modernisation and increasing international integration of San Marino also led to questions being raised about the functioning of the system of checks and balances and separation of powers in the country – especially with regard to the independence of the judiciary. In addition, the special conditions dictated by the fact of it being a micro-State also resulted in increasing attention to the potential vulnerability of the institutions and its office holders to conflicts of interest and corruption. This led to a number of important reforms of the country's institutions which we will return to in the next section on democratic institutions. The issues of the vulnerability of the country's institutions to conflicts of interest and corruption, as well as the independence of the judiciary were brought to the foreground as a result of the so-called "Conto Mazzini" or *Sammarinese Tangentopoli* scandal in 2017<sup>7</sup> and, above all, the findings of GRECO's 2019 Evaluation Report on San Marino in the framework of its fourth Evaluation Round – "Prevention of corruption in respect of members of parliament, judges, and prosecutors".<sup>8</sup> In particular the findings in GRECO's evaluation report were described as a watershed moment by our interlocutors, that resulted in an in-depth reform of the structures governing the judiciary that we will outline below. These developments took place in a period of relatively high tensions within the judiciary and political environment which spilt into the international domain and which were mentioned as one of the substantive grounds for the selection of San Marino for periodic review by the committee. The functioning of the system of checks and balances, as well as the independence of the judiciary and the potential vulnerability of San Marino's democratic and rule of law institutions to conflicts of interest and corruption will therefore be key focal points in this report.

## 2. Democratic Institutions

8. As already mentioned, San Marino was founded in AD 301 and is widely regarded as the world's oldest surviving Republic.<sup>9</sup> Its governing system developed from the structures of the Roman Republic. All the heads of the families that made up San Marino ruled the country through a Council called the *Arengo*, similar to the original Roman Senate. Again, similar to the practices in the Roman Republic, the *Arengo* appointed the highest representatives of the State, two Consuls, later called Captains Regent, to govern collegially and for a limited term in office. While these institutional structures have been updated and adapted over time, two important principles have remained a constant. Firstly, the avoidance of concentration of powers in a single person, resulting in collegiate governing structures without central leadership – the country has no Speaker of parliament or Prime minister – while the position of Head of State is shared by two Captains Regent who guarantee the constitutionality of governance. The second principle are term limits for executive office holders and a direct accountability to, and involvement of the citizens in the governance of the country (see also the section on direct democracy below).

9. San Marino's earliest Statutes, which are also constitutional sources of law date back to 1263. The current Statutes date back from 1600 and are still the backbone of its constitutional framework. In addition, a Declaration on the Citizens' Rights and Fundamental Principles of San Marino Constitutional Order ("Declaration on the Citizens Rights") was adopted in 1974 and amended by Law No. 95 of 19 September 2000, Law No. 36 of 26 February 2002, Constitutional Law No. 61 of 28 April 2005, Law No. 182 of 14 December 2005 amending the Constitution, Constitutional Law No. 1 of 22 July 2011 and Law No. 1 of 28 March 2019 amending the Constitution that together with the Statutes of 1600 form the constitutional

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7. In 2017 the country was rocked by the so-called Conto Mazzini or *Sammarinese Tangentopoli* scandal, where several high-level politicians and judges were originally found guilty of corruption and sent to lengthy prison sentences. Most of the sentences were overturned on appeal on 5 March 2022, mostly on the ground that the alleged acts were committed before the 2013 legislation criminalising corruption and money laundering came into force. See also [Libertas](#) (5 March 2022).

8. [GrecoEval4Rep\(2019\)1](#).

9. San Marino was formally named a Republic only in the 15<sup>th</sup> century.

framework of San Marino. The Declaration on the Citizens' Rights can only be amended by the Great and General Council with a qualified 2/3 majority. If approved by absolute majority, laws amending the Constitution are subject to referendum for their confirmation within 90 days from their approval.

### **2.1. The Great and General Council**

10. The Great and General Council is the Sammarinese Parliament. In the early 13th century, a new institutional body – the Great and General Council – took over most of the *Arengo's* prerogatives. The Council was composed of 60 members, originally elected by the *Arengo*. The country's Statutes adopted in 1600 established that the Great and General Council could co-opt its members, leading to the diminishment of the *Arengo* and the concentration of powers in a number of wealthy families that controlled the Great and General Council. This lasted until 1906, when the *Arengo* was summoned again, and the system of co-option abolished. Since then, the Great and General Council has been elected by popular vote.

11. The Statutes and the Declaration on the Citizens' Rights define San Marino as a Parliamentary Republic, where the sovereignty vested in the people is exercised by the Great and General Council elected through a representative democratic process. The Great and General Council is a unicameral legislative body that, *inter alia*, is vested with legislative power, directs the national policy, exerts control over the executive, elects the Captains Regent, appoints the members of the Congress of State and approves the annual budget.

12. The present Great and General Council consists of 60 members elected by popular vote for a five-year term under a two-round proportional system with preferential votes in a single national constituency.<sup>10</sup> Candidates are part of a list. The list, or coalition of lists, obtaining an absolute majority in either first or second round is assigned a minimum of 35 seats. There is a 5% threshold to participate in the allocation of seats. In the event that no list or coalition of lists obtains the minimum number of valid votes for electoral victory, the Captains Regent shall confer on the list or coalition of lists that has reached the relative majority of votes a 15-day mandate to form the majority through agreement with other lists or coalitions of lists on the basis of the statements, formulated for the negotiation phase, already filed when applying for the elections. The agreement resulting from the negotiation must reach a majority of at least 35 seats. If the mandate is unsuccessful – namely no agreement can be reached with lists that collectively have at least 35 seats – the Captains Regent shall confer a new mandate on the list or coalition of lists ranking second in the first round of the elections. If the second mandate is also unsuccessful, the Captains Regent shall call for a second round of voting between the two lists or coalitions of lists that obtained the highest number of votes during the first round.

13. Members of the Great and General Council need to hold the Sammarinese nationality, be at least 21 years of age and be domiciled in the Republic. In addition, they need to have a spotless criminal record and cannot be a magistrate, belong to the professional military corps, or to the diplomatic and consular corps. According to legal requirements, each list presented for the elections shall not include more than two-thirds of candidates from the same gender.

14. There is no Speaker. The Great and General Council is presided over jointly by the Captains Regent who have no voting rights. The parliamentary calendar is prepared by the Captains Regent at the beginning of their six-month mandate. They also draw up the agenda of the Great and General Council meetings in consultation with the Bureau of the Great and General Council.

15. Despite of its small size, San Marino has a well-developed and pluralist multi-party political environment. The most recent general election took place on 8 December 2019. The governing majority was constituted by the Partito Democratico Cristiano Sammarinese (PDCS – Sammarinese Christian Democratic Party), the Domani in Movimento Coalition (“Tomorrow in Motion”) and the Noi per la Repubblica (“We for the Republic”) list. The Domani in Movimento Coalition unites the RETE Movement and the Domani-Motus Liberi party. The Noi per la Repubblica list unites the Partito Socialista (PS Socialist Party), the Partito dei Socialisti e Democratici (PSD – Party of Socialists and Democrats), the Movimento Democratico San Marino Insieme (Democratic Movement San Marino Together) and Noi Sammarinesi (“We Sammarinese”). The opposition consists of two lists, Repubblica Futura (RF – Future Republic) and Libera (Free). The ruling majority had initially 44 seats in the Great and General Council and the opposition 16. As a result of internal political changes within the groups their composition changed over time and as of October 2022 was as follows: San Marino Christian Democratic Party (21 members); RETE Movement (9 members); Domani Motus Liberi party

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10. According to this system, voters make a direct choice for three candidates within a single list of candidates. The candidates with the most preferences are elected from that list. The number of seats for each party list is established proportionally based on the d'Hondt system.

(4 members); Noi per la Repubblica (6 members); Libera (10 members); Repubblica Futura (6 members); and a Mixed Group<sup>11</sup> (4 members, 3 of the majority and 1 of the opposition. In the Sammarinese context, it is not easy for any single party to gain an absolute majority and most of the time the government is based on a coalition of several parties and blocs.

16. Political parties are mostly funded through public funds, and they receive annual State subsidies based on the number of seats they have in the Great and General Council. They can also receive private funds. The data pertaining to persons and entities whose annual contributions exceed €3000 need to be documented in the balance sheet of the party which is published on the website of the Great and General Council. There is no legal ceiling for private contributions, which could make parties vulnerable to corruption and conflicts of interest. This should be addressed.

17. The Great and General Council is a part-time parliament and members do not receive a salary for their parliamentary work, although they receive a small attendance fee for their participation in the meetings of the Great and General Council and the committees of which they are members.<sup>12</sup> As a result, they are dependent on employment in the public or private sectors for their income. However, despite being officially a part-time parliament, the workload and availability the Great and General Council demands from its members is far from being part-time (nearly full-time).

18. According to the Rules of Procedure, the Great and General Council shall be convened at least once a month.<sup>13</sup> The sessions may consist of one or more sittings and can last several days (not necessarily consecutive). The time and duration of the sittings is decided by the Captains Regent within the context of Bureau of the Great and General Council, on the basis of an ordinary schedule prepared by the Captains Regent at the beginning of their six-month mandate. In cases of need and urgency, after consultation with the Bureau of the Great and General Council, the Captains Regent may convene a session not provided for in the ordinary schedule. In practice, the Great and General Council meets on the average in plenary once – sometimes twice – a month and each session lasts between five and seven days. The plenary sittings generally last all day and quite often continue in the evenings. In addition, the Great and General Council has four standing committees,<sup>14</sup> each composed of 18 members, that meet several times a month, with their sessions lasting one day (often an afternoon and evening) and other parliamentary committees.<sup>15</sup>

19. While members of the Great and General Council who work in the public sector in general do not face problems with obtaining the necessary time off to fulfil their parliamentary duties without loss of salary, we were informed that this is not the case for those being (self) employed in the private sector, who often encounter considerable challenges in combining the demands of their professional and parliamentary functions. We were also informed that this is exacerbated by the fact that there are no specific legal provisions for employers to provide members of the Great and General Council the necessary time off to pursue their parliamentary work with maintenance of salary, in compensation of their working time. In order to ensure the possibility for all members to participate on equal footing in the work of the Great and General Council, we would recommend such legal provisions to be adopted. Naturally, the parliamentary work of the members of the Great and General Council does not only entail participation in its sessions but also research and preparation for the debates. In that context, the fact that members of the executive are full-time and paid politicians while the members of the Great and General Council – to whom the executive is accountable – are part-time MPs who work on a voluntary basis, raises some questions with regard to the “equality of arms” between the executive and legislative powers. The possibility of including time for preparation and research in the above-mentioned legal provisions should in our view be explored.

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11. The Mixed Group shall be composed *ex officio* by the members of the Great and General Council who have not declared to which parliamentary group they intend to belong, as well as by those who, during the legislature, have declared to be autonomous from their group without forming a new one or joining an existing one. The Mixed Group may consist of any number of members of the Great and General Council.

12. In addition to a symbolic monthly allowance.

13. With the possibility of a recess in August.

14. Standing Parliamentary Committees have the following responsibilities: 1) Constitutional and Institutional Affairs, Public Administration, Internal Affairs, Civil Protection, Relations with the Township Councils, Justice, Education, Culture, Cultural Goods, University and Scientific Research. 2) Foreign Affairs, Emigration and Immigration, Security and Public Order, Information. 3) Finance, Budget and Planning, Handicraft, Industry, Trade, Tourism, Services, Transport and Telecommunications, Labour and Co-operation. 4) Hygiene and Health, Pensions and Social Security, Social Policies, Sports, Territory, Environment and Agriculture.

15. These include the Parliamentary Committee on the Phenomenon of the Infiltration of Organised Crime, the Committee for Territorial Policies and the Parliamentary Committee for Justice.



20. The comparatively large number of members of the Great and General Council (approximately one representative per 500 citizens) naturally creates a close and strong link between the representatives and the electorate. At the same time this creates a vulnerability to undue influence by small interest groups and possible conflicts of interest. The Great and General Council has been addressing this vulnerability in the follow-up to GRECO's evaluation report for the fourth evaluation round, which will be outlined in more detail in a next section. However, this should be a constant point of vigilance for the political forces in San Marino.

## **2.2. The Capitani Reggenti (Captains Regent)**

21. The parliamentary republic of San Marino is a duumvirate, or diarchy, where two Captains Regent jointly exercise the functions of Head of State.<sup>16</sup> The Captains Regent are the guarantors of the country's constitutional order and supervise the functioning of public powers and State institutions and the compliance of their activities with the legislation in force. In that context the Captains Regent promulgate all acts having the force of law and regulations adopted by the Great and General Council and by the Congress of State and can issue non-regulatory decrees on issues that come within their jurisdiction. Decrees issued by the Captains Regent require the countersignature of the Secretary of State for Internal Affairs. The Captains Regent can send a law back to parliament for consideration if they consider that it does not comply with the principles contained in the Declaration on the Citizens' Rights. The Captains Regent can jointly summon and preside over the Great and General Council and co-ordinate the meetings of the Congress of State (without the right to vote). They also preside over the Judicial Council and the Council of the XII as well as the Board of the Heads of the Township Councils and set the election dates.

22. The Captains Regent are empowered to pass laws through regulatory Regency Decrees. They co-ordinate the procedures regarding the formation of the government and mediate between political parties to determine the possibility of forming a new government coalition. Moreover, the Captains Regent are the formal recipients of popular petitions (*Istanze d'Arengo*) and popular legislative initiatives as well as requests for referenda and set the dates for the latter.

23. The Captains Regent take office on the first of April and the first of October each year and are elected by the members of the Great and General Council by an absolute majority in a secret ballot for a term of office of six months. During their term in office the Captains Regent are not substituted in the Great and General Council, which means that their parties lose a vote in the Council during their term in office. In the event of very tight majorities this has resulted in both a member of the ruling majority and of the opposition being elected as Captains Regent, but normally they both hail from the ruling majority.

24. The central role of the Captains Regent and the fact that they preside over most of the State institutions, even if they formally do not vote, naturally raise questions regarding the effectiveness of the system of checks and balances in San Marino. This is compounded by the particularities of San Marino being a micro-State. Many of the reforms of the country's constitutional system therefore aimed at ensuring that the country's unique system of government remains compatible with European norms and standards for democratic accountability and efficient checks and balances. This is and has been a priority for the successive governments of San Marino, which is to be welcomed.

25. The Captains Regent centrality in the country's system of governance also raised questions regarding vulnerability to undue influence and conflicts of interest.<sup>17</sup> This is a subject that GRECO is also monitoring in the context of its fifth evaluation round and any possible concerns and recommendations of GRECO with regard to San Marino in this respect should be addressed as a priority. We note however that already historically there have been specific measures that attempt to address this issue. In addition to their statutory accountability (see below), the Captains Regent, during their term in office, may not hold any other office or exercise any other art or profession and are not allowed to be alone and are accompanied all time by a State official, are not allowed to drive a car or any other means of transport themselves and are not allowed to handle money, including for private expenses.

26. The Captains Regent are directly accountable to the citizens of San Marino. While they enjoy absolute immunity during their term in office, in the first fifteen days after the end of their mandate, any citizen who is registered on the electoral list can submit complaints relating to the undertakings carried out, or not, by a Captain Regent during his or her six-month term in office.<sup>18</sup> These complaints are considered and

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16. This unique system to our knowledge only exists in San Marino, Andorra, and the Kingdom of Eswatini albeit each with a completely different institutional architecture.

17. In the view of the Sammarinese authorities this risk is largely mitigated by their short term in office and the fact that they form a collegiate body where each Captain Regent can veto the other.

18. This procedure is called "Regency Syndicate" (*Sindacato della Reggenza*).

adjudicated, without prejudice to any criminal and civil liability to be established by ordinary courts after the end of the term of office, by the Guarantors' Panel on the Constitutionality of Rules, which is the *de facto* Constitutional Court in San Marino. If a complaint is ruled to be well-founded, the Guarantors' Panel can issue a reprimand, levy fines or remove their political and civil rights. Even a reprimand was considered by our interlocutors to be an effective deterrent given the closely knit Sammarinese society.

### **2.3. The Congress of State**

27. Executive power is vested in the Congress of State (government) of San Marino. In line with legal provisions, the Congress of State shall consist of no more than 10 Secretaries of State (ministers). At present, the Congress of State is composed of 10 Secretaries of State in charge of an equal number of different ministries.<sup>19</sup> The Secretaries of State are appointed by the members of the Great and General Council. Candidates who are members from the Great and General Council are appointed with an absolute majority. San Marino citizens that are not member of the Great and General Council may be appointed, by a 2/3 majority, as Secretary of State as long as they do not account for more than one third of the State Congress. Since the reforms of 2005, the term of a Secretary of State cannot exceed 10 years after which they can only be re-appointed in the Congress of State 10 years after the end of their last assignment. The Congress of State may resign by the majority of the members on its own accord, or by the passing of a motion of no-confidence by the Great and General Council.

28. The Congress of State sets and implements the general policy of the Government and regulates public administration. Moreover, it can initiate legislation and submit it to the Great and General Council for approval. In addition, it drafts the budget proposals (which have the form of a draft law) and presents them to the Great and General Council. The Congress of State can adopt decrees, which have the force of law, but which need to be ratified, within three months after they have been issued, by the Great and General Council.

29. The Congress of State is accountable to the Great and General Council. The Captains Regent coordinate the meetings of the Congress of State but do not have voting rights. They represent the institutional link between the Congress of State and the Great and General Council. In line with the tradition of governing as a collegiate, there is no Prime Minister in San Marino. The establishment of a position of Prime Minister has occasionally been brought up from an efficiency perspective but is in general seen as difficult to implement in the country's political and constitutional context.<sup>20</sup>

30. We already raised the issue of "equality of arms" between the executive and parliament in the context of the Great and General Council, the Secretaries of State are full-time professional positions which are supported by institutional secretariats. This should be contrasted with the part time voluntary nature of the function of a member of parliament. In the view of a number of interlocutors this has resulted in an executive that is too powerful and that in practice rules by decree, instead of waiting for the Great and General Council to guide policies and take legislative action. If left unchecked this development could go against the very nature of the institutional makeup of the country. Addressing this should be considered in the context of future institutional reforms.

### **2.4. The Council of the XII**

31. The Council of the XII is a unique feature of San Marino's institutional architecture and used to wield considerable political powers. It was formally part of the country's legal system until the reforms of 2002. Until then the Council of the XII functioned as Constitutional Court and the highest judge of appeal in civil and administrative matters, which raised serious questions with regard to separation of powers and the independence of the judicial system. With the reforms of 2002 these functions were taken away and are now performed by the highest judges of appeal, the Judge for Extraordinary Remedies and the Guarantors' Panel on the Constitutionality of Rules.

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19. 1. Foreign Affairs, International Economic Co-operation and Telecommunications; 2. Internal Affairs, Public Sector, Institutional Affairs and Relations with the Township Councils; 3. Finance and Budget and Transport; 4. Education and Culture, University and Scientific Research and Youth Policies; 5. Health and Social Security, Welfare and Social Affairs, Political Affairs, Equal Opportunities and Technological Innovation; 6. Territory and Environment, Agriculture, Civil Protection and Relations with the Autonomous Public Works State Corporation; 7. Labour, Economic Planning, Sport, Information and Relations with the Autonomous Public Utilities State Corporation; 8. Industry, Handicraft and Trade, Technological Research and Regulatory Simplification; 9. Justice and Family; 10. Tourism, Post, Cooperation and Exhibitions.

20. As mentioned, collegiate governing structures and avoidance of concentration of power in a single office are at the basis of the country's institutional architecture.

32. The 12 members of the Council of the XII are elected at the start of each convocation of the Great and General Council by and from among its members. The Captains Regent preside over the Council of the XII which meets once a month.

33. Following the 2002 reforms, the functions of the Council of the XII are limited to approving the registration of real estate in the name of non-Sammarinese citizens and legal persons and granting recognition to Sammarinese communities abroad. According to the information we received from the Council of the XII, the decisions on the authorisation of the registration of real estate in San Marino by non-citizens and foreign legal entities are strictly a formality, while the recognition of Sammarinese communities by an official body is important as they are eligible to funding from the State budget.

34. With its current limited functions and powers, the Council of the XII is mostly a historic and symbolic institution with mainly administrative functions. During our visit, a number of interlocutors questioned its continued existence in the long term in the context of further European integration where the acquisition of real estate could also be governed by international regulations and agreements with the European Union.

## **2.5. Local self-government**

35. San Marino is split into nine administrative districts called townships (*Castelli*). San Marino signed the European Charter of Local Self-Government (ETS No. 122) on 16 May 2013 and ratified it on 29 October 2013. San Marino has not ratified the additional protocol to the Charter on the right to participate in the affairs of a local authority (CETS No. 207).

36. Each township has a town council, which is responsible for the control and management of local services, as well as, *inter alia*, the promotion and coordination of cultural, recreational, or social activities. The number of members of a township council depends on the size of the township.<sup>21</sup> The township councils are elected every five years by direct vote of the residents of the townships. The function of member of a township council and that of member of the Great and General Council cannot be combined. All San Marino citizens, over 18 years old residing in San Marino and registered on the electoral lists, can vote for the candidates in their township.<sup>22</sup> According to the law, non-nationals residing in San Marino are granted to vote, if they have been residents in San Marino for at least 10 years.

37. The heads of the township councils represent and chair the township council, celebrate civil marriages, and attend the sessions of the Committee for territorial policies. In addition, they invite members of the Congress of State and the Great and General Council to attend their sessions, organise gatherings, public debates, and meetings. As discussed in the next section, township councils have the right of legislative initiative and can propose draft legislation to the Great and General Council, except on amnesty or pardon, tax and budget laws and laws ratifying international treaties. The townships do not have local financial resources of their own and their very limited financial means derive from the central State budget. For that reason, before submitting the annual State budget to the Great and General Council, the relevant Secretaries of State are obliged to hold a meeting with the township councils to discuss their priorities.

38. As noted by the Congress of Local and Regional authorities of the Council of Europe,<sup>23</sup> it is evident that in a micro-State like San Marino, local authorities cannot have the range of responsibilities normally associated with local self-government. However, as mentioned by the heads of the township councils we met, local authorities in San Marino have so few responsibilities and even lesser resources, that it undermines the very concept of local self-government in the country.

39. The relevant legislation has put in place an elaborate structure of consultations between the central authorities and the local township councils, including a meeting of the Captains Regent at the start of their term with the heads of the township councils. In addition, as mentioned, the local councils have the right of legislative initiative. However, during our meeting with the township councils, we were informed that in practice these consultations do not work as intended and bear very little results if at all. This was also noted by the Congress of Local and Regional authorities in their report<sup>24</sup> on San Marino. The situation has improved somewhat after the reform of 2020 which established obligatory consultations between local and central authorities, and which established that where opinions of townships councils were foreseen by law, they

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21. The Township Council is composed of the Head of the Township Council and seven members, if the township has more than 2 500 inhabitants. For townships of less than 2 500 inhabitants, Township Councils are composed of the Head of the Township Council and five members.

22. Congress Monitoring and Election Observation Reports.

23. Congress of Local and Regional authorities, CG (34(2018)17final.

24. Idem.

would be binding in nature and not advisory. However according to the Township Heads we met, the practical results of the consultation process were still very limited, to the extent that this was undermining the trust in the political process. This is an issue of concern. While we understand that local government in a micro-State has logically more limited functions, where consultation and decision-making processes are put in place, it is important that the citizens see that they are taken seriously and bear tangible results, otherwise citizens could lose trust not only in local governance but in politics in general, which in the context of the rising populism in our continent, would, in our view, be a dangerous development.

## **2.6. Direct democracy**

40. San Marino has an impressive well-developed system of direct democracy consisting of constitutional instruments: the *Istanza d'Arengo*, the already mentioned popular legislative initiative, and referendums.

41. The *Istanza d'Arengo* provides that, at the start of the term of the new Captains Regent, all San Marino citizens of legal age can submit requests dealing with issues of public interest to the Captains Regent, who submit all admissible requests to the Great and General Council, which is obliged to consider them. This is a widely used instrument in San Marino. As an example: 21 petitions were filed at the start of the term of the current Captains Regent, which were almost all declared admissible and about half of which were approved by the Great and General Council

42. As already mentioned, in 2013, San Marino modified the popular legislative initiative to allow legislative initiative by citizens. Sixty or more Sammarinese citizens of legal age can propose a draft law to the Great and General Council, which will then follow the same adoption process as for laws initiated by the Great and General Council itself. In addition, as mentioned above, Townships Councils also have the right of initiative for legislation.

43. San Marino knows three types of popular referendum procedures. Voters can ask for a “*referendum propositivo*”, where they propose principles and guidelines to be regulated by law. Secondly it allows for a law to be confirmed by a popular referendum (*referendum confermativo*), or to repeal a law partially or in its entirety (*referendum abrogativo*). It is important to note that abrogative referenda cannot propose to abolish institutional bodies or to revoke constitutional laws or fundamental principles that are enshrined in the Declaration on the Citizens' Rights. In addition, referenda cannot be used for taxes and duties, the national budget, granting amnesty and pardons or for the ratification of international treaties and agreements.

44. The range of instruments available to Sammarinese citizens to exercise direct democracy is impressive and has fostered a close proximity between the government and its people. However, in our meetings with civil society, we heard some complaints that the processes to implement the petitions accepted, or results of referenda, could be very time consuming or lengthy. In addition, laws adopted were not always consistently implemented, to a certain extent reflecting the criticisms we heard from the Heads of Townships. If this perception would become systematic or widespread it could undermine trust in the instruments of direct democracy, which are an important part of the democratic institutions in the country. We would encourage the relevant Sammarinese authorities and institutions to reflect on how to counter such perceptions.

## **3. Rule of law**

### **3.1. Judiciary**

45. The constitutional order in San Marino derives from various legislative instruments. Of these, the most significant is the Statutes of 1600 and the Declaration on the Citizen's Rights. San Marino's legal system is based on the laws adopted by the parliament and on the decrees adopted by the Government and ratified by the Great and General Council. Since the reforms of 2002 the European Convention on Human Rights (ETS No. 5) is fully integrated in San Marino's legal system and is directly applicable by the Courts.

46. San Marino court system is divided into civil, criminal, and administrative pillars each consisting of three levels of courts. The judiciary is headed by a chief magistrate who organises the work of the court and the individual magistrates (s)he supervises and who co-ordinates and directs the judicial offices.

47. The highest level consists of the highest judges of appeal and the Judge of Extraordinary Remedies. The Highest Judge of Appeal in criminal matters decides, as last resort, on appeals in criminal proceedings also concerning precautionary measures and on the execution of penalties. The Highest Judge of Appeal in civil matters decides *forum non conveniens* in civil judgements and on civil and administrative judgements in the third instance. The Judge of Extraordinary Remedies decides on disputes between civil, criminal, and

administrative jurisdictions; on appeals for the review of criminal judgements; and on complaints for an annulment and reinstatement of extraordinary remedies against final civil judgements and on objection of magistrates.

48. The intermediate level consists of the criminal, administrative and civil judges of appeal who decide in the area of their jurisdiction on appeals against the decisions made in first instance by the law commissioners.

49. Law commissioners are responsible for first instance proceedings. In case of criminal proceedings one law commissioner acts as an investigative judge and conducts the prosecution, while another law commissioner adjudicates. There is no general prosecution service in San Marino. A number of stakeholders felt that the establishment of a prosecutor general could improve judicial efficiency and independence.

50. Judges are recruited through public competition. Previously, the country's lower court judges could not be San Marino citizens in order to ensure their impartiality and were generally recruited from among Italian lawyers. However, that requirement no longer exists, and San Marino citizens can also be appointed as a judge.

51. As part of the 2002 constitutional reforms, the Guarantors' Panel on the Constitutionality of Rules was established as the Constitutional Court in San Marino. It is composed of 3 judges as full members and 3 alternate judges which are appointed for, an once renewable, 4-year term by the Great and General Council with a 2/3 majority. The replacement is staggered to avoid that all judges would be renewed at the same time. The Guarantors' Panel verifies the constitutionality of laws, of regulatory acts having the force of law adopted by the Great and General Council or by the Congress of State, as well as of customary rules having the force of law, decides on the admissibility of referendum requests, and decides in case of conflicts between constitutional institutions.<sup>25</sup> In addition, it decides on any complaints filed by citizens against the undertakings of the Captains Regent at the end of their term (see also paragraph 26 above).

52. The developments concerning the already mentioned "Conto Mazzini" affair, and in particular the evaluation report of GRECO in the context of its fourth evaluation round on Prevention of corruption in respect of members of parliament, judges, and prosecutors,<sup>26</sup> revealed serious deficiencies with regard to the independence and functioning of the judiciary in San Marino. The GRECO report underscored the problematic system of governance of the judiciary and the appointment of judges in San Marino which allowed for political control over the judiciary. This report in particular was considered a watershed moment in San Marino that resulted in a far-reaching reform of the judicial structures. These reforms were adopted in 2021<sup>27</sup> (Law No. 01/2021) following a period of extensive consultations with the different stakeholders.

53. The reform substantially changed the composition of the Judicial Council, excluding active members of the legislative and executive powers. The reformed Judicial Council is composed of 8 members. Of these 8 members, 4 are magistrates (3 from among the law commissioners and 1 from among the judges of appeal – or highest judges of appeal) elected by their peers with a 2/3 qualified majority. The other 4 are lay members elected with a 2/3 majority by the Great and General Council. The lay members should be citizens of San Marino and have a high-level law degree or similar experience in the judicial system. The lay members cannot be members of the State Congress or of the Great and General Council. The term of office is four years. To strengthen independence, judge members can serve two consecutive terms, while lay members are not eligible for immediate re-election. The Judicial Council normally meets every three months but can be also called on initiative of the Captains Regent or on request of 3 members. It is formally presided over by the Captains Regent, who have no voting rights. The Head Magistrate acts as vice-president and, by delegation of the Captains Regent, he/she is responsible for its organisation and operation in accordance with the Rules of Procedure. The Minister of Justice and the President of the Parliamentary Commission for Justice are no longer members of the Judicial Council, in line with recommendations by GRECO. The current four lay members were unanimously elected by the parliament. Two of them are current lawyers qualified to practice law, two are retired lawyers. The Judicial Council, since its reform, has already approved a Code of ethics for San Marino magistrates.

54. The reform of the Judicial Council was widely welcomed by the stakeholders including the Sammarinese bar association. GRECO in its recent compliance report strongly welcomed the reforms and concluded that practically all of its recommendations had been implemented by the authorities. The authorities and political forces, as well as all stakeholders, should be lauded for their swift adoption of these reforms. At the same time, as highlighted by the Head Magistrate of San Marino,<sup>28</sup> the reforms implemented in

25. [Greco Eval I/II Rep\(2011\)2E](#).

26. [GrecoEval4Rep\(2019\)1](#).

27. Law No. 01/21, which entered into force on 12 December 2021.

Constitutional law No. 01/21 should be a starting point and not the end of the reforms. The authorities should continue to constantly monitor the independence and efficiency of the judiciary and adopt further reforms if necessary to ensure the full independence and impartiality of the judiciary.

### **3.2. Fight against corruption**

55. As mentioned, the 2017 “Conto Mazzini” scandal raised questions with regard to the vulnerability of San Marino’s institutions to corruption. Since then, San Marino has been implementing a series of targeted measures to develop and strengthen its anti-corruption policy.

56. San Marino is not covered by the perception of corruption indexes published periodically by Transparency International, and there are no other comparable international surveys on corruption perception in the country. As noted by GRECO, the most recent national study on the characteristics of corruption in San Marino was reportedly conducted in 2014. It should be noted that while the risk of corruption was perceived to be high for public officials, judiciary, police forces, and employees of private companies, most of those interviewed indicated that they themselves never had come across specific incidents of corruption.<sup>29</sup>

57. Following the publication by GRECO of its evaluation report in the framework of the fourth evaluation round, a number of reforms have been implemented in addition to the ones we mentioned in the section related to the judiciary. In a welcome development, a Code of ethics for members of the Great and General Council was adopted. As underlined by GRECO, this should be a living document, adapted to new developments and clear explanations and concrete examples should be provided to ensure its implementation. An Advisory Committee was established that is composed of members of the Great and General Council in equal numbers from the ruling majority and opposition. This Advisory Committee gives concrete support to MPs on ethical issues and possible conflicts of interest and decides on gifts received. In addition, it is the recipient of the declarations of interests of MPs. All declarations and decisions of the Advisory Council are published on the publicly accessible website of the Great and General Council. An MP is obliged to comply with the committee’s guidance. If an MP does not comply (s)he should explain in writing why. Both the opinion and reasons for non-compliance are made public, including on the website of the Great and General Council. Currently, only other members of the Great and General Council can inform the Advisory Committee about any discrepancies in the declarations of interests by other members of the Great and General Council. Despite the fact that the website is publicly accessible, members of the public do not have this possibility. Given the close proximity and intertwinement of the institutions with the citizens, we would strongly recommend that all citizens are given the possibility to point out discrepancies in the declarations of interests published on the website of the Great and General Council.

58. In its compliance report, GRECO had some misgivings about the manner in which the opinions of the Advisory Committee are enforced, which is mostly based on trust. In response, the Advisory Committee noted that – given the close proximity of voters with those elected and taking into consideration the system of preferential voting that is used in San Marino – public opinion and trust are extremely important for Council members. Nevertheless, we would recommend that the Great and General Council would consider the introduction of sanctions for more serious violations of the Code of ethics or deliberate omissions and discrepancies in the declarations of interests.

## **4. Human Rights**

59. San Marino was founded as a refuge from political and religious prosecution and historically has had a well-developed institutional and legal system for the protection of human rights. The legal foundations for the protection of human rights in San Marino are the 1974 Declaration on the Citizens’ Rights as well as the European Convention on Human Rights which, as mentioned, is directly applicable by the courts in San Marino. Despite this well-developed framework, a number of issues should be noted.

60. The Declaration on the Citizens’ Rights states that “all are equal before the law without distinctions relating to gender or personal economic, social, political, or religious circumstances”. While discrimination does not seem to be a widely occurring or frequent problem in San Marino, the European Commission against Racism and Intolerance (ECRI) has recommended that the Declaration on the Citizens’ Rights be amended to explicitly state grounds for discrimination.

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28. In his comments, the Head Magistrate underlined the solid foundation of the reform process in Constitutional Law No. 1/2021.

29. [GrecoEval4Rep\(2019\)1](#), paragraph 18.

61. According to the civil society organisations we met, no serious cases of racism or racial discrimination have been reported in San Marino, which seems to confirm official statistics. In the framework of the fifth monitoring cycle of the Framework Convention for the Protection of National Minorities (ETS No. 157)<sup>30</sup> the authorities underscore that there are no ethnic, religious, and linguistic minorities in San Marino.<sup>31</sup> Nevertheless, social developments in the Sammarinese society have prompted the Government to develop instruments to prevent any discrimination and infringement of human rights. Consequently, in 2008, the Parliament of San Marino approved the law on “Provisions on Racial, Ethnic and Religious discrimination”. This law “reaffirms the commitment of the San Marino Government to the principle of non-discrimination and gives effect to the fundamental value of equality”.<sup>32</sup> However, as noted by the Framework Convention Advisory Committee, there is no human rights institution that would meet the requirements of the Paris principles.<sup>33</sup>

62. San Marino has a Commission for Equal Opportunities, which is composed of representatives of the political groups present in the Great and General Council and civil society appointed by the Great and General Council. All members are appointed for five years and none receive any remuneration. Regrettably the commission has a very limited budget (less than €10 000) and therefore is not capable of organising any awareness activities, publish any report or maintain statistical databases. ECRI has recommended that the Sammarinese authorities establish by law an independent specialised body to combat racism and racial discrimination at the national level. In that context ECRI emphasised that, if the Sammarinese authorities decide to reform the Commission for Equal Opportunities as an independent specialised body to combat racism and racial discrimination, this commission should be provided with sufficient financial and human resources to execute its assigned tasks adequately and independently.

63. There is currently no legal framework that allows religious denomination besides the Catholic Church to register as religious organisations. Other religious denominations have to register as a civil law organisation, which is currently the case for the Muslim Community and the Jehovah’s Witnesses in San Marino. This was noted in the 2018 ECRI report on San Marino that noted that the lack of the possibility to register as a religious organisation leads to “the application of administrative rules specific to companies/firms which are ill-suited to religious practice. For example the funds raised through alms should be registered and taxed as an association”.<sup>34</sup> This issue has not yet been resolved and we call upon the Sammarinese authorities and Great and General Council to draft and adopt the required legislation that would allow religious denominations to register as religious organisations.

64. The Sammarinese legislation gives non-national residents and resident citizens equal rights with regard to employment, social assistance, health, education, etc. Previously, with regard to the health care for persons who have an employment in San Marino that is subject to compulsory insurance, resident nationals and resident foreigners were not enjoying the same privileges. Resident San Marino citizens enjoyed free health care, while resident foreigners had to pay contributions to the Sammarinese health system. To date, the payment of the contribution to health expenses is required for resident foreigners who do not have an employment activity in San Marino subject to compulsory insurance. The Government of San Marino has announced that it wishes to establish full equality of treatment for resident citizens and foreigners with regard to medical assistance and has therefore abolished the payment requirements for foreign resident workers in the county. This is to be welcomed.

65. Unequal treatment between national and foreign residents with regard to participation in local elections, in contradiction to European standards and the Charter on local self-government, is an issue of concern. Following recent changes to the electoral legislation, foreign nationals who have been residents in San Marino for at least 10 years can vote in local elections. While the introduction of voting rights for foreigners is a positive development, the requirement of 10 years of continuous residence contradicts the principle of maximally five years of legal residence preceding the elections, as stipulated in the Council of Europe Convention on the participation of foreigners in public life at the local level (ETS No. 144).<sup>35</sup> We therefore recommend that the authorities consider lowering the residency requirement to five years.

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30. [ACFC/SRV\(2021\)001](#).

31. Foreigners living in San Marino are not considered to constitute a minority.

32. [ACFC/SRV\(2021\)001](#).

33. The Principles relating to the status of national human rights institutions (the Paris Principles) were adopted in 1991. The Paris Principles are standards that all NHRIs should meet and also contain additional principles that apply only to institutions with “quasi-jurisdictional” competence. Under the Paris Principles, NHRIs are required to: protect human rights, including by receiving, investigating, and resolving complaints, mediating conflicts, and monitoring activities; and promote human rights, through education, outreach, the media, publications, training, and capacity-building, as well as by advising and assisting governments.

34. [ECRI Report on San Marino \(Fifth monitoring cycle\)](#), p 22, paragraph 74.

66. Civil society organisations and citizen's initiatives play an important role in the implementation of social policies and protection of social rights in San Marino. However, they depend for a large extent on voluntary contributions and private donations which hinder long-term planning and security of implementation. The intertwining of civil society and official institutions was blatant during our meetings, where some participants represented civil society organisations in one meeting and agencies or official consultation boards in others. Nevertheless, despite the close relationship between the institutions and civil society, and despite the existence of an elaborate set of direct democracy instruments, many representatives noted that decisions and laws are not always or not consistently, implemented, affecting the results of their work. As mentioned in other sections, this seems to be a recurrent issue that we urge the authorities to address.

67. A number of reforms have been implemented in the last decade to strengthen sexual minority rights. Until 2004, homosexuality was punishable with prison sentences. Since then, homosexual relationships have been protected by law. In 2015, the Commissioner for Human Rights of the Council of Europe recommended the introduction of the legal recognition of homosexual couples. This was done starting from 2017 when an amendment was approved in the Budget Law allowing civil marriage between foreign nationals of the same sex in the Republic (Article 72 of Law No.147/2017) and further strengthened when, in 2018 the Great and General Council passed the law on civil partnerships (Law No. 147 of 20 November 2018). According to the law, same-sex couples can obtain a form of legal recognition of their relationship that is equivalent to marriage in various areas such as residence, inheritance, and cohabitation.

68. There is no detailed data regarding LGBTI persons living in San Marino. San Marino appointed the world's first openly gay Head of State and is generally considered to be among the more progressive countries with regard to LGBTI rights. However, this should not lead to complacency or mean that intolerance does not exist. In consultation with the communities concerned further measures should be considered if the need arises.

69. While women's rights are generally well respected in San Marino, it should be noted that Women in San Marino only received voting rights in 1960, while they did not receive the right to be elected until 1973. Moreover, until 1986, Sammarinese women who married a foreigner automatically lost their Sammarinese citizenship, which was not the case for men. Only since 2000 can Sammarinese women who are married to foreigners pass on their citizenship to their husbands or children and only in 2004 was the citizenship legislation amended to establish that Sammarinese women transmitted their citizenship to their children at birth. At the same time, it should be noted that in 1981, a woman was elected Captain Regent for the first time, and in 2017, for the first time in the history of San Marino, two women were elected Captains Regent in the same semester and that many women have held institutional and governmental positions.

70. Similarly, until very recently (September 2022), San Marino had a total ban on abortions and the law mandated prison sentences for any woman who got an abortion or any person who performed, or helped a person to obtain, an abortion, even in cases of rape or incest. However, the *de facto* effects of this total ban on abortion were mitigated due to the country's geographical situation, as women were not prevented from obtaining abortions in neighbouring Italy, albeit without social security support. However, in September 2021, following a long campaign, San Marino citizens voted overwhelmingly in a referendum to legalise abortion. More than 77% of the citizens voted in favour of legalising abortion. In response, the Great and General Council approved, on 31 August 2022, the law legalising abortion which entered into force on 12 September 2022.

71. Despite the overwhelming success of the referendum, abortion remains a controversial topic in the Sammarinese society, with the debate during and after the referendum being described as toxic by some of the stakeholders. The dialogue on furthering women's and reproductive health rights is reportedly difficult. Social progress requires social acceptance, which should be actively promoted.

72. In their baseline report, the Group of Experts on Action Against Violence against Women and Domestic Violence (GREVIO),<sup>36</sup> while welcoming the reforms that had been implemented, considered that the country requires to implement additional measures to comply with the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (ETS No. 210, "the Istanbul Convention").<sup>37</sup> According to GREVIO, further action is particularly needed to ensure the practical realisation of the principle of equality between women and men. Statistical data on gender equality is reportedly scarce in

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35. Chapter C – Right to vote in local authority elections, Article 6.

36. GREVIO Baseline Evaluation Report – San Marino.

37. Istanbul Convention.



San Marino, but the proportion of seats held by women in national parliament amounts to 33% while in the private sector 22% of managers are female. The unemployment rate for women (10.56%) is considerably higher compared to men (4.7%).

73. Concerns with regard to the obstacles faced by non-governmental organisations active in promoting and protecting women's rights have also been raised in the GREVIO report. In San Marino several NGOs are actively promoting women's rights and the fight against gender-based violence. However, due to lack of government funding for their activities, these NGOs find it difficult to expand their activities and develop support services, or to be able to take part in the implementation, monitoring, and evaluation of the country's policies to combat women's violence.

74. With regard to the GREVIO report we were contacted in December 2022 by the Unione Donne Sammarinesi (UDS – Women's Union of San Marino) who was one of the entities that was met by the GREVIO delegation that prepared the base-line report. During a discussion on the GREVIO report in the Great and General Council the authorities had reportedly indicated that in their view the report contained manifestly wrong data that would have damaged the image of San Marino.<sup>38</sup> As a result, the Great and General Council agreed to request the Congress of State to start an official inquiry into who would have provided wrong information to the GREVIO with the possibility of criminal pursuit. We cannot comment on the correctness of the data in the report but the fact that a criminal investigation could be requested against a person or organisation for allegedly providing wrongfully information to a delegation of an international organisation, even if such a request was made in the heat of an political debate, is of concern as this would make the work of official monitoring bodies like ours impossible. We therefore welcome the written communications by the Minister of Foreign Affairs of San Marino that the Congress of State sees no elements that would justify an investigation and therefore considers the procedure closed.

75. Freedom of expression is generally upheld in San Marino and the media environment is pluralistic. A point of concern is the fact that the Criminal Code of San Marino criminalises defamation which is punishable with short-term detention or a daily fine which could lead to self-censorship among journalists. In order to enhance the media environment in San Marino we urge the authorities to decriminalise defamation in line with European standards.

76. Before 2014, there was no specific legislation governing the media in San Marino. This changed in 2014 with the adoption of the media law which established, *inter alia*, the media Authority. A number of interlocutors felt that this authority would allow political control over the media it is supposed to regulate, as the members of this authority are appointed by the Great and General Council. Moreover, strict privacy laws in San Marino, compounded by the already mentioned defamation legalisation, hinder access to public information. The authorities should consider amending the applicable legislation to ensure the genuine independence of the media authority, and unhindered access to public information. Several interlocutors noted the problems in regulating the media in case of a micro-State encircled by another State. As a result of this particular geographic situation, a considerable part of the media was *de facto* regulated by Italian legislation, but journalists remain liable under the country's defamation legislation.

77. On 31 July 2017, a Code of conduct for media professionals was adopted. It contains the protection of individual privacy, fundamental rights, and makes a clear distinction between facts and opinions. The code regulates the media and the work of the media representatives and provides for disciplinary sanctions in case of infringements of ethical standards. Some interlocutors noted that sanctions could potentially have a negative effect on media freedom. However, as long as the law does not leave space for interpretation or discretion, it could on the contrary give strong leverage for independent media. Online publications, such as blogs and posts on social media written by individuals or associations, are currently not considered as part of the press and therefore not covered by normal media legislation.

## 5. Conclusions

78. San Marino, which joined the Council of Europe in 1988, is a micro-State and both the world's oldest extant sovereign State as well as oldest constitutional Republic. It has a unique and well-developed system of democratic and rule of law institutions that are well adapted to its historical democratic heritage as well as the particularities of it being a micro-State. While these structures have constantly been adapted to the needs of the changing society, its main tenets, collegiate governing structures which are shared among the citizens for

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38. It should be noted that according the UDS the data in the GREVIO report was correct but misunderstood by the representative of the authorities that addressed the Great and General Council.

limited terms, have remained in place. Combined with the particularities of a micro-State, this has resulted in a very close proximity between the citizens and their political and governing structures, and an equally close distance between the different branches of powers which are often intertwined.

79. In order to retain its independence as a sovereign State in an increasingly interconnected and interdependent world, San Marino has closely integrated into the international community and harmonised its institutions and legal framework with international norms and standards. These efforts to ensure that its democratic institutions and legal framework – despite the particular challenges resulting from it being a micro-State – adhere to international norms and standards, including its obligations as a member State of the Council of Europe, should be lauded.

80. At the same time, the close distance between and among the citizens and the different branches of power in San Marino, have arisen questions and concerns about the functioning of the system of checks and balances in the country and the potential vulnerability of the democratic institutions and its office holders to corruption and conflicts of interest. This has led to the implementation of a series of far-reaching reforms of the democratic and rule of law institutions in San Marino, including, most recently, its judicial system, whose independence and resilience to external interference had come under scrutiny. The outcome of these reforms is widely seen as positive and has provided San Marino with a solid foundation for the proper functioning of its governing and judicial institutions. At the same time, due to the already mentioned particularities of its democratic and rule of law institutions, constant vigilance and openness for reform are both present and remain needed in San Marino. In this report and the draft resolution, we have therefore outlined some of areas for further attention and made a number of recommendations in this respect.

81. As mentioned, San Marino was founded as a refuge from political and religious prosecution and historically has had a well-developed institutional and legal system for the protection of fundamental human rights. Even if there are at this moment no major concerns regarding human rights in San Marino, that does not mean that underlying deficiencies do not exist. There should be no space for complacency, all the more so as in a number of cases the legal framework for the protection of human rights has run behind the existing developments and acceptance of rights in the Sammarinese society. A number of areas are therefore not, or only partially, regulated and a number of important legal reforms, including with regard to women's rights, have only relatively recently been adopted and implemented. In our report and draft resolution, we have outlined some areas of concern in this respect that would need to be addressed by the authorities.

82. San Marino has a wide and impressive range of institutional consultation mechanisms and instruments of direct democracy. However, during our visit many of our interlocutors informed us that these consultation mechanisms are not always used as intended or its results ignored or not implemented. Similarly, we were informed that laws adopted are not always consistently implemented or enforced. This is an issue of concern. A widespread perception that these consultation mechanisms are ignored or ineffective could undermine the public trust in these instruments of direct democracy which are a historic and fundamental part of the democratic institutions of San Marino. We encourage the relevant Sammarinese authorities, and in particular the Great and General Council, to reflect on manners to counter these perceptions and to continue to ensure, and where necessary strengthen, the effectiveness of the various consultation mechanisms and instruments of direct democracy.